CMA CS RAJASEKARAN Praticing Company Secretary and Insolvency Professional	New No.6, Old No.12, Appavoo Gramani 1st Street, Mandaveli, Chennai - 600 028. (Opp. C.S.I.Church) **Ph.No** :044-43601111 **Mob** : 9884528518 E-mail ID :mdaibc@gmail.com
IP Registration No: IBBI/IPA-003/IP-N00053/2017-18/10493	

INTIMATION OF INITIATION OF CIRP TO REGULATORY AUTHORITIES

Date: 24th August, 2017

To

National Stock Exchange of India Ltd.,
Exchange Plaza, C-1, Block G, Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051
Tel No: (022) 26598100 – 8114, Fax No: (022) 26598120

Dear Sir/Madam,

Subject: Intimation of initiation of Corporate Insolvency Resolution Process (CIRP) and appointment of Interim Resolution Professional (IRP)

I hereby intimate your good office that CIRP has been initiated in respect of M/s Orchid Pharma Limited under the provisions of Insolvency and Bankruptcy Code, 2016 ("Code") by an order of National Company Law Tribunal ("NCLT") with effect from 17th August, 2017.

As per section 17 of the Code, the powers of the Board of Directors of M/s Orchid Pharma Limited stands suspended and such powers shall be vested with me, CMA CS Rajasekaran, having IP Registration no. IBBI/IPA-003/IP-N00053/2017-18/10493, appointed as the Insolvency Resolution Professional.

It may further be noted that in consonance with the stipulations contained in Section 14 of the Code, a moratorium has been declared vide the aforesaid order passed by NCLT, whereby, inter alia, the following shall be prohibited:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor any of its assets or any legal right or beneficial interest therein;

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Usr
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(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

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

The instant intimation w.r.t initiation of CIRP and appointment of Interim Resolution Professional is for your information and record. I shall keep the statutory authorities posted on further developments in this regard.

Kindly acknowledge the receipt of this document.

Thanking you,

Yours faithfully,

24/08/2017

CMA CS Rajasekaran
IBBI/IPA-003/IP-N00053/2017-18/10493

24/08/2017

Enclosed:

(a) A copy of the NCLT order dated 17th August, 2017.

(b) A copy of the Public Announcement made under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

SCHEDULE I: FORM A

PUBLIC ANNOUNCEMENT

[Under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

FOR THE ATTENTION OF THE CREDITORS OF ORCHID PHARMA LIMITED

RELEVANT PARTICULARS		
1	NAME OF CORPORATE DEBTOR	**ORCHID PHARMA LIMITED** (formerly known as "Orchid Chemicals & Pharmaceuticals Ltd").
2	DATE OF INCORPORATION OF CORPORATE DEBTOR	1st July,1992
3	AUTHORITY UNDER WHICH CORPORATE DEBTOR IS INCORPORATED / REGISTERED	Registered under Companies Act 1956, Registrar of Companies (ROC)-Chennai, Ministry of Corporate Affairs
4	CORPORATE IDENTITY NUMBER OF CORPORATE DEBTOR	L24222TN1992PLC022994
5	ADDRESS OF THE REGISTERED OFFICE OF THE CORPORATE DEBTOR	**"ORCHID TOWERS", 313, VALLUVAR KOTTAM HIGH ROAD, NUNGAMBAKKAM, CHENNAI TN - 600034 INDIA**
6	INSOLVENCY COMMENCEMENT DATE OF CORPORATE DEBTOR	17/08/2017 [As per Order of NCLT dated 17/08/2017 in Company Petition No. CP / 540/(IB)/CB /2017 (Order received on 24/08/2017)]
7	ESTIMATED DATE OF CLOSURE OF INSOLVENCY RESOLUTION PROCESS	13/02/2018 (180 days from date of Insolvency commencement process)
8	NAME, ADDRESS, EMAIL ADDRESS, AND THE REGISTRATION NUMBER OF THE INTERIM RESOLUTION PROFESSIONAL	**MR.RAJASEKARAN,** Address: New No.6,Old No.12,Appavoo Gramani 1st Street, Mandaveli, Chennai-600028 Email ID:mdaibc@gmail.com Registration Number: **IBBI/IPA-003/IP-N00053/2017-18/10493**
9	LAST DATE FOR SUBMISSION OF CLAIMS	07/09/2017

Notice is hereby given that the National Company Law Tribunal, Chennai Bench has ordered the commencement of a corporate insolvency resolution process against **M/S ORCHID PHARMA LIMITED** on **17th August, 2017** (Order received on 24/08/2017)

The creditors of **M/S ORCHID PHARMA LIMITED**, are hereby called upon to submit a proof of their claims, on or before 07/09/2017 to the Interim Resolution Professional, at the address mentioned against item 8.

The claims may be submitted in Scheduled Forms B, C, D, E and F in terms of Regulations 7, 8, 9 and 9A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (as amended) by the Operational Creditors, Financial Creditors, Workmen, Employee, Authorized Representative of Workme, Employees and Creditors other than Financial and Operational Creditors respectively as the case may be. The aforesaid regulation and relevant forms are available on website www.ibbi.gov.in of The Insolvency and Bankruptcy Board of India

The Financial Creditors shall submit their proof of claims by electronic means only. The Operational Creditors or other Creditors, including Workmen and Employees, may submit the proof of claims by in person, by post or electronic means.

Submission of false or misleading proofs of claim shall attract penalties.

Name and Signature of Interim Resolution Professional

CMA CS Rajasekaran

Interim Resolution Professional

Date: 24/08/2017

Place: Chennai

In the National Company Law Tribunal
Single Bench, Chennai

CP/540/(IB)/CB/2017

Under Section 9 of the IBC, 2016

In the matter of

Lakshmi Vilas Bank Limited
V/s
Orchid Pharma Limited

Order delivered on: 17.08.2017

For the Petitioner/OC: Shri A. K. Mylasamy, Advocate
For the Respondent/CD: Mr. T.K. Bhaskar, Advocate

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

ORDER

1. Under Consideration is a Company Petition filed by Lakshmi Vilas Bank Limited (in short, '**Petitioner/Operational Creditor**') against Orchid Pharma Limited (in short, 'Respondent/Corporate Debtor') under section 9 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**').

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.

3. Shri A. K. Mylasamy, the learned counsel appearing on behalf of the petitioner/OC submitted that the petitioner is a Scheduled Bank registered under the Banking regulation Act whereas the respondent/CD is engaged in pharmaceuticals business. The respondent had availed a loan of Rs. 50 crores from the petitioner and the said loan was later secured by mortgaging certain properties of the respondent. Later on, when the respondnet defaulted to make repayment of loan, the petitioner initiated recovery proceedings under the SARFAESI Act, 2002 and the petitioner started selling the property for adjusting the loan. At request of the respondent, the petitioner stopped selling the property and leased certain property to the Respondnet/CD by way of a deed of lease dated 07.10.2013 and the respondent has been paying a monthly lease rent for the period as mentioned below:-

Period	Amount
27.05.2013 to 26.05.2014	Rs. 74,14,000/-
27.05.2014 to 26.05.2015	Rs. 84,03,000/-
27.05.2015 to 31.12.2015	Rs. 93,91,000/-

However, the respondent committed default in respect of rent from January 2016 onwards. It is submitted that the respondent has to pay a sum of Rs. 93,91,000/- for the month

of January 2016, however, it has paid only Rs. 70 lakhs leaving a balance of Rs. 23,91,000/- for the month of January 2016. It is also submitted that the respondent has been using the said property so far and has not paid any money for the period between February, 2016 to May, 2017 including balance rent of January 2016. All the particulars of arrears of lease rent amounting to Rs. 20,62,01,053.80/- to be paid to the petitioner has been described clearly in a working sheet annexed as Annexure- II(A) in the petition.

4. It is also submitted that the respondent used and enjoyed the said property without raising any disputes with regard to the leased property in question. It is further submitted that the respondent, in reply to the Demand Notice sent on 14.06.2017, raised the plea that the Corporate Debt Restructuring (in short, 'CDR') was implemented from July 2014 and called upon the petitioner to discuss the payment of rent with the monetary institution namely State Bank of India as per the CDR scheme.

5. It is further submitted that the petitioner, after making several requests for settling the dues with the respondent and having waited for a long period of time for his legitimate dues, sent a Demand Notice dated 14.06.2017 as per the provisions under section 8 of the IB Code 2016 r/w Rule 5 of the IB Rules 2016

calling upon the respondent to make the payment of the outstanding due of Rs. 20,62,01,053.80/- and thus claimed to be an Operational Creditor under the provisions of the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.

6. Mr. T.K. Bhaskar, the learned counsel appearing on behalf of the Respondnet/CD vehemently opposed the submissions put forth by the counsel for the petitioner and submitted that the instant petition is false and not maintainable. He submitted that whatever has been contended by the petitioner is mere a claim and not a debt and further, the claim is also disputed.

7. It is further submitted that the lease deed in question is under stamped & not registered under the provisions of the Registration Act and the registration of lease deed is mandatory requirement, therefore, the unregistered lease deed is inadmissible in evidence. In support of this submission, he placed his reliance on a SC judgement ***K.B. Saha and Sons Pvt. Ltd. V. Development Consultant Limited (2008) 8 SCC 564*** wherein it was held that the unregistered lease deed is inadmissible in evidence. He also placed his reliance on a SC judgement ***Avinash Kumar Chauhan V. Vijay Krishna Mishra AIR 2009 SC 1489*** wherein it was held that an

insufficiently stamped instrument would not be admissible even for collateral purposes.

8. With regard to the above contention averred by the counsel for the respondent, the counsel for the petitioner submitted that State Bank of India (MI) was making payment in respect of the invoices raised by the petitioner from time to time till 31.12.2015 which is a clear case of admission. Therefore, at this juncture, the respondent cannot raise this plea to wriggle out its obligation to make payment. He also placed his reliance on a SC judgement reported in **2012 8 SCC 516 Ahmedsaheb (Dead) by LRs and Othrs Vs. Sayed Ismail** wherein it was held that a lease deed can be looked into for collateral purposes.

9. It is further submitted that the respondent company is presently under a CDR Scheme which has been admitted and approved on 10.03.2014 and implemented in July, 2014 whereby the debts of all CDR lenders (20 bankers) have been restructured and that the petitioner is well aware of the same, therefore, initiating a Corporate Insolvency Resolution process (CIRP) against the Respondnet Company would only mean duplicating the entire resolution process which the company is already going through. In support of this

submission, he placed his reliance on two case laws ***Tata Capital Financial Services V. utility Infra projects 2015 SCC Online Bom 3597*** and ***IDFC Bank Ltd. V. Ruchi Soya Industries Ltd 2017 SCC Online Bom 153*** wherein a winding up application was not allowed considering CDR Scheme in background.

10. With regard to the above contentions made by the counsel for the respondent, the counsel for the petitioner submitted that the Petitioner is outside the CDR Scheme as it has not joined the CDR Scheme, therefore, it is entitled to the relief prayed under section 9 of the IB Code 2016.

11. It is further submitted by the counsel for the respondent that the claim of the petitioner is disputed as after the expiry of the lease deed on 24/05/2014, it was not renewed. It is also stated that lease rent was exorbitant and not in line with the fair value or market value of the property. Therefore, it is submitted that the same is to be adjudicated by an appropriate forum like Rent Control Tribunal established under the Rent Control Act and not by the present Adjudicating Authority. To support this contention, he placed his reliance on a SC judgement ***RajuJhurani Vs. M/s. Germinda Pvt Ltd AIR 2012 SC 3191***

wherein it was held that a winding up petition does not lie for a claim of rental dues.

12. In relation to the above averments made by the counsel for the respondent, the counsel for the petitioner submitted that lease rent was not exorbitant and it was in line with the fair value or market value of the property. Had it been so, the respondent would not have paid rent for such a long period of time i.e. 27.05.2013 to 31.12.2015 and moreover, this plea cannot be raised at this stage. It is also submitted that the above case law is not applicable as the facts and circumstances in the present case are otherwise and this Adjudicating Authority is the only forum to adjudicate the instant petition. Therefore, I held that the above contentions of the respondents are not sustainable.

13. It is further submitted that the petitioner in its demand letter dated 14.06.2017 stated that the petitioner is going to initiate insolvency proceedings under section 7 of the IB Code 2016 but now he cannot initiate the same under section 9 of the IB Code as the same is barred by the doctrine of estoppel and principle of *qui approbat non reprobat* because what the petitioner has already approbated cannot reprobate the same.

14. After hearing submissions of the counsel for the petitioner & respondent and adopting & reiterating the reasoning given in the above cited judgements and having perused the record, I am inclined to admit the instant application for the reason, the petitioner approached this Adjudicating Authority by issuing a Demand Notice u/s 8 of the IB Code 2016. At this juncture, it is observed that this petitioner has complied with all the requirements as stipulated under the provisions of the IB Code 2016 like filing an affidavit and a letter by a Financial Institution u/s 9 (3) (b) & (c) of the IB Code 2016. It is also pertinent to mention here that the counsel for the respondent contended that the petitioner has not filed a bank statement from a financial institution. This contention is brushed aside for the reason that the petitioner itself is a Scheduled Bank registered under the Banking Regulation Act and also operating the transactions between itself and the respondent.

15. Therefore, the instant petition is admitted and I order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

16. I appoint Mr. CMA CS Rajasekaran as Interim Resolution Professional (**IRP**) proposed by the Operational Creditor.

There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

17. I declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. I order to prohibit all of the following, namely :

(a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor 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 corporate debtor 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 the possession of the corporate debtor.

18. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

19. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.

20. The Petitioner/OC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

21. The Registry is also directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

22. The address details of the IRP are as follows: -

Mr. CMA CS Rajasekaran
Regn. No: (IBBI/IPA-003/IP-N00053/2017-2018/10493)
New no. 6, Old no. 12,
Appavoo Gramani, 1st street
Mandaveli, Chennai – 600017
(Opposite C.S.I. Church)
Email: kalai@mdassociates.co.in
Mobile No: 9884528518/044-43601111

K. ANANTHA PADMANABHA SWAMY
Member (J)

RLS