



S.No.11

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
10-04-2023 AT 10:30 AM**

CP (IB) No. 63/9/HDB/2022
u/s. 9 of IBC, 2016

IN THE MATTER OF:
PMC YM-Pharma Pvt Ltd

...Financial Creditor

VS

Krishna Premium Care Services LLP

...Corporate Debtor

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Order pronounced, recorded vide separate sheets. In the result, this Company Petition is allowed. CIRP is initiated against the CD and Moratorium is imposed, as per the terms of the order. Shri Ramnarayana Boga, Insolvency Professional is appointed as Interim Resolution Professional.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)



**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No. 63/9/HDB/2022

U/S 9 of IBC, 2016, r/w Rule 6 of I & B(AAA) Rules, 2016

Between

M/s. PMC YM-Pharma Private Limited,
193, G.T. Road, West Rishra,
KOLKATA Hooghly,
West Bengal – 712248 IN
Operations at: Survey No. 506 & 507, Koyalagudem (GP),
Choutuppal Mandal, Yadadri- Bhuvanagriri District – 508 252 (TS),
Represented by its Director Shri Mamohan Kishore
...Operational Creditor

Versus

KRISHNA PREMIUM CARE SERVICES LLP,
H.No.1-81/1, Prabhathnagar colony,
Dilsukhnagar, Hyderabad, Ranga Reddy District – 500 060
Represented by its Managing Partner,
Shri Kanaka Satya Pasumarthy Venkata Brahmananda Rao.
...Corporate Debtor

Date of order:10.04.2023

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Sh. Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant: Mr.Palanki Rama Mohan and Mr.Ch. Srinivasulu,
and other Counsels
For the Respondent: Mr. Y. Surya Narayana, and Counsels



**PER: BENCH
ORDER**

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code (hereinafter to be referred as “Code”), read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking admission of the application for initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Respondent defaulted in the payment of alleged debt of Rs. 1,90,50,250/- (Rupees One Crore Ninety Lakhs Fifty Thousand Two Hundred Fifty only).
2. **The averments in brief of the Application are that;**
 - 2.1 The Applicant Company is into manufacturing of other Chemical Products, intermediates of pharmaceutical bulk drugs. The main objects of the company are set out in the MOA of the Company viz.
 - 2.2 **M/S. KRISHNA PREMIUM CARE SERVICES LLP** (Hereinafter called as Corporate Debtor) is registered as Limited Liability Partnership firm and the main Business activities carried out by the LLP on incorporation are to provide nurses, trained attendants, physiotherapy, lab diagnostics & pharmacy delivery for diagnostics & pharmacy delivery for home and to tie up with corporate companies to give



physiotherapy corporate training programmes to address general physiotherapy issues that employees face and etc.

- 2.3 It is averred that the Corporate Debtor purchased goods from Operational Creditor, against five purchase orders. The Operational Creditor delivered the goods/FQ-Acid chemical components and raised E Way bills, paid GST to the Government on the account of Corporate Debtor and the Operational Creditor raised invoices. The Corporate Debtor took the delivery of the goods/chemical components without any demur or dispute and further paid a sum of Rs.71,00,000/- against total invoices amount of Rs. 2,65,50,250/-. Still an amount of Rs. 1,90,50,250/- towards principal plus 14% interest i.e., Rs. 79,03,070/- is due as on 21.02.2019. Thus the total outstanding of Rs. 2,69,53,320/- is to be payable to the Operational Creditor.
- 2.4 It is averred that though legal notice has been issued on 13.11.2020 outstanding amount has not been paid. Thereafter Operational Creditor also issued Form No.3 & 4 notices under IBC on 20.01.2021 advising to pay the outstanding amount of Rs. 1,90,50,250/- with upto date interest. Though the Corporate Debtor acknowledged the notice not paid the outstanding amount
- 2.6 It is averred that the Corporate Debtor also confirmed the outstanding Debt Rs. 1,90,50,250/- and statement of Accounts



sent by the Operational Creditor by way of Emails dated 07.06.2018, 28.09.2019.

- 2.7 It is averred that even after receipt of the Demand Notice in Form No.3 & 4, Corporate Debtor has not come forward to settle the dues of Rs. **2,69,53,320/-**(with 14% interest).
- 2.8 Thus the Operational Creditor has filed the present application to initiate CIRP against the Corporate Debtor under I&B Code.

3. Counter filed by corporate debtor.

- 3.1 Corporate debtor denied the averments made by the operational creditor.
- 3.2 It is averred that Corporate Debtor issued purchase orders for supply of the goods from the Operational Creditor. Further goods purchased by the Corporate Debtor from the Operational Creditor were further supplied to two parties viz. Sesa Chem India Pvt. Ltd and Best Chem.
- 3.5 It is averred that the Sesa Chem India Pvt. Ltd and Best Chem brought to the knowledge of the Corporate Debtor that the goods supplied by the Corporate Debtor to the said Corporate were of inferior quality and the Operational Creditor did not follow the specific route of synthesis.
- 3.6 It is averred that the Corporate Debtor had supplied goods to Sesa Chem India Pvt. Ltd worth Rs. 2,16,82,500/- and Best Chem worth Rs. 50,59,250/-. Out of the total outstanding amount of Rs.2,16,82,500/- receivable from Sesa Cehm India Pvt. Ltd, made payment only Rs. 23,00,000/-. Best Chem did



not make any payment to the Corporate Debtor due to the inferior quality goods provided by the Operational Creditor.

3.8 It is averred that the Corporate Debtor had made part payments i.e. 66,00,000/- to the Operational Creditor. The Corporate Debtor received only Rs. 23,00,000/- from Sesa Chem India Pvt Ltd but did not receive any amount from Best Chem.

3.9 It is averred that rejection of the goods by the purchaser was informed to the operational creditor through various telephonic calls and vide letters dated 10.10.2018 and 10.04.2019.

3.9 It is averred that the Corporate Debtor had received the demand notice from the Petitioner. The Corporate Debtor could not reply to the demand notice informing the Petitioner due to lack of legal guidance. Thus, the Corporate Debtor humbly prayed that this Hon'ble Adjudicating Authority may be pleased to dismiss the instant Company Petition due to the said pre-existing dispute.

4. **Rejoinder filed by the Operational Creditor**

4.1 It is averred that the contentions raised by the corporate debtor are illegal and contrary to law.

4.2 It is averred that there is no existing policy and internal agreement between both the parties that the Operational Creditor will supply the goods to the Corporate Debtor and the Corporate Debtor in turn will supply to third parties on behalf of the Operational Creditor. There is no documentary evidence



filed by the Corporate Debtor to prove the allegation levelled against the Operational Creditor.

- 4.3 It is averred that Corporate debtor had first time brought to the notice of the Corporate debtor about the inferior quality of the goods and there is pre-existing dispute between the parties. Further the material FQ-Acid supplied to the corporate debtor was accompanied by Certificate of Analysis approving the quality of the material. Further averred that if there is any defective in material the same could have been returned back to the operational creditor.
- 4.4 It is further averred that operational creditor was not aware that corporate debtor has supplied the goods to the third parties. Further it is submitted that the corporate debtor always sends Certificate of Analysis along with Delivery Challan and raises the Bills.
- 4.5 It is averred that since the material has not returned back to the operational creditor, it is taken granted that the material is accepted by the corporate debtor.
- 4.6 It is averred that operational creditor was not aware of the letters dated 10.10.2018 and 10.04.2019 send by the corporate debtor and not even had any telephonic conversation with regard to this.
- 4.7 Further corporate debtor has not responded to any of our notices for recovery of dues, nor has disputed our claim with reference to any of the notices. Further if there is any dispute regarding



the supplies, corporate debtor could have not made payment during that period.

4.8 It is averred that the corporate debtor has availed the GST input Credit and has not reversed the same in view of rejection. Which clearly shows the delaying and evading tactics.

4.9 Thus operational creditor prayed the Tribunal to consider the Application, and to initiate CIRP against the corporate debtor.

5. Operational Creditor filed the written submissions by reiterating the same facts mentioned in the Application as well as in the rejoinder. Further filed the case laws of in support of his claim.

- Hon'ble Supreme Court of India in re; Mobilox Innovations Private Limited Vs Kirusa Software Private Limited.
- Hon'ble NCLT, Hyderabad Bench No.2 in re: Pattabhi Enterprises vs Srikanth International Private Limited.
- Hon'ble NCLT, New Delhi Court III in re Ra Ratan Jagati Vs Alstrong Manufacturing India Private Limited.

6. In the light of the contest as afore mentioned, the points that emerges for the consideration of this Tribunal is:

1. Whether there is an *operational debt* of a sum over Rupees One Crore due and payable by the Respondent to the Applicant? If so, whether the Respondent *defaulted* in repayment of the same?



2. Whether there is an existence of a dispute between the concerned parties or any record of pendency of suit or arbitration proceeding filed before the receipt of Demand Notice.?
7. We have heard Mr. Ch.Srinivasulu, learned counsel for the Applicant and Mr. Y. Surya Narayana, learned counsel for the Respondent. Perused the record.

Point 1.

Whether there is an *operational debt* of a sum over Rupees One Crore due and payable by the Respondent to the Applicant? If so, whether the Respondent *defaulted* in repayment of the same?.

8. At the outset it may be stated that the present application being one under section 9 of IB Code, in order to succeed in this application the applicant shall establish that an *operational debt of sum exceeding rupees one crore is due and payable by the respondent to the Applicant and that the respondent defaulted in repayment of the same*. However, if the Respondent/ Corporate Debtor within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—(a) existence of a dispute, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;(b) of unpaid operational debt—(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate



debtor; or(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor, the Applicant is not entitled for the relief of admission of the corporate debtor into CIRP in an application filed under section 9 of IB Code.

9. The legal position as regards an application filed under section 9 of IB Code, can be traced from the ruling of the Hon'ble Supreme Court of India, in re *Mobilox Innovations Private Limited* which is as follows:

“In *Mobilox Innovations Private Limited*, the Hon'ble Supreme Court of India, has held that;

“It is, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form. The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the invoice to bring to the notice of the operational creditor the existence of a dispute, if any. We have also seen the notes on clauses annexed to the Insolvency and Bankruptcy Bill of 2015, in which “the existence of a dispute” alone is mentioned. Even otherwise, the word “and” occurring in Section 8(2)(a) must be read as “or” keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as “or”. If read as “and”, disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise.”

“It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice



must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application”

In the same ruling, it has been also that,

*“Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine: (i) **Whether there is an “operational debt” as defined exceeding Rs.1 lakh? (See Section 4 of the Act) (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?”***

“If any one of the aforesaid conditions is lacking, the application would have to be rejected.” (Emphasis is ours).

Therefore, in the light of the above legal possession and the factual matrix of the goods whether proceed to dispute the point above.

10. There is no dispute of the fact that the Applicant/Operational creditor supplied FQ-Acid chemical components to the Corporate Debtor under five purchase orders placed on it by the Respondent/ Corporate



Debtor. It is further admitted that the applicant raised way bills paid GST to the Government for the supply of the afore stated goods to the Corporate Debtor and the Corporate Debtor took delivery of the goods mentioned in the invoices without any demur or dispute. However according to the applicant, as against sum of Rs.2,65,50,252/- payable under the above five invoices, the respondent paid only a sum of Rs.71 lakhs leaving a balance of Rs.1,90,50,250/- towards principle and Rs. 79,03,070/- towards interest as on 21.02.2019. Therefore, the Applicant got issued legal notice dated 13.11.2020 to the Corporate Debtor demanding the outstanding amount. Despite receipt of the same, as the Corporate Debtor neither paid the amount nor sent any reply, the Applicant on 20.01.2021 issued Form 3 and 4 notices requesting the Corporate Debtor to pay a sum of Rs.1,90,50,250/- together with the interest at 14% payable on the said amount. The Corporate Debtor though acknowledged the receipt of the same neither discharged the said debt nor raised any dispute. Therefore, the present application has been filed.

11. The Corporate Debtor had *not denied placing five Purchase Order and supply of FQ-Acid chemical components besides part payment of Rs.66 lakhs to the Applicant.* However, according to the corporate debtor as one of its customers namely M/s. Sesa Chem India Private Limited, to whom the material it received from the applicant has been supplied (purportedly) refused to pay the full price for the said material contending that there were quality complaints and the same



amounts to a *pre-existing dispute* as to the quality of the material supplied by the applicant hence the present application is not maintainable and the same is liable to be dismissed.

12. Thus, from the contest put forth by the Respondent it is clear that the Corporate Debtor has not denied the existence of an operational debt or its default by it, and only contended that, as one of its customers namely M/s. Sesa Chem India Private Limited, to whom the material it received from the applicant has been supplied (purportedly) refused to pay the full price for the said material contending that there were quality complaints and the same amounts to a *pre-existing dispute* as to the quality of the material supplied by the applicant hence the present application is not maintainable. Therefore, we hereby hold that an Operational Debt of a sum over rupees one crore is due and payable by the Corporate Debtor to the Applicant and that the same is *defaulted* by the Corporate Debtor.

The Point is answered accordingly.

Point.2.

Whether there is an existence of a dispute between the concerned parties or any record of pendency of suit or arbitration proceeding filed before the receipt of Demand Notice.?

13. The Purchase Order as well as the Invoices raised on the respondent by the applicant categorically discloses that the goods under the Purchase Order are to be supplied by the Applicant to the Corporate Debtor and the Corporate Debtor shall make payment within 90 days



from the date of supply of the goods. As already stated there is no dispute as regards supply of the goods by the Applicant to the Corporate Debtor and receipt of the goods by the Corporate Debtor. Admittedly the Corporate Debtor, at its end never raised any dispute as regards the quality of the goods supplied to it by the Applicant/Operational Creditor. In so far as the letters dated 10.10.2018 and 10.04.2019, relied on by the Corporate Debtor in its attempt to buttress its argument that there is a *pre-existing dispute* are concerned, the same refer to quality complaint purportedly raised before the corporate debtor by the customer of the corporate debtor to whom the Corporate Debtor purportedly sold the goods which it has purchased from the Applicant. As already stated the Purchase Order placed on the Applicant by the Respondent/Corporate Debtor does *not envisage any liability on the part of the Applicant even in cases where the goods supplied are resold by the buyer to another buyer.*

14. That apart, the plea that the customer of the Corporate Debtor to whom the subject goods were allegedly sold complained about the quality of the goods that the applicant had supplied to the Corporate Debtor even assuming to be true, yet such a dispute cannot fall under '*pre-existing dispute*' in as much as, pre-existing dispute in terms of Section 8 Clause 2 of IB Code, means and includes only those disputes relating to the goods supplied or services rendered by the operational creditor to the corporate debtor and the third party disputes are extraneous to section 8 of IB Code, especially in the



absence of an contractual clause between the operational creditor and the corporate debtor.

15. Moreover, the Applicant had firmly denied the receipt of these letters dated 10.10.2018 and 10.04.2019, but no proof of service of these letters on the Applicant has been filed. No record of supply of the same goods that the Corporate Debtor had received from the Applicant to its so called its customer M/s.Sesa Chem India Private Limited, has been filed leave alone the record of complaint as to the quality alleged to have been made by the said customer to the Corporate Debtor. On the other hand, the records filed by the Applicant discloses that there was a quality check done for the goods sold under various invoices and the Corporate Debtor received these goods without any demur.
16. We therefore find no substance whatsoever in the plea of the Respondent that there is a *pre-existing dispute*, between the parties herein, as regards the quality of goods. Accordingly, the point is stands answered.
17. In the light of the findings on the points above and upon careful consideration in the facts and circumstances we are fully satisfied that the Applicant had established existence of Operational Debt of the sum of Rs.1 Crore due and payable by the Corporate Debtor and in default decides that there is no pre-existing dispute and it's a fit case. We also find that the application in accordance with the rule.
18. We therefore hereby admit the Corporate Debtor into CIRP. Without costs.



19. The Operational Creditor has not named anyone as Interim Resolution Professional (IRP) and has requested this Adjudicating Authority to appoint one for the Insolvency Resolution Professionals as IRP.
20. 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 BOGA RAM NARAYANA, having IBBI Registration No: IBBI/IPA-003/IPAICAIN401/2022-2023/14095, with email id: ramnboga[at]gmail[dot]com and Mobile: 7358046767 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 07.09.2023. 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 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.
- (h) The petitioner is directed to pay a sum of Rs.1,00,000/- to the interim resolution professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI regulation, 2016.
- (i) This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.
- (j) Accordingly petition is admitted.
- (k) The Operational Creditor is directed to communicate this order to the IRP appointed in this case.

SD

Charan Singh

Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula

Member Judicial

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CP (IB) No. 63/9/HDB/2022
Order date: 10/04/2023