

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

CP (IB) No.304/MB-IV/2022

Under Section 9 of the I&B Code, 2016

In the matter of:

Radiant X-Ways Logistics Private Limited

[CIN: U63000DL2013PTC250210]

...Operational Creditor/Petitioner

V/s

Macleods Pharmacaualtics Limited

[CIN: U24239MH1989PLC052049]

...Corporate Debtor/Respondent

Order pronounced on : 20.01.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Gunjan Chaubey, Advocate.

For the Respondent(s) : Ms. Mythili Gosavi, Advocate.

ORDER

Per: Kishore Vemulapalli, (Member Judicial)

This Company Petition bearing C.P. (IB) No. 304/NCLT/MB/C-IV/2022 has been filed on 09.02.2022 by Radiant X-Ways Logistics Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency &

Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Macleods Pharmaceuticals Limited, Corporate Debtor.

1. The Petition is filed by Mr. Prabhakar Pandey, Director, duly authorized by the Operational Creditor vide Board Resolution dated 25.01.2022, claiming total default amount of Rs.4,84,56,696/- as per Part IV of Form I. This amount is still due from the Corporate Debtor. The first date of default is 12.09.2019. Thereafter, default has been committed in connection to various invoices falling due up till 09.01.2022. (Exhibit G of the petition).
2. The Operational Creditor supplied goods pursuant to the letter bearing No. MPL/Dist/Freight/036/2018-19 issued by the Corporate Debtor and issued 1,888 invoices since 21.02.2018 till November 2021, out of which, 1769 invoices have been paid leaving 119 invoices unpaid for an aggregate sum of Rs. 4,84,56,697/- being the mount claimed in default.
3. The Operational Creditor issued a Demand Notice dated 22.12.2021 and the same was not specifically responded by the Corporate Debtor. However, the Corporate Debtor vide letter dated 23.12.2021 had responded to the Operational Creditor's letter dated 02.12.2021 claiming that there is receivable amounting to Rs. 12,50,17,548/- from the Operational Creditor.
4. During the course of hearing, our attention was drawn to the minutes of the meeting held on 17.11.2021 between both the parties wherein the representative of the Corporate Debtor had assured to release pending dues of Rs. 25 crores+ by 25.11.2021 and remaining balance as per due date and payment terms of mutually signed contracts.

5. Our attention was also drawn to an email dated 09.11.2021 sent to the Corporate Debtor in response to the Corporate Debtor's update on the status of the pending invoices. It is noticed from the said email communication that the Corporate Debtor had accepted a sum of Rs. 3,79,38,987/- as pending for payment or for booking at their end.
6. The Corporate Debtor in its reply has raised plea of pre-existing dispute and the same has been reverted by the Operational Creditor in its Rejoinder.

Findings:

7. We have heard the counsel and perused the pleadings available on record.
8. The Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v/s Kirusa Software Private Limited*** delivered a detailed judgment on section 8, section 9 and definition of 'dispute' under the IBC and held that-

“Under section 9 of the IBC, the NCLT had to ensure (a) whether there was an ‘operational debt’, (b) whether the documentary evidence furnished with the application showed that the aforesaid debt was due and payable and had not yet been paid? And (c) whether there was ‘existence of dispute’ between the parties or the record of pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid ‘operational creditor’ in relation to such dispute?

‘Existence of dispute’ was interpreted to mean that there was ‘plausible contention which requires further investigation’ and the ‘dispute’ was not a ‘patently feeble argument or an assertion of fact unsupported by evidence’. However, in doing so, the NCLT ‘does not need to be satisfied that the defence is likely to succeed’.”

9. After perusal of the documents on record and arguments advanced by both the parties, this Bench is of the considered view that there is no dispute as regards the existence of the debt which is borne out of various email communications placed alongwith the present petition, even though the Corporate Debtor has alleged vide letter dated 04.12.2021 that the material was supplied through mode of transport other than the mode which was stipulated in the understanding. However, the Corporate Debtor has admitted that the services of the Operational Debtor were availed from the 1st quarter of 2018 to November, 2021 in the same letter.
10. On combined reading of this letter dated 04.12.2021 and email dated 09.11.2021, it emerges out that there was no dispute till 09.11.2021 in so far as an amount of Rs. 3,79,38,987/- is concerned. The Corporate Debtor has failed to bring on record any tangible evidence to dispute the contents of email dated 09.11.2021. The plea of pre-existing dispute raised by the Corporate Debtor citing its letter dated 04.12.2021 is a patently feeble argument and merely represents technicalities to deny the admitted dues. It is not disputed that the Corporate Debtor accepted the delivery of goods and appropriated the same. Further, the Corporate Debtor had not raised any claim for non-compliance with the mode of delivery of goods while admitting acceptance of invoices of Operational Debtor as is inferred from the mail dated 09.11.2021.
11. In view of the above observations, this Bench is of the considered view that the amount of debt is above the threshold limit of Rs. 1 crore and there is a clear default on part of the Corporate Debtor with regard to payment of the amount due. The only plea of the Corporate Debtor is with respect to the pre-existing dispute which cannot survive for the

reasons stated hereinabove. This petition under Section 9 of IBC therefore deserves to be admitted.

ORDER

- (a) The petition bearing CP (IB) 304/MB-IV/2022 filed by Radiant X-Ways Logistics Private Limited, the Operational Creditor, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Macleods Pharmaceuticals Limited, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

- (c) Notwithstanding the above, during the period of moratorium, -
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Rajesh Kumar Mittal**, having Registration No. IBBI/IPA-002/IP-N00083/2017-18/10224; is appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in

terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) as advance with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and Email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a Compliance Report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
Prabhat Kumar
Member (Technical)
/Akshata/

Sd/-
Kishore Vemulapalli
Member (Judicial)