

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, BENCH

CP (IB) No. 262/9/HDB/2019
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. REDDY PHARMACEUTICALS LIMITED

Between:

M/s. Sri Chaitanya Chlorides Private Limited,
Plot No. 29-32, 39-42, IDA Phase – II,
Pashamylaram, Sangareddy Dist. – 502 307.

... Petitioner/
Operational Creditor

And

M/s. Reddy Pharmaceuticals Limited,
Sy. No.111/E, 111/EE, Cheriya village,
Sanga Reddy, Telangana – 502 285.

... Respondent/
Corporate Debtor

Date of order: 16.12.2019.

Coram: **Shri. K. Anantha Padmanabha Swamy, Member Judicial.**
Dr. Binod Kumar Sinha, Member Technical.



Parties/counsels present:

For the Petitioner/
Operational Creditor:

Mr. V. Venkat Rami Reddy, Counsel.

For the Respondent/
Corporate Debtor:

Mr. G. Suresh Goud, Counsel.

Per. Dr. Binod Kumar Sinha, Member Technical.

ORDER

- Under consideration is company petition filed by M/s. Sri Chaitanya Chlorides Private Limited (in short, "**Petitioner/Operational Creditor**") against M/s. Reddy Pharmaceuticals Limited (in short, "**Respondent/Corporate Debtor**") under section 9 of the Insolvency and Bankruptcy Code, 2016 (in short, **IB Code, 2016**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, **IB Rules, 2016**).

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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.

a) The Petitioner/Operational Creditor is into the business of rendering the services relating to supply of chemicals and chlorides including CIS BROMO BENZOAT and Mythyloxy – Phenyl etc., and whereas, the Respondent/Corporate Debtor is a Limited Company registered under the Companies Act, 1956 having its registered office at Sanga Reddy District in Telangana and it is engaged in manufacture and supplying & trading of Pharmaceutical chemicals API, intermediates, formulations etc., The authorised and paid up share capital of the Corporate Debtor is ₹2,60,10,000/- (Rupees Two Crores Sixty Lakhs Ten Thousand Only).

b) That the Operational Creditor has supplied pharma chemicals such as CIS *Bromo Benzoat and Mythyloxy Phenyl* etc., to the Corporate Debtor from time to time. The Corporate Debtor has failed to comply with the terms of payment as per the Tax Invoices cum E-way Bills.

c) That The Corporate Debtor is in due of ₹2,15,17,306/- (Principal Amount of ₹2,05,03,090/- and Interest ₹10,14,216/- @ 24% per annum) to the Operational Creditor and in turn has issued a cheque dated 26.03.2019 for ₹2,14,63,380/-. The same was returned as “*exceeds arrangement*”.

d) That the Operational Creditor has issued a demand notice under Section 8(1) of the Insolvency and Bankruptcy Code read with rule 5 Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form-3 dated 30.03.2019 and Form of Notice with invoice demanding payment in Form-4 dated 30.03.2019. There were no objections or replies from the Corporate Debtor.

e) That the Operational Creditor filed the following documents in order to prove the existence of operational debt and the amount in default:

1) Tax Invoices, E-way Bills dated 12.09.2018 to 06.12.2018.



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- 2) Cheque for ₹2,14,63,890/- dated 26.03.2019.
- 3) Demand notice in Form-3 and Form-4, dated 30.03.2019
- 4) Calculation sheet dated 30.03.2019.
- 5) Ledger Account of the Corporate Debtor received by email dated 01.04.2018 to 31.03.2019.
- 6) Ledger Account Purchase Adjustment for ₹44,25,000/- against the sale dated 18.01.2019.

f) It is further stated that the Petitioner/Operational Creditor is relying on the following judgments of the Apex Court in

- a) Civil Appeal No.9405/2017 in the matter of M/s. Mobilox Innovation Private Limited Vs. M/s. Kirusa Software Private Limited.
- b) Civil appeal number 9597 of 2018 in the matter of Transmission Corporation of Andhra Pradesh Vs. Equipment Conductors and Cables Limited.
- c) NCLAT in the National Company Law Appellate Tribunal, New Delhi, Main Citation: MANU/NL/0318/2019; Equivalent Citation: [2019] 152CLA326, [2019]155SCL210; Company Appeal (AT) (Insolvency) No.703 of 2018; Decided on 23.07.2019 Appellants; Ahluwalia Contracts (India) Limited Vs. Respondent; Raheja Developers Limited

Reiterating the above averments, the counsel for the Operational Creditor prayed to admit the instant application.

3. Respondent filed counter inter-alia stating that the Operational Creditor filed the petition with a mala-fide intention to extort money and to deprive Corporate Debtor of their legitimate entitlements, rights and applicant resorted to suppression, misrepresentation and misstatement of material facts as would be apparent from the following:

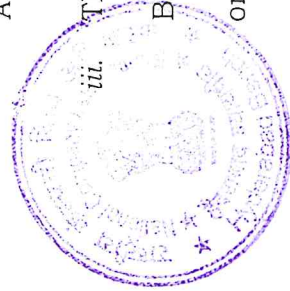
- i. That the Respondent/Corporate Debtor is denying the due amount of ₹ 2,15,17,306/- (Rupees Two Crore Fifteen Lakhs Seventeen Thousand Three Hundred and Six Only) out of which Principal Amount being ₹2,05,03,090/- (Rupees Two Crore Five Lakhs Three Thousand Ninety Rupees only) and interest amount being ₹10,14,216/- (Rupees Ten


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Lakhs Fourteen Thousand Two Hundred Sixteen Only) at the rate of 24% P.A with effect from 11.12.2018 to 30.03.2019.

- ii. That the Respondent/Corporate Debtor received material under (1) invoice bearing no. 870, Dated:-18.09.2018 for ₹1,357,00.00 (2) invoice bearing no. 871, Dated:-18.09.2018 for ₹2,301,000.00 (3) invoice bearing no.905, Dated:-25.09.2018 for ₹1,357,000.00 (4) invoice bearing no.906, Dated:-25.09.2018 for ₹9,20,400.00 (5) invoice bearing no.966, Dated:-06.10.2018 for ₹1,150,500.00 (7) invoice bearing no.1292, Dated:- 01.12.2018 for ₹11,50,500.00 (8) invoice bearing no.1315, Dated 06.12.2018 for ₹14,16,000.00 and other than these invoices respondent has not received any material under any of the invoices filed before this Adjudicating Authority and all other invoices are fabricated and created documents filed before this Adjudicating Authority to extort money from the Corporate Debtor.



iii. That the technology for preparing state I to V and CIS BROMO BENZOAT were given by the Respondent to the Petitioner with a specific oral understanding that the material will be supplied solely to the respondent or else he will pay royalty to the respondent but the applicant instead of supplying the above mentioned material continuously to the respondent, colluded with the competitors of the respondent and damaged the business prospects of the respondent very badly and Petitioner in the month of February threatened the Respondent to close the factory but Respondent has taken it lightly by thinking it as a joke but as threatened, the Petitioner filed this petition before this Adjudicating Authority with full of lies, fabricated documents with an intention to close the factory. It is further submitted that the respondent gave technology for manufacturing stage I to V and CIS BROMO BENZOAT but with certain conditions the petitioner violated those conditions and as such, for this technology transfer the


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Respondent is eligible for the same amount which they received from other clients for the technology transfer from the petitioner also.

iv. That the assertion of the petitioner at page 113 of the material papers that no effective notice received from corporate debtor is nothing but false instead an e-mail dated 17.01.2019 is sent to the applicant to settle the issue relating to invoice No. 1328, dated 09.12.2018 for ₹53,10,000/- but neither material is returned nor accounts were settled. It is further submitted that the applicant after receipt of e-mail requested that they are in the partnership business and the other partners are objecting for the rate and further requested the respondent to accept the said invoice and raise the fresh invoice by reducing the price and the difference amount of ₹7,50,000/- will be adjusted in the accounts but no such adjustment is made and the same is also not mentioned in the petition filed before this Adjudicating Authority.

v. That the corporate debtor has issued a cheque bearing No.201409 dated 26.03.2019 for ₹ 2,14,63,380/- (Two Crores Fourteen Lakhs Sixty Three Thousand Three Hundred and Eighty Only) which includes interest @24% per annum up to 26.03.2019 and the same was submitted before the Bank for collection has been returned with remarks dated 29.03.2019 that "exceeds arrangement" is specifically denied and petitioner be put to strict proof of the same by way of documentary evidence. That the respondent always given payment against each invoice separately which can be verified from the books of account of the Petitioner. It is submitted that the above cheque bearing No.201409 is given blank signed to the Petitioner during the month of October-2017 as per the request of the Petitioner. Petitioner mischievously represented the above said cheque once again on 24.06.2019 and an amount of ₹29,500/- has been debited towards cheque dishonour charges which clearly shows the cheating and



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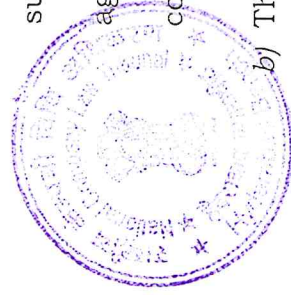
unscrupulous attitude of the applicant to take out money from the bank account of the Corporate Debtor without his authorization and knowledge.

vi. It is submitted that the Petitioner has nowhere mentioned in the application about the payment payable to the respondent against Invoice No.RPL/HM/18-19/137, dated 18.01.2019 for ₹44,25,000/.

Reiterating the above contentions, the counsel for the Respondent prayed to dismiss the petition.

4. Counsel for the Petitioner filed rejoinder and written submissions, reiterating the averments made in the Petition and further stated the following:

a) That in relation to invoice No. 1328, the Respondent has also furnished the same through their official e-mail on 07.03.2019, and further placed all the relevant documents such as the ledger account, substantiating the proof of delivery and with regard to proof of debt against every supply of material. Therefore the averments made in the counter are false.



b) That the Corporate Debtor has acknowledged the receipt of materials and also copy of ledger account furnished by the Corporate Debtor has accounted for the invoices. That in the ledger, the Respondent/Corporate Debtor has furnished the said details including the date of credit of the invoice and its value. Therefore, the allegations of the Corporate Debtor are false.

c) That the material corresponding to Invoice No.1328 dated 19.12.2018 for ₹ 53,10,000/- is due from the Corporate Debtor since it was received by the Corporate Debtor and the receipt of material has been acknowledged with stamp and the same was sent by e-mail to the petitioner/Operational Creditor. The Respondent has also furnished thorough e-mail, the ledger account, substantiating the proof of

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delivery and with regard to proof of debt against every supply of material with values thereof. The e-mail dated 18.01.2019 received from the Corporate Debtor along with the invoice acknowledged by the Corporate Debtor are enclosed at page no.19 and 20 of the rejoinder.

d) The Respondent, while agreeing to the debt and for the part payment of the invoices due and the interest thereon, have calculated and issued a cheque for ₹2,14,63,380/- on 26.03.2019 which has been returned by the bank with the remark "exceed arrangement".

e) That Demand Notice in Form No.3 and in Form No.4 under section 8 of the IBC, 2016 were dispatched along with copies of invoices and e-way challans vide Speed Post No.EN42056989IN.

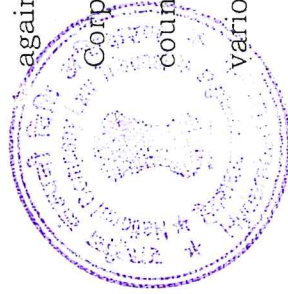
5. The petitioner further prayed to allow the Application.

6. Heard both the sides and perused the records.

7. It is the case of the Petitioner that it has supplied pharma chemicals such as

CIS Bromo Benzoat and Mythuloxyl Phenyl etc., to the Corporate Debtor against which various invoices were raised from time to time for which the Corporate Debtor was liable to pay and has failed to pay. Respondent in its counter has categorically admitted that he has received material under various invoices as stated supra under para 3(ii), wherein, the acknowledgment of the debt is more than ₹1,00,000/- and further, the Corporate Debtor has neither placed any document on record with regard to payment of the admitted debt neither has placed any record showing any pre-existing dispute.

8. With regard to the contention of the corporate debtor regarding the allegation that few of the invoices are fake and fabricated, this adjudicating authority observes that the Respondent has failed to provide any documentary evidence to the same and further, the Petitioner along with its rejoinder has placed the acknowledged copy of the invoices and also ledger account of the



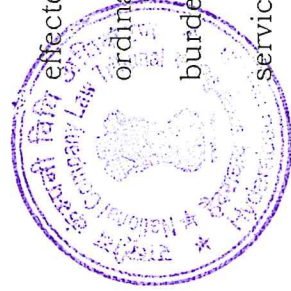
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petitioner in the books of account of the respondent shows the same. Therefore the said contention does not form any ground for rejection of the instant Application.

9. It has been contended by the Respondent that the notice u/s. 8 of the Code was not received by them and the Petitioner may be put to strict proof regarding the same. In this connection, this Adjudicating Authority observes that the Petitioner has filed proof of sending the notice under section 8 to the Corporate Debtor's address by Registered Speed Post in the form of Speed Post Receipt No.EN420569891IN dated 06.04.2019 in original. Hon'ble Supreme Court in the case of **C.C. Alavi Haji Vs Palapetty Muhammed & Anr** [(2007) 6 SCC 555], held that section 27 of General Clauses Act, 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post and unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. No doubt this is a rebuttable presumption, the burden to rebut the presumption lies on the party challenging the factum of service. No such attempt has been made by the Corporate Debtor otherwise than making a bald statement in the counter that the notice under section 8 of the Code was not received. As such the contention made by the Corporate Debtor is not tenable.

10. Further with regard to the contention of the Corporate Debtor that some goods were returned and the amounts for the same has not been adjusted, this Adjudicating Authority observes that even after reconciliation of such amounts as claimed by the Respondent and even otherwise the quantum of Debt remains above Rs. 1,00,000/- which this Adjudicating Authority has to consider for deciding the instant application. Therefore, even this contention of Corporate Debtor does not form any ground for rejection.



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11. In view of the above, this Adjudicating Authority is satisfied that there is a default in payment of the operational debt on the part of the Corporate Debtor. The instant Application is also not barred by Limitation. Further, this Adjudicating Authority is satisfied with the submissions put forth by the Petitioner/Operational Creditor regarding existence of 'Operational debt' and occurrence of 'default'. Further, the Operational Creditor has fulfilled all the requirements as contemplated under IB Code in the present Company Petition and has also proposed the name of IRP after obtaining his written consent in Form-2. In view of the same, this Adjudicating Authority is inclined to admit the instant petition

12. The instant petition is hereby admitted and this Adjudicating Authority Orders the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed as per the time line stipulated in section 12 of the IB Code, 2016, reckoning from the day this order is passed.

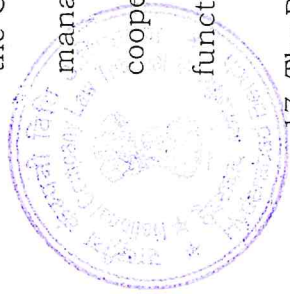
13. This Adjudicating Authority hereby appoint Mr. Madhusudhana Reddy Maligi [Regn No. IBBI/IPA-001/IP-P00843/2017-2018/11427] (IRP) as the name proposed by the Operational Creditor and his name is reflected in IBBI website. He has also filed his written consent in Form - 2. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date of this order, and call for submissions of claim in the manner as prescribed.

14. This Adjudicating Authority hereby declares the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We 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 Operational 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.*
15. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
16. 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.
17. The Petitioner/Operational Creditor 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.
18. The Registry is also directed to communicate this Order to the Operational Creditor and the Corporate Debtor.
19. The Registry shall also communicate this Order to the RoC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.

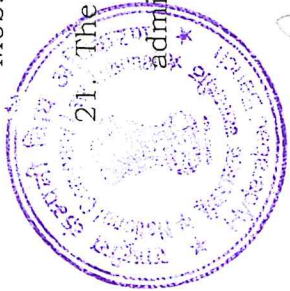


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20. The address details of the IRP are as follows:-

Mr. Madhusudhana Reddy Maligi
Regn No. IBBI/IPA-001/IP-P00843/2017-2018/11427
MMR Lion Corp, 4th Floor,
HSR Eden, Road No.2, Banjara Hills,
Hyderabad, Telangana - 500082.
Email: mmreddyfa@gmail.com.
Mob. No: 9848271555.



21. The present Petition bearing CP (IB) No. 262/9/HDB/2019 is hereby admitted.

Admitted
16.12.19

Dr. Binod Kumar Sinha
Member Technical

[Signature]

K. Anantha Padmanabha Swamy
Member Judicial

Rathi/Rk

[Signature]
Dy. Regt./Asst. Regt/Court Officer
Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रती
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CASE NUMBER.....CP (IB) 262/9/HDB/19
दिनांक प्रमाणित
DATE OF JUDGEMENT.....16/12/19
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COPY MADE READY ON.....20/12/19.