

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 1124 OF 2022

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

Amit C Poddar

...Applicant

Vs.

M/s Mann Impex

...Respondent

In the matter of

C.P.(IB) No. 3080/MB/2018

Punjab National Bank

.... Financial Creditor

Vs.

Unijules Life Science Limited

...Corporate Debtor

Order delivered on: 22/11/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Krishan Iyer, Advocate

For the Respondent : Mr. Ram Upadhyay, Advocate

ORDER

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Per: V.G. Bisht, Member (Judicial)

1. This Application IA 1124/2022 is filed by Sh. Amit Poddar, the Resolution Professional (“Applicant”) of M/s Unijules Life Sciences Limited (“Corporate Debtor”) in the Corporate Insolvency Resolution Process (“CIRP”) for direction to M/s Mann Impex (“Respondent”) to refund a sum of Rs. 7,01,985/- to the Corporate Debtor.
2. CIRP commenced on 8.3.2019 in the matter of Corporate Debtor upon admission of C.P. (IB) 3080/2018 in terms of Section 7 of the Insolvency & Bankruptcy Code, 2016 (“Code”), and the applicant was appointed as Resolution Professional in the 1st CoC meeting on 08.4.2019. The Corporate was run as a going concern during the CIRP process, and a resolution plan was approved by Committee of Creditors.
3. It is the case of the Applicant that, while conducting the ongoing business of the Corporate Debtor, the purchase department of the Corporate Debtor had requested on 16.12.2021 for the quotation for 100 ml Saline DIN clear Glass Vials Type I and 50 ml Saline WOM Clear Glass Vials Type I (“Goods”) from the respondent, and the Respondent vide email dated 1.1.2022, provided its rates for supply of said goods with condition of 100% advance payment for the supply of the said goods. Pursuant to this, the Respondent raised a Proforma Invoice dated 6.1.2022 for an amount of Rs. 7,01,985/- for the supply of said goods, and the Corporate Debtor paid a sum of Rs. 7,01,985/- as advance payment for supply of these goods on 13.1.2022. However, the Respondent failed to make the supply of the said goods and have also failed to reply to any of the emails seeking details of the supply of the said goods.
4. The Respondent have filed reply stating that this Tribunal can not adjudicate on the contractual disputes dehors Insolvency Proceedings of the Corporate Debtor, and there existed a prior dispute, which has been suppressed by the Applicant from this Tribunal.
5. We have heard the Counsel, and perused the material on record.

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6. We find that the Respondents have contended that the para 11 of the legal notice dated 19.02.2022 sent by The Applicant to the Respondent clearly states that “It was informed by the Respondent that you will not be supplying the material so ordered and paid by the Unijules Life Sciences Ltd., as you had adjusted the payment of Rs. 7,01,985/- against certain old outstanding of M/s A R Pharma Packagings Pvt Ltd., against some bill no. 184 dt. 30.01.2019 for Rs. 6,00840/- and balance you have adjusted towards Interest of Rs. 1,01,145/-“. Hence, it was contended that no material was to be supplied, as the advance paid by the Corporate Debtor stood adjusted against the prior dues payable to its associate concern. We find the contention of the Respondent in violation and against the provisions of the Code.

6.1. The Code expressly provides that the creditor of the Corporate Debtor shall file a claim for their dues for admission in CIRP process before the Resolution Professional, and such claims after collation are to be dealt with in accordance with the provisions of the Code. In the present case, the Respondent has pleaded existence of prior claim of M/s A R Pharma Packagings Pvt Ltd., against some bill no. 184 dt. 30.01.2019 for Rs. 6,00840/- and has adjusted the sums paid to it for supply of goods during CIRP period, which is not permissible, even if the debts would have been owed to the Respondent. In the present case, the Respondent claims the adjustment of pre-CIRP dues owed to the sister concern, which is not only in contravention of the provisions of the Code but also not permissible under the normal business practices unless consented by the other party.

6.2. Accordingly, we consider it appropriate to direct the Respondent to refund a sum of Rs. 7,01,985/- within 15 days along with interest @ 12% p.a. thereon from the date of remittance of this amount to them till the date of refund to the Corporate Debtor. The Applicant shall be at liberty to file appropriate complaint before the concerned

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authorities for the mailicious conduct of the Respondent, which is nothing but an attempt to cheat the Corporate Debtor undergoing Insolvency Resolution Process.

7. In view of foregoing, IA 1124/2022 is partly allowed.

SD/-

Prabhat Kumar
Member (Technical)

SD/-

Justice V.G. Bisht
Member (Judicial)