

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH-VI**

**IB-103/(ND)/2021**

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

**In the matter of:**

**TERRATECH CHEMICALS (I) PVT. LTD.**

(Formerly Known as CABB CHEMICALS (I) PVT. LTD.)

Registered office at:

Plot No. 455, 459, 460, 461,  
Opp. M.N. Desai Petrol Pump,  
Village Changodar,  
Ahmedabad- 382213

... Operational Creditor/ Applicant

Versus

**AMBEY LABORATORIES LIMITED**

Registered office at:

G-2 Vikas Apartment,  
34/1/ East Punjabi Bagh,  
New Delhi- 110026

...Corporate Debtor/ Respondent

**Coram:**

**SH. P.S.N. PRASAD, Hon'ble Member (Judicial)**

**DR. BINOD KUMAR SINHA, Hon'ble Member (Technical)**

Counsel for Financial Creditor: Mr. Gautam Bajaj, Advocate  
Counsel for Corporate Debtor: Mr. Abhijeet Swaroop, Mr. Sandeep Gaur, Mr. Aman Gaur, Advocates

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IB- 103(ND)/2021

M/s Terratech Chemicals Ltd. vs Ambey Laboratories Ltd.



**ORDER**

**Per P.S.N. PRASAD, MEMBER (JUDICIAL)**

**Date: 23.11.2021**

1. This is an application filed by the Operational Creditor, 'Terratech Chemicals (I) Pvt. Ltd.' (formerly known as CABB Chemicals (I) Pvt. Ltd.) through its Authorized Representative, Mr. Chaitanya Prasad Pratiwada Venkata, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") against the Corporate Debtor, 'Ambey Laboratories Limited.' for the alleged default on the part of the Corporate Debtor in clearing the debt of Rs. 1,02,20,374/- (Rupees One Crore Two Lakh Twenty Thousand Three Hundred Seventy Four only), as alleged by the Operational Creditor, towards the goods supplied. The details of transactions leading to the filing of this application as averred by the Operational Creditor are as follows:

- i. That the Operational Creditor is engaged in the business of manufacturing chlorinated chemicals such as Monochloro Acetic Acid etc. The Operational Creditor

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submitted that the Corporate Debtor placed three purchase orders dated 22.07.2015, 05.08.2015 and 26.09.2015. That the Operational Creditor accordingly supplied the goods and in respect of which various invoices were raised and an amount totaling Rs. 1,74,35,691/- remains unpaid. The information of the invoices is as following:

<b>Date</b>	<b>Invoice No.</b>	<b>Amount (Rs)</b>
24.07.2015	477/15-16	12,59,094
26.07.2015	487/15-16	12,59,094
08.08.2015	544/15-16	15,20,438
19.08.2015	588/15-16	15,20,438
20.08.2015	596/15-16	15,20,438
28.08.2015	626/15-16	17,02,890
30.08.2015	632/15-16	13,37,985
05.09.2015	665/15-16	15,20,438
05.09.2015	667/15-16	15,20,438
28.09.2015	750/15-16	13,77,000



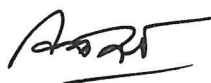

29.09.2015	753/15-16	13,77,000
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- ii. The Operational Creditor submitted that the Corporate Debtor issued various cheques in respect of the aforesaid invoices however, the said cheques either stood dishonored or payments were stopped by the Corporate Debtor. It was further stated in the application that a running account was maintained between both the parties as the goods supplied were part of and collectively one transaction in respect of a single commodity.
- iii. That the Corporate Debtor made only a payment of Rs. 2,00,000 on 16.02.2016 against the amount due and failed in making any other payments. The Operational Creditor further submitted that the Corporate Debtor paid a total amount of Rs. 70,15,313/- i.e., the amount of dishonored cheques with the last payment having been made on 08.01.2020 against the Total outstanding



of Rs. 1,74,35,691/-. Therefore, an amount of Rs. 1,02,20,374 remains due and payable.

2. The Operational Creditor submitted that a Statutory Demand Notice under section 8 of IBC, 2016 dated 12.06.2020 was issued vide Post to the Registered office of the Corporate Debtor as given on the Company Master Data on 16.06.2020. The Operational Creditor further submitted that the said Demand Notice has been received by the receiver on 19.06.2020.
3. Consequent to the notice issued by this tribunal the Corporate Debtor through its Authorized person, Mr. Archit Gupta filed its reply affidavit submitting the following:
  - a. The Corporate Debtor submitted that a commercial understanding was agreed between the parties pursuant to which the parties agreed to settle all disputes in respect of outstanding dues for an amount of Rs. 72,15,313 which was to be paid by the Corporate Debtor to the Operational Creditor. That the Operational creditor admitted in the present application that the



Corporate Debtor duly paid the aforementioned amount hence, there stands no outstanding debt as on date.'

- b. The Corporate Debtor further submitted that the present application is not maintainable pursuant to Notification dated 24.03.2020 bearing No. 30/9/2020-Insolvency issued by the Ministry of Corporate Affairs, Government of India (Notification), wherein the Government of India has amended Section 4 of the Code and prescribed INR One Crore as the minimum amount of default for preferring an application under section 9 of the IB Code, 2016. That the alleged amount stated to be due would fall below the threshold limit.
- c. The Corporate Debtor submitted that the last Invoice in relation to Purchase Order dated 26.09.2015 was issued on 29.09.2015 by the Operational Creditor, therefore the present application is barred by Limitation.
- d. Another contention raised by the Corporate Debtor in its reply is that there was a pre-existing dispute in view of the sub-standard products supplied by the Operational



Creditor, that the Corporate Debtor expressly communicated about the inferior quality of goods to the Operational Creditor vide email dated 22.05.2018.

4. Operational Creditor filed its rejoinder to the reply filed by the Corporate Debtor submitting the following:

- i. The Operational Creditor while replying to the Corporate Debtor's contention submitted that no mutual understanding was ever agreed between the parties regarding settlement of all disputes for an amount of Rs. 72,15,313/-. Further, the Corporate Debtor also handed over the cheques equivalent to the total invoices raised. It was also stated by the operational Creditor that the Corporate Debtor after 2.5 years of supply of the goods raised an afterthought false and frivolous dispute regarding the quality of the goods.
- ii. The Operational Creditor stated that the Operational Debt as claimed by the Corporate Debtor is not time barred as the Corporate Debtor vide its email dated 22.05.2018 while raising a false and frivolous dispute



acknowledged its liability and the said acknowledgement has the effect of extending the period of Limitation.

5. We have heard the arguments advanced by the counsel for both the parties and perused the documents filed, the Operational Creditor herein has prayed for the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor for the outstanding debt of Rs. 1,02,20,374/-.
6. In Part-IV of Form-5 of the present application the Operational Creditor in the column of 'Date of Default' has stated that "*the Workings for computation of amount and dates of default in tabular form is annexed as Annexure P-7*" therefore, not providing any specific "date of default". The last invoice against the supply of goods worth Rs. 13,77,000/- was raised by the Operational Creditor vide dated 29.09.2015. Thereafter, vide email communication dated 22.05.2018, wherein the Corporate Debtor admitted the debt and raised the complaint regarding inferior quality of goods clearly denotes that the Corporate Debtor gave



acknowledgment of its liability and as the said email is sent before the expiration of period of Limitation therefore, as held in ***Laxmi Pat Surana vs Union Bank of India & Anr. (Civil Appeal No. 2734 of 2020)***, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, the period of limitation would get extended by a further period of three years. Hence, as the present application was filed on 28.01.2021 which is within the period of three years from the date of email dated 22.05.2018 therefore, the present application passes the test of limitation.

7. That the Operational Creditor provided goods to the Corporate Debtor and raised 12 invoices totaling to Rs. 1,74,35,691/- out of which the Corporate Debtor made the payment of Rs. 2,00,000/- and Rs. 70,15,313/-. The Corporate Debtor in its reply raised the contention that the Statutory Demand Notice under section 8 of IBC, 2016 has not been served upon him as the address at which the demand notice has been dispatched was and continues to be



in the possession of the Assets Care and Reconstruction Enterprises Limited Since 16.11.2018. However, the service report annexed with the application denotes that the service has been made upon the address as mentioned in the Company Master Data with the last status as “Successfully Delivered”.

8. Another contention raised by the Corporate Debtor is that no outstanding debt is due against the Operational Creditor and the present application is barred in view of the Notification dated 24.03.2020. However, it is pertinent to mention that the Operational Creditor placed on record the invoices amounting to Rs. 1,74,35,687/- raised against the Purchase orders of Corporate Debtor against which the Corporate Debtor made the payment of Rs. 72,15,313/-. Therefore, an amount of Rs. 1,02,20,374 remain outstanding. The Corporate Debtor argued that both the parties agreed to settle all disputes in respect of which an amount of Rs. 72,15,313/- was paid to the Operational Creditor. However, no document substantiating that such a settlement was



agreed between both the parties in respect of all disputes has been provided in the reply. Hence, it is most plausible to assert that an operational debt of Rs.1,02,20,374 is due against the Corporate Debtor and as the threshold limit pursuant to the Notification dated 24.03.2020 for institution of proceedings for initiation of Insolvency is INR 1 crore, therefore the present application is maintainable under the aforesaid notification.

9. The Respondent submitted that there was a pre-existing dispute between the parties therefore the present application is bound to be dismissed. However, while perusing the documents along with the email communication between both the parties it is evident that the last purchase order was issued by the Corporate Debtor on 26.09.2015 and the last invoice raised by the operational creditor was on 29.09.2015. Even afterwards, in the continuous email communication between both the parties the Corporate Debtor never raised any dispute regarding the quality of goods supplied or service of the Operational Creditor. It was only on 22.05.2018 that



the Corporate Debtor through email raised the dispute regarding inferior quality of goods. The Corporate Debtor in the continuous email communication consistently undertook to make the payments against the invoices raised by the operational Creditor and clearly never mentioned about the inferior quality of goods during an approximate period of three years. Therefore, prima facie the dispute appears to be spurious and to avoid action under IBC, 2016 hence, the Corporate Debtor's plea of existence of dispute regarding inferior quality of goods does not stand any merit and is merely an afterthought by the Corporate Debtor.

10. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor as well as the Learned Counsel for the Corporate Debtor and upon appreciation of the documents placed on record to substantiate their respective claims, this Adjudicating Authority **admits** this application and **initiates CIRP** on the Corporate Debtor with immediate effect.



11. This Adjudicating Authority, hereby appoints Mr. Vijay Kumar Gupta, (Email -vkgupta2004@yahoo.co.in), Reg. No: IBBI/IPA-001/IP-P00262/2017-2018/10500 to act as Insolvency Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.
12. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.
13. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.
14. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the



moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

*“(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.*

15. *It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.*



16. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

17. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the

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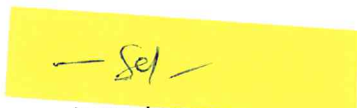
Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

18. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall

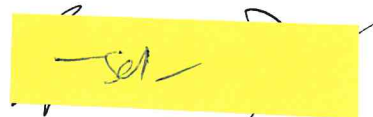
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update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.



**(DR. BINOD KUMAR SINHA)  
MEMBER (TECHNICAL)**



**(SH. P.S.N. PRASAD)  
MEMBER (JUDICIAL)**

RDS

*Pronounced today under Rule 151 of NCLT Rules, 2016 as Hon'ble Member (T) Dr. Binod Kumar Sinha, is not holding the Court today.*



**COURT OFFICER  
23.11.2021**