

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, (COURT NO. IV)

Company Petition No. IB-1177/ND/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. HEALTH CARE AT HOME

INDIA PRIVAVTE LIMITED

...Applicant/Operational Creditor

VERSUS

M/s. SATYAM DRUGS

PRIVATE LIMITED

...Respondent/ Corporate Debtor

Pronounced on: 19.12.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant : Ms. Ritwika Nanda, Ms. Petal Chandhok, Advocates

For the Respondent : Mr. Harsh Tayal, Adv.

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VS. M/s. SATYAM DRUGS PVT. LTD.



MEMO OF PARTIES

M/s. HEALTH CARE AT HOME INDIA PVT. LTD.

Having its registered office at:

4TH Floor, Punjabi Bhawan,

10 Rouse Avenue,

New Delhi 110002

...Applicant/Operational Creditor

VERSUS

M/s. SATYAM DRUGS PRIVATE LIMITED

Having its registered office at:

B-3, Basement, Building No. 4

Bhanot Apartment, LSC

Pushp Vihar, Madangir,

Delhi 110062

...Respondent/Corporate Debtor

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by

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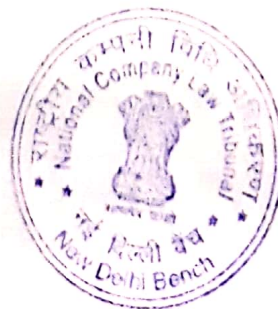
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M/s Health Care at Home India Private Limited (for brevity 'Applicant'), through its authorized signatory Mr. Sukhvinder Singh, authorizing him to file present application vide Board resolution dated 22.01.2019, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP), against M/s. Satyam Drugs Pvt. Ltd. (for brevity 'Respondent').

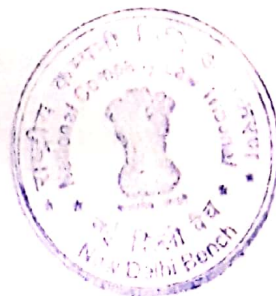
2. The Applicant, the Operational Creditor, namely M/s. Health Care at Home India Private Limited, is a company incorporated on 27.09.2012, under the provisions of Companies Act, 1956 with CIN No. U85190DL2012PTC242876, having its registered office at 4th Floor, Punjabi Bhawan, 10-Rouse Avenue, New Delhi-110002, inter alia, engaged in the business of providing para-medical staff/ attendants/ technicians to patients at the hospital and/ or their homes and business of providing medical supplies like medicines, medical equipments and auxiliary medical products.
3. The Respondent, namely M/s Satyam Drugs Private Limited, is a company incorporated on 12.10.2015 under the



provisions of Companies Act, 1956 with CIN No. U51909DL2015PTC286345, having its registered office at B-3, Basement, Building No. 4 Bhanot Apartment, LSC, Pushp Vihar, Madangir, Delhi 110062. The Authorised Share Capital of the respondent company is Rs.1,50,00,000/- and Paid Up Share Capital of the company is Rs.1,50,00,000/- as per Master Data of the company.

4. It is the case of the applicant, that the Corporate Debtor and the Operational Creditor have been associated since June, 2017. In the ordinary course of business, the Respondent, through its Directors, placed a Purchase Order with Applicant, for procuring Medicines/ Medical Equipments. On the basis of the Purchase Order placed by the Respondent through its directors, the Applicant raised the following invoices on the Respondent and delivered the products as cited therein, which were duly received and accepted. The Respondent had made part payment of a few invoices and has failed to pay the total outstanding amount to the Applicant. The details of the invoices along with the dues are as follows:

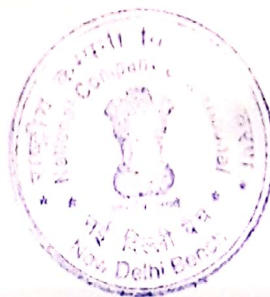
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Invoice No.	Invoice Date	Total Outstanding Amount of the Invoice (in Rs.)
DEL/18-19/0483	28.07.2018	10,62,336.40/-
DEL/18-19/0625	31.08.2018	8,31,462.40/-
DEL/18-19/0753	11.10.2018	9,20,673.60/-
DEL/18-19/0754	11.10.2018	8,20,698.30/-
DEL/18-19/0756	12.10.2018	10,10,688/-
DEL/18-19/0757	12.10.2018	22,98,633/-
DEL/18-19/0758	12.10.2018	20,85,333.60/-
DEL/18-19/0763	13.10.2018	16,08,217.80/-
DEL/18-19/0765	15.10.2018	12,55,464/-
DEL/18-19/0769	16.10.2018	10,13,254.20/-
DEL/18-19/0772	17.10.2018	11,49,632.30/-
DEL/18-19/0776	18.10.2018	7,89,876.40/-
DEL/18-19/0778	18.10.2018	16,94,284.20/-
DEL/18-19/0780	22.10.2018	10,97,123.40/-

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5. The Applicant further states that, the Corporate Debtor never raised any dispute with regard to the goods supplied to him and further, against a part outstanding/ payable amount of the above mentioned invoices and towards a part discharge of its legally enforceable debt and admitted legal liability, the Respondent through its directors issued the following cheques to the Operational Creditor:

S. No.	Cheque Date	Cheque No.	Cheque Drawn on	Sum of the Cheque (in Rs.)
1.	18.10.2018	003297	HDFC BANK	50,000/-
2.	18.10.2018	003299	HDFC BANK	50,000/-
3.	18.10.2018	214803	AXIS BANK	3,00,000/-
4.	19.10.2018	003300	HDFC BANK	50,000/-
5.	19.10.2018	003301	HDFC BANK	50,000/-
6.	20.10.2018	003302	HDFC BANK	50,000/-
7.	20.10.2018	214804	AXIS BANK	3,00,000/-
8.	20.10.2018	214805	AXIS BANK	3,00,000/-
9.	31.10.2018	003323	HDFC BANK	50,000/-

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10.	01.11.2018	003324	HDFC BANK	50,000/-
11.	01.11.2018	003325	HDFC BANK	50,000/-
12.	01.11.2018	003326	HDFC BANK	50,000/-
13.	02.11.2018	003327	HDFC BANK	50,000/-
14.	02.11.2018	003329	HDFC BANK	50,000/-
15.	03.11.2018	003330	HDFC BANK	50,000/-
16.	03.11.2018	003331	HDFC BANK	50,000/-
17.	21.11.2018	214815	AXIS BANK	3,00,000/-

The Operational Creditor presented the aforementioned Cheques, for clearing/encashment with its banker, namely CITI Bank, Ground & First Floor, DLF Capitol Point, Baba Kharak Singh Marg, Connaught Place New Delhi 110001, in A/c No. 0065931222. It is stated that on presentation of the aforementioned cheques, the said cheques were returned unpaid by the Respondent's bank.

6. The Applicant further states that, thereafter, it initiated complaint cases under Section 138 of the Negotiable

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Instruments Act, 1881 with regard to the aforementioned Cheques thus, Complaint Case Nos. 2140 of 2019, 2142 of 2019, 1028 of 2019, 2143 of 2019, 2144 of 2019, 2145 of 2019 and 2146 of 2019, were initiated against the Corporate Debtor at Patiala House Courts. The said Complaint Cases are presently pending adjudication before Ld. Metropolitan Magistrate and on the last date of hearing, the Ld. Metropolitan Magistrate was pleased to issue summons to the accused parties.

7. In spite of various requests made and reminders sent by the Applicant, the respondent did not reply. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 25.02.2019, under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent. However, owing to certain inadvertent errors, the notice under Section 8 dated 25.02.2019 was withdrawn vide letter dated 16.04.2019. Further, the Operational Creditor sent a fresh notice under Section 8 of the I & B Code, 2016, on 16.04.2019 asking them to make the entire payment of

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Rs.2,02,07,685.96/- (Rupees Two Crores Two Lakhs Seven Thousand Six Hundred Eighty Five and Ninety Six Paise), along with interest @ 18% per annum, within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

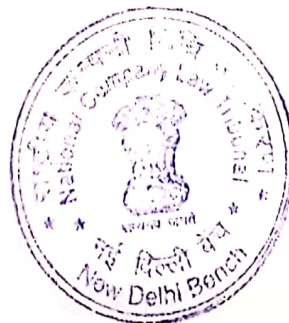
8. The applicant has annexed postal receipt, along with the tracking report, showing the delivery of the said demand notice at the registered office of the Corporate Debtor.
9. After the delivery of demand notice sent under Section 8 of the Code, the Respondent has filed its reply to the said notice, but has not raised any dispute by way of notice. In its reply the Respondent writes that, an amount of Rs. 1,97,06,210/- was outstanding dues recoverable from the Applicant by the Respondent, on account of the reverse sales made by the Respondent, on the other hand an amount of Rs. 2,24,15,101/- as outstanding dues is payable by the Respondent to the Applicant on account of purchases made by the Respondent from the Applicant. Therefore, after



adjusting both the recoverable and payable amounts, a net sum of Rs. 27,08,891/- is payable by the Respondent. A cheque of said sum of Rs. 27,08,891/- has been prepared by the Respondent, which can be collected by the Applicant.

10. The applicant has stated that total debt due and payable is Rs. 80,72,422/- (Rupees Eighty Lakhs Seventy Two Thousand Four Hundred Twenty Two) along with Rs. 5,52,236/- (Rupees Five Lakhs Fifty Two Thousand Two Hundred Thirty Six) towards interest @ 24% per annum as on 05.12.2019 amounting to total of Rs.86,24,658/- (Rupees Eighty Six Lakhs Twenty Four Thousand Six Hundred Fifty Eight). As per the invoices issued during the period 06.08.2018 to 03.12.2018.
11. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The applicant has also filed affidavit of service wherein he states that the respondent has been served dasti on 30.05.2019 and vide speed post on 29.05.2019. The receiving of the Corporate Debtor in this regard has also been annexed along with the affidavit.

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12. After the service of said notice, the respondents have caused appearance in the matter and have filed their reply. In its reply to the present section 9 application, the respondent states that, *"... as per the ledger of the respondent, the respondent is having a sum of Rs. 1,97,06,210/- as outstanding dues recoverable from the petitioner on account of the reverse sales made by the respondent to the petitioner (reverse sale is also acknowledged and reflected in the ledger annexed with the petition). On the other hand an amount of Rs. 2,24,15,101/- as outstanding dues is payable by the respondent to petitioner on account of the purchases made by the respondent. Therefore, after adjusting both the recoverable and payable amounts, a net sum of Rs. 27,08,891/- is payable by respondent to the petitioner, and the respondent has already made offer to the petitioner to receive the said amount of Rs. 27,08,891/- subject to issuance of a full and final receipt against all its claims against respondent inclusive of the claims made in aforesaid complaint cases U/S 138 of the N.I. Act."*

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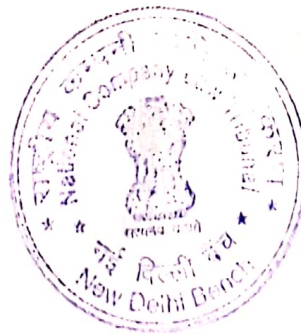
13. Pursuant to the reply of the Corporate Debtor, the Operational Creditor has filed its rejoinder, in its rejoinder the Applicant states that, "...it is denied that there have been any reverse sales amounting to Rs. 1,97,06,210/- made by the Corporate Debtor is being put to strict proof thereof. It is further stated that the amount as claimed by the Operational Creditor is Rs. 2,02,07,685.96/- (Rupees Two Crores Two Lacs Seven Thousand Six Hundred Eighty Five Paise Ninety Six Only) and not Rs. 2,24,15,101/- (Rupees Two Crores Twenty Four Lacs Fifteen Thousand One Hundred and One Only) as has been mentioned in Paragraph 9 of the Reply filed by the Corporate Debtor. It is also reiterated that the Corporate Debtor is just trying to evade its liability by offering a mere sum of Rs.27,08,891/- (Rupees Twenty Seven Lakhs Eight Thousand Eight and Ninety One Only) in order to mislead this Hon'ble Tribunal as opposed to the legitimate and rightful claim raised by the Operational Creditor amounting to Rs. 2,02,07,685.96/- (Rupees Two Crores Two Lakhs Seven Thousand Six Hundred Eighty Five and Paise Ninety Six Only)."

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14. It is pertinent to note that the applicant has placed on record all the invoices, stating that the respondent itself had acknowledged the said invoices. Once the debt is shown as due, it is for respondent to prove that there are no outstanding dues to be paid to the applicant. The respondent has time and again acknowledged its liability to pay the debt. However, no such payment has been made by the Respondent.
15. The applicant has attached the copy of Bank statements in compliance of the requirement of Section 9(3)(c) of the IBC 2016.
16. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.



17. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
18. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints the Ms. Rashmi Agarwalla, having registration no. IBBI/IPA-001/IP-P01461/2018-2019/12281, email address is rashmivika10@yahoo.co.in and contact number is +91-9871190333, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
19. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional Ms. Rashmi Agarwalla to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process

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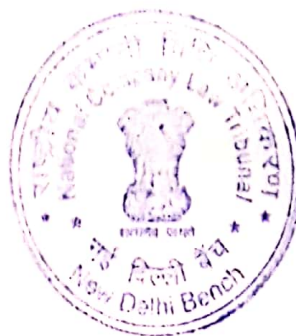


for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

20. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
21. The Registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from

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today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (Technical)

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (Judicial)



[Handwritten signature]
06/11/2020

[Handwritten signature] 07/11/2020
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

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