



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT - II

C.P. (IB)- 327 (MB)/ 2020

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

**Zhejiang Medicines & Health Products
Import & Export Co. Ltd.,**

Having its registered office at: ZMC
Building, 101-2, N. Zongshan Road,
Hangzou, 311 003, China

.....Operational Creditor

Vs

Sonal Plasrub Industries Private Limited,
(CIN No.: U51900MH1987PTC044045)
Having its Registered Office at: 404, Rimsan
Estate Premises Co-op. Society, Chincholi
Bunder Link Road, Malad (W), Mumbai –
400 064 (Maharashtra).

.....Corporate Debtor

Order delivered on:- 31.03.2023

Coram:

Hon'ble Member (Judicial)

Shri Kishore Vemulapalli

Hon'ble Member (Technical)

Shri Shyam Babu Gautam

Appearances:

For the Operational Creditor : Mr. Atharva Dandekar, Advocate

For the Corporate Debtor : Mr. Syed, Advocate

ORDER

Per: Shyam Babu Gautam, Member Technical

1. This Company Petition is filed by *Zhejiang Medicines & Health Products Import & Export Co. Ltd.* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Sonal Plasrub Industries Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Operational Creditor. This Petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of an aggregate sum of **Rs. 1,45,36,972/-** (Rupees One Crore Forty-Five Lakhs Thirty-Six Thousand Nine Hundred and Seventy-Two Only) including interest @ 18% per annum as on 6th January 2020 from the date of default till payment and/or realization of the debt.
3. The Operational Creditor is engaged, *inter alia*, in the business of import and export of medicines and chemicals. The Corporate Debtor issued purchase orders for the supply of 2-Chloro Phenyl acetic acid and succinic acid. Pursuant to this, three invoices were raised, the details of which are tabulated hereinbelow:

Invoice No. and Date of Invoice	Amount (in USD)	Due Date
15B2505905A dated 10 th August 2015	82,000	12 th November 2015
15B2506465A dated 26 th August 2015	82,000	29 th November 2015
15B2507064A dated 9 th October 2015	37,600	14 th January 2016

Copies of the said invoices are duly attached to this Petition.

4. The Operational Creditor submits that despite the passage of several months from the date on which the invoices became due, no payments were made by the Corporate Debtor. The Operational Creditor then wrote to the Corporate Debtor on several occasions via E-mail correspondences between 29th November 2016 and 22nd May 2017 wherein the Operational Creditor demanded the outstanding payments against the aforesaid three invoices. The Operational Creditor points out that the Corporate Debtor replied to the e-mails and assured payment at the earliest thus admitting their liability to make payments. Eventually, the Operational Creditor issued three **Demand Notices dated 11th July 2017, 20th November 2018 and 1st October 2019**. The first two Notices were not replied to by the Corporate Debtor but a **Reply dated 14th October 2019** was sent to the Operational Creditor whereby they denied the liability to pay on the ground of deficiency in the quality of goods supplied. The Operational Creditor argues that the Corporate Debtor has raised the alleged issue regarding quality



of the goods quite belatedly and therefore, it cannot be said to be a pre-existing dispute. Since no payments were made by the Corporate Debtor, eventually, the Operational Creditor filed this Petition on **23rd January 2020**. Copies of the e-mails and the Demand Notices have been duly annexed to this Petition.

5. The Corporate Debtor has filed a **Reply dated 30th May 2022** to this Petition and submits that the present Petition is filed beyond the Limitation period i.e. 4 years after the date of the disputed invoices. It is submitted that the goods were ordered from the Operational Creditor because the products are quality sensitive and such rare chemicals were only manufactured by few manufacturers. The nature of business of the Corporate Debtor is such that it is heavily reliant on the purity of the chemicals involved. Therefore, after the delivery of the goods, a series of tests and experiments were conducted to ascertain the purity of the chemicals and the Corporate Debtor discovered that the goods supplied by the Operational Creditor did not match the required specifications. Consequently, the Corporate Debtor sent the intimation for rejection of the products along with the Chemical Analysis Reports to the Operational Creditor via **e-mails dated 28th October 2015 and 25th November 2015**.
6. The Corporate Debtor argues that the payments were not made to the Operational Creditor on the ground of the abovementioned disputes and not because the Corporate Debtor's business is unsustainable. Moreover, it is the Corporate Debtor who suffered losses due to the delivery of substandard products by the Operational Creditor. Thus, the claim of the



Operational Creditor fails on the ground of pre-existing dispute. Copies of the **Letters of Rejection dated 17th October 2015, 24th November 2015 and 26th November 2015** along with the relevant Certificates of Analysis have been duly annexed to this Petition.

FINDINGS

7. We have heard the submissions of the Counsel appearing for the Operational Creditor and Counsel appearing for the Corporate Debtor at length. On the basis of the averments made, it is evident that the issue before this Bench is whether a dispute existed prior to the issue of the first Demand Notice dated 11th July 2017. On perusal of the Financial Statements annexed to this Petition, it is seen that an aggregate operational debt of Rs. 1,45,36,972/- exists and remains unpaid till date, a fact that is admitted by the Corporate Debtor.

8. However, the Corporate Debtor produced evidence in the form of e-mails dated **e-mails dated 28th October 2015 and 25th November 2015** along with the Letters of Rejection dated **Letters of Rejection dated 17th October 2015, 24th November 2015 and 26th November 2015** to claim that the invoices raised by the Operational Creditor remained unpaid on the ground that inferior products were delivered by the Operational Creditor which did not meet the specified requirements. The above documents were examined and the relevant extract from the Letter of Rejection dated 17th October 2015 is reproduced hereinbelow:



“Subject:

Sonal Plasrub Ind. Pvt. Ltd taken 2-Chloro Phenyl Acetic acid from (ZMC) Zhejiang Medicines and Health Product Import & Export Co. Ltd Total Quantity 800 X 25 kg= 20,000 kg. When this material tested at Sonal Plasrub Ind. Pvt. Ltd. Lab then materials come only 93.72%. Materials were failed as per specification then take three trial batches of next step product Alpha Bromo 2-Chloro Phenyl Acetic acid from received 2-Chloro Phenyl Acetic acid.

.....

Conclusion:

We found that 2-Chloro Phenyl Acetic acid is fail and due to this poor quality, our final product Alpha Bromo 2-Chloro Phenyl Acetic acid is also fail.

So, after trial three batches we found that Zhejiang Medicines and Health Product Import & Export Co. Ltd provide 2-Chloro Phenyl Acetic acid quality is very poor and rejected and cannot pass.”

Similar Rejection Letters were issued for the other two chemicals also and such rejection was duly communicated to the Operational Creditor in 2015 itself, that is, before the first Demand Notice was issued in 2017. It is hence established that the Operational Creditor was aware of the rejection of the goods supplied and therefore, their argument that the dispute was first raised by the Corporate Debtor in their Reply dated 14th October 2019 to the Demand Notice does not stand. Therefore, we are



of the considered view that the present Petition is liable to be rejected on the ground of pre-existing dispute, regarding the quality of the goods supplied, between the parties.

9. In view of the foregoing reasons, the present Company Petition is liable to be dismissed and accordingly, the same is dismissed.

The Registry is hereby directed to communicate this order to both the parties immediately.

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**KISHORE VEMULAPALLI
(MEMBER JUDICIAL)**

Anusha
31.03.2023