

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 133/Chd/Chd/2020

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy Rules, 2016**

In the matter of:

M/s Sajjala Bio Labs Private Limited

Plot No. 8, ALEAP Industrial Estate
Near Pragathi Nagar, Kukatpally,
Rangareddy District, Hyderabad
Telangana State - 500072

...Petitioner-Operational Creditor

Vs.

M/s Health Biotech Limited

having its registered office at
SCO 162-164, Indian Airlines Building,
Top Floor, Sector 34-A, Chandigarh- 160034

Also at

Nalagarh Road, Sandholi Village,
District- Baddi,
Himachal Pradesh- 173205

...Respondent-Corporate Debtor

Judgment delivered on: 13.06.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner- : Mr. V.K. Mahajan, Advocate
Operational Creditor

For the Respondent- : Mr. G.S. Sarin, PCS
Corporate Debtor

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **M/s Sajjala Bio Labs Private Limited** through its Director, Sh. Sajalla Bhargawa (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **M/s Health Biotech Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor, namely, **M/s Health Biotech Limited**, is a Company incorporated on 24.04.2001 under the provisions of the Companies Act, 1956 with CIN No. U24233CH2001PLC024356 with its registered office at Sector 34A, Chandigarh. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure A-1.

3. The facts of the case, briefly, as stated in the petition are that the Operational Creditor is a micro, small, and medium enterprise involved in the business of manufacturing of synthetic and biological active pharmaceuticals ingredients (APIs) and recognized by the Department of Scientific and Industrial Research. The Operational Creditor operates as a WHO GMP & Indian GMP certified manufacturing plant producing Enoxaparin Sodium and L-asparaginase and has been operating the same since July 2016. The Corporate Debtor approached Operational Creditor for the supply of Enoxaparin Sodium. The total quantity sold by Operational Creditor to Corporate Debtor from 13.01.2017 to 04.08.2018 is 18.30 Kg for Rs.

1,33,71,740/- against which an amount of Rs. 1,06,36,700/- has been paid. The total amount due is 27,35,040/- plus 24% interest p.a. The Corporate Debtor released a purchase order dated 22.03.2018 for the supply of 6 KG of product and delivery was affected by Operational Creditor through an agent namely, Ketan Pharma, who released an indent order bearing No. 000082 to both parties dated 22.03.2018, wherein payment was to be made within 60 days. The three batches of orders were delivered to Corporate Debtor. Due to the weight difference of 0.70 kilograms in the third batch bearing invoice no. 24 for Rs. 24,86,400/-, a credit note of Rs. 5,80,160/- was issued by the Corporate Debtor and the value of the batch was reduced to Rs. 19,06,240/-. The consignment for invoice no. 17 dated 29.06.2018 for Rs. 24,86,400/- had been duly accounted for in the books of accounts of the Operational Creditor after reprocessing. The payment for invoice no. 5 was received on 03.08.2018, the amount was due on invoice no. 11 for Rs. 8,28,800/- and on invoice no. 24 for Rs.19,06,240/-. The operational creditor through telecom and emails dated 04.01.2019, 05.01.2019, 09.02.2019, 16.03.2019, 25.03.2019, 01.04.2019 and 08.05.2019 requested Corporate Debtor for payments, however, Corporate Debtor failed to make any payment.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 27,35,040/- (Rupees Twenty-Seven Lakh Thirty-Five Thousand Forty Only) along with 24% interest from the date of default of respective invoices. The default occurred on 29.07.2018 i.e. due to non-payment of the amount towards payment dated 28.05.2018 on the due date i.e. 60 days from the date of delivery of the product to the Operational

Creditor. Copy of Bank Statement (Annexure A-6), Indent order No. 00002 of Ketan Pharma along with purchase order no. PO-600 dated 22.03.2018 (Annexure A-11), invoice dated 28.05.2018, e-way bill and consignment note (Annexure A-12), invoice dated 04.08.2018, e-way bill and consignment note (Annexure A-13), Credit note dated 04.01.2019 (Annexure A-14), Emails (Annexure A-15), Ledger Account (Annexure A-16) are attached with the main petition.

5. A demand notice in Form 3 & 4 is stated to be issued by the operational creditor on 28.06..2019 and the same has not been delivered to the corporate debtor vide registered post as the delivery report and postal receipts are attached at (Annexure-A-7 and A-8) and envelopes were returned by postal authorities with remarks "door locked and the addressee cannot be located". Since, the notice was not served, thus, the corporate debtor did not reply to the demand notice till date. No mode of substituted service has been adopted by the petitioner.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavits of service were filed by Diary Nos. 00206/2 dated 08.03.2021 and 00206/3 dated 25.10.2021. The corporate debtor has filed a reply vide diary No.00206/4 dated 13.04.2022, wherein it is stated that there is a pre-existing dispute between the parties in regard to the delivery and quality of goods. Invoice no. 17 dated 29.06.2018 was issued for defective material. Due to the delay in delivery, the Corporate Debtor could not manufacture the desired product and faced a penalty of Rs. 7,05,871/- against late delivery of Enoxaparin Sodium. The supplied stock was not according to the standard and nothing

is due from Corporate Debtor. The demand notice issued was defective. The claim filed by the applicant is without any documentary evidence. Ledger and calculation sheets are contradictory and there is a mismatch of the amount of debt due and default. The affidavit under Section 9(3)(b) is incorrect, defective and wrong. There is wilful suppression of material facts.

7. The operational creditor has filed a rejoinder by Diary No. 00206/6 dated 25.11.2022 wherein it is stated that there is no dispute regarding the quality of goods and delivery. The goods were delivered, accepted and used by Corporate Debtor. No notice of dispute was received by the operational creditor. The affidavit under Section 9(3)(b) was correctly filed. The account of Operational Creditor in the books of Corporate Debtor - Annexure R7 at pages 48-50 of the reply by Corporate Debtor tantamounts to admission by Corporate Debtor that they have defaulted and owe this amount. There was no delay in the delivery of goods mentioned in the purchase order dated 22.03.2018 for the supply of a 6 Kg product. The operational creditor is not privy to any contract by Corporate Debtor with third parties yet, on the basis of a few emails attached with a reply showing that the Corporate Debtor was himself at fault.

8. The short written submissions have been filed by the petitioner vide Diary No.00206/7 dated 03.03.2023 and by the respondent corporate debtor vide Diary No. 00206/5 dated 07.10.2022.

9. We have heard the learned counsels for the petitioner as well as the corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice in Form 3 & 4 was duly served. It is stated to be issued by the operational creditor on

28.06.2019 and the same has not been delivered to the corporate debtor vide registered post as the delivery report and postal receipts are attached at (Annexure-A-7 and A-8) and envelopes returned by postal authorities with remarks "door locked and the addressee cannot be located". Since the notice was not served, thus, the corporate debtor did not reply to the demand notice till date. No mode of substituted service had been adopted by the petitioner. Therefore, the demand notice was not duly served upon the corporate debtor.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of the affidavit by learned counsel for the operational creditor that there is no dispute of unpaid operational debt nor it had received any payment against the outstanding amount (Anexure A9).

Invoice no. 17 dated 29.06.2018 was issued for defective material. It is submitted by the corporate debtor that there was a delay in delivery of the goods due to which he could not manufacture the desired product i.e. Injection of Enoxaparin and supply to the party, failing which the corporate debtor had to face a penalty of Rs. 7,05,871/- against the late delivery of Enoxaparin Sodium. It is evident from the email dated 06.06.2018 that there was a delay in supply as the operational creditor stated that "*to delay in the arrival of heparin raw material there is a delay in delivery of the material against the order*"(Annexure R3 of the reply).

Further, the corporate debtor was penalised for Rs. 7,05,871/- by Rajasthan Medical Service Corporation Limited as a penalty for the non-timely supply of the desired quantity. The corporate debtor further emailed the authorities for

the extension of the timeline for 60 days which was granted vide letter no. 22-2016-17/2018/L080 dated 14.05.2018 for 40 days and the last date for delivery was 17.06.2018. However, only 3 kg of Enoxaparin was delivered by the operational creditor. A 10% penalty was imposed on the value of short supply (Annexure R6 of the reply).

Moreso, the copy of the ledger account submitted by the operational creditor indicates that a credit note of Rs. 5,80,160/- (Annexure R1 of the reply) was issued by the Corporate Debtor and the value of the third batch was reduced to Rs. 19,06,240/-. As per the email dated 23.03.2018, it is seen that the Enoxaparin Sodium vide PO660 was supplied however email pertains to the PO-600. The petitioner has failed to furnish any records/documents to establish default on the part of the respondent.

However, it is seen from the records that there was a pre-existing dispute between the parties in regard to the delivery and quality of goods. Further, the dispute existed between the parties much before the issuance of the demand notice dated 28.06.2019 as the emails were exchanged beforehand.

The reliance can be placed upon the judgment of Hon'ble Supreme Court

Mobilox Innovations Private Limited Vs. Kirusa Software Private

Limited (2018) 1 SCC 353 wherein it was held that:

“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence.

It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

43.We have seen that a “dispute” is said to exist, so long as there is a real dispute as to payment between the parties that would fall within the inclusive definition contained in Section 5(6).

45. *Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability”.*

(Emphasis Supplied)

Although, it is pleaded by the operational creditor that there is a default on the part of the corporate debtor with respect to the payment outstanding, however, there is no supporting document placed on record to show the amount due and outstanding. It may be noted that demand notice was not served duly upon the corporate debtor. Thus, default is not established.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated Form 3 & 4 is stated to be issued by the operational creditor on 28.06..2019 and the same has not been delivered to the corporate debtor as envelopes were returned by postal authorities with remarks “door locked and the addressee cannot be located”. However, the period of limitation would begin from the date of default i.e. 29.07.2018 i.e. due to non-payment of amount towards payment dated 28.05.2018 on the due date i.e. 60 days from the date of delivery of the product to the Operational Creditor. This application was filed vide Diary

No. 535 on 20.01.2020. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. As a sequel to the above discussion and the facts as well as circumstances since there is a pre-existing dispute between the parties regarding the amount claimed by the petitioner and demand notice was not served upon Corporate Debtor, the petition is liable to be rejected, in terms of Section 9 of IBC, 2016. The petition consequently stands dismissed, however, with no order as to costs.

-sd-
(Subrata Kumar Dash)
Member (Technical)

-sd-
(Harnam Singh Thakur)
Member (Judicial)

June 13, 2023
SM/TB