

Sr. No. 231/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL.

JAIPUR BENCH

CORAM: DR. POONDLA BHASKARA MOHAN,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

Company Petition No. (IB)- 02/9/JPR/2019

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

IN THE MATTER OF:

M/S HEXAGON NUTRITION PRIVATE LIMITED

...Operational Creditor/Applicant

VERSUS

RAJASTHAN DRUGS AND PHARMACEUTICALS LTD.

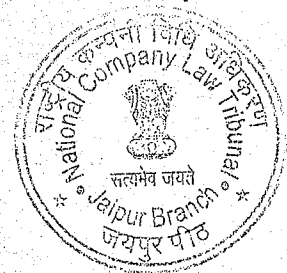
...Corporate Debtor/Respondent

For the Applicant:

Yash Sharma, Adv.

For the Respondent:

N.L. Agrawal, Adv.



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Assistant Registrar
National Company Law Tribunal

M/S Hexagon Nutrition Private Limited

Vs

Rajasthan Drugs and Pharmaceuticals Ltd.

CRN

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MEMO OF PARTIES

M/s HEXAGON NUTRITION PRIVATE LIMITED

Registered Office at: 404 Global Chambers,
Off Link Road, Adarsh Nagar, Andheri (W),
Mumbai-400053(Maharashtra)

...Operational Creditor/Applicant

VERSUS

RAJASTHAN DRUGS AND PHARMACEUTICALS LTD.

Registered Office at: Road No. 12, V.K.I. Area,
Jaipur

...Corporate Debtor/Respondent

Order Pronounced on: 25.09.2019

ORDER

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Hexagon Nutrition Private Limited (for brevity 'Applicant') claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process against Rajasthan Drugs & Pharmaceuticals Ltd. (for brevity "Corporate Debtor"). This Application is filed through Mr. Ankram

Kamal
Assistant Registrar
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Kelkar an Authorised Representative of the Applicant, authorised vide Board Resolution dated 21.06.2018.

2. The Applicant is a Private Limited Company incorporated under the provisions of Companies Act, 1956 having its Registered Office at 404 Global Chambers, Off Link Road, Adarsh Nagar, Andheri (W), Mumbai-400053(Maharashtra).
3. The Corporate Debtor is a Central Government Public Limited Company incorporated under the provisions of Companies Act, 1956 on 02.11.1978. duly registered with Registrar of Companies, Jaipur having CIN: U24232RJ1978GOI001823 having its Registered Office at Road No. 12, V.K.I. Area, Jaipur.
4. The Applicant submits that the Corporate Debtor had entered into a Supply Agreement dated 20.11.2015, which required the Applicant to supply to the Corporate Debtor Poshan Amrit (EDNS WHO formula) Sachet 92g, Energy Dense Nutrition Supplement for children with severe acute Malnutrition. Copy of aforesaid Agreement is annexed with the Application.
5. The Applicant further submits that the requisite standards of products were supplied to the Corporate Debtor and accordingly, invoices dated 24.12.2015 & 14.01.2016 were raised by the Applicant. Copy of Invoices are annexed with the Application. It is submitted that part payment of Rs. 85,11,987/- through RTGS has been made by the Corporate Debtor on account basis,

which can be inferred from the Ledger Account of the Corporate Debtor in

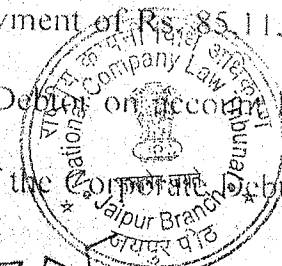
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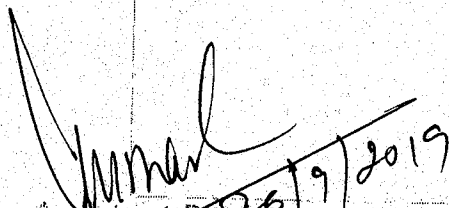


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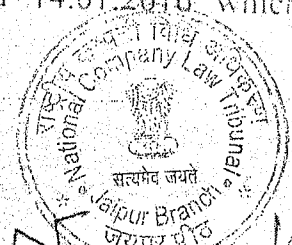
the books of Applicant. The last payment was made on 03.09.2016 of Rs. 10,11,987/- by the Corporate Debtor. Thus, the Applicant issued demand notice under Section 8 of the Insolvency and Bankruptcy Code dated 05.04.2018 on the Corporate Debtor, which was duly received by the Corporate Debtor through post on 11.04.2018. Copy of tracking report as proof of service of the said section 8 notice is annexed as Annexure- 8 with the Application.

6. It is further submitted that the Corporate Debtor did not reply to said notice nor made any payment after receiving the demand notice. The Applicant therefore filed present application under section 9 of IBC, 2016 and duly served copy of the application to the Corporate Debtor.
7. The total amount claimed by the Applicant as mentioned in Part-IV is a sum of Rs. 9,87,988.35/- as an outstanding amount which is due and payable by the corporate debtor as described below:

Amount claimed to be in default and the date on which the default occurred.	The amount claimed to be in default as on date is Rs. 9,87,988.35 (Rupees Nine Lakh Eighty-Seven Thousand Nine Hundred Eighty-Eight and Thirty-Five Paisa Only). The debt fell due from 24.12.2015 and 14.01.2016 which is continuing.
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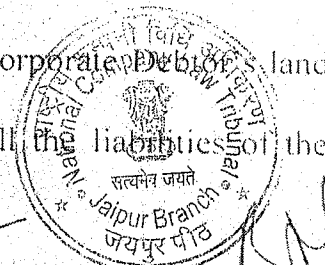

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8. The Corporate Debtor has filed a reply vide dairy no. 1643/2019 dated 23.08.2019 through its authorised representative Mr. Navdeep Rinwa. It is submitted in the reply that the contents of Part-IV are not disputed to the extents that the Corporate Debtor owes an amount of Rs.9,85,886/- to the Operational Creditor and not the amount of Rs. 9,87,988.35/- as mentioned in the Part-IV.
9. It is further submitted by the Corporate Debtor that the Applicant is not entitled to claim the interest on account of the aforesaid claim amount as the agreement executed between them does not lay down any condition for payment of interest.
10. It is further submitted that the Central Cabinet in its decision dated 28.12.2016 decided to close the Corporate Debtor. It had also been decided that the liabilities of the Corporate Debtor shall be met and Balance Sheet shall be cleansed by selling the surplus land of Corporate Debtor. In pursuance of the said order, the Corporate Debtor has been ordered vide File No. 54014 /1 /2016 -PSU dated 09.01.2017, to be closed. The aforesaid decision dated 28.12.2016 was further modified by the Government of India in a meeting held on 19.07.2019 under the Chairmanship of the Secretary Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, New Delhi and it has been decided to sell the land of Corporate Debtor of land admeasuring 9.35 acres situated at Jaipur. Thus, all the liabilities of the

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Corporate Debtor including the amount due to the Applicant as per Ledger Account of Corporate Debtor shall be met by the Corporate Debtor through budgetary support if approved by the Government of India. It is further stated that the Applicant may meet the authorities of Corporate Debtor for One Time Settlement. However, no action in this regard has been reported by the Corporate Debtor or brought to the notice of the Tribunal by any of the parties.

11. It was further submitted in the reply of the Corporate Debtor that the agreement dated 20.11.2015 contains the Arbitration Clause in Para 17 which is reproduced herein below:

"17. Arbitration- Any dispute or difference which may arise between parties or their representatives out of or in connection with or with regard to the constructions, meaning and effect of this agreement or any party thereon or in respect of any sales, indent or supply under this agreement or any other matter will be referred to Arbitration and the Arbitration Proceedings shall be held at Rajasthan Drugs and Pharmaceuticals Ltd. Road No. 12, VKI, Jaipur and MD RDPL shall be Arbitrator."

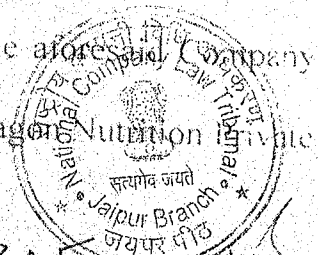
Accordingly, it was submitted that the Applicant should have invoked the Arbitration Clause prior to filing of any case / application with the Hon'ble

NCLT or any other Court and was prayed that the aforesaid Company

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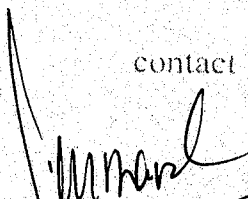


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Limited Vs. Rajasthan Drugs and Pharmaceuticals Ltd. is liable to be rejected. However, under Section 238 of the IBC,2016, Section 8 of the Arbitration and Conciliation Act,1996 has no application. Section 238 of the IBC,2016, read as under:

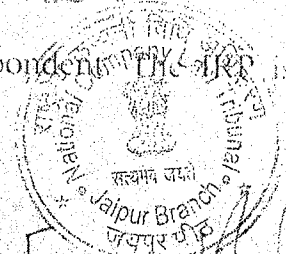
238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."


12. In the given facts and circumstances, the present Application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the Operational Debt beyond doubt and there is no tenable ground to reject this application. Therefore, the present Application deserves to be admitted and this Application is admitted.
13. The Applicant has proposed the name of Mr. Mahendra Prakash Khandelwal to be appointed as Interim Resolution Professional ('IRP'). He is qualified Resolution Professional with no IBBI-restraint and has given his consent in Form 2 to act as IRP. In view of the same, this Tribunal appoints Mr. Mahendra Prakash Khandelwal having Registration No. IBBI/IPA-002/IP-N00446/2017-18/11275 and email address mahendra927@gmail.com and contact number 9828046652, as the IRP of the Respondent. The IRP is


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National Consumer Law Tribunal

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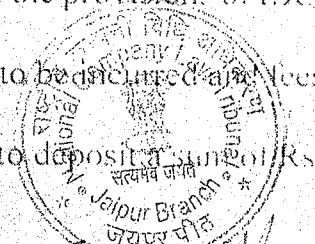
directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code.

14. The consequences of initiation of CIRP shall be inter alia, as follows: -

- (i) The Resolution Professional, Mr. Mahendra Prakash Khandelwal, having Registration No. IBBI/IPA-002/IP-N00446/2017-18/11275, is hereby appointed as the Interim Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the Provisions of IBC, 2016, including issue of publication in widely circulated newspapers including one in English and one in vernacular in Jaipur and its hinterland, as contemplated under the Provisions of IBC, 2016 and calling for the claims from the creditors of the Corporate Debtor and collating of the same shall be done.
- (ii) Further as a consequence of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during CIRP of the Corporate Debtor. The IRP shall carry out the Corporate Insolvency Resolution Process strictly as per the timelines specified and as envisaged under the Provisions of IBC, 2016 in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016. With a view to defray the IRP's expenses to be incurred and fees on account, the Operational Creditor is directed to deposit a sum of Rs

M. Maheshwari
Assistant Registrar
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Assistant Registrar on account, the Operational Creditor is directed to deposit a sum of Rs.

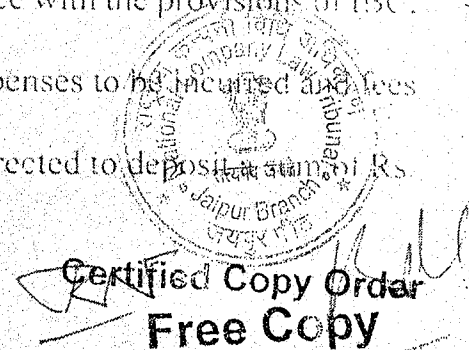
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per

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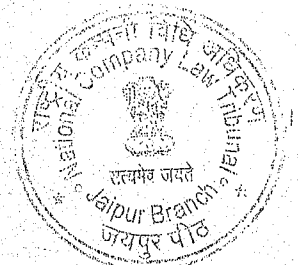
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2,00,000/- (Two Lakh only) to the account of IRP within 3 days from the date of this order. The IRP shall duly file the status report appraising this Tribunal about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Sections 17 and 19 of IBC, 2016 all personnel of the Corporate Debtor including its promoters and Board of Directors, whose powers shall stand suspended will extend all cooperation to the IRP during his tenure as such the management of the affairs of the Corporate Debtor shall vest with the IRP.

- (iv) In terms of Section 9 of IBC, 2016 a copy of this order shall be communicated to the Operational Creditor, Corporate Debtor as well as the Interim Resolution Professional appointed by this Tribunal to carry out the CIRP at the earliest not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

In the circumstances this Application stands admitted.



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Sd/-
SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)

Sd/-
DR. POONDLA BHASKARA MOHAN
MEMBER (JUDICIAL)

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