

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

CP (IB) No. 109/9/HDB/2017  
U/S 9 of IBC2016R/W Rule 6 of I&B  
(Application to Adjudicating Authority) Rules 2016

**In the matter of**

M/S Dr. Reddy's Laboratories Limited,  
8-2-337, Road No. 03, Banjara Hills,  
Hyderabad – 500034  
Telangana

.....Petitioner/Operational Creditor

**Versus**

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

M/S. Inter Labs(India) Private Limited,  
7-1-6442/2/1/F,G-1,  
Veera Palace, Sundar Nagar,  
Erragadda,Hyderabad – 500038  
Telangana.

.....Respondent/Corporate Debtor

Date of order: 22.08.2017

**CORAM:**

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

**Parties/ Counsels present**

For the Petitioner/ Operational Creditor :

Shri N.V. Shravan  
Kumar Adv.,  
Shri Challa Gunaranjan  
Adv.,

For the Respondent/ Corporate Debtor:

Shri D. NarendarNaik  
Adv.,  
Shri G Bhupesh Adv.



Ms Mytri Indukuru Adv.,  
Ms .Anjana Ramnathan  
Adv.,  
Ms.Mansi Choudhari  
Adv.,

Per: Rajeswara Rao Vittanala, Member (J)

### ORDER

1. The present Company Petition bearing CP (IB) 109/9/HDB/2017 is filed U/s 9 of IBC 2016 RW Rule 6 of I&B (Application to Adjudicating Authority) Rules 2016 is filed by Dr. Reddy's Laboratories Limited by seeking to initiate Corporate Insolvency Resolution Process in respect of M/S. Inter Labs (India) Private Limited, under the provision of IBC 2016.
2. The Brief Facts, leading to the filing of present Company Petition are as follows:
  - a) Dr. Reddy's Laboratories Limited (Petitioner Herein) is Registered under the provisions of Company Act 1956, M/S. Inter Labs (India) Private Limited (Respondent Herein) is Registered under the Provision of Companies act 1956.
  - b) The Respondent Company is engaged inter alia in the business of manufacturing of Active Pharmaceutical Ingredients and intermediates. So it has approached the Petitioner for manufacture of the product. Accordingly, both have entered into Manufacturing and Supply Agreement on 25th May 2007 (referred to as Agreement herein after) for supply of Intermediates for Active Pharmaceuticals ingredients specifically 7-Chloro-1 etc to utilize their manufacturing facilities and supply manufactured material as per Quality stipulation and delivery schedules accordingly.



- c) As per said Agreement, the Respondent has to Manufacture and supply Product by Name "7-Chloro-1Cyclopropy-6-Flouro-1, Q-Acid" Etc. The Petitioner has to supply raw material to the Respondent at its own costs. And the Respondent has to manufacture and supply the finished Products.
- d) For manufacturing the Product as per Agreement, the Petitioner supplied Raw Material from time to time but the Corporate Debtor/Respondent failed to supply finished products. It came to know that the Respondent disposed of Raw Material and Finished Products to third Parties instead of to Petitioner. So the Petitioner suffered Financial Losses.
- e) Since the Respondent was not adhering to time schedule as agreed in the said Agreement, the Petitioner issued a demand notice dated: 22/22/2013 by inter alia calling upon respondent to pay a sum of Rs. 11,52,98,673/- which was pending due as on 30/10/2013 within 15 days of receipt of Notice.
- f) In pursuant to the above notice, certain amount was paid to Respondent, but later they have stopped paying the dues. The Corporate Debtor addressed a letter dated: 26/12/2014 to the Petitioner (Annexure 7 pg. 48) by stating that they were not able to do production properly due to so many reasons, and assured the Petitioner to reduce the outstanding by another letter dated: 02/01/2015 addressed to Respondent agreeing the proposal of the Respondent subject to certain terms and conditions with regard to supply of finished products and payment of outstanding amount.



- g) The Petitioner contented that they have complied with contractual obligation but whereas the Respondent breached the terms and conditions of the agreement. As per books of Accounts of Petitioner, there is an accumulated liability of Rs. 2, 73,20,633/- is due on the last date of Transaction, which is 24/11/2015. The Respondent, after re-conciliation of accounts, has admitted the debt of Rs. 2,64,41,770/-.
- h) When the Respondent failed to adhere to terms and conditions of Agreement under subsequent under taking/assurance, the Petitioner terminated the Agreement Dated; 25<sup>th</sup> May 2007 vide its letter dated 26/09/2016 addressed to Respondent.
- i) The Petitioner got issued a Demand Notice dated: 18/03/2017 to the Respondent, U/S 8(i) of IBC 2016 R/w. Clause (a) of sub rule (i) of rule 5 of I&B (Application to Adjudicating Authority) Rules, 2016. In pursuance to this Demand Notice, the Respondent got issued a reply dated: 27/03/2017 and the Petitioner again got issued a rejoinder to the Reply Notice vide its letter dated: 03/04/2017 by denying all the allegations made by Respondent
- j) Aggrieved by the Non-Payment of admitted debt, the Petitioner has filed the Present Petition by seeking to Initiate insolvency Resolution process against the respondent.

3. The Respondent has filed a reply affidavit dated: 28<sup>th</sup> July 2017, through its Managing Director namely D. Srinivasulu. The following are main contents raised in the reply,;

- (i) They have stated there are several triable disputes including claims and counter claims and some of the disputes are as under:



- (a) Short Supply of Raw Material by the Petitioner to the Respondent
- (b) Failure of supply good Quality raw materials by the Petitioner to the Respondent
- (c) Failure to comply with the requirement of placing orders for 30MT of Q-Acid P.M
- (d) Illegal early termination of the Manufacturing and Supply Agreement dated: 25/05/2017
- (e) Petitioner directed the Respondent to procure raw materials from 3<sup>rd</sup> parties because of its failure to supply raw materials for manufacturing of 30MT Q-Acid.

(ii) The Manufacturing and Supply Agreement Dated: 25<sup>th</sup> May 2007 is not properly executed and it cannot be acted upon. They have denied that there is an outstanding amount to be paid to Petitioner, on the contrary, they have claimed that the Petitioner is liable to pay to them (Respondent) an impliedly admitted sum of Rs. 28,80,00,000/-. However, without paying this amount, the Petitioner illegally terminated a Agreement and initiated the present Proceedings.

(iii) They have mentioned so many acts on their part of Petitioner, which resulted in losses to the Respondent. The letter dated: 26/12/2014 (Annexure -7) cannot be treated to one as an admission on the part of the Respondent for Payment of outstanding amount for Petitioner.

(iv) It is stated that the Respondent raised disputes several times viz., 31/03/2011, 10/12/2011, 15/11/2011, 12/01/2012, 04/09/2012, 28/08/2013, 22/04/2014, and 13/07/2015, apart from others. However the Petitioner, by suppressing the above disputes, has filed the Present Petition. The Respondent has explained several short comings on the part of the petitioner in supply of raw materials for 30MT Q-Acid.



- (v) The Respondent has also raised that the Supply agreement in Question was Illegally Terminated in violation of Clause 20(2) of the Agreement, which says that agreement can be terminated by either party with prior written notice of 90 days. The Respondent stated that they have issued a Arbitration Notice to Petitioner vide its letter dated: 11/04/2017, and there was no denial for the averments made in this notice.
4. I have heard Mr. N.V. Shravan Kumar & Mr.Challa Gunaranjan, Counsels for the petitioner/ Operational Creditor and Shri D. Narendar Naik, Mr. Bhupesh G, Ms Mytri Indukuru, Ms. Anjana Ramnathan, Ms Mansi Choudhary, learned counsels for the Respondent/ Corporate Debtors.
5. Shri Challa Gunaranjan, learned counsel for Petitioner submits that the petitioner has complied with all the provisions of Section 9 of IBC. The Debt in Question was admitted one, and the respondent simply denied the existence of debt without showing any substantial evidence in their support. He further submits that he has issued a rejoinder dated: 03/04/2017. He has stated the Manufacturing and Supply Agreement is a business process with respect to conversion, in which Raw Material would be supplied to Respondent by Petitioner on a job work basis, and the Respondent has to manufacture furnished product i.e., 'Q-Acid'. So, the Petitioner has to pay conversion cost. It is further alleged that entire facility and machinery was sold, and there was no Manufacturing Facility available as of date'. Therefore, it is contended that the Respondent became insolvent, and it would require winding up in interest of Creditors and Public at Large.
6. Shri D. Narendar Naik Adv., learned counsel for Respondent, while reiterating the averments in their reply, has further stated that there is no admitted debt and Outstanding as claimed by Petitioner and



the letter dated 26/12/2014 (page 48) cannot be treated to be an admission, and on the contrary, the Petitioner is liable to pay an amount of more than 28 Crores. The Agreement in Question is also not valid as it was not properly executed in accordance with law. In support of this contention, he relied upon judgement of this Hon'ble Supreme Court rendered in Avinash Kumar Chauhan v/s Vijay Krishna Mishra., Therefore, he has contended that Company Petition is liable to be dismissed.

7. In the light of rival contentions of both the parties, the following issues arise for consideration in the case:

- a. Whether the Petitioner complied with requisite provisions of Sec 9 of IBC 2016 to maintain the petition;
- b. Whether debt in question is admitted one;
- c. Whether the Respondent Company is solvent to resolve the issue in Question.

8. It is not in dispute that Petitioner has filed the Present Company Petition duly complying with Provision 9 of IBC 2016 with regard to Debt, Default, and Nomination of IRP etc. As Stated supra, there is a lot of Correspondence between the Petitioner and the Respondent. In fact, the business between the parties started with Execution of Manufacturing and Supply Agreement dated: 28<sup>th</sup> May 2017. While contending this Agreement is not properly executed, on contrary, the Respondent itself relies upon various terms and conditions of Agreement with regard to failure of commitment of terms and conditions on the part of Respondent. They have also alleged that said agreement was illegally terminated in violation of Terms of Agreement.

9. The letter dated: 26/12/2014 issued by Respondent to petitioner clearly admits that there was an outstanding payment payable to petitioner, and they could not pay due to uncertain circumstances.



However they assured to reduce the outstanding with a clear Schedule. The Petitioner, while accepting the difficulty of respondent has addressed letter dated: 02/01/2015. However, the respondent failed to clear outstanding amount of Rs. 2,73,20,633/- The record do not show that there is any dispute of debt before issuing demand notice to pay the debt in question. All the contentions with regard to dispute/counter claim /arbitration are after thought that too after receiving the demand notice issued by the petitioner. Therefore, the facts prima facie show that there is an admitted debt and the respondent is unable to pay debt in question.

10. The Respondent, though given sufficient time by this Tribunal to come out with any solution to resolve outstanding dues, have not come with any solution, more over they have raised un-tenable and baseless grounds. In fact, the respondent has admitted that they are unable to clear outstanding due to several difficulties. Though circumstances warrant that the Company is liable to be liquidated, an effort should be made through CIRP to find any possibility of any resolution. Hence, it is a fit case for admission.

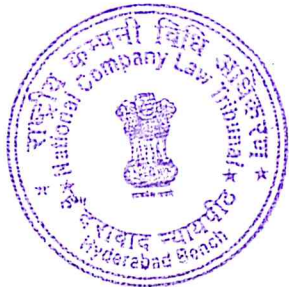


11. In the result the Company Petition bearing CP No. CP (IB) No. 109/9/HDB/2017 is admitted by exercising the powers U/S 9(5)(i) IBC 2016 and pass the following directions:

- 1) Appointed Shri M. Vijay Bhaskar Rao (Registration No. IBBI/IPA-002/IP-N00160/2017-18/10429) H.No. 8-1-301/26, Lakshmi Nagar Colony (Film Nagar Down), Shaikpet Nala, Hyderabad to act as Interim Resolution professional with a direction to initiate appropriate action contemplated in CIRP in accordance with extant provisions of IBC, 2016 and other relevant rules.

2) We hereby declare the following Moratorium U/S 14(i) of Code in respect of the following:

- (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
- (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 securitisation and reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).
- (d) The recovery of any Property by an owner or less or where such property is occupied by or in the possession of Corporate Debtor.
- (e) This order of moratorium shall have effect from today till completion of corporate insolvency resolution process (CIRP) or till passing an order for liquidation for Corporate Debtor under section 33, whichever is earlier.
- (f) Direct to cause a public announcement of the initiation of Corporate Insolvency Resolution Process immediately as prescribed under section 15 (1) and (2) of Insolvency and Bankruptcy Code, 2016, on [www.ibbi.gov.in](http://www.ibbi.gov.in) (designated



website of Insolvency and Bankruptcy Board of India, circulated vide IIBI/IP/PUBLIC ANN/221 dated 01.02.2017) and email to public.ann@ibbi.gov.in, in addition to other accepted modes of publication immediately and call for submission of claims as per Section 15 of the IBC read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Company is also directed to publish the same in their Official website.



(g) The IRP is directed to follow all extant rules of IBC and all the rules and regulations framed by Insolvency and Bankruptcy Board of India (IBBI) (Insolvency Resolution Process for corporate Persons) Regulations, 2016. Afford full opportunity to all concerned parties to the issue by duly following principles of natural justice;

(h) Both the petitioner and respondent are directed to extend full-co-operation to the IRP to discharge his statutory functions;

3) Post the case on 25<sup>th</sup> September, 2017 with a direction to the IRP to apprise this Tribunal, about steps being taken him from time to time, in instant CIRP, by way of filing an affidavit. The IRP is also directed to set schedules of meeting(s) of concerned parties, verification etc, in such a way that CIRP shall complete well before schedule 180 days prescribed under the Code.

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

V. Anna Poorna  
V. ANNAPOORNA  
Asst. DIRECTOR  
NCLT, HYDERABAD.

Sd/-  
Rajeswara Rao Vittalala  
Member (Judicial)  
Order received by the Registry  
प्रमाणित प्रति on 28/8/17  
CERTIFIED TRUE COPY  
केस संख्या  
CASE NUMBER CPJED/20109/9/HDB/2017  
निर्णय का तारीख  
DATE OF JUDGEMENT 22.8.2017