

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1



CP (IB) No. 215/9/HDB/2021

Under Section 9 of the Insolvency and Bankruptcy Code, 2016
R/w. Rule 6 of the Insolvency and Bankruptcy Rules, 2016

IN THE MATTER OF VANTA BIOSCIENCES LIMITED

Mr.Sadhanala Venkata Rao,
R/o Survey No.115, Opp Sub-registrars Office,
Hanumanji Colony, Old Bowenpally,
Secunderabad, Telangana-500009.

FREE OF COST COPY

... Operational Creditor

AND

M/s. Vanta Bioscience Limited
R/o. 1-20-248, Umajay Complex,
Rasoolpura, Secunderabad-500 003.

... Corporate Debtor

Date of Order: 27.04.2022

Coram:

Hon'ble Dr. N.V.Ramakrishna Badarinath, Hon'ble Member (Judicial)

Hon'ble Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Petitioner: Mr.D.Narender Naik, Counsel.

For Respondent: Mr.T.Surya Satish, Cousnel.

PER: BENCH

1. The present petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process in respect of M/s.Vanta Biosciences Limited, Corporate Debtor herein alleging for total amount of due including principal and interest calculated upto 11.05.2021 is of Rs. 1,18,65,000/.

2. **AVERMENTS IN PETITION**

- a. Operational creditor i.e Mr.Sadhanala Venkata Rao, has been appointed as an Additional Director- Executive Category and Chief Executive Officer in the Company i.e Vanta Bioscience Limited vide two Board Resolutions. Copies of the Board Resolutions have been annexed herewith as Annexure-A&B.

It is averred that the agreed salary payable to the operational creditor was Rs.60,00,000/- per annum. Copy of Form No.MR1 filed with the ROC by corporate debtor Company is enclosed as Annexure-C to the petition.

- c. It is averred that though the operational creditor is fulfilling his duties and responsibilities during the course of his employment, corporate debtor failed to make full payment towards the service rendered by him and had paid merely 50% of the agreed amount for the past three years.Tough the operational creditor has requested for clearing the outstanding dues, corporate debtor never came forward to repay the dues nor denied the existence of the dues.





- d. It is averred that till date of application, corporate debtor has to pay an outstanding amount to Rs.1,18,65,000/- as on 11.05.2021, inclusive of principal debt of Rs.1,01,15,000/- and interest @18% p.a on the principal amount. Due to non-payment of the amount which is due, operational creditor issued demand notice dated 11.05.2021. Even after the issuance of demand notice neither paid the amount nor disputed the amount. Copy of demand notice is annexed to the petition as Annexure-D.
- e. Thus, operational creditor averred that corporate debtor is not in position to meet commercial liabilities and shall be deemed to be insolvent and thus prayed the Hon'ble Tribunal to appropriate order in the interest of Justice.

3. Counter filed by the Corporate Debtor:

- a. Corporate debtor denied the averments made by the operational creditor. It is averred that demand notice was issued on 11.05.2021 and due to the ongoing pandemic, corporate debtor could not immediately reply to the said notice.
- b. It is averred that the appointment of the operational creditor as CEO of the corporate debtor was subject to various promises which were made by the operational creditor.
- c. It is averred that operational creditor emailed dated 29.10.2018 to the corporate debtor and asked for bifurcation of the salary into fixed and variable pay. Based on that variable salary of Rs.2.50 lakhs was to be paid as per the key performance



indicators(KPI'S) and Key Roll Areas(KRA's) performed by the operational creditor as projected and promised by the operational creditor.

- d. It is averred that the operational creditor has even suppressed the email dated 19.02.2021, wherein he was informed that his salary can be paid in terms of agreement like based on his performance and mutually agreed terms as KPI's and KEI's. suppressing the facts the operational creditor filed this application. The corporate debtor denied the demand notice through reply dated 10.06.2021 and explained the reasons.
- e. It is averred that the email conversations and documents filed by the corporate debtor along with counter shows that petitioner filed the present application is made with malafide dishonest to cause huge dent in the reputation of the corporate debtor as the corporate debtor is a listed company.
- f. Thus the corporate debtor urged the Tribunal to dismiss the company petition with exemplary costs.

4. Rejoinder filed by the operational creditor:

- a. Operational creditor denied the facts mentioned by the corporate debtor and stated that corporate debtor has not replied to the demand notice with in 10 days of receipt of demand notice.
- b. It is averred that subsequent to the issuance of demand notice, corporate debtor has come forward and made part payment amounting to Rs.4,71,024/-. The part payment clearly shows




that admission of the debt by corporate debtor. Copy of the bank statement evidencing part payment is annexed as Annexure-1 to the rejoinder.

- c. It is averred that operational creditor is entitled to receive the amount in two parts as fixed and variable as per the mutual agreement. Further the variable portion of the amount to be paid at the end of two years.
- d. It is averred that there was no communication that variable part of salary is dependent on the performance of the operational creditor.
- e. Further averred that MRI filed with ROC specific the total salary amounts to Rs.60,00,000/-. Even the Board of Directors the corporate debtor company has resolved the remuneration of the operational creditor as Rs.60,00,000/- in the Board Resolution. Copy of the Board Resolution dated 05.01.2018 is annexed as Annexure-2.



It is averred that corporate debtor on several occasions appreciated for the efforts of the operational creditor during his tenure as the CEO. The copies of the appreciation messages/emails is annexed to the rejoinder as Annexure-5.

- g. It is submitted that there was no such agreement that the salary was payable based on the performance. It is averred that as the tenure of the operational creditor was coming to an end and thus sent email for repaying the arrears withheld from his salary over a period of 3 years during his tenure as CEO, then the corporate

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debtor brought about the performance and variable portion of the record.

- h. Thus corporate debtor upheld the salary of the operational creditor and thus with no other option operational creditor filed the present application for initiating CIRP against the corporate debtor.

5. Written submissions filed by the operational creditor:

While reiterating the facts in the petition, operational creditor further averred that even after a spectacular performance of the operational creditor who created a market capitalization of a start-up company worth Rs.200 crores and procured funding of around of Rs.50 crores to develop the company, the corporate debtor based on the email dated 29.10.2018 for bifurcation of the salary, took advantage and not paid the amount. Based on the mutual understanding and to accommodate financial constraints of the corporate debtor agreed for bifurcation and it has to be paid at the end of two years and it is not mentioned with regard to the performance. Thus due to non-payment operational creditor suffered huge loss and filed present application for initiation of CIRP against the corporate debtor.

6. We have heard both sides. Applicant was appointed as CEO and whole time Director-executive category and Chief Executive Officer of the Corporate Debtor Company with a package of Rs. 60,00,000/- p.a. The same was corroborated vide Board Resolution dated 05.01.2018. The copy of the Board Resolution has been filed at page no.18 of the application, which clearly states that the operational creditor has been

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appointed as CEO and whole time Director of the corporate debtor Company. Form No.MR 1 filed with the ROC clearly evidences that the operational creditor while acting as whole time Director the Corporate Debtor paid an amount of Rs.60,00,000/- p.a. Further the Board Resolution dated 05.01.2018 evinces the same. It has been affirmed in the Ordinary Resolution passed at the Extraordinary General Meeting of Members of the Corporate Debtor on 07.02.2018. Copy of the ordinary Resolution passed by the shareholders of the Corporate Debtor Company is filed at page no.12 of the Rejoinder.

7. We observed from the Audited financials of the corporate debtor in Item 28 under heading Managerial Remuneration against the name of the operational creditor towards a remuneration of Rs.60,00,000/- per annum was shown and the said amount has been accounted for by the corporate debtor in their books of accounts.

8. Operational creditor further contended that based on the submissions in the counter affidavit that only 50% of the salary is to be paid as fixed and the remaining 50% as variable pay, was never agreed to by him, the same was also not corroborated with any evidence as required in the provisions of the Companies Act.

9. Operational creditor further submitted that the corporate debtor has failed to give reply to the notice of the operational creditor within the statutorily prescribed period of 10 days and even failed to pay the operational creditor the amount that is due. Apart from that the operational creditor also disputed the same was divided into fixed and variable pay which was never agreed upon by him. The operational

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creditor vehemently denied that such agreement ever exists between the parties. Further, corporate debtor have come forward and offered part payment of Rs.4,71,024/-. This part payment itself shows that there is debt due and payable by the corporate debtor.

10. Operational creditor also submitted that corporate debtor on several occasions conveyed appreciations for the work done by the operational creditor. Even after a spectacular performance by the operational creditor who created market capitalization of a start-up company worth Rs.200 crores and procured funding around Rs.50 crores to develop the Company, the corporate debtor.
11. Further submitted that on basis of mutual understanding between parties and to accommodate the financial constraints of the corporate debtor the operational creditor himself requested for bifurcation of salary into fixed and variable pay. However, it was never officially agreed by way of any documentation. The corporate debtor can't take advantage of the emails for defaulting payment of his legitimate dues.

12. Finally the operational creditor submitted that due to non-payment of agreed remuneration, the operational creditor suffered cash flow issues, mental agony and reputation. Lastly the applicant pleaded that there is no pre-existing dispute with regard to the due payable by the corporate debtor before issuance of demand notice under Section 9 of IBC.

13. In response to the above submissions by the operational creditor, corporate debtor submitted that the applicant herein has suppressed the facts and tried to mislead the Tribunal. Even though he has admitted through his emails, which clearly depicts that the applicant herein



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admitted for splitting up salary into fixed pay and variable pay, he is now claiming non-payment of salary. The same fact was brought to the knowledge of the operational creditor in reply given to the notice dated 10.03.2021.

14. Corporate debtor further submitted that the very appointment operational creditor as CEO of the corporate debtor was subject to various promises which were made by him as projected by him in the strategic business plan, forecast of business, financial costs, the achievements which the corporate debtor would make as per his projection for the next three years.

15. Further submitted that operational creditor failed in achieving all the promises which he forecasted for next three years. Further alleged that the applicant has not produced any evidence for these projected achievements to make a claim to variable salary. Further applicant has addressed by email dated 29.10.2018, for bifurcation of the salary into fixed and variable pay. Accordingly the salary of the applicant was fixed from the date of appointment as 2.5 lakhs as fixed and 2.5 lakhs as variable pay.

16. Therefore, the corporate debtor submitted that entire claim made by the operational creditor is contrary to these two emails and is unsustainable in law. Corporate debtor further submitted that fixed salary was paid and however, variable salary was to be paid only as per the Key Performance Indicators and Key Roll Areas performed by the operational creditor. Further corporate debtor alleged that applicant had created an unhealthy atmosphere among the employees by making false

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promises by his acts. In the light of the above submissions corporate debtor prayed for dismissal of the application as KPI and KRA's were not achieved as projected by the applicant herein.

17. We have gone through the records and submissions made by both sides. In the light of the contest as mentioned above, the point for consideration by this Adjudicating Authority is:

Whether the documentary evidence furnished with application shows that the aforesaid operational debt is due and payable and has not yet been paid by the corporate debtor?

18. We have heard the learned counsel Mr.D.Narender Naik, for operational creditor and learned counsel Mr.T.Surya Satish, for corporate debtor. At the outset it may be stated that in terms of the definition of operational debt present under Section 3(5) of the IBC, salary payable to employee comes under operational debt. According to the learned counsel for operational creditor for non-payment of the said operational debt despite of service of Demand notice dated 11.05.2021 on the corporate debtor the present application has been filed.

There is no doubt that the applicant herein was appointed as CEO and whole time Director of the corporate debtor with a package of Rs. 60,00,000/- p.a. However, according to the learned counsel for corporate debtor, the operational creditor vide email dated 29.10.2018 asked for bifurcation of the salary into fixed and variable pay and based on the said email, the variable salary is fixed at Rs.2.50 lakhs as per Key Performance Indicators.




20. Learned counsel for the corporate debtor further contends that operational creditor suppressed the email dated 19.02.2021 wherein the corporate debtor has been informed that salary can be paid in terms of his performance and mutually agreed terms of KPI's and KEI's. However, suppressing the same the present application has been filed. According to the learned counsel for the corporate debtor the dispute is clearly been raised before the demand notice. In fact according to the learned counsel for the corporate debtor the above aspects have been mentioned in the reply dated 10.06.2021 to the demand notice.
21. In the light of the context as afore stated and perused the records placed before us, in order to ascertain whether there exists the operational debt as claimed by the operational creditor which is due and payable by the corporate debtor. Perusal of the Board Resolution dated 05.01.2018 wherein the appointment of the applicant as whole time Director and CEO has been confirmed by the Board of Directors of the corporate debtor. It has been categorically stated that " Mr.Sadhanala Venkata Rao is hereby appointed as CEO of the Company with effect from January 05, 2018 on such terms and conditions as may be decided by the Board and acceptable to Mr.S.Venkata Rao". Thus it is clear that applicant has been appointed as whole time director and CEO with effect from 05.01.2018 with remuneration as 60 lakhs p.a. Having such prerequisites by the Board, the Board Resolution is not in dispute.
22. Nextly, We have perused the Form No.MR-1, and some discussions with the applicant by the corporate debtor with regard to appointment as CEO with salary as mentioned in the appointed letter dated




05.01.2018 is not in dispute. Thus availing of the service of the applicant is also not in dispute. Based on these circumstances, we therefore satisfied with the documents produced by the applicant herein and we therefore find no merit in the contentions. We hold that it is fit case to put corporate debtor into CIRP.

23. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

- a. Corporate Debtor, M/s Vanta Bioscience Limited is admitted in Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016.
- b. The Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;



- c. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- d. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.
- e. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- f. That the order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- g. That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.



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h. The Operational Creditor prayed this Adjudicating Authority to appoint the IRP. This Bench hereby appoints Shri. Kurapati Singarayya Chowdary, having registration No. IBBI/IPA-003/IP-N000149/2017-2018/11728 Residing at Flat No. 101, Sheshadri Towers G16A, Madhura Nagar, Yousufguda, Hyderabad, West Marredpally, Telangana, 500038, email : kurapatichowdary55[at]gmail[dot]com as IRP to carry the functions as mentioned under the Insolvency & Bankruptcy Code. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with. Proposed IRP shall file Form-B issued by the IBBI within three days hereafter. This information is also available in IBBI Website. Authorisation for Assignment is valid to 23.11.2022. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.



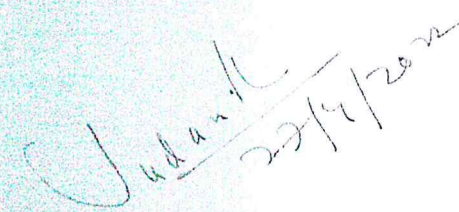
- i. The Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.
- j. The petitioner is directed to pay a sum of Rs.1,00,000/- to the interim resolution professional to meet out the expenses to perform

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the functions assigned to him in accordance with Regulation 6 of IBBI regulation, 2016.

- k. Accordingly petition is admitted.
- l. The Operational Creditor is directed to communicate this order to the IRP appointed in this case.


Veera Brahma Rao Arekapudi
Member Technical

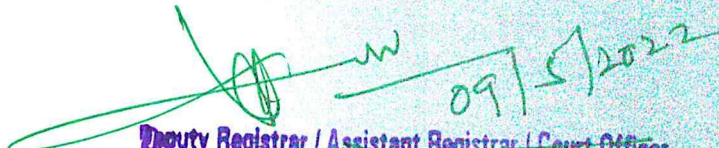

Dr. N.V. Ramakrishna Badarinath
Member Judicial

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केस संख्या
CASE NUMBER CP (IB) No. 215/9/HDB/2021.
निर्णय का तारीख
DATE OF JUDGEMENT 27/4/22
प्रति कवर लिया गया तारीख
COPY MADE READY ON 9/5/22


Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

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