S.No.101

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **15-02-2022** AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

CP(IB) No.239/9/HDB/2017
U/s 9 of IBC, 2016

IN THE MATTER OF:

Mylan Laboratories Ltd ...**Operational Creditor**

Vs

Chiral Bio Sciences Ltd ...**Corporate Debtor**

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Learned Counsel for the operational creditor Mrs Kajal, appeared via video conference.
Learned counsel for the corporate debtor Shri Ramesh Babu, appeared via video conference.
Settlement is not reported.
Therefore orders pronounced vide separate sheets.
In the result CP No.239/9/HDB/2017, is allowed and the respondent is admitted into CIRP as per the conditions mentioned in the order.

MEMBER (T) **MEMBER (J)**

Pavani

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I

CP (IB) No. 239/9/HDB/2017

[U/s. 9 of I&B Code, 2016 r/w Rule 6 of I & B (AAA) Rules, 2016]

In the matter of:

M/s. Mylan Laboratories Limited
Having its Registered Office at
Plot No.564/A/22, Road No.92
Jubilee Hills, Hyderabad – 500 034

…Petitioner/Operational Creditor

Vs.

M/s. Chiral Bio Sciences Limited
Plot No.184 & 185, Phase-II
IDA Mallapur, Hyderabad – 500 076

… Respondent/ Corporate Debtor

Date of Order: 15.02.2022

Coram:

Hon'ble Dr.Venkata Rama Krishna Badarinath Nandula, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties / Counsels Present:

For the Petitioner : Ms. Shireen Sethna Baria, Ms. B. Saroj, Ms. Kajal Kumari Jaiswal, Advocates.

For the Respondent : Mr. G.Bhupesh, Mr. S. Nagesh Reddy, Mr. P. Ramesh Babu, Mr. R.S.Sravan Kumar Advocates

Date of Order: 15.02.2022

PER : BENCH

ORDER

I. This is a Petition filed by the Operational Creditor under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the application, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon against the Corporate Debtor, alleging that the Corporate Debtor had failed in discharging the debt amount of Rs.2,06,40,794.07/- (Rupees Two Crores Six Lakhs Forty Thousand Seven Hundred Ninety Four and paise seven only) which includes Principal amount of Rs.1,15,77,479.07/- and interest @ 18% p.a. from 14.10.2012 to till the date of filing the application i.e. 15.05.2017 of Rs.95,63,315/-, and after deducting the part payment of Rs.5,00,000/- received from the Corporate Debtor, vide Banker's Cheque dated 27.03.2015.

II. M/s. Mylan Laboratories Limited, hereinafter referred to as 'Petitioner/Operational Creditor' is engaged in the business of manufacture of bulk drugs and drug intermediaries. M/s. Chiral Bio Sciences Limited, hereinafter referred to as 'Respondent/Corporate Debtor' approached the Operational Creditor and placed a Purchase Order for supply of 5612 kgs of 4-CHLORO-2-TRIFLLORO ACETYL ANILINE HCL – Hydrate on 28.07.2012, which was subsequently amended and issued by the Corporate Debtor on 02.08.2012 that was filed as Annexure-3 at page 14 of the application. In terms of the amended Purchase Order, Operational Creditor supplied the material as per the specifications mentioned in the Purchase Order and raised an Invoice No.7512101241, dated 14.08.2012 for an amount of Rs.1,15,77,479.07. A copy of the same is filed as Annexure-4 at page nos.15 to 16 of the application, which is inclusive of applicable taxes & duties.

III. As per the amended purchase order, the Invoice amount is payable within 60 days from the date of Invoice i.e. on or before 13.10.2012. Despite receipt of material, the Corporate Debtor failed and neglected to pay the outstanding amount. The Corporate Debtor, vide its letter dated 23.04.2013 admitted the liability towards its debt of Rs.1,15,77,479.07 and acknowledged its inability to pay the outstanding amount by giving various reasons.

IV. When the said amount was not paid, the Operational Creditor issued a Statutory Notice under Section 433 & 434 of the Companies Act, 1956 calling upon to pay the admitted debt of Rs.1,15,77,479.07 along with interest. The Corporate Debtor vide its reply letter dated 23.10.2013 admitted its liability towards the debt amount and inability to pay the same. A copy of the same is filed as Annexure-7 at page 21 of the application.

V. The Operational Creditor filed a Company Petition C.P.No.216 of 2014 against the Corporate Debtor before the Hon'ble High Court, Hyderabad, which was admitted by the Hon'ble High Court on 20.11.2014 and deferred the paper publication. Thereafter, negotiations were held between both the parties. The Corporate Debtor made an offer for repaying the entire principal amount of Rs.1,15,77,479.07 in eight instalments. First instalment of

Rs.5,00,000/- was paid by way of Banker's Cheque dated 27.03.2015 and handed over seven post-dated cheques towards the remaining instalments, which are detailed below:

Sl.No.	Post-dated Cheque No. & Date	Amount
1.	242358 / 30.04.2015	10,00,000/-
2.	242352 / 31.05.2015	15,00,000/-
3.	242353 / 30.06.2015	15,00,000/-
4.	242356 / 30.09.2015	10,77,479/-
5.	242354 / 31.07.2015	20,00,000/-
6.	242359 / 31.10.2015	20,00,000/-
7.	242355 / 31.08.2015	20,00,000/-

A copy of the letter dated 17.03.2015 enclosing the copies of the above post-dated cheques are filed as Annexure-9 at page nos. 28 to 31 of the application.

VI. In the light of the above settlement, the Operational Creditor filed a C.A.No.564 of 2015 for withdrawal of CP and the same was allowed and consequently CP No.216 of 2014 has been dismissed as withdrawn, with liberty to the petitioner in terms of the prayer made.

VII. Subsequently, when the operational presented the said cheques the same were not honoured stating that, "the amount stated in the post-dated cheques is higher than the value inscribed on the cheque(s) "Not over Rs.10,00,000/- ".

As the due amount was not paid by the Corporate Debtor despite continuous follow up, the Operational Creditor got issued the Demand Notice dated 19.05.2017 in Form-3, demanding the Corporate Debtor to pay the total outstanding debt amount of Rs.2,06,40,794.07. Since the demand notice, did not evoke any response from the Respondent, the Operational Creditor has filed the present Company Petition for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

VIII. While it was so, during the hearing on 19.12.2017, Learned Counsel for Petitioner filed a Joint Memo dated 19.12.2017 stating that discussions held between both the parties and the Corporate Debtor agreed to pay the Principal amount of Rs.1,10,77,479/- (Rupees One Crore Ten Lakhs Seventy Seven Thousand Four Hundred and Seventy Nine only) as full and final settlement towards the operational debt, vide its letter dated 18.12.2017 and issued two demand drafts of Rs.2,50,000/- each as an initial payment and offered to make the balance payment of Rs.1,05,77,479/- in 12 instalments and handed over 12 post-dated cheques, as detailed below:

S.No.	12 months schedule	Post Dated Cheque No.	Amount (Rs.)
1.	10th January, 2018	400246	4,23,123.25
2.	10th February, 2018	400247	9,23,123.25
3.	10th March, 2018	400248	9,23,123.25
4.	10th April, 2018	400249	9,23,123.25
5.	10th May, 2018	400250	9,23,123.25
6.	10th June, 2018	400251	9,23,123.25

7.	10th July, 2018	400252	9,23,123.25
8.	10th August, 2018	400253	9,23,123.25
9.	10th September, 2018	400254	9,23,123.25
10.	10th October, 2018	400255	9,23,123.25
11.	10th November, 2018	400256	9,23,123.25
12.	10th December, 2018	400257	9,23,123.25

IX. In view of the above settlement, the Company Petition CP(IB) No.239/9/HDB/2017 has been once again disposed of as withdrawn by directing the Corporate Debtor to strictly adhere with the terms and conditions as mentioned in the said Joint Memo dated 19.12.2017 without any deviation and granting liberty to the Petitioner to file Miscellaneous Application, in case, if any, deviation is taken place.

X. In the above back drop, the Operational Creditor was once again constrained to file IA No.687/2018 for revival of CP(IB) No.239/9/HDB/2017, as the Corporate Debtor breached the terms of Joint Memo dated 19.12.2017, as only one single instalment due of Rs.4,23,123.25 payable in the month of January was paid in the month of March, 2018.

XI. While it was so, on 02.05.2019, when IA No.687/2018 came up for hearing, Learned Counsel for Corporate Debtor stated that "the parties are going to settle the matter. They have already paid Rs.19.5 lakhs and today they have paid another Rs.5.00 lakhs and time prayed for filing Memo of Settlement". Again, on 05.08.2019 the Learned Counsel for Corporate Debtor reported the Tribunal that he has handed over DDs for an amount of Rs.22 lakhs to the

Learned Counsel for Operational Creditor towards part payment in connection with the settlement already reached and further requested time. However, no payment has been made by the Corporate Debtor. This Tribunal, on 22.10.2019, allowed IA No.687/2018. Thus, the above Company Petition CP(IB) No.239/9/HDB/2017 has been revived.

XII. In the above undeniable factual backdrop, where Form-3 demand notice dated 19/05/2017 issued by the Operational Creditor demanding the Corporate Debtor to pay the total outstanding debt amount of Rs.2,06,40,794.07 has not been responded despite receipt, coupled with the undisputed fact of glaring breach of the terms of the two settlements dated 17.03.2015 and 19.12.2017 where under the Corporate Debtor has unconditionally accepted to discharge the operational debt of the Operational Creditor herein in parts, unlike in other matters filed under section 9 of I&B Code, enquiry as to the existence of an operational debt and its default by the Corporate Debtor in the case on hand since admitted , is unwarranted and unnecessary.

XIII. Nevertheless, we have heard the Learned Counsel for Operational Creditor and Learned Counsel for Corporate Debtor. The Operational Creditor has filed various documents in proof of claim and default. The demand notice is shown at page nos. 36 to 41 of the petition. The demand notice was served on Corporate Debtor and received by them. The case of the Operational Creditor is that it had supplied 5612 kgs of 4-CHLORO-2-TRIFLLORO ACETYL ANILINE HCL – Hydrate to the Corporate Debtor. The Tax Invoice is shown as Annexure-4 at page nos. 14 to 15 of the petition.

According to the Operational Creditor, the following payments were made by the Corporate Debtor during the pendency of this company petition.

Payments made by Chiral Bio Sciences Limited / Corporate Debtor			
Principal Outstanding amount		Rs.1,15,77,479.07	
Interest (Interest @ 18% per annum from 14.10.2012 till the date of filing this application i.e. 15.05.2017 for 1675 days		Rs.95,63,315/-	
Total outstanding		Rs.2,11,40,794.07	
S.No.	Date of Payment	Amount Rs.	Total Outstanding
1.	27.03.2015	5,00,000/-	2,06,40,794/-
2.	18.12.2017	2,50,000/-	2,03,90,794/-
3.	18.12.2017	2,50,000/-	2,01,40,794/-
4.	02.03.2018	4,23,125.25	1,97,17,669/-
5.	25.03.2019	2,00,000/-	1,95,17,669/-
6.	15.04.2019	2,50,000/-	1,92,67,669/-
7.	02.05.2019	5,00,000/-	1,87,67,669/-
8.	01.06.2019	7,00,000/-	1,80,67,669/-
9.	05.08.2019	22,00,000/-	1,58,67,669/-
10.	02.01.2020	5,00,000/-	1,53,67,669/-
	Total amount paid	**57,73,125.25**	
Total outstanding payable			**1,53,67,669/-**

XIV. An analysis of the Counter filed by the Corporate Debtor indicates that it has raised dispute with regard to the defective material after 7 years of material supplied. In response to the legal notice dated 16.09.2013, the Corporate Debtor in their reply letter dated 23.10.2013 has not raised any objection except requesting some more time to clear the dues.

XV. It is pertinent to note that even in the proceedings before the Hon'ble High Court in the company petition or at the time of compromising the matter with the Operational Creditor, the Corporate Debtor has never raised any dispute in regard to defective material. Thus, this is not a matter where existence of a pre-existing dispute is pleaded.

XVI. Hon'ble Supreme Court of India in re, Mobilox Innovations Private Limited, held that;

"Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine: (i) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act) (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and (iii) 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?"

"If any one of the aforesaid conditions is lacking, the application would have to be rejected." (Emphasis is ours).

XVII. Therefore, in view of our discussion as afore stated, and upon considering the submissions made by the Ld. Counsels for the Petitioner and the Respondent, we are of the firm view that this petition deserves to be admitted. Accordingly, the petition is admitted.

XVIII. The Operational Creditor has not named anyone as Interim Resolution Professional (IRP) and has requested this Adjudicating Authority to appoint one for the Insolvency Resolution Professionals as IRP. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period from January 1, 2022 to June 30, 2022 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr. Sudhir Gonugunta, having Registration No. IBBI/IPA-001/IP-P00573/2017-18/11014, e-mail: sudhirca123@gmail.com as Interim Resolution Professional. As per the IBBI website, his AFA is valid upto 15.11.2022. The aforesaid IRP has no disciplinary proceedings pending against him. He shall file his written communication and all relevant papers immediately before the Registrar of this Adjudicating Authority but not later than three days.

XIX. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with the following directions: -

i. The Bench hereby prohibits 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; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

ii. Notwithstanding anything contained in any other law for the time being in force, a 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, 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

iii. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

iv. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

v. That the order of moratorium shall have effect from the date of this Order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

vi. The Petitioner is directed to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional within three days from the date of this Order to meet out the expenses and his fee to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The initial expenditure incurred by IRP shall, however, be subject to the approval by the Committee of Creditors, in its first meeting.

vii. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

viii. Accordingly, this Petition is admitted.

ix. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.

15/2/2022

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

Dr.N.V.RAMA KRISHNA BADARINATH
MEMBER (JUDICIAL)

Syamala