

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. No. 258/2016 (T.P No. 108/2017)
u/s 433, 434 & 439 of the Companies Act, 1956

&
U/s 9 of I & B Code, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016

In the matter of

Encarta Pharma Private Limited,
No.21, "SHRISTI"
3rd Floor, 24th Main, J.P Nagar, 6th Phase,
Bengaluru-560078.

Petitioner/Operational Creditor

AND

Vikram Hospital Private Limited,
No.46, Vivekananda Road,
Yadavagiri,
Mysore-570020.

Respondent/Corporate Debtor

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

Date of Order: 19th June, 2018

For the Petitioner(s): Mr. Deepak, Senior Advocate with Mr. S. Rajesh,
Advocate.

For the Respondent: Mr. Rajath H.V, Advocate.

Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical)**

ORDER

1. This Company Petition bearing C.P No.258/2016 (T.P No. 108/17) is filed by Encarta Pharma Private Limited, under sections 433, 434 and 439 of the Companies Act, 1956 before the Hon'ble High Court of Karnataka at Bengaluru, by inter-alia seeking to liquidate/woundup of Vikram Hospital Private Limited; and to appoint Official Liquidator to take possession of the assets, properties, Books and Records etc.,



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2. The case was transferred from the Hon'ble High Court of Karnataka at Bengaluru, in pursuant to the Notification No. GSR.1119 (E) dated 7th December 2016 issued by the Ministry of Corporate Affairs, New Delhi, to this Tribunal and it is renumbered as T.P. No. 108/2017. And it was listed on various dates viz., 02/02/2017, 06/03/2017, 10/04/2017, 26/04/2017, 20/06/2017, 07/07/2017, 10/08/2017, 05/09/2017, 15/09/2017, 26/09/2017, 23/10/2017, 09/11/2017, 15/11/2017, 05/12/2017, 08/01/2018, 12/02/2018, 12/03/2018, 26/03/2018, 04/04/2018, 18/04/2018, 10/05/2018, 07/06/2018 & 19/06/2018, and on a very few occasions, the Corporate Debtor was represented.
3. Brief facts, leading to filing of the present Company Petition, are as follows:-
 - 1) The Petitioner/Operational Creditor viz., Encarta Pharma Private Limited is a company incorporated under the Companies Act, 1956 and is in the business of distribution of medical consumables and implants products to various Hospitals and dispensers. The Petitioner has been supplying medical consumables and other products to the Respondent and has been maintaining a running account since 2005.
 - 2) The Respondent / Corporate Debtor Creditor viz., Vikram Hospital Private Limited was incorporated under the Companies Act, 1956 on 26th May 2000, having its authorized share capital is Rs 20,00,00,000/- (Rupees Twenty Crores only) divided into 20,00,000 equity shares of Rs 100/- each.
 - 3) During the course of business, the Petitioner has supplied materials which has been accepted by Respondent as per the Invoices raised, and for this the Respondent Company is due a sum of Rs 1,76,33,598/- as per the statement enclosed. In spite of several requests and follow ups, the Respondent fail to pay the outstanding amount. Therefore the Petitioner was constraints to send a legal notice to the Respondent Company on 3rd August 2016 demanding for the payment of



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outstanding dues of Rs 1,76,33,598/- plus accrued interest from the date of Invoice became due till the payment of the entire outstanding amount. However, the Respondent fails to pay the amount. Consequently, the Petitioner has issued a Winding up notice on 3rd August 2016 under Section 434 (1) (a) of the Companies Act, 1956 to the aggregate sum of Rs 1,76,33,598/- plus interest.

- 4) Since the Respondent fails to pay the outstanding amount as its liability far exceeds its present and probable assets, hence the instant company Application. On transfer of the case from Hon'ble High Court- Karnataka, the Petitioner is directed to comply the relevant provisions and rules framed under I & B Code and to file revised Company Petition.
4. Heard Shri Deepak, learned Counsel for Petitioner/Operational Creditor. None appeared for the Respondent. The learned Counsel for Petitioner while reiterating various contentions raised in the Company Petition also relevant law, has submitted that the Respondent admittedly failed to pay the outstanding amount of Rs 1,76,33,598/- and even the objections filed by the Respondent shows that admittedly liable and the Petitioner has also complied with all the provisions of I & B Code and filed an amended Company Petition and thus, it is a fit case to initiate Corporate Insolvency Resolution Process.
5. The Respondent/Corporate Debtor has filed statement of objections denying the allegations made in the Petition by inter-alia stating as follows:
 - a) The Petitioner has not complied with the statutory mandate contained in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, and no demand notice was issued to the Respondent reflecting the actual amount due to the Petitioner. As such the instant Application seeking to initiate Corporate Insolvency Resolution Process is not maintainable and is liable to be rejected at the threshold.



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- b) That the claim amount for Rs 2,54,47,189/- put forth by the Petitioner in the instant Application filed on 26th April 2017 is erroneous and hence, the said claim is hereby denied as false and imaginary, as the actual amount due to the Petitioner as on 31/03/2-017 is Rs 1,57,10,464/- and not as claimed by the Petitioner.
- c) That the Respondent has been making prompt attempts to repay the dues of the Petitioner and even after initiation of the above proceedings i.e., T.P No. 108/2017, the Respondent has been making periodical payments to clear the dues of the Petitioner and thereby the allegations made by the Petitioner does not meet the criteria under the provisions of I & B Code 2016 and is devoid of any merits and hereby denied as false, baseless and incorrect statements and hence liable to be rejected.
6. Perused the pleadings of both the parties. The present Application/Petition is filed seeking in accordance with section 9 (2) of I & B Code, 2016. There is no repayment of unpaid operational debt and even though Demand Notice has been issued under the provisions of I & B Code and Rules there under. Therefore, we are satisfied that, it is a fit case to admit the instant Company Petition and to pass other consequential orders for appointment of Insolvency Resolution Professional etc.,
7. **Mr. Ramachandra D.Choudhary**, 9-B, Vardan Tower, near Nirmal House, Lakhudi Circle, Navrangpura, Ahmedabad-380014. Registration No. **IBBI/IPA-001/IP-00157/2017-18/10326** is proposed as Interim Resolution Professional is eligible to be appointed as IRP and also filed requisite declaration in accordance with the format prescribed by the IBBI-New Delhi.
8. In view of the above facts and circumstances and by exercising powers conferred on this Tribunal U/s 9(5)(i) and other extant provisions of IBC, 2016, the following orders are passed :
- 1) The Company Petition bearing T.P. No. 108/2017 is hereby admitted initiating CIRP in respect of Corporate Debtor;

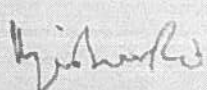


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- 2) **Mr. Ramachandra D.Choudhary**, 9-B, Vardan Tower, near Nirmal House, Lakhudi Circle, Navrangpura, Ahmedabad-380014. Registration No. **IBBI/IPA-001/IP-00157/2017-18/10326** is hereby appointed as Interim Resolution Professional in respect of the Corporate Debtor to carry on the functions as mentioned under the Insolvency & Bankruptcy Code.
- 3) The following moratorium is declared prohibiting all of the following, namely:
- (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 Securitisation 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.
 - (e) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
 - (f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - (g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:
- 4) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time
- 5) Post the case for report of IRP on 26/07/2018.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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


Deputy/Asst. Registrar
National Company Law Tribunal
Bengaluru Bench

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21/6/18