

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
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:

M/s ACE CARDIOPATHY SOLUTIONS PVT. LTD.

...Operational Creditor/Applicant

VERSUS

M/s CARDIAC CARE AND ALLIED HEALTH PVT LTD.

...Corporate Debtor/Respondent

MEMO OF PARTIES

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

**M/s ACE CARDIOPATHY SOLUTIONS
PRIVATE LIMITED**

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

...Applicant

VERSUS

**M/S CARDIAC CARE AND ALLIED
HEALTH PRIVATE LIMITED**

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

...Respondent

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(Signature)
Assistant Registrar
National Company Law Tribunal
Jaipur

For the Applicant : Anubha Singh, Adv.
Simran Gupta, Adv.

For the Respondent : Sunil Nath, Adv.

Order Pronounced On: 11.09.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. The present Application has been filed by *M/s ACE Cardiopathy Solutions Private Limited* ('Operational Creditor'/ 'Applicant') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against *M/s 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').
2. The Applicant, *M/s ACE Cardiopathy Solutions Private Limited*, is engaged in the business of supplying medical devices including medical implants, surgical equipment, cardiology devices, stents, pace makers and other related items. The Applicant has alleged default on the part of the Corporate Debtor for 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 as 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

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at the rate of 18% per annum from the respective due dates of the invoices as on 31.01.2023.

3. The Corporate Debtor is a Private Limited Company, incorporated under the Companies Act, 1956 on 13.11.1986, duly registered with the Registrar of Companies, Jaipur having CIN U85110RJ1986PTC003791 and the Corporate Debtor operates a hospital named '*Heart and General Hospital*' in the field of Cardiology and Cardiac Surgery having registered office at 7, Vivekanand Marg, C-Scheme, Jaipur, Rajasthan- 302001. The authorized share capital of the Corporate Debtor Company is Rs. 4,50,00,000/- (Rupees Four Crore Fifty Lakh Only), and the paid-up share capital is Rs. 4,14,47,000/- (Rupees Four Crore Fourteen Lakh Forty-Seven Thousand Only). The same has been verified from the online database maintained by the Ministry of Corporate Affairs.
4. The present application has been filed on the following set of facts:
 - 4.1. The Applicant and Corporate Debtor have been involved in business activities for many years. The Applicant has been supplying various medical and cardiology devices and consumables to the Corporate Debtor, which are used in the hospital operated by the Corporate Debtor. It is submitted that when the Corporate Debtor used the goods, an invoice was raised for these goods. Moreover, all the medical devices supplied to the Corporate Debtor can be traced to the respective patients in whom they were deployed.

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- 4.2. Furthermore, it is submitted that due to the superior quality of the goods provided by the Applicant, the Corporate Debtor faced no issues whatsoever, and no complaints were ever raised regarding the quality of the goods. Further, the Corporate Debtor usually made monthly payments for the tax invoices raised by the Applicant on the first day of the following month.
- 4.3. The Applicant further states that the Corporate Debtor was making timely payments up until 31.03.2022. However, after 31.03.2022, the Corporate Debtor stopped making timely payments. The last unpaid invoice raised by the Operational Creditor is dated 08.11.2022. Further, the officials of the Applicant time and again requested the officials of the Corporate Debtor for timely release of their payment.
- 4.4. In the meantime, a dispute arose between the directors of the Corporate Debtor Company, and control of the Corporate Debtor came into the hands of *Dr. Ghanshyam Bhambani*. Subsequently, *Dr. Ghanshyam Bhambani*, the present director of Corporate Debtor Company instructed the officials of the Applicant 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 Corporate Debtor and not to any individual, *Dr. Ghanshyam Bhambani* issued a letter dated 24.09.2022. In the letter, he

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alleged major discrepancies and unethical practices regarding the supply of stents and other consumable goods, while admitting that a significant portion of the supplies to his hospital was indeed from the Operational Creditor. This letter was responded to by *Mr. Umesh Munjal*, Director of the Operational Creditor, through a letter dated 26.09.2022, addressing all the queries raised by the director of the Corporate Debtor. Copies of the letter dated 24.09.2022, and the letter dated 26.09.2022, are marked as Annexure-6 (Colly) of the Application.

4.5. Further, after the reply letter dated 26.09.2022, from the Operational Creditor, the Corporate Debtor did not make any further allegations. Since that time, the Corporate Debtor has continued to purchase medical devices and consumables from the Operational Creditor on an immediate payment basis and has been doing so on a continuous basis.

4.6. Thus, as on 31.01.2013 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 Corporate Debtor to the Operational Creditor. Copy of the

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unpaid invoices are being marked as Annexure-7 (Colly) of the Application.

4.7. Therefore, a Demand Notice under Section 8 of Insolvency and Bankruptcy Code, 2016, dated 11.02.2023 was sent to the Corporate Debtor. However, the Corporate Debtor raised objections to the Demand Notice received. Copies of the Demand Notice dated 11.02.2023 and a copy of the objections dated 03.03.2023, are annexed as Annexure-8 (Colly) and Annexure- 10 of the Application.

4.8. Furthermore, the Applicant submits that despite alleging major discrepancies and unethical practices, the Corporate Debtor has continued to purchase medical devices, balloons, and consumables for patient care from the Applicant on an immediate payment basis. The Corporate Debtor has attempted to shift its liabilities to the outgoing Director, *Mr. Prakash Chandwani*. It is also noted that the Corporate Debtor 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. Nevertheless, the Corporate Debtor continues to purchase medical devices from the Operational Creditor on an immediate payment basis. The Operational Creditor continues to supply these essential and lifesaving products to the Corporate Debtor as failure to do so could result in medical complications for patients.

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4.9. The relevant details as reflected in Part IV of the Application are reproduced hereunder:

PART IV

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 of Operational Debt- Rs. 1,79,98,948.93 (Rupees One Crore Seventy-Nine Lakh Ninety-Eight Thousand Nine Hundred Forty-Eight and Ninety-Three Paise only) as principal and Rs. 19,73,329.59 (Nineteen Lakh Seventy-Three Thousand Three Hundred Twenty-Nine and Fifty-Nine Paise as interest @ 18% per annum from the respective due dates of the invoices as on 31.01.2023 Date from which the debt fell due- The debt fell due on the first day of the following month in which the invoices were raised by the Operational Creditor.
2.	Amount claimed to be in default and the date on which the default occurred (Attach the working for computation of amount and dates of default in tabular form)	Amount claimed to be in default is Rs. 1,79,98,948.93 (Rupees One Crore Seventy-Nine Lakh Ninety-Eight Thousand Nine Hundred Forty-Eight and Ninety-Three Paise only) as principal and Rs. 19,73,329.59 (Nineteen Lakh Seventy-Three Thousand Three Hundred Twenty-Nine and Fifty-Nine Paise as interest @ 18% per annum from the respective due dates of the invoices as on 31.01.2023

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		<p>The Date on which the Default occurred- The first date of default is 30.06.2022 i.e. the due date of the payment of amount in respect of the invoices raised by the Operational Creditor in the month of May, 2022. The content of the Demand Notice dated 11.02.2023 in relation to the due dates and the date of default has not been challenged or refuted by the Corporate Debtor.</p> <p>Working for computation of Default in Tabular form is being enclosed and marked as Annexure-13.</p>
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5. Consequent to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its Reply *vide* Dairy No. 2801/2023 dated 28.11.2023, stating as follows:

5.1. 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, it was submitted that the Applicant knew *Dr. Ghanshyam Bhambhani* had been a Director in the Respondent 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

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entire management, administration, and daily operations of the Respondent were solely handled by *Dr. Prakash Chandwani* ('Former Director') who had been with the Respondent since his appointment in 2006 until September 2022.

- 5.2. 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 Applicant, the Respondent discovered significant discrepancies between the actual supplies received and the invoices issued by the Applicant during the Former Director's tenure.
- 5.3. *Dr. Ghanshyam Bhambhani*, in his capacity as a director, addressed the issue with the Applicant through a letter dated September 24, 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 Applicant was colluding with the Former Director.
- 5.4. The Respondent also highlights that the collusion between the Former Director and the Applicant is evident from Challan No. 1168, dated 02.05.2022, issued by the Applicant for the supply of the consumable cardiology products. This challan was issued in the name of *CKS Hospital*,

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where the Former Director has a stake and serves as 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 ₹9,30,010, was issued to the Respondent for the same products. The Respondent requested the Applicant to provide complete records of delivery receipts/ e-way bills, but the Applicant failed to provide these details.

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

5.6. The Respondent further states that most transactions during the Former Director's tenure involved invoices that lacked signatures and the Applicant'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

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and private insurance companies, but many claims were withheld due to doubts about their authenticity.

5.7. The Respondent further submits that according to the invoices issued by the Applicant for the supplies which include various cardiology devices and consumable cardiology products. These 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 ₹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 ₹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 Applicant were executed under undue influence and in collusion with the former Director of the Respondent.

5.8. The Respondent purchased limited cardiology devices and equipment on an immediate payment basis after the resignation of the Former Director

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to meet urgent patient needs. However, these purchases do not absolve the Applicant 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 Applicant.

- 5.9. Additionally, the Respondent also states the issue pertains to Intravascular Lithotripsy ('IVL') devices supplied by the Applicant 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. Emails from ECHS regarding this matter are annexed as Annexure-8 (Colly) to this Reply.
6. The Applicant filed its Rejoinder *vide* Diary No. 16/2024 dated 02.01.2024 and made the following submissions: -
- 6.1. The Applicant contended that the director of the Corporate Debtor, *Mr. Ghanshyam Bhambhani* has purportedly authorized himself through a Board Resolution dated 11.10.2023. However, the resolution lacks signatures or names of Board members, which indicates that the Board of the Corporate Debtor has not authorized *Mr. Ghanshyam Bhambhani* as authorized person to file Reply in this matter. Additionally, the Applicant asserts that any business transactions are conducted with the company, not

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with individual Directors. Therefore, the allegations that the former Director of the Corporate Debtor *Dr. Prakash Chandwani*, was colluding with the Applicant are merely an attempt to evade the existing liability of the Corporate Debtor.

- 6.2. Further it is submitted that the Corporate Debtor raised certain apprehensions which were promptly addressed by the Operational Creditor in its letter dated September 26, 2022. However, after receiving the reply from the Applicant, the Corporate Debtor did not send any further communications, indicating that the concerns raised had been resolved.
- 6.3. The Applicant states that the pricing issues raised by the Corporate Debtor depend on various factors including the quality and brand of the product. Purchasing products from unauthorized vendors or grey markets can significantly affect pricing. It is also pertinent to note that the price and brand of the product were agreed upon by both the parties and the same product had been supplied to the Corporate Debtor for a very long period and payments were also made accordingly. Once the Corporate Debtor agrees to purchase a product at a specified price, it cannot raise disputes about the agreed price after the product has been supplied and used.
- 6.4. It is further submitted that the Applicant is not aware of any professional connections between *Dr. Prakash Chandwani* and any other entity. Further, Challan No. 1168, dated May 2, 2022, was issued at the request of the

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Corporate Debtor but the name of *CKS Hospital* was mistakenly included on the challan. Due to the urgent need for patient care by the Corporate Debtor, the supplies were made immediately. The error was subsequently corrected manually by *Mr. Surendra*, a representative of the Corporate Debtor.

6.5. Further, the Applicant stated that no items were returned between April 1, 2022, and December 31, 2022, and no debit note for such returns has been provided to the Applicant. Consequently, these returns do not appear in the ledger maintained by the Applicant. Additionally, all invoices issued by the Applicant are e-invoices, and the invoices attached to the Reply show that each invoice includes the receipt number and the signature of the person who received the items.

6.6. The Corporate Debtor's contention that pasting of sticker of a single product on the invoices of two different patients i.e. patient *Chagan Kanwar* (Invoice No. INV/22-23/136) and patient *Dharampal* (Invoice No. INV/22-23/137) is inaccurate. In fact, the employees of the Corporate Debtor mistakenly affixed an extra sticker from patient *Chagan Kanwar's* product to patient *Dharampal's* invoice. This error was identified by the government department ECHS which did not raise any concerns about the quality of the equipment but did seek clarification regarding the sticker

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issue. The Corporate Debtor was aware of this mistake but is using it as an opportunity to shift the liability onto the Applicant.

- 6.7. Furthermore, the Applicant contends that any audit conducted by the Corporate Debtor is intended for their internal purposes. During the special audit, no information was requested from the Applicant indicating that the true aim of the audit was to dispute the Applicant's claim and deny the Applicant's rightful dues. Additionally, there was no pre-existing dispute prior to the receipt of the Demand Notice.
7. The Applicant filed its Additional Affidavit *vide* Diary No. 1269/2024 dated 16.05.2024 and stated that during the course of hearing on April 17, 2024 this Hon'ble Tribunal posed a question regarding the rates of the product *Ryujin Plus 1.25x10* and the same has been attached as Annexure- 18(Colly) and Annexure-19 respectively of this Affidavit. Additionally, the Applicant also submitted copies of documents relating to the previous conduct of the current Managing Director of the Corporate Debtor.
8. The Corporate Debtor filed its Reply to the Additional Affidavit *vide* Diary No. 1584/2024 dated 28.06.2024 arguing that the Additional Affidavit was submitted after the pleadings were completed and after both parties' counsels had presented their arguments. Therefore, it should not be taken on record. Furthermore, no directions were given by this Hon'ble Tribunal to place any additional documents on record. Additionally, the Additional Affidavit

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mentions that the rates for the Ryujin balloons have remained unchanged for the Financial Year 2018-19, FY 2019-20, FY 2021-22, and invoice of FY 2022-23 till June, 2022, which raise doubts about the pricing of this product by the Applicant. The Applicant has also referred to the documents concerning the previous conduct of the current Managing Director of the Respondent which is not relevant to the Present matter. Such an affidavit appears to be an attempt to build a case against the Director of the Respondent by presenting irrelevant and fabricated grounds.

9. The Corporate Debtor filed its written submissions *vide* Diary No. 2026/2024 dated 23.08.2024 whereby reiterating the same contentions as mentioned in the Reply and it additionally relied on the following judgments:

- 9.1. *Mobilox Innovations Private Limited v/s Kirusa Software Private Limited, (2018) 1 SCC 353.*
- 9.2. *Kay Bouvet Engineering Ltd. v/s Overseas Infrastructure Alliance (India) (P) Ltd., (2021) 10 SCC 483.*
- 9.3. *Invest Asset Securitisation and Reconstruction Pvt. Ltd. v/s Girnar Fibres Ltd., (2022) SCC Online SC808.*
- 9.4. *S.S. Engineers v/s Hindustan Petroleum Corporation Ltd. & Ors., MANU/SC/1146/2022.*
- 9.5. *Sabarmati Gas Limited v/s Shah Alloys Limited, (2023) 3 SCC 229.*
- 9.6. *M/s Wacker Chemie AG v/s M/s Mccooy Silicones Limited, CP (IB) No. 120/2019.*
- 9.7. *Industrial Forging Industries (P) Ltd. v/s A2Z Infra Engineering Ltd., CP(IB) No. 196/2022.*
- 9.8. *Akbar Travels of India (P) Ltd. v/s RITCO Travels & Tours (P) Ltd., CP (IB) No. 26/2019.*

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10. The Applicant has filed its written submissions *vide* Diary No. 2145/2024 dated 02.09.2024 whereby reiterating the same contentions as mentioned in the Application, Rejoinder and it additionally relied on the following judgments:

- 10.1. *Gulshan Kumar Ahuja v/s Monika Garg & Priya Bhushan Sharma, Company Appeal (AT) (Insolvency) No. 1202/2024.*
- 10.2. *Deepak Modi v/s Shalfeyo Industries Private Limited and Others, Company Appeal (AT) (Insolvency) No. 1019/2022.*
- 10.3. *Writers & Publishers Private limited v/s M/s Oriental Cold Corporation and Others, Company Appeal (AT) (Insolvency) No. 1170/2022.*
- 10.4. *Unistill Alcoblends Private Limited v/s India Brewery & Distillery Private Limited, Civil Appeal (AT) (Insolvency) No. 162/2019.*
- 10.5. *S.S. Engineers and others v/s Hindustan Petroleum Corporation Limited, Civil Appeal No. 4583/2022.*
- 10.6. *Switching AVO Electro Power Limited v/s Ambient Computronics Private Limited Company Appeal (AT) (Insolvency) No. 525/2020.*

11. We have heard the Ld. Counsels for the parties and perused the averments made in the Petition, Reply, Rejoinder, Affidavits, Written Submissions and all the documents enclosed with the Petition.

12. 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 Demand Notice for unpaid Operational Debt. Furthermore, Section

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

13. 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

(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

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the defect in his application within seven days(i) of the date of receipt of such notice from the adjudicating Authority.”

14. In the present Application, the Applicant has been supplying various medical and cardiology devices and consumables to the Corporate Debtor. The Corporate Debtor made timely payments of the invoices generated till 31.03.2022. Subsequently, the Corporate Debtor stopped making timely payments, and the last unpaid invoice was issued by the Operational Creditor on 08.11.2022. In the meantime, the Corporate Debtor issued a letter dated 24.09.2022 alleging discrepancies and unethical practices regarding the supply of stents and other consumable goods. The Applicant responded to this letter vide reply dated 26.09.2022 in which the Applicant denied the allegations made by the Corporate Debtor and stated that all negotiations had been conducted by *Dr. Prakash Chandwani*, the former director of the Corporate Debtor over the past several years.
15. However, after the Applicant’s reply letter dated 26.09.2022 no further communication was received from the Corporate Debtor regarding the allegations made in the letter dated 24.09.2022. Further, the Corporate Debtor has been purchasing medical devices and consumables from the Applicant on instant payment basis and is doing so on a continuous basis. Subsequently, the Applicant requested the Corporate Debtor for releasing the earlier due payments.

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16. Further, the Applicant has raised unpaid invoices of Rs. 1,79,98,948.93/- (Rupees One Crore Seventy-Nine Lakh Ninety-Eight Thousand Nine Hundred Forty-Eight and Ninety-Three Paise Only) as 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 at 18% per annum as on 31.01.2023. Consequently, a Demand Notice dated 11.02.2023 was sent to the Corporate Debtor by the Applicant. In response, the Corporate Debtor raised objections against the Demand Notice in its reply letter dated 03.03.2023.
17. The details of the objection raised by the Corporate Debtor against the Demand Notice and their counter by the Operational Creditor are tabulated below:

ISSUE RAISED	CORPORATE DEBTOR'S STAND	OPERATIONAL CREDITOR'S STAND
Pricing of the Products	The rates of the products supplied by the Applicant 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 Operational Creditor. This consistency in pricing shows that the Applicant Company,	The Applicant stated that once the Corporate Debtor agrees to purchase a particular product at a specific price, the Corporate Debtor cannot raise a dispute about the agreed-upon pricing after the product has been supplied and used. Additionally, the rates charged for the Ryujin balloons were mutually agreed upon by the

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	in collusion with the former Director of the Respondent, have deceived the Respondent.	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 Applicant in the name of CKS Hospital, 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 Applicant 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 CKS Hospital 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 Corporate Debtor.
Goods Returned by the Corporate Debtor	The Corporate Debtor submitted that during the period from 01.04.2022 to 31.12.2022, 15 products i.e. Balloons have been returned back and the Applicant failed to take into account.	The Applicant has denied this claim, stating that no items were returned between April 1, 2022, and December 31, 2022, and that no debit note was prepared by the Corporate Debtor.

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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 Applicant alleged that the issue resulted from a mistake by an employee of the Corporate Debtor, 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.
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18. It is pertinent to note that the Corporate Debtor raised the aforementioned concerns for the first time in its reply to the Demand Notice. At this juncture, it becomes pertinent to take note of the earlier letter dated 24.09.2022 sent by the Corporate Debtor to the Operational Creditor. For the sake of clarity, copy of the said letter is reproduced here:

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CARDIAC CARE & ALLIED HEALTH PRIVATE LIMITED

Regd. Office: Vivekanand Marg, C-Scheme, Jaipur - 302001, Rajasthan
 CIN: U05110R19BAPT003791
 Email: HeartHospital@gmail.com

Phone: 0141-2370271

The Director
 Ace Cardioathy Solutions Pvt. Ltd
 109, 1st floor, City Pulse Mall, Naryan Singh Circle, Jaipur

Kind Attn: Mr. Venesh Menjal

Sir,
 With due respect (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. Pranav Chaudhary since last many years. Major discrepancies and unethical practices regarding supply of life saving Other Consumable goods were found from your company.

On discussing about it, I have called you way back about 2 months back, but by that day your response was having some urgent work of busy at somewhere.

Next time your response was I am busy of applying the changes in rates 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.

Sir, During this period

1. No positive response was shown even after calling you number of times.
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 contact us within next 7-10 days from receiving this message to settle the outstanding amount otherwise failing of which will lead us to take further action in this regard.

For Cardiac Care and Allied Health Pvt. Ltd.

Sr. Ghanshyam Bhambhani
 Director

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19. A bare perusal of the letter dated 24.09.2022 reveals that the same was a general communication between the Corporate Debtor and Operational Creditor, and it was made for the purpose of settling the outstanding amount. Further, in the said letter, no specific dispute qua the goods supplied by the Operational Creditor and used by the Corporate Debtor in treatment of the patients has been raised.
20. 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)*

*(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

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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.”

21. Further, it is no more res-integra that for non-admission of a Section 9 Application, the existence of a dispute must be plausible, and it must not appear as a moonshine defence. In the present matter, the Corporate Debtor has not raised any dispute prior to the issuance of the Demand Notice by the Operational Creditor. Further, in the garb of the letter dated 24.09.2022, a moonshine defence has been set up to deny the legitimate due of the Operational Creditor.
22. Additionally, the Corporate Debtor has raised the contention that the former director of the Corporate Debtor was hand in gloves with the Applicant. However, the said ground raised by the Corporate Debtor is bereft of any merit as change in management of a Company by itself would not amount to pre-existing dispute. At this stage, it is relevant to refer the Judgement of the Hon'ble NCLAT in "*Shah Paper Mills Ltd. v/s Shree Rama Newsprint and Papers Ltd., (2023) 236 Comp Cas 686* wherein it was held that change in management of the Corporate Debtor could not be a ground for extinguishing the past liabilities that they owed to the Operational Creditor. Hence, after considering the reply and submission made by the Corporate Debtor and correctly come to the conclusion that there is no ground to establish any real

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and substantial pre-existing dispute. We also find no convincing reasons to be persuaded that there was any pre-existing dispute.

23. 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:

"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."

24. In so far as the debt is concerned, a bare perusal of the ledger account of the Applicant in the books of the Corporate Debtor and the copies of unpaid tax invoices proves that there is an outstanding claim in respect of goods provided by the Applicant to the Corporate Debtor. Furthermore, in its letter dated 24.09.2022, the Director of the Corporate Debtor 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."

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25. In the present Application from facts and records it is undisputed fact that there is debt and default. Thus, we are of the view that in the present matter, all the ingredients laid out under Section 9 are fulfilled. Therefore, we are inclined to initiate CIRP of the Corporate Debtor in the present matter.
26. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP') but it is not obliged to do so. In the instant case, the Operational Creditor has proposed has proposed the name of the IRP, therefore, we appoint *Mr. Satyendra Prasad Khorania*, having Registration Number IBBI/IPA/-002/IP-N00002/2016-2017/10002, duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the above-named IRP.
27. 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 Applicant.

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

28.1. 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.

28.2. 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 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.

28.3. The said IRP shall act strictly in accordance with the provisions of the Code and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) within seven days from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon formation of the Committee of Creditors. 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

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such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

28.4. In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, 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.

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

30. The Registry is directed immediately to send a soft copy of the instant Application along with this order to the parties along with the RP nominated herein.



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Madheech
Assistant Registrar
National Company Law Tribunal
Jaipur

Sd/-
DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

Sd/-
RAJEEV MEHROTRA,
TECHNICAL MEMBER