

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-V, NEW DELHI**

**CP IB NO. 841/(ND)/2020**

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

**IN THE MATTER OF:**

**KEDRION BIOPHARMA INC.**

400 Kelby Street Fort Lee,  
NJ 07024 USA

**Through its Special Power of Attorney Holder**

**Mr. Naveen Madan,**

**Director Finance**

**R/o** A-1003, Delhi State NPEF CGHS Apartments  
Plot No. 1, Sector-19, Dwarka,  
New Delhi-110075

**...Operational Creditor**

**VERSUS**

**M/S. WIZAMAN IMPEX PVT. LTD.**

15, Chelmsford Country Club,  
Ghitorni- South Delhi,  
New Delhi-110030

**ALSO, AT:** 301, JMD Regions Square

Main Mehrauli Gurgaon Road,

Gurgaon, Haryana-122001

**...Corporate Debtor**

**Order Delivered on: 12.03.2024**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Applicant:** Sr. Adv. Nakul Dewan, Mr. Mayur Narang, Ms. Suruchi Suri, Mr. Nek Chatterjee, Advs.

**For the Respondent:** Mr. AT Patra, Mr. Shubham Jindal, Mr. Karan Khaitan, Advs.

**O R D E R**

**PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**‘the Code’**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s Kedrion Biopharma Inc. (‘Operational Creditor’)** through its Special Power of Attorney Holder, Mr. Naveen Madan, duly authorized for initiation of Corporate Insolvency Resolution Process (**‘CIRP’**) against **M/s. Wizaman Impex Private Limited (‘Corporate Debtor’)**.
2. **M/s. Kedrion Biopharma Inc.** (Operational Creditor) is a corporation registered and organised under the laws of State of Delaware, USA, having its office at 400, Kelby Street, Fort Lee, NJ 07024, USA. **M/s. Wizaman Impex Private Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN- U51909DL2005PTC143015], having its registered office at 15, Chelmsford Country Club, Ghitorni, New Delhi, South Delhi- 110030. The Corporate Debtor has Authorized Share Capital of Rs. 50,00,000 (Fifty Lacs) and Paid-Up Share Capital of Rs 50,00,000 (Fifty Lacs).
3. The present Petition was filed on 30.06.2020 before this Adjudicating Authority by M/s. Kedrion Biopharma Inc. (Operational Creditor), duly authorized to initiate Corporate Insolvency Resolution Process (**‘CIRP’**) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**). The total amount claimed is USD 9,01,955 (Nine Lacs One Thousand Nine Hundred Fifty-Five) which is inclusive of the interest amount. The date of default is

different for 3 commercial invoices i.e., 18.04.2014, 25.04.2014 and 23.05.2014.

**4. Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.**

- a) The Operational Creditor entered into a Distribution Agreement dated 21.03.2014 with the Corporate Debtor for the purpose of appointing the Corporate Debtor as a non-exclusive distributor of the Operational Creditor's medical products RhoGAM and MicRhoGAM in India only until the subsidiary/Indian affiliate of the Operational Creditor namely Kedrion India Biopharmaceuticals Pvt. Ltd. was capable of doing so.
- b) In respect of the product RhoGAM, three invoices were raised by the Operational Creditor on 19.12.2013, 26.12.2013 and 23.01.2014. These invoices were to the tune of USD 12,61,955.40.
- c) On 18.01.2016, the Corporate Debtor confirmed the debt due. Upon an adjustment of a credit of USD 360,000, the balance debt of USD 9,01,955.40 became due, which was confirmed by the Corporate Debtor on 02.02.2017.
- d) The credit was granted to offset the alleged potential losses incurred by the Corporate Debtor on account of demands made by the Directorate of Health Services ("DHS") due to the alleged 'short shelf life' of the products.
- e) The credit note was also acknowledged by the Corporate Debtor in its reply dated 17.08.2019 to the Operational Creditor's demand notice.
- f) The present petition was filed before this Adjudicating Authority ('AA') on earlier occasion also, however, the same was dismissed by the AA vide its order dated 06.10.2020, being barred by the limitation. The Operational Creditor appealed against the said order of the AA before the Hon'ble NCLAT, claiming that the present petition is within the period of limitation and placed before Hon'ble NCLAT certain additional documents vide I.A. No. 2685/2020 demonstrating the acknowledgement of debt by the Corporate Debtor. Therefore, on the basis of those additional documents,

the Hon'ble NCLAT restored the Section 9 application vide its order dated 15.12.2021.

- g) The Corporate Debtor appealed before the Hon'ble Supreme Court against the said order of the Hon'ble NCLAT, whereby, the Hon'ble Supreme Court vide its order dated 07.02.2022 set aside both the orders dated 06.10.2020 and 15.12.2021, however, took on record the additional documents placed by the Operational Creditor. The Hon'ble Supreme Court further directed the AA to reconsider this Section 9 petition afresh.
- h) The Corporate Debtor made acknowledgement on several occasions i.e., 18.01.2016, 02.02.2017, 21.11.2017, 25.10.2018, 07.11.2018 and 10.11.2018.
- i) The Operational Creditor sent a demand notice dated 25.07.2019 to the Corporate Debtor claiming a sum of USD 9,01,000/- as the amount due towards operational debt. However, the said demand notice returned undelivered. Therefore, the Operational creditor sent a demand notice dated 07.08.2019 reiterating the particulars of the demand notice dated 25.07.2019.
- j) The Corporate Debtor did not raise any issue of pre-existing dispute while making acknowledgement of debt via emails, however, raised it for the first time in reply dated 17.08.2019 to the Operational creditor's demand notice dated 07.08.2019.
- k) The present petition is filed before this AA for fresh consideration.

**5. Submission by the Learned Counsel appearing on behalf of the Corporate Debtor**

- a) That there exists a pre-existing dispute both with regard to the quality of goods and amount of debt, which was brought to the knowledge of the Operational creditor vide reply dated 17.08.2019.
- b) That Arbitration proceedings are pending in the Hon'ble High Court of Judicature at Bombay with regard to the disputes between Wizaman and DHS.

- c) That the supplies against the 3 invoices which are the subject matter of the present application, were made mostly in respect of supplies to Directorate of Health Services (DHS), Maharashtra tender. The said tender was in favour of the Applicant's erstwhile dealer "Johnson & Johnson", which tender at the instance of the Applicant was transferred in favour of the Respondent.
- d) That the Operational Creditor had requested the Corporate Debtor to make a payment of Rs. 67,62,535 to the Applicant's erstwhile dealer "Johnson & Johnson" on behalf of the Operational Creditor.
- e) That vide email dated 22.01.2016, the Operational Creditor had acknowledged its liability to compensate the Corporate Debtor with regard to the claim of the DHS, Maharashtra in respect of supplies of "short shelf life" products and as an interim measure had recognized its liability at USD 2,00,000.
- f) That the Operational Creditor issued a credit memo worth USD 3,60,000 in favour of the Corporate Debtor.
- g) That by the present averments, the Corporate Debtor is disputing the quality of goods and quantum of debt claimed by the Operational Creditor.

### **Analysis & Findings**

6. We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the petition, reply filed by the Corporate Debtor, rejoinder filed by the Operational Creditor and written submissions presented by both the Operational Creditor and the Corporate Debtor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.

7. It is observed that the Hon'ble Supreme Court vide its order dated 07.02.2022 dismissed both the orders dated 06.10.2020 and 15.12.2021 passed by this Adjudicating Authority and the Hon'ble NCLAT, respectively. The Hon'ble Supreme Court has further directed this Adjudicating Authority to reconsider the case *"while taking into consideration the additional documents now taken on record and at the same time, while extending an adequate opportunity of hearing to the corporate debtor."* The additional documents placed on record by the Operational Creditor before the Hon'ble NCLAT vide I.A. 2685/2020 and before this Adjudicating Authority vide affidavit dated 01.03.2022 are as under:
- i) Copies of the email correspondences for the period ranging from 03.11.2017 till 11.01.2019 indicating the acknowledgement of debt by the Corporate Debtor.
  - ii) On 21.11.2017, the Corporate Debtor intimated that it would come up with a proposal for payment of the debt. This was in response to the Operational Creditor's request on 20.11.2017 for establishing an escrow account for the deposit of the debt due.
  - iii) On 25.10.2018 and 10.11.2018, the Corporate Debtor shared its account statements and offered settlement amounts.
  - iv) On 07.11.2018, the Operational Creditor, in order to amicably settle the matter, proposed a full and final settlement of USD 459,786.41, which was to be paid in four installments of USD 114,949.60 beginning from November 2018 and ending on 20 February 2019. However, this amount was never paid.
8. It is observed that the present case involves 3 different dates of defaults for 3 invoices i.e., 18.04.2014, 25.04.2014 and 23.05.2014, the latest date of default being 23.05.2014. On perusal of the additional documents placed before us vide affidavit dated 01.03.2022, it is observed that the Corporate Debtor made acknowledgement of debt on several occasions i.e., on 18.01.2016, 02.02.2017, 21.11.2017, 25.10.2018, 07.11.2018 and 10.11.2018. The latest

acknowledgement being of 10.11.2018 extended the limitation period for further 3 years from the date of the latest acknowledgement. The present petition was filed on 30.06.2020. Therefore, the present petition is filed within the period of limitation.

9. It is to be noted that the 'Operational Creditor' had sent a demand notice dated 07.08.2019 to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth USD 9,01,955.40 (inclusive of the interest amount) which is equivalent to the tune of Rs. 7,50,96,806.604 (Rupees Seven Crores Fifty Lacs Ninety-Six Thousand Eight Hundred and Six and Six Hundred Four Paise). Therefore, the present petition meets the threshold limit of Rs. 1 crore, as required by Section 4 of the Code.
10. In order to determine the admissibility of petition for initiating CIRP under Section 9 of the Code, the judgment of the Hon'ble Supreme Court in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:
  - a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
  - b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
  - c) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

11. In the first instance, to determine as to whether the said amount claimed by the Operational Creditor would fall under the ambit of 'Operational Debt', it is pertinent to analyze the definition of 'Operational Debt' as stipulated under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under the said Section, the 'Operational Debt' is defined as: *"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"*.

While analyzing the present facts in the light of said definition under Section 5(21), it is observed that the Operational Creditor is engaged in the business of manufacturing of pharmaceutical products, particularly plasma products such as Rhogam, an Anti-D immunoglobulin. The Operational Creditor entered into a Distribution Agreement dated 21.03.2014 with the Corporate Debtor for the purposes of distribution and sale of its pharmaceutical products only until the subsidiary/Indian affiliate of the Operational Creditor namely M/s Kedrion India Biopharmaceuticals Pvt. Ltd. was capable of doing so and raised several invoices upon the Corporate Debtor with respect to the sale and distribution of its pharmaceutical products. However, no amount has been received by the Operational Creditor against any of the three invoices namely invoice no. 'DMI 4169626' dated 19.12.2013 amounting to USD 25,800/-, invoice no. 'DMI 4174867' dated 25.04.2014 amounting to USD 6,32,100/- and invoice no. 'DMI 4202417' dated 23.05.2014 amounting to USD 604,055.40/-. Furthermore, on the consideration of the transactional invoices, as annexed by the Operational Creditor, and placed before us, we are of the view that there had been a transaction between the Operational Creditor and the Corporate Debtor and that the Operational Creditor has supplied goods to the Corporate Debtor and therefore, is claiming the payment in respect of the invoices so raised. Hence, this Adjudicating Authority is inclined towards believing that the debt claimed by the petitioner for provision of pharmaceutical products comes under the purview of 'Operational Debt' within the meaning of Section 5(21) of the Code.

12. It is observed that as per the requirement of Section 8(2)(a) of the Code, the Corporate Debtor is required to bring into notice of the Operational Creditor, existence of any dispute within 10 days of the receipt of the statutory demand notice issued and delivered by the Operational Creditor u/s 8(1) of the Code. In the present case, the Corporate Debtor has filed reply dated 17.08.2019 to the demand notice dated 07.08.2019 sent by the Operational creditor to the Corporate Debtor. Therefore, the Corporate Debtor has fulfilled the requirement of sending reply to demand notice within the stipulated period of 10 days of the receipt of demand notice as laid down under said Section 8(2)(a) of the Code.
13. It is also observed that the Corporate Debtor attempted to show that there is a 'Pre-existing dispute' between the parties which has arisen before the receipt of demand notice sent by the Operational Creditor to the Corporate Debtor. The Corporate Debtor disputes both on the 'quality of goods' as well as 'quantum of debt' claimed. The Corporate Debtor claims that the products for which invoices were raised were of 'short shelf life' and the invoices which are the subject matter of the present case were made mostly in respect of supplies to the DHS, Maharashtra tender. Further, the Corporate Debtor has claimed that there is a pre-existing dispute between the Corporate Debtor and DHS regarding the 'short shelf life' of the products for which the Operational Creditor had acknowledged its liability to compensate the Corporate Debtor with regard to the claim of DHS.
14. In **Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353**, the Hon'ble Supreme Court has held that "*an application under Section 9 of the Code is not maintainable and ought to be rejected on there being a "pre-existing dispute"*". The Hon'ble Supreme Court had held that "*so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the application*". Therefore, to admit or reject this application, it is pertinent to adjudicate upon

the issue as to whether there exists any 'Pre-Existing Dispute' as claimed by the Corporate Debtor.

15. On going through the records, it is observed that the Corporate Debtor had sent several emails to the Operational Creditor making the acknowledgement of the debt claimed by the Operational Creditor. Furthermore, the Corporate Debtor had not raised any dispute in respect of the alleged debt in the acknowledgement-emails, before receipt of the statutory demand notice and rather, raised it for the first time in its reply dated 17.18.2019. It is also observed that the fact as to the ongoing arbitration proceeding between DHS and Wizaman Impex Pvt. Ltd. was mentioned by the Operational Creditor only in its demand notice and has not been raised by the Corporate Debtor. Furthermore, on the appreciation of documents placed before us, we are of the view that any such dispute as claimed by the Corporate Debtor exists solely between the DHS and Wizaman Impex Pvt. Ltd. and such a dispute has no relation to the invoices raised by the Operational Creditor. Had the Corporate Debtor been having any dispute as to the claim of the Operational Creditor, there would have been no acknowledgement of debt on the part of the Corporate Debtor, that too, on multiple occasions. However, there was no payment of such debts acknowledged by the Corporate Debtor and hence, it constitutes 'default' on the part of the Corporate Debtor.

16. It is also observed that the Operational Creditor had issued a credit memo worth USD 3,60,000 as compensation towards the Corporate Debtor with regard to the claim of the DHS. Hence, the Corporate Debtor's defence as to quantum of debt does not hold any valid ground. Additionally, the Corporate Debtor had not enclosed any relevant document in support of its claim as to the existence of a 'Pre-Existing Dispute' between the Operational Creditor and the Corporate Debtor. Furthermore, there is no proof attached by the Corporate Debtor which shows that there had been payment of 'Operational Debt' to the Operational Creditor. We are of the view that mere sending of notice as to the

existence of a dispute, without any substantiating document in the said regard, is a mere contention and cannot be acted upon. Therefore, the defence of the Corporate Debtor does not substantiate any plausible ground for rejecting the instant application. Hence, the defence of the Corporate Debtor appears to be moonshine.

17. It is further observed that apart from the issue of 'Pre-existing Dispute', the Corporate Debtor has also raised dispute as to the admissibility of the documents that is placed before this AA. Firstly, the Corporate Debtor claims that the acknowledgement emails that are sent by the Corporate Debtor and mentioned by the Operational Creditor must be 'signed' as per the provisions of Section 18 of the Limitation Act, 1963, however, the same are not signed and therefore, cannot be used in evidence. To decide upon this issue, reference is taken from the decision of the Hon'ble High Court of Karnataka in the case of **Sudarshan Cargo Pvt. Ltd. V. Techvac Engineering Pvt. Ltd., ILR 2013 KAR 3941**, wherein, it was held by the Hon'ble High Court that "*E-mails acknowledging the debt constitute a valid and legal acknowledgement of debt though not signed as required under section 18 of the Limitation Act, by virtue of the provisions of the Information Technology Act, 2000*". Therefore, this defence of the Corporate Debtor does not hold any ground.

Secondly, the Corporate Debtor claims that the emails were privileged emails as they were marked with 'without prejudice' i.e., such emails were meant only for the purpose of "genuine attempt to compromise a dispute between the parties". However, such a contention was rejected by the Hon'ble Supreme Court in the case of **ITC Limited V. Blue Coast Hotels Ltd. (2018) 15 SCC 99**, wherein, the Hon'ble Supreme Court has held as under:

*"35. Much was sought to be made of the words "without prejudice" in the letter containing the undertaking that if the debt was not paid, the creditor could take over the secured assets. **The submission on behalf of the debtor that the letter of***

*undertaking was given in the course of negotiations and cannot be held to be evidence of the acknowledgement of liability of the debtor, apart from being untenable in law, reiterates the attempt to evade liability and must be rejected. The submission that the letter was written without prejudice to the legal rights and remedies available under any law and therefore the acknowledgement or the undertaking has no legal effect must likewise be rejected. This letter is reminiscent of a letter that fell for consideration in Spencer's case as pointed out by Mr. Harish Salve, "as a rule the debtor who writes such letters has no intention to bind himself further than is bound already, no intention of paying so long as he can avoid payment, and nothing before his mind but a desire, somehow or other, to gain time and avert pressure."*

On the perusal of the additional documents placed on record by the Operational Creditor vide affidavit dated 01.03.2022, we are of the view that 'without prejudice' email communications took place between the parties, whereby, settlement talks took place between the Operational Creditor and the Corporate Debtor. However, based on the decision of the Hon'ble Supreme Court in **Blue Coast Hotels Limited (supra)**, we are of the view that mere 'without prejudice' nature of the emails would not entitle the Corporate Debtor to evade from the liability. However, the same shall not be read in isolation and the other ingredients i.e., the 'debt' and the 'default' shall be taken into consideration.

Thirdly, the Corporate Debtor claims that there was no proper stamp duty on the Power of Attorney on the basis of which the Operational Creditor is acting upon. At this juncture, it is pertinent to refer to the decision of the Hon'ble NCLAT in the case of **Ashique Ponnamm Parambath Vs. The Federal Bank Limited [CA (AT) (CH) (Ins.) No. 22 of 2021]**, wherein, the Hon'ble NCLAT has held that where there exists other material to prove the 'debt' and 'default',

then insufficiency of the stamp is immaterial. The relevant extract is reproduced hereunder as:

*“Even if it is considered that the Term Loan Agreement is insufficiently stamped and it can’t be accepted in evidence, then also alleged debt and default are proved beyond doubt. The application filed under Section 7 is complete.”*

Further, it is observed that the Power of Attorney has to be in accordance with the law of the country where it was executed. In the present case, the Power of Attorney was executed in US. Therefore, it has to be executed in accordance with the laws of the US. Moreover, the burden of proving that the Power of Attorney was not executed in accordance with the laws of the US lies on the Corporate Debtor, however, the Corporate Debtor failed in producing any such document that disputes the genuineness of the Power of Attorney executed in favour of the Special Power of Attorney-Holder and therefore, such Power of Attorney is considered to be a valid document. Hence, the contention of the Corporate Debtor that the Operational Creditor is relying upon the insufficiently stamped Power of Attorney does not hold any ground.

18. It is pertinent here to refer to the decision of Hon’ble Supreme Court in **Re. Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd (2018) 1 SCC 353**, wherein, the Hon’ble Supreme Court was pleased to hold, inter alia, as follows:

*“24. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand notice or copy of invoice, **the corporate debtor must***

**bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.....**

*40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

In the present case, arbitration proceedings are pending in between the Corporate Debtor and the DHS and there does not exist any suit or arbitration proceeding pending between the Operational Creditor and the Corporate Debtor. Therefore, the claim of the Corporate Debtor as to the existence of the Pre-existing Dispute is a mere contention which does not create a plausible belief as to existence of any ‘Pre-existing dispute’ between the Operational Creditor and the Corporate Debtor more particularly in the face of tendering multiple acknowledgements of debt by the Corporate Debtor sans any whisper about any dispute between them. Therefore, it would be safe to conclude that there does not exist any ‘Pre-existing dispute’ in the present case.

19. Therefore, in view of the transactional invoices and other documents placed before us, by both the parties, we are satisfied that there exists an 'Operational Debt' and that the Corporate Debtor has defaulted in the payment of such debt. Hence, we are of the view that there is a *debt due and payable* and that there has been *default* on the part of the Corporate Debtor.

20. In view of the above facts and circumstances, we are satisfied that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of Section 9(5) of the Insolvency and Bankruptcy Code. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. In the light of the above facts and circumstances, it is, hereby ordered as follows: -

- a) The application bearing **CP (IB) No. 841/ND/2020** filed by, **M/s. Kedrion Biopharma Inc.**, the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s. Wizaman Impex Pvt. Ltd.**, the Corporate Debtor, stands **admitted**.
- b) The Applicant has not proposed the name of any IRP in Part-III of the application and leaves it at the discretion of this Adjudicating Authority. Therefore, Mr. Vijay Kishore Saxena, Registration Number IBBI/IPA-001/IP-P01766/2019-2020/12708, Email: vksaxena2159@gmail.com included in the list of Insolvency Professionals approved by IBBI for the period January 01- June 30,2024 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to submission of his consent in Form AA with disclosure and a valid Authorization of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India

(Insolvency Professional) Regulations, 2016. It is pertinent to mention that the IRP has a valid AFA.

- c) We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Vijay Kishore Saxena, to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
- d) 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.”*

*(e)The IB Code 2016 also prohibits Suspension or termination of any 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, 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, concessions, clearances or a similar grant or right during the moratorium period.”*

- e) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the 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.
- f) 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 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’.
- g) 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 its 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.

- h) A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

**Sd/-**  
**(DR. SANJEEV RANJAN)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**