

DIVISION BENCH  
COURT - II

S-2

**NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

C.P. (IB)/440(KB)2018  
IA(I.B.C)/742(KB)2021, IA(I.B.C)/808(KB)2021,  
IA(I.B.C)/891(KB)2021, IA(I.B.C)/1296(KB)2020,  
IA(I.B.C)/1030(KB)2021, IA(I.B.C)/1064(KB)2021,  
IA(I.B.C)/742(KB)2021, IA(I.B.C)/808(KB)2021,  
IA(I.B.C)/891(KB)2021, IA(I.B.C)/1296(KB)2020,  
IA(I.B.C)/391(KB)2020

**CORAM: 1. HON'BLE MEMBER(J), SHRI ROHIT KAPOOR  
2. HON'BLE MEMBER(T), SHRI HARISH CHANDER SURI**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 08<sup>TH</sup>FEBRUARY, 2022, 10:30 A.M**

IN THE MATTER OF	HUVEPHARMA SEA [ PUNE] PRIVATE LIMITED VS AMRIT FEEDS LIMITED
UNDER SECTION	IBC UNDER SEC 9

**Counsel / Authorised Representative appeared through video conference:**

For Liquidator in IA/808/2021, : Mr. Krishnaraj Thaker, Adv.  
IA/742/2021, IA/891/2021, Ms. Sreenita Ghoshdastidar, Adv.  
IA/1296/2020, IA/1030/2021 &  
IA/1064/2021

For applicant in IA/742/2021 : Mr. Anirban Ray, Adv.  
Mr. Rites Goel, Adv.  
Ms. Pooja Agarwal, Adv.

For applicant in IA/891/2021 : Mr. Shaunak Mitra, Adv.  
Mr. Shiv Ratan Kakrania, Adv.  
Mr. Tanuj Kakrania, Adv.

For applicant in IA/1030/2021 : Mr. Saswat Acharya, Adv.  
Mr. Udit Agarwal, Adv.

For Punjab National Bank : Ms. Urmila Chakraborty, Adv.  
Mr. Debasish Chakrabarti, Adv.

For HDFC Bank Ltd. in : Mr. Soorjya Ganguli, Adv.  
IA/808/2021 & IA/891/2021 Ms. Kiran Sharma, Adv.

For applicant in IA/1296/2020 : Mr. D. N. Sharma, Adv.  
Mr. Nirmalya Dasgupta, Adv.  
Mr. Shwetaank Nigam, Adv.

For applicant in IA/1064/2021 : Mr. Jitendra Patnaik, Adv.

### **ORDER**

1. Ld. Counsel for the parties present.
2. IA(IBC)/1296(KB)2020 – It is stated that this is a demurrer application for dismissal of IA(IBC)/852(KB)2020, which was listed on 17/02/2022. List this IA also on **17/02/2022**.
3. IA(IBC)/1030(KB)2021 – List this application on **14/03/2022**.
4. IA(IBC)/742(KB)2021 –
  - (a) This application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 has been filed by Zeus Biotech Private Limited, against the Liquidator in this matter seeking directions upon the Liquidator to consider FORM-C dated 21/04/2021 submitted by applicant by condoning the delay.
  - (b) It is submitted that the Operational Creditor/applicant herein had supplied the products ordered by the Corporate Debtor vide several purchase orders on different dates to the Corporate Debtor. The Operational Creditor raised various invoices against supply of products as specified in the purchase orders and the Corporate Debtor was under contractual obligation to clear the outstanding invoices within the credit period within 60 days. It is mentioned in the petition that to maintain good business relationship with the Corporate Debtor. The Operational Creditor would supply the products to the Corporate Debtor on credit basis for a period of 90 days from the date of such invoices, with a condition that, if the Corporate Debtor fails to make the payment of the respective invoices within the credit period, the Corporate Debtor shall be liable to pay interest @ 24% p.a. from the date of such invoices. It is submitted that the Corporate Debtor used to make payments on account and the transactions were continuing in nature, therefore, the limitation prescribed under the law is not applicable to these transactions. It is submitted that the Operational Creditor has received payments till 12<sup>th</sup> March, 2018. It is further submitted that the Operational Creditor had filed Civil Suit before the Civil Court in Mysore, Karnataka (O.S. 100 of 2019) for recovery of its dues and on advice, it has claimed partial balance from the Corporate Debtor. It is submitted that during the pendency of Recovery Proceeding, this Adjudicating Authority by order dated 19<sup>th</sup> February, 2021 passed an order of liquidation in C.P. (IB) No.440/KB/2018, of the Corporate Debtor (Annexure-A). The

applicant further submits that a communication was issued by the Liquidator, dated 24<sup>th</sup> February, 2021 in Form-B as per Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and this was communicated to the Operational Creditor on 17<sup>th</sup> March, 2021, and despite prevailing Covid-19 situation in Karnataka, the Operational Creditor was able to send Form-C dated 20<sup>th</sup> March, 2021 along with relevant record to the Liquidator (Annexure B & C). It is submitted that although the applicant never waived its right of its entire claim of Rs.8,01,54,946.68/- as against the company in liquidation, but the Operational Creditor realized that, it had inadvertently submitted partial claim in Form-C dated 20<sup>th</sup> March, 2021, and immediately after realizing the mistake, it proceeded to prepare a fresh Form -C and sent the same to the Liquidator on 21<sup>st</sup> April, 2021 through email and through registered post (Annexure-E).

- (c) It is submitted that the applicant was shocked to receive an email dated 22<sup>nd</sup> April, 2021 informing him that the Liquidator has not admitted the claim of the Operational Creditor without any reason for rejection thereof. Even though a fresh Form-C dated 21<sup>st</sup> April, 2021 was submitted along with all the supporting documents but the Liquidator has failed to act on the same.
- (d) Ld. Counsel for the Operational Creditor further submits that the main claim of the Operational Creditor has been admitted on the basis of invoices but the interest part has not been admitted. The Ld. Counsel has taken us through various purchase orders and related invoices. The purchase orders clearly indicate at the bottom that the payment terms are 60 days from GRN and the invoices also specifically mention interest @ 24% p.a. on delayed payment.
- (e) During the course of arguments, Ld. Counsel for the Operational Creditor /applicant agreed to charge interest @ 8% because according to the Liquidator 24% interest in the present scenario of economy, is too harsh to be allowed. Ld. Counsel appearing for the Liquidator, however, accepted the suggestion and has agreed to re-calculate the interest @ 8% p.a. and allow the claim of the Operational Creditor so far as interest part is concerned. The main claim as regards the principal amount of invoices outstanding to be paid has already been accepted by the Liquidator.
- (f) The delay in submission of the claim by the Operational Creditor, if any, is condoned.
- (g) In view of the fact that the interest amount earlier being disputed by the Liquidator has

been agreed to be accepted in Court by the Ld. Counsel for the Liquidator, the application being I.A. (I.B) no. 742/KB/2021 stands disposed of.

(h) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

5. IA(IBC)/808(KB)2021 – List this matter on **14/03/2021**. Meanwhile, e-filing process shall be completed and also to ensure defect free status. Hard copies are also to be filed along with e-filing process at the Registry.

6. IA(IBC)/1064(KB)2021 – List this matter on **14/03/2021**. Meanwhile, e-filing process shall be completed and also to ensure defect free status. Hard copies are also to be filed along with e-filing process at the Registry.

7. Rest of the applications shall be tagged along on that date. Let written notes be also filed by the parties in each application. Parties are also directed to file hard copies of all documents along with e-filing process.

**Harish Chander Suri**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

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