

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**IBA/111/2020**

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w  
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016)*

*In the matter of **Wellous Pharma Private Limited***

**M/s. Paower-Tech Engineers,**  
No.9, 4<sup>th</sup> Cross Street, Natesan Nagar,  
Pondicherry – 605 005.

*... Operational Creditor*

Vs.

**Wellous Pharma Private Limited,**  
C-14, 3<sup>rd</sup> Floor,  
Ramaniyam Marvel Phase-I,  
Block 234, 1<sup>st</sup> Main Road,  
Sri Satya Sai Nagar,  
Velachery, Chennai 600 042.

*... Corporate Debtor*

*Order Pronounced on 22<sup>nd</sup> July 2022*

CORAM :

**JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor : Mr.Sarath Babu, Advocate*

*For Corporate Debtor : Mr.S.Sathyanarayanan, Advocate  
Ms.Pavithra Dhayalan, Advocate*

**ORDER**

**Per: SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by one **M/s.Paower-Tech Engineers** (hereinafter referred to as 'Operational Creditor') on 23.12.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016,

against **Wellous Pharma Private Limited** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Operational Creditor is a Partnership firm having its Registered address as No.9, 4<sup>th</sup> Cross Street, Natesan Nagar, Pondicherry – 605 005. This application has been signed by Mr.C.Umamurugan, who has been authorized by Power of Attorney dated 03.12.2019.

3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a private limited company incorporated under the Companies Act, 2013 on 04.10.2016 with CIN:U24304TN2016PTC112803 the registered office of the Corporate Debtor is situated at C-14, 3<sup>rd</sup> Floor, Ramaniyam Marvel Phase-I, Block 234, 1<sup>st</sup> Main Road, Sri Satya Sai Nagar, Velachery, Chennai 600 042.

4. From Part-III of the Application, it is seen that the Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP).

5. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a sum of Rs.8,18,692/- (including

interest of Rs.1,60,094/-) as on 11.10.2018, which is due and payable by the Corporate Debtor. As regards the date of default it as averred in Part-IV of the Application that the date of default is from the due date of the invoices till the date of demand notice i.e. 26.09.2019.

6. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default. Following documents have been attached with the application:-

- a) Copy of Invoices along with grading reports.
- b) Ledger Account of the Corporate Debtor in the books of the Operational Creditor, etc.,

7. It was contended by the Ld. Counsel for the Operational Creditor that the Operational Creditor has provided the electric material and other related services to the Corporate Debtor in which the Corporate Debtor had defaulted in honouring the invoices raised by the Operational Creditor from 05.02.2018 to 11.09.2018.

8. It was further submitted that the Operational Creditor has given several reminders to the Corporate Debtor regarding outstanding payment. In the absence of a proper reply, the Operational Creditor has caused demand notice dated 26.09.2019 and thereafter filed this application to initiate CIRP against the Corporate Debtor.

9. In opposition to that the Ld. Counsel for the Corporate Debtor in the counter submitted that there is a pre-existing dispute between the parties. The Operational Creditor had failed to perform the electrical work as agreed and in the e-mail dated 02.04.2018, the Corporate Debtor clearly listed out the pending works that need to be performed by the Operational Creditor.

10. It was further submitted that on the inspection of the electrical work at the Villupuram site, the Electrical Inspector raised various deficiencies regarding the electrical work done by the Operational Creditor and communicated the same to the Corporate Debtor vide letter dated 02.02.2018.

11. It was further submitted that as per the purchase order dated 28.06.2017, it was agreed that

- i. the 30% of the consideration to be paid as advance along with order,
- ii. 50% to be paid along with delivery of materials; and
- iii. remaining 20% to be paid only after testing and commissioning.

Accordingly, the Corporate Debtor had paid 80% of the total payment. Since the portion of the work was not completed the testing and commissioning were in abeyance. Hence, the remaining 20% payment was pending from the side of the Corporate Debtor.

It was further argued that it is not at all default on the side of the

Corporate Debtor, since the alleged sum will become due for payment only after completion of testing and commissioning.

12. It was further submitted that as per condition No.5 of the purchase order the Operational Creditor is responsible for getting CEA approval including Genset approval but the applicant failed to obtain the approval and the Corporate Debtor obtained the same with an additional cost of Rs.50,000/-.

13. It was further submitted that as per condition no.7 of the purchase order the Applicant was liable to give CENVAT credit for an amount of Rs.3,00,000/-. Since the GST was implemented subsequent to the purchase order the Applicant promised to purchase materials in the name of the Corporate Debtor as to claim an input tax credit by the Corporate Debtor. However, the Applicant failed to submit any material bills purchased for carrying out the work so as to enable the Corporate Debtor to avail input tax credit.

14. In the Rejoinder filed by the Operational Creditor denied the existence of a pre-existing dispute and submitted that the deficiency pointed out by the Electrical Inspector in the letter dated 02.02.2018 were rectified, thereafter upon satisfaction of the Electrical Inspector safety certificate was issued for the installation.

15. It was further submitted that the contention of the Corporate Debtor regarding CEA approval was not appreciable and at the time of CEIG Inspection DG set was not erected and it was clearly mentioned by the Corporate Debtor in the work completion letter dated 18.01.2018.

16. It was further submitted that the Corporate Debtor has forced the Operational Creditor to violate the taxation method and it is not at all possible in the GST billing system to as asked by the Corporate Debtor and avail CENVAT credit because it is a violation of GST rules and procedures.

17. In the sur-rejoinder the Corporate Debtor submitted that as on date of completion letter DG set was not erected. However, subsequently, it was erected, but the Operational Creditor failed to get the CEA approval. Left with no other option the Corporate Debtor engaged another contractor M/s. Winpower Engineering to get the CEA approval.

18. It was further submitted that regarding the CENVAT credit, the Operational Creditor has promised to purchase the materials in the name of Corporate Debtor but failed to honour the same and later contended it as impossible to perform.

19. It was further submitted that the deficiencies and shortcomings of the Operational Creditor were intimated to the Operational Creditor on several occasions even in the reply to the demand notice sent by the Operational Creditor. In view of the above, the Corporate Debtor sought to dismiss the application as not maintainable.

20. Having gone through the documents on record, after submissions of Learned Counsels, it is seen that in the purchase order No.33 dated 18.06.2017 it was mentioned as follows

*"5. CEA approval including Genset approval is your responsibility.*

*7. CENVAT credit approximately Rs.3,00,000/- - since GST implicated, the CENVAT benefit cannot be passed to the client - billing will be raised with GST."*

Reading the above clarifies that the Operational Creditor has agreed to get the CEA approval and will get the GST bill in the name of the Corporate Debtor.

21. Further, it is seen that in para 6 and 7 of the rejoinder the Operational Creditor has clearly admitted that it had not complied above conditions even after it was intimated by the Corporate Debtor as deficiency of service.

22. It is noted that the Corporate Debtor has engaged M/s. Winpower Engineering to complete the commissioning and approval process. It also noted that in the reply to the demand

notice dated 10.10.2019, the Corporate Debtor has counter-claimed the following

*"i) To submit all the materials bills purchase by them to carry out the works as per the purchase order dated 28.06.2017.*

*iii) To pay a sum of Rs.50,000 incurred by us for obtaining CEA approval.*

*iv) To refrain themselves from taking any legal action against us,*

*Failing which we will be constrained to take appropriate legal action against your client holding them responsible for the cost and consequences."*

23. The above findings bring us to conclude that there is an unsettled pre-existing dispute between the Corporate Debtor and Operational Creditor and this case is covered by the celebrated decision of the Hon'ble Apex Court in **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited** wherein it was held as follows

*"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 86 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."*

24. In view of the above discussion we perceive no merits in this case. Accordingly, the application IBA/111/2020 stands **dismissed.**

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**SAMEER KAKAR**  
MEMBER (TECHNICAL)

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**JUSTICE (RETD) S.RAMATHILAGAM**  
MEMBER (JUDICIAL)

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