

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
01-04-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

CP(IB) No. 241/9/HDB/2021
U/s 9 of IBC, 2016

IN THE MATTER OF:

Afita Constructions Pvt Ltd

...Operational Creditor

Vs

Neoska Pharma 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 is recorded vide separate sheet. In the result, the petition is admitted.
The Corporate Debtor is put in CIRP as per the terms and conditions mentioned
in the order.


MEMBER (T)


MEMBER (J)

Karim

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CP (IB) No.241/9/HDB/2021

Under section 9 of IBC, 2016 read with Rule

6 of I&B (AAA) Rules, 2016

In the matter of

M/s Atifa Constructions Pvt Ltd.

Through its Managing Director/
Authorised Signatory

Firoz Akbarali Sadikot

Having its registered office at:

603/ 605, 6th Floor

Thakoor House (Antariksh)

Makwana Road, Marol Village

Andheri East, Mumbai – 400059.

.. **Petitioner/
Operational Creditor**

Versus

Neoaska Pharma Private Limited

401, 4th Floor Manjeera Trinity Corporate

JNTU-Hitech City Road

Kukatpally

Hyderabad – 500072.

.. **Respondent
Corporate Debtor**



Date of order: 01.04.2022



Coram:

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

Parties / counsels present:

For the Petitioner : Shri A. Raghuram, Advocate.

For the respondent : Shri Sachin Sharma, Advocate.

PER BENCH

ORDER

This petition is filed by Atifa Constructions Pvt Ltd. /Operational Creditor, stating that an amount of **Rs.9,51,28,800/-** along with interest at the rate of 18% per annum from the date of default till realisation is due and payable to it by the corporate debtor. Hence this petition is filed under section 9 of Insolvency and Bankruptcy Code, 2016, read with Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.



2. The averments made in the petition are as under:

- (i) The Operational Creditor is a private limited company registered under the Companies Act, 1956, engaged in civil construction contracting business. The respondent is a limited company registered under the Companies Act, 1956, engaged in manufacturing and exporting active pharmaceutical ingredients.
- (ii) The respondent/ Corporate Debtor issued Letter of Intent (LI) on 23.10.2018 (EXHIBIT 'B') in favour of the petitioner/ Operational Creditor for civil and structural work for proposed formulation plant of the Corporate Debtor at Visakhapatnam.
- (iii) The Operational Creditor raised invoices for the period from 02.03.2019 to 15.05.2020 (EXHIBIT 'C') for Rs.26,03,64,186/-.
- (iv) For the work completed till 15.05.2020, the Operational Creditor raised bills amounting to Rs.26,03,64,186/-. The Corporate Debtor had acknowledged the same and made part-payment of 18,72,58,867/-. The Corporate Debtor did not pay the remainder. Nevertheless the Operational Creditor continued to do work for Operational Creditor in good faith.
- (v) The Operational Creditor could not raise invoice for Rs.2,20,23,483/- due to suo motu cancellation of GSTIN/ UIN. Details of the Corporate Debtor on GSTIN/ UIN Portal and Invoice dated 25.02.2021 (EXHIBITS 'D' and 'E').
- (vi) The respondent has however, replied through e-mail dated 26.09.2020 (EXHIBIT 'F', Page 137 of the petition) as under:

"We are arranging necessary funds to pay your arrears very shortly and also have the plan to restart construction works in the month of October 2020."



- (vii) The Corporate Debtor failed and neglected to pay the outstanding amount of Rs.9,51,28,800/- in spite of reminders issued by Operational Creditor dated 08.05.2020, 25.06.2020 and 08.03.2021 (EXHIBIT 'G').
- (viii) The petitioner has issued Demand Notice dated 10.08.2021 (EXHIBIT 'H') to the Corporate Debtor, which has been returned with remark "Item on hold. Door locked". When the said Demand Notice was attempted to deliver at an alternate address, that too returned with remark "No such person in the address". Ultimately, the Demand Notice could be delivered at another alternate address on 16.08.2021. It had also been served through e-mail on 11.08.2021. Copies of Postal Tracking Reports are at EXHIBIT 'I'.
3. This Tribunal has issued notice on 16.09.2021, which was returned unserved with an endorsement "Door locked". On 08.11.2021, Shri Y. Suryanarayana, learned counsel appeared for the Corporate Debtor. He was given 10 days' time for filing counter. Thereafter, the Corporate Debtor was represented before this Tribunal by different advocates as under:

On 03.12.2021	..	Ms. Devangi, PCS
On 23.12.2021	..	Shri Y. Suryanarayana, Advocate
On 17.02.2022	..	Shri Y. Suryanarayana, Advocate
On 01.03.2022	.	Shri Sachin Sharma, Advocate



Though it was stated on behalf of the Corporate Debtor that there are chances of settlement/ solution, no such development has taken place.

4. Heard the Counsel for Operational Creditor and Counsel for Corporate Debtor and perused the documents produced on record.

5. In above view of the mater the following points emerge for consideration before this Tribunal.

POINTS FRAMED :

1. Whether there is an 'operational debt' as defined exceeding Rs.1,00,00,000/-?
2. Whether the documentary evidence furnished with application shows that the aforesaid debt is due and payable and has not yet been paid?

POINT No.1

The debt claimed is more than Rs.1 crore.

POINT No.2

It is the case of the petitioner herein that the respondent/ Corporate Debtor had issued Letter of Intent (LI) on 23.10.2018 in favour of the petitioner/ Operational Creditor for civil and structural work for proposed formulation



plant of the Corporate Debtor at Visakhapatnam. The Operational Creditor had executed the work in accordance with the LI. The Operational Creditor had raised invoices for the period from 02.03.2019 to 15.05.2020 (EXHIBIT 'C') for Rs.26,03,64,186/-. The Corporate Debtor made part-payment of 18,72,58,867/-, but failed to pay the remainder. The Operational Creditor issued reminders as stated supra. Ultimately issued Demand Notice, which was served on the Corporate Debtor in third attempt on 16.08.2021. Finding no response from the Corporate Debtor the Operational Creditor is constrained to approach this Tribunal.

6. We have seen the record produced before us, more particularly, Letter of Intent dated 23.10.2018 (Page 28) issued in favour of the petitioner/ Operational Creditor, the invoices. Besides, e-mail dated 26.09.2020 (EXHIBIT 'F', Page 137 of the petition) addressed by the representative of the Corporate Debtor reads as under:

"We are arranging necessary funds to pay your arrears very shortly and also have the plan to restart construction works in the month of October 2020."

The above documents clinchingly confirm that a debt is due and payable by the Corporate Debtor to the Operational Creditor. It is not the case of the



Corporate Debtor that the said debt has been discharged. Point no.2 is answered accordingly.

7. We are satisfied that an operational debt is due and payable by the Corporate Debtor to the Operational Creditor herein and that the Corporate Debtor has failed to pay the same. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, with following directions: -

- (A) Corporate Debtor, M/s **Neoaska Pharma Private Limited** 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.



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.

- (E) 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.
- (F) 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.
- (G) The Operational Creditor failed to name any one as IRP and has requested the Tribunal to appoint one for the CIRP. The IBBI has recommended a panel of IRPs for appointment as IRP for the period 01.01.2022 to 30.06.2022. In compliance with section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints **Shri Gullapalli Kishore Babu**, having registration No. IBBI/IPA-003/ICAI-N-00384/2021-2022/13926, residing at 11-11-169, Sowbhagyapuram, Road No 1, Kothapet, near Venkateswra Swamy



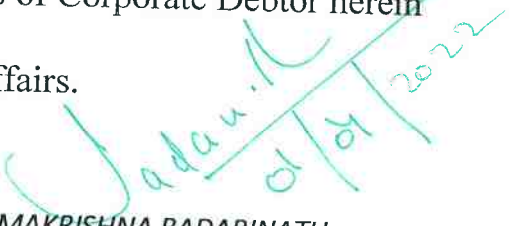
Temple, Opposite Srinivasa Kalyana Mandapam, Hyderabad, Telangana ,500035, email : gkishorebabu[at]gmail[dot]com as IRP. The aforesaid IRP has no disciplinary proceedings pending against him. His Authorisation for Assignment is valid till 13.12.2022. This information is also available in IBBI Website. 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.

- (H) Shri Gullapalli Kishore Babu shall file Form-B issued by IBBI within three days from today.
- (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 petitioner is directed to communicate this order to the proposed IRP.



7. Accordingly, this Petition is admitted.
8. 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.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


DR. N.V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

Karim