

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 308/MB-IV/2020

Under Section 9 of the I&B Code, 2016

In the matter of:

**ELOMATIC-PHARMALAB CONSULTING
AND ENGINEERING PRIVATE LIMITED**
[CIN: U73100MH2004PTC149278]

...Operational Creditor/Applicant
V/s

**V-ENSURE PHARMA TECHNOLOGIES
PRIVATE LIMITED**
[CIN: U74990MH2010PTC205969]

...Corporate Debtor/Respondent

Order Dated: 06.06.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Vishesh Srivastav, Ld. Counsel.

For the Respondent(s) : Mr. Ranit Basu a/w Ms. Maitri Malde, Ld.
Counsel.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an Application being C.P. (IB) No. 308/MB/C-IV/2020 filed on 29/01/2020 by ELOMATIC-PHARMALAB CONSULTING AND ENGINEERING PRIVATE LIMITED, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of V-ENSURE PHARMA TECHNOLOGIES PRIVATE LIMITED, Corporate Debtor.
2. The total amount claimed by the Operational Creditor as specified in the Part IV of the Company Petition is Rs. 36,55,050/- is due and payable by the Corporate Debtor. The date of default is 15.11.2019.
 - 2.1. The Operational Creditor is in the business of providing "Engineering Consultancy, providing Concept, Basic, Civil, Structural & Architectural Designs, Project Supervision Works & Work pertaining to plan approvals from Statutory Bodies". M/s. V-Ensure Pharma Technologies Private Limited (hereinafter referred to as the 'Corporate Debtor') on the other hand is the manufacturer of In-Vitro Diagnostic Rapid Test Medical Devices, other Pharmaceutical products and devices and other businesses.
 - 2.2. The Corporate Debtor issued purchase order to the Operational Creditor for "Engineering Consultancy Services for the Greenfield Tablet & capsules mfg facility in patalganga including Concept Design, Civil, Structural & Architectural Designs, basic Design, review of the Vendor Design" for Rs.30,00,000/- plus GST @ 18 % thereon. The said purchase order contained the payment terms as well. The Operational Creditor subsequently received the Work/Service order from the Corporate Debtor

through email dated 03.05.2019 for the MIDC submissions Works under the change control clause for Rs. 15,00,000/- plus GST @ 18 % thereon. The Operational Creditor raised invoice no. EPCE/59/2018-2019 dated 20.12.2018 and invoice no. EPCE/17/2019-2020 dated 17.04.2019, which were paid by the Corporate Debtor. The Operational Creditor issued final invoice no. EPCE/61/2019-2020 dated 14.11.2019 against the services for a sum of Rs. 36,55,050/-, which remained unpaid and claimed as due and in default in the present petition. The services were provided from October, 2018 to July, 2019. Such large delay beyond agreed terms of payment clearly indicate the inability of the Corporate Debtor to pay the Debt amount as they become due and that they have become Insolvent.

2.3. In view of the above the Operational Creditor issued a Demand Notice dated 19.12.2019 under Section 8 of the Code, thereby claiming the outstanding principal amount of Rs 36,55,050/-. The Corporate Debtor in its Reply does not mention / prove any pre-existing dispute with respect to Debt. This clearly shows that the Corporate Debtor is not able to pay the debts taken in normal course of business and has become insolvent.

3. The Corporate Debtor vide its reply dated 07.08.2021 has stated that the Operational Creditor has filed present petition it is the petitioner who has defaulted on its obligation and deliberately failed to complete the agreed services with an malafied intention to extract money from the Corporate Debtor; the Operational Creditor was paid initially according to the payment terms in the purchase order and the amount claimed to be in default was to be paid upon completion of basic design however the equipment arrangement was not done for the FBP and coating Machine due tom technical issue at the petitioners end. A continuous follow up through emails dated 25.04.2019, 09.05.2019, 26.04.2019, 30.04.2019, 03.05.2019, 04.05.2019 and 06.05.2019,

but there was no response from the Operational Creditor. Since the basic designs was not completed for which the payment was already made prompted the Corporate Debtor to seek refund of an amount of Rs. 3,00,000/- paid towards basic design vide email dated 31.07.2019. It seems that this cost the operational Creditor to raise the invoice dated 14.11.2019 claim to be in default. It is pertinent to note that the said invoice contains the scope of work which were mentioned in the above mentioned 3 Nos. invoices and which were already cancelled by the Petitioner through email dated 26.06.2019. further, as the prior invoices pertaining to the same purchase order has already been disputed by the Respondent. there is no any documentary evidence to justify the claim of an "Operational Debt". In short, the Corporate Debtor claims that there exists prior dispute in relation to services under invoice dated 14.11.2019.

4. The Operational Creditor has filed Affidavit in Rejoinder dated 16.03.2023 and has denied each allegation raised by the Corporate Debtor.

Findings

5. This bench has carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.
6. This bench finds that vide email dated 26.05.2019, the Operational Creditor had responded to each concern, relating to deficiency in the services, raised by the Corporate Debtor. It is also noted that vide email dated 25.05.2019, the Corporate Debtor had specifically communicated the MIDC basic engineering Fee is not payable as MIDC work is still not complete. Further, vide email dated 30.05.2019, the Operational creditor was further was informed of the concerns regarding room height; fire safety and process related issues having impact on performance and regulatory objections. This bench further finds that the Operational Creditor came to know about engagement of another

consultant for the same job as follows from email dated 27.07.2019, wherein the Operational Creditor asked the Corporate Debtor that “*since you have decide to start work with other consultancy company kindly settle our dues for the work done/ work in progress so far.*” This bench also finds that the Corporate Debtor has sought refund of Rs. 3,00,000/- vide 31.07.2019 on the ground of non-delivery of basic design. On holistic understanding of these communications this bench feels that there exists prior dispute before dispatch of demand notice dated 16.12.2019. Further, the said dispute had been duly notified in response to the said demand notice by the Corporate Debtor vide letter dated 27.12.2019.

7. The Hon’ble Supreme Court in ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited*** held that, in the event there is a pre-existing dispute between the parties, an Application under Section 9 of the Code would have to be rejected.
8. In view of the above, we find that the present case is fit for dismissal under Section 9(5)(ii)(d) read with Section 8(2)(a) and Section 5(6) of the Insolvency and Bankruptcy Code, 2016 in view of pre-existing dispute between the parties with respect to the purported claims. Hence, the present case requires adjudication which is beyond the powers granted to us to adjudicate a petition filed under sec. 9 of the code and deserves to be dismissed.

ORDER

9. The petition bearing C.P. (IB) No. 308/MB/C-IV/2020 filed on 29/01/2020 by ELOMATIC-PHARMALAB CONSULTING AND ENGINEERING PRIVATE LIMITED, the Operational Creditor/ Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against V-ENSURE PHARMA TECHNOLOGIES PRIVATE LIMITED, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) **dismissed.**

10. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
06.06.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)