



SL. No.3

**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 15.10.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/479/2024 in CP(IB) No.72/9/HDB/2019
NAME OF THE COMPANY	Alekhya Drugs Pvt Ltd
NAME OF THE PETITIONER(S)	Trident Chemphar Ltd
NAME OF THE RESPONDENT(S)	Alekhya Drugs Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

IA(IBC)/479/2024

Orders pronounced, recorded vide separate sheets. In the result, this application is disposed of.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

IA No. 479 of 2024

in

CP (IB) 72/9/HDB/2019

[U/s. 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016]

**In the matter of M/s. Trident Chemphar Ltd. vs. M/s Alekhya
Drugs Pvt Ltd.**

Between:

M/s Celebrity Life Sciences Pvt Ltd
(formerly known as M/s. Alekhya Drugs Pvt Ltd)
Having its Registered Office at Flat No. E201, 7-2-1813/5/A/1,
S.V.S.S Nivas Czech Colony, Erragadda, Sanath Nagar,
Hyderabad – 500018
Represented by its Director

... Applicant

AND

Union of India
Represented by the Additional Director General of Foreign Trade,
Room No: 302, CGO Towers, Kavadi Guda, Hyderabad,
Telangana - 500080

...Respondent

Date of Order: 15.10.2024

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Parties / Counsels Present:

For the Applicant : Mr. Peri Rama Krishna, Advocate

For the Respondent : Mr. K V Raman, Advocate



[Per: Rajeev Bhardwaj, Member (Judicial)]

ORDER

1. The present application has been filed by M/s Celebrity Life Sciences Pvt Ltd (**“Applicant”**) directing the Respondent not to recover any amount of unquantified/quantified penalty for Pre-CIRP period in respect of irregularities/offences mentioned in Notice dated 04.12.2023.

Applicant's Case:

2. The Applicant, M/s Celebrity Life Sciences Pvt Ltd (previously known as M/s Alekhya Drugs Pvt Ltd), is a Private Limited Company registered as MSME, represented by its Director, Shri Karunakar Reddy Pabbatreddy, by virtue of a Board Resolution dated 20.11.2023.
3. The Corporate Insolvency Resolution Process (**CIRP**) of the Applicant was initiated, vide Order dated 11.12.2019 in CP(IB) No. 72/9/HDB/2019, based on an application filed by M/s. Trident Chemphar Ltd, an Operational Creditor, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**).
4. The Resolution Plan submitted by Shri K. Umamaheswara Rao, the promoter of the Corporate Debtor, was approved by the CoC with 100% voting share.



5. The Resolution Plan was approved, vide Order dated 03.09.2021, and the Corporate Debtor's name was subsequently changed to M/s. Celebrity Life Sciences Pvt Ltd. The Resolution Plan has been successfully implemented, and a Certificate from the Monitoring Committee Chairman (the then Resolution Professional) has been filed.
6. The Respondent issued a Show Cause Notice dated 04.12.2023 to the Applicant, demanding payment of penalties for offences committed during the Pre-CIRP period for violations under the Foreign Trade Act, 1992.
7. It is claimed that as the Respondent did not submit any claims during the CIRP process, therefore, it is barred from raising such demands post-approval of the Resolution Plan, as per Section 31 of the IBC.
8. Once the Resolution Plan is approved by the CoC and the Adjudicating Authority, it is binding on all creditors, including the Central Government, State Government, and Local Authorities. The Respondent's attempt to demand penalties for Pre-CIRP offences is in violation of the approved Resolution Plan and the Orders of the Hon'ble Tribunal.



Respondent's Case:

9. It is submitted that the present application filed under Rule 11 of the NCLT Rules, 2016 read with Section 235A of the IBC is not maintainable as both the provisions do not apply to the relief sought, and this Authority has become functus officio post-approval of the Resolution Plan.

10. It is submitted that a Notification No. 25/2015-20202, dated 18.10.2019 was issued regarding '*Incorporation of new provision in the Foreign Trade Policy 2015-20 about cases referred to National Company Law Tribunal (NCLT)*'. In exercise of powers conferred by Section 5 of FT (D&R) Act, 1992, read with Paragraph 1.02 of the Foreign Trade Policy, 2015-20, as amended from time to time, the Central Government made the following amendment in the Foreign Trade Policy 2015-20, wherein a new Para no. 2.15A was added in Chapter 2 of Foreign Trade Policy 2015-20 as under:

2.15. A Any firm/company coming under the adjudication proceedings before the National Company Law Tribunal (NCLT) shall inform the concerned Regional Authority (RA) and NCLT of any outstanding export obligations/liabilities under any of the schemes under FTP. The total outstanding duty saved amount / dues along with interest, and any penalty imposed under FTD&R Act, or any other dues, shall be counted as part of the dues to the government against the said firm/company.



11. Similarly, a Public Notice No. 39/2015-2020, dated 18.10.2019 was issued by DGFT regarding 'Incorporation of new provision in the Handbook of Procedure 2015-20 about cases referred to National Company Law Tribunal (NCLT). A new Para no. 2.29A was added in Chapter 2 of Handbook of Procedure 2015-20 as under:

2.29A Any firm / company coming under the NCLT proceedings shall make a summary of statement of outstanding export obligations/liabilities under the FTP schemes, indicating duty saved amounts and applicable interest till the date start of proceedings before the National Company Law Tribunal (NCLT), any penalty imposed under FTD&R Act, any other dues such as fee etc., and submit the same to the RA concerned and to NCLT, before the start of NCLT proceedings as part of the statutory filings. The statement of consumption of inputs/procurement of capital goods, attested by chartered engineer/chartered accountant, shall also be submitted along with other documentary details of any partial fulfilment of Export Obligation claimed towards offsetting the duty saved amount.

12. It is claimed that the Respondent was not informed of the Corporate Debtor's initiation into CIRP, thus, denying them the opportunity to submit claims.
13. The Corporate Debtor failed to fulfil its export obligations for various authorizations obtained under the FTP, leading to a show-cause notice on 04.12.2023 for non-compliance.



14. It is further submitted that at this stage, only a show-cause notice has been issued by the Respondent and no orders have been passed as of yet. It is settled law that there should be no interference at the stage of a show-cause notice, except in extraordinary circumstances, even under the extraordinary jurisdiction conferred by Article 226 of the Constitution to the High Court. There is no occasion for the Applicant to have approached this Authority directly without having bothered to reply to the show-cause notice.
15. The Respondent has relied on the Hon'ble Supreme Court rulings in ***Ghanshyam Mishra And Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited*** and ***State Tax Officer vs Rainbow Papers***, reinforcing that statutory obligations cannot be waived by a Resolution Plan.
16. We have heard the Learned Counsel for the Petitioner and Respondent and perused the entire record.
17. This Authority has approved the Resolution Plan submitted by the Applicant, vide Order dated 03.09.2021 in CP (IB) No. 72/9/HDB/2019.
18. The Respondent issued Show Cause Notice dated 04.12.2023 alleging that the Applicant has defaulted on the fulfilment and the conditions with which the authorisations



have been obtained from the Respondent. The list of authorisations availed by the Applicant are tabulated below:

S. No	Advance Authorization No	Issuance Date
1.	0910033668	17.04.2008
2.	0910034941	06.08.2008
3.	0910038154	04.06.2009
4.	0910042977	05.08.2010
5.	0910051629	07.03.2012
6.	0910051660	09.03.2012
7.	0910054675	03.01.2013
8.	0910059218	07.02.2014
9.	0910065029	12.05.2017

19. Based on the aforementioned authorizations, it is evident that these authorizations were obtained prior to the initiation of the Corporate Insolvency Resolution Process (**CIRP**). The Show Cause Notice indicates that the Applicant has failed in fulfilling its obligations with regards to the Advance Authorisation **No. 0910051660**, dated **09.03.2012** which were to be fulfilled within a period specified in the conditions sheet of the said Authorisation. Moreover, the conditions sheet of the authorisation is not placed on record which is crucial to understand as for how long such authorisation granted is valid.



20. The Respondent has referred to the issuance of Notification No. 25/2015-2020, dated 18.10.2019 incorporating new provision in Foreign Trade Policy 2015-20 about the cases referred to the NCLT by adding a new para no 2.15 A to the Chapter 2 of Foreign Trade Policy and further a similar Public Notice No. 39/2015, dated 18.10.2019 which was issued by DGFT regarding the incorporation of the new provision in the hand book of the procedure 2015-20 about the cases referred to the NCLT by adding a new para no. 2.29A in the Chapter 2 of handbook of procedures.
21. The scope of these notifications is primarily limited to the requirement of informing the concerned Regional Authority (RA) and the NCLT regarding any proceedings before the NCLT, particularly with respect to the outstanding export obligations or liabilities under schemes governed by the Foreign Trade Policy (FTP). However, the IBC holds overriding authority over any laws that are inconsistent with its provisions. As such, the Respondent is precluded from claiming any dues arising from the pre-CIRP period.
22. The Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd 2021 SCC OnLine SC 313*** has vociferously held that once the Resolution Plan is approved,



all the claims of the Corporate Debtor, including that of its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders shall stand extinguished.

23. It is clear that the object of IBC, 2016 envisages a clean slate principle to the Resolution Applicant who takes over the Corporate Debtor under Section 31 of IBC, 2016 and the Judgment of the Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra(supra)*** has made abundantly clear that the Resolution Applicant can be made liable for the dues which are forming part of the Information Memorandum and once the Resolution Plan is approved by this Adjudicating Authority, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.
24. Therefore, the SRA cannot be burdened with the penalties that should have been raised prior to the CIRP for the defaults committed by the CD before initiation of the CIRP.



25. However, it is already observed that Show Cause Notice dated 04.12.2023 neither clearly indicates whether the penalties mentioned therein are of a continuing nature nor specify the date of expiry of the validity of the said authorization. It is also unclear whether the said licenses have been surrendered or not. Consequently, this petition lacks the necessary information required for proper adjudication.

26. Even the present application is also premature because the Applicant has been served with the notice and no action has been taken.

27. As a result, the present Application is disposed of with the observation that the Applicant may file fresh application upon final adjudication by the Respondent.

Sd/-

(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)