

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 28.02.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/138/2023
NAME OF THE COMPANY	Reichindia Pharma Ltd
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	10 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this Petition is dismissed.

The Corporate Applicant is to show-cause as to why action under Section 65 of Insolvency and Bankruptcy Code, 2016 be not taken against it. Registry is directed to list the matter on 08.05.2024 for further hearing on this aspect.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

CP(IB) No.138/10/HDB/2023

*(Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of
the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rules,2016)*

In the matter of:

M/S. Reichindia Pharma Limited
CIN No. U24230TG1995PLC021457,
Rep. by its Managing Director
Syam Sunder Chidara
Flat No. 203, Sri Sai Sampada Plaza,
Street No. 6, Habsiguda,
Hyderabad-500007.

...Corporate Applicant

Date of order : 28.02.2024

CORAM:-

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Corporate Applicant : MS. JVL Bharathi, Advocate

Heard on : 21.02.2024

Per : Sanjay Puri, Member (Technical)

ORDER

1. This is an application filed under Section 10 of Insolvency and Bankruptcy Code, 2016 (**IBC, 2016**) read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) by

M/S. Reichindia Pharma Limited (hereinafter referred as 'Corporate Applicant' or 'Company').

2. It is averred that the Corporate Applicant was incorporated on 21.08.1995 with CIN No. **U24230TG1995PLC021457**. Registered its office at Flat No. 403, Concrete Triumphet, H. No. 1-3-85, 85/1, 86 Street No. 4, Habsiguda, and it inter alia was engaged in manufacture of Chemical and Chemical products. Its authorized Share capital and the paid-up capital was of Rs. 7 Crores.
3. It is averred that in the year 2011, the company had set up a pharmaceutical formulation unit at Bhongir, by availing loans from APSFC and SBI. As the company could not stabilize production for a long term, it had incurred heavy losses. This resulted in the company account becoming NPA and it was unable to revive the operations despite their best efforts.
4. It is claimed that the Corporate Applicant having no possibility of generating any income to pay dues, under pressure from the financial institutions for repayment of the loans had sold the unit in the month of February, 2022 to repay the loans. The company however has not been able to pay statutory dues amounting to Rs.4,13,52,910 to various Government Departments.
5. The Corporate Applicant contends that, it was served with a Notice¹ on 19.04.2023 under Section 74 by the Goods and Services Tax (GST) authorities, encompassing Principal Tax amounting to **Rs.1,09,23,802** and a penalty of **Rs.1,74,27,191** for the Financial Years 2017-2022. Additionally, a Notice² dated 28.04.2020 from the Commissioner of

¹ Pg 60-61 of the Application.

² Pg 62-64 of the Application.

Central Tax demanding **Rs.25,97,900**, and an inquiry email³ dated 01.05.2023 from the EPFO seeking **Rs.69,14,189** were received.

6. Furthermore, various Demand Notices⁴ were issued under sections 45-C to 45-I of the ESI Act, 1948, by the Employees State Insurance Corporation (ESIC), totaling **Rs.15,31,090**. The Corporate Applicant also received a Show Cause Notice⁵ on 28.04.2023 from the Commercial Taxes Department for **Rs.48,900**, and as per the Balance Sheet & Income Tax Portal, there is a pending TDS amounting to **Rs.14,91,757**. The cumulative dues payable to all the concerned Departments aggregate to **Rs.4,13,52,910**. Hence, the Corporate Applicant has approached this Hon'ble Tribunal, seeking initiation of Corporate Insolvency Resolution Process (CIRP) as it is unable to settle these outstanding dues.
7. A Special Resolution was passed by the shareholders vide EGM⁶ dated 24.04.2023 to show that the Syam Sunder Chidara is authorized to initiate the CIRP. Name of Mr. Madasa Kumar⁷ has been proposed as Interim Resolution Professional, who vide letter⁸ dated 01.05.2023 has conveyed acceptance to the proposal of the Corporate Applicant.

Decision:

8. We have heard the Counsel for the Applicant. After considering the submissions and documents placed on record, we find that the Corporate Applicant has filed the present petition only to defeat the statutory dues to various departments. We are of the view that the Applicant has not approached the Adjudicating Authority for resolution of corporate insolvency, but to avoid legal repercussions of the statutory defaults.

³ Pg 65 of the Application.

⁴ Pg 66-77 of the Application.

⁵ Pg 78-80 of the Application.

⁶ Extraordinary General Meeting.

⁷ IP Registration No. IBBI/IPA-001/IP-P01590/2019-2020/12465.

⁸ Pg 16-17 of the Application.

9. The Applicant's defaults represent a deliberate evasion of statutory dues and involvement in prosecutable offences. A careful examination of this Application reveals that the Corporate Applicant is fraudulently avoiding the payment of various taxes mandated by law, besides avoiding payment of employee dues.
10. There is clear evasion of Goods and Services Tax (GST), and non-payment of Tax Deducted at Source (TDS), Employees State Insurance Corporation (ESIC), Provident Fund (PF) and Service Tax collected in the names of third parties (i.e. employees etc) and to be paid to the Government.
11. These acts are violation of Statutory obligations. The present Application is a blatant attempt to avoid paying penalties and interest on the defaulted amounts and also to protect the Corporate Applicants and its promoters/directors from being prosecuted for these offences. The Applicant has filed the instant Application so as to initiate moratorium on the proceedings initiated by various departments.
12. Here it is useful to refer to the case of **Wave Mega City Center Private Limited v/s Rakesh Taneja**⁹ before the NCLAT it was held that

"...the Adjudicating Authority is not obliged to admit Section 10 Application. Section 10 and Section 65, which are part of the same statutory scheme needs to be read together to give effect to the legislative scheme of the Code. In event CIRP is initiated by a corporate applicant fraudulently with malicious intent for any purpose other than the resolution of insolvency, holding it that it is obligatory for the Adjudicating Authority to admit Section 10 Application, will be contrary to the statutory scheme under Section 65. In event conditions under Section 65 are fulfilled, Section 10 Application can be rejected, even if debt and default is proved. Thus, Section 65 has to be read as enabling provision to reject an application even on proving of debt

⁹ Wave Megacity Centre (P) Ltd. v. Rakesh Taneja, 2023 SCC OnLine NCLAT 50

*and default Section 10 Application is not to be obligatorily admitted. The present is a case where it has been held that Application under Section 10 has been maliciously and fraudulently initiated for the purpose other than **for the resolution of insolvency..**”*

13. In the present case, the company is now devoid of any assets, and there appears to be no possibility of revival through the Corporate Insolvency Resolution Process (CIRP). The sole purpose of the Corporate Applicant seems to be defrauding Government Authorities. By invoking a moratorium under Section 14 of the Insolvency and Bankruptcy Code (IBC) after defaulting on payments totalling Rs.4,13,52,910, the Application clearly serves purposes other than insolvency resolution. Consequently, this Petition made under Section 10 is rejected.
14. The Corporate Applicant is to show-cause why action under section 65 of Insolvency and Bankruptcy Code, 2016 is not taken against it. Registry to list the matter on 08.05.2024 for further hearing on this aspect.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

Rohit