

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP(IB)No.540/9/HDB/2018

Under section 9 of the IB Code, 2016
Read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

**In the matter of:- M/s ACARICIDE INDIA PRIVATE
LIMITED**

Between:

M/s.VIP Industries,
1/C, Krishna Complex,
2nd Floor, Near Sayona Estate,
Naroda- Kaluvupur Road,
Memco, Ahmedabad.

...Applicant/Operational Creditor

Versus

ACARICIDE INDIA PRIVATE LIMITED
(Formerly known as KVM Organic Products Private
Limited),
2nd Floor, MIG-88 Road No.1,
KPHB Phase-1, KPHB Colony,
Hyderabad, TG 500072.

...Respondent/Corporate Debtor



Order pronounced on: 09.07.2019

Parties/Counsel Present:

For the Petitioner/Operational Creditor:

Mr.V.Venkata Rami Reddy, Advocate

For the Respondent/Corporate Debtor:

Mr.Gogineni Krupachand, Advocate

Mr.C.Srinath, Advocate

✓

ORDER

1. Under consideration is a Company Petition filed by M/s. VIP Industries (in short, 'Petitioner/Operational Creditor') against M/s. Acaricide India Private Limited (in short, 'Respondent/Corporate Debtor') under section 9 of the Insolvency and Bankruptcy Code 2016 (in short, I & B Code 2016) Read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**').
2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. The learned counsel appearing on behalf of the Petitioner/Operational Creditor submitted that the Operational Creditor is in the business of rendering services relating to supply of various chemicals. The Corporate Debtor has approached the Petitioner for purchase of Chemicals and Pesticides. Based on the assurance and representations of the Corporate Debtor, the Operational Creditor had supplied Pesticide Formulations/ Technicals to the Corporate Debtor and several invoices were raised for the supply of Chemicals and Pesticides.
4. The learned counsel submitted that in compliance with the said Invoices, the Operational Creditor had duly supplied the goods through delivery challans to the address specified by the Corporate Debtor and also placed the particulars of the delivery challans & LR as Annexure II (G).



u/

5. It is submitted that the total amount of debt is Rs.1,91,19,376/- together with (Principal amount Rs.67,44,660/- + Interest of Rs.1,23,74,716/-) calculated at 24% per annum on the said sum from 11.09.2010 to 30.06.2018. Upon constant persuasion, the Corporate Debtor has issued cheque bearing No.443173, dated 09.07.2018 for Rs.64,00,000/- drawn on State Bank of India, Balanagar, Hyderabad, with a promise that the remaining principal amount with the interest will be paid later within 7 days. The above cheque which has been submitted in Vijaya Bank has returned unpaid with the remarks "Refer to Drawer".

6. The Operational Creditor has issued a demand notice dated 19.07.2018 U/s.8(1) of the I & B Code, 2016, calling for the unconditional repayment of the unpaid Operational debt within ten days. The Demand Notice was served to the Registered Office of the Corporate Debtor on 20.07.2018.

7. The learned counsel for the Operational Creditor submitted that, even after the expiry of the statutory period of 10 days, no proper reply was received from the Corporate Debtor. The Operational Creditor has filed an affidavit stating the above fact.

8. In order to prove the existence of Operational debt and the amount in default, the Operational Creditor filed the following documents:-

a) Affidavit executed and signed by the Proprietor of M/s VIP Industries, the Operational Creditor, with regard to Confirmation of bank accounts. [Annexure II (H)]

b) Invoices annexed as Annexure II (F)

c) Delivery Challans annexed as Annexure II (G)

9. The Corporate Debtor filed counter. In the counter it is stated that one Mr.M.Venkata Rao and his family members established

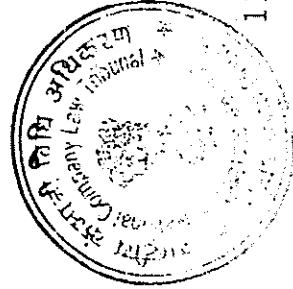


✓

M/s K.V.M.Organic Products Private Limited and they are not in a position to run the said company. Mr.Venkata Rao and his family members made a proposal and requested Mr.Srinivasa Rao (Present Managing Director of Respondent Company) to take over the company. Then, on mutual understanding between the then management and present management, shares were transferred in the name of new management and the new management changed the name of the Company from KVM Organic Products Private Limited to Acaricide India Private Limited in 2017. The shares were transferred to the new management only after receipt of the full amount of the share value and an MOU was also entered on 04.03.2017. List of Creditors was annexed to the said MOU, but no papers in respect of that is handed over to the present management. Whenever asked, the then management (Mr.M.Venkata Rao) with a malafide intention protract the matter from time to time and till date no particulars were given.

10. It is submitted that the present management spent nearly Rs.25 crores for the Company. The learned counsel for the Respondent stated that some of the creditors to the list enclosed to the MoU in 2017, had approached the Respondent and settled the amounts and issued NOC.

11. The learned counsel for the Respondent submitted that as per the statement of the Petitioner and as per Annexure II, the three transactions were made in 2010 and one in 2012, but the present claim is pertaining to 2018. The said claim is barred by limitation. The Petitioner is not entitled to any relief as claimed in the Petition.

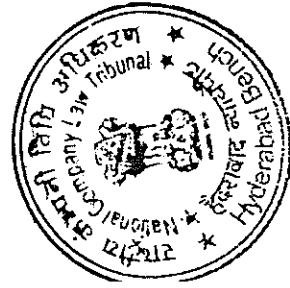


u/

12. The learned counsel for the Corporate Debtor submitted that the claim of the Petitioner is Rs.67,44,660/- and claiming interest is Rs.1,23,73,716/- which is double to the principle amount, further it is not supported by any documentary evidence. It is submitted that no statutory documents were filed by the Petitioner in support of their claim and prayed to dismiss this CP.

13. In reply to the counter, the Operational Creditor filed rejoinder. In the rejoinder it is submitted that the Operational Creditor is not the party to the MoU entered and signed between new management and old management. It is submitted that, the Operational Creditor supplied material to the Company, M/s K.V.M. Organic /products Private Limited which is the corporate entity incorporated under Companies Act, 1956 and the said Company's name was changed to M/s.Acaricide India Private Limited on 08.12.2017.

14. It is submitted that, after the change of the management and change of the name of the Company, on demand by the Operational Creditor, the company issued a cheque towards discharge of part liability, payable to the Operational Creditor. The new management cannot take a plea that the dues payable by the Company to the creditor has to be paid by the old management. Moreover the Managing Director of the Respondent Company has signed the cheque with his consent to pay the liability to the Operational Creditor only after the change of management. Therefore, the company accepted and confirmed the liability and duly issued a cheque for Rs.64,00,000/- as part payment and now cannot escape from discharging the liability of the Company.



y

15. It is submitted that the Corporate Debtor failed to pay for the material supplied and the invoices raised including an invoice raised in the year 2012. Despite several reminders form Operational Creditor, the company failed to pay the debt amount. After change of management, it was assured and confirmed by the Managing Director of Respondent who has signed the cheque towards the unpaid invoices of the year 2010-2012. As part of the said payment, the company issued a cheque in favour of Operational creditor on 09.07.2018 and thus it is evident that the Company is liable to pay the due amount. Hence, the claim made by the Operational Creditor is within the limitation and not barred by the limitation. Issuance of cheque in favour of Operational Creditor is within the limitation and not barred by the limitation.

16. It is submitted that, the balance sheet of the Corporate Debtor clearly indicates that the Corporate Debtor has to pay Rs:3,25,24,000/- towards trade payables as on 31.03.2017 and Rs.5,66,62,041/- towards trade payable as on 31.03.2016. The above financial figures is also a secondary evidence with regard to trade payables by the Corporate Debtor. The invoices, delivery challans, LRs and way bills are statutory documents/evidences supporting the claim of the Operational Creditor.

17. The cheque issued by the Company is against the discharge of the debt amount only. It is not for any other transaction. The Corporate Debtor's contention about issuance of the blank cheque towards security is a baseless and not satisfied by any evidence.

18. The Corporate Debtor filed written submissions reiterating the averments made in the reply/counter.



u/

19. Having heard both sides and having gone through the records, it is seen that the cheque of Rs.64,00,000/- issued by the Respondent in the name of the Operational Creditor is against the discharge of the debt amount only and further it is observed that there is no other transaction between the parties.

20. The Respondent also failed to substantiate the contentions in relation to the limitation aspect and all the material documents categorically proved the transaction i.e., for claim in relation to the material supply. Therefore, the transaction is well within the limitation.

21. In view of the above observations, I am inclined to admit the petition as the petitioner has made out a case and also satisfied the Adjudicating Authority for admitting the petition by proving the existence of the debt.

22. The instant petition is hereby admitted and this Adjudicating Authority order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

23. This Adjudicating Authority hereby Appoints Mr. Madasa Kumar, as IRP. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Insolvency and Bankruptcy Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

24. I declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution



ye

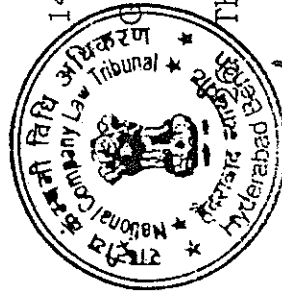
process for the purposes referred to in Section 14 of the I&B Code, 2016. I order to prohibit all of the following, namely:

- a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.*

25. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section

14 shall not apply to such transactions, as notified by the Central Government.

The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.



4

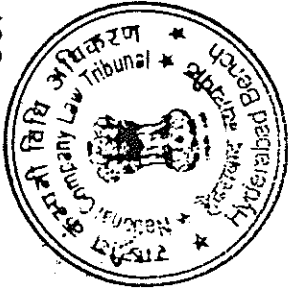
27. The Petitioner/FC as well as the Registry is directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

28. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

29. The address details of the IRP are as follows:-

Mr.Madasa Kumar,
Address:- 11-5-39/4/A, Road No.8,
Venkateswara Colony, Saroornagar,
Hyderabad - 500035
Email:- kumarmadas@gmail.com
Ph: 9866512519
Reg. No: IBBI/IPA-001/IP-P01590/2019-2020/12465

30. The present Petition is hereby admitted.



K.ANANTHA PADMANABHA SWAMY
MEMBER JUDICIALC

Dy. Regr./Asst. Registrar Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रतिलिपि
CERTIFIED TRUE COPY
केस नं. १८१
CASE NUMBER... (S.P./No. 540/9/HQ/2018)
निर्णय का तिथि १/२/१९
DATE OF JUDGEMENT...
प्रति तैयार किया गया तारीख १८/१२/१९
COPY MADE READY ON... 18/12/19