S.No.4

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
21-07-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

CP(IB) No.333/9/HDB/2021
U/s 9 of IBC, 2016

IN THE MATTER OF:
M/s. Changzhou Fly Import
and Export Trading Co. **…Operational Creditor**

Vs

M/s. Avathera Pharma Pvt Ltd **…Corporate Debtor**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

O R D E R

Orders pronounced in CP (IB) No.333/9/HDB/2021 pronounced vide separate sheets. In the result the petition is admitted and Moratorium is hereby declared against the Corporate Debtor. The Registry is directed to furnish free copy of this order to the parties as per Rule 50 of the NCLT Rules, 2016.

Sd/- Sd/-

MEMBER (T) **MEMBER (J)**

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NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1

CP (IB) No. 333/9/HDB/2021
Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter between

Changzhou Fly Import and Export Trading Co. Ltd

Registered office at

#No.88, Yanzheng Road, Hutang Town,

Changzhou City, Jiangsu Province, China.

... Operational Creditor

VERSUS

M/s. Avathera Pharma Private Limited

Registered Office at

P No.1981, 1984, Pragathi Nagar,

Jeedimetla, Hyderabad, Telangana- 500 015.

... Corporate Debtor

Date of order: 21.07.2022

Coram:

Dr N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For the Petitioner : Ms. Annapurna Reddi, Advocate.

PER BENCH

1. Under consideration before us is the Company Petition filed by Operational Creditor herein stating that M/s. Avathera Pharma Private Limited / Corporate Debtor committed default of Rs.1,69,03,441.20/. Hence, this petition is filed under Section 9 of Insolvency & Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, commencement of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. AVERMENTS:

2.1 It is averred that the Corporate Debtor is in the business of supplying and exporting FFP2-Leval Face Mask. During the course of the business Corporate Debtor represented to the Operational Creditor that Corporate Debtor is having ready stock of FFP2-Leval Face Mask and that can be dispatched on confirmation upon receipt of 50% advance payment.

2.2 Thereafter the Operational Creditor entered into sales contract (‘**Sales Contract No.1’**) bearing No.FLY20200130 dated 30.01.2020 for a total value of USD 40,040.00 and as per the agreed, the Operational Creditor on 31.01.2020 advanced the sum of USD 20,020.00 being 50% of the contract value for supply of face mask.

2.3 Later while the delivery of FFP2-Level face mask was awaited, Corporate Debtor further represented the Operational Creditor that a bulk stock of 3-Ply Surgical Face Mask is available and can be delivered immediately subject to receipt of the total contract sum.

2.4 Thus the Operational Creditor cancelled the **Sales Contract No.1** and entered into **Sales Contract No.2** dated 10.02.2020. further, the Operational Creditor paid the amount as agreed post adjustment of advance paid against the Sales Contract No.1 to the Corporate Debtor.

2.5 As per the terms the product has to be delivered within 4-5 days after receipt of the payment. But despite of receipt of payment Corporate Debtor delayed the delivery of 3-Ply surgical face mask without any reason.

2.6 Thereafter, the Operational Creditor cancelled the contract vide its email dated 21.02.2020 and requested the Corporate Debtor for refund of the advance payment along with the USD 14,285.80(penalty for breach of contract) and the total amount is of USD 242,285.80.

2.7 Despite of continuous follow up, Corporate Debtor delayed the payment on one pretext or other. Later Corporate Debtor vide its email dated 08.04.2020 stated that the amount will be remitted and requested to issue a letter/undertaking in this regard. Considering the request Operational Creditor issued letter confirming the amount of Rs.1,61,02,994/- against the invoice No.1112 dated 08.02.2020.

2.8 It is averred that Corporate Debtor had not made the payment and thus the Operational Creditor had issued legal notice dated 20.07.2020 through its counsel, whereas the Corporate Debtor vide reply dated 10.08.2020 while admitting the liability represented that a sum of R.s1,60,98,181.00 in equivalent USD is required to be remitted rather than Rs.1,61,02,994/-.

2.9 Thereafter Operational Creditor issued letter dated 14.08.2020 to settle the matter agreed for refund of Rs.1,60,98,181/- within 15 days of receipt of letter.

2.10 It is averred that Corporate Debtor vide email dated 07.10.2020 stated that due to short of funds requested time till 26.10.2020 for refund of amount. Even then the Corporate Debtor is seeking extension on one pretext or the other for making payment.

2.11 Thus the Operational Creditor issue demand notice dated 08.09.2021 under Section 8(1) of the Code, seeking payment of Operational debt of Rs.1,69,03,441.20(calculated 1 USD= Rs.74.1379 as on 24.08.2021).

3. In the above backdrop the point that emerges for consideration by this Tribunal is:

Whether an Operational debt as claimed by the applicant is due and payable by the Corporate Debtor to the applicant? If so,

whether the Corporate Debtor defaulted in payment of the said Operational debt?

4. We have heard the Learned Counsel Ms.Annapurna Reddi, for operational creditor and perused the record.

5. At the outset it may be stated that the operational creditor in respect of its claim it entered into sales contract no.1 dated 30.01.2020 and sales contract no.2 dated 10.02.2020. In terms of the same as per operational creditor, corporate debtor committed default in making supplies. Under these circumstances, operational creditor cancelled the contracts vide email dated 21.02.2020, as corporate debtor failed to pay or returned the amount admitted. Pursuant thereto the corporate debtor vide email dated 08.04.2020 sought time for refund. Corporate debtor also confirmed the liability, however, failed to pay. Hence demand notice has been issued by way of Speed post which was delivered on the registered office of corporate debtor on 14.09.2021 but corporate debtor neither replied not contested. The assertions of the corporate debtor remain unrebutted. Neither replied to the demand notice nor paid the amount. Therefore, the contentions in the Application remains unrebutted.

6. Pursuant to the direction of this Tribunal the operational creditor has taken notice to the corporate debtor's registered address. However, on both the occasions namely, 17.12.2021 and 21.03.2022 notice returned unserved with an endorsement "no such person" and further the email also bounced back as unserved. This Tribunal therefore directed the operational creditor to take notice by ways of publication in leading newspaper having wide circulation in the area where registered office of the Corporate Debtor is situated. Accordingly, publication has been effected in Nava Telangana, on 22.04.2022. Pursuant to the publication corporate debtor was called absent and was set ex-parte.

7. We hold that there is sufficient service. Even demand notice discloses that since the respondent had not responded to the notices, we treat that corporate debtor remains unrebutted. Thus corporate debtor was treated as ex-parte. In view of Section 8 (2) of the Code, the Corporate Debtor is required to raise a dispute or make payment within 10 days after the receipt of the Demand Notice. Since, the Corporate Debtor neither raised the disputes nor made payment and the defaulted is more than Rs. 1 crore, being the minimum threshold limit fixed under IBC, 2016, hence, under the circumstances, the Adjudicating Authority is inclined to admit the petition and put the Corporate Debtor into Corporate Insolvency Resolution Process.

8. Hence, the Adjudicating Authority admits the Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

(a) The Bench hereby prohibits 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; transferring , encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor;

(b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(d) That 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 Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

(e) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(f) The Operational Creditor prayed this Adjudicating Authority to appoint the IRP. This Bench hereby appoints Shri Mr.

Ramanjaneyulu Gandluri, (Mobile- 9989224292) having IBBI Registration No: IBBI/IPA-003/IPAICAIN0407/2022-2023/14104, with email id : ramgandluri[at]gmail[dot]com as to carry the functions as mentioned under the Insolvency & Bankruptcy Code. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with. Proposed IRP shall file Form-B issued by the IBBI within three days hereafter. This information is also available in IBBI Website. Authorisation for Assignment is valid to 11.05.2023. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(g) The petitioner is directed to pay a sum of Rs.1,50,000/- to the interim resolution professional to meet out the initial CIRP expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI regulation, 2016.

(h) The Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

(i) Registry is directed to send a copy of this order to the Operational Creditor and IRP appointed in this case.

(j) Accordingly petition is admitted.

(k) The Operational Creditor is directed to communicate this order to the IRP appointed in this case.

(l) The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.

Sd/- Sd/-

Veera Brahma Rao Arekapudi
Member Technical

Dr. N.V.Ramakrishna Badarinath
Member Judicial

Pavani