

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 09.05.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/158/2023
NAME OF THE COMPANY	Crosol Crop Care Pvt Ltd
NAME OF THE PETITIONER(S)	Chemcel Biotech Ltd
NAME OF THE RESPONDENT(S)	Crosol Crop Care Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

Orders pronounced, vide separate sheets. In the result, this petition is dismissed.

- i. Both the Operational Creditor and Corporate Debtor, are put to notice, as to why action under Section 65 of IBC 2016 is not taken against them.
- ii. Registry may put up the matter for further consideration on 28.05.2024.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

CP (IB) No.158/09/HDB/2023
U/s. 9 of IB Code, 2016

Between:

M/s. Chemcel Biotech Limited,
D.No.16-130/12, JRD Tata Industrial Estate,
Auto Nagar, 3rd Cross Road Extn.,
Vijayawada – 520 007.

....Operational Creditor

Vs

M/s. Crosol Crop Care Private Limited,
117, Block 3, White House,
Begumpet,
Hyderabad – 500 016.

....Corporate Debtor

Date of Order: 09.05.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For the Applicant : Mr. D Narender Naik, Advocate

For the Respondent : None appeared

Heard on : 06.05.2024

Per : Sanjay Puri, Member (Technical)

ORDER

1. This application has been filed by M/s Chemcel Biotech Limited, the Operational Creditor (**OC**) which is engaged in the business of manufacturing, production, processing, formulation, refining, purchase, sale, import, export and general dealing of different types of pesticides, insecticides, fungicides, weedicides and other agricultural or animal remedies.
2. It is claimed that, the OC manufactured and supplied certain pesticides to M/s Crosol Crop Care Private Limited, the Corporate Debtor (**CD**) which was earlier named as Hemasree Biotech Private Limited. The invoices¹ for an amount of Rs 1,62,85,525.65 were raised by the OC in the month of March 2015 in respect of these supplies by the OC to the CD.
3. The CD has allegedly failed to clear these invoices over the years. The OC is claimed to have been obtained confirmation of the outstanding amount of Rs 1,62,85,525.65 from the CD periodically every year till 2022.
4. It is submitted by the OC that, in order to maintain amicable relationship with the CD, did not file any case against the CD for non-payment of the outstanding dues. It is stated that, the CD was however duly acknowledging the outstanding debts and also admitted its liability before the Income Tax Department and kept seeking time to make the payment. Despite multiple reminders, the amount of Rs 1,62,85,525.65 remained unpaid, it is claimed.

¹ Pg 24-29 of the application.

5. The OC is stated to have issued notices² dated 02.01.2023 and 25.02.2023 to the CD seeking payment of unpaid debt of Rs 1,62,85,525.65. The CD is stated to have replied vide letter³ dated 21.03.2023 where they re-assured the OC about their commitment to repay the amount within 30 days.
6. Receiving no repayment of the outstanding debt, the OC then issued Demand Notice⁴ u/s 8 of IBC on 08.04.2023 demanding a payment of Rs 1,62,85,525.65. In reply, the CD once again is stated to have acknowledged the outstanding debt of Rs 1,62,85,525.65 and sought more time for payment. The CD further requested the OC not to approach any Court/Tribunal for any action against it. The OC however has approached this Tribunal by filing the present application and seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the CD.
7. During the proceedings before us, the Respondent CD remained practically unrepresented, seemingly on their own volition. Counsel for the Respondent appeared once on 10.08.2023 and filed his Vakalat and Counter. The second time, he appeared on 08.09.2023 and sought adjournment. Thereafter, the matter was posted for hearing on 07.11.2023, 08.12.2023, 01.02.2024, 14.02.2024, 21.03.2024 and 06.05.2024. The Counsel for the Respondent chose not to attend the proceedings before us. Vide order dated 01.02.2024, the CD was set *ex-parte*.
8. An affidavit in reply however filed on behalf of the CD on 11.07.2023, within a month of filing of the present application,

² Pg 46-47 of the application.

³ Pg 48 of the application.

⁴ Pg 49-54 of the application.

merely confined the position of the OC that the invoices amounting to Rs 1,62,85,525.65 have remained unpaid and sought six months' time to repay the outstanding dues.

9. The case of the OC, as supported by the CD, is that an operational debt of Rs 1,62,85,525.65 on account of unpaid invoices for the goods supplied was created in the name of CD, in March 2015. This debt was acknowledged by the CD over the years, every year, and till 13th April 2022. In the months of January and February in 2023, the OC demanded payment from the CD of the outstanding amount. On 21st March 2023, the CD assured to pay the outstanding within 30 days. Receiving no payment from the CD within 30 days, on 8th April 2023, the OC sent notice under section 8 of IBC. In reply, on 26th April 2023, the CD once again acknowledged their liability to pay Rs 1,62,85,525.65, but did not pay the said sum. Consequently, the present application was filed by the OC.
10. Having gone through the application, the invoices, the confirmation letters and the reply affidavit, we are of the view that this petition is nothing but a collusive attempt to defraud the creditors of the CD.
11. The collusive nature of the application is evident from the correspondence exchanged between the OC and the CD. These letters⁵, exchanged annually in April, are strikingly identical (except for the dates) despite ostensibly having being typed over several years. The font, size, margins, line spacing, and language have remained identical from 2015 to 2022. All these letters appear to have been fabricated at the same time and printed on the same

⁵ Pages 32 to 45 of the Application

printer, only to create a ruse of an acknowledged operational debt of more than the prescribed limit that remained alive since March 2015.

12. The OC and the CD are known to each other at least since January 2015, when the OC sold⁶ its manufacturing unit to the CD. Subsequently, the OC entered into a Lease Deed⁷ with the CD for the same manufacturing unit, at a monthly rental of Rs 25,000 i.e. Rs 3 lakhs payable annually by the OC to CD. It is inconceivable that the outstanding amount payable by the CD to the OC was not adjusted against the rental payments payable by the OC to the CD.
13. Before us however, no ledger account of the CD in the OC's books has been presented, despite their continuous dealings over the years. Only copies of six invoices totalling Rs 1,62,85,525.65, issued in March 2015, are provided to demonstrate the debt, along with questionable correspondence between the OC and the CD to avoid limitation issues. The claim of outstanding liability shown in the Income Tax returns is also unsupported by evidence. Remarkably, the CD does not dispute this operational debt claim, and all their statements are surprisingly supportive of the OC.
14. The objective of this application appears to be anything but the resolution of the insolvency of the CD, which is a company with a paid-up capital of Rs 3 Crores.
15. From MCA's⁸ website on Master Data for companies, it is seen that an undischarged debt of Rs 11 crores for Bank of India is standing

⁶ Para 2 on Page 2 of the Application

⁷ Page 66 to 75 of the Application

⁸ Ministry of Corporate Affairs

in the name of CD since 08.01.2015. CERSAI⁹ website also show charge of Rs 10,99,30,000 having been created by Bank of India in the name of the CD company by mortgage of immovable property owned by the CD. It is apparent that this petition has been filed to initiate CIRP and invoke the resulting moratorium under section 14 of IBC in order to prevent any recovery action by the Bank in the event of default by the CD.

16. The facts before us clearly indicate that these proceedings have been initiated with fraudulent or malicious intent for a purpose other than resolution of insolvency. Therefore, we direct as follows:

- i. This Application No. CP(IB) No.158/9/HDB/2023 is dismissed.
- ii. Both the OC M/s. Chemcel Biotech Limited, and the CD M/s. Crosol Crop Care Private Limited, are put to notice, as to why action under Section 65 of IBC 2016 is not taken against them.
- iii. Registry may put up the matter for further consideration on 28.05.2024.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

VL

⁹ Central Registry of Securitisation Asset Reconstruction and Security Interest of India