

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-I**

**CP (IB) 3868/MB /2019**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016

*In the matter of*

**M/s Krishna Solvesolvechem Ltd**

**[CIN: U51102MH2006PLC160204]**

M-2, Srinivas Building,

382/384, Narshi Natha Street,

Mumbai-9, Maharashtra, India.

**...Operational Creditor/Applicant**

Versus

**M/s Arch Pharmalabs Limited**

**[CIN: U24231MH1993PLC150891]**

3<sup>rd</sup> Floor, Titanic Building,

Chandivali Farm Road,

Near HDFC Bank, Andheri

(East), Mumbai 400072, Maharashtra.

**...Corporate Debtor/Respondent**

**Order Delivered on 21.11.2023**

***Coram:***

Hon'ble Member (Judicial) : Justice V.G Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

***Appearances:***

For the Operational Creditor : Mr. Shyam Kapadia a/w  
Ms. Hanisha Dasoo,  
Advocates.

For the Corporate Debtor : Mr. Pulkit Sharma a/w Mr.  
Rushabh, Advocate.

**ORDER**

***Per:*** Justice V.G Bisht (Retd.)

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Krishna Solvesolvechem Ltd ("the Operational Creditor hereafter referred to as Petitioner")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Arch Pharmalabs Limited ("the Corporate Debtor hereafter referred to as Respondent")**.
2. The Respondent was incorporated on 02.04.1993 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U24231MH1993PLC150891. Its registered office is at 3<sup>rd</sup> Floor, Titanic Building, Chandivali Farm Road, Near Andheri(East), Mumbai 400072, Maharashtra, India .Therefore, this Bench has jurisdiction to entertain and decide the Petition.

**Submissions made by the Petitioner:**

3. M/s. Krishna Solvechem Limited. is a public limited company under the provisions of the Companies Act, 1956, having corporate identification number: U51102MH2006PLC1600204 having its registered office at M-2, Srinivas Bldg., 382/384, Narshi Natha Street Mumbai-9 Maharashtra, India and its corporate office at B-503, Sahayog Building Ltd., Kandivali (West), Mumbai-400067 and is engaged in imports & distributions of chemicals solvents, drug intermediates etc. (hereinafter referred to as the "Applicant" or the "Operational Creditor").
  
4. M/s Arch Pharmalabs Limited., is a public limited company, incorporated under the provisions of the Companies Act, 1956, having corporate identification number: U24231MH1993PLC150891 and having its registered office at 3rd Floor, Titanic Building, Chandivali Farm Road, Nr. HDFC Bank, Andheri (East), Mumbai - 400072, Maharashtra, India and its corporate office at 'H' Wing, 4th Floor, Tex Centre, HDFC Compound, Off. Saki Vihar Road, Chandivali, Near Kamani Mills, Andheri (East), Mumbai - 400072, India, Maharashtra (hereinafter referred to as the "Respondent" or the "Corporate Debtor").
  
5. The Respondent approached the Applicant and requested the delivery of chemical solvents through various purchase orders for the same. The Applicant provided the same and issued various

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tax invoices accordingly till 22nd January 2013 (i.e. the date of the last tax invoice raised).

6. The Applicant Raised the Invoices dated 13<sup>th</sup> September 2012 to 22<sup>nd</sup> January 2013 which are pending for payment and are broadly mentioned in the working claim sheet viz. total amount of Debt, details of transactions on account of which Debt fell due, and the date from which such Debt fell due:
  - a) The Total Outstanding tax invoices amount is Rs. 2,36,21,491/- (Two Crores, Thirty-Six Lakhs, Twenty-one thousand, four hundred and Ninety-One only). All these tax invoices were duly accepted by the Corporate Debtor without any Dispute or demur.
  - b) The terms and conditions of the tax invoices provides that the Corporate Debtor is liable to pay an interest of 24.75% on the delayed amount. Such delayed interest amount to INR 3,79,97,664/- (Three Crores, Seventy-Nine Lakhs, Ninety-Seven Thousand, Six Hundred and Sixty-Four only)
  - c) Accordingly, the amount claimed to be in default and the date on which the default occurred is INR 6,16,19,155/- (Six Crores Sixteen Lakhs, Nineteen Thousand, One Hundred and Fifty-Five Only) including outstanding interest amount calculated @24.75% P.A as per MSMED Act 2006 which is due from 13<sup>th</sup> December, 2012.
7. From the bare perusal of the Reply filed by the Corporate Debtor, it is pertinent to note that the Corporate Debtor has till date not denied its' liability to pay the outstanding dues to the Operational

Creditor and in fact the Corporate Debtor has itself mentioned in the reply about its' Financial difficulties and it was under the Liquidation as CDR had failed. Thus, from the Corporate Debtor's own conduct it shows that the Corporate Debtor is unable to pay its debts and is trying to wriggle out it's responsibilities to pay and has mentioned frivolous and raised objections about the maintainability of the present Petition.

8. The operational Creditor was left with no choice but to invoke statutory Arbitration under Micro Small and Medium Enterprises Development Act 2006, (MSMED Act) against the Corporate Debtor to recover the outstanding amounts being due and payable under the aforesaid unpaid invoices. The Arbitral Award dated 23<sup>rd</sup> February , 2015, was passed by the Arbitration Panel as Constituted under the MSMED Act, 2002, under which claim of the Operational Creditor made on the basis of the aforesaid unpaid invoices was allowed and granted in favour of the Operational Creditor and the Corporate Debtor was directed to pay the Principal amount of Rs.2,36,21,491 /-(Rupees Two Crore Thirty Lakhs Twenty -one Thousand Four Hundred and Ninety-One Only) along with the interest as per the provisions under section 15& 16 of MSMED Act , 2006. The Corporate Debtor was further directed to pay the interest to the Operational creditor until the date of actual realization.
9. The Operational Creditor immediately upon the passing of the said Award had filed an Execution Application being No.1981 of 2015 before the Hon'ble High Court, Bombay for Execution of the said Award. The Execution proceedings of Operational Creditor were dismissed and that made the operational creditor left with no

choice but to initiate the insolvency proceedings against the Corporate Debtor.

10. The said award was challenged by the Corporate Debtor by way of Arbitration Petition No.1631 of 2015 before the Hon'ble High Court under Section 34 of the Arbitration and Conciliation Act, 1996, and by the order dated 18<sup>th</sup> August 2016, the said Petition challenging the said Award was dismissed.

**Submissions made by the Respondent:**

11. The corporate Debtor submits that Petition under section 9 of the code has been filed by the Operational creditor in November 2019 and registered on 31<sup>st</sup> December 2019. Based on this alone, this Petition deserves to be dismissed as the same is hopelessly barred by Limitation.
12. The Corporate Debtor submits that the Operational Creditor issued a demand notice dated 3<sup>rd</sup> August 2019, upon the corporate Debtor. The claim in the demand notice is also made on the basis of the invoices and the date of default has been considered by the Operational Creditor as 14<sup>th</sup> September 2012. The Petitioner submits that act of making part payments towards the outstanding dues, tantamount to admission of liability. That the Corporate Debtor has replied to the said Demand Notice on 23<sup>rd</sup> August 2019 raising the issue of maintainability of the Demand Notice as the claim made by the operational creditor was hopelessly time barred under.

**Findings:**

13. We have heard both sides and perused the records.

14. From the record, it is observed that the Operational Creditor raised demand notice towards the debt owed to the Petitioner. However, for the outstanding unpaid sum the Corporate Debtor denied its liability by stating that the Petition filed is barred by limitation.
15. The Operational Creditor issued a Demand Notice dated 3<sup>rd</sup> August ,2019, to the Corporate Debtor for an amount of Rs.6,16,19,155(Rupees Six Crores Sixteen Lakhs Nineteen Thousand One Hundred and Fifty -Five Only) under the provision of the Insolvency and Bankruptcy Code, 2016, and the petition was filed on 14.11.2019. The Petitioner has categorically stated in the demand notice that the default occurred on 14.09.2012 and in the current account, no payments have been received after 23.01.2013 by the Operational Creditor from the Corporate Debtor.
16. The date of default is indicated by the Petitioner in the Petition. In order to establish default, the date of such default is the decisive point which comes into the play. It is on the said date that the cause of action arises because the right to sue occurs only when the default occurs. Nonetheless, even if we consider the last invoice raised by the Operational Creditor between January 2012 to June 2013, the limitation period to file the Petition as per Schedule 137 of Limitation Act, would end on 2016.
17. Further, even if limitation is determined with reference to the date of decree obtained under MSME Act, the order was passed by the Facilitation Council on 23.02.2015, that also occurred prior to three years of the date of filing of present petition. Even though the date of dismissal of appeal by the Corporate Debtor against

the order of the facilitation council is taken into consideration for determination of limitation period, the said would also expire on 17.08.2019.

18. The Operational Creditor has sought exclusion of period of 13<sup>th</sup> June 2016 to 9<sup>th</sup> October 2017, the period during which the proceedings for liquidation of the Corporate Debtor were pending at the behest of Kotak Mahindra Bank. However, this Bench is of considered view that the said proceeding does not bar filing of present Petition in terms of the provisions of the Code, hence, the exclusion cannot be granted for the purpose of determination of limitation aspect. On the contrary, the petition for liquidation under the Companies Act, 2013 after promulgation of the Code does not survive and must be necessarily dealt with accordance with the provision.
19. We further find that the execution proceedings in terms of decree passed by the Facilitation Council came to be dismissed on 27.04.2018, however, such dismissal was attributable to non-prosecution of its case by the Petitioner. Even otherwise, the pendency of execution does not debar the Petitioner to file the present petition, which is for resolution of the Operational Creditor, accordingly such pending execution proceedings can not extend the period of limitation.
20. Accordingly, we have no hesitation to conclude that the petition is time barred and not maintainable. Even otherwise, we find that the Operational Creditor filed the present petition after having exhausted all its avenues for recovery of the debt, we feel that the present petition appears to be filed with the objective of the



recovery and not for the resolution of the Corporate Debtor, accordingly, this Petition does not survive on this ground also.

21. In the above circumstances the petition bearing **CP (IB) 3868/MB/C-I/2019** filed by **M/s Krishna Solvesolvechem Ltd**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **M/s Arch Pharmalabs Limited [CIN: U24231MH1993PLC150891]**, the Corporate Debtor, is **dismissed**.

**Sd/-**

**Sh. PRABHAT KUMAR**

**Member (Technical)**

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**Sd/-**

**JUSTICE V.G BISHT**

**Member (Judicial)**