

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C.P. (IB) No.155/BB/2019  
U/s 9 of IBC, 2016  
R/w Rule 6 of I&B(AAA) Rules, 2016

**In the matter of:**

M/s. Origin Formulations Private Limited  
4<sup>th</sup> Floor, Narayankrupa Square,  
Behind Old Natraj Cinema, Besides Sakar V,  
Off Ashram Road, Ahmedabad  
Gujarat – 380 009 - Petitioner/Operational Creditor

**Versus**

M/s.Fab Pharmaceuticals Private Limited,  
No.4, Vishal Palace, Flat No.002,  
Ground Floor 1<sup>st</sup> Cross, and Malleshwaram  
Bangalore – 560 003. - Respondent/Corporate Debtor

**Date of Order: 19<sup>th</sup> September, 2019**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

**Parties/Counsels Present:**

For the Petitioner : Shri Praveen Kumar N.K  
For the Respondent : None

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.155/BB/2019 is filed by M/s.Origin Formulations Private Limited **(Petitioner /Operational Creditor)** U/s 9 of IBC, 2016, R/w Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of **M/s.Fab Pharmaceuticals Private Limited, (Respondent/Corporate Debtor)** on the ground that the Corporate Debtor



committed a default in payment of Rs.21,93,392/- (Rupees Twenty One Lakhs Ninety three Thousand three Hundred Ninety Two Only).

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- 1) M/s.Origin Formulations Private Limited, (Petitioner/ Operational Creditor) a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office 4<sup>th</sup> Floor, Narayankrupa Square, Behind Old Natraj Cinema, Besides Sakar V, Off Ashram road, Ahmedabad, Gujarat 380009.
- 2) M/s.Fab Pharmaceuticals Private limited (Respondent/ Corporate Debtor/) was incorporated on 11.05.2010 under the provisions of the Companies Act, 1956 and having registered address at: No.4, Vishal Palace, Flat No.002, Ground floor, 1st Cross, and Malleshwaram Bangalore 560 003. Its Authorized Share capital is Rs.120,00,000/- and the paid up share capital is Rs.5,00,000/-.
- 3) It is stated that the agent on behalf of the Corporate Debtor approached Operational Creditor to purchase the Pharmaceutical materials/products offered by Operational Creditor. Accordingly, the Corporate Debtor has placed the purchase order dated 04th April to dispatch SDS (Medicines). The Operational Creditor had delivered and supplied the products to Corporate Debtor. The goods were duly accepted without any dispute or demur and more specifically good were never sent back or no email regarding any defects or late delivery were sent to the Operational Creditor until in their reply to the demand notice and, therefore the products were accepted without any encumbrance by the Corporate Debtor. Goods were ordered in parts only to get/avail leverage on the payments,

Date	Invoice No.	Amount
30.04.2018	C18000137	9,52,795

22.06.2018	C18000298	2,90,640
07.07.2018	C18000351	5,81,280
07.09.2018	C18000454	5,74,694
07.09.2018	C18000483	1,33,840
11.10.2018	C18000499	4,01,520
	Total	29,34,769

Thus, invoices of Rs.29,34,769/- were issued by the Operational Creditor to the Corporate Debtor.

- 4) It is stated that in the month of May and July i.e on 22.05.2018 , 02.07.2018, the Corporate Debtor had deposited for an amount of Rs.5,52,795 and Rs.4,00,000/- respectively, after which no amount/outstanding has been paid to them. And in fact, they have failed even to reply to their emails about the payments. After every possible attempt and request to the Corporate Debtor to pay off the outstanding dues, a last email dated 30.01.2019 was sent to the Corporate Debtor, to which no reply was made and Corporate Debtor has not paid any heed to even reply thereafter till today.
- 5) Under the aforementioned circumstances, on 15.03.2019 the Operational Creditor was compelled to issue demand notice under Section 8 of the IBC, 2016 R/w Sub-rule 5 of the Insolvency and Bankruptcy Regulations, 2016 calling upon the Corporate debtor to pay an aggregate amount of Rs.21,93,392/- i.e total outstanding dues being the invoiced amount of Rs.19,81,974/- as well as the amount accrued as annual interest at 18% as per the existing trade practice is Rs.2,11,418/- from the date of receipt of the demand notice and till the actual payment and/or realization, within 10 days of the receipt of the notice.
- 6) It is stated that the said notice was duly served upon the Corporate Debtor on 18.03.2019, in as much as the Corporate Debtor has sent a reply to the said demand notice dated 27.03.2019 wherein for the first time Corporate Debtor has raised an objection for the delayed supply of goods, which was never raised rather all the goods were



well accepted by the Corporate Debtor at the relevant point of time and thus there is no substance in the said allegation.

7) It is stated that in the facts and circumstances as set out hereinabove, it is clear that the Corporate Debtor is unable to pay off its debts arising in the usual and ordinary course of its business and has become commercially insolvent. In such circumstances, it is just necessary and imperative that the CIRP be initiated against the Corporate Debtor. It is also stated that the Corporate Debtor has been making huge losses and is not in a stable position to clear its debts and liabilities. In such circumstances, where the Corporate Debtor has become insolvent and is unable to pay its outstanding debt to a large body of creditors it would be in the fitness of things to initiate the Insolvency Proceedings against the Corporate Debtor forthwith failing which all the creditors will be left entirely high and dry. Under the circumstances, it is utmost necessary to initiate CIRP against the Corporate Debtor.

3. Heard Shri Praveen Kumar N.K, learned Counsel for the Petitioner. None appears for the Respondents. We have carefully perused the pleadings of the party and extant provisions of the Code and law.
4. The case was listed for admission on various dates viz. 02.05.2019, 31.05.2019, 26.06.2019, 18.07.2019, 06.08.2019, 13.08.2019, 30.08.2019, 11.09.2019 & 19.09.2019, and it was adjourned on these dates at the request of party, on one ground, or the other.
5. Shri Praveen Kumar N.K, learned Counsel for Petitioner, while pointing out various averments made in the Petition and Summary, as briefly stated supra, has further submitted that the debt and default in question are not opposed by the Respondent, and the instant Company Petition is filed in accordance with law, and thus urged the Adjudicating Authority to admit the case by initiating CIRP, appoint a qualified IRP from the list sent by

IBBI for Bangalore Bench of the Code under column of IRP of the Company Petition.

6. During the course of hearing, since none appears for the Respondent, the Adjudicating Authority ordered notice on 02.05.2019 to the Corporate Debtor. Accordingly, the Registry has issued a notice dated 07.05.2018. Shri Ramanjaneya.V, learned Advocate for Respondent Company was present on 31.05.2019 and thus he was directed to file statement of objection well before the next date of hearing i.e 26.06.2019. Subsequently, on several occasions neither the Respondent/nor any body represents it. However, the Respondent has not filed any objection till date. The Adjudicating Authority has already granted sufficient time to the Respondent. In spite of the same, the Corporate Debtor failed to avail the opportunity given to it. Therefore, there is no other alternative for Adjudicating Authority except to proceed with the case as per merits.
7. The above facts and circumstances supported by material documents in support of the Petition, has prima facie established that the Corporate Debtor is unable to pay the outstanding amount in question, and thus committed debt and default in question, which is deemed to be proved subject to for further examination of the claim in detail by IRP, who is going to be appointed in the case. The Petition is filed in accordance with law. The Petitioner has issued statutory Demand notice dated 15<sup>th</sup> March, 2019 by calling upon the Respondent to pay the outstanding amount in question however, the Respondent has simply denied without any substance and it cannot be termed as pre-existing dispute and it is an afterthought. The qualified Resolution Professional, namely, Srikantiah Shivaswamy with Regn.No. **IBBI/IPA-001/IP-P00411/2017-18/10727**, who has also filed written Consent in Form-2 dated 23.09.2019, by inter declaring that he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor and that there are no disciplinary proceedings pending

against him with the Board or ICSI. Therefore, the instant Company Petition is a fit case to initiate CIRP etc.

8. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, under Section 9(5)(i) and other extant provisions of the Code, C.P. (IB) No.155/BB/2019 is hereby admitted with the following consequential directions:

(1) We hereby appointed Srikantiah Shivaswamy with Regn.No. **IBBI/IPA-001/IP-P00411/2017-18/10727**, as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor namely M/s.Fab Pharmaceuticals Private Limited to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.

(2) The following moratorium is declared prohibiting all of the following, namely:

- 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 supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
  - f. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.
  - g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.
- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by the IBBI.
- (5) The IRP is directed to file his progress reports to the Adjudicating Authority from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
- (6) Post the case for report of the IRP on **21<sup>st</sup> October, 2019.**

  
**(ASHOK KUMAR MISHRA)**  
**MEMBER, TECHNICAL**

Raushan

  
**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**