

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT - II

Item No. 3
(IB)-1045(ND)2020

IN THE MATTER OF:

M/s. Rhydburg Pharmaceuticals Ltd. ... Applicant/Petitioner
Versus

Sanyog Healthcare Limited. ... Respondent

Under Section: 9 of IBC, 2016

Order delivered on 12.03.2021

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (J)

SHRI L.N. GUPTA,
HON'BLE MEMBER (T)

PRESENT:

ORDER

Order is pronounced in an open Court today.

-Sel-

(L. N. GUPTA)
MEMBER (T)

-Sel-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-1045(ND)2020

IN THE MATTER OF:

**M/s Rhydburg Pharmaceuticals Ltd.
1st Floor, B-9, Commercial Complex,
Dr. Mukherjee Nagar, North West Delhi
New Delhi-110009**

...Operational Creditor

VERSUS

**Sanyog Healthcare Ltd.
Khasra No.5, First Floor, Lal Dora
1909-1909 Village Kamruddin Nagar
Nagloi New Delhi-110041**

...Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on: 12.03.2021

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Operational Creditor : Mr. Rajnish Sinha, Advocate
For the Corporate Debtor : Mr. Aditya Dewan and
Mrs. Siddharth Chechani,
Advocates

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**'the Rules'**) by M/s Rhydburg Pharmaceuticals Ltd. Through its Authorized Representative Sh. Ashok Monga (**'Operational Creditor'**), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Sanyog Healthcare Limited (**'Corporate Debtor'**).

2. That the Corporate Debtor namely, M/s. Sanyog Healthcare Limited is a Company incorporated on 24.02.1999 with CIN No. U24232DL1999PLC098564 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at B-1, Yadav Park, Main Rohtak Road, Nangloi Delhi-11041.

3. That the Authorized Share Capital of the Corporate Debtor is Rs.20,00,00,000 and Paid-up Share Capital is Rs.18,62,40,000 as per the Master Data of the Corporate Debtor.

4. It is stated by the Operational Creditor that it is a manufacturer of pharmaceutical products and marketer in India with growing international presence.

5. It is submitted by the Operational Creditor in the Part IV of the Petition that the amount of his total debt claimed is Rs. 3,49,65,711/ as on 21.03.2020.

6. It is stated by the Operational Creditor that the Corporate Debtor is engaged in the retail business of selling Pharmaceutical products across India. It is added that the Corporate Debtor had approached the Operational Creditor for purchasing Pharmaceutical products for its business needs.

7. It is further stated that it was agreed between the parties that the Corporate Debtor shall place its orders on need basis and the products shall be delivered by the Operational Creditor, pursuant to which the payments will be made.

8. That the Operational Creditor has annexed the Invoices from Page 102 to 129 of the Petition, depicting transaction between the parties.

9. Further, the Operational Creditor has also annexed the Ledger Account of the Corporate Debtor reflecting transactions.

10. It is stated by the Operational Creditor that it had followed up the Corporate Debtor several times for its payments. The Operational Creditor has also placed emphasis on its letter dated 29.01.2020, annexed at Page 130 of the Petition, whereby the Corporate Debtor was asked to clear its dues.

11. That it is submitted by the Operational Creditor that since the Corporate debtor did not make the payments due, it had issued a Demand Notice dated 10.03.2020 under Section 8 of IBC, 2016 at the Registered Office of the Corporate Debtor claiming a total operational debt of Rs. 3,98,62,325/-.

12. It is stated by the Operational Creditor that the Demand notice issued under Section 8 of IBC was served by hand at the Registered Office of the Corporate Debtor on 10.03.2020. The Operational Creditor has also placed on record the proof of receipt of the demand notice at Page 139 of the Petition.

13. It is further stated that pursuant to delivery of the Demand Notice, Corporate Debtor made the last Part Payment of Rs.3,50,000/- on 21.03.2020, leaving an amount of Rs.3,49,65,711/- unpaid towards the principal debt amount.

14. It is added by the Operational Creditor that no notice of dispute has been received by it, a fact which is reflected in the Affidavit dated 28.10.2020 filed under Section 9(3)(b) of IBC, 2016. That the Operational Creditor in compliance of Section 9(3)(c) of IBC 2016 has annexed the statement of account by the Axis Bank pertaining to the period from 05.04.2020 to 31.03.2020.

15. That the Corporate Debtor has filed its reply and has stated that it had made a payment of Rs. 1 Crore since the receipt of the notice dated 29.01.2020. It is added that despite the receipt of the total

amount of more than Rs.1 Crore, the Operational Creditor issued notice under Section 8 of IBC 2016 in a haste.

16. It is further contended by the Corporate Debtor that the present petition is barred by Section 10A of IBC 2016 as the Petition is filed after 25.03.2020

17. After going through the records, averments and hearing submissions of both the parties, this Bench observes that :

- (i) The Corporate Debtor has neither brought the existence of dispute nor filed any record of pendency of any suit or arbitration proceedings before the receipt of demand notice or invoice in relation to such a dispute within 10 days from the receipt of the Demand Notice in terms of the Section 8(2)(a) of IBC 2016, nor it had made the payment of the entire Operational Debt in terms of Section 8(2)(b) of IBC 2016.
- (ii) To check whether the present Petition is barred by Section 10A of IBC 2016, it is necessary to visit the Provisions of Section 10A of IBC 2016. The same are reproduced below :

“10A. Suspension of initiation of corporate insolvency resolution process.

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March.”

It is pertinent to note that the last invoice in the present case was raised on 23.01.2020, which indicates that the Operational Creditor has not claimed any debt for the period post-25.03.2020. We further observe that there is no impediment in filing a Petition under Section 7,9 and 10, if the date of default of debt claimed is prior to 25.03.2020.

18. We are, therefore, of the view that the Corporate Debtor has not advanced any cogent reason as to why the CIR Process shall not be triggered against it.

19. In the facts and circumstances of the case narrated above, we are of the view that the Operational Creditor has succeeded in establishing the default on the part of Corporate Debtor in making payment of the operational debt. The Petition filed under Section 9 fulfills all the requirements of the law. **Therefore, we admit the petition in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of provisions of Section 14 of the Code.**

20. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

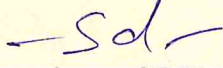
- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate 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.”


21. As proposed by the Operational Creditor, this Bench appoints Sh. Manohar Lal Vij, IP with Registration No. IBBI/IPA-001/P01480 /2018-2019/12269 as IRP (mlvij1956@gmail.com) having office at 8/28, W.E.A, 3rd Floor, Abdul Azziz Road, Karol Bagh, New Delhi-110005 subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of the IBC, 2016.

22. The Operational Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

23. A copy of this order shall immediately be communicated to the Operational Creditor, the Corporate Debtor and Sh. Manhoar Lal Vij, IRP Registration No. IBBI/IPA-001/P01480/2018-2019/12269 as IRP (mlvij1956@gmail.com) by the Court Officer/Registry of this Tribunal.

24. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.


(L. N. GUPTA)
MEMBER (T)


(ABNI RANJAN KUMAR SINHA)
MEMBER (J)