

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B) No. 582 /9/NCLT/AHM/2018

Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**
Hon'ble Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 14.08.2019**

Name of the Company: Raymon Patel Gelatine Pvt. Ltd.
V/s.
Terrene Pharma Pvt. Ltd.

Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy Code

| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
|--------------|-------------------------------|--------------------|-----------------------|------------------|
|--------------|-------------------------------|--------------------|-----------------------|------------------|

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2.

ORDER

None appeared on behalf of the parties.

The Order is pronounced in the open court, vide separate sheet.

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CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 14th day of August, 2019

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MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(IB) 582/9/NCLT/AHM/2018

In the matter of:

M/s. Raymon Patel Gelatine Private Limited

61, Haribhakti Extensions

Old Padra Road

VADODARA 390 015

Gujarat State

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Petitioner

[Operational Creditor]

Versus

M/s. Terrene Pharma Private Limited

Plot No. E-19-21

EPIP Zone

Manjusar

GIDC Estate

Tal. Savli

VADODARA 391 770

Gujarat State

...

Respondent

[Corporate Debtor]

Order delivered on 14th August, 2019.

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Advocate Mr. Piyush Luktuke for the applicant

ORDER

[Per: Ms. Manorama Kumari, Member (Judicial)]

1. That, the instant application is filed by Ms. Prabhaven Manubhai Patel, Director of the applicant/operational creditor M/s. Raymon Patel Gelatine Private Limited, under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to trigger Insolvency Resolution

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Process against M/s. Terrene Pharma Private Limited
(hereinafter called as respondent/corporate debtor).

2. That, the applicant/operational creditor M/s. Raymon Patel Gelatine Private Limited, having its registered office at 61, Haribhakti Extension, Old Padra Road, Baroda 390 015, Gujarat State and engaged in the business of manufacture and supply of Gelatin - I.P. used by pharmaceutical companies.
3. That, the respondent/corporate debtor M/s. Terrene Pharma Private Limited is a company incorporated under the Companies Act, 1956 on 20.06.2005 and having its registered office at Plot No. E 19-21, EPIP Zone, Manjusar GIDC, Tal. Savli, Dist. Vadodara 391 770, Gujarat State, having identification No. U24230GJ2005PTC046275. That, authorised share capital of the corporate debtor is Rs. 11,00,000,00/- and paid up share capital is Rs. 104,720,110/-. The respondent company is engaged in manufacturing of pharmaceutical products.
4. It is submitted by the applicant that it had supplied Gelatin I.P. to the respondent during the period from 30.11.2015 to 25.05.2017 and had raised four invoices against such supplies as per the table given at page No. 13 to the application. That, against invoice dated 30.11.2015 for Rs. 11,69,438/- part payment of Rs. 5,92,323/- has been paid

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by the respondent. **That, a total debt against four invoices as on 25.05.2017, Rs. 25,97,053.00 (Rupees twenty-five lacs ninety-seven thousand fifty-three only)** is due from the respondent. That, the said four invoices of various dates have fallen due on different dates as per the details given at Table – A attached to the application.

5. It is further submitted by the applicant that despite repeated reminders the respondent failed to clear the debt and, therefore, the applicant was compelled to issue demand notice in form 3 dated 27.07.2018 calling upon the respondent company to clear the debt.
6. The applicant, along with the application, has submitted copy of the following documents: -

| Sr. No. | Particulars | Annexure | Pages |
|---------|--|----------|-------|
| 01 | Demand notice in form 3 | A | 9-17 |
| 02 | Evidence of issuing demand notice | B | 18 |
| 03 | Bank Statement | C | 19-34 |
| 04 | Board Resolution authorising to sign and issue demand notice | D | 35-36 |
| 05 | Affidavit under Section 9 (3) (b) of IB Code | E | 37-39 |
| 06 | Letter received from corporate debtor in reply to demand notice | F | 40-41 |
| 07 | E-mail conversations | G | 42-50 |
| 08 | Evidence of sending copy of application (form 5) to corporate debtor | H | 51 |

Findings:

7. Heard the learned lawyer appearing for the applicant/ operational creditor.

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8. On perusal of the record, it is found that on number of occasions service has been affected but none appeared on behalf of the respondent. That, as per track report the notice was served upon the respondent and the service is found to be complete. Since the notice issued through Registry returned undelivered, the petitioner was directed to make a paper publication. Accordingly, the petitioner had released paper publication and proof of which has been filed. Therefore, the matter is heard ex-parte.

9. On perusal of the record it is found that acknowledging the receipt of demand notice issued by the applicant dated 27.07.2018, the respondent had issued letter dated 08.08.2018 inter alia stating that the material supplied by the petitioner was of inferior quality due to which the respondent had suffered heavy losses. No document is produced by the respondent in support of such claim. On the contrary, the only material available on record is the email communication between the two parties, which shows that the respondent has acknowledged receipt of goods.

10. On perusal of the record it is found that the petitioner has annexed with the application copies of various e-mail communication exchanged between the petitioner and corporate debtor from time to time with regard to the overdue payment. It is also found that the respondent had given post-dated cheques to the petitioner as security

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against the goods supplied by the petitioner. That, the application is not barred by limitation in view of the fact that on 21st December, 2017 the respondent has acknowledged the debt as reflected in the e-mail. Apart from that the respondent has also paid Rs. 5.00 lacs towards invoice No. 467 as reflected in the e-mail dated 06.05.2017. In the said e-mail petitioner has requested the respondent to clear the old outstanding of Rs. 20.00 lacs which is pending from November, 2015. Thus, the application is not barred by limitation. That apart, the application is found to be complete in all respect as per form No. 5.

11. On perusal of the record it is found that the respondent has duly received the demand notice and has also replied the notice on 08.08.2018 and has tried to raise a dispute by saying that the goods supplied by the petitioner were of inferior quality on account of which the respondent company had suffered huge loss. That, even after issuance of several notices and paper publication by the petitioner, the respondent has not come forward to show his bona fide.
12. While examining an application under Section 9 of the Act, will have to determine the following: -
 - (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)

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(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid;

and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

13. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant. That, service is complete and no dispute has been raised by the respondent. That, Applicant is an Operational Creditor within the meaning of sub-section 20 of Section 5 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default.

14. That, the Application filed by the Applicant is complete in all respects.

15. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. This Adjudicating Authority hereby appoint Shri Bhupendra Singh Narayan Singh Rajput, A-309, ATMA House, Opp. Old Reserve Bank of India, Ashram Road, Ahmedabad 380 009 (cabsrajput309@gmail.com Mobile 9426014155) having

Bhupendra Singh

Adjudicator

registration No. IBBI/IPA-001/IP-P00397/2017-2018/10715 to act as an interim resolution professional under Section 13(1)(c) of the Code.

16. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority directs the Insolvency Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and calls for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
17. From the above stated discussion and on the basis of material available on record, this Adjudicating Authority is of the considered view that it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
18. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -

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- (i) 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;
- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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);
- (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

19. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.


20. The order of moratorium shall have effect from the date of receipt of authenticated copy 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


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Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

21. This Petition stands disposed of accordingly with no order as to costs.
22. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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