

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

C.P. (I.B) No. 87/MB/2024

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

M/S Sai Services,

Through its Proprietor, Mr. Anil Patil

54, Panchvati Plaza, Plot No. 95/96, Haware,
Sector- 5, Ghansoli, Navi Mumbai - 400401
(Maharashtra)

...Petitioner/Operational Creditor

Vs

Pharmaceutical Products of India Limited

Plot No. D-312/313, TTC Industrial area, MIDC
Turbhe, Navi Mumbai - 400705 (Maharashtra)

... Respondent/Corporate Debtor

Order Dated: 02.09.2024

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

Appearances:

For the Petitioner:

Adv. Ajinkya Kurdukar (PH)

For the Corporate Debtor:

None



ORDER

Per: Reeta Kohli, Member (Judicial)

This Company Petition is filed by **Sai Services, through its Proprietor, Mr. Anil Patil** (hereinafter referred as “**the Petitioner/Operational Creditor**”) on 09.01.2024 to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Pharmaceutical Products of India Limited** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs. 1,29,12,695/-**, **date of default being on 17th November 2023.**

Facts and submissions of the Operational Creditor-

1. The Operational Creditor is a proprietorship firm engaged in the business of providing manpower supply for operations and security personnel on a contract supply basis. The Operational Creditor was approached by the Corporate Debtor to provide security services at Corporate Debtor’s plant situated in Boisar, Mumbai.
2. The Operational Creditor, from April 2022 to October 2023, duly provided and deployed 25-30 security personnel for a 12-hour day and night shift to provide security services at the Corporate Debtor’s plant. Invoices with respect to the same were duly raised on time at the end of every month.
3. As stated, the last invoice raised by the Operational Creditor was dated 10/11/2023 and according to the payment terms as agreed by the parties, each invoice was to be paid within 7 days from the date of invoice thus



making 17/11/2023 the date of default. The said invoice along with all the previous outstanding dues remains unpaid to date.

4. The Operational Creditor submitted that numerous reminders vide letters dated 12/11/2022, 08/02/2023, and 10/06/2023 were sent to the Corporate Debtor in view of the payment of outstanding dues. Through letter dated 17/02/2023, the Corporate Debtor assured the Operational Creditor that the payment will be made by way of sale of assets which is in process. However, no such payment was made to the Operational Creditor.
5. The Operational Creditor also submitted that security services were provided to the Corporate Debtor in a diligent and timely manner. Also, the Corporate Debtor has never raised any dispute regarding invoices raised by the Operational Creditor. The Operational Creditor raised the invoices for the services rendered which were duly acknowledged by Corporate Debtor from time to time. However, The Corporate Debtor caused a significant delay in payment of the said invoices, and the reason behind the same was cited as '*liquidity issues faced by the company*'. Through a letter dated 21/10/2022, the Corporate Debtor acknowledged the debt owed to the Operational Creditor and gave assurance that the outstanding dues shall be cleared shortly.
6. As stated, The Corporate Debtor duly accepted the Operational Creditor's services against invoices for FY 2022-23 SS/PPIL/22-23/01 to SS/PPIL/22-23/12 and for FY 2023-24 SS/PPIL/23-24/01 to SS/PPIL/23-24/07 aggregating to Rs. 72,75,000/- and Rs. 36,57,000/- respectively.
7. In view of the above-stated invoices, the total amount which is due and payable to the Operational Creditor is stated to be Rs. 1,29,12,695/-, inclusive of Rs. 1,09,32,000/- as principal amount and Rs. 19,80,965/- as interest.
8. It was further submitted that the Corporate Debtor was well aware about the 21% interest rate which is applicable on the pending amount as the



- same has been clearly stated in all invoices that were raised by the Operational Creditor.
9. After several follow-ups and intimations for re-payment, a Demand Notice dated 12/12/2023 was issued on the Corporate Debtor, for an amount of Rs. 1,29,12,695/-. However, pursuant to the receipt of the Demand Notice, the Corporate Debtor via a letter dated 28/12/2023, requested further time till March 2024 for clearing the outstanding debt due to the Operational Creditor but no such payments were made by the Corporate Debtor.
10. In the light of the abovementioned submissions, the Operational Creditor filed the present petition before the Hon'ble Tribunal and prayed to allow the said petition and initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
11. It is pertinent to note that vide Daily Order dated 22/02/2024, the Hon'ble Tribunal directed the Registry and the Operational Creditor to issue notice to the Corporate Debtor. A Service Notice dated 20/03/2024 was issued to the Corporate Debtor which was duly delivered on 22/03/2024 as substantiated by the Track Report available on the record of this Hon'ble Tribunal. Further, it should be mentioned that despite the service of the abovesaid notice, the Corporate Debtor, neither himself nor through an advocate, appeared before the Hon'ble Tribunal. Numerous opportunities were given to the Corporate Debtor to represent himself in the hearing as is evident from the Daily Order dated 16/04/2024 which is reproduced as under-

"None for the Respondent despite service. In the interest of justice, one last opportunity is granted to the Respondent to appear on the next date of hearing or/otherwise, we shall be constrained to proceed ex-parte against the Respondent. In the meantime, Counsel for the Petitioner is directed to furnish hard copy of the Petition. Adjourned to 07.05.2024"



12. It is integral to be mentioned that the Respondent did not make an appearance on 07/05/2024 or on any subsequent dates to which the hearing was adjourned, that is, 21/05/2024 and 14/06/2024. To substantiate the same, Daily Order dated 14/06/2024 is reproduced as under-

“Despite service, none has appeared on behalf of the respondent. Vide the order dated 16.04.2023 it was recorded as under:

“None for the Respondent despite service. In the interest of justice, one last opportunity is granted to the Respondent to appear on the next date of hearing or/otherwise, we shall be constrained to proceed ex-parte against the Respondent. In the meantime, Counsel for the Petitioner is directed to furnish the hard copy of the Petition. Adjourned to 07.05.2024”

In view of the fact that there is no representation on behalf of the respondent today also, therefore, respondent is proceeded ex-parte. Adjourned to 21.06.2024”

13. Therefore, in view of the persistent nonappearance on the part of the Corporate Debtor despite due notice, the Bench was compelled to proceed ex-parte against the Corporate Debtor, as recorded in the Daily Order dated 14/06/2024. This decision of the Bench can further be substantiated in view of the settled law wherein the Hon’ble NCLAT has been pleased to hold in the matter *of Ashok Tiwari v. DBS Bank India (Ltd.) and Anr. Company Appeal (AT) (Insolvency) No. 195 of 2024*



“16. Rule 49 gives ample jurisdiction to the Adjudicating Authority to proceed for ex parte as corporate debtor does not appear. “Appearance” as contemplated under Rule 49(1) is appearance by the corporate debtor or by an authorised representative.”

14. After having heard the Ld. Counsel for the Petitioner and perusing the documents on record, it is evident that the Corporate Debtor and the Operational Creditor were in a business relationship where the Operational Creditor provided security service to the Corporate Debtor. In light of the invoices and the aforementioned letters dated 17/02/2023 and 21/10/2022, it becomes clear that the Corporate Debtor has acknowledged the pending invoices and accepted the amount due and payable to the Operational Creditor. The said fact is further evident from the annexure attached to the letter dated 17/02/2023 titled **“DETAILS OF INVOICES FOR WHICH PAYMENT HAS BEEN OVERDUE”**. It further deserves to be stated that, by the means of the said letter, the Corporate Debtor also provided explicit reassurance to the Operational Creditor in terms of the payment of the outstanding dues by stating the following-

“We are in the process of selling certain assets to generate necessary funds for settling outstanding payments, including the amount owed for Invoices mentioned in the annexure attached.”

15. It is pertinent to note that the existence of debt and occurrence of default is further substantiated by the letter dated 25/09/2023 sent by the Corporate Debtor to the Operational Creditor, wherein the Corporate Debtor has not only acknowledged the pending dues in



view of the invoices but has also duly acknowledged the payable interest by stating the following-

"We acknowledge pending due of invoices of Rs. 1,16,39,382.50 including interest for delayed payment around Rs. 16 Lakhs."

Hence, in view of the above-stated letters dated 21/10/2022, 17/02/2023, and 25/09/2023 the existence of debt clearly stands established.

16. It is to be mentioned that the Corporate Debtor has never raised any dispute regarding the invoices raised by the Operational Creditor or with respect to the service rendered by the Operational Creditor. Furthermore, the Corporate Debtor, despite being duly served with the notice, has failed to file any reply to the present Petition and has exhibited a persistent default of appearance before this Hon'ble Tribunal throughout the course of the hearing, despite having been given ample opportunity to present its case. Thus, considering the before-stated, the question of the existence of any pre-existing dispute does not arise.
17. Keeping in view of the totality of the circumstances of the present case and in view of the fact that there is an admitted debt due towards the Operational Creditor and admittedly there is a default duly acknowledged by the Corporate Debtor, with no pre-existing dispute in question, it is a fit case for admission. Furthermore, the amounts stated to be due in this case is above the threshold limit as stipulated under Section 4 (1) of IBC and in view of the settled law wherein the Hon'ble NCLAT has been pleased to hold in the matter of *Narvesh Choudhary vs. Sterling Enamelled Wires Pvt. Ltd Company Appeal (AT)(Insolvency) No. 39 of 2023 & I.A. No.137 of 2023*

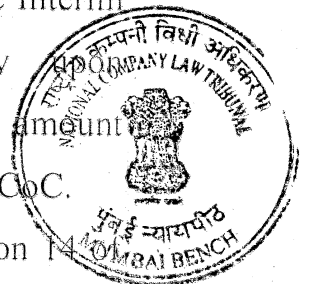


“17. We have no hesitation in observing that in the present case, all requisite conditions necessary to trigger CIRP under Section 9 stands fulfilled with operational debt having been acknowledged and default committed thereto and there being no real pre-existing disputes discernible from given facts. For the foregoing reasons, we are of the view that the Adjudicating Authority has rightly admitted the application of the Operational Creditor filed under Section 9 of IBC.”

18. Therefore, the present petition is **admitted** to CIRP by passing the following order:

ORDER

- a. The above Company Petition No.87 /IBC/MB/2024 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Pharmaceutical Products of India Limited**.
- b. The Petitioner has proposed the name of **Mr. Arihant Nenawati**, bearing Registration No. IBBI/IPA-001/IP-P00456/2017-2018/10799, residing at 201, Sheraton Classic, Charat Singh Colony, AK Road, Andheri, Mumbai, as Interim Resolution Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 Insolvency and Bankruptcy Code, 2016 prohibiting 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; 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. That the order of moratorium shall have effect from the date of pronouncement 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, as the case may be.
- f. 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.
- g. 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in



their possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 87/IBC/MB/2024 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

MADHU SINHA
Member (Technical)

/Jhanvi/

Sd/-


REETA KOHLI
Member (Judicial)



Certified True Copy

Copy Issued "free of cost"

On 05/09/2024


05/09/2024
Deputy Registrar

National Company Law Tribunal Mumbai Bench