

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 1235/KB/2018

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

M/S. SYNDICATE BANK, a body Corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head Office at Manipal in the State of Karnataka and carrying on business through its different branches including one at 26, Shakespeare Sarani, P.S. Shakespeare Sarani, Kolkata 700071, commonly known as SYNDICATE BANK, CAMAC STREET BRANCH, KOLKATA, within the jurisdiction as aforesaid

... Applicant/Financial Creditor

-Versus-

IN THE MATTER OF:

M/S. VISA PHARMACEUTICALS PRIVATE LIMITED, a Company incorporated under the provisions of Companies Act, 1956, having its registered office at 71, Canning Street, 4th Floor, A 402/8, Bagree Market, P.S. Hare Street, Kolkata 700001, West Bengal.

... Respondent/ Corporate Debtor





**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &
Shri Harish Chander Suri, Hon'ble Member (Technical)**

Counsel on Record:

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|------------------------------------|---|------------------------|
| 1. MR. N. SRINIVAS, Advocate |] | |
| 2. MR. MANOJ KUMAR SINGH, Advocate |] | For Financial Creditor |
| 3. MR. J. AHMED, Advocate |] | |
| | | |
| 1. MS. DEBALEENA GANGULY, Advocate |] | For Corporate Debtor |

Date of pronouncement of Order: 03/12/2019.

ORDER

Per Shri Harish Chander Suri, Member (Technical).

1. This petition under Section 7 of the Insolvency & Bankruptcy Code read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **M/s. Syndicate Bank**, a body corporate, through One of its Chief Manager Mr. Bansi Gopal Pujari, Chief Manager, hereinafter referred to as the "Financial Creditor" for initiating Corporate Insolvency Resolution Process as against **M/s. Visa Pharmaceuticals Private Limited**, a Corporate entity having its registered office at Kolkata, hereinafter referred to as the "Corporate Debtor".

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2. It is submitted that the Financial Creditor was approached by the Corporate Debtor sometime in the year 2015 through its Directors Mr. Aditya Balasaria and Mr. Madhusudan Balasaria with a request to sanction an overdraft facility and had represented that they had great potential and business stability. Relying and believing upon their representation, the Financial Creditor agreed and sanctioned the aforesaid facility to the Corporate Debtor. The parties entered into various agreements on 21st August, 2015 and executed the Demand Promissory Note, Composite Hypothecation Agreement, mortgage documents, Power of Attorney etc.

3. The Corporate Debtor passed Board Resolutions in its Board Meetings dated 20th August, 2014 and executed the necessary documents in favour of the Financial Creditor. Thereafter the Corporate Debtor breached the fundamental provisions of the Agreement by not performing their obligation there under and failed to operate the account as agreed, leading to having outstanding dues which they chose not to repay. The Corporate Debtor duly acknowledged its liability and dues but failed to liquidate the same. The Corporate Debtor became liable to make payment to the tune of Rs.1922.06 lakhs with interest thereon with effect from 1st August, 2018.

4. It is submitted that no part of claim is barred by the laws of limitation. The cause of action is stated to have arisen on 29th May, 2017 when the account was declared as NPA. It is submitted that **Exhibit 'C'**



Concise Statement of M/s. Visa Pharmaceuticals (P) Limited, filed by the Financial Creditor indicates that total over draft facility of Rs.1600.00 Lacs was sanctioned on 18th August, 2015 which was duly availed by the Corporate Debtor, to be repaid with interest @13% p.a. The statement shows that an amount of Rs. 419.06 lacs had accrued as interest as on 31st July, 2018 and the total sum of Rs.1922.06 Lakhs which became due and payable by the Corporate Debtor to the Financial Creditor. The Financial Creditor had got various documents executed by the Corporate Debtor and its Directors to secure its loan/facilities and has filed the same which are on record. The Financial Creditor has filed all the documents executed between the parties to prove its case which according to us makes the application complete in all respect.

5. We have also seen the reply filed by the Corporate Debtor. It is submitted in the reply that the application of the Financial Creditor is not maintainable in substance and in form for seeking relief prayed for as it suffers from incurable defects and deserves to be rejected.
6. It is submitted that there is no default as stated in the application and that no specific power of attorney has been granted by the Financial Creditor for initiation of the Corporate Insolvency Resolution Process. It is further submitted that the Corporate Debtor has not received any notice under Section 13(2) of the SARFAESI Act 2002. It is submitted that the Financial Creditor has not issued any demand notice calling upon the Corporate Debtor to repay the amount allegedly defaulted by the Corporate Debtor.

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7. Similarly in the rejoinder also the Financial Creditor has reiterated its facts and averments mentioned in the application. In reply to the objection of the Corporate Debtor, the Financial Creditor has filed a copy of the minutes of the Board of Directors of Syndicate Bank dated 28th May, 2019 which is reproduced as under:-

“Approval be and is hereby accorded for authorizing Chief Managers (Scale IV) and above holding valid power of Attorney issued by the Bank to initiate proceedings under Insolvency and Bankruptcy Code, 2016 and filing application under section 7 of the code before National Company Law Tribunal as recommended in the above”.

A copy of the Power of Attorney is also enclosed with the rejoinder.

8. The Financial Creditor has also filed a Supplementary Affidavit to the rejoinder and submitted that the Financial Creditor had issued notice under Section 4 (1) of the Code on 21st May, 2018 and despatched it under registered post to the registered office of the Corporate Debtor on 22nd May, 2018. A copy of the postal receipt dated 22nd May, 2018 showing dispatch of the notice dated 21st May, 2018 is also annexed thereto but, it is stated that the postal receipt could not be annexed with the application inadvertently, although a copy of the notice was annexed as **Exhibit ‘BE’**.

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9. We have gone through the application and all the Annexure filed with the application, reply, rejoinder, supplementary affidavit etc. After looking at the application and the supporting documents there is no scope left for any dispute or defence as being raised by the Corporate Debtor. The Corporate Debtor has availed the overdraft facility for which a specific request had been placed under the signatures of its Directors supported by Board Resolution duly acknowledged and accepted the terms of the sanction letter dated 28th August, 2014 and various documents executed by the Corporate Debtor securing the loan of the Financial Creditor. The Financial Creditor has made out a perfect case for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.
10. The Financial Creditor has proposed the name of Mr. Kannan Tiruvengadam, CA to appoint as Interim Resolution Professional, if the petition is admitted. The said IRP in his written communication dated 25.07.2018 certified that there are no disciplinary proceedings pending against him with the Board of Indian Institute of Insolvency Professionals of Institute of Chartered Accountants of India.
11. Arguments of the Corporate Debtor merely on two Technical grounds cannot stand before the infallible strength of the Financial Creditor's claim. The Corporate Debtor has not been able to defend its case because it has no valid defence against the Financial Creditor

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inasmuch as it has failed to perform its obligations in terms of the agreement between the parties which it was duty bound to. The law therefore must have its course. The Financial Creditor also succeeds in proving that all the requirements to be meted out under section 7(3) of the Code has been complied. Accordingly, we admit the application upon the following:-

ORDERS

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/S. VISA PHARMACEUTICALS PVT. LTD.** is hereby **admitted**.
- ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.
- iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
 - a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

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- (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 (54 of 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.
- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
 - v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
 - vii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1)

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of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- viii) **Mr. Kannan Tiruvengadam C.A. of Netaji Subhas Villa, Flat No. 3C, 3rd Floor, 18, Karunamoyee Ghat Road, Near Dharapara Tollygunge, Kolkata 700082, having Registration No. IBBI/IPA-001/IP-P00253/2017-2018/10482, Email ID: calkannan@gmail.com, Mobile No. 9836969699, an Insolvency professional registered with Indian Institute of Insolvency Professionals of ICAI, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.**
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- x) The Registry is hereby directed under section 7(7) of the Insolvency and Bankruptcy Code, 2016 to communicate the

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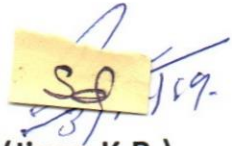
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order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.

- xi) The matter be listed on **06.01.2020** for filing of the progress report.
- xii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this, the 3rd day of December, 2019.

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