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)- 13/9/JPR/2026

IN THE MATTER OF:

Droguria Disval SRL
Having office at Grito de Asencio 3736,
Cl437IMN, Argentina
Through its Authorised signatory

...Operational Creditor/ Petitioner

VERSUS

Hindustan Biopharma Private Limited
Through its Authorised Signatory
Having its office at 153/53,
RIICO IND area - Ghatal Road,
Behind Grand Metro Phool Bagh,
Bhiwadi, Rajasthan - 301019

...Corporate Debtor/ Respondent

PRESENT: -

For the Petitioner : Vaishali Gupta, Adv.
Anubhav Gupta, Adv.

For the Respondent : Fahad Khan, Adv.
Nawab Sahab, Adv.

Order Pronounced On: 30.10.2026

ORDER

Per: Ms. Reeta Kohli, Judicial Member

1. The present Petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by

राष्ट्रीय कम्पनी विधि अधिकरण National Company Law Tribunal सत्यमेव जयते Jaipur Bench जयपुर पीठ

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Assistant Registrar
National Company Law Tribunal
Jaipur

Droguria Disval SRL ('Petitioner'/ 'Operational Creditor') seeking initiation of Corporate Insolvency Resolution Process ('CIRP') in respect of *Hindustan Biopharma Private Limited* (CIN: U74999RJ2021PTC076955) ('Respondent'/ 'Corporate Debtor'), on account of default in payment of USD 229,900/- i.e. approximately Rs. 1,92,63,160/- (Rupees One Crore Ninety-Two Lakhs Sixty-Three Thousand One Hundred Sixty Only).

2. The Operational Debt produced in Part IV of the Petition, is reproduced here as following:

PARTICULARS OF OPERATIONAL DEBT		
1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	**Total Amount Due:** *Rs. 1,92,63,160/- (Rupees One Crore Ninety-Two Lakhs Sixty-Three Thousand One Hundred Sixty Only) along with applicable interest at the rate of 18% p.a.*
2.	Amount claimed to be in default and the date on which the default occurred.	**TOTAL AMOUNT CLAIMED UNDER DEFAULT**: *Rs. 1,92,63,160/- (Rupees One Crore Ninety-Two Lakhs Sixty-Three Thousand One Hundred Sixty Only) along with applicable interest at the rate of 18% p.a. from 08.08.2023* The Date on which the default occurred:08.08.2023.

3. The Petitioner in its prayer has stated that:

i. "Pass an order for commencement of Corporate Insolvency Resolution process against Hindustan Biopharma Private Limited.

ii. Pass an order directing the appointment of interim resolution professional, as this Hon'ble Tribunal may deem fit, who shall act as

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per the provisions of the Insolvency & Bankruptcy Code, 2016 and applicable rules and regulations.

iii. *Pass an order of payment of amount of Rs. 1,92,63,160/- (Rupees One Crore Ninety-Two Lakhs Sixty-Three Thousand One Hundred Sixty Only) which is due from the Corporate Debtor under the law along with 18% interest pa since the date of it becoming due till the actual payment.*

iv. *Pass such other and further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of this case."*

4. The Petitioner is a company incorporated under the laws of Argentina, engaged in the business of pharmaceutical distribution, having registered address at *Grito de Asencio 3736, C l437IMN, Argentina*. The present Petition is filed through its Authorised Signatory, namely *Ezequiel Gomez.*

5. The Respondent is a company incorporated under the provisions of the Companies Act, 2013 on 13.09.2021, having registered address at *153/53, RIICO IND area- Ghatal Road, Behind Grand Metro Phool Bagh, Bhiwadi, Rajasthan - 301019.*

6. The Petition has been filed on the basis of the following set of facts:

6.1. The Petitioner is a well-established pharmaceutical distribution company based in Argentina and the Respondent who is engaged in the business of supply and trade of pharmaceutical products approached the Respondent, in the year 2023, offered to sell three (3) pharmaceutical products, namely *Defitelio 200 mg/2.5 ML, Cidnavir and Bencid*, for a total consideration of USD 2,49,1244/- *vide* Invoice No.

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GST/2324/2323030 dated 05.07.2023 to the Respondent. Further the Petitioner agreed upon the conditions of the invoice and made 100% advance payment of USD 2,49,244/- to the Respondent prior to shipment of the goods, on the trust and trade relation between them on 08.08.2023.

6.2. The Petitioner submitted that, after receiving the payment, the Respondent informed the Petitioner, by email dated 30.09.2023, that one of the medicines covered under the invoice was under a counterfeit alert, and assured the Petitioner that it would either supply the said medicine at the earliest or refund the corresponding amount.

6.3. The Petitioner further submitted that the batch of the said medicine mentioned by the Respondent in the invoice (Batch 20), against which payment was made, had no issue or alert issued by the World Health Organization (WHO) at that time. However, after receiving the payment, the Respondent unilaterally replaced that batch with another batch (Batch 19), which had already been reported illegal in the WHO alert of April 2023.

6.4. Furthermore, the Petitioner submitted that the Respondent shipped only the two medicines out of three agreed medicines under Invoice No. *GST/2324/2323030,* valued at USD 19,344/- out of the total invoice

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value of USD 249,244/. Thus, as stated by the Petitioner a sum of USD 229,900/- (USD 249,244 less USD 19,344) remained due and payable by the Respondent to the Petitioner.

6.5. The Petitioner further submitted that various emails were exchanged between the Petitioner and the Respondent, however, the Respondent neither supplied the medicine in question nor refunded the money. The Respondent kept insisting that a fraud had been played upon it by its own supplier, but never provided any communication or proof of action taken against the said supplier in this regard.

6.6. The Petitioner further submitted that the Respondent itself, *vide* several emails dated 30.09.2023, 09.10.2023, 08.11.2023, and 05.12.2023 confirmed and admitted its liability and stated that it was ready to refund the amount of USD 229,900/-, i.e. approximately Rs. 1,92,63,160/-, which was due to the Petitioner.

6.7. The Petitioner submitted that, with a view to a healthy resolution of the matter, the Petitioner provided a list of alternative medicines which could be supplied by the Respondent against the amount due. However, the Respondent kept insisting on supplying some other medicines, which are of no use to the Petitioner, and even quoted highly unreasonable prices for the same.

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6.8. Further, it is submitted by the Petitioner that the Petitioner issued a Demand Notice dated 22.11.2024 in *Form-3* under Section 8 of the Code, which was served upon the Respondent *via* email on 09.12.2024.

6.9. Thereafter, it is submitted that the Respondent replied to the said Demand Notice by email on 09.12.2024. According to the Petitioner, the Respondent admitted the existence of the debt and its liability to pay and, instead of paying, again offered to supply the same generic medicines to the Petitioner. The Petitioner contends that no payment has been made by the Respondent despite receipt of the statutory Demand Notice, and the operational debt remains unpaid.

6.10. The Petitioner submitted that it has no security against the Respondent and that it has no reservation/retention of title arrangement in respect of any goods of the Corporate Debtor.

7. The submissions made by the Respondent are as follows:

7.1. The Respondent is engaged in the business of trading and supply of pharmaceutical products. The business originally commenced in or around 2014 under the name and style of *Hindustan Pharma and Trading Corporation* and was subsequently incorporated as *Hindustan Biopharma Private Limited* in 2021.

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7.2. The Respondent submitted that, in June 2022, it came in contact with *Mr. Andres Pacheco*, an agent based in Argentina, who approached it through its official email address and acted as an intermediary for customers in Argentina. It is further stated that prior business transactions were also carried out through him, and shipments were successfully supplied by the Respondent to Argentina.

7.3. The Respondent further stated that on 22.06.2023 *Mr. Andres Pacheco,* on behalf of the Petitioner, communicated by WhatsApp and by email stated its requirement for three products, namely *Defitelio (40 units), Cidofovir (15 units)* and *Probenecid/Bencid (2 units)*, and requested a proforma invoice/formal quotation.

7.4. The Respondent submitted that after negotiations the Respondent issued a final proforma invoice dated 05.07.2023 for the three medicines. Upon approval, the Petitioner issued a purchase order dated 06.07.2023, shared by *Mr. Pacheco* on WhatsApp. The Respondent further submitted that the proforma invoice/purchase order was subject to availability, regulatory compliance, verification of genuine batches, and the practical feasibility of procurement and international shipment of pharmaceutical products.

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7.5. On 08.08.2023, the Respondent further submitted that the Respondent received the advance payment as per the terms written over the proforma invoice. The Respondent further admitted the receipt of the advance payment, but specifically denied that such receipt automatically created an admitted, crystallised and undisputed operational debt, the transaction being still subject to procurement, authenticity verification, regulatory checks and lawful shipment of pharmaceutical products.

7.6. The Respondent submitted that for fulfilment of order, the Respondent placed orders for all three medicines with its suppliers and was able to procure two of them, namely *Cidofovir* and *Bencid/Probenecid.* However, on 23.08.2023, before procuring *Defitelio,* it became aware that *Defitelio* was under a high alert issued by the WHO in respect of falsified batches found in India, Turkey and Argentina. *Defitelio* being a sensitive pharmaceutical product involving patient safety, batch authenticity and strict regulatory compliance, the Respondent immediately contacted its supplier and put the supply of *Defitelio* on hold pending verification and clarification.

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7.7. Furthermore, the Respondent in its reply submitted that by email dated 23.08.2023, the Respondent enquired from *Jazz Pharmaceuticals*, the concerned entity for *Defitelio*, about the authenticity of the batches available in India. In response, it was advised, in substance, that purchase of such items was not recommended, and the WHO alerts were referred.

7.8. The Respondent submitted that the WHO medicine guidelines were communicated to *Mr. Andres Pacheco* through WhatsApp on 25.08.2023. The Respondent further relied on the Petitioner's own record, namely *Annexure-6* of the Petition (*internal page 61*), to submit that on 30.09.2023, the Respondent wrote directly to the Petitioner, with *Mr. Pacheco*, highlighting its concerns regarding *Defitelio* high alert and presence of falsified products in India and the affected batch numbers; expressing its inability to ship such falsified/suspect goods and therefore informing the Petitioner that the other two medicines were available and ready to be shipped; and offering the Petitioner an option to place an order for another product in lieu of the advance amount. The Respondent further submitted that, from August/September 2023 itself, much before the demand notice dated 22.11.2024, the Respondent and the Petitioner were

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aware that a serious regulatory and authenticity-related dispute had arisen in relation to *Defitelio*.

7.9. It is stated by the Respondent that, on 08.09.2023, *Mr. Pacheco* informed the Respondent that the Petitioner was ready to accept the other two items and sought refund/adjustment in respect of the third item. The Respondent further contended that, well prior to the issuance of the demand notice, the transaction between the parties had entered the realm of dispute, adjustment, and alternate commercial resolution.

7.10. Thereafter, on 31.10.2023, the Respondent raised the actual goods invoice for the two medicines which could be lawfully shipped, and the shipment was sent to Argentina. The Respondent stated that this fact has also been accepted by the Petitioner in the correspondence.

7.11. It is submitted by the Respondent that, in order to resolve the matter amicably, the Petitioner, through its employees/representatives *Mr. David A. Alderete* and *Ms. Florencia Bereetta*, approached the Respondent for supply of alternate medicines in lieu of *Defitelio*. For that various emails/WhatsApp exchanges took place, in which *Ms. Bereetta* shared a list of alternate medicines proposed to be taken in lieu of *Defitelio*.

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7.12. On 18.01.2024, the Respondent received a communication from the *Embassy of Argentina, New Delhi*, requesting the parties to resolve the dispute amicably. According to the Respondent, this shows that even prior to the demand notice the matter was being treated as a commercial dispute and not as an admitted or crystallised operational debt.

7.13. The Respondent contended that after deliberations two alternate products, namely *Cidofovir 500 mg* and *Probenecid 500 mg*, were finalised, and *Ms. Florencia Bereetta* placed a purchase order for the same dated 22.07.2024. Acting on it, the Respondent placed orders with its vendors/suppliers and incurred procurement obligations and costs. However, the Petitioner's representative cancelled the purchase order by email dated 22.07.2024, after the Respondent had already proceeded with procurement, causing loss to the Respondent.

7.14. It is stated by the Respondent that on 27.09.2024 the Petitioner initiated a criminal complaint against the Respondent before the Station House Officer, Bhiwadi (Annexure R-14), that is, before issuing the Section 8 demand notice.

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7.15. The Respondent admitted that the Petitioner issued a demand notice dated 22.11.2024 under Section 8 of the Code and the Respondent duly replied to the same and, without admitting any liability or undisputed operational debt, offered to resolve the matter amicably by adjusting/reimbursing the amount through supply of alternate medicines to be identified by the Petitioner. According to the Respondent, the reply was made in good faith to resolve a commercial dispute, and denies that it was casual, mala fide or an admission of liability.

7.16. The Respondent further states that on 30.01.2025 it received, by email, a show cause notice from the office of the *DGFT, Jaipur*, in relation to the issues arising out of the subject transaction, calling upon it to explain why its Importer Exporter Code (IEC) should not be cancelled.

7.17. The Respondent denies the allegation that it unilaterally replaced a clean Batch 20 with Batch 19 after receiving payment. It states that both Batch 19 and Batch 20 were affected by/referred to in the WHO falsified medicine alert, that it did not alter, replace or substitute any batch in the manner alleged, and that upon becoming aware of the alert it acted with due caution, put procurement of *Defitelio* on hold

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and initiated verification with *Jazz Pharmaceuticals*. The Respondent submits that the allegation of unilateral substitution itself raises disputed questions of fact which cannot be determined in summary proceedings under Section 9.

7.18. On the above grounds, the Respondent has prayed that the Petition be dismissed/rejected as not maintainable in law or on facts, that the prayer for initiation of CIRP be rejected, and that costs be awarded in its favour.

8. We have heard the Ld. Counsel for both the parties and have perused the documents placed on record along with the judgments relied upon by them.

9. In the instant case, the Petitioner, an Argentine pharmaceutical distributor, has filed a Petition under Section 9 seeking initiation of CIRP against *Hindustan Biopharma Private Limited* for an unpaid operational debt of USD 229,900 (approximately Rs. 1,92,63,160/-) along with 18% interest. The Petitioner states that it placed an order for three pharmaceutical products (Defitelio, Cidnavir, and Bencid) and made a 100% advance payment of USD 249,244/- on August 8, 2023. However, the Respondent shipped only two medicines worth USD 19,344/-, failing to deliver *Defitelio* or refund the balance amount. The Petitioner alleges that the Respondent unilaterally swapped the agreed clean batch (Batch 20) with a batch previously flagged

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by a WHO falsified medical product alert (Batch 19). Furthermore, the Petitioner asserts that the Respondent repeatedly acknowledged and admitted its liability to refund or adjust the amount through various emails between September and December 2023. Despite the issuance of a statutory Demand Notice under Section 8 on 22.11.2024, and subsequent replies from the Respondent offering unviable alternatives, the debt remains completely unpaid, prompting the Petitioner to seek the commencement of CIRP and recovery of dues.

10. On the other hand, the Respondent has vehemently opposed the petition, contending that it is not maintainable as the matter involves a pre-existing commercial dispute, disputed questions of fact, and an un-crystallised operational debt unsuitable for summary proceedings under Section 9. While admitting the receipt of the advance payment under a purchase order subject to regulatory compliance and batch verification, the Respondent maintains that it acted with due diligence upon discovering that *Defitelio* was flagged under a high-alert WHO advisory regarding falsified batches in India and abroad. It immediately halted procurement, notified the Petitioner's agent, and successfully shipped the remaining two lawful medicines while actively attempting to resolve the balance through alternate product adjustments. The Respondent denies ever admitting a crystallised debt, substituting batches

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maliciously, or acting in bad faith. The Respondent stated that the dispute was already before the Argentine Embassy and local authorities (including a criminal complaint and a DGFT notice) well prior to the Section 8 demand notice. Consequently, the Respondent has prayed for the dismissal of the petition along with costs.

11. At this juncture, it is germane to refer the Judgement of the Hon'ble Apex Court in *Mobilox Innovations Private Limited* wherein in para 25 the Hon'ble Supreme Court laid down the guidelines for adjudicating Section 9 Application. The Para 25 is as follows: -

> *"25. 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)*
> *(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."*

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12. In the instant case, the transaction emanates from an advance payment of USD 229,900/- (approximately Rs. 1,92,63,160/-) made by the Petitioner for the supply of pharmaceutical goods; in light of the principle laid down by the Hon'ble Supreme Court in *M/s. Consolidated Construction Consortium Limited v. M/s. Hitro Energy Solutions Private Limited* [(2022) 7 SCC 164], an advance payment made for the supply of goods or services bears a direct nexus with the operational requirements of the corporate debtor and squarely constitutes an 'operational debt' under Section 5(21) of the Code. Further, the default occurred on 08.08.2023 upon non-fulfillment of the supply and non-refund of the balance advance.

13. The statutory Demand Notice dated 22.11.2024 in Form-3 under Section 8 of the Code was duly served upon the Respondent, and in response thereto, the Respondent explicitly admitted its liability and inability to pay due to cash flow constraints, offering instead to supply generic goods by way of settlement. For ease of reference, the reply dated 09.12.2024 is reproduced hereunder:-

> *"Dear Vaishali*
> *It was a business transaction not the cyber crime.*
> *We never denied for anything. Due to the less business, do not have money in hands to refund.*
> *For the settlement, I can offer the generic brands only to resolve the matter, I will arrange the generic goods in multiple shipments depending upon the order volume.*

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Ask them and let us know. Attached is the list of generic items, can be easily done to close the chapter.
..."

14. Further, the Respondent has contended that a criminal complaint was initiated before the local police station and that various communications were exchanged prior to the issuance of the Demand Notice. However, upon a careful perusal of the record, we find that there is no pre-existing dispute regarding the quality or the quantity of the goods in question, nor is there any bona fide dispute challenging the underlying transaction. On the contrary, the criminal complaint and subsequent correspondence themselves relate to the same outstanding refund amount and the unadjusted advance monies due from the Respondent to the Petitioner. An attempt to cover a pure commercial default in the garb of a criminal proceeding or a generalized regulatory dispute, especially when the Respondent has consistently acknowledged the receipt of advance funds and its failure to supply or refund, cannot qualify as a 'pre-existing dispute' under Section 8(2) of the Code so as to defeat a valid operational debt.

15. Keeping in view the facts and circumstances of the case and the judgement of the Hon'ble Apex Court in *Mobilox Innovations Private Limited* the essential required for admission of Section 9 Petition stand satisfied and are as follows:-

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a) Existence of operational debt: The Respondent neither supplied the real medicine nor refunded the amount to the tune of USD 229,900, i.e., approximately Rs. 1,92,63,160/- (Rupees One Crore Ninety-Two Lakhs Sixty-Three Thousand One Hundred Sixty Only) which was received by the Respondent as advance payment from the Petitioner. This principle has been firmly settled by the Hon'ble Supreme Court in *M/s. Consolidated Construction Consortium Limited v. M/s. Hitro Energy Solutions Private Limited [(2022) 7 SCC 164]*, wherein the Apex Court held in paragraph 43 that a debt which arises out of an advance payment made to a corporate debtor for the supply of goods or services bears a direct nexus with operational requirements and constitutes an operational debt. Hence, this constitutes operational debt within the meaning of Section 5(21) of the Code.

b) Debt exceeds threshold of Rs. 1 Crore.

c) Default occurred- The Respondent defaulted in payment of the outstanding dues amounting to approximately Rs. 1,92,63,160/-. The Petitioner issued demand notice on 22.11.2024, clearly calling upon the Respondent to discharge the liability. However, even after receipt of demand notice, the Respondent failed to make payment of the outstanding amount. This default constitutes a default within the

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meaning of Section 3(12) of the Code. Accordingly, the operational debt is admitted, acknowledged and undischarged.

d) Demand Notice dated 22.11.2024 was duly served upon the Respondent.

e) No payment has been made towards the Operational Debt.

f) No pre-existing dispute has been established in terms of the Section 8 of the Code. After carefully considering the contentions raised by the Respondent, this Adjudicating Authority is of the considered view that vide email dated 09.12.2024, the Respondent admitted the advance payment with them and offered to arrange generic goods as a form of settlement. The aforementioned reply to the demand notice under Section 8 of the Code cannot be treated as a pre-existing dispute.

g) Further, the instant petition is complete with respect to Form-5 i.e., Application of Petitioner to initiate CIRP.

16. Thus, in the present case the existence of debt and default is clearly established from the admission contained in communication dated 09.12.2024. 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.

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17. Accordingly, this Petition is admitted under Section 9 of the Code. CIRP is initiated against the Respondent.

18. In its Company Petition, the Operational Creditor has not proposed the name of *any* IRP under sub-section (4) of Section 9 of the Code. Accordingly, this Adjudicating Authority deems it appropriate to appoint *Ms. Anubha Singh*, having Registration Number IBBI/IPA-001/IP-P-02784/2022-2023/14260 and e-mail id *anubha.singh5@gmail.com* duly registered with ICAI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional.

19. 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.

20. 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

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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 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.

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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 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.

21. Accordingly, *CP No. (IB)-13/9/JPR/2026* is admitted.

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National Company Law Tribunal
Jaipur

REETA KOHLI
JUDICIAL MEMBER

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Note of Concurrence

By Kavita Bhatnagar, Technical Member
in
CP No. (IB)-13/9/JPR/2026
in the order of Member (J) pronounced on 30.10.2026
(Droguria Disval SRL Vs. Hindustan Biopharma Pvt. Ltd.)

Dated: 30.10.2026

Per: - Kavita Bhatnagar, Technical Member

1. I have perused the order of learned Member (Judicial), admitting the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016. While I concur with the conclusion reached therein, I consider it necessary to record certain factual discrepancies and additional reasons, particularly concerning the amount claimed, the date of default, the nature of the operational debt and the plea of a pre-existing dispute raised by the Corporate Debtor.

2. At the outset, a discrepancy in the factual narration deserves mention. In paragraphs 2 and 6.4 of the order, the outstanding amount has been recorded as USD 229,900, calculated after deducting USD 19,344 towards the medicines supplied from the total advance of USD 249,244. However, paragraph 9 of the Corporate Debtor's written submissions refers to an actual goods invoice dated 31.10.2023 for USD 21,144 in respect of those medicines. This difference of USD 1,800 has not been reconciled in the principal order. Nevertheless, even if the higher amount of USD 21,144 is

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deducted, the outstanding principal would be USD 228,100, which remains above the statutory threshold of Rs. 1 crore. Accordingly, this discrepancy does not affect the maintainability or admission of the present application. The exact amount admissible as a claim in CIRP shall be determined by the Interim Resolution Professional in accordance with the Code and applicable regulations.

3. A further discrepancy arises in the narration concerning the alternative purchase order. Paragraph 7.13 of the order refers to a purchase order dated 22.07.2024 and its cancellation on the same date. However, the Corporate Debtor's written submissions refer to an email dated 17.07.2024 forwarding purchase orders and a subsequent communication dated 22.07.2024 cancelling the order. These dates are material because the Corporate Debtor has relied upon the alleged cancellation to contend that it incurred procurement obligations and suffered losses. The two communications ought therefore to be distinguished. Nevertheless, the record does not establish that any amount claimed as procurement loss had been finally determined or agreed to be adjusted against the advance received under the original transaction.

4. Another aspect concerns the date of default. The petition mentions 08.08.2023, being the date on which the advance payment was received by the Corporate Debtor. However, receipt of an advance towards supply of

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goods does not, by itself, constitute default. The obligation to refund arose subsequently upon non-supply of the contracted medicine and the consequential demand for return of the consideration. The correspondence exchanged between the parties from September 2023 onwards demonstrates that the issue of non-supply and refund had arisen substantially before issuance of the statutory demand notice dated 22.11.2024. Thus, although the date of receipt of the advance cannot automatically be treated as the date of default, the material on record sufficiently establishes that the obligation to refund had arisen and remained unfulfilled before issuance of the statutory demand notice. The discrepancy concerning the date mentioned in the petition does not, in the facts of the present case, affect the conclusion regarding the existence of default.

5. A further legal aspect concerns the nature of the operational debt. The Operational Creditor in the present case is the purchaser who paid an advance for supply of pharmaceutical products. The Hon'ble Supreme Court in ***Consolidated Construction Consortium Limited vs. Hitro Energy Solutions Private Limited, (2022) 7 SCC 164***, has held that a debt arising out of an advance payment made to a corporate debtor for supply of goods or services falls within the meaning of operational debt under Section 5(21) of the Code. Thus, the fact that the Operational Creditor was the purchaser rather than the supplier does not exclude its claim from the ambit of

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operational debt. In the present case, the claim arises from the admitted receipt of advance consideration and the failure to supply the corresponding goods or refund the amount attributable thereto. Accordingly, the claim is in the nature of operational debt within the meaning of Section 5(21) of the Code.

6. Coming to the plea of a pre-existing dispute, the Corporate Debtor has relied upon WHO alerts concerning falsified batches of Defitelio and its inability to proceed with supply without verification of authenticity and regulatory compliance. These circumstances cannot be dismissed as inherently frivolous. The Corporate Debtor may have had genuine regulatory concerns regarding the supply of the medicine. However, a distinction must be drawn between a dispute concerning the ability to supply the contracted goods and a dispute concerning the obligation to return the consideration received for goods admittedly not supplied. The regulatory concerns may explain why Defitelio was not supplied, but they do not, without an independent contractual or legal justification, establish a right to retain the corresponding advance indefinitely.

7. The Corporate Debtor has further relied upon negotiations for alternative medicines and the cancellation of a subsequent purchase order as evidence of a pre-existing dispute. These communications show that the parties were attempting to resolve the consequences of non-supply. However, the

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material placed before the Tribunal does not establish that the parties entered into a concluded substituted arrangement under which the original refund obligation was extinguished or that the amount attributable to Defitelio was finally adjusted against alternative supplies. The Corporate Debtor's allegation of procurement losses arising from cancellation of the subsequent purchase order also does not, on the material presently available, establish a concluded adjustment or discharge of the outstanding advance. The existence of such negotiations and alleged losses has nevertheless been considered while applying the test laid down in ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited, (2018) 1 SCC 353***.

8. In this context, particular significance attaches to the Corporate Debtor's reply dated 09.12.2024 to the statutory demand notice. The Operational Creditor has relied upon the Corporate Debtor's statement that, owing to reduced business, it did not have sufficient funds available to refund the amount. The Corporate Debtor characterises the communication as an attempt at amicable settlement. However, when considered with the earlier correspondence regarding refund and the admitted non-supply of Defitelio, the communication supports the conclusion that the inability to return the outstanding consideration was not attributable solely to a genuine dispute over liability. The subsequent communications of April 2026, relied upon by

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the Operational Creditor, further indicate acknowledgment of the money remaining with the Corporate Debtor.

9. Upon considering the entire correspondence and the rival contentions, I am of the view that the material relied upon by the Corporate Debtor establishes difficulties concerning performance of the original supply contract and subsequent attempts at commercial adjustment, but does not disclose a plausible dispute sufficient to defeat the subsisting claim for refund of the advance attributable to the undelivered medicine. This conclusion is reached upon applying the test prescribed by the Hon'ble Supreme Court in *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited*, namely whether there exists a genuine dispute requiring further investigation, and not by undertaking a final adjudication of the parties' contractual rights. The defence relating to regulatory concerns has been considered on its merits at the limited level permissible under Section 9 and has not been rejected merely because the Operational Creditor disputes it.

10. I further observe that the prayer seeking direct payment of the outstanding amount with interest cannot be treated as an independent money-recovery relief in proceedings under Section 9. The admission of the application is justified by satisfaction of the statutory requirements for commencement of CIRP and not for enforcement of a money decree. The claim for interest at 18% per annum, including its contractual basis and admissibility, is a matter

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for consideration in accordance with law during the claim's verification process. The principal amount, even after taking account of the discrepancy referred to above, is sufficient to satisfy the statutory monetary threshold.

11. In view of the foregoing, I concur with the conclusion reached by learned Member (Judicial), admitting CP No. (IB)-13/9/JPR/2026 under Section 9 of the Insolvency and Bankruptcy Code, 2016. The observations recorded herein supplement the reasoning contained in the principal order, particularly in relation to the factual discrepancies and legal issues discussed above. The consequential directions contained in the principal order shall remain operative.

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Assistant Registrar
National Company Law Tribunal
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Kavita Bhatnagar
Member (Technical)