



S.No.10

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
07-11-2023 AT 10:30 AM**

Company Petition IB/191/2021
u/s. 9 of IBC, 2016

IN THE MATTER OF:

Kalidindi Venkateswara Raju

...Operational Creditor

VS

Hemarus Therapeutics Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. In the result, the **CP/191/2021 is admitted** and Corporate Debtor is put under CIRP. Interim moratorium is ordered. Shri M. Ramana Reddy, IP is appointed as Interim Resolution Professional.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH-1

CP (IB) No.191/9/HDB/2021

Under Section 7 of the Insolvency and Bankruptcy Code,
2016 read with Rule 4 of Insolvency and Bankruptcy
(Application to Adjudicating Authority Rules), 2016.

In the matter of:

Kalididni Venkateswara Raju

204, E Venue Apartments
Road No.14, Banjara Hills
Hyderabad – 500034
Telangana.

**.. Petitioner
Operational Creditor**

VERSUS

Hemarus Therapeutics Limited

CIN: U74220TG2003PLC041698
Sy No.222P, Thurkapally Village
Shameerpet Mandal
Rangareddy
Telangana – 500078.

**.. Respondent
Corporate Debtor**

Date of Order: 07.11.2023

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH,
HON'BLE MEMBER (TECHNICAL)**



CP IB No.191/9/HDB/2021.
Date of order: 07.11.2023

Parties/Counsels present:

For applicant: Shri Y. Suryanarayana, Advocate
with Shri Sachin Sharma, Advocate.

For respondent: Shri Bikki Raveendra Babu, Sr.Counsel
Advocate assisted by Shri D.V.K.Phanindra, PCS
And Shri K. Dheeraj, Advocate.

PER BENCH

This Application is filed by Kalidindi Venkateswara Raju (hereinafter referred as ‘Operational Creditor’) under Section 9 of Insolvency and Bankruptcy Code (Hereinafter to be referred as “IBC”), read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (hereinafter referred as ‘CIRP’) against Hemarus Therapeutics Limited (hereinafter referred as ‘Corporate Debtor’), alleging that an amount of **Rs.1,49,75,000/-**, as per confirmation dated 11.01.2018 confirming the accounts for the period from 01.04.2015 to 10.01.2018, is payable by the Corporate Debtor to the Operational Creditor.



2. Averments made in the petition.

2.1 The applicant is residing at the address mentioned in Part-I of the petition. The Corporate Debtor is a company registered with RoC, Telangana having CIN: U74220TG2003PLC041698. It is incorporated on 16.09.2003.

2.2 It is submitted that the said default had occurred against Employment Agreement wherein the Operational Creditor was appointed as Executive Director/ Chief Operating Officer of the Corporate Debtor vide Appointment Letter dated 04.10.2014 (ANNEXURE-2). By the said Appointment Letter, the Operational Creditor was entitled to a monthly remuneration of Rs.5,00,000/- (including basic plus allowances). However, after deduction of TDS, the Operational Creditor was entitled to remuneration of Rs.4,50,000/- per month. The Corporate Debtor did not pay remuneration to the Operational Creditor from March 2015 to January 2018. Out of Rs.1,75,50,000/- for the period from October 2014 to December 2017, the Corporate Debtor paid only Rs.25,75,000/-. Thus, balance amount payable by the Corporate Debtor to the Operational Creditor is Rs.1,49,75,000/-.

2.3 The Operational Creditor in the capacity of Executive Director had performed all his duties as stated in the Appointment Letter meticulously despite non-receipt of salary.



2.4 The Operational Creditor had sent e-mail communications, WhatsApp messages, held several discussions over phone with late Dr. Jayaram Chigurupati, Managing Director of the Corporate Debtor requesting for payment of the said balance amount payable by the Corporate Debtor to the Operational Creditor, but in vain. One such e-mail dated 02.02.2018 is annexed as ANNEXURE-4.

However, late Dr. Jayaram Chigurupati, Managing Director of the Corporate Debtor has handed over 9 post-dated cheques to the applicant herein for a total amount of Rs.1,49,00,000/-. Copies of 9 post-dated cheques are enclosed as ANNEXURE-5. Details are as under:

Cheque No.	Date of cheque	Amount Rs.
530126	10.02.2019	11,00,000
530129	10.03.2019	11,00,000
530131	10.04.2019	11,00,000
530122	10.05.2019	11,00,000
530118	10.06.2019	21,00,000
530119	10.07.2019	21,00,000
530120	10.08.2019	21,00,000
530121	10.09.2019	21,00,000
530124	10.10.2019	21,00,000
TOTAL		1,49,00,000



The said cheques were not presented at the request of the authorised representative of the Corporate Debtor and on assurance that the said amount will be paid by the Corporate Debtor.

2.5 The Corporate Debtor had sent Confirmation of Accounts to the Operational Creditor mentioning details of the amounts payable by the Corporate Debtor to the Operational Creditor from October 2014 to January 2019. A copy of said Confirmation of Accounts dated 01.04.2015 is annexed as ANNEXURE-6. As per confirmation dated 11.01.2018 confirming the accounts for the period from 01.04.2015 to 10.01.2018, the closing balance is Rs.1,49,75,000/-, viz. the amounts payable by the Corporate Debtor to the Operational Creditor is Rs.1,49,75,000/-.

2.6 Even Form 26AS Certificate (ANNEXURE-3) evidences that the Corporate Debtor had deducted and deposited an amount of Rs.50,000/- every month as TDS. The Corporate Debtor did not make payment of salary to the Operational Creditor but has deducted TDS every month.

2.7 The applicant has issued Demand Notice dated 21.04.2021 to the Corporate Debtor demanding outstanding payment. Copy of said Demand Notice dated 21.04.2021 along with consignment Status reflecting the date on which Demand Notice was delivered is at ANNEXURE-7. Vide reply



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letter dated 29.04.2021 (ANNEXURE-8) has challenged authenticity of the cheques issued by late Dr. Jayaram Chigurupati. The Corporate Debtor though tried to establish that there was a pre-existing dispute could prove the same. A copy of the working of amounts payable by the Corporate Debtor to the Operational Creditor is annexed as ANNEXURE-9. Copy of Statement of Bank Account of the Operational Creditor where deposits were made or credits are received is at ANNEXURE-10.

3. COUNTER DATED 10.11.2021 FILED BY THE RESPONDENT.

Shri DVK Phanindra, PCS has represented on behalf of the Corporate Debtor duly authorised by Resolution passed by Board of Directors (ANNEXURE-1 of this Counter), contending the following.

3.1 The claim of the petitioner is that he was employed by the Corporate Debtor as Executive Director/ Chief Operating Debtor vide Appointment Letter dated 04.10.2014, during the period from 01.10.2014 to 31.12.2017. His further claim is that he was not paid remuneration/ salary for the period from March 2015 to January 2018 and that balance amount payable by the Corporate Debtor to the Operational Creditor is Rs.1,49,75,000/-.



About post-dated cheques:

3.2 The respondent stated that cheques signed by Dr. Jayaram Chigurupati, the then Managing Director of the company, he had expired on 30.01.2019. It was a plan of the petitioner to extort money, by using the cheques signed by late Dr. Jayaram Chigurupati. The Corporate Debtor in its reply dated 29.04.2021 has questioned authenticity of the said post-dated cheques, since the person, who issued the cheques is no more.

Allegation :

Cheques were not presented at the request of the authorised representative of the Corporate Debtor and on assurance that the said amount will be paid by the Corporate Debtor.

Respondent's answer to the said allegation:

3.3 The respondent refuted the said statement as false, baseless and far from truth. The respondent contended that if payment in question is not dispute the petitioner ought to have encashed money. Failure to do so shows he is not entitled to the same.

Present petition u/s 9 of IBC.

3.4 The respondent contended in para 8 of the Counter that the present proceeding is intended to defame the Corporate Debtor. Statements made in



this petition are fabricated, deceitful. On the contrary, due to improper discharge of duties, the Corporate Debtor had incurred huge financial loss as explained hereunder:

(a) As in-charge of sales and operations of the company, the petitioner has neither charged tax nor collected the same from customers on their interstate sales. As a result, the Sales Tax Department levied an amount of Rs.3,26 crores.

(b) The company is registered as EOU entity. The Corporate Debtor imported machinery and raw material seeking exemption of import duty of around Rs.7 crores and 39 lacs respectively. The Corporate Debtor has to fulfil export obligation by exporting. As Chief Operating Officer, the petitioner has failed in discharging his designated duties.

**4. THE PETITIONER HAS FILED REJOINDER DATED 09.12.2021
CONTENDING THAT:**

4.1 The Corporate Debtor failed to produce any document in support of its contention that there was a pre-existing dispute before issuance of Demand Notice u/s 8 of the IBC, 2016. Such a defence of the Corporate



Debtor is ill-founded, intended to evade liability of the amount payable.

Contentions of the Corporate Debtor are *suppressio veri suggestio falsi*.

4.2 Answering para 3 of the Counter the petitioner states that the petitioner was appointed as Executive Director/ Chief Operating Officer vide Appointment Letter dated 04.10.2014 and move out from the Corporate Debtor on 10.01.2018 after receiving commitment message to pay the accounted dues from the Managing Director. Term of appointment of the petitioner in the Corporate Debtor was from 04.10.2014 to 10.01.2018.

4.3 As regards post-dated cheques, the Corporate Debtor is taking shelter in death of the erstwhile MD, late Dr. Jayaram Chigurupati to avoid payment liability. Post-dated cheques were signed by late Dr. Jayaram Chigurupati on 10.01.2019 during his life time, in his office, in pursuance of terms of settlement agreed on 08.01.2019, in presence of Eswar Chandra Rao at the residence of late Dr. Jayaram Chigurupati.

4.4 Answering para 7 of the Counter the petitioner states that the Operational Creditor did not deposit the post-dated cheques in good faith and on assurance given by the authorised representative of the Corporate Debtor, Shri Eswar Chandra Rao. Assurance was given by the authorised representative that the entire payment of the Operational Creditor shall be



released and the Operational Creditor accordingly on humane consideration in mourning period, did not deposit the post-dated cheques.

4.5 Answering para 8 of the Counter the petitioner states that before issuance of the Demand Notice dated 21.04.2021 issued by the Operational Creditor, the Corporate Debtor never raised any dispute qua services provided by the Operational Creditor. It was only after receiving Demand Notice dated 21.04.2021 the Corporate Debtor has levelled allegations that the petitioner did not discharge his obligations.

4.6 Answering para 8(a) of the Counter the petitioner states that it was only the MD who was responsible and in-charge of sales and distribution of the Corporate Debtor. Therefore, it was incorrect to say that the Operational Creditor neither charge tax nor collected it from customers based on which Sales Tax Department has levied an amount of Rs.3.26 crores. The petitioner submits that the petitioner has diligently performed his duties.

4.7 Answering para 8(b) of the Counter the petitioner states that it was only the MD who was responsible and in-charge of procurement of purchase orders to fulfil export obligations and sale of the Corporate Debtor. Whereas, the petitioner was responsible for overall technical manufacturing and maintenance operations.



4.8 The petitioner submitted that the petitioner has provided all the necessary documents/ information to substantiate and establish that there is a lawful operational debt due to the petitioner which is not paid and outstanding by the Corporate Debtor. There is an unpaid 'operations debt' as defined exceeding Rs.1 crore, there is sufficient documentary evidence furnished by the Operational Creditor showing that the debt is due and that there is a default and there is no pre-existing dispute between the parties.

**5. THE PETITIONER HAS FILED WRITTEN SUBMISSIONS
DATED 13.07.2023.**

5.1 Perused the Written Submissions. The same is reiteration of what has been stated in the petition and rejoinder. The petitioner has relied on the following documents in support of his claim that there exists a debt payable by the Corporate Debtor:

Sl. No.	List of documents	Page number of the petition.
1.	Appointment letter dated 04.10.2014	20
2.	E-mail dated 02.02.2018 sent by Operational Creditor to the Corporate Debtor.	35
3.	Nine post-dated cheques issued by late Dr. Jayaram Chigurupati to the Operational Creditor.	37
4.	Confirmation of accounts received by the Operational Creditor from the Corporate Debtor.	46



5.	26AS Certificate for the AY 2015-16, 2016-17 and 2017-18.	23
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5.2 Besides, the petitioner has relied on the following decisions.

- Cerestra Advisors Pvt Ltd Vs. MN Takshila Industries Pvt Ltd. 2020 SCC OnLine NCLT 1440 passed by NCLT, Hyderabad. (para 38). A copy of the order is placed at page 7 of this Written Submission.
- Order dated 18.04.2022 in IA (IBC) No.683 of 2021 in CP IB No.747/7/HDB/ 2019, in the matter of Tagros Chemicals India Pvt Ltd Vs. Rep by Resolution Professional Mr. TSN Raja, IRP, Rajvir Industries Ltd. A copy of the order is at page 23 of the Written Submission.

**6. CORPORATE DEBTOR FILED WRITTEN SUBMISSION
DATED 24.07.2023, CONTENDING THAT:**

6.1 The petition is filed by the petitioner claiming arrears of salary amounting to Rs.1,49,75,000/- from March 2015 to January 2018, on 28.07.2021, which is beyond the period of three years. Hence the petition is barred by limitation.

6.2 The petitioner stated that nine post-dated cheques were handed over to the petitioner by late Dr. Chigurupati Jayaram, but he has not disclosed on what date. Admittedly, late Dr. Chigurupati Jayaram expired on 30.01.2019.



It is also true that the Operational Creditor was working as Chief Operating Officer in the Corporate Debtor company and had control over the Cheque Books of late Dr. Chigurupati Jayaram. In view of the fact that the said cheques were not in serial order against the dates mentioned on the cheques, it clearly shows that the above said cheques were brought into existence by the Operational Creditor after death of late Dr. Chigurupati Jayaram.

6.3 It is further contended that either post-dated cheque or any cheque is not a valid cheque for presentation after death of drawer of the cheque. In this case late Dr. Chigurupati Jayaram died on 30.01.2019 and the same was intimated to the Banker of the company. Therefore, the Operational Creditor cannot validly present the above said post-dated cheques for collection after death of the drawer, late Dr. Chigurupati Jayaram. Hence the claim based on post-dated cheques said to have been issued by late Dr. Chigurupati Jayaram cannot be treated as debt, more so as operational debt.

6.4 It is further submitted that the Operational Creditor has filed CP No.23/ 241/ HDB/ 2021 under sections 241 and 242 of the Companies Act against the Corporate Debtor on 22.03.2021. Thereafter, on 28.07.2021, the Operational Creditor has filed this petition. It clearly speaks that the Operational Creditor, on one hand questioning the actions of the



management claiming as a shareholder/ member of the company and on the other hand claiming as creditor requesting this Tribunal to commence CIRP in respect of the Corporate Debtor.

7. During the course of submissions, learned counsel for the corporate debtor fairly submitted that the corporate debtor is resisting the present Company petition only on the ground of limitation and burden is on the petitioner to establish that the claim under the petition is not barred by limitation.
8. In the light of the same, the only point that emerges for our consideration is

Whether the operational debt which is due and payable by the respondent to the petitioner is barred by limitation? If so, whether the Application is maintainable?

9. We have heard Learned Counsel Shri Y.Suryanarayana, for the petitioner and Learned Counsel Shri Bikki Ravindra Babu, for the respondent. Perused the records and documents filed.
10. Shri Y.Suryanarayana, Learned Counsel for the operational creditor submits that the corporate debtor had sent the letter of, “Confirmation of Accounts” dated 11.01.2018, relating to the period of 01.04.2015 to 10.01.2018, whereby it un equivocally confirmed/acknowledged that a



sum of Rs. 1,49,75,000/- as outstanding, due and payable by the corporate debtor to the operational creditor. A copy of the same has been filed at page no. 48 of the Company Petition. Therefore, according to the learned counsel in terms of Section 18 of limitation Act, period of limitation got extended by 3 years effective from 11.01.2018.

11. Learned counsel further submits that though the present Company Petition in the normal course was required to be filed before 21.03.2020, in the light of the order of Hon'ble Supreme Court of India, in re, Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021, wherein the provision of limitation Act, have been suspended from 15.03.2020 till 28.02.2022, the present Company Petition which has been e-filed on 29.07.2021, is well within limitation.
12. Shri Bikki Raveendra Babu, Learned Counsel representing the corporate debtor while contending that the operational debt claimed as due and payable by the operational creditor is hopelessly barred by the limitation, and submits that the claim of the operational creditor is based on 9 post-dated cheques which have been issued by Shri Chigurupati Jayaram, does not disclose the date on which the said Chigurupati



Jayaram, has handed over the cheques to the operational creditor. According to the learned counsel the death of Chigurupati Jayaram, which occurred on 30.01.2019 is not in dispute. Learned Counsel further submits that the cheques are not in serial order and dates mentioned in the cheques clearly shows that the above cheques were brought into existence by the operational creditor after the death of Chigurupati Jayaram.

13. Learned Counsel further states that the death of Chigurupati Jayaram, has been intimated to the banker of the Company, during which the operational creditor cannot validly, present the post-dated cheques between 10.02.2019 to 10.10.2019 for collection. Hence, the present claim based on the post-dated cheques said to have been issued cannot be treated as debt, besides barred by limitation. Hence the petition is liable to be dismissed.
14. Learned Counsel for operational creditor during his submissions had laid emphasis on the letter of Confirmation of account dated 11.01.2018 and not on the post-dated cheques. There is no denial of letter of confirmation of accounts dated 11.01.2018 by the corporate debtor. Therefore, the letter of confirmation of accounts dated 11.01.2018 can



be treated as acknowledgement of debt and consequently in terms of Section 18 of limitation Act , a fresh period of 3 years of limitation accrues in favour of operational creditor. In view of the matter, petitioner was required to file the Company Petition within 3 years from 11.01.2018. But the Company petition was filed on 29.07.2021.

15. Having heard the learned counsel for both sides and on perusal of the record, we wish to state that as per the Company Petition the Corporate debtor had sent the letter of confirmation of accounts to the operational creditor mentioning the details of the amounts payable by the corporate debtor to the operational creditor from October 2014 till January 2019, confirming the accounts for the period 01.04.2015 to 10.01.2018, with the closing balance of Rs.1,49,75,000/- i.e as payable by the corporate debtor to the operational creditor is Rs.1,49,75,000/-. A copy of the confirmation of accounts is enclosed as Annexure 6 to the petition.
16. Therefore, it is abundantly clear that the said claim is based on the letter of confirmation of accounts of the operational creditor dated 11.01.2018. Admittedly, the corporate debtor had not disputed the letter of confirmation. A copy of the same has been filed at page no. 48 of the Company Petition.



17. Therefore, in the light of the ruling of Hon'ble Supreme Court of India in re, Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021, which was filed on 29.07.2023 is well within the period of limitation.

Point answered accordingly.

18. Therefore, as already stated existence of operational debt of sum over one crore and it is defaulted by the corporate debtor is not disputed. However, there is no pre-existing dispute. Hence is fit case to admit the corporate debtor into CIRP.

19. Hence, the Adjudicating Authority admits this Petition under Section 7 of I&B Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

(A) Corporate Debtor, M/s Hemarus Therapeutics Limited is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016,

(B) 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;

- (C) 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.
- (D) 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.

- (E) 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.
- (F) That the order of **moratorium** shall have effect **from the date of receipt 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.
- (G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (H) That this Bench hereby appoints **Shri Malireddy Ramana Reddy**, having Registration No. IBBI/IPA-003/ICAI-N-



00308/2020-2021/13452 as Interim Resolution Professional,
whose contact details are:

e-mail ID: .ramanareddygrp[at]gmail[dot]com

Address: 8-3191/155 (16/A) VAISHNAVIS SAI
SAURABH RESIDENCY, VENGAL RAO
NAGAR ,BESIDE SAI DARSHINI TIFFIN
CENTRE ,Hyderabad,Telangana ,500038

as Interim Resolution Professional to carry the functions as
mentioned under the Insolvency & Bankruptcy Code.

(I) Proposed IRP has filed Form-2 dated 28.07.2021 [PAGE-15 of the application]. His Authorisation for Assignment is valid till 23.02.2024. This information is available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(J) The Registry is directed to furnish certified copy of this order to the parties as per Rule 50 of the NCLT Rules, 2016.



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(K) The petitioner is directed to communicate this order to the proposed Interim Resolution Professional.

(L) Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

Accordingly, this Petition is admitted.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Karim/pavani