



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 9
TP (Co. Act.)-18(PB)/2024
Old CP No. 590/2012

IN THE MATTER OF:

Drager Medical GmbH Petitioner
Vs
M/s. Ion Bio Med I-Care Pvt Ltd Respondent

Order under Section 433(e)/433(f) of Companies Act, 1956

Order delivered on 04.02.2026

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the Petitioner : Mr. Sudhir Makkar, Senior Advocate along with Mr. J.K.Chaudhary, Nayan Mittal and Ms. Aadhya, Advocates
For the Respondent(s) : Ms. Shrishti Kaul, Advocate along with Mr. Kumar Shashank, Ms. Roopsee Pandita and Ms. Anisha, Advocates

ORDER

1. Ld. Counsels for the Parties appeared. It is noted that by order of the Hon'ble High Court of Delhi dated 20.02.2024, the present case has been transferred to this Adjudicating Authority for passing appropriate orders. On 04.06.2024, it was recorded as follows:

1. On 07.05.2024, we passed the following order:
*"Ld. Sr. Counsel Mr. Sunil Fernandes for the petitioner appeared physically.
Ld. Counsel Mr. Anand Singh for the Respondent appeared through VC. Meantime, Ld. Counsels for both sides are directed to prepare the list of dates & events, Issue-wise chart, Provisions of Law and the Citations on which they are relying.
The same should be exchanged well in advance between the parties and filed before the next date of hearing.
At the request, list the matter for a physical hearing on 04.06.2024."*
2. The compliance of the order dated 07.05.2024 has been made only today. Ld. Counsel for the Petitioner appears and states that the list of dates & events, Issue-wise chart, Provisions of Law and the Citations on which they are relying have been filed on the DMS and he seeks time

TP (Co. Act.)-18(PB)/2024
Old CP No. 590/2012

Drager Medical GmbH
Vs
M/s. Ion Bio Med I-Care Pvt Ltd



to file the hard copy of the same.

3. Mr. Anant Singh, Ld. Counsel for the Respondent also appears physically and seeks time to file the hard copy of the list of dates & events, Issue-wise chart, Provisions of Law and the Citations on which they are relying.
4. At request and by consent of both sides, list the matter **on 13.08.2024**.
5. We deem it appropriate to ask IBBI to make a relevant provision in the CIRP regulations to deal with cases pertaining to the winding up of the companies which now have been transferred to this Tribunal under Section 433(1) of the Companies Act, 2013 to be taken up as an application for initiation of CIRP under IBC, 2016.
6. For the purpose, the Regulations may stipulate that the applicant shall file appropriate Forms i.e. Form - 1 in the case of Financial Creditor under Section 7 of the IBC, 2016, Form - 5 in the case of Operational Creditor under Section 9 of the IBC, 2016 and Form - 6 in the case of Corporate Applicant under Section 10 as prescribed in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
7. The registry is hereby directed to send a copy of this order to the IBBI.

2. Thereafter, the petitioner filed the requisite form under Section 9 of the Code and the formalities of the application has been completed by virtue of the interim orders passed from time to time.
3. Heard, Ld. Senior Counsel Mr. Sudhir Makkar for the Petitioner and Ld. Counsel Ms. Shrishti Kaul for the Respondent appearing through VC.
4. The matter was heard on several dates and on 03.02.2026, opportunity to file revised written submission was given, which has been duly filed by the petitioner.
5. The brief facts of the case are that the Respondent/Ion Bio Med-I Care Pvt. Ltd./Corporate Debtor (earlier known as M/s Usha Draeger Pvt. Ltd.) Respondent (herein) was formed pursuant to a joint agreement dated 09.05.1987 between the petitioner's company and Usha Services and Consultant Pvt. Ltd. that intended to manufacture sale of medical products and equipment. It is stated that a distribution agreement was executed in February, 1999 and the respondent was appointed as the



distributor. The distribution agreement was terminated on 18.06.2003 w.e.f. 31.12.2003.

6. On 18.11.2024, it is stated that the petitioner invoked arbitration in terms of Clause 26 & 27 of the distribution agreement for recovery of unpaid dues by respondent. Thereafter, on 29.06.2012, ICC Tribunal passed an arbitration award against the respondent to pay (Euros 4,994,873.81 equivalent to INR 30,55,52,711.26 (Rs. Thirty Crore Fifty Five Lakh Fifty Two Thousand Seven Hundred Eleven) which includes principal interest and arbitration costs. To secure this award, the proceedings were initiated by the petitioner before the Hon'ble High Court of Delhi, which granted certain reliefs and the respondent filed an affidavit of compliance to the orders of Hon'ble High Court of Delhi which are all part of the records of this proceedings.

7. On 17.10.2012, the following order was passed:


ORDER
17.10.2012

1. The affidavit filed by the Respondent with its annexures has been served on the counsel for the Petitioner. In view of the details furnished, it is stated by Mr. Rajiv Nayar, learned Senior counsel appearing for the Petitioner that the Petitioner will pursue the execution petition proposed to be filed by it in accordance with law.

2. Counsel for the Respondent assures the Court that till further orders O.M.P. 777 of 2012 Page 1 of 2

passed by the Court in the execution proceedings, the fixed deposits of the Respondent will not be encashed.

3. The petition is disposed of in the above terms.


S. MURALIDHAR, J.

OCTOBER 17, 2012
bs

The Hon'ble High Court of Delhi disposed of the said OMP No.

777 of 2012 while recording submissions of the petitioner that an

TP (Co. Act.)-18(PB)/2024
Old CP No. 590/2012



execution petition is proposed to be filed by the petitioner and the respondent shall not encash its fixed deposit till further orders.

8. Thereafter, since the respondent did not make the payment in terms of award, a legal notice was issued on 19.11.2012 under Section 434(1)(a) of the Companies Act, 1956 demanding the payment of Rs. 30,55,52,711.26 crores. The notice has been annexed as Annexure – P/11 (page 358 to 362 of the winding up petition).
9. On 11.12.2012, a Company Petition bearing No. CP-590/2012 was filed before the Hon'ble High Court of Delhi for winding up. In addition to that the petitioner filed an Execution Petition in relation to the arbitral award passed against the respondent. The objections raised by respondent were rejected by the Hon'ble High Court of Delhi and the was appeal was filed by the respondent against the aforesaid order before the Division Bench which also came to be dismissed on 26.03.2019. Further, an SLP was also filed which got dismissed on 03.07.2019.
10. In this transaction between the petitioner and the respondent termed as an operational & service transaction, before the execution court, the respondent filed an affidavit stating it has no asset to satisfy the award. On 28.04.2023, it is stated that the Execution Petition was disposed of pursuant to the acknowledged inability of the Respondent to satisfy the ICC award with liberty to petitioner to proceed ahead in the Company Petition.



11. Thereafter, the applicant filed a petition on 11.09.2023 under Section 481 of the Companies Act, 2013 seeking dissolution of the respondent company without undergoing the process of liquidation before the Hon'ble High Court of Delhi. However, on 22.02.2024, the Hon'ble High Court of Delhi transferred the matter to NCLT for further proceedings in accordance with law and just on compliance the matter is taken up for hearing today.
12. All the above facts are not in dispute, the petitioner's counsel plead that in a case where it is proved by the affidavit that there is no asset to satisfy the award in so far as the respondent company is concerned, the case is fit for admission under the provisions of the Code.
13. Ld. Counsel Ms. Shrishti Kaul for the Respondent strongly relies upon the following decisions to say that this arbitral award cannot formed the basis of Section 9 application. She refers two important decisions both passed by the Hon'ble NCLAT. (i) **G. Eswara Rao v. Stressed Assets Stabilisation Fund & Another** in Company Appeal (AT) (Insolvency) No. 1097 of 2019 decided on February 7, 2020. Ld. Counsel relied upon Para Nos. 24 to 28 of the order. The same is extracted below:

"24. In the present case, the "corporate debtor" defaulted to pay prior to 2004, due to which O.A. No. 193 of 2004 was filed by the respondent ("financial creditor"). A decree passed by the Debts Recovery Tribunal or any suit cannot shift forward



the date of default. On the other hand, the judgment and decree passed by the Debts Recovery Tribunal on August 17, 2018, only suggests that debt become due and payable. It does not shifting forward the date of default as decree has to be executed within a specified period. It is not that after passing of judgment or decree, the default takes place immediately, as recovery is permissible, all the debts in terms of judgment and decree dated August 17, 2018 with pendente lite and future interest at the rate of 12 per cent. per annum could have been executed only through an execution case.

25. In Binani Industries Ltd. v. Bank of Baroda (2019) 5 Comp Cas-OL 28 (NCLAT) Company Appeal (AT) (Insolvency) No. 82 of 2018 decided on November 14, 2018, this Appellate Tribunal has held that "corporate insolvency resolution process" is not a recovery proceeding. It is not a "litigation" nor it is an auction.

26. By filing an application under section 7 of the I and B Code, a decree cannot be executed. In such case, it will be covered by section 65 of the I and B Code, which stipulates that the insolvency resolution process or liquidation proceedings, if filed, fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, attracts penal action.

27. The Adjudicating Authority (National Company Law Tribunal) has failed to consider the aforesaid fact and wrongly held that the date of default took place when the judgment and decree was passed by the Debts Recovery Tribunal on August 17, 2018.



28. As noticed above, in absence of any acknowledgment under section 18 of the Limitation Act, 1963, the date of default/non-performing asset was prior to 2004 and does not shift forward, therefore, the period of limitation for moving application under section 7 of the I and B Code was for three years, if counted, to be completed in the year 2007. As date of passing of decree is not the date of default, we hold that the application under section 7 of the I and B Code was barred by limitation, though the claim may not be barred.

For the said reason, we set aside the impugned order dated October 1, 2019—*Stressed Assets Stabilisation Fund v. Saritha Synthetics and Industries Ltd.* [2020] 219 Comp Cas 227 (NCLT) and dismiss the application under section 7 of the I and B Code filed by the Stressed Assets Stabilisation Fund ("financial creditor"). The "corporate debtor" is released from all the rigours of "corporate insolvency resolution process". The "interim resolution professional" will handover the assets and records to the promoters/board of directors immediately. The Adjudicating Authority will decide the fee and cost incurred and payable to the "interim resolution professional"/"resolution professional", which will be borne by the Stressed Assets Stabilisation Fund. The case stands remitted to the Adjudicating Authority only for such determination.

The appeal is allowed. No costs."

14. Further, reliance is placed on **Digamber Bhondwe, Director, Raipur Tresure Island Private Limited v. JM Financial Asset Reconstruction Company Ltd.** in Company Appeal (AT) (Insolvency) No. 1379 of 2019 to state that attempt is to recover the debt, which is

TP (Co. Act.)-18(PB)/2024
Old CP No. 590/2012



not permissible under the law. Ld. Counsel relied upon Para No. 19 of the order. The same extracted below:

19. We further reject the submission that because in Section 3(10) of I&B Code in definition of “Creditor” the “decree holder” is included it shows that decree gives cause to initiate application under Section 7 of I&B Code. Section 3 is in Part I of I&B Code. Part II of I&B Code deals with “Insolvency Resolution And Liquidation For Corporate Person”, & has its own set of definitions in Section 5. Section 3 (10) definition of “Creditor” includes “financial creditor”, “operational creditor” “decree-holder” etc. But Section 7 or Section 9 dealing with “Financial Creditor” and “operational creditor” do not include “decree-holder” to initiate CIRP in Part II. We accept the submissions made by the Learned Counsel for the Appellant and hold that the Application under Section 7 in this matter was time barred and impugned order admitting the Application deserves to be set aside.

- A. For the above reasons, we set aside the impugned order passed by Adjudicating Authority and dismiss the Application under Section 7 of I&B Code filed by the Respondent.*

- B. In the result, the Corporate Debtor “Raipur Treasure Online Pvt. Ltd.” is released from the rigor of Corporate Insolvency Resolution Process and actions taken by IRP/RP and Committee of Creditors, if any, in view of the Impugned Order are set aside. IRP/RP will hand back the records and management of the Corporate Debtor to the promoters/directors of the Corporate Debtor.*

- C. The matter is remitted back to the Adjudicating Authority to decide the fee and costs of ‘Corporate Insolvency Resolution Process’ payable to IRP/RP*



*which shall be borne by the Respondent J.M.
Financial Asset Reconstruction Company.*

The Appeal is allowed as above, no costs.

15. Further, Ld. Counsel states that the decree holder cannot initiate proceedings. However, Ld. Counsel for the Petitioner relied upon ***Cholamandalam Investment & Finance Company Ltd. v. Navrang Roadlines Private Limited*** passed by Hon'ble High Court of Madras in O.S.A. (CAD) No. 115 of 2022 decided on 01.12.2022. In that relevant para 8, 9, 10, 11 & 12. The same are extracted below:

*"8. The Hon'ble Supreme Court in the case of **Kotak Mahindra Bank Limited Vs. A. Balakrishnan** [2022 SCC Online SC 706] has held as under:*

"Once a claim has fructified into a final judgment post adjudication by a tribunal or court, the amount payable under the judgment, decree, order or recovery certificate, will give rise to fresh cause of action in favour of the creditor. It also held that such a decree could be used as proof of debt to initiate proceedings under the Insolvency and Bankruptcy Code'2016 within three years from the date of the decree.

*9. The Hon'ble Apex Court in the judgment in **Swiss Ribbons Vs. Union of India** reported in (2019) 4 SCC 17 had upheld the validity of Section 53(1) of Insolvency Code, which prescribes priority of distribution of assets in liquidation.*

10. In the present case, the respondent has submitted its proof of claim in the capacity as the Liquidator of the respondent Company claiming (i) principal amount of



Rs.1,27,77,777.05 in terms of the Trip Loan agreement dated 17.4.2018; (ii) Legal charges of Rs.24,135/-; and (iii) Additional Financial charges of Rs.77,56,165/- in respect of the very same claim. Therefore, the Liquidator of the respondent Company seeks to recover its dues qua the applicant/respondent Company in accordance with the procedure envisaged under Insolvency and Bankruptcy Code, 2016. According to the Liquidator of the respondent Company, Section 35 of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the IBBI (Liquidation Process) conferred right to the Liquidator to recover and realize all assets and dues to the corporate debtor in a time bound manner for maximization of value for the stakeholders.

11. We have also gone through the impugned order passed by the learned Single Judge. Learned Single Judge, after careful consideration of the provisions envisaged under Insolvency and Bankruptcy Code, 2016, has held that the amount lying in the deposit to be made available for distribution amongst the creditors qua M/s Navrang Roadlines Private Limited, inter alia, in accordance with Section 53 of Insolvency and Bankruptcy Code, 2016 in the pending CIRP before NCLT i.e. National Company Law Tribunal, Ahmedabad Bench, vide proceedings bearing reference CP(IB) 368/NCLT/AHM/2019. The relevant portion of the order reads as follows:

“11. This Court also considered the position that IBC is a self-contained code and Section 53 captioned "Distribution of assets' [as already alluded to supra] is an adumbration of priority order of creditors. A careful perusal of statutory priorities



in the adumbration makes it clear that workmen dues, wages and unpaid dues to employees other than workmen take precedence qua financial debts owed to unsecured creditors. In the case on hand, applicant in Section 9 is an NBFC and admittedly, an unsecured financial creditor. Testing the matter on a demurrer, assuming there are some claims of wages i.e. workmen dues or wages of employees other than workmen qua Navrang, they definitely have a precedence to get their share of pie in this sum of a little over Rs.15 lakhs that is now available for distribution and a further axiomatic extension of this principle is, if there are none, NBFC would still get its monies and NBFC is not going to be deprived of it. It is only a question of prioritizing the creditors as NBFC has taken a nosedive economically and gone into liquidation. After all, NBFC itself has gone before NCLT (post deposit by Garnishees) and slotted itself in the queue. Therefore, from the equity perception also, this Court has no hesitation in coming to the conclusion that the prayer in the captioned application deserves to be answered affirmative.

12. The sum sequitur is, captioned application is ordered with a rider that monies withdrawn would have to be made available for distribution amongst the creditors qua Navrang inter alia in accordance with Section 53 of IBC in the pending CIRP before NCLT i.e. National Company Law Tribunal, Ahmedabad Bench (Court No.2) vide proceedings bearing reference CP(IB) 368/NCLT/AHM/2019."

12. A mere perusal of the above observations of the Hon'ble Supreme Court in the decisions cited supra, shows that the liability in respect of a claim arising out of a recovery certificate issued by the DRT would be considered as "financial debt" within the ambit of Section 59(8) of Insolvency and Bankruptcy Code, 2016. It has also held

**TP (Co. Act.)-18(PB)/2024
Old CP No. 590/2012**



*that the underlying claim of the Bank/Claimant under the lending documents would have to be categorised as a “financial debt” under Insolvency and Bankruptcy Code, 2016. Therefore, a recovery certificate issued in respect of the same claim, which is essentially a crystallization of the claim through the process of adjudication, had also be classified as a “financial debt” under Insolvency and Bankruptcy Code, 2016. Consequently, the nature of the underlying claim of the creditor, would determine the categorisation of the amount payable under the final decree passed adjudication of the same claim. **The liability arising out of an arbitral award or a court decree would be categorised as either financial or operational debt depending on the nature of the underlying claim which stands crystallised through the arbitral or court proceedings.***

(Emphasis Supplied)

16. It is stated that view taken in ***Cholamandalam Investment & Finance Company Ltd.*** (Supra) was followed by Hon’ble NCLT, Hyderabad in the case of IBR Ltd. SBL Constructions Pvt. Ltd. v. IBR in liquidation. CP-294/7/2017 dated 23.02.2024. The relevant para are extracted below:



9. Once the Arbitral Award becomes final, it can be executed in the same manner as if it was a decree of the Civil Court. As the award was passed prior to the CIRP period, therefore the moratorium applies and in the present context, it is section 14(1)(a) which is applicable.

"14. Moratorium

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;"

10. In view of the moratorium, the Arbitral Award passed is to be taken as valid claim by the Resolution Professional/Liquidator and that is why Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that the amount payable under Resolution Plan to the Operational Creditors and Financial Creditors are mandatorily required to be mentioned.
11. The Arbitral Award would be considered either as Financial or Operational Debt and here we may profitably refer to the decision in The Hon'ble Madras High Court in the case of *Cholamandalam Investment and Finance Company Ltd. versus Navrang Roadlines Private Limited (O.S.A (CAD) no. 115 of 2022*, following the decision of Hon'ble Supreme Court in case of *Kotak Mahindra Bank Ltd. versus A. Balakrishnan and Another (2022)9 SCC 186* held in para 12 that –



“ A mere perusal of the above observations of the Hon’ble Supreme Court in the decisions cited supra, shows that the liability in respect of a claim arising out of a recovery certificate issued by the DRT would be considered as “financial debt” within the ambit of Section 59(8) of Insolvency and Bankruptcy Code, 2016. It has also held that the underlying claim of the Bank/Claimant under the lending documents would have to be categorised as a “financial debt” under Insolvency and Bankruptcy Code, 2016. Therefore, a recovery certificate issued in respect of the same claim, which is essentially a crystallization of the claim through the process of adjudication, had also be classified as a “financial debt” under Insolvency and Bankruptcy Code, 2016. Consequently, the nature of the underlying claim of the creditor, would determine the categorisation of the amount payable under the final decree passed adjudication of the same claim. The liability arising out of an arbitral award or a court decree would be categorised as either financial or operational debt depending on the nature of the underlying claim which stands crystallised through the arbitral or court proceedings.

Own emphasis

12. Hon’ble Supreme Court of India in *Dena Bank v. C. Shivakumar Reddy*, (2021) 10 SCC 330 has laid down that any arbitral award for payment of money, if not satisfied, would constitute a financial debt, thereby enabling the Financial Creditor to initiate proceedings under Section 7 of the Code.
 13. Thus, it is clear that the Arbitral Award is either a Financial Debt or an Operational Debt basing on the nature of the underlying claim. In the instant case the Arbitral Award is an Operational Debt due to the nature of the contract with the Principal Employer.
17. Ld. Senior Counsel also relied upon ***Kirusa Software P. Ltd. v. Mobilex Innovations P. Ltd.*** passed by Hon’ble NCLAT in Company Appeal No. (AT) (Insolvency) No. 6 of 2017 decided on 24.05.2017. The relevant para no. 29 is extracted below:

“29. There may be other cases such as a suit relating to existence of amount of debt stands decided and decree is pending for execution. Similarly, existence of amount of debt or quality of goods or service for which a suit have been filed and decreed ; an award has been passed by arbitral panel, though petition under section 34 of the Arbitration and Conciliation Act, 1996, may be pending. In such case the question will arise whether a petition under



section 9 will be maintainable particularly when it was a suit or arbitration proceeding is not pending, but stand decided ? Though one may argue that insolvency resolution process cannot be misused for execution of a judgment and decree passed in a suit or award passed by an arbitration tribunal, but such submission cannot be accepted in view of Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, wherein a decree in suit and award has been shown to be a debt for the purpose of default on non-payment.”

18. Further, reliance is placed on the order passed by NCLT Mumbai Bench in the case of **Agrocorp International Private (PTE) Limited, Operational Creditor v. National Steel and Agro Industries Limited, Corporate Debtor** in CP (IB) No. 798/MB/C-IV/2019 decided on 09.06.2020. The relevant portion as relied upon are extracted below:

“23. The corporate debtor submits that the foreign award had not obtained finality as it could either, prefer an appeal in the appropriate forum in London or it can object to the enforcement of the award under the provisions laid under section 48 of the Arbitration Act.

24. The amount due under the unenforced foreign award does not fall under the definition of claim or debt under the IBC as the foreign award has not been enforced in India under the Arbitration Act, it cannot be said to be a judgment under Indian law and therefore there can be no right to payment.

25. The Hon'ble Supreme Court in K. Kishan v. Vijay Nirman Company Pvt. Ltd. (Civil Appeal No. 21824 of 2017) held that pendency of challenge to an arbitral award qualifies as “pre-existing dispute” for the purposes



of initiating corporate insolvency resolution process by the operational creditor.

26. The operational creditor referred to section 3(6) of the IBC, 2016 which defines claim as under:

“claim’ means—

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;”

27. A claim is defined to include a right to a remedy for breach of contract, if such breach gives rise to a right of payment, whether or not such a right has been reduced to a judgment. Thus, a claim includes a judgment, being an award passed by a court of competent jurisdiction.

28. The arbitral award passed as per Arbitration Rule No. 126 of the “GAFTA” was initiated for the breach of sales contract, after considering the disputes and submissions made by the corporate debtor in the arbitral proceedings.

29. The existence of contract was already proved during arbitration proceedings and after considering those the award was decided by the sole arbitrator.

30. The operational creditor submits that if a party receives a binding award from a country which is signatory to the New York Convention or the Geneva Convention and the award was made in the territory which has been notified as a convention country by India, the award would then be enforceable in India. An award is “final” if under the laws of the country in which an award has been made, is no longer open to challenge on merits.”



19. Having noted the above decision, we are of the view that this is an admitted case of debt, which culminated into an award. The contention of the respondent's counsel that the petitioner is enforcing the decree and hence this petition cannot not be entertained is untenable. The respondent by an affidavit filed has stated that they have no asset to satisfy the award proves insolvency. The debt is admitted. In this view of the matter, the very initiation of the petition is not for the recovery but to find closure to a debt ridden company admitted by their own affidavit. In any event, the decision of the Hon'ble Madras High Court and other decisions relied upon by the Petitioner clearly established that such arbitral award based on the underlying operational debt can be a cause of action for initiating proceedings. We accept this proposition and reject the respondent defence. The decision relied upon by respondent is not applicable to the facts of the case and distinguished by the Madras High Court decision. We find merit and accordingly the petition stands admitted.

20. In light of the above facts and circumstances, it is ordered as follows: -

a) The Application bearing **TP (Co. Act) 18/(PB)/2024 Old CP No. 590/2012** filed by the Applicant/Operational Creditor, under section 9 of the Code read with Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Corporate Debtor is **admitted**.

b) We also declare moratorium in terms of Section 14 of



the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(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, Adjudicating Authority, 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.

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

c) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be



specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.

d) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

e) Ms. Sunita Umesh having address: M/s. UCC & Associates LLP, Chartered Accountants, 1315, Ansal Tower, 38 Nehru Place ,New Delhi ,Delhi ,110019 Email id sunita.umesh@uccglobal.in registration number IBBI/IPA-001/IP-P00080/2017-18/10165 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

f) In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression



immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.

h) The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. He is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

i) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

j) The Operational Creditor shall deposit a sum of Rs. 3,00,000/- (Rupees Three Lakhs) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Operational Creditor.



k) In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.

l) The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.

m) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

n) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

21. Accordingly, the present petition bearing **TP (Co. Act) 18/(PB)/2024 Old CP No. 590/2012** is **admitted**. No order as to cost.

-Sd/-

(RAMALINGAM SUDHAKAR)
PRESIDENT

-Sd/-

(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)

04.02.2026/Fatima

Drager Medical GmbH
Vs
M/s. Ion Bio Med I-Care Pvt Ltd

TP (Co. Act.)-18(PB)/2024
Old CP No. 590/2012