

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 13.05.2020

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: Hon'ble Member (J), Shri Rajeswara Rao Vittanala

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP (IB) No. 155/BB/2019 (MOVED)	For hearing IA 139/2020	Sec 9 of I&B Code 2016	M/s Origin Formulations Pvt Ltd	Amiraj R Barot & Praveen Kumar N K, Advocates, Srikantaiah Shivaswam y, RP - Applicant	M/s Fab Pharmaceutical s Pvt Ltd	Anup Sitaram Rama Rao (Advocate for Corporate Debtor)

ADVOCATE FOR PETITIONER/s:

Shri. S. Shivarajwamy. R.P
Shri. Anoop Satharama Rao
Counsel for R.P

ADVOCATE FOR RESPONDENT/s:

Shri. Kunal Rakhia,
M.D. of Corporate Debtor

(All through video conference)

Both IA 40 139/2020 & CP No 155/BB/19 are
disposed of by separate order
KJW

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.139 of 2020
U/R 11 of the NCLT Rules, 2016
R/w Section 60(5) of Code &
C.P. (IB) No.155/BB/2019
U/s 9 of the Code, 2016,
R/w Rule 6 of I&B (AAA) Rules, 2016

Mr. Srikantiah Shivaswamy,

Resolution Professional of

M/s. Fab Pharmaceuticals Private Limited

(Corporate Debtor)

RF-4, Santarra Magan Place,

Doddakammanahalli Huliavu,

Bengaluru- 560 076.

- Applicant/Resolution Professional

Date of Order: 13th May, 2020

Coram: Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Parties/Counsels Present(through Vedio Conference:

For the Applicant : Mr. Anup Seetharam Rao
with Mr.S.Shivaswamy R.P
MD of Corporate Debtor : Mr. Kunal.F. Rakhia

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No.139 of 2020 in C.P. No.155/BB/2019 is filed by Mr. Srikantiah Shivaswamy (Resolution Profession) under Rule 11 of the NCLT Rules, 2016 R/w Section 60 (5) of Code by inter alia seeking to terminate the CIRP in question; to release the Corporate Debtor from rigours of moratorium etc.
2. Briefs facts of the case, as mentioned in Application, which are relevant to the issue in question, are as follows:



- (1) Initially, C.P (IB) No. 155/BB/2019 was filed by M/s. Origin Formulations Private Limited, U/s 9 of the IBC, 2016 Read with Rule 6 of I&B (AAA) Rules, 2016 by inter alia seeking to initiate CIRP in respect of M/s. Fab Pharmaceuticals Private Limited, (herein after referred to as Corporate Debtor) on the ground that it has committed a default for an amount of Rs. 21,93,392/- (Rupees Twenty One Lakhs Ninety three Thousand Three Hundred Ninety Two Only). After considering the matter, the Adjudicating Authority, admitted the case by an order dated 19th September, 2019 by initiating CIRP, appointing S.Shivaswamy, as IRP, imposing moratorium etc.
- (2) Accordingly, the Interim Resolution Professional, caused Public Announcement(Form A) in Financial Express, in its issue dated 02.10.2019, by intimating the order of Adjudicating Authority, calling upon the Creditors of *M/s. Fab Pharmaceuticals Private Limited to submit their claims on or before 15.10.2019. In response*, apart from the Operational Creditor, the HDFC Bank (Financial Creditor) and another from Ravikumar Karigowda, on behalf of Commercial Tax Department made their claims. Accordingly, the claims received have been duly verified by the IRP/ RP, as per the list dated 25.01.2020 by admitting the claim of the Operational Creditor to the extent of Rs.19,81,974/- apart from HDFC Bank claim of Rs.1,74,02,103/- and the Commercial tax department, accounting to Rs.1,12,306/- So Committee of Creditors(COC) was constituted with sole Financial Creditor consisting of HDFC.
- (3) The IRP conducted the first meeting of COC on 02.12.2019, as per extant provisions of the Code, wherein, it was inter alia decided to confirm the IRP as R.P, the HDFC Bank also confirmed the freezing the Account of the Corporate Debtor. The 2nd COC meeting was held on 09.01.2020, wherein, the representative of HDFC Bank and Mr. Mr. Kunal.F. Rakhia, MD of Corporate



Debtor were present. The Bank has declared that the Account of Corporate Debtor was regular, and MD also expressed his readiness to settle the dues of Operational Creditor, and the expenses incurred for CIRP, subject to withdrawal of Company Petition and, there was no need to appoint any valuers. The 3rd meeting of the COC was held on 11.02.2020, wherein the HDFC Bank, the sole Financial Creditor informed that the Account of the Corporate Debtor was categorised as standard Asset, they are not in favour of continuing the CIRP. It was also taken into consideration of non-co-operation of the Operational Creditor to settle the issue. Therefore, the HDFC Bank, has authorised the R.P to file necessary Application before the Adjudicating Authority to terminate the CIRP Proceedings. Hence, this instant Application.

3. Heard Shri. Anup Seetharam Rao, learned Counsel for the RP and, Shri Kunal.F. Rakhia, Managing Director of the Corporate Debtor, **through Video Conference**. None appear for the Operational Creditor, though appropriate notice was given about the case. I have also carefully perused the pleadings of both the Parties as available on record, and the extant provisions of the Code and the Rules made thereunder.
4. Shri. Anup Seetharam Rao, the learned Counsel, while re-iterating various contentions made in the instant Application, has further submitted that the Operational Creditor has further suffered CIRP proceedings, before NCLT, Ahmedabad Bench, as Corporate Debtor, vide order dated 17.09.2019 passed in CP(IB)/Ahm/566/29 filed by Prutha Enterprises, U/s 9 of Code. The Corporate Debtor has expressed its readiness to settle the admitted amount of Rs.10,22,000/- (Rupees Ten Lakhs Twenty Two Thousand Only) to the Operational Creditor, after deducting payable to extent of Rs.9,59,000/- (Rupees Nine Lakhs Fifty Nine Thousand Only). The



sole Financial Creditor is not willing to continue the CIRP proceedings, and there being no claims against the Corporate Debtor, except the claim of Operational Creditor, who is not interested to settle his claim, the initiation of CIRP proceedings against the Corporate Debtor is against the object of Law. He, therefore, submit that there would no purpose be served to continue the CIRP proceedings in question.

5. Shri. Kunal.F. Rakhia, Managing Director of the Corporate Debtor, has further submitted that business operations of Corporate Debtor, being in essential service, is supplying medicines to the Govt of Karnataka and public at large, and thus continuing its business uninterruptedly even during the present lockdown period. He has further submitted that he has tried his level best to settle the outstanding of Operational Creditor, as per Books of Accounts, however, it was adamant to continue the CIRP and refusing to withdraw his Company Petition, through RP. Therefore, he has urged to release the Corporate Debtor from the Clutches of CIRP by Defreezing the account of the Corporate Debtor with their Bank, so as to run its business in normal Course. The Company is having ten employees on its rolls.
6. As stated supra, the main Company Petition was filed by M/s. Origin Formulations Private Limited, U/s 9 of the Code by claiming that the Corporate Debtor has committed a default for an amount of Rs. 21, 93,392/- Though it is bounden duty of Operational Creditor to bear initial cost of Corporate Insolvency Resolution Process, after admission of the case, it has failed to contribute initial cost of CIRP. The object of Code is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all



the stakeholders including alteration in the order of priority of payment of Government dues etc. In terms of Section 6 of Code, whenever, Corporate Debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as prescribed under the provisions of Code. Section 65 of Code debars any person to initiate insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

7. In the instant case, as detailed supra, the Operational Creditor is not interested to avail the settlement proposal fairly made by the Corporate Debtor, and only interested to keep the case pending, even without contributing initial cost of CIRP. Therefore, the Operational Creditor has initiated CIRP proceedings against the object of Code. Since, the Sole Financial Creditor (HDFC) has authorised the RP to file the instant Application seeking the relief as mentioned supra, the Adjudicating Authority, can exercise its inherent powers, under Rule 11 of NCLT Rules , 2016 to dispose the instant Application, under Section 60(5) of Code, as sought by the Applicant herein. Since the Corporate Debtor expressed its willingness to settle claim of Operational Creditor, it may avail the same, even though, the Company Petition is disposed of.
8. For the aforesaid reasons and circumstances, this Bench is of the considered opinion that the Operational Creditor has initiated the impugned proceedings, seeking to achieve it ulterior object contrary to Corporate Insolvency Resolution Process, as contemplated under the provisions of Code. Moreover, the Corporate Debtor is solvent Company having no claim against it, except the claim of Operational



Creditor in question, for which, the Corporate Debtor has already expressed its willingness to settled its claim as detailed supra. Therefore, the instant Application deserves to be allowed by terminating the CIRP in question as prayed for, in the interest of justice. The Operational Creditor has not availed the opportunity through this video conference, even though it was placed under sufficient notice, by the Resolution Professional. It shows that it is not interested to assist the Adjudicating Authority to dispense with justice, as per law.

9. In the result, by exercising the powers conferred on the Tribunal being Adjudicating Authority, under NCLT Rules,2016, R/w Section 60(5) of the Code, both I.A. No.139 of 2020 and C.P. (IB) No.155/BB/2019, are hereby disposed with following directions:
- (1) The impugned proceedings dated 19.09.2019 passed in C.P. (IB) No.155/BB/2019 stands terminated forthwith , and the Corporate Debtor is released from rigours of CIRP.Consequently, the status of Corporate Debtor stands restored prior to initiation of impugned CIRP, which includes restoration of Account of Corporate Debtor with Financial Creditor, namely HDFC Bank.
 - (2) It is made clear that this order will not preclude the Operational Creditor to avail the offer of settlement made by the Corporate Debtor to settle its claim.
 - (3) No order as to cost.


RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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