

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 4308/MB/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

M/s V. Navin

[Identification no.: AAFV1049A]

...Operational Creditor/Applicant

Versus

Bionext Pharma Pvt. Ltd.

[CIN:U24232MH2004PTC148628]

...Corporate Debtor/Respondent

Order Pronounced on 20.03.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Operational Creditor : Ms. Diksha Shetty,
Advocate.
For the Corporate Debtor : Mr. Aditya Mishra,
Advocate.

ORDER

Per: Prabhat Kumar, Member (Technical)

This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by M/s V. Navin ("hereinafter

referred to as the Operational Creditor/Applicant"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Bionext Pharma Pvt. Ltd. ("hereafter referred to as the Corporate Debtor/Respondent").

Brief Facts

1. The Respondent was incorporated on 16.09.2004 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U24232MH2004PTC148628. Its registered office is at Plot no. C – 373, MIDC, TTC Industrial Area Pawane, Village Turbhe, Navi Mumbai – 400 705. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
2. The Applicant is engaged in manufacturing of various kind of Pharma sugar whereas the Respondent is in the business of manufacturing medicines etc.
3. The Corporate Debtor through their representative Mr. Prashant approached the Operational Creditor and informed that the Corporate Debtor are, inter alia, in need of Sugar. During the period January 2015 till May 2018 Operational Creditor by various invoices, which was inclusive of respective taxes, from time to time sold and delivered to Corporate Debtor the goods/materials as set out in the said Invoices.
4. The said Invoices were delivered to Corporate Debtor along with the goods covered thereunder and the amount under the invoices were payable by Corporate Debtor within the period mentioned in the respective invoices.
5. The Corporate Debtor received and accepted the goods under each of the Invoices mentioned in Annexure D & Annexure E without raising any objection as to quality or quantity thereof.
6. The Corporate Debtor failed and/or neglected to pay the amount of the Invoices at Annexure D on their respective due dates.

7. Accordingly amount of Rs.27,85,050/- (Rupees Twenty-seven Lakh Eighty-Five Thousand and Fifty only) is due and payable by the Corporate Debtor against the invoices plus interest at the rate of 18% per annum from due date of respective Invoices. The Operational Creditor states that an amount aggregating to Rs.18,96,913/- (Eighteen Lakhs Ninety-six Thousand Nine Hundred and Thirteen only) is due and payable by the Corporate Debtor towards interest on the outstanding invoices plus further interest @ 18% p.a. till payment and/or realization.
8. The representative of Corporate Debtor vide the confirmation on the ledger statement dated 1 March 2019 confirmed that the Corporate Debtor owes a principal amount of Rs. 28,02,050/- towards the Operational Creditor. Therefore, the Operational Creditor was constrained to issue demand notice dated 9th September, 2019 under the Insolvency and Bankruptcy Code, 2016.
9. The demand notice was sent to the Corporate Debtor by Registered Post at their Mumbai address calling upon them to pay their hereto pending dues.
10. Hence, the total amount claimed by the Applicant vide the present application is Rs.46,81,963/- (Rupees Forty Six Lakhs Eighty-One Thousand Nine Hundred and Sixty Three Only) .
11. A CIRP order was already passed in CP no. 4201/2019 in which withdrawal application under Section 12A was also filed.
12. The Respondent's right to file reply was forfeited vide order dated 09.11.2022 and it was set ex-parte vide order dated 17.01.2024. However, the order setting the respondent ex-parte was recalled vide order dated 02.02.2024, but no reply was filed despite this.

Findings

13. Heard the submissions of learned Counsel for Applicant and Respondent and perused the records.

14. Considering the above facts and circumstances, the debt and default stands established and no dispute in relation to such debt in default has been brought on record.
15. The application made by the Applicant is complete in all respects as required by law. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition.

Order:

1. In view of above, this Adjudicating Authority **admits** this Petition and passes the following order:
2. The Petition bearing **CP (IB) 4308/MB/2019** filed by **M/s V. Navin** [Identification no.: AAFV1049A], the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Bionext Pharma Pvt. Ltd.** [CIN:U24232MH2004PTC148628], the Corporate Debtor, is **admitted**.
3. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property

- including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
 4. Notwithstanding the above, during the period of moratorium: -
 - i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
 5. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
 6. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 7. The Applicant has not proposed name of any Interim Resolution Professional (IRP) and hence, we hereby appoint **Mr. Mahesh Kumar Gupta** having registration no. **IBBI/IPA-001/IP-P00478/2017-18/10866**, **Mobile no. 9820446861** and email ID **camkg59@gmail.com** as the IRP of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the

Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

8. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
9. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
10. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
11. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within **seven days** from the date of receipt of a copy of this order.
12. Ordered accordingly.

Sd/-
Prabhat Kumar
Member (Technical)

<MK>

Sd/-
Justice V. G. Bisht (Retd.)
Member (Judicial)