

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI

IA/774/IB/2020

in

CP/540/IB/2017

(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of ORCHID PHARMA LIMITED

**Mr. G.RAMACHANDRAN,**  
(Reg.No.IBBI/IPA-002/IP-N00167/2017-2018/10437),  
Resolution Professional of  
Sai Regency Power Corporation Private Limited.

... Applicant

-Vs-

**1. Mr. RAMKUMAR SRIPATHAM VENKATASUBRAMANIAN,**  
Monitoring Agent of M/s. Orchid Pharma Limited,  
1605, Block 1, Myhome Vihanga,  
Gachibowli, Hyderabad,  
Telangana – 500 032.

... Respondent No.1

**2. M/s. ORCHID PHARMA LIMITED,**  
#313, Valluvar Kottam High Road,  
Nungambakkam, Chennai – 600 034.

... Respondent No.2

**3. DHANUKA LABORATORIES LIMITED,**  
82, Abhinash Mansion, 1<sup>st</sup> Floor,  
Joshi Road, Karol Bagh, New Delhi – 110 005.

... Respondent No.3

Order Pronounced on 19<sup>th</sup> July 2023

**CORAM:**

**SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**  
**SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)**

Present: -

For Applicant : Mr.Srinivasan M.D, Advocate

For Respondents : Mr. Pradeep Roy, Advocate

**ORDER**

(Hearing Conducted through VC)

**Per: SANJIV JAIN, MEMBER (JUDICIAL)**

This Application has been filed by the Resolution Professional of Sai

**Regency Power Corporation PVT. Ltd (SRPCPL) against the Monitoring**



Agent of Orchid Pharma Limited (OPL) (Respondent No.1), **Orchid Pharma Limited** (Respondent No.2) and **Dhanuka Laboratories Limited** (DLL) (Respondent No.3), seeking the following reliefs:

*“Direct the Respondents to jointly and severally, pay a sum of Rs.2,41,70,403/- to SRPCPL forthwith, as CIRP Costs in full and in priority to all other creditors;*

*Direct the Respondent to jointly and severally pay the costs of the Application.”*

## **2. Facts in Brief:**

2.1. The facts relevant for the disposal of the Application are that SRPCPL and OPL entered into various Power Delivery Agreements from time to time. The last Agreement was entered on 31.08.2011. As per the Agreement, SRPCPL was to provide electricity to OPL and consequently, OPL was to make payments to SRPCPL for the consumption of electricity. SRPCPL raised several invoices, but according to SRPCPL, many invoices remained unpaid by OPL.

2.2. Meanwhile, vide order dated 17.08.2017, CIRP was initiated against OPL. IRP invited the claims from all the creditors. SRPCPL also filed claims for an amount of Rs.8.86 crores (approximately) on 07.09.2017.

2.3. The Tribunal vide order dated 27.06.2019 approved the resolution plan submitted by DLL in respect of OPL. The plan was challenged before the Hon'ble NCLAT which set aside the plan vide an order dated 13.11.2019. Finally, the Hon'ble Supreme Court vide order dated 28.02.2020 set aside the



order of Hon'ble NCLAT and upheld the Order of this Tribunal which had approved the resolution plan of DLL for OPL.

2.4. In the meantime, CIRP was initiated against SRPCPL vide order dated 27.03.2019. Certain payments were claimed to be made to SRPCPL by OPL through RP and accordingly, RP for OPL filed the proof of claim on 10.04.2019 for Rs.2.41 crores. Subsequently, the RP of OPL filed the revised proof of claim against SRPCPL on 21.08.2019 for Rs.2.79 crores.

2.5. It is alleged that upon inspection / verification of documents, it was discovered by the Applicant that from the claim of Rs.8.86 crores made against OPL, Rs.2,01,91,655/- were actually the amount due towards the electricity consumed by OPL for the month of August 2017 i.e., after the initiation of CIRP. Upon perusing the documents, it was discovered that a sum of Rs.40,00,000/- (not Rs.2.79 crores as claimed by OPL) was payable by SRPCPL to OPL towards a security deposit and an amount of Rs.6,84,37,080/- was due from OPL towards the electricity, billed up to 17.08.2017 and Rs.2,53,39,130/- towards the electricity billed during CIRP of OPL.

2.6. It is stated that the Applicant issued a letter dated 10.12.2019 to the RP of OPL and submitted a revised proof of claim for an amount of Rs.6,44,37,080/- adjusting Rs.40,00,000/- payable by SRPCPL to OPL. It is stated that vide letter dated 10.12.2019 it also submitted that amounts of Rs.1,67,78,855/- and Rs.3,65,746/- were unjustly deducted by RP of OPL for the months of April and May 2019.



2.7. It is stated that on 16.12.2019, RP of OPL sent a mail to the Applicant calling the statement of accounts from 01.04.2017 to 12.12.2019 to reconcile the balance. In response thereto, he sent a mail dated 19.12.2019 and provided the reconciliation statement. He sent another mail dated 28.02.2020 to the RP of OPL calling upon him to pay Rs.2,53,39,130/-, but the RP of OPL referred to the order of the Hon'ble Supreme Court about the approval of the resolution plan of DLL and asked for the confirmation of bank account details of SRPCPL. The Applicant on 23.03.2020 confirmed the bank account details. On 14.04.2020 he acknowledged the receipt of Rs.42,81,755.99 against the claim of SRPCPL from OPL. He however indicated that the claim of SRPCPL against OPL for the services provided to OPL during the CIRP is not cleared.

2.8. It is stated that on 16.04.2020 he received a mail that OPL has paid an excess amount to SRPCPL for the electricity supplied by SRPCPL during the CIRP period and rejected the claim of Rs.2,41,70,403/- stating that the RP of OPL will file a claim of refund of Rs.1,33,73,013/- for the excess monies received by SRPCPL from OPL.

2.9. It is stated that the Applicant also informed the RP of OPL that a sum of Rs.11,68,727/- was received by the Applicant towards the CIRP costs payable to SRPCPL from the resolution plan amount of OPL, but the RP of OPL informed that since the resolution plan of DLL has been approved which is binding on all the stakeholders including SRPCPL, the claim of SRPCPL is not maintainable. Later he informed that the claim filed by the Applicant on 10.12.2019 was time-barred.



2.10. It is stated that during the moratorium supply of essential goods and services cannot be terminated and the supply of electricity comes into the category of essential services which SRPCPL had provided to OPL till the plant of SRPCPL was operational. As per section 5(13), CIRP cost means all costs incurred by the person acting as RP for running the business as a going concern. Section 30 provides that RP should mandatorily check and confirm if all dues of expenses incurred for going concern are covered in the resolution plan. It is stated that as per this Section, all CIRP costs shall be paid in full and in priority to all other creditors of the Corporate Debtor. Any diversion shall be tantamount to a violation of the resolution plan.

2.11. It is stated that SRPCPL had raised the invoices for Rs.46,41,04,612/- in relation to electricity supplied during CIRP i.e., August 2017 to August 2019 against which it had received Rs.43,87,65,482/- and as such the balance amount of Rs.2,53,39,130/- was to be received from OPL.

2.12. It is stated that Respondent No.1 has paid Rs.42,81,755.99 to SRPCPL under the approved resolution plan against which a sum of Rs.31,13,029/- was adjusted by SRPCPL towards its claim against OPL and Rs.11,68,727/- towards the CIRP cost of Rs.2,53,39,130/- payable by OPL to SRPCPL and as such Rs.2,41,70,403/- is due and payable by OPL to SRPCPL as CIRP costs as on date.

2.13. Upon notice, RP of OPL filed his reply stating that the plan has already been implemented. The Applicant revised the claim after 33 months after the original submission of the claim. The Applicant did not supply power as per



the contract during the CIRP and has raised an illegitimate claim even getting all money paid during CIRP. It is admitted that the Corporate Debtor continued to procure power from the Applicant till August 2019. There was a security deposit for an amount of Rs.2,78,63,517/- and the claim submitted by the Corporate Debtor in April 2019 and August 2019 was based on a security deposit and is legitimate and valid. It is stated that the CIRP of Corporate Debtor was initiated on 17.08.2017. Corporate Debtor had made a payment of Rs.2,53,39,133/- on 21.08.2017 as an advance amount for supply under the PDA during the CIRP period which is legally adjusted by the Applicant towards the payment due before 17.08.2017 i.e., CIRP commencement date. It is stated that all the legitimate invoices received have been paid by the Corporate Debtor as per the details in Annexure-2 collectively. Accounts were also reconciled and the security deposit was adjusted in the prior period against the various dues before the initiation of CIRP. The contention of the Applicant that the amount of Rs.2,53,39,133/- received on 21.08.2017 against the dues pertaining to the pre-CIRP period is arbitrary. The management of the Applicant had never raised any dispute of ad-hoc amount Rs.2,53,39,130/- received by then in August 2017 till that time RP took control of the operation of the Applicant.

2.14. It is stated that the amount claimed as CIRP Costs payable towards the supply of electricity from the month of August of 2017 amounting to Rs.2,01,91,655/- have been duly paid and adjusted against the payment of Rs.2,53,39,133/- made on 21.08.2017 after the initiation of CIRP 17.08.2017.



2.15. It is stated that as per the books of account, power was supplied and the invoice was raised for Rs.46,41,04,612/- during CIRP and the same duly settled. It is stated that the plan is binding upon all the parties including stakeholders and the applicant.

3. We have heard Ld. Counsel for the parties and perused the records.

4. A perusal of records reveals that SRPCPL and OPL had entered into Power Delivery Agreement (PDA) as per which SRPCPL was to provide electricity to OPL and OPL was to make payments for the consumption of electricity. Vide order dated 17.08.2017, CIRP was admitted against OPL. Resolution Plan was submitted by DLL *qua* OPL as a going concern, which plan was approved by the NCLT and upheld by the Hon'ble Supreme Court vide order dated 20.08.2020. In the meanwhile, CIRP was also initiated against SRPCPL vide order dated 17.03.2019. The record reveals that SRPCPL went into liquidation vide an order dated 27.04.2021 and the company was sold as a going concern. The Liquidator has already filed an Application for closure of the liquidation process.

5. Records reveal that in terms of the PDA, OPL had given security for a sum of Rs.2,78,63,517/-. It is an admitted case of the parties that during CIRP, SRPCPL had provided electricity to OPL since it was a going concern. SRPCPL had filed the claims with the RP of OPL for Rs.8.86 crores on 07.09.2017. But later it revised the claim for Rs.6,44,37,080/-.



6. It is admitted by SRPCPL that in August 2017, it had received Rs.2,53,39,133/- from OPL. According to OPL, it was an advance to meet the cost of power during CIRP but as per SRPCPL no end use was specified and the amount was specific by SRPCPL for payments against the outstanding dues from OPL.

7. There is no quarrel with the legal proposition that CIRP costs have to be paid in full and the costs include all the services which have been taken by the RP for running the Corporate Debtor as a going concern. In the present case, the RP has made the payments to the creditors who provide the services of the materials during the CIRP and accounted for in the resolution plan which was approved by the NCLT and upheld by the Hon'ble Supreme Court. The management of the Corporate Debtor was handed over to the Resolution Applicant / DLL as a going concern and now the Resolution Applicant is in complete charge of the Corporate Debtor. The claims of the stakeholders were also collated by the RP and distributed to the stakeholders as per Section 53 of IBC, 2016 under the waterfall mechanism. This exercise was completed by the RP way back in 2019 / 2020. The Applicant / SRPCPL had also filed the claim before the RP which he had collated based on which he submitted the Application for approval of the Resolution Plan after getting approval of members of COC.

8. The records clearly show that the payments were made by the RP of OPL for the invoices raised by the Operational Creditors for the services and



the supplies rendered / given during the CIRP period. Nothing is seen from the records that the RP has not made the payments of the CIRP costs. RP being bound by the provisions contained under Section 30(2) of IBC, 2016 has included all these payments in the course of CIRP which were paid.

9. It appears that the Applicant / SRPCPL has adjusted the payments made by the RP of OPL against the supplies / invoices by SRPCPL to OPL during CIRP towards the debts before CIRP, which is also the case of the Respondent / RP of OPL. As evident from the records, SRPCPL adjusted the security deposits made by OPL in terms of the PDA and the payments made by the OPL to SRPCPL in August 2017 for a sum of Rs.2,53,39,133/- in the pre-existing dues i.e., dues prior to CIRP.

10. It is well settled law that RP is liable to include the expenses incurred during the CIRP, which are to be paid in full. The pre-existing dues as per the scheme of IBC are to be collated by the RP and to be paid as approved in the Resolution Plan.

11. SRPCPL has also gone into liquidation and its assets have also been liquidated. Steps are being taken for the closure of the liquidation process. The management of the OPL is completely taken over by the DLL through the Resolution Plan approved by this Tribunal which was also confirmed by the Hon'ble Supreme Court of India. The Plan is in the advanced implementation stage. The Liquidator of SRPCPL and Resolution Professional of OPL have thus become *functus officio*.



12. Thus, we are of the view that the Application filed by the Applicant does not have merit, as in our view entire payment of Rs.2,41,70,403/- pertain to Pre-CIRP period of OPL and as the claim of the Applicant have been sufficiently addressed in the Resolution Plan of the Respondent and have been duly paid on the approved Resolution Plan hence the present application deserved to be dismissed. Accordingly, this application IA/774/IB/2020 is dismissed.



—Sd—

**SAMEER KAKAR**  
MEMBER (TECHNICAL)



—Sd—

**SANJIV JAIN**  
MEMBER (JUDICIAL)