



SL. No.2

**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 10.01.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/194/2023
NAME OF THE COMPANY	Ramakrishna Homeo Pharmaceuticals Pvt Ltd
NAME OF THE PETITIONER(S)	Carbonzero Eco Projects Pvt Ltd
NAME OF THE RESPONDENT(S)	Ramakrishna Homeo Pharmaceuticals Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

Orders Pronounced, recorded vide separate sheets. In the result, this petition is allowed

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Basha



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II**

CP (IB) No. 194/7/HDB/2023

*[Application under Section 7 of the Insolvency & Bankruptcy Code, 2016 by Financial
Creditors to initiate Corporate Insolvency Resolution Process]*

Between:

1. M/s. Carbonzero Eco Projects Private Limited,

No.15-15/59, Sudarshan Nagar,
Road No.6A, Opposite HCU Bus Stop Road,
Gachibowli,
Hyderabad - 500 019.

...Applicant/Financial Creditor No.1

2. M/s. Greater Horizon Consultants LLP,

Plot No.18, New MLA and MP Colony,
Road No.10-C, Jubilee Hills,
Hyderabad – 500 033.

...Applicant/Financial Creditor No.2

A N D

M/s. Ramakrishna Homeo Pharmaceuticals Limited,

No.4-1-434,
Bank Street, Koti,
Hyderabad – 500 033.

Date of Order: 10.01.2024

Coram:

Hon'ble Shri. Rajeev Bhardwaj, Member (Judicial)

Hon'ble Shri Sanjay Puri, Member (Technical)

Counsel/Parties present:

For the Applicants : Mr. Shabbeer Ahmed,
Mr.V.Aneesh, Advocates.
For the Respondent : Mr.Amir Bavani, Advocate.

Per: Rajeev Bhardwaj, Member (Judicial)



ORDER

1. When M/s.Ramakrishna Homeo Pharmaceuticals Private Limited (hereinafter referred as Corporate Debtor/ Respondent) did not pay back the loan amount taken from M/s.Carbonzere Eco Projects Private Limited (**Financial Creditor No.1/FC-1**) & M/s.Greater Horizon Consultants LLP (**Financial Creditor No.2/FC-2**), the present application was filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process (**CIRP**).
2. The Corporate Debtor took loan of Rs.80,00,000/- vide loan agreement No.1 dated 09.04.2018 (**Annexure 3** – page 4 of the application) from Financial Creditor No.1 and Rs.15,00,000/- from Financial Creditor No.2 vide loan agreement No.2 dated 17.05.2019 (**Annexure 13** – page 6 of the application).
 - 2.1 In relation to loan agreement No.1, the Corporate Debtor asked the FC No.1 vide (**Annexure 4** - page 5 of the application) to waive off the loan interest till 31.03.2022 and extension of timeline for one more year. In reply dated 02.04.2022 (**Annexure 5** – page 5 of the application), the FC No.1 extended the due date for payment of loan to 31.03.2023.
 - 2.2 In respect of **loan agreement No.1**, the CD and the FC No.1 entered into extension agreement dated 04.04.2022 (**Annexure 6** – page no.5 of the application) vide which the payment due date was extended upto 31.03.2022 and it was agreed that the interest would be charged @18% per annum. However, the CD did not return back the loan amount and therefore reminder notices dated 01.12.2022, 01.02.2003 and 03.04.2023 were sent by the FC No.1 vide **Annexure 7, 8 & 9** respectively – page no.5 of the application.



- 2.3 Finally, the FC No.1 issued legal/demand notice on 10.07.2023 (**Annexure 11** – page no.5 of the application) asking the CD to pay Rs.97,99,104/- which includes principal amount of Rs.80,00,000/- and interest amounting to Rs.17,99,014/- as on 30.06.2023. In reply dated 18.07.2023 (**Annexure 12** – page no.6 of the application), the CD has again sought extension of time for repayment of the outstanding loan amount.
- 2.4 In relation to **loan agreement No.2**, the CD wrote another letter dated 01.04.2023 (**Annexure 14** – page no.7 of the application) for waving off the interest till 17.05.2022 and extension of timeline by one year. FC No.2 vide reply dated 02.04.2022 (**Annexure 15** – page no.7 of the application) accepted the request to waive off the loan interest and further it had agreed to extend the timeline of loan dated to 17.05.2023. Both the parties entered into an extension agreement dated 02.04.2022 (**Annexure 16** – page 7 of the application) for extension of loan due date to 17.05.2023 and further the CD agreed to pay interest @18% per annum. When the loan amount was not paid, the FC No.2 issued reminder notices dated 02.02.2023, 01.04.2023, 18.05.2023 and 03.07.2023 **Annexure 17, 18 & 19** respectively – page no.8 of the application.
- 2.5 Ultimately, legal/demand notice dated 10.07.2023 (**Annexure 20** – page 8 of the application) was sent by the FC No. 2 to the CD asking to pay Rs.15,00,000/- towards principal amount and interest of Rs.3,02,548/- as on 30.06.2023. In reply dated 18.07.2023 (**Annexure 21** – page no.9 of the application), the Corporate Debtor prayed for some more time to repay the loan amount.



3. In the counter, the CD has not denied about the outstanding loan amount, but submitted that the FCs cannot be allowed to put the CD into CIRP because of its temporary inability to pay the debt. Reliance has also been placed in the case of *M/s.Vidharbha Industries Power Limited versus M/s.Axis Bank Limited (2022) 8 SCC 352*.
- 3.1 It is submitted that the financial creditor cannot be allowed to use IBC for the recovery of debt by placing reliance on the decisions in *M/s.Yash Nachrani, Director of suspended Board of Directors Coppertun Brewing Private Limited versus M/s.Pardesi Construction Private Limited and others, Company Appeal (AT)(Insolvency) No.625 of 2022*.
4. We have heard learned counsels for both the parties and have gone through the entire records.
5. Indisputably, the CD took loan of Rs.80,00,000/- on 09.04.2018 from the FC 1 (**Annexure 3** – page 4 of the application) and Rs.15,00,000/- on 17.05.2019 from FC 2 (**Annexure 13** – page 6 of the application). Due to the inability of the CD to repay the loan amount, both the parties further entered into agreement for extension of time, but the CD again failed to stick to the timeline agreed to by both the parties. Finally, when the CD failed to repay the amount, notices dated 03.07.2023 and 10.07.2023 **Annexure 10 & Annexure 11** respectively of the application were sent to the CD and in reply dated 18.07.2023 (**Annexure 12** of the application), the CD has not disputed the loan amount, but prayed for extension of time because of the financial health of the company.



6. In view of the admitted position, there is not much to elaborate except answer to the legal issues raised by the financial creditors.
7. Prior to the decision in *M/s.Vidharbha Industries Power Limited versus M/s.Axis Bank Limited (2022) 8 SCC 352*, the twin test used as a touchstone for initiating CIRP was the existence of “debt” and “default” as laid down in *M/s.Innoventive Industries Limited versus M/s. ICICI Bank Limited (2018)1 SCC 407*, *Mr.E.S.Krishnamurty and Others and M/s.Bharat Hi-tech Builders (P) Limited. (2022) 3 SCC 161*. Therefore, once it is proved that the default in payment of debt has occurred, there is hardly any discretion left with NCLT to refuse admission of the application under Section 7 of IBC. However, the Hon’ble Supreme Court in *M/s.Vidharbha Industries Power Limited* supra had diluted this twin test and held that in addition to the existence of “debt” and “default”, the NCLT is also required to take into account certain other factors, like the financial health and viability of the company.
8. After the decision in *M/s.Vidharbha Industries Power Limited* supra, the Hon’ble Apex Court in *Mr.M.Suresh Kumar Reddy versus Canara Bank & Others (2023)8 SCC 387* has reiterated the stand taken in *M/s.Innoventive Industries Limited versus M/s. ICICI Bank Limited and Mr.Krishnamurty and Others versus M/s.Bharat Hi-tech Builders (P) Limited* cases supra and held that once NCLT is satisfied that the default has occurred, there is no discretion left with NCLT to refuse admission of the applicant under Section 7 of the IBC. It was further held that in the review petition in the case of *M/s.Vidharbha Industries Power Limited versus supra*, it was clarified that the said decision was given under specific set of facts and therefore it cannot be read and understood as taking a view that is contrary to the view taken in *M/s.Innoventive Industries*



Limited versus M/s. ICICI Bank Limited and Mr.E.S.Krishnamurty and Others supra. Further, in *Swiss Ribbons Private Limited v. Union of India ((2019) 4 SCC 17*, Hon'ble the Supreme Court expanded on the decision laid down in *Innoventive case* supra and held that the trigger under the IBC, is non-payment of dues owed to creditors and the legislative policy in India has shifted from the concept of "inability to pay debts" to "determination of default". This shift enables the financial creditor to initiate the insolvency resolution process, the moment there is evidence of a default.

9. Consequently, the applicant cannot claim that like in *M/s.Vidharbha Industries Power Limited versus M/s.Axis Bank Limited* case supra benefit should also be extended to company because of the financial health as that decision was given in the background of special facts and circumstances, which are not present in this case.
10. The other contention of the CD that the provisions of IBC cannot be used for recovery of outstanding loan amount as held by the Hon'ble NCLAT in the decision cited by the CD in *Yash Nachrani, Director of Suspended Board of Directors Coppertun Brewing Private Limited versus Pardeshi Construction Pvt. Ltd. And ors., Company Appeal (AT)(Insolvency) No. 625 of 2022*, we agree that the Adjudicating Authority does not resolve suits or similar proceedings, but the ultimate object of an application under section 7 or 9 of the IBC is the realization of a 'debt' by invocation of the Insolvency Resolution Process. However, the CD has shown its inability many times to repay the debt, meaning thereby that it is not a healthy organization. Once it is proved that there is "debt" and "default", there is no option except to admit the application as held in various cases like,



M/s.Innoventive Industries Limited versus M/s. ICICI Bank Limited, Mr.E.S.Krishnamurty and Others, M/s.Bharat Hightech Builders Private Limited, supra.

11. Accordingly, this Tribunal appoints Ms. Madhusudan Reddy Maligi R/o. M.M.R.Lion Corporation, 4th Floor, HSR Eden, Road No.2, Banjara Hills, Hyderabad – 500 034, Mobile No.9177020555, email: mmreddy_fca@gmail.com, mmreddyandco@gmail.com having registration IBBI/ IPA-001/IP-P00843/2017-2018/11427 valid up to 29.10.2024, as IRP. The aforesaid IRP has no disciplinary proceedings pending against him. Proposed IRP filed Form-B issued by the Institute of Insolvency Professional. This information is also available in IBBI Website. 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 and further registry is directed to inform the order of admission of CIRP against the corporate debtor to the concerned parties.
12. The IRP shall perform all is functions as contemplated, inter-alia, by Sections 17,18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation, under Section 19 of IBC, 2016 to extending every assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to the Adjudicating Authority with a prayer for passing an appropriate order.



13. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016. The Financial Creditor is directed to pay an advance of Rs. 1,00,000/- (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First progress Report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per rules.
14. Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Debtor on MCA site as being under CIRP.
15. For the foregoing reasons, we come to the conclusion that the applicant is able to make out a case for initiation of CIRP against the Corporate Debtor. Hence, **CP No.194/7/HDB/2023 is allowed with the above directions.**

SD/-
SANJAY PURI
MEMBER (TECHNICAL)

SD/-
RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

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