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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.09.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 269/9/HDB/2018
NAME OF THE COMPANY	Apex Drugs Ltd
NAME OF THE PETITIONER(S)	Zhejiang Tongxiang Trade (Group) Company Ltd
NAME OF THE RESPONDENT(S)	Apex Drugs Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
G. SUBASH	Advocate	9032702007	G. Subash

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Case admitted. Orders pronounced vide separate orders.



Member (J)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

No. CP (IB) No. 269/9/HDB/2018

U/s 9 of IBC, 2016

In the matter of

M/s Zheijang Tongxiang Foreign Trade (Group) Co.
16th Floor, Foreign Trade Building
21, Jingya Road. Tongxiang
Zheijang, China

...Petitioner /
Operational Creditor

VERSUS

M/s Apex Drugs Limited
210, 2nd Floor, Rams Enclave
Erragadda, Hyderabad
Telangana, India.

...Respondent/
Corporate Debtor

Date of order: 06.09.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / Counsels present:

For the Petitioner : Shri G. Subash, Advocate

For the Respondent : None

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial) -
Author

Heard on: 18.07.2018, 05.07.2018, 02.08.2018,
14.08.2018, 29.08.2018

ORDER

1. This Petition is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016, seeking to initiate to Corporate Insolvency Resolution Process against M/s Apex Drugs Limited (Corporate Debtor).
2. Brief averments made in the Petition are:-
 - (1) M/s Zheijang Tongxiang Foreign Trade (Group) Co. is the Operational Creditor. M/s Apex Drugs Limited is the Corporate Debtor, having its registered office at 210, 2nd Floor, Rams Enclave, Erragadda, Hyderabad, Telangana.
 - (2) It is averred that Operational Creditor is an exporter of various chemicals and Pharmaceutical Intermediates from China. The Corporate Debtor placed Purchase Orders on different dates between June 2015 and October 2015 on 120 days clean credit, which are marked as Annexure-II. The Corporate Debtor purchased goods worth USD 3,71,440.
 - (3) It is averred on 16.08.2016, the Operational creditor through its agent Excel International, Chennai informed the Corporate Debtor about the outstanding due vide e-mail, which is marked as Annexure-II.
 - (4) It is averred that Corporate Debtor having admitted liability, sought time under one pretext or the other and when Operational Creditor directed the bankers to return the documents, the Corporate Debtor requested Operational Creditor



to put on hold the instructions to the bank and assured payment of outstanding due. It is also averred that Operational Creditor and its agent made several attempts to contact the Corporate Debtor but the Corporate Debtor stopped responding to their communications.

- (5) It is the case of Operational Creditor that when no payment was received from Corporate debtor, a demand notice dated 03.10.2017 was issued to the Corporate Debtor to repay the outstanding operational debt of US 4,97,730 and the same was duly served on the Corporate Debtor on 16.11.2017.
 - (6) It is the case of Operational Creditor that when no reply was received from the Corporate Debtor, this Petition is filed seeking directions to initiate CIRP against the Corporate Debtor.
 - (7) The Learned Counsel for Operational creditor further filed a memo intimating the name of Shri Maligi Madhusudhana Reddy as Interim Resolution Professional.
3. I have heard the Counsel appearing for Operational Creditor. None appeared for Corporate Debtor. Notice issued to the Corporate Debtor was returned unserved with endorsement "not claimed". The returned postal envelope along with memo was filed on 02.08.2018.
 4. The Petitioner filed memo dated 27.06.2018 enclosing postal receipt as well as track consignment report to the effect that item attempted "door locked, intimation



served". The notice issued by the Tribunal sent through registered post was served on the Corporate Debtor but it was returned as "not claimed" even though attempt was made for delivery and intimation was served. The Corporate Debtor was thus aware of notice sent through the Tribunal but Corporate Debtor deliberately did not receive the notice. The Tribunal again ordered notice to the Corporate Debtor to its e-mail address. The Operational Creditor has sent notice through e-mail to the Managing Director and memo was filed enclosing copy of the notice sent through e-mail. In spite of it, the Corporate Debtor did not chose to appear before the Tribunal. Therefore, notice is deemed to have been served on the Corporate Debtor and Corporate Debtor deliberately did not chose to appear before the Tribunal. Therefore, the Corporate Debtor is treated as absent.

5. I have gone through the record. The petition is filed by Operational Creditor to initiate Corporate Insolvency Resolution Process against Corporate Debtor for failure to pay the amount due in respect of invoices raised for supply of goods to the Corporate Debtor. The amount said to have been due by Corporate Debtor is 4,97,730 USD.
6. The Operational Creditor has filed demand notice issued to the Corporate Debtor prior to filing of petition. It is shown as Annexure-I at page Nos. 15-21. The details of service of Demand notice is shown at page No. 23 . The details of invoices are shown at

Annexure-2 at page No. 24 to 28. E-mail correspondence is also filed. Operational Creditor several times demanded the Corporate Debtor to clear the unpaid operational debt. The Corporate Debtor however promised to pay the same but it failed to pay outstanding operational debt.

7. The Operational Creditor falls within the definition of "person" contained in Section 3 (23) of the IBC. Section 3 (23) (g) provides that person includes a person residing outside India. Section 5 (20) defines Operational Creditor – means a person to whom an operational debt is owed. Therefore, definition of person includes a person residing outside India, who will fall within the definition of Operational Creditor. Hon'ble Apex Court also held in the decision reported in. **Macquarie Bank Limited Vs Shilpi Cable Technologies Limited** reported in 2018 to SCC 674 that person under Section 3 (23) covers a person residing outside India. Thus, person includes a company.
8. The Petitioner has filed documentary evidence to show that Corporate Debtor committed default in repayment of unpaid operational debt. The Corporate Debtor remained absent and therefore the petition to be admitted. The Operational Creditor has filed memo along with consent Affidavit of IRP in prescribed form-2. The Petition is in order and is liable to be admitted.
9. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium

for the purposes referred to in Section 14 of the Code, with following directions:-

- (a) 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;
- (b) 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.
- (c) 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.
- (d) That the order of moratorium shall have effect from 06.09.2018 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.

- (e) 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. That this Bench hereby appoints Shri Maligi Madhusudhana Reddy, G-8, Amrutha Ville, Opp: Yashoda Hospital, Rajbhavan Road, Somajiguda, Hyderabad - 500082 e-mail: mmreddyfca@gmail.com (IBBI/IPA-001/IP-P00843/2017-2018/11427 as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

Accordingly, this Petition is admitted.


RATAKONDA MURALI
MEMBER (JUDICIAL)