

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Excise Appeal No. 1509 of 2012

(Arising out of Order-in-Appeal No. US/478 to 481/RGD/2012 dated 09.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

M/s. KDL Biotech Ltd.

Appellant

Village – Savroll, Khopoli,
Tal. – Khalapur, Raigad 410 202.

Vs.

Commissioner of CE & ST, Raigad

Respondent

4th Floor, GST Bhavan, Plot No.1,
Section 17, Khandeshwar,
Navi Mumbai 410 206.

WITH

Excise Appeal No. 1510 of 2012

(Arising out of Order-in-Appeal No. US/478 to 481/RGD/2012 dated 09.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

Pundalik T. Kadam

Appellant

Manager (Dispatch & Excise),
KDL Biotech Ltd.
Village – Savroll, Khopoli,
Tal. – Khalapur, Raigad 410 202.

Vs.

Commissioner of CE & ST, Raigad

Respondent

4th Floor, GST Bhavan, Plot No.1,
Section 17, Khandeshwar,
Navi Mumbai 410 206.

WITH

Excise Appeal No. 1530 of 2012

(Arising out of Order-in-Appeal No. US/478 to 481/RGD/2012 dated 09.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

M/s. Unimark Remedies Ltd.

Appellant

Godown No. 4A, Bldg. No.E,
Rajlaxmi Commercial Complex,
Kalher Village, Bhiwandi Road,
Thane 421 302.

Vs.

Commissioner of CE & ST, Raigad

Respondent

4th Floor, GST Bhavan, Plot No.1,
Section 17, Khandeshwar,
Navi Mumbai 410 206.

AND

Excise Appeal No. 1531 of 2012

(Arising out of Order-in-Appeal No. US/478 to 481/RGD/2012 dated 09.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

M/s. Unimark Remedies Ltd.

Appellant

Kerala Nal Sarovar Road,
Village Kerala, Tal. – Dholka,
Dist. – Ahmedabad 380 015.

Vs.

Commissioner of CE & ST, Raigad

Respondent

4th Floor, GST Bhavan, Plot No.1,
Section 17, Khandeshwar,
Navi Mumbai 410 206.

Appearance:

None for the Appellant

Shri Dharendra Kumar, Joint Commissioner, Authorised Representative
for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 11.11.2022

Date of Decision: 11.11.2022

FINAL ORDER NO. A/86068-86071/2022

PER: SANJIV SRIVASTAVA

In the present case on 09.05.2022 Bench has observed as follows:-

"Learned Advocate appearing for the appellant submitted that the matter pertaining to the appellant M/s. Unimark Remedies Ltd. is pending before the Learned National Company Law Tribunal (NCLT), Mumbai Bench. He has also referred to paragraph 9(vi) of the order dated 03.04.2018, stating that Shri Amit Gupta Chartered Accountant has been engaged as Resolution Professional to carry the functions under the Insolvency and Bankruptcy Code. Accordingly, he prayed for withdrawing his Vakalatnama for conducting the matter on behalf of M/s. Unimark Remedies Ltd. The prayer made by the learned Counsel is considered. Accordingly, Registry is directed to issue notice to Mr. Amit Gupta, engaged as the National

Resolution Professional. The matter is adjourned to 12.08.2022. Further, Registry is also directed to issue notice to all the appellants, whose matters have been listed for hearing today."

1.2 On the said date counsel has filed a request for withdrawal of his Vakalatnama from all the four appeals before us. Also an order dated 03.04.2018 of the National Company Law Tribunal (NCLT), Mumbai Bench, was produced. As per para 5 of this order, following has been recorded:-

"5. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

I (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;

(IV) That the order of moratorium shall have effect from 3.4.2018 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, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(VI) That this Bench hereby appoints Mr. Amit Gupta, Amit H Gupta & Co. Chartered Accountants, Office No. 309, 3rd Floor, Crescent Business Park, Sakinaka Telephone Exchange,

Sakinaka, Andheri (E), Mumbai – 400 072, Email:- caamith.gupta@gmail.com, having Registration No. IBBI/IPA-001/IP-P00016/2016-17/10040 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.”

1.3 Accordingly this Bench had directed for issuance of notice to all the parties including the Insolvency Professional. Registry has vide letter dated 07.06.2022 issued notice to all the persons concerned including the Resolution Professional. From the perusal of the notice, it is observed that it has been sent to:-

Pundalik T. Kadam
Manager (Dispatch & Excise),
KDL Biotech Ltd.
Village – Savroll, Khopoli,
Tal. – Khalapur, Raigad 410 202.

Unimark Remedies Ltd.
Godown No. 4A, Bldg. No.E,
Rajlaxmi Commercial Complex,
Kalher Village, Bhiwandi Road,
Thane 421 302.

Unimark Remedies Ltd.
Kerala Nal Sarovar Road,
Village Kerala, Tal. – Dholka,
Dist. – Ahmedabad 380 015.

Shri Amit Gupta (Interim Resolution Professional)
Amit H. Gupta & Co., Chartered Accountants,
309, 3rd floor, Crescent Business Park,
Sakinaka Telephone Exchange, Sakinaka,
Andheri (E), Mumbai 400 072.
Email:- caamith.gupta@gmail.com

1.4 Even after the service of the notice, none has appeared in the matter. Specifically the Insolvency Professional has not caused any appearance or made an application for substitution as required under Rule 22 of CESTAT (Procedure) Rules, 1982. It seems that the appellants are not interested in prosecuting this matter any further.

1.5 Rule 20 of CESTAT (Procedure) Rules provides as under:-

"Rule 20. Action on appeal for appellant's default. — Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not

appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits :

Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal."

2.1 Appeals are dismissed as per Rule 20 of CESTAT (Procedure) Rules, 1982.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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