

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

CP No. 2182 (IB)/MB/C-IV/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

**Shubham Pharmachem Private
Limited**

...Operational Creditor

Versus

Pure Life Science Private Limited
Corporate Debtor

Order Delivered on 22.10.2019

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Mr Zaid Ansari, Advocate
For the Corporate Debtor : Mr Girish Thanvi, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by Shubham Pharmachem Private Limited ("the Operational Creditor"), a company within the meaning

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of section 2(20) of the Companies Act, 2013 and represented by its Authorised Signatory, Mr. Durga Prasad L Mishra, on the basis of a Board Resolution dated 06.11.2008 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Pure Life Science Private Limited ("the Corporate Debtor").

2. The Corporate Debtor is a private company limited by shares and incorporated on 27.04.2009 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U24100MH2009PTC192062. Its registered office is at 730, Ecstasy Building (8th Floor), City of Joy, JSD Road, Mulund (West), Mumbai, Maharashtra 400080. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 10.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.13,89,752.00 (Rupees thirteen lakh eighty-nine thousand seven hundred and fifty-two only) as principal and Rs.5,02,625.00 (Rupees five lakh two thousand six hundred and twenty-five only) as interest @ 20% p.a. as on 31.03.2018, which is the date of default.
4. The case of the Operational Creditor is as follows: -
 - (a) The Corporate Debtor approached the Operational Creditor for supply of 10,000 kilogrammes of the Paracetamol drug, of "Maghmani," under a Purchase Order No.PLPL/004/15-15

dated 05.03.2016 (para 3 of Part IV at page 6 of the Petition); it has been placed on record as **Exhibit 'C'** at p.31 of the Petition.

- (b) The Operational Creditor supplied the drug in terms of the Purchase Order within the stipulated timeframe and to the satisfaction of the Corporate Debtor (para 4 of Part IV at page 8-9 of the Petition);
- (c) The Operational Creditor raised a Tax Invoice bearing No.2015-16/4623 dated 15.03.2016 for the sum of Rs.23,44,781/- (Rupees twenty-three lakh forty-four thousand seven hundred and eighty-one only) on the Corporate Debtor, which has been duly received by the Corporate Debtor and duly acknowledged (para 5 of Part IV at page 9 of the Petition); it has been placed on record as **Exhibit 'D'** at p.32 of the Petition.
- (d) The Delivery Challan in this regard has also been signed by the officials of the Corporate Debtor (para 6 of Part IV at page 10 of the Petition); it has been placed on record as **Exhibit 'E'** at p.33 of the Petition.
- (e) Against the delivery of the goods, the Corporate Debtor handed over to the Operational Creditor a post-dated cheque bearing No.922598 for the sum mentioned in the invoice, i.e., Rs. 23,44,781/-. The cheque was to be presented on or after

13.06.2016. However, when the cheque was presented, it was dishonoured by the Corporate Debtor's bank and has been returned unpaid for the said reason, the same has been placed on record as **Exhibit 'F'** at p.34 of the Petition (para 6 and 7 of Part IV at page 11 of the Petition);

- (f) When this was brought to the notice of the Corporate Debtor, another cheque bearing No.922620 came to be issued, for the same amount, it has been placed on record as **Exhibit 'G'** at p.35 of the Petition. However, the same was never presented for payment in view of the requests from the side of the Corporate Debtor not to present the cheque (para 7 at page 12 of the Petition);
- (g) After repeated follow-ups, the Corporate Debtor has paid a sum of Rs.9,55,028/- (Rupees nine lakh fifty-five thousand and twenty-eight only) on 17.10.2016 to the Operational Creditor. The copy of the ledger account of the Corporate Debtor as maintained by the Operational Creditor has been placed on record as **Exhibit 'H'** at p.36 of the Petition. The Copy of the Bank Certificate dated 19.02.2019 issued by Citi Bank, Goregaon East Branch, Mumbai-400063 has been placed on record as **Exhibit 'I'** at p.37 of the Petition. Therefore, the total debt due and payable to the Operational Creditor is Rs.18,92,377.00 (Rupees eighteen lakh ninety-two thousand

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three hundred and seventy-seven only), as mentioned at page 4 of the Petition.

5. The Operational Creditor had served a Demand Notice in Form 3 dated 31.03.2018 to the Corporate Debtor (**Exhibit 'J'**, pp.38-50) in terms of section 8 of the IBC. Proof of service of Demand Notice has been attached (**Exhibit 'L'** to the petition at pp.52-54). The Corporate Debtor has not replied to the Demand Notice.
6. Mr Girish Thanvi, Learned Advocate appeared on behalf of the Corporate Debtor and made his submissions.
7. In its reply dated 03.09.2019, the Corporate Debtor has set up the following defence: -
 - (a) The Operational Creditor is into a Joint Venture business with Sankil Nigeria Limited, in the name and style of Sankit Pharmaceuticals Limited, which is owned and managed by one Mr Jagdish Bhojwani and Mr Pradeep Bhojwani. The Bhojwanis regularly engage in business transactions with a company called Alokrish Nigeria Limited and with Aventur Bio-Resources Private Limited, where there is common director called Mr Krishnan Krishnamurthy (*sic* Krishnamurthy Kannan) (para 2(a) at page 2 of the Reply);
 - (b) The said Krishnamurthy Kannan approached the Corporate Debtor for supply of Paracetamol drug amounting to

Rs.22,33,125/- to one Shreechem Pharmaceuticals Private Limited. Accordingly, the Corporate Debtor purchased 10,000 kgs. of drug from the Operational Creditor and supplied the same to Shreechem Pharmaceuticals Private Limited (para 2(b) at page 2-3 of the Reply);

(c) The Corporate Debtor made a payment of Rs.9,55,028/- to the Operational Creditor on 17.10.2016. Thereafter, Mr. Krishnamurthy Kannan insisted that the Corporate Debtor should supply printed capsules to Alokrish Nigeria Limited for a sum of Rs.13,89,752/-, thereby clearing the outstanding amount towards the Operational Creditor, since Alokrish Nigeria Limited and Sanil Pharmaceuticals had some business on going. Accordingly, the Corporate Debtor supplied the printed capsules to Alokrish Nigeria Limited worth Rs.13,89,752/- and thus, the transactions with both Alokrish Nigeria Limited and the Operational Creditor came to an end. (para 2(c) at page 3 of the Reply);

(d) The supply of capsules was as per the understanding amongst the Operational Creditor, Sankil Pharma Nigeria, Alokrish Nigeria Limited and the Corporate Debtor. (para 2(d) at page 3 of the Reply).

8. We have heard the arguments of both sides and perused the records.

9. There is no doubt that the Operational Creditor has supplied the goods in accordance with the directions of the Corporate Debtor, and that the receipt of goods and its quality is not disputed by the Corporate Debtor. However, the Corporate Debtor claims that in so far as the outstanding principal sum is concerned, the Corporate Debtor has supplied goods for like sum in favour of another corporate entity, and that this was done as per the directions of the Operational Creditor. There is nothing placed on record to show that the Corporate Debtor has supplied a separate set of goods in favour of another entity worth ₹13,89,752/- as per the directions of the Operational Creditor.
10. Therefore, it is not clear how the supply of goods by the Corporate Debtor to another completely different entity can result in the debt due to the Corporate Debtor being cleared, unless it is shown that there was an express instruction to this effect from the Operational Creditor itself. Since nothing is placed on record in spite of opportunity given to the Corporate Debtor, it is difficult to accept the version of the Corporate Debtor.
11. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this

Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

12. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP No.2182(IB)/MB/C-IV/2019** filed by **Shubham Pharmachem Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Pure Life Science Private Limited [CIN: U24100MH2009PTC192062]**, 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 Adjudicating Authority 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) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter, the IRP shall be appointed by this Adjudicating Authority by a separate order. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out her functions as contemplated by sections 15, 17, 18, 19, 20 and 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.

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- (h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) 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/-

RAVIKUMAR DURAISAMY
Member (Technical)

22.10.2019

SD/-

RAJASEKHAR V.K.
Member (Judicial)