

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

CP (IB)/50/10/HDB/2017
U/s10 of IBC2016 R/W Rule 7 of I&B
(Application to Adjudicating Authority) Rules, 2016

In the matter of

M/S AMEYA LABORATORIES LIMITED (ALL)
A-49, Madhura Nagar,
Vengal Rao Nagar,
Hyderabad –500038

....Petitioner/Corporate Debtor

Versus

1. KOTAK MAHINDRA BANK LIMITED

Having its office at:
6-3-1109/1, 1st Floor, Jewel Pavani Towers,
Raj Bhavan Road, Somajiguda,
Hyderabad – 500082
Rep. by Mr. N. Murali Krishna

2. IDBI BANK LIMITED

Having its office at
: NPA Management Group,
H.No.5-9-89/1 & 2, 2nd Floor
Chapel Road, Hyderabad

3. ASSET RECONSTRUCTION
COMPANY (INDIA) LIMITED

Having its office at
Unit No.207, Bhuvana Towers
S.D. Road, Secunderabad ... Respondents/Financial Creditors

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

Date of order: 21.08.2017

CORAM:

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



Parties/ Counsels present

For the Petitioner : Shri A.S Prashanth along with
Shri Amir Bhavani, Shri Amir Ali
Shri Bhuvan Arora, Ms Varsha
Banarjee and Shri A.D Gupta
Advocates

For the Respondent : Shri K.R Raman, Ms N.Sridevi,
Shri B. Srinivasa Aditya, Ms
Jyothi Rani, Shri
Y.Suryanarayana, Shri Satish
Karun, Shri S.R.Srinivasa Rao,
Shri Deshpande Guru Prasad,
Shri P Sri Harsha, Shri M. Anil
Kumar and Shri B Harinath Rao,
Advocates

Per: Rajeswara Rao Vittanala, Member (J)

ORDER

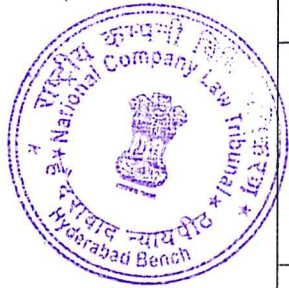
1. The present Company Petition bearing CP No.50/10/HDB/2017 is filed by M/S AMEYA LABORATORIES LIMITED (ALL) (petitioner/Corporate Debtor, U/s 10 of Insolvency and Bankruptcy Code 2016 (IBC), by seeking to Initiate Corporate Insolvency Resolution Process under IBC 2016, in respect of AMEYA LABORATORIES LIMITED.
2. Brief facts, leading to the filing of present Company Petition, are as follows:
 - 1) The Company was incorporated on 20.02.1996 as "Anu's Laboratories Limited" with Registration No. 01-23283 with the Registrar of Companies, Hyderabad, Andhra Pradesh. Subsequently, the name of the company was changed to "AMEYA LABORATORIES LIMITED" vide certificate of Incorporation, consequent



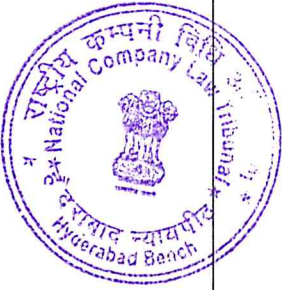
upon change of name dated 16.09.2013 issued by Registrar of Companies, Hyderabad, Andhra Pradesh.

- 2) The petitioner Company has taken loans from various banks and a statement of loans and defaults are furnished below:

Sl. No.	Name of Financial Creditor	Address	Details of Debt (Rs. In Crores)			
			Secured	Type of Facility	Amount O/s	Amount in Default
1.	State Bank Of India	Stressed Assets Management Branch 1 st floor, RTC Bus Complex, Kachiguda, Hyderabad		WC	72.49	72.49
2	ING Vysya Bank(Now merged with Kotak Mahindra Bank Ltd.	Regional Office, 3 rd Floor, Somajiguda, Hyderabad.		Term Loan WC	18.33 11.35	18.33 11.35
3	KarurVysya Bank Ltd.	Central Processing Cell(Loans) 5-8-363 to 365, 1 st Floor, Chirag Ali lane, ABIDS, Hyderabad		WC	14.33	14.33
4	IDBI	NPA Management Group, h.No 5-0-89/1&2, 2 nd Floor Chapel Road, Nampally, Hyderabad		WC	42.09	42.09
5	Development Credit Bank Ltd*	44 SD Road Regimental Bazar, Shivajinagar, Secunderabad		Term Loan	16.40	16.40



6	A.P State Financial Corporation Bank Ltd.	5-9-194, Chirag Ali Lane, Abids, Hyderabad - 500001	Term Loan	1.42	1.42
	<u>UNSECURED</u>				
7	IFCI Venture Capital Funds Ltd.	IFCI Tower, 61, Nehru Place, New Delhi - 110019	Short Term Loan	1.12	1.12
8	Shriram City Union Finance Ltd.	3-6-478, 5 th Floor, Anand Estates, Liberty Road, Himayathnagar Hyderabad	Short Term Loan	21.13	21.13
9	Can Bank Factors Ltd.	Flat No. 201-202, 2 nd floor, "SANTANA ETERNAL" D. No: 3-6-108/1, Road No.19, Himayathnagar Hyderabad - 500029	--	1.58	1.58
10	Reliance Capital Ltd.	Malik Estate 6-3-344, opp: J.V.Rao park, Banjara hills Hyderabad - 500034	--	2.06	2.06
11	India Factoring and Finance Solutions Pvt. Ltd.	6 th Floor, Vaibhav Chambers, Opp.Income Tax Office, Bandra, Kurla Complex, Bandra East. Mumbai	--	.70	.70
	Total			202.53	202.53



- 3) When the Petitioner Company was unable to pay Loans, and committed defaults to various Creditors, it has filed a Reference with BIFR U/S 15(I) of the Sick Industrial Companies (Special Provision) Act, 1985, and the same

was registered as Case No. 83 of 2005. While the Case was pending, the Government of India by Notification Dated 25/11/2016, the Sick Industrial Companies (Special Provision) repealed Act 2003, is issued making all proceedings or appeals of whatever nature pending before BIFR/ AAIFR as abated w.e.f 01/12/2016. Since said BIFR proceedings are pending, while the said repeal act came into force, the present Company Petition is filed under IBC 2016.

- 4) M/S Elder Pharmaceuticals Limited (ELZENA), one of the Financial Creditor of the Petitioner company has filed a Company petition No.33 of 2013 before the Hon'ble High court of Judicature at Hyderabad for the state of Telangana and the state of Andhra Pradesh U/S 433(e)& (f) and 439(c) of the Companies Act, 1956 and Rule 95 of the Companies (court) Rules, 1959, by seeking the following directions.

- (i) That Anu's Laboratories Limited, the Respondent Company herein be wound up by and under the order and directions of this Hon'ble court under the Provisions of the companies Act, 1956.
- (ii) That the Official liquidator, A.P High Court be appointed as the Liquidator of the Respondent company with all necessary powers to take charge of the assets and properties of the company and to distribute the same as per the directions of this High Court.
- (iii) That, pending the hearing and final disposal of this petition, the Official Liquidator, High Court of A.P or some other fit and proper person be appointed as the provisional Liquidator of the Company, with all powers under the Companies Act, 1956.



- (iv) That, pending the hearing and final disposal of this petition, this Hon'ble court, be pleased to pass an order of injunction restraining the Respondent Company, its agents and servant from in an manner disposing off and /or parting with possession of and / or alienating, encumbering and / or transferring and / or creating any right, title or interest in any manner whatsoever in favour of any person whosoever, except in the ordinary course of its business in respect of all the assets of the Respondent company;
- (v) For ad-interim and interim relief in terms of prayer (iii) and (iv) hereinabove
- (vi) That cost for petition be provided for;

- 5) Accordingly, the Hon'ble High court, after considering the indebtedness of the petitioner Company, by an order dated 20th April, 2015, ordered the petitioner Company to be wind up by appointing official Liquidator attached to the Hon'ble High Court.
- 6) Aggrieved by said order of Hon'ble High Court, AMEYA LABORATORIES LIMITED, the petitioner, herein, has filed application No. 940 of 2015 in O.S A. No. 35 of 2015 before Division of Hon'ble High Court, by inter alia, seeking to grant stay of all further proceedings pursuant to winding up order passed on 20th April 2015 in C.P No. 33 of 2013. After considering the issue, the Court passed an order dated 19th August 2015, which reads as follows :

"In view of the law declared by the Supreme Court in RISHSABH AGRO INDUSTRIES LTD., all proceedings on or after 02.07.2015 shall, in view of section 22 of the Act, be stayed. It is made clear that the stay would operate only from 02.07.2015



onwards, and all proceedings prior thereof shall remain in force. Needless to state that, this order shall not preclude the respondent-creditor from invoking the Jurisdiction of BIFR under the provisions of the Act”.

- 7) While the matter stood thus, the petitioner has filed the present Petition by seeking to initiate CIRP under the provisions of IBC.
- 8) Kotak Mahindra Bank LTD. the Respondent No.1 herein, has opposed the petition by filing a counter dated 6th June 2017. The following are their main contentions:
 - a) The present Company petition is nothing but a gross abuse of process of law, and it has filed with an ulterior motive to stall this Respondent and other secured Creditors from enforcing their securities, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 **(SARFAESI Act)** as the process of recovery is at an advanced stage, where in one of the secured asset of Company was already sold.
 - b) It is stated that the stay order date 19th August 2015, passed by the Hon'ble Division Bench of High Court in Application No. 94 of 2015 O.S.A. No. 35 of 2015 at Hyderabad, doesn't amount to setting aside winding up order date 20th April 2015. So, the present Petition is not maintainable under section 11(d) of IBC and thus, it is liable to be rejected on this ground alone.
 - c) It is alleged that the Petitioner has taken mutually contradictory stands in two forums i.e., before High Court at Hyderabad, and before this Tribunal, which is



Impermissible under law. The petitioner has not approached this Tribunal with clean hands and it is contumacious.

- d) They have pointed out that the erstwhile ING Vysya Bank Ltd has sanctioned term loan, and working capital facilities to the Petitioner. The Petitioner had mortgaged immovable properties in favour of ING Vysya Bank Ltd. as security for discharging the loans sanctioned. ING Vysya Bank Ltd. merged with this Respondent (Kotak Mahindra) in pursuant to a scheme of amalgamation. The same has been sanctioned by the Reserve Bank of India vide its order No. DBR. No. PSBD/4476/16.01.136/2014-15 dated 31.03.2015. It was ordered by the Reserve Bank of India, vide order of even date that the said scheme of amalgamation would come in to effect from 01.04.2015. Accordingly, the account of the petitioner with ING Vysya Bank Ltd. stood transferred to this Respondent including all documents, rights and obligation in relation to the Credit Facilities granted by ING Vysya Bank, all securities, personal guarantees etc. Consequently, this Respondent stepped into the shoes of ING Vysya Bank Ltd, in so far as the credit Facilities granted by ING Vysya Bank Ltd. to the petitioner Company is concerned.

- e) It is further stated that they have conducted auction for the sale of Unit III at Vishakhapatnam under SARFAESI Act, 2002, Andhra Pradesh in January, 2016. A buyer approached for the purchase of Unit III and sale concluded on 25.07.2016, wherein the defendant was a confirming party to the sale under Private Treaty of SARFAESI Act, 2002. The property was registered in the name of the Buyer on 29.07.2016. The Promoter of Petitioner Mr. K.Hari Babu also informed the Bank in



Joint Lenders Meeting dated 20th September 2016 and 16th December 2016 that he would be submitting a proposal for one-time settlement of all its dues to the Bank. However, the petitioner failed to come out with any such settlement so far.

f) It is stated that since May, 2015, the representatives of this Respondent, IDBI Bank Ltd, the State Bank Of India, and the Karur Vysya Bank Ltd. have been periodically meeting for the purpose of reviewing and finalizing, not only mode of recovery of their respective outstanding amounts but also to enforce their common security interest created by the Petitioner. This Respondent, the IDBI Bank Ltd, the State Bank of India, and the Development Credit Bank, KarurVysya Bank Ltd constitute more than 75% of creditors in Value. In the last meeting held on 12-05-2017 among the representative of the respondents, IDBI Bank Ltd, the State Bank of India, and the Karur Vysya Bank Ltd, it was resolved to oppose the present petition.

g) Therefore, they have prayed the Tribunal to reject the present petition with exemplary costs.

9. IDBI Bank Limited, the 2nd Respondent herein, has also filed separate a counter dated 14th June 2017, by opposing the Company petition. The following are main contentions raised in their counter:

a. They have stated that, at the request of the petitioner Company in the month of September 2008, the Bank has sanctioned various credit facilities, such as Cash Credit of 1500/- lakhs, Letter of Credit of Rs. 2000/- lakhs totally amounting to Rs.3500 Lakhs vide sanction Letter Ref. No. 617/IDBI/MCG/HKT, Dated: 20-01-2011



and later vide letter No.37/MCG/ALL dated 18-04-2011, The facilities were again renewed and enhanced from Rs.35 Crore to 40 Crore. Further as per the sanction letter, the Respondent Bank is having first pari passu charge on the entire current assets of the company both at present and in future by way of hypothecation and second pari passu charge on entire fixed assets of the company. Sri. K. Hari Babu and Sri N.S. Walimbe, promoters and directors of the respondent company have executed personal guarantees for the above said credit Facilities sanctioned to the Company.

b. It is further stated that beside filing of O.A No. 1432 of 2014 before the DRT for recovery of more than Rs. 34 Crores, the Bank has also initiated SARFEASI proceedings against the Petitioner Company, and on the secured properties and in the said process, the secured creditors have sold the property situated at Vishakhapatnam under the lead of Kotak Mahindra Bank Ltd. and out of the said sale proceeds this Respondent Bank has received a sum of Rs.1,22,26,468/- towards its Share and the Petitioner Company is still due to pay a sum of Rs.56,90,97,174.24 as on 05-06-2017.

c. In pursuance to default committed by the Petitioner, its account was classified as NPA as per the guidelines of the RBI, as such this Respondent Bank initiated SARFEASI proceedings against the Petitioner Company and on mortgaged properties. While the matter stood thus, the Petitioner Company by suppressing the material facts of initiating the recovery proceedings against the petitioner Company by filing above said O.A No. 1432 OF 2014 before the Debt Recovery Tribunal at Hyderabad and initiation of the SARFEASI proceedings



against it, has approached BIFR under the provision of the Sick Industrial Companies (Special Provisions) Act 1985 and it was registered as Case No. 83 of 2015.

d. It is contented that stay orders dated 19th August, 2015 passed by the Hon'ble High Court at Hyderabad, cannot be understood that the winding up of Orders dated: 20-04-2015 passed by Hon'ble High Court in CP No. 33 of 2013 were set aside due to the fact that still the OSA filed by the Petitioner Company is pending before the Hon'ble High Court at Hyderabad. So the instant Company petition is not maintainable as per section 11(D) of the IBC 2016. Therefore, it is liable to be dismissed at the threshold without any further consideration.

e. It is further stated that since May 2015, the officials of this Respondent Bank, and other secured creditors viz., Kotak Mahindra Bank Ltd, the State Bank Of India, Development Credit bank and the KarurVysya Bank Ltd etc., have been periodically meeting for the purpose of reviewing and finalizing the modes of recovering their respective outstanding due amounts from the Petitioner Company, by enforcing the common security created in their favour. This Respondent Bank and the other secured creditors stated above constitute more than 75% of the creditors in value, and in the last meeting held on 12-05-2017 among the officials of the Respondent Bank and the other secured creditors referred above, it was resolved to oppose the present Petition filed by the Petitioner Company.



10. The Asset Reconstruction Company (India) Limited, the Respondent No.3 herein, has also filed its reply dated 14th June 2017, opposing the instant Company petition. The main contents raised by it are as follows:

a. It is stated that in pursuant to the documents executed by the corporate Debtor i.e., Ameya Laboratories Limited, the Development Credit Bank has sanctioned certain loans to Corporate Debtor. That the Development Credit Bank Limited, the original lender by virtue of an Assignment Agreement Dated 13.04.2017 assigned the debt of the Corporate Debtor in its favour as trustee of the Arcil-SBPS-022-IV Trust. Hence, Development Credit Bank Limited has become absolute owner of the loans initially sanctioned by DCB.

b. It has further submitted that the Development Credit Bank Limited had initiated SARFAESI action, and has also taken physical possession of the Company property including land, building, plant and machinery. As on today, the physical possession of the company property remains with the original lender i.e., Development Credit Bank Limited.

c. They have also urged the Tribunal to dismiss the instant company petition as it is not all maintainable.

11. I have heard Mr A.S Prashanth, along with Mr. Amir Bhavani, Amir Ali, Mr. Bhuvan Arora, Ms Varsha Banarjee, Mr. A.D Gupta learned counsels for the Petitioner and Mr. K.R Raman, Ms N. Sridevi, Mr. B.Srinivasa Aditya, Ms Jyothi Rani, Mr. Satish Karun, Mr. S.R. Srinivasa Rao, Mr. Deshpande Guru Prasad, Mr. P Sri Harsha, Mr. M. Anil Kumar, Mr. B Harinath Rao, Learned counsels for the



Respondents. I have also carefully gone through all the pleadings along with material papers filed in their support.

12. In view of above facts of case, the main issue arise for consideration in the present Company Petition is whether Company petition is maintainable or not; if so what is the relief, the Petitioner is entitled for.
13. As stated supra, the basic facts especially with regard to sanctioning of loans by various financial creditors, by default approaching BIFR, the Hon'ble High court, SARFAESI proceedings etc. are not in dispute. It is no doubt that the Petitioner, on abolition of SICA Act, can file the present petition purely on technical grounds. However, whether the petitioner is justified to maintain the petition under IBC is a serious issue to be considered in the instant petition. It is not in dispute that the Hon'ble High Court passed wind-up order for winding up of petitioner Company at the instance of Elder Pharmaceuticals Limited vide its order dated 20th April, 2015 as detailed supra. Aggrieved by this order, the petitioner Company has approached the Hon'ble Division Bench vide Application No. 940 of 15 in OSA No. 35 of 2015, however, limited stay, as extracted above was passed. As stated by the Financial Creditors/Banks, as clearly mentioned in their replies, several actions under SARFAESI and other acts have been initiated.
14. One of the fundamental points to be considered by Adjudicating Authority, in a proceeding initiated for CIRP under IBC under, is whether any possibility of resolution process upon analysing financial position of Defaulting Company. If it is found that there is no financial feasibility of reviving the Company in question basing on its financial position, it would be a futile exercise to initiate Insolvency process contemplated under IBC and liquidation of such a



company would be an appropriate step without going through process of CIRP. In the instant case, as stated supra, the Hon'ble High court of AP, in the order dated 20th April, 2015, passed in CP No 33 of 2013, on consideration of the facts, has already come to conclusion that the petitioner Company was unable to pay debt to the petitioner therein (M/s Elder Pharmaceuticals Limited) and thus, ordered the petitioner Company to be wind up, and this order is subsisting as of now as rightly contended by the Respondents herein. And other financial creditors, the respondents herein, have also initiated several steps, as mentioned above, to recover their dues.



15. It is not enough that one is eligible to file a petition under IBC, 2016, but the other fundamental principles like approaching a judicial forum with clean hands; not to resort to forum shopping; multiple litigation, not to misuse/abuse judicial process etc are very well settled judicial principles which are required to be fulfilled to maintain a petition, under the provisions of IBC 2016 too. And this Code cannot be permitted to misuse/scuttle other proceedings initiated legally by the parties concerned. The petitioner, by simply relying on the abolition of SICA Repeal Act, has filed the present Company petition. It is not in dispute that the petitioner can technically maintain the present petition since BIFR proceedings initiated by the petitioner abates. However, he is estopped/not justified to approach the Adjudicating Authority under IBC, 2016.
16. There are enough safeguards provided in the provisions of IBC, 2016 to prevent its misuse/abuse by the parties on frivolous grounds. To cite some, sections 65 with regard to Fraudulent or malicious initiation of proceedings; Section 66 (Fraudulent trading or wrongful trading) etc., Section 11 of

IBC also bar the following persons to initiate Corporate Insolvency process:

- a) a corporate debtor undergoing a corporate insolvency resolution process: or
- b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application ; or
- c) a corporate debtor of financial creditor, who has violated any of the terms of resolution plan which was approved twelve months before the date of making an application under this chapter ; or
- d) A corporate debtor in respect of whom a liquidation order has been made.

17. Since the petitioner Company, as stated supra, has already suffered Liquidation order passed by the Hon'ble High court which is still subsisting, the present petition is also not maintainable under section 11 (d) of IBC, 2016, as extracted above. Apart from that, as stated supra, the Financial Creditors/Banks of company have already initiated several steps to recover their dues as explained by the Bank in their Affidavits. The filing of present Company Petition is nothing but gross abuse of process of law enacted by the IBC, 2016. The entire act has to be read together to come to a conclusion with regard to admission of a case under IBC is concerned, and it cannot be simply based on technical reading of the concerned provisions of IBC. Hence, it is not a fit case for admission, and is liable only to be dismissed with costs. However, since the petitioner is technically eligible to file the present petition, upon abatement of BIFR proceedings initiated by it, I am not inclined to impose any costs.



18. In view of the above facts and circumstances of case, I am of the considered view that the present Company Petition is not a fit case to admit. Hence, the Company Petition bearing CP No. CP (IB)/50/10/HDB/67 is hereby dismissed. No order as to costs.



RAJESWARA RAO VITTANALA
Member (Judicial)

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प्रमाणित प्रति
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केस संख्या
CASE NUMBER CP (IB)/50/10/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 21.8.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 24.8.2017

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.