

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT No. IV)**

COMPANY APPLICATION No. IB-275/ND/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

Sai Tech Medicare Private Limited...

**Applicant/
Operational Creditor**

Versus

**Alchemist Limited ...
Corporate Debtor**

Respondent/

Order Pronounced on: 30/11/2021

Coram:

Dr. Deepti Mukesh, Hon'ble Member(Judicial)

Ms. SumitaPurkayastha, Hon'ble Member (Technical)

MEMO OF PARTIES

Sai Tech Medicare Private Limited
Having registered office at
Shop No. 293/6, Sangam Market
Near Sugni Devi School, Ladwa
Tha. Thaneshar, Kurukshetra
HARYANA – 136 132 ...
Operational Creditor

Applicant/

Versus

Alchemist Limited
Building No. 23, Nehru Place
NEW DELHI 110 019 ...**Respondent/**

Corporate Debtor

Appearance:

For the Applicant : Mr. Vaibhav Sharma, advocate
 Mr. Karanveer Jindal, Advocate
 Mr. A.K. Rudra, Mr. Vishweshar Mishra, Advs.

ORDER

Per: Dr. Deepti Mukesh, Member (Judicial)

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by **Sai Tech Medicare Private Limited**, through Mr. Jagbir Singh, Director who is duly authorised via Board Resolution dated 30.09.2019 (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against **Alchemist Limited** (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company, incorporated under the provisions of Companies Act, 1956 having CIN U24233HR2006PTC036501 and having registered office at Haryana. The Applicant is engaged in sale, purchase and trading of pharmaceuticals.
3. The corporate debtor is a Limited Company, incorporated under the provisions of companies Act, 1956 on 05.07.1988, duly

registered with Registrar of Companies, New Delhi with CIN: L7220DL1988PLC192643 and having registered office at Nehru Place, New Delhi 110 049. The Authorized share capital of the Respondent is Rs.1,21,25,00,000/- and Issued, Subscribed and Paid up share capital of the company is Rs. 13,87,69,000/-.

4. It is submitted by the applicant that the corporate debtor had been purchasing medicines from the applicant and against each delivery of goods, invoice was raised upon the corporate debtor. That the goods were sent to the corporate debtor at various places namely, Ambala, Solan, Delhi and Ghaziabad as per the requirement and directions of the corporate debtor. That the corporate debtor used to make payments as on-account basis. That group company of the applicant namely Symbiosis Pharmaceuticals Private Limited was also supplying goods to the corporate debtor. That there were certain cash receipts by the applicant from the corporate debtor which was adjusted against the outstanding amount of Symbiosis Pharmaceuticals Private Limited. That there was also an adjustment of machinery in the outstanding balance and after making the adjustments, the corporate debtor is liable to pay an outstanding amount of Rs. 2,75,49,064/- to the applicant.

5. It is further submitted by the applicant that the corporate debtor in order to partially discharge the outstanding amount issued ten cheques of total amount of Rs. 1,80,21,292/-, however, on presentation of eight cheques out of the ten cheques, all the eight cheques got dishonoured. The applicant has placed on record copies of all the dishonoured cheques along with return memos of the bank. Thereafter, a proposal was given by the corporate debtor to pay the outstanding amount of Rs. 2,75,49,064/- to the applicant in kind i.e. by giving three residential flats to the applicant in full and final settlement of all the dues towards the applicant. That the applicant agreed to the proposal of the corporate debtor and a tripartite compromise agreement dated 19.11.2018 was entered into amongst applicant, corporate debtor and one of the group company of corporate debtor viz. Alchemist Realty Limited. That in terms of the said compromise deed, Alchemist Realty Limited was to transfer three residential flats to the applicant in full and final settlement of the outstanding dues and in case of default or breach of terms, the applicant was free to initiate appropriate legal proceedings against the corporate debtor for such default. That the corporate debtor and its group company viz. Alchemist Realty Ltd. failed to honour their commitments as per the compromise deed. That despite repeated reminders, the corporate debtor has failed to make

the payment and as a last resort, the applicant is constrained to initiate insolvency proceedings against the corporate debtor.

6. It is further submitted by the applicant that no dispute has been raised by the corporate debtor in respect of the supplies made, invoice raised and/or the quality or quantity of the material supplied.
7. That demand notice in Form 3 dated 14.10.2019 under the provisions of the IB Code was sent to the corporate debtor, however, the corporate debtor neither replied the notice nor raised any dispute. As per the master data annexed to the application, the demand notice sent by speed post was delivered at the registered office of the corporate debtor on 17.10.2019 as per master data. The copy of track report is annexed to the application.
8. The application is filed under Section 9 of the Code claiming an amount of Rs. 2,92,02,007/- (Rupees two crores ninety-two lacs two thousand and seven only) and the said application was duly served at the address as per master data and service affidavit is filed.

9. The corporate debtor has neither filed any reply nor appeared before the bench. The corporate debtor was proceeded ex-parte on 28.09.2021.
10. As per Form V, part IV, the corporate debtor is liable to pay an outstanding of Rs. 2,92,02,007/- and such debt fell due on 09.04.2019 i.e. the date on which e-mail was sent by the applicant to the corporate debtor for breach of the terms of agreement dated 19.11.2018. The application is filed on 30.11.2019, which is well within the period of limitation and not barred by law.
11. The registered office of the corporate debtor is situated in New Delhi and, therefore, this Tribunal has jurisdiction to entertain and try this application.
12. Heard submissions and perused the documents on record. In the given facts and circumstances, the present application is complete and the applicant is entitled to claim its dues, which remain uncontroverted by the corporate debtor, establishing the default in payment of the operational debt beyond doubt. The present application is admitted in terms of Section 9 (5) of the IB Code, 2016.
13. The applicant has proposed the name of Mr. Chandra

Prakash for appointment as Interim Resolution Professional (IRP). We, hereby appoint Mr. Chandra Prakash, having Registration No: IBBI/IPA-002/IP-N00660/2018-2019/12023 having Email Address: cppumba2409@gmail.com and having office at 812, 8th Floor, Indra Prakash Building, Barakhamba Road, New Delhi-110001 to act as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate debtor and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

14. We direct the Operational Creditors to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Chandra Prakash to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the

- Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
15. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
16. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-
Ms. Sumita Purkayastha
Member (Technical)

KMN

SD/-
Dr. Deepti Mukesh
Member (Judicial)