

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH-II, CHENNAI**

**CP (IB)/202(CHE)/2021**

*(Filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with  
Rule 6 of Insolvency and Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016)*

*In the matter of **M/s. Duraent Biologicals Limited***

**M/s. Raj Metro Life Sciences Private Limited**

Represented by its Director Mr. Karan Jitendra Ladhani  
No. 102, 1<sup>st</sup> Floor,  
Navjivan Co-op. Housing Society Ltd.,  
Lamington Road,  
Mumbai - 400 008

..... *Operational Creditor*

*-Versus-*

**M/s. Duraent Biologicals Limited**

No. 32/2, Soundararajan Street,  
T.Nagar, Chennai -600 017

..... *Corporate Debtor*

*Order Pronounced on 6<sup>th</sup> January 2022*

**CORAM**

**Justice (Retd.) S.RAMATHILAGAM, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : Yasmin E. Tavarua, Advocate  
For Corporate Debtor : Ex-Parte*

**ORDER**

**Per: Justice (Retd.) S.RAMATHILAGAM, MEMBER (JUDICIAL)**

The present application is moved by **M/s. Raj Metro Life Sciences Private Limited** (hereinafter referred to as "*Operational Creditor*") under Section 9 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency and Resolution Process against **M/s. Duraent Biologicals Limited** (hereinafter referred to as "*Corporate Debtor*").

2. From Part-I of the application, it is seen that the Operational Creditor is a Private Limited company. From Part-II of the application, it is seen that the Corporate Debtor is a Public Limited Company incorporated on 24.06.2010 having its registered office at No. 32/2, Soundararajan Street, T.Nagar, Chennai -600 017. As per Part-III of the application, it is seen that the Operational Creditor has proposed the name of Mr. Nurani Subramanian Suryanarayanan (IBBI/IPA-002/IP-N00379/2017-18/11122) as IRP, whose written consent is also annexed along with the application.

3. From Part-IV of the application, it is seen that the Operational Creditor has claimed a sum of Rs.3,07,38,876/- (Rupees Three Crore Seven Lakh Thirty Eight Thousand Eight Hundred and Seventy Six Only) as on 31.03.2019 which is due and payable by the Corporate Debtor along with interest. From the tabular column in Part-IV of the application it is seen that the said debt has become due from 08.01.2018. However, no specific date of default has been mentioned in the application.

4. Part-V of the application discloses the details of the documents attached by the Operational Creditor in order to prove the existence of 'Operational Debt'. The documents are as follows,

- Agency Agreement dated 16<sup>th</sup> October 2010
- Agreement dated 29<sup>th</sup> December 2011

- Copy of Tax Invoices
- Copy of Ledger Statement
- Copy of Bank Statement
- Copy of Legal Notice dated 01.11.2019
- Copy of Legal Notice dated 23.01.2020
- Copy of Demand Notice dated 27.02.2021
- Copy of Legal Notice and its reply dated 05.03.2021 and 22.03.2021 respectively.

5. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has claimed itself a high end chain marketing company dealing with bio-pharmaceuticals and biologicals with exclusive contracts for innovative products from around the world. On account of the fact that the Corporate Debtor is a newly incorporated Company, it was looking for partners who are able to provide infrastructure for its business in terms of finance, office space, cold and normal storage spaces etc., The Operational Creditor herein, having interest in providing the complete back-up to the corporate debtor, has entered into an Agency Agreement dated 16.10.2010 for a period of three years with an auto renewal provision therein, by way of which the Operational Creditor was entitled to sell the products marketed by the Corporate Debtor.

6. The Learned Counsel for the Operational Creditor further submitted that the parties had entered into another agreement dated 29.11.2011 which defines and establishes the business relationship between the Company and the Distributor i.e.,

between the Corporate Debtor and the Operational Creditor herein. The terms of the said agreement are briefly set out in Page No. 5 of the Application filed by the Operational Creditor. Further, it is highlighted that the Operational Creditor has invested into the corpus of the Corporate Debtor on entitlement of minimum 2.5% return along with 2.5% as sales commission on monthly basis after the first year of operation. The said arrangement between the parties continued smoothly till 2014 after which the Corporate Debtor was not in a position to make supplies of the biological products for the reasons best known to them. Thereafter, from December 2014, the Corporate Debtor has started returning the payments in part payable to the Operational Creditor till January 2018. It is further submitted that despite repeated requests made by the Operational Creditor, the Corporate Debtor has failed to pay the balance amount which was due and payable to the Operational Creditor.

7. Pursuant thereto, it is seen that the Operational Creditor has issued two legal notices dated 01.11.2019 and 23.01.2020 which were acknowledged by the Corporate Debtor however, no response as to repayment or dispute was made. Further, the Operational Creditor has raised Demand Notice in Form III as mandated under Section 8 of the IBC, 2016 dated 27.02.2021, which was delivered to the Corporate Debtor on 17.03.2021, for which no reply as to

repayment or dispute was made. Thus, the Operational Creditor has prayed for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

8. With respect to the Corporate Debtor, it is seen that despite notices having been served no representation was made and thus the Respondent was called absent and set ex-parte on 20.09.2021.

9. Heard the submissions and perused the documents on record including the written statement made by the Ld. Counsel for the Operational Creditor. On perusal of the application filed by the Operational Creditor, it is seen that the Operational Creditor, throughout the application has made averments that the amount paid by the Operational Creditor is remaining with the Corporate Debtor without any goods being supplied, this seems to have only alleged that there exists a debt due and payable by the Corporate Debtor. As per his contention, the Operational Creditor herein has advanced monies as investment into the corpus of the Corporate Debtor alongside who has also acted as the Master Distributor of the Corporate Debtor.

10. Thus the issue arising here is whether the debt in question is an operational debt. Insofar as this issue is concerned, it would be useful to go through the definition of operational debt in Section 3(11) and Section 5 (21) of the IBC 2016

*"3(11) 'debt' means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.*

*5(21) 'operational debt' means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority."*

11. It is evident from the definitions cited above that 'operational debt' means claim in respect of provision of goods and services. Accordingly, the phrase "*in respect of*" may be interpreted widely to include a claim arising out of or in relation to the contract for the provision of goods and services i.e. even the claim of the person in receipt of the goods or services.

12. The extract as to substantiate the investment made by the Operational Creditor and to analyse the relationship between the parties, the relevant clause of the Master Distributor Agreement dated 16.10.2010 is extracted as follows,

*5. The company appoints the agent as its exclusive Master Distributor for the region based on a minimum guaranteed return of 2.5% every month on the investments made by the agency in the products of the company:*

The relevant clause of Business Relationship Agreement dated 29.12.2011 is extracted as follows,

*13. RML is entitled to minimum guaranteed return of 2.5% every month as Return on Investment (RoI) on the investments made by*

*RML and 2.5% as sales commission on turnover apart from ROI, both of which are payable on monthly basis. This will be revised after the 1<sup>st</sup> year of successful operations.*

*14. DBL will maintain goods worth at-least 50% the total investment made by RML at its storage facilities at all times. This would be inclusive of pipeline inventory.*

From the above extract it is evident that the agreement has been adopted in a way that the investment made by the Operational Creditor is considered as advance paid in receipt of goods and services. Further, it is also seen that the business of the Corporate Debtor is an agency service of holding goods and distributing it down the line. The Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India* while highlighting the intelligible differentia between the Financial Creditor and the Operational Creditor, observed that

*"contracts with Operational Creditors are relatable to supply of goods and services in the operation of business.... Operational debts also tend to be recurring in nature and the possibility of genuine disputes in case of operational debts is much higher when compared to financial debts. A simple example will suffice. Goods that are supplied may be substandard. Services that are provided may be substandard. Goods may not have been supplied at all. All these qua operational debts are matters to be proved in arbitration or in the courts of law."*

13. Thus the 'debt' in the present case is proved to be an 'Operational Debt' and also the Corporate Debtor has committed 'default' in repayment of the said 'Operational Debt'. Further, despite opportunities rendered no representation was made by the Corporate Debtor Under the said circumstances, this Tribunal is left

with no other option other than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

14. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. The Operational Creditor has proposed the name **Mr. Nurani Subramanian Suryanarayanan (Reg. No. IBBI/IPA-002/IP-N00379/2017-2018/11122) Email: suri\_nar@hotmail.com** and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand suspended as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

15. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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 or a similar grant or right during moratorium period;

16. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

17. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

18. Based on the above terms, the Application stands **Admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-  
**B. ANIL KUMAR**  
MEMBER (TECHNICAL)

-Sd-  
**Justice (Retd.) S. RAMATHILAGAM**  
MEMBER (JUDICIAL)

*Mohanapriya*