

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - V**

C.P. (I.B) No. 416/MB/2023

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

In the matter of

M/s. Wiz Logtec India Private Limited

[Formerly known as M/s. M + R Logistics (India) Private Limited]

Having its registered address at No.56/57, 3rd Floor, Rajaji Salai, Chennai - 600001, Tamil Nadu, India.

...Petitioner/Operational Creditor

Vs

M/s. Vivimed Life Sciences Private Limited

201, Devavrata, Sector 17, Vashi Navi Mumbai, - 400703, Maharashtra, India

...Respondent/Corporate Debtor

Order Dated: 22.03.2024

Coram:

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

Appearances: Physical/ VC

For the Petitioner: Adv. Gaurav Kumar (VC)

For the Respondent: Sr. Counsel Mr. Zubin Behramkamdin a/w Adv. Ziyad Madon a/w Adv. Meiron B. Damania Jain (PH)

ORDER

1. This Company Petition is filed by M/s. Wiz Logtec India Private Limited (hereinafter referred as “**the Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against M/s. Vivimed Life Sciences Private Limited (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a total Operational Debt of Rs. 1,37,47,165/- including Principal amount of Rs. 1,21,12,040/- along with an interest of 18 % p.a of Rs.16,35,125/-.

Brief Facts :-

2. The Operational Creditor and Corporate Debtor entered into a Service Agreements (hereinafter referred to as ‘Agreements’) dated 25.01.2019 and 03.08.2020. The Corporate Debtor (a Pharmaceutical Company) engaged the Operational Creditor for the export of Pharmaceutical products manufactured by the Corporate Debtor, Services with respect to custom clearance and transportation Services.
3. As per the said Agreements the Operational Creditor is required to raise invoices along with supporting documents. Therefore, the Petitioner raised invoices on the Corporate Debtor for the respective services. Out of the total invoices raised, the Operational Creditor received Rs. 4,20,15,168/- from the Corporate Debtor. However, in spite of repeated follow ups the Corporate Debtor failed to settle the invoices amount having Principal of Rs.1,21,12,040/-along with

interest of Rs.16,35,125/- at 18% per annum totalling to Rs. 1,37,47,165/-.

4. It is submitted that the Operational Creditor through various communication contacted and requested the Corporate Debtor for payment of the outstanding dues. However, there has neither been any clearance of payments nor any notice of dispute raised by the Corporate Debtor.
5. The Demand Notice dated 12.01.2023 was served by the Operational Creditor to the Corporate Debtor vide e-mail dated 24.01.2023 and vide Speed Post receipt no. ET2199361391N dated 30.01.2023. However, the Corporate Debtor has failed to pay its debts despite several reminder. Therefore the Operational Creditor is left with no other option but to file Insolvency and bankruptcy petition against the Corporate Debtor Company under the Insolvency and Bankruptcy Code, 2016. Hence this present petition.

Reply of Respondent

6. The Corporate Debtor had filed their Affidavit in Reply ("**Reply**") dated 05.07.2023 and **additional affidavit** dated 05.01.2024. The Corporate Debtor has denied each and every statement, contention and allegation made by the Petitioner.
7. Additional Affidavit dated 05.01.2024 contains series of email communications exchanged between the parties which are not reproduced in the Reply filed by the Respondent. The said email communications are germane to the Respondent's contention of a "pre-existing" dispute. In this regards, the Corporate Debtor relied on the matter of ***A.S. Met Corp Private Limited v. K L S R Infratech Limited [IA (IBC) 731 & 732/2023 in CP(IB) No. 263//HDB/2022, Order dated 26th May 2023]***, the Hon'ble National Company Law Tribunal Hyderabad Bench - I held, after following the Judgment of

the **Hon'ble Supreme Court of India in Dena Bank (Now Bank of Baroda) v. C. Shivakumar Reddy & Anr. /(2021)10 SCC 330**], that *new documents could be filed even after completion of oral arguments by both sides. The documents contained in the Additional Affidavit are vital for a true determination of the issue, and, being emails exchanged between the parties, are very much to the Petitioner's knowledge. Thus, the same ought to be taken into consideration by this Hon'ble Tribunal.*

8. It is submitted that the Service Agreement dated 25.01.2019 and 03.08.2020 annexed with the Petition is not even stamped and is required to be impounded due to unstamped Agreements whereby the parties are creating monetary rights and obligations under the said Agreements. Therefore, the present petition cannot be entertained.
9. It is further submitted that pursuant to the terms of the said Agreements, the Petitioner had to raise the invoices along with the supporting documents and detailed description of the services rendered. However, the Petitioner kept raising the false invoices without proper justification or summary. The invoices produced on record by the Petitioner were not duly accepted by the Respondent as the same were raised without any confirmation of the services rendered to Petitioner.
10. The Respondent further submits that most of the invoices produced on record by the Petitioner are raised towards the alleged "**Demurrage and Detention Charges**" which are already disputed by the Respondent as no sufficient supporting documents were submitted by the Petitioner with the proper summary/reason and/or justification for the charges incurred. It is further submitted that the Respondent vide its email dated 01.09.2021 and 03.09.2021 had duly communicated to the Petitioner that pursuant to the personal meeting held between the Parties, the Respondent

had clearly explained to the Petitioner as to what all supporting documents are required in order to process and clear the invoices. Moreover, the Respondent in the said emails had strongly disputed the additional "**trucking charges**" for which the Petitioner had raised false invoices without any justification. The copies of the said emails dated 01.09.2021 and 03.09.2021 are annexed hereto as EXHIBIT – B. It is evident from the past emails exchanged between the parties that the said invoices raised by the Petitioner were disputed and due to certain discrepancies, the said invoices were not submitted and accounted in the books of accounts of the Respondent.

11. The Respondent further submitted that the Petitioner has deliberately not disclosed about the past email communication and/or meetings held between the parties with respect to the dispute relating to said invoices as the same establish a ground for the "**pre-existing dispute**" between the parties. Therefore, the present petition is not maintainable and liable to be rejected. Additionally, due to many discrepancies in the said invoices the question of any outstanding payment of invoice amounts being due and payable to the Petitioner does not arise.
12. The Respondent submitted that the services availed by the Respondent are not disputed. However, the claim of the Petitioner towards the outstanding amount of Rs. 1,37,47.165/- under no circumstances be accepted by the Corporate Debtor/Respondent as the entire invoice amount are disputed and still require reconciliation. The Petitioner instead of resolving the issues by reconciliation of accounts opted to convert this matter into a proceeding under IBC and issued a Demand Notice under section 8 of the IBC, 2016 dated 12.01.2023 which was received by the Corporate Debtor/Respondent on 24.01.2023 by email. The Respondent was shocked and surprised since there was prior

communication for resolving the dispute amicably by reconciliation of accounts.

13. The sole intention of the Petitioner was harassing the Corporate Debtor Respondent to have unlawful financial gains. The Corporate Debtor/Respondent issued an interim reply dated 27.01.2023 stating that a detailed response to the said Demand Notice will be issued after collating the necessary documents and seeking appropriate instructions from the internal team with respect to the various allegation and the demands raised in the said Demand Notice, A copy of the said Interim reply dated 27.01.2023 is marked and annexed hereto as EXHIBIT - C.
14. Thereafter, the Corporate Debtor /Respondent vide its reply dated 06.02.2023 informed the Petitioner that as per books of accounts of the Corporate Debtor, there are discrepancies in the invoices submitted by the Petitioner and therefore, the Petitioner requested the Corporate Debtor to nominate an executive and to suggest a date and time to carry out the exercise of reconciliation of accounts at the premises of the Corporate Debtor. A copy of the said Reply dated 02.02.2023 issued by the Respondent is hereto marked and annexed as "EXHIBIT-I. The said reply dated 06.02.2023 issued by the Respondent was duly received by the Petitioner on 08.02.2023 by email.
15. However despite receipt of the reply issued by the Respondent seeking reconciliation of accounts, the Petitioner did not even bother to contact the Respondent/Corporate Debtor for any resolution or amicable Settlement by way of carrying out reconciliation of accounts. This clearly shows the intent of the Petitioner to file this Petition was frivolous. Therefore, the present Petition deserves to be rejected on the ground of existence of pre-existing dispute between the parties.

Rejoinder

16. The Ld. Counsel for the Petitioner, with respect to the contention of the Respondent that the Agreement is not executed in Stamp paper or without payment of stamp duty, submitted that it is the settled law that when the Agreement is mutually executed by the Operational Creditor and Corporate Debtor with the Signature and Seal, the mere fact that the agreement is not executed in a stamp paper or that the stamp duty is not paid does not affect the valid claims of the Operational Creditor arising out of such an Agreement. This rationale was upheld by ***Hon'ble NCLAT in the matter of M/s. Smartworks Coworking Spaces Private Limited Vs. M/s Turbot Hq India Private Limited in Company Appeal (AT) (Insolvency) No. 772 of 2022.*** The relevant extract is reproduced below :-

...when Agreement was admittedly executed between the parties,

signed by both the parties and acted upon, mere fact that it not being engrossed on stamped papers shall have no adverse consequence on the claim of the Operational Creditor" (Para 24)

"...we hold that Appellant has proved that debt claimed by the Appellant in Section 9 Application was operational debt. Further the agreement dated 17th August, 2018 was not compulsorily registrable and agreement having not been executed on Rs. 100 Stamp Paper inconsequential, the agreement having been acted upon and the Corporate Debtor having entered into possession of the premises in pursuance of the Agreement" (Para 25)

17. With Regard to the Second contention of the Respondent that the invoices were raised by the Operational creditor without any

confirmation from the side of the Corporate Debtor. It is submitted that they have denied the above contention since the CD has failed to produce any sustainable evidence to the contrary. Clause 3 of the Service Agreement signed dated 03.08.2020, reads as follows:

“3. Payment

In consideration of the obligations and duties accepted and undertaken by the Service provider, Strides shall pay to the Service Provider 60 days from the date of receipt of the invoice after statutory deduction of TDS”

Therefore, the above clause as well as other relevant clauses in the Agreement never mandates a confirmation from the side of the Corporate Debtor to raise invoices for the services rendered by the Operational Creditor.

18. Further It is submitted that E-mail dated 23.06.2022 sent by the CD, as a reply to the constant reminders of the Operational Creditor to clear the pending dues, reads as under: -

“Dear Mr Velkumar

We will come back to you and organize a discussion in first week of July and work towards resolution of the same

Thanks for your kind understanding

Best Regards

Sugeet”

The conversation thereby exhibits the admission of the liabilities by the Operational Creditor.

19. It is further submitted that with respect to the dispute if any could have been raised only upon receipt of invoice and not prior to the same. The attention is drawn towards the "List of events and Dates" wherein the Operational Creditor has clearly mentioned that the date of submission of outstanding invoices along with supporting documents is 15.02.2022. The Terms of the Invoices raised by the Operational Creditor reads as follows:

*"Please come back to us if there is any discrepancy in invoice within 3 days of receipt of this invoice
Delay in our payment will attract interest @18% p.a."*

Therefore, from the above lines it is clear that the time slot for raising any dispute/ discrepancy starts from the date on which these invoices are received by the Corporate Debtor and ends 3 days from thereafter. On failure to do so, the Corporate Debtor forfeited its right to raise any dispute or that there exists any dispute with the quality of the services or the existence of amount. Consequentially any dispute which has been raised prior to the above time slot fails to qualify as a pre-existing dispute.

20. The perusal of the E-mails relied upon by the Corporate Debtor create a portrait of "Pre-existing dispute" however would reveal that all of those E-mails relates back to 2021, a date when the invoice was not even served to the Corporate Debtor.
21. The Corporate Debtor has failed to prove correlation between the dispute raised and the services provided by the Operational Creditor. The Corporate Debtor relying on Emails to prove "pre-existing dispute" are merely a bunch of E-mails, a scrutiny of the E-mail conversations would suggest that not a single line, gives reference to any invoices raised by the Operational Creditor neither

does it give any reference to the services rendered by the Operational Creditor.

22. It is the settled law that dispute raised by a Corporate Debtor must correlate with the amount in question. In the absence of the same, what survives is the fact that the same has been propounded by the **Hon'ble NCLAT in the matter of Mr. Aroon Kumar Aggarwal Vs. M/S Abc Consultants Private Limited in Company Appeal (AT) (Ins) No. 409 of 2020** vide the following lines:

*"Thus, from the resume of the aforesaid facts and circumstances, one thing is clear that the plea of **pre-existing dispute has to co-relate with the amount claimed be the Operational Creditor** or if a suit or arbitration proceedings is pending then the same should also be related to such dispute."*

23. It is further submitted that even a perusal of the Email footer would project the logo of "**Strides Pharma Sciences Limited**" which once again questions whether the said E-mail has any proximate relation with the services provided by "**M/s. Vivimed Life Sciences Pvt. Ltd.**", the Operational Creditor.

24. It is submitted that non-reconciliation of accounts does not necessarily prosper into a "pre-existing dispute". This stand was propounded by the **Hon'ble NCLAT in the matter of Mr. Narayan Sigh Pathania Vs. Valuelabs LLP & Othrs. In CA(AT)(Insol.) No. 1415 of 2019** relevant lines from which reads as follows:

*"27... ..There is a bald and bare denial of any amounts due and payable only on the ground of 'pending reconciliation. It is pertinent to note that there is no whisper of any dispute regarding 'rate.'" **

28. *It is pertinent to note that in all their replies, the Appellant herein only mentioned non-reconciliation of accounts as the reason but is silent with respect to any other issue regarding payment of amounts and therefore this Tribunal holds that the Appellant has failed the test of proving any pre-existing dispute “.*

29, *....Merely contending that the accounts were not reconciled for almost a year, in our considered opinion. can be considered as a 'feeble and spurious' argument. "*

25. Another rationale adopted by the Hon'ble NCLAT in this context is, when there is no outright denial of liability of pending dues from the side of the Corporate Debtor. This was laid down by the Hon'ble NCLAT in the matter of **Sharad Chandra Goel Vs. Tarannom Shargh International Transportation Company in Company Appeal (AT)(Insolvency) No. 841 of 2022 (delivered on 04.05.2023)**

"The Operational Creditor also turned down the request of the Corporate Debtor to carry out appropriate reconciliation of accounts.

"In such circumstances, when the Corporate Debtor has frozen their liability, subsequent raising the issue of rate differences and attendant reconciliation, to our mind becomes redundant and therefore does not appeal to us to be genuine. When the Corporate Debtor had admittedly prepared the Sol showing an outstanding liability of over LSD 2:00.000 and it was frozen after mutual agreement. raising the issue of reconciliation of accounts as a ground

of dispute clearly lacks substance and credibility (Para 21) "

23. *We are inclined to agree that no serious lacunae have been pointed out by the Corporate Debtor prior to demand notice with regard to the quality of services provided by the Operational Creditor. Moreover, no evidence of outright denial of the liability to pay has been placed on record by the Corporate Debtor "*

"...In sum, no real pre-existing dispute is discernible. The Adjudicating Authority therefore does not appear to have committed any error in holding the alleged disputes claimed by the Corporate Debtor to be feeble as it is not supported by credible evidence." (Para 23)

Under the umbrella of the above judgment, it is submitted that when the CD has categorically failed to produce any evidence to prove outright denial of liability, what survives is a crystallized "debt" and "default" which urge the admission of the CD into CIRP.

It is relevant to duplicate the lines of the Corporate Debtor in Para 10 and Para 12 of the Counter which states as follows:

"10. It is not dispute by the Respondent that the Respondent has availed services from the Petitioner."

"12. Thereafter, the Corporate Debtor/ Respondent vide its reply dated 06.02.2023 informed the Petitioner that as per the books of accounts of the Corporate Debtor, there are discrepancies in the invoices submitted by the Petitioner.

26. It is further submitted that Firstly the quality of services provided by the Operational was never once disputed by the CD throughout the course of the transactions. Secondly. **when the CD expressly**

admitted that services were rendered and if it was the case that reconciliation was required, the Corporate Debtor has failed to produce its own books of accounts or extracts there from to prove the exact outstanding pending towards the Operational Creditor. Discrepancies in invoices does not affect as long as the "default" exceeds the threshold level. Circumstances as such suggest that dispute raised by the CD is a moonshine defense which fails to accommodate any sustainable value.

Therefore, the Petition deserves to be admitted.

Findings

27. We have heard the Ld. Counsel for the parties and perused the documents available on the record with their able assistance.
28. The present petition reveals that Petitioner and Respondent entered into a Service Agreements dated 25.01.2019 and 03.08.2020. As per the said Service Agreements the Petitioner raised invoices on the Respondent. From the total outstanding amount, the Petitioner received Rs. 4,20,15,168/- from the Respondent.
29. The Respondent has contented that the Service Agreement dated 25.01.2019 and 03.08.2020 annexed with the Petition is not stamped/not executed on Stamp paper, therefore should not be considered as a valid agreement. In response to which the Petitioner has relied upon the Judgement of ***Hon'ble NCLAT in the matter of M/s. Smartworks Coworking Spaces Private Limited Vs. M/s Turbot Hq India Private Limited in Company Appeal (AT) (Insolvency) No. 772 of 2022.*** Wherein it is held that when the Agreement is mutually executed by the Operational Creditor and Corporate Debtor with the Signature and Seal, the mere fact that the agreement is not executed in a stamp paper or that the stamp duty is not paid does not affect the valid claims of the Operational Creditor arising out of such an Agreement. Therefore, in view of the

aforesaid Judgement, the contention of Respondent is found to be not sustainable. The relevant extract is reproduced below :-

...when Agreement was admittedly executed between the parties,

signed by both the parties and acted upon, mere fact that it not being engrossed on stamped papers shall have no adverse consequence on the claim of the Operational Creditor" (Para 24)

"...we hold that Appellant has proved that debt claimed by the Appellant in Section 9 Application was operational debt. Further the agreement dated 17th August, 2018 was not compulsorily registrable and agreement having not been executed on Rs. 100 Stamp Paper inconsequential, the agreement having been acted upon and the Corporate Debtor having entered into possession of the premises in pursuance of the Agreement" (Para 25)

30. The other contention raised by the Respondent is that the Respondent issued an interim reply to the Demand Notice dated 27.01.2023 (annexed as annexure C to the Reply) and final reply on 06.02.2023 (annexed as annexure D to the Reply), had suggested the Petitioner for reconciliation of accounts between the parties in order to resolve the issue with respect to the invoices and amicable settlement. Therefore, exist a pre-existing dispute between the parties. However, in response to the above contention, the Petitioner relied upon the Judgment of **Hon'ble NCLAT in the matter of Mr. Narayan Sigh Pathania Vs. Valuelabs LLP & Othrs. In CA(AT)(Insol.) No. 1415 of 2019** wherein it was held that non-reconciliation of accounts does not necessarily prosper into a "pre-existing dispute". The relevant extract reads as follows:

"27... ...There is a bald and bare denial of any amounts due and payable only on the ground of 'pending

*reconciliation. It is pertinent to note that there is no whisper of any dispute regarding 'rate.' **

*28. It is pertinent to note that in all their replies, the **Appellant herein only mentioned non-reconciliation of accounts as the reason but is silent with respect to any other issue regarding payment of amounts and therefore this Tribunal holds that the Appellant has failed the test of proving any pre-existing dispute** “.*

*29,**Merely contending that the accounts were not reconciled for almost a year, in our considered opinion. can be considered as a 'feeble and spurious' argument.** ”*

In view of the above Judgement, this Bench is of the considered view that the Firstly the quality of services provided by the Operational Creditor was never disputed by the CD throughout the course of the transactions. Secondly, the CD expressly admitted that services were rendered by the Operational Creditor. If it was the case that reconciliation was required, it is Corporate Debtor only who has failed to produce its own books of accounts or extracts there from to prove the exact outstanding pending towards the Operational Creditor. In addition, the proposal of reconciliation from CD was offered vide letter dated 06.02.2023 i.e. only after the issuance of Demand notice dated 27.01.2023. Further the Respondent in its Reply in Para 10 has admitted the fact of availing services of the Petitioner. The relevant para is as follows:

"10. It is not dispute by the Respondent that the Respondent has availed services from the Petitioner."

This bench further observes that the Petitioner vide letter dated 15.02.2022 has re-submitted the invoices along with the supporting documents to the Respondent which was signed and stamped by the Respondent while receiving the same.

Hence, the contention of the Corporate Debtor cannot be entertained.

31. Therefore, we are of the considered view that the Petitioner has been able to establish that there is an existence of “**operational debt**” which was due & payable and there is a “**default**” committed by the Corporate Debtor. First date of default mentioned in the Part IV of the Petition is 16.04.2022 i.e. 60 days from the date of receipt of the invoice along with the supporting documents as per clause 3 of Service Agreement dated 03.08.2020 and the Petition is filed on 03.04.2023 therefore, the Petition is well within the period of Limitation.
32. This Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code.
33. The Operational Creditor has not proposed the Resolution Professional in Part III of the Company Petition.
34. Accordingly, the above Company Petition is ‘admitted’ with the following:

ORDER

- a. The above Company Petition No. 416/IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Vivimed Life Sciences Private Limited.**
- b. **Shekhar Arvind Parkhi**, having registration No. IBBI/IPA-001/IP-P-02494/2021- 2022/13801, having email Id- ip.shekharparkhi@gmail.com, having address A-303, Yashwin Society, Susgaon Road, Behind Mercedes Benz

Show Room, Near Vigbyor School, Pune, Maharashtra-411021, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. 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.
- f. 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.

- g. That the order of moratorium shall have effect from the date of pronouncement 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, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Pune, for updating the Master Data of the Corporate Debtor.

Accordingly, CP 416 of 2023 is **admitted**.

SD/-

Madhu Sinha

Member (Technical)

/Abhay/

SD/-

Reeta Kohli

Member (Judicial)