

Date: 12.06.2024

To,
The Manager
Listing Department
BSE Limited
P.J Towers, Dalal Street Fort
Mumbai 400001

BSE Scrip Code: 542678

BSE Scrip ID: CHCL

SUB: Update on Hearing before NCLT Mumbai Bench under Insolvency and Bankruptcy Code, 2016

Ref: Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Dear Sir/Ma'am,

In addition to disclosure dated 30th November, 2023, this is to inform you that the case titled "Shreeji Pharmachem Vs M/s Cian Healthcare Limited" Application bearing C.P. (IB) No. 149/MB/2022 under Section 9 of the IBC, filed by M/s. Shreeji Pharmachem, the OC, for initiating CIRP in respect of Cian Healthcare Limited, the CD is **admitted**.

The Bench hereby appoints Mr. Roshen Chordiya, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P-02840/2023-2024/14347 Interim Resolution Professional (IRP) to carry out the functions under the IBC.

Order of Board is attached for your ready reference.

Kindly take the above in your records.

Thanking You!

Yours Faithfully

FOR CIAN HEALTHCARE LIMITED

(Munjaji Dhumal)
Company Secretary and Compliance Officer

Membership No.: A65852

Encl: As above

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 149/MB/2022

[With IA 4687/2023]

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

M/S. SHREEJI PHARMACHEM

[PAN: AFYPG3446B]

Registered Office: Flat No. 1, 2nd Floor

Loyalka Apartment, Siri Road, Bandstand Chowpatty

Mumbai — 400006, Maharashtra.

...Operational Creditor

V/s

CIAN HEALTHCARE LIMITED

[CIN: L24233PN2003PLC017563]

Registered Office: Milkat No. 3339, Block No. 1

C.S. No. 227/23A, Harpale Park, Opp. Berger Paint, Phursungi

Pune-412308, Maharashtra.

...Corporate Debtor

Pronounced: 11.06.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Hearing: Hybrid

Appearances:

Operational Creditor: Adv. Manoj Shirsat a/w Adv. Abhay Wadhwa and Adv. Yachika Jain i/b Adv. Priyank Shah

Corporate Debtor: Adv. Nausher Kohli a/w Adv. Ashwini Gawde, Adv. Avinash Khanolkar and Adv. Nashra Siddiqui i/b ASR & Associates

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This Company Petition bearing C.P. (IB) No. 149/MB/2022 (Application) was filed on 09.12.2021 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) by M/s. Shreeji Pharmachem, the Operational Creditor (OC), through Mr. Janak Gandhi, Proprietor, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Cian Healthcare Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs.1,14,50,402/- (One Crore Fourteen Lakh Fifty Thousand Four Hundred Two Rupees) which is based on eleven unpaid invoices issued by the OC in lieu of supplying goods to the CD.

1.3 The date of alleged default as mentioned in Part-IV of the Application is from 24.06.2021 to 10.11.2021, which is based on the due date of payment for each unpaid invoice. As the CD defaulted in payment of its outstanding dues, the OC prays that CIRP may be initiated in respect of the CD under Section 9 of the IBC.

2. CONTENTIONS OF OC

2.1 The OC submitted that it is involved in the business of pharmaceutical products while the CD is a Pune-based pharmaceutical company and is

engaged in the business of manufacture and distribution of pharmaceutical products. The CD approached the OC for delivering certain raw material for manufacture of Albendazole Tablets during the period from 2020 to 2022.

2.2 The OC issued several invoices to the CD in lieu of supplying goods against which an outstanding amount of Rs. 1,14,50,402/- was due and payable by the CD; however, the CD made a part-payment of Rs. 2,10,379/- against Invoice No. 58/2021-22 on 07.10.2021 to the OC after issuance of demand notice under Section 8 of the IBC but before the Application was filed. The following amounts remained outstanding by the CD as on the date of filing the Application:

Sl. No.	Invoice No.	Date	Due Date	Amount (Rs.)	Outstanding (Rs.)
1.	58/2021-22	23.04.2021	24.06.2021	2,95,295/-	84,916/- (2,95,295 - 2,10,379)
2.	95/2021-22	05.05.2021	05.07.2021	28,30,403/-	28,30,403/-
3.	152/2021-22	31.05.2021	01.08.2021	5,31,531/-	5,31,531/-
4.	160/2021-22	05.06.2021	05.08.2021	1,74,224/-	1,74,224/-
5.	227/2021-22	28.06.2021	29.09.2021	8,62,261/-	8,62,261/-
6.	257/2021-22	10.07.2021	11.10.2021	2,58,531/-	2,58,531/-
7.	261/2021-22	12.07.2021	13.10.2021	21,26,124/-	21,26,124/-
8.	282/2021-22	22.07.2021	22.07.2021	2,30,330/-	2,30,330/-

9.	289/2021-22	27.07.2021	27.07.2021	21,67,307/-	21,67,307/-
10.	315/2021-22	09.08.2021	10.11.2021	21,24,000/-	21,24,000/-
11.	322/2021-22	12.08.2021	12.08.2021	60,475/-	60,475/-
TOTAL AMOUNT					1,14,50,402/-

2.3 The demand notice was issued on 01.10.2021 in respect of the outstanding amount till 30.09.2021. The CD, *vide* its reply dated 05.10.2021, not only sought extension of time for repayment but also cited financial issues caused by COVID-19 Pandemic and certain delay in realisation of dues from various State Governments and gave assurance to the OC that all the outstanding dues would be settled within six months by Post-Dated Cheques (PDCs).

2.4 The CD issued several PDCs in favour of the OC which were later dishonoured whenever the OC attempted to encash them. The OC has provided a list of dishonoured cheques and copies of CD's emails dated 23.11.2021 and 07.12.2021 sent to the OC.

2.5 There were attempts for settlement of dues between the parties. The Ld. Counsel for the OC contended that the CD has merely changed its stance during the settlement process indicating its lack of willingness or capability to settle the aforesaid dues. The fact that the CD had admitted the debt and default *vide* its reply dated 05.10.2021, as well as its Affidavit-in Reply dated 12.09.2023, shows that the present Application is only to be allowed. The Ld. Counsel for the OC drew our attention to the decisions of the Hon'ble Supreme Court in *Vidarbha Industries Power Limited Vs. Axis*

Bank Limited, [(2022) 8 SCC 352] and the Hon'ble NCLAT in *Sodexo India Services Pvt. Ltd Vs. Chemizol Additives Pvt. Ltd.*, [(2021) SCC OnLine NCLAT 18] as also in *Aster Technologies Pvt. Ltd. Vs. Solas Fire Safety Equipment Pvt. Ltd.*, [(2021) SCC OnLine NCLAT 387] in support of its case for admission of the Application.

2.6 The OC has submitted Affidavit under Section 9(3)(b) and 9(3)(c) of the IBC dated 09.09.2021, proving non-receipt of the unpaid operational debt as well as absence of notice of any dispute raised by the CD. The OC relied upon its statement of account for the period of 01.11.2021 to 09.12.2021; letters dated 24.11.2021 and 04.12.2021, issued by the ICICI Bank and Axis Bank, respectively, regarding non-receipt of funds from the CD, and the OC's letter dated 01.12.2021 to the CD, regarding confirmation of accounts for the period from 01.04.2021 to 01.12.2021.

2.7 The CD has filed IA. No. 4687/2023 for producing details of the negotiation between the parties for settlement. The Ld. Counsel for the OC argued that the documents placed on record by the CD cannot be relied upon under Section 23 of the Indian Evidence Act, 1872. In the circumstances, the OC prays that the Application may be admitted and CIRP may be initiated in the case of the CD.

3. CONTENTIONS OF CD

3.1 The CD, *vide* its reply dated 12.09.2023, contended that there was pre-existing dispute between the parties over quality of supplied goods. It has been submitted that, by using the raw materials supplied by the OC, the

CD manufactured Albendazole Tablets and supplied it to the Government of Andhra Pradesh for distribution. However, there were complaints regarding its quality which resulted in sample inspection by the Drug Controller, in which they were found to be defective and 'below the standard quality'. The Ld. Counsel for the CD has submitted that the quality of the Albendazole Tablet suffered severely only on account of poor quality of the raw material supplied by the OC. The CD has placed on record order dated 15.09.2022 from the Drugs Controller, Directorate of Medical Health and Family Welfare, Uttarakhand to withdraw the Tablets which was based on the Test Report dated 07.04.2022 conducted by the Drugs Control Administration, Guntur (Andhra Pradesh). Further, the Government of Andhra Pradesh not only withheld payments to the CD but also did not give any reply as regards payments due to it.

3.2 The CD further submits that it was misled by the Certificates of Analysis dated 11.07.2020 and 14.07.2020 provided by the OC as regards quality of the raw material which created an adverse chain of events whereby the CD faced huge financial losses as well as loss of reputation in the pharmaceutical market. The CD has produced copies of Certificates of Analysis dated 11.07.2020 and 14.07.2020.

3.3 The IA No. 4687/2023 dated 16.10.2023 is filed by the CD, praying for dismissal of the Application as well as imposing maximum penalty on the OC under Section 65 of the IBC. The CD placed on record, various emails sent to the OC during May, 2023 to October, 2023 indicating its attempt to clear the outstanding dues through settlement. However, the settlement

proposals were outrightly rejected by the OC citing past record of delay by the CD and gave their counter settlement proposal *vide* letter by its Advocate dated 12.10.2023. The CD also submitted that it is a solvent company by placing on record its balance sheet for the financial year 2022-2023.

3.4 It is brought to our notice by the Ld. Counsel for the CD that the CD has already made part-payment of Rs. 35,05,000/- out of the alleged default of Rs. 1,14,50,402/- through bank transfer, which has not been disputed by the OC. The part-payments made by it were towards settlement of outstanding amount against the OC's invoices. After making part-payments, the total default amount has been reduced to Rs.79,45,402/- which is less than the requisite threshold amount of one crore rupees in terms of Section 4 of the IBC and, therefore, the present Application is not maintainable. Despite sending emails dated 29.10.2022 and 19.04.2023 for confirmation of outstanding ledger balance, the OC did not give any reply to the CD. The CD has produced copy of its ledger for the period of 01.04.2018 to 20.04.2023 to substantiate part-payments made to the OC.

3.5 The CD is a going concern and it is a small enterprise as per its registration certificate dated 21.08.2020. It currently employs more than 350 persons and the balance sheet for the financial year 2022 shows its solvency. Since, the actual objective of the IBC is not for penalising solvent companies, allowing the Application would be detrimental to the CD's interests.

3.6 The Ld. Counsel for the CD further submits that the CD is now ready to make the balance payment of the entire outstanding amount due to the OC. Its readiness is evident from the payment of substantial amount of Rs. 35,05,000/- to the OC. However, the OC, neither acknowledged the receipt of these payments nor it ever tried to settle the matter. The OC's conduct only indicates its intention of recovery of interest and the cost of litigation under the garb of settlement.

3.7 The present Application is nothing but a misuse by the OC for the purpose of debt recovery which is not the objective of the IBC. The OC's claim for interest on the amount of the invoices is unfounded as no interest has been mentioned in Part-IV of the Application and that there was no agreement as to the same in the invoices raised by the OC.

3.8 The OC is engaged in forum shopping by approaching this Tribunal even though it had already initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881, by filing Miscellaneous Case No. 1400214/2022 against the CD and its directors before the Learned Metropolitan Magistrate's Court, Girgaon, Maharashtra. In view of the above, the Application only deserves to be dismissed.

4. ANALYSIS AND FINDINGS

4.1 We have examined all the documents and pleadings and heard both the Ld. Counsel for the OC and the CD.

4.2 The major objections set up by the CD revolve around (i) incomplete Part-IV; (ii) pre-existing dispute; (iii) threshold amount got reduced owing to

part-payments of the default; (iv) misuse of IBC for recovery and forum shopping by the OC; and (v) solvency of the CD. Now, let us examine the defences raised by the CD one by one.

4.3 The OC has mentioned in Part-IV of the Application the date of default as 24.06.2021 to 10.11.2021. According to the Ld. Counsel for the CD, there cannot be more than one date of default and the date should be certain, without which a Section 9 application cannot stand. However, on examination, we find that the first unpaid invoice No. 58/2021-22 is for Rs. 2,95,295/- out of the total eleven unpaid invoices is dated 23.04.2021. The OC has received an amount of Rs. 2,10,379/- out of Rs. 2,95,295/- and thus Rs. 84,916/- remains to be paid by the CD in respect of this invoice. Payment in respect of the same was due on 23.06.2021, being '60 days PDC' as per the mode/terms of payment mentioned in the invoice. Since only part-payment is seen to have been made in respect of the first invoice No. 58/2021-22 and the balance payable is Rs. 84,916/-, we take 24.06.2021 as the date of default, being sixty days from 23.04.2021. The total outstanding in respect of all the unpaid invoices add up to Rs. 1,14,50,402/- which is mentioned in Part-IV. The CD, however, submits that since most of the payments have been made by it in-part, the old date of default gets shifted and, therefore, the Application has become infructuous. It is seen that, on the one hand the CD submits that the date of default cannot be shifted, and on the other hand, it states that default date gets shifted due to part-payments made by it. We feel that, by this, the CD is attempting to blow hot and cold at the same time, which is not

acceptable. The first date of default, i.e., 24.06.2021 is the date of default, being sixty days from 23.04.2021 agreed by the parties for payment. In view of the above, the argument of the CD that no specific date of default was mentioned in Part-IV is incorrect and the issue is held in favour of the OC.

4.4 As regards pre-existing dispute, it is the case of the CD that it used the Certificate of Analysis given by the OC to manufacture Albendazole and provided to Andhra Pradesh Government for distribution. Pursuant to complaints, the Drugs Controller found that the samples failed to meet the standard quality. The CD alleges that the OC had not given standard quality raw material for it to manufacture Albendazole Tablets. This version of the CD does not appear to be appealing to us as we do not find any agreement denoting supply of Certificate of Analysis by the OC. Further, we feel that the CD is duty bound to check the quality of raw materials procured from various sources before production and public distribution of pharma products. If there were quality issues, the same ought to have been taken up with the OC beforehand. There is no evidence as to the above. To the demand notice under Section 8 of the IBC, issued by the OC to the CD on 01.10.2021, the CD replied on 05.10.2021. However, the CD has not raised any pre-existing dispute in its reply within ten days from the date of receipt of the notice, rather it apologised for the inconvenience caused to the OC for the default amount of Rs. 1,16,50,402/-. The CD has also cited COVID-19 Pandemic as the reason for financial issues and non-realisation of payments from State Governments. Therefore, there is a

clear admission of debt and liability by the CD. Further, the CD requested for six months' time for payment of all outstanding dues. Moreover, the show cause notice under Section 85(2) of the Drugs and Cosmetics Rules, 1945, given to the CD by the Drugs Controller, Uttarakhand is dated 15.08.2022, by which the Drugs Controller ordered CD to withdraw the specific batch of the drug from the market and sought certain relevant records from it. This is corroborated by a letter of the Drugs Control Administration of Andhra Pradesh, pursuant to a report from the Government Analyst, Drugs Control Laboratory, Vijayawada, and addressed to the Drugs Controller, Uttarakhand. Interestingly, all these documents have been produced by the CD along with its Affidavit-in-Reply. All these are much after the Section 8 notice was replied to by the CD and after the present Application was filed on 10.12.2021. Hence, we hold that the defence of pre-existing dispute is nothing but an afterthought by the CD, which is found against it. Hence, the judgment of Hon'ble Supreme Court in *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*, [Civil Appeal No. 9405/2017] produced by the CD does not help.

4.5 The next contention of the CD is that the part-payments made to the OC during the course of the proceedings have reduced the debt amount below requisite threshold under Section 4 of the IBC and, hence, on this ground alone the Application is to be dismissed. It is the case of the CD that out of the claim amount of Rs.1,14,50,402/- in Part-IV of the Application, it has paid Rs.35,05,000/- on various tranches from 04.02.2022 to 15.04.2023

and the OC has not responded to its emails dated 19.04.2023 and 29.10.2022 and balance confirmation letter dated 16.04.2023. We find that all these part-payments made by the CD not only corroborate its debt and liability but have been made after filing of the Application on 08.12.2021. Further, this is nothing but an admission by the CD that the default amount was more than one crore rupees on the date of filing of the application. Let us now consider Section 4 of the IBC that requires the threshold limit to trigger insolvency by an applicant. Section 4 (as it stood before the amendment Act No. 26 of 2021) states that Part II of the IBC shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees and a maximum of one crore rupees to be notified by the Central Government. The minimum threshold of one lakh rupees now stands increased to one crore rupees by the Central Government by Gazette Notification dated 24.03.2020, in the aftermath of COVID-19, in exercise of the powers conferred under the first proviso to Section 4. Hence, it is clear that all that is required to trigger insolvency by a creditor is a default of minimum one crore rupees at the time of filing of application. There is no provision in the IBC that makes an application made under Section 7 or 9 invalid, if the threshold is reduced by subsequent payments made by a debtor. If such a dispensation is allowed, any debtor would endeavour to bring down the threshold limit just below one crore rupees in order to fail the statutory right of a creditor to trigger insolvency. We hold that this is certainly not the intention of Section 4 of the IBC. It is also relevant to examine '*The*

Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law (Legislative Guide) under Resolution No.59/40 dated 02.12.2004. The Legislative Guide recognises the purpose of establishment of an efficient and effective framework to address the financial difficulty of debtors, including financial and trade creditors. It further envisages that the insolvency law should be transparent and predictable. It also states that the Legislative Guide will enable potential lenders and creditors to understand how insolvency proceedings operate and to assess the risk associated with their position as a creditor in the event of insolvency. The Legislative Guide further recognises *“Unpredictable application of the insolvency law has the potential to undermine not only the confidence of all participants in insolvency proceedings, but also their willingness to make credit and other investment decisions prior to insolvency.”* Further, the Bankruptcy Law Reforms Committee’s Report dated 04.11.2025, under Dr. T. K. Vishwanathan also does not recommend vitiation of an application by a financial/operational creditor in the event the default amount is reduced by the debtor making part-payment, after filing application to trigger insolvency. The Insolvency Law Reforms Committee in its Report dated 20.02.2020, recommending increased threshold to trigger insolvency observed *“...that the success of the Code should be measured in terms of its ability to resolve distress in a value-maximizing manner for all stakeholders. This will be adversely affected if the system remains burdened, and value destructive delays ensue. The Committee also felt that if the mechanism under the Code*

results in sub-optimal outcomes, it is likely to lose credibility amongst investors, which would be further value destructive for the assets under the Code." Hence, even from the point of view of value maximisation of the assets of the CD, its resolution under the IBC is essential. This issue is thus decided against the CD.

4.6 The CD opposes admission of this Application also on the ground of its being solvent company and willingness to settle the matter with the OC. The CD, in its reply to the demand notice, and by part-payments after filing the present Application, has expressed readiness to pay the defaulted amount. The fact that the CD did make part-payments to the tune of Rs. 35,05,000/- towards the outstanding dues shows the existence of debt and default. According to the CD, the OC's attempt is only recovery of money and not resolution of insolvency of the CD, which is a solvent company. The Ld. Counsel for the CD has brought to our notice a coordinate Bench's decision disallowing C.P.(IB) 195/MB/2019 in *Pratiksh Pramod Rai Vs. Mylaw Learning Resources Pvt. Ltd.*, on the ground of the petitioner rejecting the proposal of settlement by the corporate debtor. In that matter, the petitioner who was an employee of the corporate debtor agreed on a lesser amount of claim and later did not allow a settlement agreement to be drawn up, which is not the case on hand. Further, the Ld. Counsel for the CD also cited an order by another coordinate Bench in *SBF Pharma Vs. Gujarat Liqui Pharmacaps Pvt. Ltd.* in CP(IB) No. 282/9/NCLT/AHM/2019, wherein the petition was rejected stating that the IBC prohibits and discourages recovery in several ways. The said decision

was subsequently affirmed by the Hon'ble NCLAT, New Delhi in *SBF Pharma Vs. Gujarat Liqui Pharmacaps Pvt. Ltd.* [2019 SCCOnLine NCLAT 1440]. We have perused the said order and found that the respondent (original petitioner) wanted to settle the matter and issued demand draft for certain amount which was not accepted by the appellant (original respondent). This led to the Hon'ble NCLAT holding that the original petitioner had malicious intent other than resolution. In the present matter, the OC has not accepted any offer of settlement by the CD either before filing the Application or thereafter. On the contrary, after filing the Application on 10.12.2021, since the matter was not coming up for consideration of the Bench on innumerable occasions from 16.02.2022 to 15.02.2023, the OC filed IA 557/2023 seeking early hearing which was allowed on 16.02.2023. Further, another IA No. 1153/2023 was filed by the OC for expeditious hearing which was disposed of by the Bench on 29.03.2023. Since the CD did not file its reply to the Application even after two years' of filing the Application, the Bench ordered the CD to file the same subject to payment of cost of Rs. 25,000/- The CD filed its reply only on 09.08.2023. Thereafter, another IA No. 2782/2023 was filed by the OC, again for expeditious hearing, which was disposed of by us since the matter was reported as being settled. On the submission by the parties, we gave opportunity for settlement on 25.09.2023 and directed the OC and CD to complete settlement process and file appropriate withdrawal memo. A settlement proposal was given by the CD to the OC on 25.10.2023, which has been rejected by the OC. We again gave opportunity to the

parties for settlement. Since no settlement was reported, we heard the matter finally and reserved for orders on 18.11.2023. However, there is no whisper of settlement thereafter. In view of the above chain of events, we hold that the OC has not accepted the settlement offer made by the CD. There is no provision in the IBC to reject an application under Section 9, which is otherwise complete, just because the CD has made part-payments towards the debt and liability during the course of the application, thereby resulting in the amount of outstanding debt falling below the threshold for filing the application viz., one crore rupees or because the CD claims to be a solvent company and is ready and willing to pay the outstanding debt. In view of the above, this issue is found against the CD.

4.7 The Ld. Counsel for the CD brought to our notice the decisions of the Hon'ble NCLAT, New Delhi in *M/s. Agrawal Veneers Vs. Fundtonic Service Pvt. Ltd.*, [Company Appeal (AT) (Ins) No. 968 of 2020] as well as Hon'ble NCLAT Chennai in *Tricolite Electrical Industries Limited vs. WIPRO Limited.*, [Transfer Appeal (AT) No. 227/2021 in Company Appeal (AT)(Ins) No. 326 of 2020] regarding the purpose of the IBC and discouraging misuse of proceedings for recovery purposes. However, upon perusal, we find that the factual matrix of both the decisions is totally different from that of the present one. The matter on hand is neither incomplete application nor the CD has proved any pre-existing dispute. In fact, in the present case, the CD not only sought time for repayment of outstanding debt but also it failed to repay the default amount to a major

extent despite its part-payments, post the filing of the present Application. Considering these aspects, the above-mentioned judgments relied upon by the CD are not applicable in the present matter.

4.8 As far as the maintainability of IA 4687/2023 is concerned, the Ld. Counsel for the OC vehemently opposed the aforesaid IA on the ground that the documents produced in the IA are related to negotiation between the parties for settlement which were offers without prejudice and the same cannot be used against the OC as admission. The Ld. Counsel for the OC cited the decisions of Hon'ble High Courts of Punjab & Haryana and Odisha in *Smt. Surjit Kaur Vs. Gurcharan Singh* [(1972) SCC OnLine P&H 102] and *Sri. Bauribandhu Mohanty and Anr. Vs. Sri. Suresh Chandra Mohanty and Ors.* [(1991) SCC OnLine Ori 69] respectively. It is inferred that matter that the parties agreed together during the process of negotiation for settlement, without prejudice, is not relevant under Section 23 of the Indian Evidence Act, 1872. Hence, we hold that the emails by the CD as well as OC's response to the settlement proposals dated 12.10.2023 are irrelevant in the case on hand. Both the above-mentioned judgments cited by the OC, in turn relied on the decision of Hon'ble Allahabad High Court in *Shibcharan Das Vs. (Firm) Gulabchand Chhotey Lal* [AIR 1936 ALL 157], which clearly stated that when the negotiations are being conducted without prejudice with a view to settlement, it is not open for one of the parties to give evidence of an admission made by another for that could discourage parties to seek settlement through

negotiations. In the view of above factual and legal position, IA 4687/2023 is dismissed.

4.9 The OC has thus successfully demonstrated and proved the debt and default in this case. It is noted that the CD admits the said outstanding debt. Therefore, we are of the considered view that this Application is complete and satisfies all the necessary requirements for admission under Section 9 of the IBC.

ORDER

In the result, this Application bearing C.P. (IB) No. 149/MB/2022 under Section 9 of the IBC, filed by M/s. Shreeji Pharmachem, the OC, for initiating CIRP in respect of Cian Healthcare Limited, the CD is **admitted**.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Roshen Chordiya**, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P-02840/2023-2024/14347 and **e-mail- risingsun192123@gmail.com**, having valid Authorisation for Assignment up to 25.10.2024 as the Interim Resolution Professional (IRP) to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their

knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the OC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors.
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- IX. The Registry is directed to immediately communicate this Order to the OC, the CD and the IRP by way of e-mail and WhatsApp, not later than two days from the date of this Order.
- X. The Registry is also directed to communicate this Order to the Insolvency and Bankruptcy Board of India forthwith for information and record.

Compliance report of the order by Designated Registrar is to be submitted today.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Tanmay Jain//