

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 13.02.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/108/2023
NAME OF THE COMPANY	Punarnava Rasayan Pvt Ltd
NAME OF THE PETITIONER(S)	GPT Pharmaceutical Pvt Ltd
NAME OF THE RESPONDENT(S)	Punarnava Rasayan Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this Petition is dismissed.

Both the FC M/s.GPT Pharmaceuticals Private Limited and the CD M/s.Punarnava Rasayan Private Limited, are put to notice, as to why action under Section 65 of IBC 2016 is not taken against them.

Registry may put up the matter for further hearing on 28.02.2024.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

CP(IB) No.108/07/HDB/2023
U/s. 7 of IB Code, 2016

Between:

M/s. GPT Pharmaceuticals Private Limited
Represented by its Authorized Representative,
11-1, CIEE, Gandhi Nagar, Balanagar,
Hyderabad.

....Financial Creditor

Vs

M/s. Punarnava Rasayan Private Limited,
Balanagar,
Hyderabad.

....Corporate Debtor

Date of order : 13.02.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For the Applicant : Mr. G. Bhupesh, Advocate

For the Respondent : Mr. Varun Ambati, Advocate

Heard on : 08.02.2024

Per : Sanjay Puri, Member (Technical)

ORDER

1. This application has been filed by M/s. GPT Pharmaceuticals Private Limited, Financial Creditor (**FC**) for initiating the CIRP¹ under Section 7 of IBC² against M/s. Punarnava Rasayan Private Limited, Corporate Debtor (**CD**).

Brief facts of the application:

2. It is stated that, from time-to-time the FC has provided the financial assistance to the CD to fulfil its business obligations. It is claimed that a Loan Agreement³ was signed between the FC and the CD on 30.05.2020. Pursuant to which, the FC provided a loan of Rs.4,79,63,303 to the CD at an interest rate of 18% per annum.
3. It is further claimed that, according to this Loan Agreement, the entire sum including interest was to be paid back in six instalments starting from 30.05.2021 to 30.01.2022. The terms of repayment as specified in the Loan Agreement were:
“On or before 30.06.2021 – Rs.29,63,303
Balance in 5 equal instalments of Rs.75,00,000 each with the first instalment falling due on 30.07.2021 and the last instalment falling due on 30.01.2022. The full amount of interest calculated @18% per annum on reducing balances is to be paid along with the last instalment.”
4. It is claimed that, since the CD failed to repay as per the Agreement, the loan amount was defaulted on 30.06.2021, resulting in the present application.

¹ Corporate Insolvency Resolution Process.

² Insolvency and Bankruptcy Code, 2016

³ Pg 16-17 of the Application.

Counter:

5. The initial objection raised on behalf of CD pertains to the purported lack of proper authorization on the part of the Applicant to file an application under Section 7 of the IBC. Additionally, there are objections against the commencement of the CIRP, which may have serious consequences on the CD and every one relying on it.
6. It is countered that, no certified copies of any record have been filed by the Applicant FC to show default by the CD. It is claimed that, the Applicant FC is engaging in arbitrary, counter-productive, illegal actions by misusing the Code, only to harass and arm twist to gain for its ulterior motives.
7. It is further claimed that, the CD is not in receipt of any loan as mentioned and it is denied that the Applicant FC had arranged any funds as per the Loan Agreement.

Affidavit by the Applicant:

8. During the course of proceedings, the Applicant has also filed an Affidavit stating that:
 - The CD is obligated to remit a sum of Rs.6,88,72,675 inclusive of the principal amount of Rs. 4,79,63,303 and interest @ 18% from 30.05.2020 to 31.10.2022, totalling Rs.2,09,09,372.
 - As the CD's inability to fulfil this obligation, the Applicant has submitted an application under Section 7 of the IBC, seeking the declaration of insolvency for the CD and the initiation of CIRP.
 - The present application under Section 7 of the IBC, is not collusive and emphasizes that its filing is not intended to subvert the objectives of the statute.

- As directed by this Tribunal, the financial accounts for the preceding three years are submitted.

Decision:

9. We have heard the both sides and have gone through the records. The entire case of the Applicant FC rests on the "Loan Agreement" of 30.05.2020. This Loan Agreement records that as on 31.03.2020, the outstanding amount from M/s. Punarnava Rasayan Private Limited (the CD) was Rs.4,79,63,303 which was "confirmed and acknowledged" by the CD. Apart from this Loan Agreement, the sole accompanying document submitted with the application is an interest calculation sheet, indicating an interest amount of Rs.2,09,09,372, thereby bringing the total outstanding to Rs.6,88,72,675.
10. A close examination of the Loan Agreement indicates a potential collusion between the FC and the CD. It is noteworthy that the stamp paper used for the Loan Agreement was purchased on 20.06.2017, while the agreement itself is purported to have been executed on 30.05.2020, approximately three years later."
11. The Loan Agreement does not give any details of any disbursement or the Bank Account or the Cheque Nos. or any other details by which the "financial assistance" rendered by the FC to CD of Rs.4,79,63,303 could be established. Regardless, the CD on its part "confirmed and acknowledged" the said amount without a demur. Even during these proceedings, the CD has neither assailed nor disowned the said Agreement, other than perfunctorily denying the arrangement of funds by the FC as per this Agreement.

12. The disingenuous nature of this specific Agreement becomes apparent upon examining the repayment terms. It mandates the repayment of Rs.29,63,303 as the first instalment on or before 30.06.2021, followed by the remaining balance in five equal instalments of Rs. 75 lakhs each, resulting in a total repayment of Rs.75,00,000 x 5 (+) Rs.29,63,303 = Rs.4,04,63,303. Hence, the Agreement sets forth a repayment sum that falls short by Rs.75 lakhs of the alleged outstanding amount. Surprisingly, this significant discrepancy in the repayment terms went unaddressed by the CD, despite its potential to strengthen its case against the Applicant FC.
13. The entire Counter of the CD is full of inane and general averments against the application without making any specific argument on facts. A collusive nature of the application is further confirmed by going through the Final Accounts of the FC, M/s. GPT Pharmaceuticals Private Limited.
14. The purported Loan was extended on 30.05.2020, but in the Balance Sheet for the year ending 31.03.2021 it finds no place. In the Balance Sheet of 31.03.2022, the Loan amount of Rs.4,82,68,300 is noted as Unsecured Loan⁴ from the CD. However, for both these years, the interest receivable has not been shown either in the Balance Sheet or in the Profit & Loss Account. The FC being a Company is required by Law to maintain its Books on mercantile basis. Any interest due from any entity should have been credited to its Profit & Loss Account, rendering it taxable under the Income Tax Act. Yet, neither the interest amount of

⁴ Pg 50 of the Affidavit

Rs.2,09,09,372 has been recorded as income in its Final Accounts nor has any income tax been paid on it.

15. The facts before us clearly indicate that these proceedings have been initiated with fraudulent or malicious intent for a purpose other than resolution of insolvency. Therefore, we direct as follows:
- i. This Application No. CP(IB) No.108/07/HDB/2023 is dismissed.
 - ii. Both the FC M/s. GPT Pharmaceuticals Private Limited and the CD M/s. Punarnava Rasayan Private Limited, are put to notice, as to why action under Section 65 of IBC 2016 is not taken against them.
 - iii. Registry may put up the matter for further hearing on 28.02.2024.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**

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