

S.No.8

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
29.07.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE.

CP (IB) No. 267/9/HDB/2020

U/s 9 of IBC, 2016.

IN THE MATTER OF:

Survival Technologies Pvt Ltd

... Operational Creditor

Vs

Kosher Pharmaceuticals Pvt Ltd

... Corporate Debtor

C O R A M:-

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

ORDER

Order pronounced in CP (IB) No.267/9/HDB/2020 recorded vide separate sheet. In the result the Corporate Debtor admitted into CIRP as per the terms and conditions mentioned in the order.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No. 267/9/HDB/2020

U/S 9 of IBC, 2016, r/w Rule 6 of I & B(AAA) Rules, 2016

Between

Survival Technologies Pvt.Ltd.
1401/A, Naman Midtown,
Senapati Bapat Marg,
Elphinstone (West)
Mumbai- 400013

...Operational Creditor

Versus

Kosher Pharmaceuticals Pvt. Ltd,
Flat No:314,Neeligiri Block,
Aditya Enclave, Ameerpet,
Hyderabad, Telangana,
Pin:500043.

...Corporate Debtor

Date of order: 29.07.2022

Coram:

Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Petitioner: Ms.B.Saroj, Counsel.

PER: BENCH

1. This Petition is filed under Section 9 of Insolvency and Bankruptcy Code (hereinafter to be referred as “Code”), read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Respondent defaulted in the payment of alleged debt of Rs. 1,42,93,637/- (One crore forty two lakhs Ninety-Three thousand six Hundred and Thirty seven rupees only) constituting of principal amount being Rs. 1,00,53,040/- (One crore fifty three thousand forty rupees only) with interest at 24% per annum being a sum of rupees 42,40,597 as on 17.07.2020.
2. **The averments in brief of the Application and Written Submission are that;**
 - (i) The Petitioner, herein after referred to as “Operational Creditor”, is a Private Limited registered office in Mumbai, is in business of manufacturing of API intermediaries and trading in various intermediary products in pharmaceutical industry.
 - (ii). The Respondent, herein after referred to as “Corporate Debtor”, is a Private Limited Company incorporated under the Companies Act, 1956., is in business of trading in various pharmaceutical products.
 - (iii). The Operational creditor and Corporate debtor were dealing and trading with each other since 2018 and having trading with other in

various raw material since 2018, the Operational creditor has maintained a running account in respect of transactions with the corporate debtor.

- (iv). The Operational creditor from 31.08.2018 to 24.10.2018 had transferred an amount of rupees two crores through NEFT transfer to corporate debtor as in the table below, with an intention to enter into a share purchase agreement .Pursuant to which the Operational creditor and Corporate debtor entered into a Non-Disclosure Agreement date 17/11/2018

Date	Amount(Rs)
31.08.2018	50,00,000
05.09.2018	25,00,000
01.10.2018	25,00,000
04.10.2018	25,00,000
11.10.2018	25,00,000
16.10.2018	15,00,000
24.10.2018	35,00,000

- (v). That after due diligence and negotiations the parties have decided to withdrawn from executing the share purchase agreement and the amount invested by the operational creditor was taken into the running account maintained by the operational creditor as subsequently the parties supplied raw material to each other in their routine course of business.

- (vi). That the Corporate debtor has supplied goods and raw material to operational creditor on 24.11.2018 for sum Rs. 45,13,500/-, on 30.11.2018 for sum of Rs.12,03,600/- and on 17.08.2019 for sum of Rs.27,14,000/- for which the Corporate Debtor has raised invoices for respective amounts on above mention dates.
- (vii). That the Operational creditor supplied raw material to the Corporate Debtor on 19.08.2019 for sum Rs.2,44,260 and 27.09.2019 for sum of Rs.22,79,880/- for which the Operational Creditor has raised invoices for respective amounts on above mentioned dates.
- (viii). That the corporate debtor on 07.08.2019 and 1.11.2019 has paid Rs. 11,30,880/- and 10,00,000/- respectively which has been adjusted by the Operational Creditor for the raw material supplied to the Corporate Debtor by the Operational Creditor. The balance amount for the raw material was adjusted to the amount due to Operational Creditor.
- (ix). That in spite of several and numerous reminders made by the Operational Creditor, the Corporate Debtor failed to repay the outstanding dues to the operational creditor and further submitted that the operational creditor through its advocate issued a demand notice dated 03.03.2020 and same was acknowledged and promised to repay by the Corporate debtor on 07.03.2020.
- (x). That subsequent to the demand notice dated 03.03.2020 the Corporate Debtor repaid Rs. 19,00,000/- to the Operational Creditor. For ready reference for transactions between the Operational Creditor and Corporate Debtor are Tabulated below:

Date	Particulars	Amount
31.08.2018 to 24.10.2018	Amounts transferred by the Operation Creditor to Corporate Debtor	2,00,00,000
24.11.2018 & 30.11.2018	2 invoices raised by the for supply of raw material by Corporate Debtor to Operational creditor	(57,16,100)
19.08.2019 & 27.09.2019	2 invoices raised by the for supply of raw material by Operational creditor to Corporate Debtor	25,24,000
07.08.2019 & 01.11.2019	Amount paid by the Corporate Debtor	(21,39,880)
17.08.2019	Invoice raised by the for supply of raw material by Corporate Debtor to Operational creditor	(27,14,000)
17.03.222	Amount paid by Corporate Debtor by Demand Notice	19,00,000
	Balance Amount Due from Coporate Debtor	1,00,53,040

- (xi). That this company petition was listed for hearing before this tribunal, despite of issuance of notice and advertisement regarding the company petition the corporate debtor failed appear before this Tribunal. Thereafter, this tribunal set the Corporate Debtor ex-parte vide its order dated 11.11.2020 and submissions of Operational creditor were heard and reserved for orders vide order dated 09.12.2020.
- (xii). That while this company petition was reserved for orders the Corporate Debtor approached the Operational debtor for amicable settlement and filed an I.A. No. 60 of 2021 to set aside the order date 11.11.2020, which was subsequently dismissed by this Tribunal vide order dated 29.11.2021.
- (xiii). That during the proceedings of the said Interlocutory application, the Operational creditor and Corporate debtor has filed a joint memo stating that they have settled the matter in terms of the settlement agreed by both the parties on 13.01.2021.
- (xiv). That the corporate debtor has acknowledged debt of Rs.1,24,64,530/- and agreed to repay it within Six months in six equal instalments. Further submitted that after the filing of the said joint memo, the corporate debtor had made a repayment of Rs. 20,80,000/- and failed to comply with settlement terms.
- (xv). That the operational creditor vehemently denies acceptance of goods supplied by the Corporate Debtor of worth Rs.65,29,000/- as the operational creditor disputes the quality of good supplied by

Corporate Debtor as the goods were substandard. Since, the goods supplied are not accepted by the Operational Creditor, the total amount due from the Corporate Debtor to operational creditor is Rs.1,03,843,530/-.Hence, prayed this Tribunal to admit this Company petition.

3. In the above backdrop the point that emerges for consideration by this Tribunal is:

**Whether an Operational debt as claimed by the applicant exists?
If so, whether the Corporate Debtor defaulted in payment of the said Operational debt?**

5. We have heard the Learned Counsel Ms.Shireen Sethna Baria, for operational creditor and perused the record.
6. At the outset it is pertinent to state that the pursuant to the notice to the corporate debtor by way of publication, as the corporate debtor was called absent on 11.11.2020 and as there was no representation for the corporate debtor the corporate debtor was set *ex-parte*. Thereafter, the Tribunal reserved the Company Petition for orders. While it was so, the corporate debtor filed IA No.60/2021, praying to set aside the order dated 11.11.2020.
7. While it was so, on 11.01.2021, pursuant to the representation made by both sides that settlement talks were going on and a settlement was expected, the Tribunal directed them to file joint memo of settlement, by observing that failing settlement the matter will be listed for orders on 13.01.2021. On 13.01.2021 both sides sought time for filing joint memo. Hence matter was adjourned to 09.02.2021. On 09.02.2021,

at request of the corporate debtor, Tribunal again granted time for making payment and adjourned the matter to 17.03.2021. From 17.03.2021 matter was posted to 20.04.2021.

8. Meanwhile, on 18.03.2021 counsel for corporate debtor filed memo in the registry stating that “compromise terms agreed upon between the parties and the corporate debtor paid first instalment of Rs.10,00,000/-.” The matter thereafter got adjourned from 20.04.2021 to several dates for reporting settlement.
9. While so, on 02.09.2021, corporate debtor appeared and submitted that matter has been settled and that a joint memo will be filed. Therefore, matter was adjourned to 10.11.2021. On 10.11.2021 settlement memo was not filed. Hence this Tribunal, has taken up IA No.60/2021, filed by the corporate debtor for setting aside ex-parte order dated 11.11.2020 and posted to 29.11.2021. On 29.11.2021, IA No.60/2021, was *dismissed* for default.
10. Thereafter, the Tribunal on 30.12.2021 Suo-moto, re-opened the matter and ordered notice to the corporate debtor and posted the matter to 05.01.2022. On 05.01.2022, counsel for the operational creditor alone was present and the CD remained absent. Thereafter, matter was adjourned to 21.01.2022. Later, on 02.03.2022 Mr.Tirupathi Reddy, MD of the Corporate debtor appeared physically and sought time to settle the matter hence the matter adjourned to 22.03.2022 for reporting settlement. However, no settlement was reported till date.
11. In this backdrop since IA No.60/2021 filed by the corporate debtor to set aside the order dated 11.11.2020 whereby the corporate debtor

was set exparte , has been dismissed by this Tribunal on 29.11.2021 , and as no steps were taken for restoration of IA No.60/2021, the corporate debtor remained ex parte.

12. In the above backdrop, we have carefully perused the records with us. Before instituting this petition, the operational creditor had issued demand notice in terms of Section 8(2) of the Code and the same has been received by the corporate debtor. The Corporate debtor neither satisfied the debt nor raised any dispute. The Corporate debtor did not contest the company petition and in fact made part payment under purported settlement. Thus operational debt payable by the corporate debtor which remain undisputed has not been discharged by the corporate debtor. Thus the debt and default since established, it is a fit case to put under CIRP.
13. 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 following directions: -
 - (A) Corporate Debtor, M/s Kosher Pharmaceuticals Pvt. Ltd, is admitted in Corporate Insolvency Resolution Process under section 9 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 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) 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. Accordingly, this Tribunal appoints Mr.Papaiah Sastry Chundury, having Registration No. IBBI/IPA-003/IP-N00251/2019-2020/12889 e-mail: cpsastry[at]hotmail[dot]com as Interim Resolution Professional. As per the IBBI website, his AFA is valid upto 31.05.2023. 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. 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.
- (I) The petitioner is directed to pay a sum of Rs.1,00,000/- (Rupees one lac only) to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution

Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.

- (J) The operational creditor is directed to communicate this order to the IRP appointed in this case.
- (K) Accordingly, this Petition is admitted.
- (L) Registry to send a copy of this order to the Operational Creditor, IRP in this case.
- (M) Registry is directed to communicate this order to Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.

Sd/-

Veera Brahma Rao Arekapudi
Member Technical

Sd/-

Dr. N.V.Ramakrishna Badarinath
Member Judicial

Pavani