

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

MA/177/IB/2018

In

CP/540/IB/CB/2017

Under Section 60 of the IB Code, 2016

In the matter of M/s. Orchid Pharma Limited

M/s. Sreedhar Clearing Services Private Limited

.....Applicant/Petitioner

V/s

M/s. Lakshmi Vilas Bank Limited

And

M/s. Orchid Pharma Limited

And

Shri. Sripatham Venkatasubramanian Ramkumar

.....Respondents

Order delivered on: 16.08.2018

Coram:

K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

S. VIJAYARAGHAVAN, MEMBER (T)

Counsel for Applicant/ Petitioners: *Shri. P. Subba Reddy*
Shri. Shenik S Jain
Shri. T. Krishan Bhagavat
Shri. Moheet Rathore
Shri. A. Vikash

Counsel for 2nd & 3rd Respondent/CD: *M/s. Cyril Amarchand Mangaldas*

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

1). In this case, an application has been made under section 60 of the IBC 2016 on behalf of M/s. Sreedhar Clearing Services Private Limited. The Applicant Company was providing Customs Clearing Agency Services to M/s. Orchid

Pharma Limited (Corporate Debtor). The Applicant has stated that the Service Provider (applicant) worked on commission basis for the services rendered to clear the goods from the Customs Department and in the course of the services, the service provider had to make several payments which includes, Airport Authority of India charges, Documentation charges, Post Parcel Clearance charges and other statutory charges. These payments were necessarily made on behalf of the clients and are termed as "*reimbursable expenses*" which are to be paid by the clients along with the commission. The Applicant has stated that the outstanding amount as claimed by them was Rs.38,23,525/- (Rupees Thirty Eight lakhs Twenty Three Thousand and Five Hundred and Twenty Five only) and the IRP representing the corporate debtor had accepted the principal outstanding as Rs.30,13,792/- (Rupees Thirty Lakhs, Thirteen Thousand, Seven Hundred and Ninety Two only) but no payment has still been received from the corporate debtor.

2). Vide para 6 of their application, the applicant has stated that they have not been accommodated in the Committee of Creditors despite the company being a financial creditor to the extent to "*reimbursable bills*". The Applicant has further contended that the *reimbursable expenses* are nothing but a loan granted to R2 in the due course of services and that the *reimbursable expenses* along with interest accumulates to Rs.49,62,690/- (Rupees Forty Nine lakhs, Sixty Two Thousand, Six Hundred and Ninety only). The Applicant has prayed that the company's

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name and claim may be included in the list of Financial Creditors and thereby allowing them to participate in the meeting of Committee of Creditors.

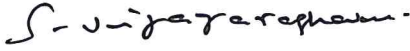
3) In this connection, the Tribunal notes that the Applicant has filed the claim in Form-B which is applicable for operational creditors. The Resolution Professional representing the Corporate Debtor and other respondents have submitted that the term "**Operational Debt**" as defined under section 5 (21) of the IBC refers to a claim in respect of provision of goods/services and has contended that the definition of *operational debt* includes all claims in respect of provisions of goods/services and the reimbursable expenses claimed as *financial debt* by the Applicant can be treated only as an *operational credit* extended to the corporate debtor.

ORDER

The Tribunal is of the opinion that the nature of business relations entered into between the Applicant company and the Corporate Debtor is that of a service provider i.e. the Applicant rendered the services in the capacity as a Customs Clearing Agency for which they have been paid a commission along with any amount paid on behalf of the corporate debtor. In view of this, the nature of the transaction clearly falls within the definition of an "**Operational Creditor**" as defined in Section 5 (21) of the IBC 2016 and the Applicant cannot be treated as a "**Financial Creditor**" as per the definition under Section 5 (8) of the IBC

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2016. However, the claim of the Applicant will continue to be recognized as an
“Operational Credit” in the Corporate Insolvency Resolution Proceedings.


(S. Vijayaraghavan)
Member (Technical)


(K. Anantha Padmanabha Swamy)
Member (Judicial)

/KNP/