

(2021) 06 NCLT CK 0011
In the National Company Law Appellate Tribunal
Case No : IB-2528/(ND) Of 2019

M/S Vapi Care Pharma Private Limited	APPELLANT
Vs	
M/S Asterism Pharmaecutical Private Ltd	RESPONDENT

Date of Decision : 11-06-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 8, 9, 14
Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016 — Rule 6

Citation : (2021) 06 NCLT CK 0011

Hon'ble Judges : P.S.N. Prasad, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Advocate : Saurav Sharma

Judgement

P.S.N. Prasad, Member (Judicial)

1. This is a petition filed by M/S Vapi Care Pharma Private Limited (Operational Creditor) seeking to initiate CIRP against the Respondent

company/Corporate Debtor M/S Asterism Pharmaceutical Private Limited, under Section 9 of IBC 2016 for the alleged default on the part of the

Corporate Debtor for an amount 11,31,653/- along with interest at 24% per annum towards the goods supplied.

2. It is the case of the applicant that the Operational Creditor has supplied Medicines to the Corporate Debtor as per purchase orders raised by them

under invoices bearing invoice no. VCPH/18-19/0120 dated 31.05.2018 for Rs. 3,24,173/- and invoice no. VCPH/18-19/0363 dated 22.10.2018 for

Rs.2,97,035/- and Invoice No. VCPH/18-19/0120 dated 28.10.2018/- for Rs.3,24,888/-, issued as per the terms and conditions contained in the said

invoice.

3. Further the Applicant has submitted that against the said invoices, the Corporate Debtor has not made any part payments and Rs.11,31,653/-which is due and payable by the Corporate Debtor along with interest at 24% per annum w.e.f. 31.05.2018 till its realisation.

4. It is further submitted by the Applicant that despite promises and assurances made by the Corporate Debtor to make the above payment to the Operational Creditor, till date the said amount has not been paid by the Corporate Debtor to the Operational Creditor in discharge of its admitted liability.

5. The Operational Creditor on 01.07.2019 issued a demand notice for an amount of Rs.11,31,653/- (Basic invoice amount: Rs. 9,46,096/- plus 1,85,557/- interest) under Section 8 of Insolvency and Bankruptcy Code, 2016 which was duly delivered at the Registered Office of the Corporate Debtor through register post. However, the Corporate Debtor has not replied to the notice dated 01.07.2019 neither made the outstanding payment to the Operational Creditor till date.

6. Despite several opportunities none appeared on the behalf of Corporate Debtor. Hence there were proceeded ex-parte vide order date 01.03.2021 of this Tribunal.

7. Heard the parties and perused the documents.

8. There is no dispute that the goods were supplied by the applicant to the corporate debtor. Additionally, after due service of the demand notice as well as despite various opportunity, no one is present on the behalf of Corporate Debtor at the time of final hearing of the matter. The Corporate Debtor has not shown adequate interest to defend the claim filed against him. The applicant has placed sufficient evidence in support of his claim and the amount of default is more than Rs. 1.00 lakh. Going by the above details the operational creditor has clearly established the existence of debt and default on the part of the corporate debtor. Hence this Tribunal initiates CIRP on the corporate debtor with immediate effect.

9. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

â??(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.

Â (2) 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.

(3) 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.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.â??

10. The Operational Creditor has not proposed the name of the IRP in part III of the application. Accordingly, we appoint Mr. Santosh Sharma

Registration No. IBBI/IPA-002/IP-N00898/2019-20/12842 email: sci.santoshsharma@gmail.com duly empanelled with the IBBI as the IRP. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere.

11. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs with IRP to meet the immediate expenses of IRP. The same shall be fully

accounted by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIRP costs.

12. The office is directed to communicate a copy of the order to the Operational Creditor, the corporate debtor and the Interim Resolution

Professional at the earliest possible but not later than seven days from today.