

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI (COURT No. IV)**

**COMPANY APPLICATION No. IB-2299/ND/2019**

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

**In the Matter of:**

**Jaydev Pharma Distributors**  
through its proprietor  
Mr. N. Ashok Kumar Kothari

...

**Applicant/  
Operational Creditor**

**Versus**

**Alniche Lifesciences Private Limited**

... **Respondent/  
Corporate Debtor**

Order Pronounced on: 12 /01/2022

**Coram:**

**Dr. Deepti Mukesh, Hon'ble Member(Judicial)**  
**Ms. Sumita Purkayastha, Hon'ble Member (Technical)**

**MEMO OF PARTIES**

**Jaydev Pharma Distributors**  
Through its proprietor  
Mr. N. Ashok Kumar Kothari  
14, Ground Floor  
Devikammal Street  
Shenoy Nagar  
CHENNAI 600 030

...

**Applicant/Operational Creditor**

**Versus**

*Signature*

**Alniche Lifesciences Private Limited.**S-14, 2<sup>nd</sup> Floor

Janta Market

Rajouri Garden

NEW DELHI 110 027 ...

**Respondent/Corporate Debtor****Appearance:**

For the Applicant : Ms. Rabiya Thakur, Advocate

For the Respondent : Mr. Aishwarya Mohan Gahrana, CS

**ORDER****Per: Ms. Sumita Purkayastha, Hon'ble Member (Technical)**

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by **Jaydev Pharma Distributors**, through its proprietor Mr. N. Ashok Kumar Kothari (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against **Alniche Lifesciences Private Limited** (for brevity 'Corporate Debtor').
2. The Applicant is a proprietorship concern of Mr. N. Ashok Kumar Kothari engaged in distribution of drugs on wholesale basis having its office at Shenay Nagar, Chennai.
3. The corporate debtor is a Private Limited Company, incorporated under the provisions of companies Act, 1956 on 09.11.2012, duly registered with Registrar of Companies, New Delhi with CIN:  
CP (IB) /2299/ND/2019



U51909DL2012PTC244770 and having registered office at Rajouri Garden, New Delhi 110 027. The Authorized share capital of the Respondent is Rs. 1,01,00,000/- and Issued, Subscribed and Paid up share capital of the company is Rs. 5,51,600/-.

4. It is submitted by the applicant that the applicant and the corporate debtor are engaged in the sale and purchase of pharmaceutical products. The applicant has been buying pharmaceutical stocks at a bulk quantity from the corporate debtor regularly from 28.08.2015 till 30.06.2017 and all the stocks were bought by the applicant on paying the whole amount in advance to the corporate debtor. That in continuance of the aforesaid, the applicant bought stocks worth Rs. 42,65,127/- from the corporate debtor along with stocks worth Rs. 80,39,058/- from one Auxiliare Healthcare Private Limited (sister concern of the applicant). It is further submitted that the corporate debtor appointed a new distributor and after the said appointment, the sale and purchase transactions between the applicant and the corporate debtor had discontinued. It is further stated that it was mutually agreed between the applicant and corporate debtor that the unsold stock duly purchased from the corporate debtor lying with the applicant shall be handed over to the new distributor - Sri Sneha Pharma and, thereafter, the



corporate debtor shall reimburse the applicant the total value of aforesaid unsold stock. That in furtherance of the above understanding, on June 25<sup>th</sup> 2016, applicant received an e-mail from the corporate debtor to return the unsold stock to the newly appointed distributor – Sri Sneha Pharma at its office at T. Nagar, Chennai. Accordingly, the applicant had returned goods worth Rs. 43,58,385/- to Sri Sneha Pharma vide return memos dated 18.01.2017, 25.01.2017, 28.01.2017 and 30.01.2017. In furtherance of the terms entered between the parties, the corporate debtor paid a sum of Rs. 17,83,100/- as part payment towards return of goods.

5. It is further submitted by the applicant that thereafter the applicant has been continuously sending reminders via e-mails to the corporate debtor to clear the unpaid operational debt, however, an amount of Rs. 20,04,136/- still remains to be unpaid which includes interest of Rs. 1,47,533/- charged @ 8% per annum on the unpaid amount.
6. It is further submitted by the applicant that having failed to get the outstanding debt, demand notice under Section 8 of IB Code dated 01.08.2019 was issued by applicant which was delivered to the corporate debtor on 05.08.2019. The proof of service is annexed being the track report showing "item delivered". That



no dispute was raised by the corporate debtor towards the aforesaid demand notice by way of any reply.

7. Provisions of Section 9 (3) (b) of the IB Code, 2016 has been complied with and affidavit has been filed as required u/s 9 (3) (b) of the IB Code, 2016. Also letter from the bank of applicant evidencing non-payment of operational debt with an affidavit under Section 9 (3) (c) of the IB Code, 2016 has also been filed.
8. The corporate debtor has filed reply to the application controverting the averments made in the application and has asserted as follows  
That the application is an attempt to extract money wrongfully from the respondent;
  - i. That there is an existing dispute between the parties as at the time of discontinuation of services of the applicant, the respondent paid all amount due to the applicant except Rs. 6,05,995/- as on 12.06.2017;
  - ii. That the applicant has not submitted its proper ledger accounts;
9. The applicant filed rejoinder and has asserted as follows: -
  - i. That the stock as described by the corporate as "unpaid stock" is the stock duly purchased by the applicant by paying for the same and it was not an "unpaid stock purchase";



- ii. that true and correct extract of ledger account wherein the entries are made in the account according to relevant principles of accounting is filed and nothing has been concealed;
  - iii That it has been admitted that there has been a typographical error while drafting and calculating the interest and the correct amount is Rs. 1,63,604/- and not Rs. 1,47,533/-
  - iii. That the corporate debtor has not repaid the balance of security deposit of Rs. 2,16,900/- lying with the corporate debtor and thus is also liable to pay the interest to the tune of Rs. 2,45,800/-, both totalling Rs. 4,62,700/-.
10. As per Form 5, Part IV, the corporate debtor is liable to pay an outstanding sum of Rs. 20,04,136/-.
11. The registered office of the corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
12. Last payment of Rs. 2,03,100/- was received by the applicant on 12.06.2017 when the debt became due. The application is filed 16.09.2019. Therefore, the debt is not time barred and the application is filed within the period of limitation.



13. Heard submissions made and perused the documents on record. The present application is complete and the Applicant is entitled to claim its dues. The corporate debtor has disputed the payment of claim of applicant on the ground of pre-existing dispute, but, has failed to show that there is a pre-existing dispute and the amount claimed by the applicant is not payable. No documentary evidence is filed by the corporate debtor to substantiate the existence of a dispute. We are convinced that the debt is due and payable and default has occurred. As held by the Hon'ble Supreme Court in case of "Mobilox Innovative Private Limited vs. Kirusa Software Private Limited" the dispute has to be genuine and not mere moonshine dispute. The present application is admitted, in terms of section 9 (5) of IBC, 2016.
14. The applicant has not proposed the name of the Interim Resolution Professional (IRP), though, in form No. 5 it is mentioned that the applicant shall submit name of the IRP before the hearing date, therefore, we hereby appoint Mr. Bipin Garg, having Registration No: IBBI/IPA-001/IP-P-01940/2020-2021/13026 (Mobile No. 9910694826), having Email Address: [bipin.garg@me.com](mailto:bipin.garg@me.com) and having office at 506, Mercantile House, 15, Kasturba Gandhi Marg, Adjacent to British Council Building, New Delhi, National Capital Territory of Delhi 110 001 to act as the Interim Resolution Professional subject to the condition that



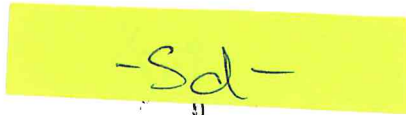
no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate debtor and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

15. We direct the Operational Creditors to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Bipin Garg to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the



Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

17. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



**Ms. Sumita Purkayastha**  
**Member (Technical)**

KMN



**Dr. Deepti Mukesh**  
**Member (Judicial)**