



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
C.P. (IB)/286(AHM)2023

Order under Section 9 IBC

IN THE MATTER OF:

PIRAMAL CRITICAL CARE INC.
VS
ASTRAL STERITECH PRIVATE LIMITED

.....Applicant

.....Respondent

Order delivered on: 10/06/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in the open court, vide separate sheet.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

CP(IB) No. 286 / NCLT / AHM / 2023

(Company Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016) read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

Piramal Critical Care Inc.

....Applicant

Versus

Astral SteriTech Private Limited

...Respondent

Order pronounced on 10.06.2024

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

Piramal Critical Care InC.

3950 Schelden Circle, Bethlehem
PA 18017, USA.

Through its Power of Attorney holder:

Mr. Kartik Shastry

Residing at 4-701, Lodha Eternis,
MIDC Rd. No. 11, Andheri East,
Mumbai-400093.

...Applicant/Operational Creditor

Versus

Astral SteriTech Private Limited

911, GIDC Makarpura,
Vadodara, Gujarat-390010, India.

... Respondent/Corporate Debtor

Present:

For the Applicant : Mr. Yuvraj Choksy, Adv. a.w Mr. Saumitr
Chaturvedi

For the Respondent : Mr. Abhyuda Singh, Adv. a.w Mr. Nachiket
Dave, Adv. & Mr. Raghav Chadha, Adv.



JUDGEMENT

1. Under consideration, is an application filed by the Operational Creditor viz. Piramal Critical Care Inc. under Section 9 of Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "IBC, 2016") against the Corporate Debtor viz. Astral Steritech Private Limited seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

2. In Part I of the application it is stated that the Operational Creditor's Identification no. is 2459102. In Part II of the application it is stated that the Operational Debtor was incorporated on 03.09.2012 with the Nominal share capital of Rs.11,00,00,000/- (Rupees Eleven Crores only) and the paid up capital of Rs.9,22,80,000/- (Rupees Nine Crores Twenty Two Lakhs Eighty Thousands only). In Part III of the Application the Financial Creditor has proposed a name of one Mr. Manish Santosh Buchasia as the Interim Resolution Professional, who has also filed his written consent in Form 2. In Part IV of the application the default amount is stated to be \$6,879,726.43/- and date of default is mentioned as 19.08.2023.



3. Applicant submitted that the parties signed a Development, License, and Supply Agreement dated February 14, 2019, as amended from time to time, including by First Amendment to Development, License, and Supply Agreement dated June 27, 2019 (hereinafter referred to as Supply Agreement) in which the Corporate Debtor granted a non-exclusive license to the Operational Creditor to promote, market, sell, have sold, offer for sale, distribute, import and otherwise commercialize medical products in the United States of America.
4. It further submitted that the Corporate Debtor vide letters dated May 2, 2023 and May 4, 2023 informed the Operational Creditor that a recall was warranted for all products manufactured at its facility situated in Vadodara, Gujarat because of inter alia contamination at the Corporate Debtor's facility in Vadodara, Gujarat and data integrity issues. Applicant submitted that according to Clause 13.5 and 13.3 of the Supply Agreement, the Corporate Debtor is responsible in bearing the costs and expenses incurred in administering any such recall.
5. Applicant submitted that the Operational Creditor sent email on August 16, 2023, to the Corporate Debtor demanding



payment of outstanding dues failing which the Operational Creditor sent a demand notice dated August 29, 2023 to the Corporate Debtor demanding payment of \$6,752,997.87. The Corporate Debtor sent a reply dated 07.09.2023 to the Demand Notice. Thereafter, the Operational Creditor sent a reply dated 07.11.2023 to the aforesaid letter dated 07.09.2023 and e-filed the present petition on 09.11.2023.

6. Respondent submitted that there is a pre-existing dispute between the Parties, prior to the filing of the present Petition by the Operational Creditor and as such, the present Petition is not maintainable. It further submitted that the present Section 9 Petition is legally untenable and is liable to be dismissed at the very threshold since the Demand Notice under Section 8 of IBC, is not in accordance with law. Respondent submitted that it did not receive the email sent for authentication and verification by the operational creditor for verification of claims filed with information utility due to old/ non-functional email addresses being used by the operational creditor to a void intimation to the respondent.



7. Respondent stated that the present purported claim by the operational creditor is a civil commercial dispute which has to be resolved by a civil forum. It further stated that the governing laws as agreed upon between the parties in Clause 27 of the Agreement are the laws of New York, United States of America. Therefore, this Hon'ble Tribunal does not have the appropriate jurisdiction to adjudicate the present dispute. Hence prayed for the dismissal of the application.
8. We have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused documents filed on record.
9. The applicant/Operational Creditor served a demand notice dated August 29, 2023. The Respondent/Corporate Debtor in feeble voice raised pre-existing dispute. However, no document is attached along with the reply showing such dispute was raised before issue of demand notice.
10. The Corporate Debtor relaying upon Clause 27 of the agreement, contended that New York, USA is having exclusive jurisdiction. However the NCLAT in Excel Metal Processors Limited vs. Benteler Trading International GMBH and Anr. [Company Appeal (AT) (Insolvency) No. 782 of 2019] held that



exclusive jurisdiction clause in a commercial contract do not cover proceedings initiated under the IBC, 2016. Also, the NCLT has jurisdiction under Section 408 of the Companies Act, 2013 and under Section 60(1) of the IBC, 2016. Hence the contention of the application cannot be accepted.

11. In our view the application is complete in terms of Section 9 of the Code. As the Applicant/Operational Creditor has proved that there is debt and despite service of notice under Section 8, the same was not paid by the Respondent/Corporate Debtor. We have also seen that the amount defaulted is more than Rs. 1.00 Cr. which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.
12. Hence we pass the following order:

ORDER

- I. The CP(IB) 286 of 2023 is allowed.



- II. The Respondent/Corporate Debtor Astral SteriTech Private Limited is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- III. The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- IV. However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- V. As the Applicant/Operational Creditor has suggested the name of the IRP in the application, we hereby appoint Mr. Manish Santosh Buchasia, Registered Insolvency Professional having registration number as IBBI/IPA-002/IP-N00487/2017-2018/11449 under section 13 (1)(c)



of the Code to act as Interim Resolution Professional (IRP). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- VI. The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- VII. The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.



- VIII. The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- IX. The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- X. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- XI. We direct the Operational Creditor to pay IRP a sum of Rs.2,00,000/- (Rupees Two Lakh Only) in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.



XII. The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

XIII. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

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**DR.V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

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**CHITRA HANKARE
MEMBER (JUDICIAL)**