

PARABOLIC DRUGS LTD.

CIN No. : L24231CH1996PLC017755.

Ref. No.: PDL/SCY/SEPTEMBER/2018

Date: 01/09/2018

The National Stock Exchange of India Limited
"Exchange Plaza", Banda Kurla Complex
Bandra East, Mumbai
Maharashtra

Listing Compliance Cell
BSE Limited
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SUBJECT: Announcement

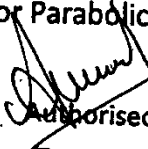
It is informed that Corporate insolvency process has been commenced against the Company as per order dated 23rd August, 2018 & 30th August, 2018, passed by honorable National Company Law Tribunal, Chandigarh Bench, Chandigarh under the Insolvency & Bankruptcy Code, 2016 in **CP (IB) No.102/Chd/CHD/2018** in the case of M/s. Weather Makers Pvt. Ltd. Vs. M/s. Parabolic Drugs Limited.

Mr. Sanjay Kumar Aggarwal, having Registration No.IBBI/IPA-002/IP-N00126/2017-18/10295 was appointed as an Interim Resolution Profession

You are requested to display the same on the Notice Board of your Exchange for the information of members and general public.

Thanking You

For & On Behalf of Parabolic Drugs Limited

Sincerely
For Parabolic Drugs Ltd

Authorised Signatory
Authorised Signatory

IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"

CP (IB) No. 102/Chd/CHD/2018
with
CA No.316/2018

Under Section 9 of IBC, 2016

In the matter of:

Weather Makers Pvt.Ltd.
SCO: 139-141, First Floor,
Sector 17-C,
Chandigarh – 160017

...Petitioner –Operational Creditor

Versus

Parabolic Drugs Ltd.
having its registered office at
ScO: 99-100, Top Floor,
Sector 17-B,
Chandigarh - 160017

...Respondent –Corporate Debtor

Judgment delivered on : 23.08.2018

**Coram: Hon'ble Mr.Justice R.P.Nagrath, Member (Judicial)
Hon'ble Mr.Pradeep R.Sethi, Member (Technical)**

For the Petitioner : Mr.Yogeh Goyal, Advocate

For the Respondent : Mr.Gaurav Mankotia, Advocate

Per: R.P.Nagrath, Member (Judicial)

JUDGMENT(Oral)

Notice of CA No.316/2018 to the respondent-corporate debtor and Mr.Gaurav Mankotia, Advocate appearing for the respondent accepts notice. Learned counsel for respondent submits that the respondent is not to file any reply/objections to the application. The prayer is made in the application to place on record upto date Ledger Account statement

(Annexure A15) along with complete synopsis of the case. Having heard learned counsel for the parties, the application is allowed and the documents be taken on record. CA No.316/2018, therefore, stands disposed of.

2. This petition has been filed by M/s Weather Makers Pvt.Ltd., a company incorporated under the Companies Act, 1956 as an Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the Code) to initiate insolvency resolution process against the corporate debtor.

3. The petitioner-company was incorporated on 05.11.1990. The certificate of incorporation is at page 32 (Annexure-A) of the paper book with which the Memorandum and Articles of Association have been annexed. The petition has been filed under the Code on the basis of resolution of Board of Directors of the company passed on 10.02.2018 authorising Mr.Anil Sahni, Managing Director or Mr.Arun Sahni, Director of the company to file the application/petition before the Tribunal and to do all the acts necessary in the progress of the case.

4. The petition has been filed by moving application in Form 5 as prescribed in Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the Rules) furnishing all the required particulars.

5. The respondent company was incorporated on 22.02.1996 with authorised share capital of ₹72 crores and paid-up capital of ₹61,89,20,140/-. The master data of the respondent-corporate debtor is at page 52-54 of the paper book. The registered office of the respondent-corporate debtor is at

Chandigarh and therefore, the matter falls within the territorial jurisdiction of this Bench of the Tribunal.

6. The facts of the case briefly stated, are that the petitioner was supplying Heating, Ventilation and Air Conditioning System (HVAC) and providing services of supplying, installation, testing and commissioning, fabrication of HVAC System in the plant(s) etc. to the respondent-corporate debtor. The first bill of default was issued on 19.09.2011. Goods were supplied to the respondent by various invoices Annexure A5 (colly) from 19.09.2011 to 29.08.2012. The respondent had been making payment of the amount from time to time and the last payment to the tune of ₹4 lacs was made on 21.03.2014 and the balance outstanding amount was ₹73,37,732.80 for which the details have been mentioned with the additional synopsis filed with CA No.316/2018 as under:-

Material supplied to Parabolic Drugs Ltd. Village Sudran (MP-3, DERA BASSI)	₹306164.80
Material supplied to Parabolic Drugs Ltd. Village Sudran (STERILE PLANT, DERA BASSI)	₹2062327
Material supplied to Parabolic Drugs Ltd. Village Chharoli (LALRU PROJECT)	₹4969241
Total	----- ₹73,37,732.80

The computation of calculation of the outstanding amount has been attached at Annexure A-3 with the main petition.

7. It is further stated that the respondent-corporate debtor issued balance confirmation letter dated 30.07.2016 accepting the outstanding amount as on 30.06.2016 to be ₹73,37,734/- and another balance confirmation letter dated 31.08.2017 which are in the nature of

acknowledgements of debt in writing signed by the respondent-corporate debtor. The balance confirmation letters are at Annexure A4 (colly) with the main petition. It is stated that the outstanding amount was not paid despite repeated demands. In this way, the total outstanding amount stated is ₹73,37,732.80 in Col.1 of Part IV of Form 5 for which details of the transactions have also been mentioned.

8. Before filing the instant petition, the petitioner sent a Demand Notice dated 21.02.2018 Annexure A-7 in terms of Section 8 of the Code in Form 3 with which the petitioner has also sent summary details/working of the transactions, copy of the ledger account and copy of all the invoices. Same are forming part of the record. This notice was sent by speed post to the corporate debtor and it was delivered to the corporate debtor on 22.02.2018. Petitioner has stated that it did not receive any notice of dispute from the corporate debtor in respect of the amount in default. The affidavit of the authorised representative of the petitioner company is at Page 149 of the paper book (Annexure A9).

9. Being an operational creditor, the petitioner was not required to propose the name of the Resolution Professional to be appointed as Interim Resolution Professional, yet in Part III of Form 5 the petitioner has proposed the name of Mr.Sanjay Kumar Aggarwal, having IBBI Regn.No.IBBI/IPA-002-IP-N00126/2017-18/10295 as the Interim Resolution Professional. The written communication by the proposed Interim Resolution Professional in Form 2 is also annexed at Annexure A11. He has certified that there are no disciplinary proceedings pending against him and he is currently appointed

as Resolution Professional in one case. At page 156 of the paper book, there is certificate of registration issued by IBBI in favour of Mr.Sanjay Kumar Aggarwal.

10. On filing of this petition, copy of the petition along with entire paper book was also dispatched to the respondent-corporate debtor in order to comply with the requirement of sub-rule 2 of Rule 6 of the Rules.

11. Notice of this petition was issued to the respondent-corporate debtor and appearance was made for the corporate debtor by Mr.Gaurav Mankotia, Advocate. The objection to the prayer has been filed by the respondent-corporate debtor. It is stated that the goods supplied by the petitioner company were not as per specification and there was manufacturing defect in the heating, ventilation and air conditioning system and the representatives of the petitioner company were apprised of the defects. It is also stated that the respondent-corporate debtor was facing tough times because of the slump in business and the returns as envisaged were never achieved. The promoters of the corporate debtor, however, tried their best to revive the company and settle with various creditors for revival of an on-going company. Even certain policies of the Government of India were not conducive for the revival of the company which had witnessed huge growth on previous occasions. The turnover of the company has come down from ₹1150 crores in the year 2011-12 to merely ₹75 crores.

12. We have heard learned counsel for the parties and have perused the records quite carefully.

13. The petition has been filed after the expiry of 10 days of the service of the demand notice in the prescribed form and thus fulfilling the requirement of sub-section (1) and (2) of Section 9 of the Code.

Sub-section (3) of Section 9 of the Code reads as under:-

“(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and

(d) such other information as may be specified”

14. The petitioner has complied with the requirement of Clause (a) by sending copy of the invoice in the prescribed form demanding payment from the corporate debtor which fact is not disputed during the course of arguments. The petitioner has also filed affidavit of not receiving any notice of the dispute relating to unpaid operational debt, to comply with the requirement of Section 9(3)(b) of the Code. Certificate from Union Bank of India where the petitioner is maintaining its account and receiving payment from the corporate debtor has also been filed to the effect that since 01.02.2018 i.e. before the date of demand notice, no payment has been received from the corporate debtor in this account, thereby complying with the requirement of Section 9(3)(c) of the Code. Learned counsel for the petitioner submits that there is no record of the information utility available confirming that no payment of unpaid operational debt by the corporate debtor, but the proof confirming that there is no payment of the operational

debt by the corporate debtor has been produced in abundance in order to comply with clause (e) of Section 9(3) of the Code.

15. There is an allegation in the reply/objection filed by the corporate debtor that the goods supplied were of sub-standard, but there is no proof forthcoming, rather it is admitted during the course of arguments by learned counsel for respondent that any such dispute was never raised by the corporate debtor except the objection to this effect taken in the reply. It is also not disputed that reply to the demand notice was not sent.

16. The petitioner's version is further established from copy of the ledger account of the corporate debtor being regularly maintained. Copy of the ledger account was sent along with the demand notice Annexure A7. At page 145 of the paper book is the entry dated 21.03.2014 of the Ledger Account showing last payment received from the corporate debtor was to the tune of ₹4 lacs. There are then the balance confirmation letters admittedly executed by the corporate debtor before the expiry of 3 years taken from 21.03.2014. The Ledger Account statement was initially filed upto 01.09.2014 along with the main petition but copy of the ledger account for the subsequent period has been filed as Annexure A-15 with CA No.316/2018 which also indicates that no further payment was received from the corporate debtor. Learned counsel appearing for the respondent does not dispute the authenticity of the aforesaid ledger account in view of the balance confirmation letters which have been relied upon by the petitioner. So, simply raising the issue of sub-standard goods in the reply cannot be taken as an 'existence of a dispute'.

18. We have also perused the written communication in Form 2 furnished by the registered Resolution Professional, proposed to be appointed as the Interim Resolution Professional and the same is found to be in order. All the ingredients required to be established are made out.

19. In view of the above, the instant petition deserves to be admitted. The petition under Section 9 of the Code is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code as amended:-

- (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.

20. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

21. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or pass an order for liquidation of corporate debtor under Section 33 as the case may be.

22. The matter be listed on 29.08.2018 for passing formal order to appoint Interim Resolution Professional with further directions.

Copy of this order be communicated to both the parties.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

Aug 23, 2018
subbu

**IN THE NATIONAL COMPANY LAW TRIBUNAL
 “CHANDIGARH BENCH, CHANDIGARH”
 (Exercising powers of Adjudicating Authority
 under the Insolvency and Bankruptcy Code, 2016)**

**CA No.343/2018
 In
 CP (IB) No.102/Chd/CHD/2018**

In the matter of:

Weather Makers Pvt. Ltd.

(CIN No.U29191CH1990PTC010803
 SCO: 139-141, First Floor,
 Sector 17-C, Chandigarh-160017

...Petitioner/Operational Creditor

Versus

Parabolic Drugs Limited

(CIN No.L24231CH1996PLC017755)
 having its registered office at,
 SCO: 99-100, Top Floor
 Sector 17-B, Chandigarh-160017

...Respondent/Corporate Debtor

And in the matter of:

JM Financial Asset Reconstruction
 Company Ltd.

...Applicant

Order delivered on 30.08.2018

**Coram: Hon’ble Mr.Justice R.P.Nagrath, Member (Judicial)
 Hon’ble Mr.Pradeep R.Sethi, Member (Technical)**

For the Petitioner : Mr. Yogesh Goel, Advocate

For the Respondent : Mr. Gaurav Mankotia, Advocate

For the Applicant : 1. Mr. Manish Jain, Advocate
 (i.e. CA 343/2018) 2. Ms. Divya Sharma, Advocate

Per: Justice R.P.Nagrath, Member (Judicial)

ORDER

The petition CP (IB) No.102/Chd/CHD/2018 was filed by M/s Weather Makers Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') for initiating the insolvency resolution process against the respondent-corporate debtor. The petition was admitted by this Tribunal on 23.08.2018 declaring moratorium in terms of Section 14 of the Code. The matter was adjourned to 29.08.2018 for passing the formal order of appointment for the Interim Resolution Professional with further directions. It was observed in paragraph 18 of the order of admission that the written communication in Form No.2 furnished by the proposed Interim Resolution Professional was in order.

2. When this matter was fixed for passing the formal order of appointment the instant CA No.343 of 2018 was filed by M/s JM Financial Asset Reconstruction Company Ltd. under Rule 11 of NCLT Rules, 2016. It is stated that the applicant had filed the petition under Section 7 of the Code registered as CP (IB) No.225/Chd/CHD/2018 seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor, which was disposed of on 23.08.2018 in view of the order of admission passed in this case.

3. It is further averred that in the petition under Section 7 of the Code, the applicant being the financial creditor had proposed the name of Ms. Anju Agarwal registered Resolution Professional with the IBBI to be appointed as the Interim Resolution Professional. The written communication in Form No.2 was also annexed.

4. It is further stated that in the event of constitution of the Committee of Creditors, the applicant will hold 71% of the voting share. It is urged that the Interim Resolution Professional proposed by the applicant to be appointed as Interim Resolution Professional would sub-serve the interest of all the stakeholders better, even though all the Insolvency Professionals are considered to be independent professionals.

5. Notice of this application was issued to the learned counsel for the petitioner herein, as well as the learned counsel for the corporate debtor. Reply has been filed by learned counsel for the petitioner-operational creditor. The main ground taken is that the applicant is not a party to the petition and has no right to intervene. The applicant has already been granted liberty to file the claim before the Interim Resolution Professional while disposing of the petition under Section 7 of the Code on 23.08.2018 by this Tribunal. There is no need to refer to all the grounds taken in the reply, but the petitioner, however, has averred that the applicant by filing the application has tried to dictate the terms by threatening allegation that in any case the Resolution Professional suggested by the Operational Creditor appointed would be changed by the Committee of Creditors.

6. We have heard learned counsel for the parties on this application and perused the records. The operational creditor has raised very strange allegations in the reply relating to dictating of terms by the applicant or the threat of substituting the Interim Resolution Professional proposed by the operational creditor instead of opposing the prayer on facts, law and maintainability.

7. The learned counsel for the applicant however referred to minutes of the meeting of the Joint Lenders of the respondent-corporate debtor held on 14.05.2018 in order to substantiate the contention about the voting share of the applicant to be 71% being a financial creditor. Copy of these minutes and that of the written communication in Form No.2, furnished by Ms. Anju Agarwal, the proposed Interim Resolution Professional which was annexed with the petition under Section 7 of the Code, have been handed over. The same are taken on record.

8. Having given our thoughtful consideration to the contentions raised, we find that the applicant having been granted the liberty to file the claim before the Interim Resolution Professional while disposing of the petition filed under Section 7 of the Code would not have the preference over the appointment of Interim Resolution Professional proposed by the operational creditor.

9. Learned counsel for the respondents referred to the judgement passed by this Tribunal in **M/s Educomp Infrastructure & School Management Ltd. Vs. Andhra Bank and others CP (IB) No.10/Chd/Hry/2018** decided on 25.04.2018 in support of his contention. In the said case this Tribunal had also considered a similar controversy and found the Resolution Professional proposed by the respondents in the said case, namely, the financial creditor should be preferred to be appointed as Interim Resolution Professional. It was observed as under:

“The provisions of Sections 7, 9 and 10 have been enacted with a view to initiate the insolvency resolution process by distinct category of creditors and to enable the petitions to be disposed of expeditiously. In the scheme of the Code there was no requirement of issuing notice of the petitions under Section 7 and 10 the Code.

It is now a settled principle that the Adjudicating Authority has to comply with the principles of natural justice. In the instant petition, the corporate debtor itself impleaded all the financial creditors as respondents and it is also admitted that the respondents constitute 100% of the voting rights in the formation of Committee of Creditors. If that be the situation it does not stand to reason why the petitioner would insist upon the appointment of the named Resolution Professional as Interim Resolution Professional particularly when the object of the Code is to shift the Management from the Corporate Debtor to the Creditors.”

10. We, however, find that the facts in the present case do not permit the acceptance of the contention of financial creditor simply because a petition under Section 7 was filed in which the notice was yet to be issued to the corporate debtor by this Tribunal. The learned counsel for the applicant submits that the petition under Section 7 of the Code filed by the applicant was taken up for the first time on 23.08.2018 when the present petition was admitted. Copy of the order passed in CP (IB) No.225/Chd/CHD/2018 filed by the applicant is at Annexure A1 with the reply to the instant application.

11. **In M/s Educomp Infrastructure & School Management Ltd.** (supra) case it was observed by this Tribunal that the corporate debtor who had filed application under Section 10 of the Code had itself impleaded the financial creditors as the respondents and also admitted that the respondents constituted 100% of the voting rights in the formation of the Committee of Creditors. In these circumstances, it was observed that the corporate debtor who was petitioner cannot insist upon appointment of the named Resolution Professional as Interim Resolution Professional. This Tribunal had also referred to **Energ Engineering Projects Limited, New Delhi and others (2017 IndLaw NCLT 1452)** observing that in the said case four petitions for initiation of resolution process in respect of the same corporate debtor were disposed of by a common order. It was also

observed that one of the said application was filed by the corporate debtor under Section 10 of the Code, and other three applications by the operational creditors. Under these circumstances it was held that in such cases the appointment of Interim Resolution Professional as named by the corporate debtor in preference to that of creditors will go against the spirit of the Code.

12. In the instant case it would be seen that we had made observations in the order of admission that the communication in Form No.2 filed by the Resolution Professional proposed by the operational creditor to be appointed as Interim Resolution Professional was in order and we fixed the case for passing of formal order of appointment of the Interim Resolution Professional. In view of the aforesaid we do not find any force in the contention that the Resolution Professional proposed by the financial creditor should be preferred at this stage. To safeguard the right of the financial creditor there is provision for replacement in terms of Section 22 of the Code, under which such decision has to be taken in the first meeting of the Committee of Creditors.

13. From the above discussion CA No.343/18 is dismissed.

14. In view of the above, we appoint Mr. Sanjay Kumar Aggarwal, R/o #14, New Punjab Mata Nagar, Main Street, Pakhowal Road, Ludhiana-141013; having Registration No.IBBI/IPA-002/IP-N00126/2017-18/10295; Mobile 9876105414 and email address sanjayaggarwal.fcs@gmail.com as an Interim Resolution Profession with the following directions:

- (i) The term of appointment of Mr. Sanjay Kumar Aggarwal, shall be in accordance with the provisions of Section 16(5) of the Code.

- (ii) In terms of Section 17 of 'the Code', from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the 'Code', including taking control and custody of the assets over which the 'Corporate Debtor' has ownership rights recorded in the balance sheet of the 'Corporate Debtor' etc. as provided in Section 18 (1) (f) of the 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the 'Corporate Debtor';
- (iii) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the 'Code of Conduct' governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- (iv) The Interim Resolution Professional shall endeavour to constitute the Committee of Creditors after collation of all the claims received against the corporate debtor and the

determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee and this Tribunal on or before the expiry of thirty days from the date of his appointment , and shall hold first meeting of the committee within seven days of filing the report of constitution of the committee.

- (v) It is hereby directed that the 'Corporate Debtor', its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all cooperation in accessing books and records as well as assets of the 'Corporate Debtor';
- (vi) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the 'Code' read with Section 15 calling for the submission of claims against 'Corporate Debtor'; and
- (vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to all the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Pradeep R.Sethi)
Member (Technical)

Sd/-
(Justice R.P.Nagrath)
Member (Judicial)

August 30, 2018
Anchal