

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI**

CP/877/IB/2018 filed under Section 9 of
the Insolvency and Bankruptcy Code, 2016
r/w Rule 6 of the Insolvency and
Bankruptcy (Application to Adjudicating
Authority) Rules, 2016

In the matter of *M/s. Arudaavis Labs Private Limited*

Mr. G. Dhananjaya Naidu
Represented by his PoA Mr. D.Balaji

... Operational Creditor

-Vs-

M/s. Arudaavis Labs Private Limited

... Corporate Debtor

Order delivered on 30th July, 2019

CORAM

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : *Mr. B.Dhanaraj, Counsel*
For Corporate Debtor : *Mr. A.M.Sridharan, Counsel*

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under Adjudication is *CP/877/IB/2018* that has been
filed by **Mr. G. Dhananjaya Naidu**, through his Special
Power of Attorney *Mr. D. Balaji* (hereinafter referred to as

“Operational Creditor”) under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, ‘I&B Code, 2016’) r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the Corporate Debtor *M/s. Arudaavis Labs Private Limited* (hereinafter referred to as **“Corporate Debtor”**). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Heard the Counsels for the Operational Creditor, Corporate Debtor, and perused the record placed on file.

3. The Operational Creditor has claimed an outstanding amount of Rs.47,07,971/- including interest, against the Corporate Debtor as on 01.04.2018, which the Corporate Debtor has failed to pay.

4. The brief facts of the case are that the Operational Creditor is an absolute owner of the land and building (godown cum shed) measuring about 95 Cents and 10,504 sq.ft., respectively comprised Survey Nos.105/3C, 105/3D, 105/7B and 105/6B, at Chennivakkam Village, Ponneri Taluk, Tiruvallur District. In the year 2011, the Corporate Debtor intending for commercial purpose i.e. for the manufacture of pharmaceutical ingredients and intermediates, had approached the Operational Creditor to take up the above mentioned premises on monthly rent.

5. In pursuance of the same, the Operational Creditor and the Corporate Debtor have entered into a Rental Agreement dated 20.04.2011 wherein the said premises was let out for Rent by the Operational Creditor to the Corporate Debtor for carrying out its business operations.

6. Subsequently, at the request of the Corporate Debtor, two separate Rental Agreements were entered into between the Operational Creditor and the Corporate Debtor; one in

respect of the vacant land on 30.05.2011 and the other in respect of the building on 16.05.2011, whereby the Corporate Debtor had agreed to pay a sum of Rs.80,000/- as monthly rent for the building and a sum of Rs.67,000/- as monthly rent for the vacant land, together with applicable service tax, if any payable to the Government, on or before 5th of every English calendar month, for a period of 11 months, renewable on mutual consent. Further, the Corporate Debtor has made a security deposit of Rs.8,50,000/- and Rs.1,50,000/- as regards the building and vacant land respectively with the Operational Creditor.

7. Thereafter, the Operational Creditor and the Corporate Debtor have entered into two Renewal Agreements, both dated 23.11.2013, whereby the Rent for the Building was revised to Rs.88,000/- per month and the Rent for the Land was revised to Rs.73,700/- per month. The Renewal Agreements also stipulated that the Corporate Debtor shall pay the monthly Rent together with applicable service tax, if

any payable to the Government, on or before 5th of every English calendar month.

8. The Operational Creditor has placed on record the TDS i.e. Form 26AS at pages 43 to 46 of the typed set filed with the Application which evidences the fact that the Corporate Debtor had made payments of the Rent for some period as agreed between the parties under the Agreements mentioned above.

9. It has been submitted by the Counsel for the Operational Creditor that the Corporate Debtor started defaulting in making the payment from the period ending 2014 to till date. The details of the payments made and the outstanding dues are postulated in a tabular form at pages 63 to 66 of the typed set filed with the Application, which gives a complete picture of the balance outstanding amount as claimed by the Operational Creditor.

10. The Counsel for the Operational Creditor has referred to two Cheques both dated 12.05.2017 issued by the

Corporate Debtor for an amount of Rs.3,00,000/- and Rs.2,00,000/- which got bounced on presentation for the reason "*Funds insufficient*". Copies of the Cheques along with Cheque Return Memo are placed at pages 47 and 48 of the typed set filed with the Application. The Counsel for the Operational Creditor on 23.06.2017 has given notice to the Corporate Debtor under Section 138 of the Negotiable Instruments Act, 1881, to which no reply was given by the Corporate Debtor and thereafter a Criminal Complaint was filed at Ponneri Magistrate Court for initiating Criminal Proceedings against the Corporate Debtor under the relevant provisions of the Negotiable Instruments Act, 1881.

11. The Operational Creditor has also sent termination notice to the Corporate Debtor on 07.10.2017 stating therein that an outstanding balance arrears of rents of Rs.34,02,452/- (Rs.19,34,397/- for the building and Rs.14,68,055/- for the land) is due and payable by the Corporate Debtor and also called upon the Corporate Debtor to vacate the premises, to which no reply was given

by the Corporate Debtor. Copy of the termination notice is placed at pages 54 to 58 of the typed set filed with the Application.

12. Thereafter, the Operational Creditor has issued a Demand Notice under Section 8 of the I&B Code, 2016 on 19.04.2018 to the Corporate Debtor and the same was received by the Corporate Debtor on 21.04.2018, to which a reply was given by the Corporate Debtor on 27.04.2018. Copies of the Demand Notice and the Reply are placed at pages 17 to 20 and 67 to 70 respectively, of the typed set filed with the Application. In reply to the Demand Notice, the Corporate Debtor has stated that there is a pre-existing dispute between the parties with respect to the quantum of rent and the Operational Creditor has failed to provide necessary amenities like water, toilet and septic tank, and further, the Operational Creditor has failed to replace the damaged door shutters and has failed to construct a compound wall on the eastern side of the building to prevent large number of poisonous snakes from entering

into the factory premises. It is also stated that substantial damages were caused to the factory premises due to the unprecedented floods in the month of November, 2015 and Varadah Cyclone in December, 2016 and the Operational Creditor has failed to carry out the necessary repairs. Apart from the above, the Operational Creditor has stated that the debt claimed by the Operational Creditor is not falling within the purview of "Operational Debt".

13. The Counsel for the Operational Creditor has brought to the notice of this Bench that after receiving the notice under Section 8 of the I&B Code, 2016 and filing of this Application on 13.06.2018, the Corporate Debtor has filed RCOP No. 5/2018 pending before the District Munsiff Court, Ponner, which was allegedly filed on 19.09.2018 and asserted that there was no pending dispute as on date of notice given under Section 8 of the I&B Code, 2016.

14. The Counsel for the Operational Creditor has referred to the letter dated 12.10.2015, copy of which is placed at

page 7 of the typed set filed with the Rejoinder, which is sent by the Managing Director of the Corporate Debtor on 12.10.2015 to three creditors including the Operational Creditor, wherein it has been mentioned that the Corporate Debtor shall settle all the dues of the Operational Creditor on or before 31.12.2015 with accruing rent, interest and other dues. In the same communication, a reference has also been made to a Cheque amounting to Rs.7.5 Lakhs given to the Operational Creditor and an assurance was given to pay the subsequent rental dues in three instalments by October 31st – 2 months rent, November 30th – 2 months rent, December 31st – 3 months rent.

15. The Operational Creditor has complied with Section 9 (3) (b) & (c) of the I&B Code, 2016, by filing a detailed Affidavit, wherein under Para 3, it has been deposed that the Corporate Debtor has not given any notice to the Operational Creditor as regards any pending litigation and arbitration proceedings initiated by it relating to a dispute of the unpaid operational debt. Copy of the Affidavit is

placed at pages 71 and 72 of the typed set filed with the Application. The Operational Creditor has also placed on record the statement of accounts issued by the Indian Bank at pages 73 to 104 of the typed set filed with the Application.

16. The Counsel for the Corporate Debtor has filed the counter and submitted that the amount of Rs.47,07,971/- stated to be in default as claimed by the Operational Creditor, does not fall within the purview of "Operational Debt" as defined under Section 5(21) of the I&B Code, 2016. It has further been stated that the amount claimed cannot be categorized as "Operational Debt" and the Operational Creditor cannot claim himself to be an "Operational Creditor" as stipulated under 5(20) of the I&B Code 2016, as demand made does not relate to the *"Goods or Services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority"* as defined under Section 5(21) of the

I&B Code, 2016. Based on this, it is submitted that the Applicant is not entitled to maintain the Application as an “Operational Creditor”. It is further submitted by the Counsel for the Corporate Debtor that the amount claimed in the Application pertains to the tenancy of the Corporate Debtor under Rental Agreements in respect of the godown, building and the vacant land respectively for carrying on the business of manufacture of pharmaceutical products and there is no direct relation between the act of letting out by the Operational Creditor and the pharmaceutical products produced by the Corporate Debtor. In other words, it is contended that the hiring of the building and land on rent, has no direct nexus with the business of the Corporate Debtor, as the same will not fall within the purview of the term “*Goods or Services*” as defined under Section 5(21) of the I&B Code 2016.

17. It is worthwhile to record that under Para 4 of the Reply, the Corporate Debtor contended that there is a pre-existing disputes between the parties with respect to the

quantum of rent, provision of decent and effective amenities, erection of fence to prevent entry of poisonous snakes from adjoining lands, repairs to be carried out consequent to the devastation caused by unprecedented floods in November, 2015 and Varadah Cyclone in December, 2016.

18. The counsel for the Corporate Debtor during the course of argument submitted that assuming but not admitting that the building under occupation of the Corporate Debtor may have a connection or nexus with the business of the Corporate Debtor, but the vacant land could not have any connection with the operations of the Company. At this stage, the Bench raised a query to seek a clarification from the Counsel for the Corporate Debtor that as to whether the vacant land is being used for ingress and egress of the material for the purpose of operation of the business of the Company and the land forms part of the record of registration with the Tamilnadu Drug Control Department. In reply, the Counsel for the Corporate Debtor

has fairly admitted that the vacant land is being used for ingress and egress of the material used for the operations of the Company, but that may not be forming part of the record relating to the license obtained from the Tamilnadu Drug Control Department.

19. In reply to the said issue, the Counsel for the Operational Creditor has referred to the Agreement dated 30.05.2011, wherein it has clearly been mentioned that the Party of the Second part viz. the Corporate Debtor, has approached the Landlord viz. the Operational Creditor to let out the vacant land belonging to the Operational Creditor for rent, for the purpose of service maintenance of the Corporate Debtor.

20. It is pertinent to mention here that the plea that has been taken by the Counsel for the Corporate Debtor during the course of arguments i.e. the vacant land is not having any connection with the operation of the Company, is an

improvement in the argument, which has not been pleaded in the Reply statement.

21. The Counsel for the Corporate Debtor has referred to the Renewal Agreements dated 23.11.2013 and drew the attention of this Bench to clause 8, which provides that the Tenancy can be renewed for a further period of two years on mutual agreement at an enhanced rent agreement of 10% for the second year over and above the rent agreed initially and has submitted that, the Corporate Debtor has been making efforts with the Operational Creditor for reduction of rent, to which the Operational Creditor did not agree. However, during the course of arguments, the Counsel for the Corporate Debtor has fairly admitted that the rent has been paid till December, 2015 and thereafter no rent has been paid by the Corporate Debtor.

22. The Counsel for the Corporate Debtor has submitted that the Rent Agreements do not contain any clause with respect to the interest on delayed payments, whereas the

Operational Creditor has demanded the interest on the delayed payment at the rate 11.76%. In reply, the Counsel for the Operational Creditor has referred to the letter dated 12.10.2015 issued by the Corporate Debtor, wherein it has clearly been mentioned that the Corporate Debtor shall settle all the dues including the dues of the Operational Creditor on or before 31.12.2015 with accruing rent, interest and other dues, which suggests that the Corporate Debtor on his own volition was agreeable to pay the interest on delayed payments.

23. The Counsel for the Corporate Debtor in support of his submissions i.e. the Debt claimed is not falling within the purview of "Operational Debt" as defined under Section 5(21) of the I&B Code 2016, has referred to the ruling rendered by the NCLT, Single Bench New Delhi, in *IB/209/ND/2017* titled ***Mrs. Pramod Yadav & Anr. -Vs- Divine Infracon Pvt. Ltd.***, wherein under Para 10, it has been observed as follows:

The term “Goods or Services” used in the definition of the “Operational Debt” must relate to direct input to the output produced or supplied of the Corporate Debtor and any debt arising without nexus to the direct input to the output produced or supplied cannot in the context of IBC, 2016 be considered as an “Operational Debt” and even though it can be a claim amounting to a debt, it cannot be categorized as an “Operational Debt”.

24. Further, the Counsel for the Corporate Debtor has referred to another order dated 06.10.2017 passed by the NCLT, Single Bench, Delhi in *IB/200/ND/2017* titled ***Jindal Steel and Power Limited –Vs- DCM International Limited***, wherein under Para 10 of the said order, the same observation has been reiterated.

25. The Counsel for the Corporate Debtor has also referred to the Order dated 11.03.2019, passed by NCLT, Mumbai Bench, in *CP No. 567/IB/2018* titled ***M/s. Citicare Super Speciality Hospital –Vs- Vignaharta Health Visionaries Pvt. Ltd.*** wherein the issue was relating to rental arrear, which was termed as “license fee” and the

same was claimed as an outstanding debt. The NCLT, Mumbai Bench, under Para 23, relied upon the decision of the NCLT, Delhi given in **“Jindal Steel”** case (*supra*) and rejected the plea of the Operational Creditor by observing that the Debt claimed is not falling within the purview of *“Goods or Services”*.

26. The Counsel for the Operational Creditor in rebuttal to the case law cited by the Counsel for the Corporate Debtor, has referred to order passed by the NCLT, Kolkatta Bench on 05.10.2018 in CP(IB) No. 108/KB/2018 and CA(IB) No.119/KB/2018 titled **Sarla Tantia -Vs- Nadia Health Care Private Limited**, wherein an issue was framed as to *whether the recovery of arrears of rent can be claimed as operational debt within the meaning of Section 5 (21) of the I&B Code, 2016*. While replying to the said issue, the NCLT Kolkatta Bench has concluded that *“letting out premises on rent is nothing but providing the services and the same will fall within the purview of the term “Operational Debt” as defined under Section 5(21) of the I&B Code 2016.”* The

NCLT, Kolkatta Bench, has relied upon the report of the Bankruptcy Law Reforms Committee Volume I, wherein under Para 5.2.1, it has been observed that *“the Lessor that the entity rents out space from is an operational creditor to whom the entity owes monthly rent on a three year lease”*. The said observation of the Committee finds mentioned in the judgement delivered by the Hon’ble Apex Court in ***Mobilox Innovations Private Limited -Vs- Kirusa Software Private Limited.***

27. The Counsel for the Operational Creditor has also referred to the Order passed by this Bench on 07.07.2017 in TCP/49/IB/2017 titled ***Prasad Productions Pvt. Ltd. -Vs- Diksat Transworld Ltd.***, wherein a similar issue was involved and the Application got admitted.

28. The Counsel for the Corporate Debtor has stated that the ***Mobilox*** case (*supra*), as referred by the Counsel for the Operational Creditor, did not lay down *ratio on the issue under reference and the passing reference is an obiter dictum* only. However, this Bench cannot agree with the view

expressed by the Counsel for the Corporate Debtor. The ***Mobilox Judgment*** (*supra*) has referred to the Bankruptcy Law Reforms Committee, Volume – I: Rationale and Design, November, 2015, which has become the part of the said judgment. Therefore, even if, the passing reference to the committee report is an *obiter dictum* that has the effect of *ratio decidendi*.

29. It is imperative to note here that the issue raised by the Counsel for the Operational Creditor that the land and building have no connection with the operations of the Corporate Debtor, is not supported with any documentary evidence, whereas the agreements are clearly providing that the Land and Building are taken on rent for the use and occupation of the Corporate Debtor and the same has been admitted by the Counsel for the Corporate Debtor during the course of arguments that the vacant land is being used for ingress and egress and for services and maintenance of the Corporate Debtor. In view of it, the Lease Rent is falling within the purview of definition of “*Services*” as provided

under Section 5(21) of the I&B Code, 2016 and the Operational Creditor is entitled to invoke the provisions of Section 9 of the I&B Code, 2016 against the Corporate Debtor.

30. It has been noted that the Counsel for the Corporate Debtor on the one hand pleads that the Debt does not fall within the purview of "Operational Debt" and on the other hand he has submitted that there exists dispute. It is noted that prior to the issuance of notice under Section 8 of I&B Code, 2016, no dispute was raised by the Corporate Debtor and assurances were given to the Operational creditor for making the payments, as mentioned in the preceding paragraphs. Therefore, the defence taken by the Corporate Debtor is spurious, hypothetical and illusory, it is taken to derail the process of adjudication, which need not be gone in detail. In view of it, the pleas taken by the Counsel for the Corporate Debtor stand rejected.

31. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This

Bench is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt as claimed by the Operational Creditor. Therefore, Application is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

32. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is ordered to prohibit all of the following, namely: -

- (a) 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;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) 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 Act, 2002 (54 of 2002);

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

33. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

34. Ms. Rajalakshmi Varadarajan has been proposed as IRP by the Operational Creditor. There is no disciplinary proceeding pending against the IRP as is evidenced from Form-2. Therefore, Ms. Rajalakshmi Varadarajan is hereby appointed as IRP. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately.

She is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

35. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that she could discharge her functions under Section 20 of the I&B Code, 2016.

36. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that she could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016. The address details of the IRP are as follows: -



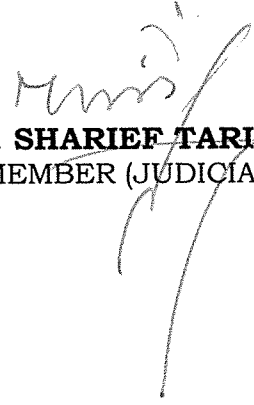
Ms. Rajalakshmi Varadarajan
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37. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor with immediate effect.

38. The Order is dictated and pronounced in the open court in the presence of the Counsel for the parties.



ANIL KUMAR B
MEMBER (TECHNICAL)



CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)

P. ATHISTAMANI