

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**SPECIAL BENCH, BENGALURU**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**  
**(Through Web-Based Video Conferencing)**

**CP (IB) No.151/BB/2022**  
**U/s. 9 of the IBC, 2016**  
**R/w Rule 6 of the IBC (AAA) Rules, 2016**

**IN THE MATTER OF:**

**Raptim Research Private Limited,**

Registered Office at:  
A-242, TTC Industrial Area,  
Mahape, MIDC Mahape Navi Mumbai  
Thane 400 710.

... Petitioner/Operational Creditor

**Versus**

**Shilpa Medicare Limited,**

Registered Office at:  
12-6-214/A1, Hyderabad Road,  
Raichur 584 135. Karnataka

... Respondent/Corporate Debtor

**Order delivered on: 24<sup>th</sup> August, 2023**

**Coram:** Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)  
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Shri Raghuram Cadambi with  
Shri Deepakar

For the Respondent : Shri Dhyan Chinnappa, Sr. Counsel  
Shri H.N. Vasudevan.

**O R D E R**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present petition is filed on 14.06.2022 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code),

**CP (IB) No. 151/BB/2022**

r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s Raptim Research Private Limited (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. Shilpa Medicare Limited (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for an outstanding amount of Rs. 1,65,20,000/- (Rupees One Crore Sixty-Five Lakh Twenty Thousand Only) with interest at 18% p.a from 31<sup>st</sup> August 2021 till date of this Petition, amounting to Rs. 19,80,000/- (Rupees Nineteen Lakh Eighteen Thousand Only) in all aggregating to Rs. 1,85,00,000/- (Rupees One Crore Eighty-Five Lakh Only)

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
3. The Operational Creditor is a Private Limited Company and is engaged in the business of full-service contract research organization. The Operational Creditor provides end-to-end services to Local/Global Pharmaceutical, Biotechnology and Cosmetic industry.
4. The Corporate Debtor is a company registered under the Companies Act, 1956 and is engaged in the business of manufacturing and/or marketing of various pharmaceutical ingredients and pharmaceuticals in finished dosage forms.
5. The Petitioner and Respondent entered into Master Service Agreement on 19.04.2019, inter alia to conduct Bio Equivalence studies and Invitro studies. The Master Service Agreement under Article 8 provided for terms of payment to be made to the Operational Creditor. The Amount payable on Advance before initiation of Study will be 25% of the Total Contract Value, 30% on completion of Method validation, 30% on initiation of Pivotal Study and balance 15% on submission of Draft report by Operational Creditor.

6. The study commenced within a few days of receiving the investigational products from Corporate Debtor. While the study was in progress, the State and Central Governments in India announced strict National Lock down due to ongoing Covid-19 pandemic. However, the Petitioner resumed the study upon easing of the lockdown. The Corporate Debtor provided investigational products in the month of January 2020. As the results were unsatisfactory SML provided altered products, from time to time between January 2020 to October 2020, albeit there was some delay on part of Corporate Debtor in delivering the altered products.
7. The Petitioner by its email dated 20.10.2020 informed the respondent that the Method Validation stage was completed. Thereafter, on 04.11.2020 the petitioner by its email provided the timeline for the study. Later on, 10.11.2020 the petitioner informed the respondent that the petitioner was proceeding with pivotal study. The Petitioner having raised invoices on the respondent from time to time between the month of November 2020 to February 2021 dated 25.11.2020, 25.11.2020, 23.11.2021 and three invoices dated 24.02.2021 aggregating to Rs. 1,65,20,000/- for the work done as per Statement of Work and Change Order.
8. However, the Corporate Debtor did not make timely payments inspite of repeated reminders and thus the said invoices were reversed and fresh invoices were raised on 30.09.2021 for similar amount. Thereafter, by an email dated 10.12.2020, the petitioner shared Final IVPT study Report to respondent. Thereafter, the respondent's team visited the petitioner's facility on 14<sup>th</sup> -15<sup>th</sup> December 2020 and post audit and raised observations/queries. The Petitioner on 30.12.2020 provided satisfactory response to the queries of the respondent.
9. It is submitted that the respondent may not appreciate or approve the response, as it could be inconvenient to them, however, cannot be a ground to withhold payment due to the Petitioner. The petitioner has addressed several email to the corporate debtor to

clear the outstanding payments. The Corporate Debtor proposed to pay the outstanding dues of the Operational Creditor by 10<sup>th</sup> May 2021. The Operational Creditor informed the Corporate Debtor that the payment deadline is not acceptable to Operational Creditor since the same have been pending for a long time. The Operational Creditor had raised six invoices on the Corporate Debtor between the months of November 2020 to February 2021, aggregating Rs. 1,65,20,000/- for the work done on IVPT Study. However, the Corporate Debtor failed to make timely payments of the said invoices. The said invoices were reversed and six fresh invoices were raised upon the Corporate Debtor on 30.08.2021.

10. As the Corporate Debtor failed to repay the outstanding amount due and payable to the Operational Creditor, the Petitioner on 14.01.2022 addressed a demand notice under section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor inter alia calling upon the Corporate Debtor to repay the unpaid operational debt amounting to Rs. 1,82,93,153/-. Reply to the said notice was given on 28.01.2022.
11. The Operational Creditor stated that the Corporate Debtor has till date not disputed or denied the said invoices raised by the Operational Creditor. It is further submitted that the Corporate Debtor has availed the services of the petitioner and has failed and neglected to pay the amount due and payable to the Operational creditor as the study report is unfavourable.
12. The Operational Creditor raised invoice No. RRL/L/2122/110 both dated 27.05.2021 upon the Corporate Debtor for its Biowaiver Quote Based on the Varenicline Biopharmaceutical System for Varenicline Tartrate. After the issuance of demand notice dated 14.01.2022 upon Corporate Debtor, it made a part payment of Rs. 6,31,300/- towards the outstanding Invoice being Invoice No. RRL/L/2122/110.
13. The Learned Counsel for the respondent in its statement of objection dated 14.11.2022 submits that the Respondent has paid the

genuine invoices raised by the Operational Creditor. The respondent raised disputes in respect of the invoices pertaining to SOW1 raised by Petitioner as the services under the said invoices were defective services since the petitioner failed to adhere to the timelines specified in the Master Service Agreement. It is submitted that till today the petitioner has not provided responses to the queries raised by Respondent.

14. It is submitted that from the review of MSA it is clear that the petitioner needs to comply with health authority regulations and follow the protocols, timelines agreed under the respective SOWs, and guidelines issued by WHO and USFDA. It is submitted that petitioner raised certain invoices in respect of the SOW1 pertaining to IVPT study of Acyclovir 5% Cream and the respondent withheld payment of these invoices as the petitioner delayed compliance with the agreed timeline, further, the respondent has highlighted the above compliance to the petitioner.
15. Moreover, according to the terms of MSA, respondent conducted a retrospective audit from 14.12.2020 to 15.12.2020 at the site of the study in respect of SOW1 and raised several queries to the Operational Creditor. Respondent also shared the audit report mentioning the queries with petitioner vide its email dated 18.12.2020. However, the petitioner in opposition to Article 2 of MSA, failed to provide justifiable responses to three queries raised by SML in the audit. Further, the respondent has communicated to the petitioner about the unresolved audit observations by its email dated 15.06.2021. However, till today petitioner has not provided any justifying or adequate responses to the observations.
16. Further, vide email dated 03.06.2021 the respondent communicated to the petitioner that the response provided by Petitioner to the audit queries were not justifiable and hence the same is not accepted. Hence, the invoices raised by the petitioner in respect of SOW1 are not paid.

17. Further, under SOW-2, petitioner agreed to carry out Biowaiver quote based on Varenicline Tartrate Biopharmaceutical Classification System for an agreed price of Rs. 34,50,000/- plus GST. The petitioner raised various invoices and these invoices were paid by the respondent. Further, respondent also requested the petitioner to carry out certain additional work and also made payments of the same. In total, the respondent paid Rs. 44,57,210/- to the petitioner.
18. It is further submitted that petitioner has incorrectly interlinked two different sets of invoices. The invoices are pertaining to two separate SOWs. Respondent vide its email objected to the interlinking of the invoices pertaining to SOW1 and 2.
19. The Learned Counsel for the Petitioner filed its rejoinder vide diary No. 5701 dated 27.12.2022 reiterating the submission made in the petition and the same is taken on record.
20. This Tribunal on 06.06.2023 directed the parties to file brief synopsis with relevant judgment and the same is complied vide diary no. 3072 and 3105 dated 12.06.2023 and 13.06.2023 and the same is taken on record.
21. Heard both the counsels and perused the records available.
22. The present petition is filed by the Operational Creditor for an outstanding Principal amount of Rs. 1,65,20,000/- with interest at 18% p.a aggregating to Rs. 1,85,00,000/-. It is seen from the petition that the parties have entered into a Master Service Agreement dated 19.04.2021 wherein the Petitioner conducted Studies and report to be submitted to the Respondent. Further it is submitted by the Operational Creditor that, the petitioner raised invoices on the respondent from time to time for the work done and milestones completed, however, the respondent failed to make timely payments.
23. However, it is seen from the statement of objection that respondent has relied on email communications between petitioner and respondent to prove the existence on pre-existing dispute. On

perusal of the email communication it observed that the respondent has conducted retrospective audit at the site of the petitioner. And the audit report and observations were send to the petitioner vide email dated 18.12.2020 and 15.06.2021 and sought clarification/justification for some of the audit observations. However, it is seen from the email dated 03.06.2021 by the respondent to the petitioner that respondent has not provided adequate response to the audit observation and since no clarity is given from the part of the petitioner payment cannot be cleared off by the respondent. The extract of the email communication dated 03.06.2021 issued by the respondent to the petitioner is as follows:

*“It was already discussed and communicated to you that don’t interlink both the projects, there are sponsor audit related observations in acyclovir IVPT study which are still open from the Raptim and need to get clarity on the impact of these findings on the study failure till then Shilpa management is not ready to clear off the payments.”*

24. In the light of the discussions foregoing, it is concluded that in the case in hand there is a dispute and it is not within the domain of this Adjudicating authority to resolve the dispute between the parties.
25. Accordingly, the Present petition bearing **CP (IB) No. 151/BB/2022** is hereby **dismissed**. However, this order shall not preclude the petitioner from pursuing other remedies in accordance with law, if so advised. No order as to costs.

**-Sd-**

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**-Sd-**

**(T. KRISHNAVALLI)  
MEMBER (JUDICIAL)**