

Sr. No. 119/2026

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 19/9/JPR/2023

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016)

IN THE MATTER OF:

ACE CARDIOPATHY SOLUTIONS PVT. LTD.

...Operational Creditor/Petitioner

VERSUS

CARDIAC CARE AND ALLIED HEALTH PVT LTD.

...Corporate Debtor/Respondent

MEMO OF PARTIES

ACE CARDIOPATHY SOLUTIONS
PRIVATE LIMITED

R/o-551,5th Floor, Wing B Krishna Apra,
Business Square, Netaji Subhash Place,
Delhi, Northwest DL- 110034.

...Petitioner

VERSUS

CARDIAC CARE AND ALLIED
HEALTH PRIVATE LIMITED

R/o-7, Vivekanand Marg, C-Scheme,
Jaipur- 302001.

...Respondent

For the Petitioner

: Anubha Singh, Adv.
Shubham Chaudhary, Adv.



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(Signature)

Assistant Registrar
National Company Law Tribunal
Jaipur

For the Respondent : Anurag Kalavatiya, Adv.
Parul Singhal, Adv.

Order Pronounced On: 17.04.2026

ORDER

Per: Ms. Reeta Kohli, Judicial Member

1. The present Petition has been filed by *ACE Cardiopathy Solutions Private Limited* ('Operational Creditor'/ 'Petitioner') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against *Cardiac Care and Allied Health Private Limited* ('Corporate Debtor'/ 'Respondent') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') alleging non- payment of the operational dues amounting to Rs. 1,79,98,948.93/- (Rupees One Crore Seventy-Nine Lakh Ninety-Eight Thousand Nine Hundred Forty-Eight and Ninety-Three Paise Only) being the principal amount and Rs. 19,73,329.59/- (Rupees Nineteen Lakh Seventy-Three Thousand Three Hundred Twenty-Nine and Fifty-Nine Paise Only) as interest amount calculated at the rate of 18% per annum from the respective due dates of the invoices as on 31.01.2023.

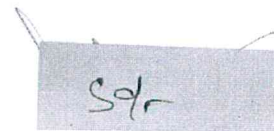
2. Brief Facts and Submission of the Petitioner

- 2.1. The Petitioner and Respondent have been involved in business activities for many years. The Petitioner has been supplying various



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medical and cardiology devices and consumables to the Respondent, which are used in the hospital operated by the Respondent.

2.2. The Respondent usually made monthly payments for the tax invoices raised by the Petitioner on the first day of the following month and timely payments were made by the Respondent up to 31.03.2022. However, after 31.03.2022, the Respondent stopped making payments. The last unpaid invoice raised by the Operational Creditor is dated 08.11.2022. Further, the officials of the Petitioner time and again requested the officials of the Respondent for timely release of their payment.

2.3. In the meantime, a dispute arose between the directors of the Respondent Company, and control of the Respondent came into the hands of *Dr. Ghanshyam Bhambani*. Subsequently, *Dr. Ghanshyam Bhambani*, the present director of Respondent Company instructed the officials of the Petitioner to collect the remaining payment from the outgoing director, *Dr. Prakash Chandwani*. When the officials of the Operational Creditor confronted *Dr. Ghanshyam Bhambani*, explaining that the goods were supplied to the Respondent and not to any individual, *Dr. Ghanshyam Bhambani* issued a letter dated 24.09.2022. In the said letter, *Dr. Ghanshyam Bhambani* alleged major discrepancies and unethical practices regarding the supply of stents and

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other consumable goods, while admitting that a significant portion of the supplies to his hospital was indeed from the Operational Creditor. *Mr. Umesh Munjal*, Director of the Operational Creditor, through a letter dated 26.09.2022, replied to the abovementioned letter and addressed the queries raised by the director of the Respondent.

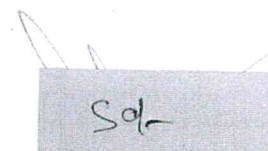
2.4. Further, after the reply letter dated 26.09.2022, the Respondent did not make any further allegations. Thereafter, the Respondent continued to purchase medical devices and consumables from the Operational Creditor on an immediate payment basis.

2.5. Thus, as on 31.01.2023 the unpaid invoices aggregated to a sum of Rs. 1,79,98,948.93/- (Rupees One Crore Seventy-Nine Lakh Ninety-Eight Thousand Nine Hundred Forty-Eight and Ninety-Three Paisa only) as principal and Rs. 19,73,329.59 (Nineteen Lakh Seventy-Three Thousand Three Hundred Twenty-Nine and Fifty-Nine Paisa as interest @ 18% per annum from the respective due dates of the invoices, stands due and is payable by the Respondent to the Operational Creditor.

2.6. Consequently, a Demand Notice under Section 8 of Insolvency and Bankruptcy Code, 2016, dated 11.02.2023 was sent to the Respondent. The Respondent has submitted objections to the Demand Notice on 03.03.2023, raising false and frivolous objections and the same was replied by the Petitioner.



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2.7. Thereafter, the Petitioner filed Section 9 Petition before this Adjudicating Authority which was admitted *vide* order dated 11.09.2024. The said order of admission was challenged before the Hon'ble NCLAT by the Respondent. The Hon'ble NCLAT *vide* order dated 05.08.2025 held that the letter dated 28.08.2022 sent to the Petitioner in relation to the existing of pre-existing dispute needs to be considered. The Hon'ble NCLAT remanded the matter to the Adjudicating Authority to relook into the entire matter while considering the letter dated 28.08.2022.

2.8. Subsequently, it is the case of the Petitioner that the letter dated 28.08.2022 having signatures of *Dr. Ghanshyam Bambhani* as Director of Respondent is a forged letter and the same shows a non-existent pre-existing dispute in order to alter the fate of the instant Section 9 Petition. The Petitioner filed affidavit *vide Diary no. 271/2016* dated 17.02.2026 after Hon'ble NCLAT order dated 05.08.2025 asserting that *Mr. Ghanshyam Bhanbhani* himself admitted that he had taken control of the reigns of the Respondent only in September 2022 and the alleged letter is of the month August, 2022. As per the Petitioner, this shows that the said letter has been forged and prepared as a result of an afterthought and has not been delivered to the Petitioner.



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2.9. It is the case of the Petitioner that despite alleging major discrepancies and unethical practices, the Respondent continues to purchase medical devices, balloons, and consumables for patient care from the Petitioner on an immediate payment basis. The Respondent has attempted to shift its liabilities to the outgoing Director, *Mr. Prakash Chandwani*. It is also noted that the Respondent has not made payment for the unpaid invoices and has raised objections regarding the authenticity and genuineness of the medical devices provided by the Operational Creditor.

3. Submission of the Respondent-

3.1. The Respondent submits that the Respondent is a well-known and reputed hospital that has been operating in Jaipur since 1986. It is financially healthy, and a profitable entity, capable of meeting its financial obligations. Further, Respondent submits that the Petitioner knew *Dr. Ghanshyam Bhambhani* had been a Director in the Respondent Hospital since May 31, 2012, and that he had been residing abroad for a long period. However, *Dr. Bhambhani* was a non-executive director and did not play an active role in the day-to-day affairs, operations, or management of the Respondent. The entire management, administration, and daily operations of the Respondent were solely handled by *Dr. Prakash Chandwani* ('Former Director')

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who had been with the Respondent since his appointment in 2006 until September 2022.

3.2. It is further stated that in September 2022, after taking control of the management, *Dr. Ghanshyam Bhambhani* began actively participating in the day-to-day affairs of the Respondent. Upon reviewing internal records related to the receipt of various medical and cardiology equipment, devices, and consumables from the Petitioner, the Respondent discovered significant discrepancies between the actual supplies received and the invoices issued by the Petitioner during the Former Director's tenure.

3.3. *Dr. Ghanshyam Bhambhani*, in his capacity as a director, addressed the issue with the Petitioner through letters dated 28.08.2022 and 24.09.2022. He raised serious objections, stating that the supplies for which payment was being demanded could not be matched or verified with the company's internal records. He further alleged that the Petitioner was colluding with the Former Director.

3.4. The Respondent highlighted that the collusion between the Former Director and the Petitioner is evident from Challan No. 1168, dated 02.05.2022, issued by the Petitioner for the supply of the consumable cardiology products. This challan was issued in the name of *CKS Hospital*, where the Former Director has a stake and serves as

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Managing Director. Subsequent, to the issuance of the aforesaid Challan, an Invoice with Invoice No. INV/22-23/338, dated 29.06.2022, for an amount of Rs. 9,30,010, was issued to the Respondent for the same products. The Respondent requested the Petitioner to provide complete records of delivery receipts/ e-way bills, but the Petitioner failed to provide these details.

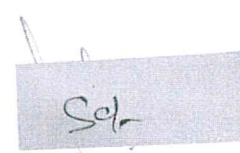
3.5. Additionally, as per the Respondent, out of the consumable cardiology products supplied by the Petitioner between April 1, 2022, and December 31, 2022, 15 balloons were returned. A debit notes for Rs. 2,25,002.00 (Rupees Two Lakh Twenty-Five Thousand and Two Only) (including GST) was prepared and shared with the Petitioner. However, the Petitioner neither accounted for this return nor issued a corresponding credit note, and the return does not appear in the ledger copy provided by the Petitioner.

3.6. The Respondent further stated that most transactions during the Former Director's tenure involved invoices that lacked signatures and the Petitioner's seal. Moreover, nearly all transactions involved manual invoices rather than e-invoices which are required under the CGST Act. These invoices were also submitted for claims to government departments and private insurance companies, but many claims were withheld due to doubts about their authenticity.



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3.7. The Respondent submitted that according to the invoices issued by the Petitioner for the supplies which include various cardiology devices and consumable cardiology products, the products encompass items such as 'coronary angioplasty catheter river', 'Tazuna balloons', 'Accuforce,' and 'Ryujin Plus balloons.' These products are various types of balloons used for detecting and treating cardiological issues in patients. All the aforementioned products are similar consumable cardiology items that were supplied to the Respondent at the same or similar rate of Rs. 13,393 per piece. The Respondent alleges that this pricing was intended to deceive them. Upon verifying the authenticity and pricing of these consumable cardiology products, the Respondent purchased 'Ryujin balloons' from another supplier, *M/s Allied Mediways, Pitampura, New Delhi*, on November 10, 2022, at a significantly lower price of Rs. 4,200 per piece. Given that similar products are available in the market at much lower prices, the Respondent contends that the transactions with the Petitioner were executed under undue influence and in collusion with the former Director of the Respondent.

3.8. The Respondent purchased limited cardiology devices and equipment on an immediate payment basis after the resignation of the Former Director to meet urgent patient needs. However, these purchases do not

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absolve the Petitioner of its earlier wrongful actions. Additionally, the Respondent never agreed to the 18% interest rate imposed on overdue invoices and the same is unilaterally applied by the Petitioner.

3.9. Additionally, the Respondent also states the issue pertains to *Intravascular Lithotripsy ('IVL')* devices supplied by the Petitioner which was used in treatment of patients covered under the government schemes like the *Ex-Servicemen Contributory Health Scheme (ECHS)*. Payments for these treatments have been withheld by the concerned Government Departments citing the reason that the same stickers with identical reference and lot numbers cannot be used in two different patients. Thereafter, the Respondent wrote an email to the Petitioner vide letter dated 28.08.2022 seeking clarification from the Petitioner about supply of two IVL devices with same Lot Numbers. However, no reply to the same was received from the Petitioner.

3.10. Moreover, it is an admitted position on record that the Respondent had cleared all other invoices raised by the Petitioner. The selective non-payment of only those invoices which were specifically disputed clearly establishes that the Respondent had no intention to withhold legitimate dues. Rather, it was only the invoices tainted with discrepancies and irregularities that were contested.

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3.11. Further, it is the case of the Respondent that it is a fully operational and running hospital, providing specialized cardiac and general medical services to patients on a continuous basis. Thus, the Respondent Hospital is commercially solvent entity. The Respondent has placed reliance on the Judgement of Hon'ble NCLAT, Chennai in the case of *Sterling and Wilson Private Limited v. Embassy Energy Private Limited (Company Appeal (AT) (CH) (Ins.) No. 161 of 2022)*.

4. Findings

- I. We have heard the learned counsels for both the parties afresh and have carefully perused the pleadings, rejoinder, additional affidavits, documents placed on record (including the letter dated 28.08.2022 issued by the Respondent and the ECHS letters dated 18.08.2022, 09.09.2022 and 09.12.2022), written submissions filed, and the directions contained in the order of the Hon'ble NCLAT dated 05.08.2025.
- II. Before we proceed with the facts of the present case, the statutory framework regarding the Application under Section 9 of the Code needs to be recapitulated. An application under Section 9 of the Code can only be filed after the delivery of a demand notice as provided under Section 8 of the Code. Section 8 of the Code requires the Operational Creditor, upon the occurrence of default, to deliver a



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Demand Notice for unpaid Operational Debt. Furthermore, Section 8(2) specifies that the Corporate Debtor must, within 10 days of receiving the Demand Notice, inform the Operational Creditor of any existing dispute.

III. Under Section 9(1), if Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Sub-section (2) of Section 8, may file an Application under Section 9(1) of the Code.

Section 9(1) is as follows:

“Section 9: Application for initiation of corporate insolvency resolution process by operational creditor.- (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.”

Section 9(5)(ii) is as follows:

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—

- (i).....*
- (ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—*
 - (a) the application made under sub-section (2) is incomplete;*
 - (b) there has been [payment] of the unpaid operational debt;*
 - (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;*
 - (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or*

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(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days(i) of the date of receipt of such notice from the adjudicating Authority.”

- IV. In the present case, the Petitioner has been supplying various medical and cardiology devices and consumables to the Respondent. The Respondent made timely payments against the invoices generated till 31.03.2022. Subsequently, the Respondent stopped making timely payments, and the last unpaid invoice was issued to the Respondent on 08.11.2022. In the meantime, the Respondent issued a letter dated 28.08.2022 and another letter dated 24.09.2022 alleging discrepancies and unethical practices regarding the supply of stents and other consumable goods. The Petitioner responded to the letter *vide* reply letter dated 26.09.2022 in which the Petitioner denied the allegations made by the Respondent and stated that all negotiations had been conducted by *Dr. Prakash Chandwani*, the former director of the Respondent over the past several years.
- V. However, after the Petitioner’s reply letter dated 26.09.2022 no further communication was received from the Respondent regarding the allegations made in the letter dated 24.09.2022. Subsequently, the Petitioner requested the Respondent to release the due payments.

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- VI. The Petitioner has raised unpaid invoices amounting to Rs. 1,79,98,948.93/- (Rupees One Crore Seventy-Nine Lakh Ninety-Eight Thousand Nine Hundred Forty-Eight and Ninety-Three Paisa Only) as the principal amount, and Rs. 19,73,329.59 (Rupees Nineteen Lakh Seventy-Three Thousand Three Hundred Twenty-Nine and Fifty-Nine Paisa Only) as interest at 18% per annum as on 31.01.2023.
- VII. The Demand Notice dated 11.02.2023 was sent to the Respondent by the Petitioner. The Respondent raised objections against the Demand Notice in its reply letter dated 03.03.2023. The details of the objections raised by the Respondent against the Demand Notice and the counter thereto by the Petitioner are tabulated below:

| ISSUE RAISED | RESPONDENT'S STAND | PETITIONER'S STAND |
|-------------------------|--|---|
| Pricing of the Products | The rates of the products supplied by the Petitioner are priced at the same rate of Rs. 13,393/- irrespective of their different description since the financial year 2018-19, which raises doubts about the pricing of the product by the Petitioner. This consistency in pricing | The Petitioner stated that once the Respondent agrees to purchase a particular product at a specific price, the Respondent cannot raise a dispute about the agreed-upon pricing after the product has been supplied and used. Additionally, the rates |



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| | shows that the Petitioner Company, in collusion with the former Director of the Respondent, have deceived the Respondent. | charged for the <i>Ryujin balloons</i> were mutually agreed upon by the parties and are consistent with the agreed terms. |
| Challan, Invoice No. INV/22-23/338 dated 29.06.2022 | The challan in question was issued by the Petitioner in the name of <i>CKS Hospital</i> , where the former Director of the Respondent holds a stake and serves as the Managing Director. This raises objections regarding the authenticity of the goods supplied to the Respondent. | The challan was issued by the Petitioner for products delivered against Bill of Supply No. BS/22-23/638 dated June 29, 2022, and Challan No. 1168 dated May 2, 2022. However, the name of <i>CKS Hospital</i> was inadvertently mentioned incorrectly on Challan No. 1168. Due to the urgent requirement, the product was supplied immediately, and the error was later corrected manually by a representative of the Respondent. |
| Goods Returned by the Respondent | The Respondent submitted that during the period from 01.04.2022 to 31.12.2022, 15 products i.e. Balloons | The Petitioner has denied this claim, stating that no items were returned between April 1, 2022, |

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| | have been returned back and the Petitioner failed to take into account. | and December 31, 2022, and that no debit note was prepared by the Respondent. |
| Claim related documents issued by the ECHS | The claims or amounts related to the aforementioned cardiology devices have been withheld by the concerned department due to suspicion regarding the authenticity of the claims. It is alleged that the same lot number was used on stickers for two different patient invoices. | The Petitioner alleged that the issue resulted from a mistake by an employee of the Respondent, who mistakenly affixed an extra sticker from one patient's product to the invoice of another patient. However, the department has not raised any concerns about the quality of the equipment; instead, their concern is specifically about the use of a single product's sticker on invoices for two different patients. |

VIII. Without commenting on the veracity of *Challan No. 1168* dated 02.05.2022 issued in the name of *CKS Hospital*, the said challan does not dilute the admitted operational debt in any manner whatsoever in particularly in light of objections and counter-objections stated above.

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The Respondent itself admits that the said challan was followed by *Invoice No. INV/22-23/338* dated 29.06.2022 amounting to Rs. 9,30,010/- which was raised against the Respondent and the said goods were duly used in the Respondent's hospital. Even if the entire value of the said challan is deducted, the principal outstanding still stands at more than Rs. 1.70 Crores. Further, if the alleged debit notes of Rs. 2,25,002/- for 15 returned balloons is also taken into consideration in toto, the net operational debt will still satisfy the threshold of Rs. One Crore prescribed under Section 4 of the IBC. It is a settled position of law that once the debt exceeds the threshold amount after adjusting credit for all disputed/returned items, the Petition is liable to be admitted.

IX. Further, the allegation pertaining to collusion/over-pricing in particular the levy of same pricing of Rs. 13,393/- per piece for different items (*coronary angioplasty catheter river, Tazuna balloons, Accuforce, Ryujin Plus balloons etc.*) is misconceived. The Petitioner and the Respondent have a long-standing business relationship. In consonance with the business relations, the parties mutually agreed upon the prices for the products and the Respondent regularly accepted the invoices and made regular payments without raising any issue till 31.03.2022.

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X. At this point, it is relevant to take note of the conduct of the Respondent which further fortifies the view that its defences are not bona fide but contrived merely to delay and defeat the legitimate claim of the Petitioner. Despite being fully aware of the outstanding dues (as evidenced by its own letters dated 28.08.2022 and 24.09.2022 calling upon the Operational Creditor to settle the outstanding amount), the Respondent chose not to raise any dispute regarding quality, short supply, overpricing or non-conformity of goods prior to receipt of the Demand Notice dated 11.02.2023. Instead, Respondent continued its business relationship by purchasing the same medical devices and consumables from Petitioner on an immediate payment/cash basis even after March 2022 till the present day, at the very same rates which it now belatedly terms collusive. No contemporaneous record exists of any formal rejection of goods, or intimation of set-off prior to the Demand Notice.

XI. It is to be noted that the Respondent has drifted from its stand, starting from primarily attributing liability to the erstwhile director, to now relying on generalised procedural issues with ECHS reimbursements since the matter was remanded by the Hon'ble NCLAT's vide its Order dated 05.08.2025. Such inconsistent and opportunistic conduct, including raising frivolous allegations only when the payment became



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due, amounts to abuse of process and reflects a deliberate attempt to withhold legitimate dues. It is well settled that the conduct of the Respondent as reflected by its continued dealings with the Petitioner post delivery of the demand notice, and shifting defences, is a relevant factor in determining whether a purported dispute is genuine or a mere moonshine defence raised to thwart the objective of the IBC.

XII. Further, the shifting stance of the Respondent itself exposes its mala fide intent to wriggle out of its liabilities. In the first round of hearing before this Authority (prior to the first admission order dated 11.09.2024), the Respondent's sole defence was that the entire liability pertains to the former Director *Dr. Prakash Chandwani* and the present management cannot be imposed with such liabilities. After the Hon'ble NCLAT's remand, the Respondent took a shield behind the letter dated 28.08.2022 and its communication with ECHS department. Such conduct of Respondent in itself is sufficient to hold that the defences are not bona fide but are mere moonshine raised with the sole intent to delay payment.

XIII. It is pertinent to note that the Respondent raised the aforementioned concerns for the first time in its reply to the Demand Notice dated 11.02.2023. At this juncture, it becomes pertinent to take note of the earlier letters dated 28.08.2022 and 24.09.2022 sent by the Respondent

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to the Petitioner. For the sake of clarity, copies of the said letters are reproduced here:

Cardiac Care And Allied Health Pvt. Ltd.

Regd. Office : 7, Vivekanand Marg, C-Scheme, JAIPUR-302 001
Tel. No. : (0141) 2370271, Email : heartghospital@gmail.com
CIN : U85110RJ1986PTC003791, GSTIN : 08AAACC7489C1ZL

Date : 28/08/2022

To,
Director,
Ace Cardiopathy Solutions Private Limited
Jaipur.

Subject : Reg. IVL Stickers same lot number

Dear Sir,

With reference to above cited subject , please note that we have received query from ECHS related to IVL supplied by your company two IVL devices with same LOT numbers . For this , ECHS has stopped our payment Bills claimed and have told us to give explanation in this regard.

This is very serious concern in relation to ECHS guidelines which may hamper equipement of our hospital with various regulators / Departments including ECHS. We may presume that this type of instances can occur in various other IVL and other products.

Since this is serious concern related to your products we are withholding your payment. Kindly clarify the same as early as possible. Your early response is awaited in this matter.

Thanks

For Cardiac Care and Allied Health Pvt.Ltd.

Director



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CARDIAC CARE & ALLIED HEALTH PRIVATE LIMITED

Regd. Office: T. Vivekanand Marg, C Scheme, Jaipur - 302001, Rajasthan
CN: 30511041080PT6003791
Email: heart2hospital@gmail.com

Phone: 8441-2370271

Dear Sir,

The Director
Sun CardioPathy Solutions Pvt. Ltd.
108, 1st floor, City Pulse Mall, Naryan Singh Circle, Jaipur
Kind Attn: Mr. Umesh Mungat

Sir,
With due respect I Ghanshyam Bhambhani, Director Cardiac Care & Allied Health Pvt. Ltd. joined as full time Director to this hospital and going through with records about the supplies of various items recd. from Parties including you as well. It was found that receipts of major supply of stents and other items comes to this hospital are from your company. The whole process of purchase was previously dealt by Dr. Prakash Ghansyam since last many years. Major disbursements and contractual parties regard to supply of stents and other consumable goods were handled from your firm only.

For clearing about it, I have called you via whatsapp about 2 months back, but by that time your response was having some urgent work so busy at some where.

Next time your response was I am busy of applying the charges in cases of stents to various companies.

Afterwards the call made to you by hospital staff regarding the non supply of stents and other items as well as about payment discussion, your response was that you are infected by COVID.

So, During this period

- 1. No positive response was shown even after calling you number of times.
- 2. Non-cooperation of providing smooth stents to hospital and even not receiving the payments to be made by us.

Now hereby looking to this matter it is further informed to you to contact us within next 2-3 days from receiving this message to settle the outstanding amount otherwise taking of which will leads us to take further action in this regard.

For Cardiac Care and Allied Health Pvt. Ltd.

Ghanshyam Bhambhani
Dr. Ghanshyam Bhambhani
Director

These were the two communications by the Respondent prior to the demand notice issued by the Petitioner. The letter dated 24.09.2022 clearly provides for settlement of outstanding amount. The relevant portion is reproduced hereunder: -

“Now hereby looking to this matter it is further informed to you to contact us within next 2-3 days from receiving this message to settle the outstanding amount otherwise falling of which will leads us to take further action in this regard.”

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XIV. Thus, the aforementioned communications by the Respondent reveal that the same were general communication between the Respondent and the Petitioner for the purpose of settling the outstanding amount. Further, no specific dispute qua the goods supplied by the Petitioner has been raised and the goods have already been used by the Respondent.

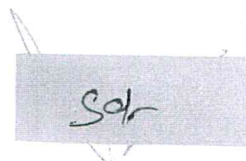
XV. Furthermore, in compliance with the specific directions of the Hon'ble NCLAT, we have examined the letter dated 28.08.2022 issued by the Respondent. The aforementioned letter dated 28.08.2022 raises the issue of same lot number of two IVL devices and withholding of payment qua them by the Respondent. Even if the letter is taken at its face value, it is relevant to take note of the fact that the same pertains only to two IVL devices. The issue qua lot number of two IVL devices cannot be juxtaposed upon all the other goods and products supplied by the Petitioner so as to entitle the Respondent to withhold the whole due amount.

XVI. At this juncture, it is relevant to take note of the communication dated 09.09.2022 between ECHS and the Respondent which reveals that the cost of one IVL device is approximately Rs. 3 Lakhs. Therefore, even if the cost of two IVL devices are to be adjusted then also the due amount will continue to remain above the threshold limit under the



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Code so as to warrant initiation of CIRP. Thus, this Adjudicating Authority is of the opinion that the Respondent cannot withhold the complete due amount based on discrepancy limited to two IVL devices. Hence, the letter dated 28.08.2022 does not raise an omnibus dispute qua the goods supplied which have already been used by the Respondent.

XVII. The issues raised by the Respondent are generalized and procedural in nature and appear to have surfaced only after change in management. The said issues were never formally raised with quantified amounts or set-off against the Petitioner prior to the Demand Notice dated 11.02.2023. The continued purchases by the Respondent on immediate payment basis after March 2022 further undermine any claim of fundamental defects or non-conformity in the supplies made by the Petitioner.

XVIII. It is relevant to highlight that even after issuance of the Demand Notice dated 11.02.2023 and the change in management, the Respondent continued to purchase the very same medical devices, balloons and consumables from the Petitioner on immediate payment basis at the same rates. A party cannot be allowed to accept and act upon the pricing for years and then, only after default and consequent notice under Section 8, term it as "collusive" or "deceptive". The issue qua

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pricing is a belated ploy to wriggle out of the legitimate liabilities and is a classic moonshine defence raised only to defeat the legitimate claim of the Petitioner. Thus, the same deserves to be rejected.

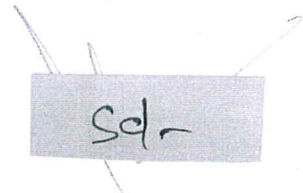
XIX. Additionally, the Respondent has contended that the former director of the Respondent was in collusion with the Petitioner. However, the said contention is bereft of merit, as a mere change in the management of a company would not, by itself, amount to a pre-existing dispute. At this stage, it is relevant to refer to the judgment of the Hon'ble NCLAT in *Shah Paper Mills Ltd. v. Shree Rama Newsprint and Papers Ltd.*, (2023) 236 Comp Cas 686, wherein it was held that a change in the management of the Respondent cannot be a ground for extinguishing past liabilities owed to the Petitioner. Hence, upon considering the present case made by the Respondent, we have come to the conclusion that there is no ground to establish any real and substantial pre-existing dispute.

XX. It is submitted that the reliance placed by the Respondent on the judgment of the Hon'ble NCLAT, Chennai Bench in *Sterling and Wilson Private Limited v. Embassy Energy Private Limited (Comp. App. (AT) (CH) (Ins.) No. 161 of 2022)* is wholly misplaced. In the said matter, the Section 9 petition was dismissed on the primary ground that there existed no privity of contract between the Operational Creditor



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(sub-contractor) and the Corporate Debtor (project owner), and consequently no operational debt was established against the Corporate Debtor. The passing observation that the Respondent therein was a commercially solvent Company was made only in the facts of that case where no debt was found due at all.

XXI. In so far as the contention of the Respondent qua solvency is concerned, it is relevant to take note of conduct of the Respondent and take a wholistic view of the factual situation. It is no where in dispute that the Respondent owes the unpaid dues to the Petitioner and despite assuring the settlement as recorded in the letter dated 24.09.2022, till date the Respondent has not settled its dues. Further, despite having sufficient funds, the Respondent is consciously avoiding its liabilities.

XXII. At this juncture, it is germane to refer the Judgement of the Hon'ble Apex Court in *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited* wherein in para 34 the Hon'ble Supreme Court laid down the guidelines for adjudicating Section 9 Application. Para 34 is as follows: -

"34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an "operational debt" as defined exceeding Rs 1 lakh? (See Section 4 of the Act)

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(ii) *Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*

(iii) *Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

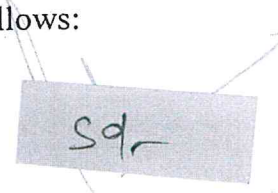
XXIII. Further, it is no more res-integra that for non-admission of a Section 9 Petition, the existence of a dispute must be plausible, and it must not appear as a moonshine defence. In the present matter, the Respondent has not raised any dispute prior to the issuance of the Demand Notice by the Petitioner. Further, in the garb of the letters dated 28.08.2022 and 24.09.2022, a moonshine defence has been set up to deny the legitimate dues of the Petitioner.

XXIV. At this juncture, it is also important to quote the judgment of the Hon'ble Supreme Court in *M/s S.S. Engineers & Ors. vs. Hindustan Petroleum Corporation Limited*, which reads as follows:



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“32. On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.”

XXV. In so far as the debt is concerned, a bare perusal of the ledger account of the Petitioner in the books of the Respondent and the copies of unpaid tax invoices proves that there is an outstanding claim in respect of goods provided by the Petitioner to the Respondent. Furthermore, in its letter dated 24.09.2022, the Director of the Respondent has stated as follows:

“2. Non co-operation of providing smooth supply to hospital and even not receiving the payments to be made by us. Now hereby looking to this matter it is further informed to you to connect us within next 2-3 days from receiving this message to settle the outstanding amount otherwise failing of which will leads us to take further action in this regard.”

XXVI. Thus, in the present case the existence of debt and default is clearly established from the ledger accounts, copies of unpaid invoices and partial admissions contained in earlier communications of the

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Respondent. No payment has been received by the Petitioner after issuance of the Demand Notice. Hence, all ingredients required for admission of an application under Section 9 of the Code are satisfied. There is no ground for rejection under Section 9(5) of the Code.

XXVII. Accordingly, upon reconsideration in light of the directions of the Hon'ble NCLAT dated 05.08.2025 and after detailed examination of all documents on record, we hold that no pre-existing dispute within the meaning of Sections 8 and 9 of the Code exists. The Application is admitted under Section 9 of the Code. CIRP is initiated against the Respondent.

XXVIII. In its Company Petition, the Financial Creditor has proposed the name of *Mr. Satyendra Prasad Khorania* as the IRP under sub-section (4) of Section 9 of the Code. However, upon perusal of the IBBI website it came to the knowledge of this Adjudicating Authority that the proposed IRP has more than 10 assignments as on date. The aforesaid is restricted by Regulation 22 of the IBBI (Insolvency Professionals) Regulations, 2016 which limits the number of assignments to 10. In view of the aforementioned Regulation, this Adjudicating Authority deem it Appropriate to appoint *Mr. Arvind Kaushik*, having Registration Number *IBBI/IPA-001/IP-P00291/2017-18/10535* and e-mail id *ca73588@gmail.com* duly registered with ICAI Insolvency

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Professional Agency, to be appointed as the Interim Resolution Professional.

XXIX. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder. It is directed to the Interim Resolution Professional /Resolution Professional to check the genuineness of the claim while admitting the operational dues of the Petitioner.

XXX. Consequences of initiation of CIRP shall be inter-alia as follows:

- a. The IRP appointed by the Adjudicating Authority, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
- b. Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in vogue during the CIRP of the Corporate to Debtor. The IRP shall carry out CIRP strictly as per the

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timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.

- c. This Bench also directs for an advance payment of Rs. 1,00,000/- (Rupees One Lakh Only) to be paid by the Petitioner to the Interim Resolution Professional immediately to initiate the CIRP. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by the CoC.
- d. In terms of Section 17 and 19 of the Code all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- e. The Registry is directed that this Order shall be communicated within three days from the date of passing of this Order to the Petitioner, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.
- f. The IRP/ RP is directed to strictly comply with all the provisions of the Code. The IRP/RP shall refrain from filing repetitive progress reports before this Adjudicating Authority unless directed to do so. The IRP/RP is hereby cautioned against treating



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the present order as a means to delay the timelines of the Corporate Insolvency Resolution Process and is directed to strictly adhere to the timelines stipulated under Section 12 of the Code.

XXXI. Accordingly, CP No. (IB)-19/9/JPR/2023 is admitted.



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Madhuch
National Company Law Tribunal
Jaipur

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REETA KOHLI
JUDICIAL MEMBER

Sd/-

KAVITA BHATNAGAR
TECHNICAL MEMBER

