



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III**

C.P. No. (IB) 1267/MB/C-III/2021

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

Vipul Life Science Limited

Having office at:

205, BPS Plaza, Devi Dayal Road, Mulund (West), Mumbai - 400080

...Operational Creditor/Petitioner

Versus

Coastal Organics Private Limited

Having office at:

9, Durgesh Co-operative Housing Society, Patankarwada, Khopoli, Tal: Khalapur, Dist: Raigad, Maharashtra - 410203

...Corporate Debtor/Respondent

Order pronounced on: 12.06.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Operational Creditor: Adv. Pulkit Sharma a/w Adv. Aashdin Chivalwala & Adv. Rohan Vasa i/b Argus Partners



For the Corporate Debtor: Adv. Parikshit Desai a/w Adv. Vipin R Singh
i/b Hawelikar & Associates

Per: Sh. Charanjeet Singh Gulati, Member (Technical)

1. This Petition has been filed by Vipul Life Science Limited (“**Petitioner/Operational Creditor**”) to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Coastal Organics Private Limited (“**Respondent/Corporate Debtor**”) under **Section 9** of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) for the alleged default on part of the Corporate Debtor in repayment of debt of **Rs. 1,51,80,350/-** (principal amount of Rs. 97,24,512 + interest of Rs. 54,55,838).

Brief Facts:

2. The Operational Creditor and the Corporate Debtor had entered into an Agreement dated 15.03.2017 whereby the Operational Creditor agreed to sell raw materials to the Corporate Debtor for manufacture of 1-Ethyl-3-(3-dimethylaminopropyl) Carbodiimide (**EDAC.Hcl**) and Sodium Triacetoxy Borohydride (**STAB**). Raw materials were supplied from time to time between 11.07.2017 to 18.03.2019 and accordingly, the Operational Creditor raised invoices against the supply of raw materials. Notably, the last invoice was raised on 18.03.2019.
3. It is submitted that as on 31.03.2019, a principal sum of Rs. 2,70,07,913/- was payable by the Corporate Debtor to the Operational Creditor under the invoices. However, on 17.05.2019, Rs. 1,72,83,401/- from the aforesaid amount was adjusted by the Operational Creditor towards payments which were to be made to Corporate Debtor. Consequently, Rs. 97,24,512/- remains to be payable by the Corporate Debtor to the Operational Creditor.
4. The Operational Creditor issued a demand notice dated 18.07.2019 calling upon the Corporate Debtor to pay the principal amount of Rs.



97,24,512/- . However, the Corporate Debtor failed to make the payment. Thereafter, a balance confirmation letter was also sent to the Corporate Debtor on 31.03.2020 to which no reply was received. Later, an email dated 28.07.2021 was addressed calling upon the Corporate Debtor to pay the outstanding principal amount. The Corporate Debtor sent a reply vide email date 29.07.2021 stating that some important transactions had not been accounted for by the Operational Creditor.


5. Subsequently, the Operational Creditor sent an email dated 26.08.2021 calling upon the Corporate Debtor to pay the outstanding amount, failing which the balance as per the records of the Operational Creditor shall be deemed to be correct. However, the Corporate Debtor neither responded to the email nor had paid the outstanding balance.
6. Consequently, on 19.10.2021, the Operational Creditor issued a demand notice under section 8 of the I&B Code calling upon the Corporate Debtor to pay the default amount within 10 days from the date of receipt of the said demand notice. However, the Corporate Debtor failed to make the payment. Hence, the present Petition has been filed by the Operational Creditor.

Reply of the Corporate Debtor

7. The Corporate Debtor had filed its Reply dated 13.06.2022 challenging the maintainability of the Petition on the following grounds:
 - i) There exists no ‘operational debt’ due and payable by the Corporate Debtor to the Operational Creditor. The Agreement dated 15.03.2017 on the basis of which the present Petition is filed, states that the Operational Creditor ‘*will procure all the raw materials which are required for manufacturing the product EDAC.Hc and STAB **at their own cost?***



- ii) The Petition does not contain any documentary evidence to show that the debt is due and payable by the Corporate Debtor to the Operational Creditor as is mandated under Section 9(3) of the I&B Code, 2016.
- iii) There is a pre-existing dispute between the parties which is evident from email dated 29.07.2021 addressed by the Corporate Debtor to the Operational Creditor.
- iv) The Operational Creditor is liable to pay the Corporate Debtor a sum of Rs. 1,63,57,697/- along with interest at 18% per annum for unpaid invoices and debit notes.
- v) The alleged operational debt due to the Operational Creditor is towards unpaid invoices for supply of raw materials for the production of EDAC.Hcl and STAB and has produced 21 invoices. However, of the 21 invoices, some of the invoices i.e. Invoices at Pages 28, 30, 31, 32, 33, 37, 46, 47, and 48 of the present Petition (hereinafter referred to as **“disputed invoices”**) do not relate to the supply of raw material required for the production of EDAC.Hcl and STAB.
- vi) The Corporate Debtor was the sole producer of the said products in the state of Maharashtra. However, the Corporate Debtor lacked the necessary infrastructure and resources to capitalize on its monopoly. The Operational Creditor suggested that it would aid the Corporate Debtor in growing its business, increasing its business. Based on this assurance, the Corporate Debtor was asked to supply and deliver the said Petitioner at a discounted rate but also charged the Corporate Debtor a commission for every order placed by third parties with the Corporate Debtor. Accordingly, the Corporate Debtor supplied the said products from 15.06.2017 till January 2019 for which invoices were raised by the




Operational Creditor. However, this arrangement had caused an overall loss to the Corporate Debtor and thus, on or about January 2019, the Corporate Debtor stopped the production and supply of EDAC.Hcl and subsequently, in March 2019, the production of STAB was stopped.

Rejoinder of Operational Creditor

8. In response to the Reply of the Corporate Debtor, the Operational Creditor filed Rejoinder dated 20.02.2023 making the following submissions:

- i) As regards the contention that the debt is beyond the scope of the Agreement, it is submitted that the Ledger Account of the Corporate Debtor demonstrates that there has been a default in payment by the Corporate Debtor which the Corporate Debtor has not disputed. The Parties were always *consensus ad idem* on the fact that the raw materials would be sold by the Operational Creditor to the Corporate Debtor and accordingly, the Operational Creditor has raised invoices.
- ii) With respect to the disputed invoices, it is submitted that the said invoices were never disputed earlier by the Corporate Debtor and the present allegation is an afterthought. However, without prejudice to the rights and contentions of the Operational Creditor, even if the amount claimed under the disputed invoices are excluded, the balance claim amount being Rs. 1,39,42,465/- would still satisfy the threshold limit prescribed under the Code.
- iii) The Corporate Debtor has alleged that a sum of Rs. 1,63,57,697/- is payable by the Operational Creditor to the Corporate Debtor. In this regard, as per the Ledger Account of the Corporate Debtor in the books of the Operational Creditor, it can be seen that Rs. 2,70,07,913/- was due and payable from the Corporate Debtor. It



is admitted fact that the Operational Creditor owes some amounts to the Corporate Debtor for which purpose Rs. 1,12,34,026/- has been adjusted towards the total outstanding payments receivable from the Corporate Debtor. However, the amount claimed in the Petition by the Operational Creditor against the Corporate Debtor is completely unrelated to the liability of the Operational Creditor towards the Corporate Debtor.

iv) As regards the allegation of pre-existing dispute, it is submitted that the Corporate Debtor is relying on an email dated 29.07.2021 wherein it is merely stated that “*some important transactions are not accounted*”, and the same cannot be termed as a “pre-existing dispute” between the parties.

ANALYSIS & FINDINGS

9. Heard Ld. Counsel for the parties and perused the record.
10. The Operational Creditor and the Corporate Debtor entered into an Agreement dated 15.03.2017 by which the Operational Creditor was to sell certain raw material for the manufacture of 1-Ethyl-3-(3-dimethylaminopropyl) Carbodiimide (**EDAC.Hcl**) and Sodium Triacetoxy Borohydride (**STAB**). It is submitted that raw materials were sold to the Corporate Debtor from 11.07.2017 till 18.03.2019 and subsequently, invoices were raised by the Operational Creditor. The last invoice was raised on 18.03.2019.
11. Under the said agreement, it is also stated that the Party of the First Part i.e. the Operational Creditor shall purchase the EDAC.Hcl and STAB manufactured by the Party of the Second Part i.e. the Corporate Debtor.
12. The Corporate Debtor did not deny the execution of the said agreement with the Operational Creditor but objected to its liability to make any



payment especially considering clause 1 of the said agreement which reads as follows:

“1. The party of the First Part will procure all the raw materials which are required for manufacturing the product EDAC.Hcl and STAB at their own cost.”

13. It is the case of the Corporate Debtor that since the cost of raw material is to be borne by the Operational Creditor, there is no obligation on the part of the Corporate Debtor to make any payment to the Operational Creditor. Further, the Corporate Debtor contends that it is the operational creditor who owes some monies to the Corporate Debtor and thus, there is a pre-existing dispute between the parties.
14. We note that the Operational Creditor had raised invoices against the sale of raw material to the Corporate Debtor between 11.07.2017 and 18.03.2019, however, it is seen that no such dispute was ever raised by the Corporate Debtor until the filing of the present Petition.
15. The only document that the Corporate Debtor is relying upon for substantiating its case of existence of dispute is an email dated 29.07.2021 sent by the Corporate Debtor to the Operational Creditor which reads as follows:

“On 29-Jul-2021, at 10:32 PM, coastal Organics <coastalorganics2015@gmail.com> wrote:

Dear sir/ madam,

Some important transactions are not accounted, Presently I am not in position to comedown to your place due to my health issues that you well aware. I will come in a month’s time to reconcile and settle the account.

Jayaram Shetty”

16. It is clear from the above email that the Corporate Debtor had merely asked for a month’s time to reconcile its account. The language of the



said email does not show that the Corporate Debtor had denied or disputed its liability to the Operational Creditor. This email cannot be construed as a communication to demonstrate the existence of a dispute between the Corporate Debtor and the Operational Creditor.

17. Further, it is also observed that the Operational Creditor had replied to the email dated 29.07.2021 stating as follows:

From: Vipul Sheth <sv@vipullife.com>

Date: 26 August 2021 at 3:34 pm

To: coastal Organics <coastalorganics2015@gmail.com>

Hello Sir,

If you will not settle account within five days we will assume that our account is perfect and there is no mismatch from our side and there is no entry has been pending you are requested please come to our office and settle our account within five working days we have given you enough time. Every time we are calling you but there was no answer from your side.

*Thanks and best regards,
Vipul Sheth”*

18. It is apparent from record that the Operational Creditor has been consistently pressing for release of payment since 18.07.2019 whereas there is no record to show that the Corporate Debtor either disputed any of the invoices raised by the Operational Creditor or denied its liability except seeking time for settlement of amount. Notably, no reply was also given to the above email dated 29.07.2021 sent by the Operational Creditor to the Corporate Debtor.
19. Further, as regards the Corporate Debtor’s submission that the Operational Creditor is liable to pay Rs. 1,63,57,697/- to the Corporate Debtor, we note that the Operational Creditor, in its rejoinder dated 20.02.2023, has admitted that some amount is payable to the Corporate Debtor and a sum of Rs. 1,72,83,401/- was adjusted towards outstanding amount payable by the Corporate Debtor to the Operational Creditor. In this regard, we have perused the Ledger Account of the



Corporate Debtor in the books of the Operational Creditor. We see that an amount of Rs. 2,70,07,913/- is due and payable by the Corporate Debtor to the Operational Creditor as on 31.03.2019. As submitted by the Operational Creditor, an adjustment of Rs. 1,72,83,401/- has been made on 17.05.2019 towards the said amount of Rs. 2,70,07,913/- after which the remaining outstanding balance stood at Rs. 97,24,512/-.

20. This fact was brought to the notice of the Corporate Debtor vide demand notice dated 19.10.2021 issued under section 8 of the I&B Code. The Corporate Debtor had not replied to the said notice but acknowledged the receipt of the same in its reply to the present Petition. Under such circumstances, we are satisfied that the Corporate Debtor was aware of the adjustments made with respect to the amount payable by the Operational Creditor to the Corporate Debtor. Thus, we do not consider it necessary to delve into this issue any further.
21. Notably, all the objections raised by the Corporate Debtor in its reply dated 13.06.2022, are being raised for the first time. There are no documents placed on record to suggest that the disputes enlisted in the Reply were raised before the issuance of the demand notice dated 19.10.2021. Therefore, we conclude that there is no pre-existing dispute between the parties in the present case.
22. Considering the same, we view it fit to decide the present petition on merits. The Ledger Accounts of the Corporate Debtor in the books of the Operational Creditor for the period 01.04.2017 to 31.03.2018 and 01.04.2018 to 31.03.2019 show that the Corporate Debtor is liable to pay Rs. 2,70,07,913 to the Operational Creditor as on 31.03.2019. As already mentioned above, an amount of Rs. 1,72,83,401 was adjusted towards the outstanding balance of Rs. 2,70,07,913 for the amount payable by the Operational Creditor.



23. During the course of hearing, the Bench raised pointed query regarding the adjustment of Rs. 1,72,83,401/-. Accordingly, the Operational Creditor filed an additional affidavit dated 05.11.2023 placing on record the details of the calculations of the amounts regarding the adjustment of Rs. 1,72,83,401/-. However, on perusal of the additional affidavit read with the Rejoinder dated 20.02.2023, it is revealed that the Operational Creditor has adjusted an amount of Rs. 2,01,09,160/- against the total outstanding balance payable by the Corporate Debtor. The Journal Voucher dated 17.05.2019 is reproduced below:

VIPUL LIFE SCIENCE LIMITED			
205/206 BPS Plaza,Devi Dayal Road,Mulund(West),Mumbai-400080			
<u>Journal Vouchers</u>			
Voucher Date : 17/05/2019		Voucher No. : 170504	
PARTICULARS	Debit Amount ₹	Credit Amount ₹	
508607 - COASTAL ORGANICS PVT. LTD (Ag.Bill No.INV-260702, INV-200902, INV-230901, INV-250903, INV-270901, INV-280902, INV-300901, INV-041002, INV-071002, INV-121003, INV-121004, CDN-121002, INV-121002, INV-131005, INV-151008, INV-171001, INV-211001, INV-231003, INV-251006, INV-251004, INV-271002, INV-291003, INV-021104, INV-031102, INV-051101, INV-141103, INV-161102, INV-191101, INV-201102, INV-231102, INV-241104, INV-261104, INV-271107, INV-281107, INV-011203, INV-061206, INV-061210, INV-111203 BEING AMT RECEIVABLE ADJUSTED AGST AMOUNT PAYABLE)		17283401.00	
709296 - COASTAL ORGANICS PVT.LTD (ADVANCE) (AMOUNT ADJUSTED AGST CREDITORS.)		2825759.00	
608593 - COASTAL ORGANICS PVT.LTD. (Ag.Bill No.65, 66, 68, 70, 73, 74, 76, 81, 82, 83, 84, 85, 86, 89, 91, 93, 92, 94, 97 AMOUNT PAYABLE ADJUSTED AGST AMOUNT RECEIVABLE)	20109160.00		
Rupees : Two Crore One Lakh Nine Thousand One Hundred Sixty Only	Total :-	20109160.00	20109160.00



24. Thus, it can be seen that an adjustment of Rs. 2,01,09,160/- has been made by the Operational Creditor out of the Corporate Debtor's total liability of Rs. 2,70,07,913/- and therefore, the outstanding principal amount is Rs. 68,98,753/-.
25. Moreover, we see that some amounts have been paid between 10.05.2018 and 23.01.2019 by the Corporate Debtor against the invoices raised by the Operational Creditor and the last payment was made on 23.01.2019. Thereafter, the Corporate Debtor defaulted. Thus, when the Corporate Debtor had itself acknowledged the invoices/ credit notes raised by the Operational Creditor by releasing payments from time to time, it cannot later on reverse its stand by objecting its liability.
26. Notably, the invoices raised by the Operational Creditor show that the same have been raised for sale of material required for the manufacture of EDAC.Hcl and STAB. Hence, the amount payable under the said invoices constitute 'operational debt'. Thus, debt and default has been established.
27. The invoices raised by the Operational Creditor provides for payment to be made within a time period of 60 days from the date of the invoice. Thus, considering the last invoice dated 18.03.2019, the due fell on 17.05.2019. Since the Corporate Debtor failed to make payment, the date of default is 17.05.2019. The present Petition was filed on 23.11.2021, thus, the Petition is within limitation.
28. Further, the invoices specifically state that interest at the rate of 21% per annum will be charged if payment is not made within the due date. Keeping in view the Hon'ble NCLAT's ruling in **Mr. Prashant Agarwal vs. Vikash Parasrampuriah & Anr. [Company Appeal (AT) (ins) No. 690 of 2022]**, we hold that the principal amount of Rs. 68,98,753/- along with interest at the rate of 21% calculated from 17.05.2019, i.e. the date of default, till the date of filing of the present Petition i.e. 23.11.2021, is



above the minimum threshold of Rs. 1 crore prescribed under section 4(1) of the I&B Code.

29. In view of the facts and circumstances of the case and discussions hereinabove, this Tribunal is satisfied that the present petition is maintainable and accordingly, the Company Petition bearing no. 1267 of 2021 is **admitted** and ordered as follows:

ORDER

- i) The above Company Petition No. (IB) 1267 (MB)/2021 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Coastal Organics Private Limited**.
- ii) This Bench appoints **Ms. Poonam Basak** (**poonamb.irp@gmail.com**), Registration No. IBBI/IPA-001/IP-P01234/2018-2019/11957 **as the Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.
- iii) The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by the Committee of Creditors.
- iv) There shall be a moratorium under section 14 of the Code prohibiting the following:
 - a) 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;



- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) 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;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- v) 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.
- vi) 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.
- vii) 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.
- viii) The public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- ix) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. 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.

- x) The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi) The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- xii) The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- xiii) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

30. The Company Petition No. 1267 of 2021 is accordingly **admitted**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Sd/-

Lakshmi Gurung
Member (Judicial)

Uma, LRA