



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER**

CP No. (IB)- 74/9/JPR/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:

M/S APOLLO INTERNATIONAL LIMITED

..... OPERATIONAL CREDITOR

VERSUS

M/S SUPRIYA PHARMACEUTICALS LIMITED

..... CORPORATE DEBTOR

MEMO OF PARTIES

M/s Apollo International Limited

CIN: U74899DL1994PLC061080

Office No. 303, Third Floor, DLF Courtyard,

Saket, New Delhi – 110017

Also at: Apollo Towers, Plot No. 20,

Sector 44, Gurugram, Haryana – 122002

... Applicant / Operational Creditor

VERSUS

M/s Supriya Pharmaceuticals Limited

CIN: U01100RJ1985PLC003363

Khesra No. 238/13, Ambit Education LLP

Tehsil Tizara, Bhiwadi, Alwar,

Rajasthan – 301019

CP No. (IB)- 74/9/JPR/2021



Also at: 810, Arunachalam Building,
19, Barakhamba Road, New Delhi – 11001

... Respondent / Corporate Debtor

For the Operational Creditor : Rakesh Kumar, Adv.
Sataroop Das, Adv.
Tanisha Kaushal, Adv.

For the Corporate Debtor : None Appeared

Order Pronounced On: 22.03.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application in the prescribed Form No. 5 is filed by M/s Apollo International Limited, through its authorised representative Mr. Rakesh Gupta, claiming to be a Financial Creditor ('Applicant'/ 'Operational Creditor') for the initiation of the Corporate Insolvency Resolution Process ('CIRP') against M/s Supriya Pharmaceuticals Limited ('Respondent'/ 'Corporate Debtor'). The application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC'), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules').
2. The Applicant, M/s Apollo International Limited, is presently engaged in integrated logistics, digital cinema, leather garments & accessories, international equipment & projects, and marketing & distribution of tires. Its registered office is located at Office No. 303, Third Floor, DLF Courtyard, Saket, New Delhi – 110017. The alleged default on the part of the Respondent



for the non-payment of operational dues amounting to Rs. 32,58,54,612/- (Rupees Thirty-Two Crores Fifty-Eight Lakhs Fifty-Four Thousand Six Hundred and Twelve Only) inclusive of interest payable @ 20% per annum.

3. The Corporate Debtor, M/s Supriya Pharmaceuticals Limited, is a public limited company incorporated under the Companies Act, 1956 on 24.07.1985, having CIN: U01100RJ1985PLC003363. The Respondent has its registered office at – Khasra No. 238/13, Ambit Education LLP, Gram Thada, Tehsil Tizara, Bhiwadi, Alwar, Rajasthan – 301019. The Corporate Debtor has an Authorised Share Capital of Rs. 10,00,00,000/- (Rupees Ten Crores Only) and Paid-Up Share Capital of Rs. 4,92,00,000/- (Rupees Four Crores Ninty-Two Lakhs Only).
4. The details of the transactions leading to the filing of this Application are averred by the Applicant *vide* Diary No. – 2023/2021 dated 04.10.2021 are as follows:
 - a. The Operational Creditor decided to enter the business of exporting bulk drugs to foreign buyers and was importing raw materials under Advance License Scheme. In order to achieve the objective, the Applicant engaged with the Respondent wherein the Operational Creditor was to supply raw materials and receive manufactured goods on a replenishment basis. In pursuance of this, the Applicant issued two purchased orders, PO No. AIL/Pharma/AMPI & Amoxy/PO/001 dated



- 30.08.1996 ('First Purchase Order') and PO No. AIL/Pharma/Cephalexin/PO/001 dated 30.08.1996 ('Second Purchase Order'). Resultantly, it also issued a separate purchase intent for each purchase order and its specific requirement which were an integral part of the purchase orders.
- b. As per the aforesaid arrangement, the Operational Creditor will procure all the raw materials by sale purchase which will be used by the Corporate Debtor for manufacturing finished bulk drugs and supply the finished goods back to the Applicant. However, the Respondent did not execute its part of the performance and is liable to pay the value of the supplied raw materials including the countervailing duties ('CVDs'), advances for the purchase of the finished product amounting to Rs. 3,61,19,669/- (Rupees Three Crore Sixty-One Lakhs Nineteen Thousand Six Hundred and Sixty-Nine Only) exclusive of interest for the First Purchase Order.
- c. Prior to the issuance of the Second Purchase Order, the Operational Creditor purchased 2,000kg of Cephalexin from the Corporate Debtor for supplying it to M/s Rigg Far East and paid a consideration of Rs. 1,12,00,000/- (Rupees One Crore and Twelve Lakhs Only). However, the aforementioned goods were of inferior quality and consequently, suffered a financial loss equivalent to Rs. 14,31,851/- (Rupees Fourteen



Lakhs Thirty-One Thousand Eight Hundred and Fifty-One Only). Given such a quality issue, the Operational Creditor requested the Corporate Debtor to take necessary steps towards the improvement of the quality of the Cephalexin under the Second Purchase Order. Nonetheless, the Respondent never supplied the goods and is liable to pay not only the advance balance under the Second Purchase Order of Rs. 1,64,20,125/- (Rupees One Crore Sixty-Four Lakhs Twenty Thousand One Hundred and Twenty-Five Only) but also for the loss of arising out of the inferior quality. Therefore, the Respondent owes, excluding the interest, a total of Rs. 5,39,71,645 (Rupees Five Crore Thirty-Nine Lakhs Seventy-One Thousand Six Hundred and Forty-Five Only) as operational dues. Subsequently, the Applicant issued a Legal Notice dated 05.10.1999 which was not responded to by the Corporate Debtor.

d. Meanwhile, the Corporate Debtor suspended all its operations and made a reference to the Board of Industrial and Financial Reconstruction ('BIFR') under the provisions of the Sick Industrial Companies Act, 1985 ('SICA'). The BIFR *vide* Order dated 14.05.1999 ('BIFR Order') held that the Respondent has become a sick company, initiated measures under Section 18 of the SICA and appointed Canara Bank as the operating agency. A copy of the BIFR Order is annexed as Annexure – 1 of the Application. Under the provisions of SICA, all legal proceedings



- were barred. However, the Applicant being unaware of the BIFR's order, initiated recovery proceedings before the Hon'ble Delhi High Court for the operational dues along with interest calculated at 20 per cent per annum from 01.04.1999 to 23.12.1999, which was registered as '*Apollo International Limited v. Supriya Pharmaceuticals Limited, Suit No. 2815 of 1999*'.
- e. The Hon'ble Delhi High Court *vide* Order dated 24.12.1999, issued summon and passed an *ex-parte* order restraining the Corporate Debtor from creating any third-party interest in the assets. During the pendency of the suit, the Corporate Debtor executed a Deed of Settlement dated 27.07.2000 ('First Settlement Deed'), agreeing to settle the entire claim of operational dues and the interest of Rs. 1,95,00,000/- (Rupees One Crore Ninety-Five Lakhs Only). Therefore, the Respondent tender Rs. 1,50,000/- (Rupees One Lakhs Fifty Thousand Only) and agreed to pay the balance, in instalments, as mentioned in the schedule attached to the Deed of Settlement; however, it did not honour the terms of payment. A copy of the First Settlement Deed is annexed as Annexure – 2 of the Application.
- f. Accordingly, the suit was pursued by the Applicant and *vide* Order dated 15.01.2014, the Hon'ble Delhi High Court decreed a sum of Rs. 6,22,42,540/- (Rupees Six Crores Twenty-Two Lakhs Forty-Two



Thousand Five Hundred and Forty Only) including interest at 20 per cent per annum and subsequently, it moved an application under Order VIII Rule 10 of Code of Civil Procedure ('CPC'). The copy of the Order dated 15.01.2014 is annexed as Annexure – 3 of the Application. However, on the appearance of the Corporate Debtor through an application, the Hon'ble Delhi High Court recalled its earlier Order dated 15.01.2014 *vide* Order dated 05.02.2016 and the suit was restored.

- g. Meanwhile, the Corporate Debtor again executed a Deed of Settlement dated 15.06.2016 ('Second Settlement Deed') wherein, it agreed to settle the entire claim of the Operational Creditor for a total of Rs. 48,00,000/- (Rupees Forty-Eight Lakhs) within fifteen days of the sanction of the Rehabilitation Scheme by BIFR under SICA. A copy of the Second Settlement Deed is annexed as Annexure – 4 of the Application. The reasons for agreeing to the aforementioned amount were the sanctioning of the Rehabilitation Scheme within a tentative period of eight months and no substantial assets being left in the possession of the Corporate Debtor. Resultantly, the Hon'ble Delhi High Court *vide* Order dated 19.07.2016, decreed the suit and made the Corporate Debtor accountable for its submitted undertaking. The copy of the Order dated 19.07.2016 is annexed as Annexure – 5 of the Application.



- h. Concurrently, the Rehabilitation Scheme of the Corporate Debtor could not be sanctioned and continued on 01.11.2016 in light of Section 252 of the Code. The Applicant issued and served a Demand Notice dated 26.08.2021 to the Respondent under Section 8 of the Code as per Form 3 as prescribed under Rule 5 of the Rules at its registered office, demanding a sum of Rs. 32,58,54,612/- (Rupees Thirty-Two Crores Fifty-Eight Lakhs Fifty-Four Thousand Six Hundred and Twelve Only) inclusive of interest @20% per annum on the invoices.
- i. The Respondent neither paid the outstanding debt nor raised a dispute regarding the outstanding debt till the filing of the present petition. The demand notice was accompanied by computation of interest, details of invoices, Purchase Orders, Purchase Indent, Legal Notice and Reply to Legal Notice, relevant dates of default, Settlement Deeds and Letter communications between the parties. Copy of Demand Notice dated 26.08.2021 is annexed as Annexure – 7 (Colly) of the Application. The postal receipt and proof of service *via* email sent to the Respondent are filed *vide* Diary No. 2354/2021 dated 15.11.2021, which are annexed as Annexures – 1 and 3 of the Additional Document, respectively.
- j. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 32,58,54,612/- (Rupees Thirty-Two Crores Fifty-Eight Lakhs Fifty-Four Thousand Six Hundred and Twelve Only) as of the date of



filing of this application. The aforementioned details, as reflected in Part IV of the Application, are as follows:

Part IV

Particulars of Operational Debt

1.	Total Amount of Debt, Details of Transactions on account of which debt fell due, and the Date from which such debt fell due.	Total amount of debt: Rs. 32,58,54,612/- (Rupees Thirty-Two Crores Fifty-Eight Lakhs Fifty-Four Thousand Six Hundred and Twelve Only)
2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed to be in default: Rs. 32,58,54,612/-# Total Principal Amount: Rs. 5,39,71,645/- Total Interest Due: Rs. 27,18,82,967 /-#* Date from which Debt fell Due: 05.10.1999

* Calculated the Interest Amount @20% p.a. from the period of 05.10.1999 to 31.07.2021.

Total debt amount is arrived after accounting Rs. 1,50,000/- paid during First Settlement Deed towards the interest.

k. Further, the Applicant has filed a Statement of Bank Account *vide* Diary No. 2354/2021 dated 15.11.2021 maintained with State Bank of India from 01.09.2021 to 08.11.2021 at Annexure – 2 of the Additional Document. It is stated that there is no repayment of the unpaid operational debt by the Respondent.

1. The Applicant has also annexed the Annual Statement *vide* Diary No. 2354/2021 dated 15.11.2021 for the Financial Years 2016-17, 2017-18 and 2018-19 ('Financial Statements'), wherein in the head — disclosure



in the board of director's report and report on other legal and regulatory requirements, the reference to the actions undertaken by it including a favourable decree from Hon'ble Delhi High Court. As per the Financial Statements, it is stated, '*During 2015-16, the management has written off old balances of creditor and debtor as they were time-barred and no one has approached the company for their due except Apollo International Limited.*' A copy of the Financial Year 2016-17, 2017-18 and 2018-19 are annexed as Annexures – 4, 5 and 6 of the Additional Document, respectively.

5. In spite of the service of notice on the Corporate Debtor, there was no representation. The Applicant was directed to issue fresh notices to the Respondent *vide* Order dated 14.12.2021. It was also directed that in the case where the service of the Respondent is not effected by the post, the Applicant shall adopt substituted service and shall advertise the notice of hearing in two newspapers, One English and One Hindi, having wide circulation in the area. The compliance for the same is done by the Applicant *vide* Diary No. 211/2022 dated 25.01.2022.
6. Consequently, Mr. Ramesh Dugar, claiming to be the director of the Corporate Debtor, appeared in person where he was asked to submit proof of his status in the company. Along with the same an opportunity to file the reply was provided to the director of Corporate Debtor *vide* Order dated 15.02.2022. However,



given the non-appearance of the Corporate Debtor, the Applicant was further directed to send the intimation of the Court's proceedings *vide* Order dated 25.03.2022; the same was complied *vide* Dairy No. 1203/2022 dated 21.04.2022.

7. In the interest of justice, this Adjudicating Authority *vide* its Order dated 05.05.2022, directed the Registry to send notice of hearing; the same has complied *vide* Sr. No. 105/2022. The Order also stated that if there is no representation made and a reply filed by the Corporate Debtor on the next hearing date, appropriate orders will be passed in the matter based on the available records.
8. Further, the Applicant filed a duly endorsed acknowledgement of the personal service of notice by Mr. Ramesh Durgar, director of the Corporate Debtor affixing the seal of the Corporate Debtor on the notices of hearing *vide* Diary No. 1741/2022 dated 07.06.2022. Furthermore, the Applicant has again sent a copy of the notice of hearing to the Registered Corporate Address of the Respondent *via* speed post on 27.05.2022, the postal receipts and proof of service are annexed *vide* Diary No. 1741/2022 dated 07.06.2022. It is noted that the Respondent has not filed any reply to this application in the face of having numerous opportunities provided by this Authority in the matter and wilfully avoiding appearance in the present case. Thus, the Respondent has



forgone its right to file a reply, and ex-parte proceedings were initiated against it *vide* Order dated 29.06.2022.

9. During the hearing, the learned counsel for the Applicant relied on the application filed and stated that the requirements of Section 9 of the Code were satisfied. We have carefully considered the submissions of learned counsel for the Applicants and have perused the record.
10. The Applicant, on the matter of limitation, has submitted that the Corporate Debtor was before BIFR under SICA, 1985 from 14.05.1999 till the repeal of the Act of 1985. As per Section 22(1) of SICA, the Corporate Debtor enjoyed protection/ bar on legal proceedings from the time of reference till 01.11.2016, i.e., the date of abatement of the BIFR reference. No scheme was sanctioned and approved under the provisions of the SICA. It is stated that only after the removal of the bar on the legal proceedings from November 01st, 2016 would the period of limitation commence.
11. This period of limitation is further extended based on the acknowledgement of the debt in the Financial Statements of the Corporate Debtor. The Applicant relies on the Judgment of the Hon'ble Supreme Court in '*Asset Reconstruction Company v. Bishal Jaiswal, Civil Appeal No. 323 of 2021*' wherein it approved that the inclusion of debt in a balance sheet duly prepared and authenticated would amount to an admission of a liability and therefore satisfies the requirement of law for a valid acknowledgement under Section 18 of the



Limitation Act, even though the directors by authenticating the balance sheet merely discharge a statutory duty and may not have intended to make an acknowledgement. Thus, the application was filed on 20.09.2021 within the period of limitation from 01.12.2016 as per Section 22 (5) of the SICA. It is further extended based on the acknowledgement *via* Financials Statement as per Section 18 of the Limitation Act, 1963; therefore, the present application is not barred by limitation as per Article 137 of the Limitation Act, 1963. The Applicant has submitted an affidavit under Section 9(3)(b) of the Code in the application.

12. In the present case, the occurrence of default is evidenced by the details furnished by the Applicant, including the copies of the acknowledgement through the First and Second Settlement Deeds, the copies of receipts of money advanced through purchase orders and purchase intent, the copies of the statement of accounts duly certified under the Bankers Books Evidence Act 1891, and the copy of the order(s) of the Hon'ble Delhi High Court.

13. The application filed in the prescribed Form No. 5 is complete.

14. The Hon'ble NCLAT in *Gauri Prasad Goenka, Ex-Chairman of NCR Limited Vs. Punjab National Bank and Anr (2019 SCC Online NCLAT 1137)* have observed that as per Section 22(5) of SICA, the legal proceedings attracted to the case of a Sick Industrial Unit are suspended. Section 22(5) states that *in computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof*



remains suspended under this section shall be excluded. Therefore, the remedy for the enforcement of the right by the Creditor to recover the outstanding debt from the Debtor through the medium of a suit for recovery of money remains suspended for the period during the pendency of inquiry under Section 16,17 or appeal under Section 25 of SICA.

15. Admittedly, in the instant case, the Corporate Debtor was referred to SICA on 14.05.1999. While SICA came to be repealed, Section 9 of the Code was enforced w.e.f. from 01.11.2016. It is, therefore, clear that on account of the statutory bar, the period commencing from 14.05.1999 to 01.11.2016 stands excluded under the aforesaid provisions rendering the Operational Creditor(s) ineligible to file for recovery of outstanding debt or take any other appropriate remedy in law through the ordinary mode, *i.e.* by way of filing of the suit. Therefore, for the purpose of limitation, the such period has to be excluded, and the petition has been filed well within limitation.

16. The operational dues of the Applicant were confirmed by the Financial Statements of the Corporate Debtor and deeds of settlement, and in the absence of any payment either under the First Settlement Deed or Second Settlement Deed, no waivers of principal or interest applicable on the acknowledged operational dues.

17. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Alwar; therefore,



this Adjudicating Authority has jurisdiction to entertain and try this application.

The matter is within the purview of the Law of Limitation as the period of limitation, which was suspended, resumed on 01.12.2016, and was further extended to 31.03.2019. Subsequently, the application was filed on 20.09.2021.

18. The first issue for consideration is whether the demand notice in Form No.3 dated 25.08.2021 was served upon the Respondent. The demand notice was sent via a registered post on 26.08.2021 to the corporate debtor and its directors. The postal receipt and proof of service *via* email sent to the Respondent are filed *vide* Diary No. 2354/2021 dated 15.11.2021, which are annexed as Annexures – 1 and 3 of the Additional Document, respectively.

19. The next issue for consideration is whether the Respondent disputed the operational debt. The Respondent Corporate Debtor has not filed a reply, resultantly, there is no dispute concerning any pre-existence of dispute. Thus, as per documents placed on record with the adjudicating authority, there is no dispute as to the outstanding liability of the Respondent/ Corporate Debtor towards the Applicant/ Operational Creditor.

20. We have gone through the contents of the application filed in Form No.5 and found the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 32,58,54,612/- (Rupees Thirty-Two Crores Fifty-Eight Lakhs Fifty-Four Thousand Six Hundred and Twelve Only), including the interest @ 20% per annum. It is observed that the Operational Creditor has issued various purchase intents for the finished goods to be



resupplied by the Respondent Corporate Debtor. Applicant Operational Creditor has given demand notice in Form-3 dated 25.08.2021, duly served on the Respondent Corporate Debtor. This Adjudicating Authority has held above that the Operational Creditor correctly delivered the demand notice in Form No.3, and no pre-existing dispute is proved.

21.It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice to date. It is also observed that the conditions under Section 9 of the Code stand satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC, 2016.

22.The Applicant has named one Mr. Sanjeet Kumar Sharma with Registration No. IBBI/IPA-001/IP-P01132/2018-19/11827, duly registered with the Insolvency and Bankruptcy Board of India, to be appointed as the Interim Resolution Professional ('IRP'). The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP. The credentials of the proposed IRP have been checked from the IBBI website, and nothing adverse is found on record. A copy of the Written Consent of the IRP is annexed on Pages 167 – 168 of the application.

23.In this matter, the Interim Resolution Professional appointed herein, Mr. Sanjeet Kumar Sharma, shall exercise all the powers enumerated under the Code read with



Rules made thereunder. The Applicant shall provide a copy of the Application, if not provided already, along with this order to IBBI for its records.

24. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.

25. Consequences of initiation of CIRP shall be inter-alia as follows:

- a. The Insolvency Resolution Professional proposed by the Applicant, Mr. Sanjeet Kumar Sharma, is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issuance of publication in widely circulated Newspapers as contemplated under the provisions of IBC, 2016 and calling for claims from the creditors of Corporate Debtor and collation of the same shall be done.
- b. Further, as a sequel of admission, the moratorium, as envisaged under Section 14 of IBC, 2016, is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly per the timelines specified and as envisaged under the provisions of IBC, 2016, concerning the Corporate Debtor.



- c. The said IRP shall act strictly in accordance with the provisions of IBC, 2016, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 3,00,000/- (Rs. Three Lakh Only) to the bank account of IRP within a week from the date of this Order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding in relation to the Corporate Debtor.
- d. In terms of Sections 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor, including promoters and the Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- e. In terms of Section 9 of IBC, 2016, this Order shall be communicated at the earliest, not exceeding one week from today to the Applicant, Corporate Debtor, and the IRP appointed by this Adjudicating Authority to carry out the CIRP. A copy of this Order shall also be communicated to IBBI for its records.

26. Copy of this order to be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the application and documents on the Resolution Professional by all modes for information.



27. The Registry is directed immediately to send a soft copy of the instant application along with this order to the RP nominated herein on his e-mail id.

28. Accordingly, CP No. (IB) 74/9/JPR/2021 is admitted in the abovementioned circumstances.

DEEP
CHANDRA
JOSHI

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JOSHI
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DEEP CHANDRA JOSHI
JUDICIAL MEMBER

PRASANTA
KUMAR
MOHANTY

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PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER