SL No. 131

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRIMADAN BHALCHANDRA GOSAVI– MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 22.09.2021 AT 12:00 PM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 147/9/HDB/2020
NAME OF THE COMPANY	Vilin Bio Ned Ltd
NAME OF THE PETITIONER(S)	Alutech Packaging Pvt Ltd
NAME OF THE RESPONDENT(S)	Vilin Bio Ned Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

CP 147/9/HDB/2020 is listed for orders. Orders pronounced vide separate orders.

Sd/-

MEMBER (T)

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MEMBER(J)

Syamala

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I, HYDERABAD

CP(IB) No. 147/9/HDB/2020
U/s. 9 of Insolvency & Bankruptcy Code, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016

In the matter of:

M/s. Alutech Packaging Pvt. Ltd.
Having its Registered Office at
DSM-315, DLF Tower Shivaji Marg
West Delhi
NEW DELHI – 110 015, India

.... Operational Creditor

Vs.

M/s. Vilin Bio Med Limited
Having its Registered Office at 6-61/1
First Floor, Shipi Complex
Dilsukhnagar
Hyderabad – 500 0-35

Also at the Factory Address:
Khasra No.85, Madhapur Village
Tehsil, Roorke, Haridwar District
Uttarakhand – 247 667, India

... Corporate Debtor

Date of Order: 22.09.2021

Coram:

Hon'ble Shri. Madan B. Gosavi, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties / Counsels present:

For the Petitioner : Ms. Mano Ranjani, Advocate

For the Respondent: ---

Heard on: 26.08.2021, 17.09.2021

Date of Order: 22.09.2021

[Per: Bench]

ORDER

1. The instant Petition is filed by **M/s. Alutech Packaging Pvt. Ltd. /Operational Creditor** alleging that **M/s. Vilin Bio Med Limited/ Corporate Debtor** had defaulted an amount of **Rs.17,37,352/- (Rupees Seventeen Lakhs Thirty Seven Thousand Three Hundred Fifty Two only)** which includes Principal amount of **Rs.11,32,709/-** and interest of **Rs.6,04,643/- (**Interest calculated @ 18% per annum till 31.01.2020 from the date of default i.e. on 28.04.2017). **The Computation Table is annexed as Annexure-1 at page No.15 of the application.**

   Hence, this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The averments of the petition filed by the Petitioner/Operational Creditor in brief are described hereunder:

   i. M/s. Vilin Bio Med Limited / Corporate Debtor is engaged in pharmaceutical formulations. During the course of business, the Corporate Debtor approached and negotiated with the Operational Creditor for supply of Alluminium Foil for usage as packaging material for its pharmaceutical products. All the material were supplied by the Operational Creditor against VAT invoices which were duly acknowledged and received by the Corporate Debtor. The Corporate Debtor have never raised any dispute about the supplied quality, quantity and rates whatsoever in nature. The payment terms were 60 days from the date of delivery.

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ii. It is averred that a running account was being maintained between the parties whereby Corporate Debtor purchased the materials on various dates on credit basis and paid amount of some bills on different dates and the last transaction took place on 28.04.2017, whereon an amount of Rs.1,40,000/- was paid by the Corporate Debtor towards partial discharge of its total liability.

iii. It is averred that to recover the defaulted amount, the Operational Creditor has rigorously followed up with the Corporate Debtor for payment. The Corporate Debtor admitted its entire liability under the supply contract and in discharge thereof issued the following cheques drawn on Punjab National Bank, Ramnagar, Roorkee, Haridwar, Uttarakhand.

S.No.	Cheque No.	Date	Amount Rs.
1.	176571	09.06.2017	74,906/-
2.	176568	09.06.2017	2,21,638/-
3.	176569	09.06.2017	94,168/-
4.	176570	09.06.2017	1,83,609/-
5.	176572	09.06.2017	3,32,958/-
6.	176573	09.06.2017	2,25,430/-

When the above cheques were deposited for clearance, they got returned unpaid by the banker of Operational Creditor with a remark 'Exceeds Arrangement'.

iv. It is averred that on 05.07.2017, the Operational Creditor sent a Legal Notice calling upon the Corporate Debtor to make the payment of the total cheques amount of Rs.11,32,709/-. Having not received the payment, the Operational Creditor filed a complaint u/s 138 of Negotiable Instruments Act with case No. CO MA 2439/2017 in the Hon'ble Judicial Magistrate Mansi Gaur, 1st Class Court, Rohtak, Haryana and the proceedings of the same are in progress.

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v. When the said amount was not paid by the Corporate Debtor, the Operational Creditor got issued a Demand Notice dated 07.11.2019 in Form-3 by demanding to pay the total debt amount of Rs.17,13,891/- which includes principal of Rs. 11,32,709/- plus interest of Rs.5,81,182/- (interest calculated @ 18% p.a. from the date of respective invoice till 22.10.2019).

vi. It is averred that the Corporate Debtor in its reply dated 23.12.2019 to the demand notice has not denied or raised any dispute with regard to the outstanding payment but has referred to the cheque bounce case No CO MA 2439/2017 filed by the Operational Creditor against the Corporate Debtor and its Directors and averred that the Operational Creditor's action of issuing the demand notice under the Insolvency & Bankruptcy Code is untenable.

vii. It is averred that the Operational Creditor relied on the Order of Hon'ble NCLAT in Sudhi Sachdev Vs. Appl Industries Ltd. dated 13.11.2018 held that *"The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, it cannot be held to be a dispute pending before a Court of Law"*.

It is also averred that the pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute. We find no merit in this appeal. It is accordingly dismissed.

viii. It is submitted that Bank Statements of Operational Creditor for the period from 01.10.2019 to 30.01.2020 is shown **at page nos. 48 to 66 of the application.**

ix. Hence this application seeking to trigger CIRP against Corporate Debtor for default of operational debt.

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3. From a careful consideration of the arguments and evidence on record, it is apparent that the Operational Creditor had supplied Alu-Alu BF Foil to the Corporate Debtor during the period from 09.11.2016 to 16.01.2017 and an amount of Rs.12,72,709/- had fallen due for payment by the Corporate Debtor. Out of the total debt amount, on 28.04.2017, the Corporate Debtor paid an amount of Rs. 1,40,000/- towards partial discharge of his liability.

4. In this case, notice was ordered to the Corporate Debtor. Notice was served on the Corporate Debtor. Proof of service filed by the Operational Creditor about service of notice on the Corporate Debtor. Hearings were held on various dates i.e. 03.03.2020, 20.03.2020, 03.02.2021, 16.03.2021, 20.04.2021, 16.07.2021, 26.08.2021 and 17.09.2021 However, there was no representation for the Corporate Debtor. None appeared for the Corporate Debtor on receipt of notice by the Corporate Debtor. Therefore, the Corporate Debtor is treated as Ex-Parte.

5. The Operational Creditor suggested the name of Dr. K. Lakshmi Narasimha Ph.D as Interim Resolution Professional (IRP). The Operational Creditor filed consent of the proposed IRP in Form-2 vide Memo dated 15.04.2021.

6. We have heard the Learned Counsel for the Operational Creditor. There is no contest of the case of the Operational Creditor by the Corporate Debtor. The Operational Creditor has filed Demand Notice dated 07.11.2019. The Operational Creditor has further relied on the invoices shown as Annexure-A8 at page nos. 37 to 42 of the application. The Corporate Debtor replied to the notice referring to the cheque bounce case # CO MA 2439/2017 filed by the Operational Creditor against the Corporate Debtor and its Directors and the Operational Creditor's action of issuing the demand notice under the Insolvency & Bankruptcy Code, 2016 is untenable but never disputed with regard to the outstanding amount of the operational debt.

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7. The case of the Operational Creditor is that the Corporate Debtor committed default of the Operational Debt to the tune of Rs.11,32,709/, apart from the interest of **Rs.6,04,643/- (**Interest calculated @ 18% per annum till 31.01.2020). The total amount of default is Rs.17,37,352/-. Cheques given by the Corporate Debtor were bounced. Thus, the Operational Creditor is able to establish the debt and default. The petition is in order. The petition deserves to be admitted. Accordingly, the petition is admitted.

8. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with the following directions: -

   i. The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor;

   ii. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator

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or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

iii. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

iv. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

v. That the order of moratorium shall have effect from the date of this Order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

vi. The Operational Creditor proposed the name of Dr. K. Lakshmi Narasimha, Ph.D. (Law) as Interim Resolution Professional and he has given his consent in Form-2 and his Authorisation for Assignment is valid upto 26.11.2021. Accordingly, this Tribunal appoints Dr. K. Lakshmi Narasimha, Ph.D (Law) as Interim Resolution Professional, having Registration No. IBBI/IPA-001/IP-P00107/2017-18/10214.

vii. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

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Date of Order: 22.09.2021

viii. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.

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VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

SD/-

MADAN B. GOSAVI
MEMBER (JUDICIAL)

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