

NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

(IB)-324/9/JPR/2019

IN THE MATTER OF:

**M/s. ATE Projects Pvt. Ltd.
611-612 Laxmi Deep Building,
Ansal Tower, Laxmi Nagar,
Delhi-110092
(Through its Authorized Representative
Mr. Yogesh Sharma)**

...Operational Creditor

VERSUS

**1. M/s. Rajasthan Drugs and Pharmaceuticals Ltd.
Office at Road No. 12,
V.K.I Area, Jaipur, Rajasthan-302013**

...Corporate Debtor

**2. Union of India
Ministry of Corporate Affairs
A Wing Shastri Bhawan, Garage No. 14,
R.P. Road, New Delhi-110001
(Through Secretary)**

Section: 9 of IBC, 2016

Order Delivered on : 11.11.2021

CORAM:

SH. AJAY KUMAR VATSAVAYI, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Operational Creditor : Mr. Alok Tripathi, Adv.

For the Corporate Debtor : Mr. Tarun Kumar Mishra, Adv.

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

M/s. ATE Projects Pvt. Ltd. (for brevity **'Applicant/Operational Creditor'**) has filed the present Petition through its Authorized Representative Mr. Yogesh Sharma under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity **'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Rajasthan Drugs and Pharmaceuticals Ltd. (for brevity **'Respondent/Corporate Debtor'**).

2. That the Operational Creditor namely M/s. ATE Projects Pvt. Ltd. is a Company incorporated on 01.11.1999 with CIN U74999DL1999PTC102246 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at 611-612 Laxmi Deep Building, Ansal Tower, Laxmi Nagar, Delhi-110092

3. That the Corporate Debtor namely, M/s. Rajasthan Drugs and Pharmaceuticals Ltd. is a Company incorporated on 02.11.1978 with CIN U24232RJ1978GOI001823 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at V.K.I Area, Jaipur, Rajasthan-302013.

4. That the Authorized Share Capital of the Operational Creditor is Rs. 2,50,00,000/- and Paid-up Share Capital is Rs. 68,28,000/- as per the Master Data of the Operational Creditor.

5. It is stated by the Applicant that the Corporate Debtor is a Central Public Sector Enterprise having its Manufacturing Unit & Registered office in VKI Area, Jaipur (Rajasthan). It has been added that the Corporate Debtor is a Government of India enterprise under the administrative control of the Ministry of Chemicals & Fertilizers, Department of Pharmaceuticals, Government of India.

6. It is further stated that 51% of the equity shares of the Corporate Debtor are held by Government of India and the remaining 49% equity shares are held by Government of Rajasthan through RIICO Ltd.

7. It is submitted by the Applicant that in the year 2015, the Corporate Debtor invited tenders for various works, against which the Applicant submitted its bids and was declared a successful bidder. It has added that the Corporate Debtor awarded the contract to the Applicant vide letter dated 04.12.2015, which was accepted by the Applicant through email dated 04.12.2015. In furtherance, the Corporate Debtor issued the purchase order no. PUR/MC/1512/ 0063 dated 28.12.2015 and order no. PUR/MC/1512/0064 dated 29.12.2015 for HVAC work and purchase order no. PUR/MC/1512/ 0062 dated 23.12.2015 for Dust Extraction Work in favour of the Applicant. Subsequently, the Corporate Debtor also issued work order

no. RDPL/GIA/Project-2015/15-16/01/2328 dated 25.01. 2016 for HVAC Work and work order no. RDPL/GIA/Project-2015/15-16/01/2329 dated 25.01.2016 for dust extraction and work order no. RDPL/GIA/Project-2015/15-16/01/2330 dated 25.01.2016 for Civil, electrical and plumbing works. Thus, the Corporate Debtor issued total orders (purchase orders and work orders) worth Rs. 5,38,50,590/-.

8. It is further submitted by the Applicant that a separate agreement for heating ventilation & air conditioning system and for dust extraction system work & civil construction works was made between the Applicant and Corporate Debtor. It is pertinent to mention that inadvertently, on the 1st page of the agreement, date was mentioned as 25.01.2015 instead of 25.01.2016. It has added that the Applicant had deposited the security amount of Rs. 5,12,000/- and started the work after receiving the advance payment of Rs.38,60,604/- against the Bank Guarantee. The Applicant accordingly started the supply of materials and work against the purchase orders and work orders issued by the Corporate Debtor. The Applicant submitted running bill from 06.04.2016 to 10.09.2016 for the work done and material supplied. Copies of invoices qua the materials supplied at site are annexed as Annexure D of the application. It has stated that no payments were made by the Corporate Debtor for the material supplied and work done.

9. It is further stated that the Applicant received a letter dated 17.01.2017, wherein it was mentioned that the Government of India vide letter file no. 54014/1/2016-PSU dated 09.01.2017 has ordered the shutting down of the Corporate Debtor and therefore, the Corporate Debtor directed the Applicant to stop the work at site and further informed that the outstanding liabilities, whatsoever, shall be cleared in accordance with the decision of the authority concerned. Copy of the letter dated 17.01.2017 is annexed as Annexure E of the application. Further since the work was stopped at site, the Applicant resubmitted the running bills, which were duly accepted by the Corporate Debtor on 09.03.2017.

10. The Applicant has stated that vide letter dated 22.03.2017, the Corporate Debtor asked the Applicant to send the certified copy of total outstanding dues along with proposal for a one-time settlement within 3 days and in response thereto, the Applicant submitted the details of the total principal amount outstanding of Rs.1,80,36,531/- as on 26.03.2017 against all the three agreements, which was due since October 2016 and demanded payment of the same at the earliest. The Applicant further stated that through various email communications, it demanded the payment due and payable from the Corporate Debtor, however, no action was been taken by the Corporate Debtor.

11. The Applicant has added that since it was left with no remedies, it sent a legal notice dated 11.01.2019 demanding the outstanding payment. However, no payment was made. It is pertinent to mention

here that the sales tax department started demanding C-Form, qua the material supplied and since the Corporate Debtor neither issued the C-Form nor made the payment, therefore the Applicant filed an Application before the Commercial Court, Jaipur under Section 9 of the Arbitration and Conciliation Act, 1996 seeking direction qua the Corporate Debtor to handover the C-Form for the material supplied. However, the Commercial Court vide order dated 26.08.2019 rejected the Application on technical ground holding that mandatory injunction cannot be granted.

12. That it is submitted by the Operational Creditor that since the Corporate Debtor did not make the due payment of its operational debt, it had issued a Demand Notice dated 13.11.2019 under Section 8 of IBC, 2016 at the Registered office of the Corporate Debtor. The Operational Creditor has also annexed the notice of dispute dated 04.12.2019 sent by the Corporate Debtor through Advocate Mr. Tarun Kumar Mishra. The Applicant has filed the Affidavits under Section 9(3)(b) and 9(3)(c) of IBC 2016.

13. That the Applicant has claimed an outstanding amount of Rs.2,98,79,294.12/- as operational debt in the Part IV of the Application.

14. That during the final hearing of the matter on 23.09.2021, there was no representation on behalf of the Corporate Debtor. It was noted that even on earlier occasion also, there was no representation for the

Corporate Debtor. In these circumstances, Ld. Counsel for the Petitioner was heard and the reply filed by the Corporate Debtor has been considered. The Corporate Debtor, in its reply on record, has opposed the Prayer made by the Applicant.

15. It is stated by the Corporate Debtor that the Present Application filed under Section 9 is not maintainable in view of the existence of the Arbitration clause in all the Agreements executed between the parties. One of such clause relied by the Corporate Debtor is at page no. 43 of the Application. The scanned copy of the same is reproduced below –

SETTLEMENT OF DISPUTE (ARBITRATION)

All disputes and differences of any kind whatever arising out of or in connection with the contract or the carrying out of the works, whether during the progress of the works or after their completion and whether before or after the determination or breach of the contract, shall be referred to Arbitration of a single Arbitrator. All disputes and differences of any kind whatever arising out of or in connection with the contract or the carrying out of the works, whether during the progress of the works or after their completion and whether before or after the determination or breach of the contract, shall be referred to INTERNATIONAL CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION having its office at plot no.6, vasantkunj institutional area , phase -ii ,New Delhi-110070 and its decision/ award shall be binding on both the parties.

16. That the Corporate Debtor has further placed emphasis on Section 5 of the Arbitration and Conciliation Act 1996 in order to support its submission that the present petition is not maintainable. The contents of the Section 5 of the Arbitration and Conciliation Act 1996 are reproduced overleaf –

5. Extent of judicial intervention.—*Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.*

17. It is further stated by the Corporate Debtor that the Application filed under Section 9 of IBC, 2016 is based on some disputed sums. Therefore, the same does not warrant any action by this Adjudicating Authority unless the disputes are converted into actionable claim by way of an award issued by the Arbitrator.

18. It is further stated by the Corporate Debtor by placing reliance on terms and conditions of the agreement regarding 'Terms of Payment', 'Measurement', 'Supply', 'Installation' that :

“..the conditions given in the agreements for being eligible to receive payment were not fulfilled by the claim applicant. Even the said true copies of invoices raised by the contractor appended with their application from pages 124 to 163, neither any bill in proper Performa as per the contract has been attached nor the said invoices makes it clear that to which contract the invoice pertains and no bill as per contract has been submitted, Various invoices enclosed by the Claimant/Applicant indicates only above delivery of a particular material at RDPL premises (Respondent's premises) but unless a bill is submitted in proper Performa contract wise along with a measurement sheet no payment could be made. It is further submitted that the agreement no. 1 expired on 24.06.2016 the agreement no. 2 expired on 24.05.2016 and the third agreement expired on 24.05.2016. The invoices submitted by the Claimant of the Applicant have been issued much later than the expiry of the contracts. The invoices at

page 130, 131, 133, 134, 136 140, 142, 144, 146, 148, 150, 152, 154, 155, 156, 158, 160, 162 have been issued much later than a date of expiry of the contacts for which no extension of time was sought by the Claimant/Applicant.

The Claimant/Applicant has submitted as Annexure-F from pages 165 to 222. The first bill for Civil & Electrification labor work bearing dated 27.02.2017 (page 165) received in RDPL on 09.03.2017, amounting to Rs. 8,46,475/- which has been submitted after receipt of letter dated 17.01.2017 of the Respondents, which is stated to have joint measurement and verification sheet with it but there is no such verification sheet Appended.

The second bill from pages 182 to 195 has also been received on 09.03.2017 amounting to Rs. 6.07.610 - which also does not have any joint measurement and verification sheet as mentioned in the forwarding letter.

The third bill from pages 196 to 197 for HVAC work amounting to Rs. 47,45,493 85/- (Supply) + R. 2.22.415.21/- (Labor does not elaborate as to how the bill has been prepared.

The fourth bill at page 199 amounting to Rs. 4,82,569/- also does not elaborate as to how the bill has been prepared.

Pages 200, 201, 202 e alleged installation protocol for screw chiller dated 04.10.2016, chilled water pump with motor a on dated 19.01.2017 and for instantaneous hot water generation system which has also been received on dated 19.01.2017. It is pertinent to mention here that all the agreements had expired by June 2016 and no further extension of time to keep the contract alive was ever sought by the Claimant/Applicant. The other bills from pages 203 to 222 have been submitted on 27.02.2017 and received in the RDPL on 09.03.2017 but these bills are not having joint measurement sheets as well as verification by representative of the RDPL..”

19. Further in the notice of dispute dated 04.12.2019, the objections which is taken by the Corporate Debtor is that it informed the Operational Creditor vide letter dated 17.01.2017 that the Government of India has taken the decision for closure of the Corporate Debtor and the outstanding liability will be cleared/ regularized in accordance with the decision of the authority concerned. Therefore, there was a notice for closure of the agreement of the work. It has added that no work was carried out at the site beyond 17.01.2017.

20. It is further pointed out by the Corporate Debtor that there is no provision for payment of interest. It has added the bills submitted were not supported with joint measurements. Therefore, no amount could be arrived at.


21. After going through the averments made in the Application, Reply of the Corporate Debtor, documents placed on record and hearing submissions, this Bench is of the view that before examining the present Application on merits, it is necessary to examine whether an application to initiate CIR process is maintainable against the Corporate Debtor herein, which is a Government Company.

22. That as per the submissions of the Applicant, 51% of the share capital of the Corporate Debtor is held by Central Government and rest 49% is held by State Government of Rajasthan. The same has also been admitted by the Corporate Debtor in its reply.

23. It has also been brought on record by the Applicant that the Corporate Debtor vide its letter dated 17.01.2017 has communicated to the Operational Creditor, the decision of Govt. of India to close the Corporate Debtor. The scanned copy of the same is reproduced below:

Annexure - E

राजस्थान द्रुग् एवं फार्मास्यूटिकल्स लिमिटेड
(गोटा सरकार का उपक्रम)
कंपन्याचा पत्ता कोटास कार्यालय :
राजस्थान वी.के.ए.आर. रोड, जे.पी. 12, जयपुर-302013
फोन : 0141-4107108, 4107100, 4107104, 4035468, 4035469
फैक्स : 0141-4107101 वेबसाईट : www.rdpl-india.in
रजिस्ट्रेशन नं. 1978/बी.जे.आर/001823


RDPL

Rajasthan Drugs & Pharmaceuticals Ltd.
(A GOVT. OF INDIA ENTERPRISE)

Works & Regd. Office : 164
Road No. 12, V.K.I. Area, Jaipur - 302 013
Phone : 0141-4107105, 4107108, 4107104, 4035468, 4035469
Fax : 0141-4107101 Website : www.rdpl-india.in
CIN No. U24232RJ1978GON001823

January 17, 2017

M/s ATE Projects Pvt Ltd
611-612, Laxmi Deep Building,
Ansal Tower, Laxmi Nagar, Delhi-110092

Dear Sir,

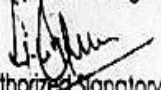
Sub:- Closure of Rajasthan Drugs & Pharmaceuticals Limited, Jaipur as per decision of Hon'ble Cabinet of India.

Ref:- Letter No.54014/1/2016-PSU dated:09-01-2017 received from Govt. of India, Ministry of Chemicals & Fertilizers, Deptt. of Pharmaceuticals, New Delhi.

With reference to the above, we bring it to your kind notice that the outstanding liabilities, whatsoever, shall be cleared/regularized in accordance with the decision of the authority concerned. You are, therefore, requested to kindly bear with us till then.

Thanking you,

Yours faithfully,
for Rajasthan Drugs & Pharmaceuticals Limited


Authorized Signatory

FACTORY MANAGER
Rajasthan Drugs & Pharmaceuticals Ltd
(A Govt. of India Enterprise)
Road No. 12, V.K.I. Area, Jaipur - 302 013

24. Here we refer to the master data of the Corporate Debtor obtained from the MCA website. The same is reproduced below -

MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA

EMPOWERING BUSINESS, PROTECTING INVESTORS
REGULATOR • INTEGRATOR • FACILITATOR • EDUCATOR

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DSC Services	Company/LLP Master Data	
DIN Services	CIN	U24232RJ1978GOI001823
Master Data	Company Name	RAJASTHAN DRUGS AND PHARMACEUTICALS LIMITED
	ROC Code	RoC-Jaipur
	Registration Number	001823
	Company Category	Company limited by Shares
	Company SubCategory	Union Govt company
	Class of Company	Public
	Authorised Capital(Rs)	100000000
	Paid up Capital(Rs)	49861000
	Number of Members(Applicable in case of company without Share Capital)	0
	Date of Incorporation	02/11/1978
Advanced Search	Registered Address	ROAD NO.12, VKI AREA, JAIPUR.ROAD NO.12, VKI AREA, JAIPUR RJ 000000 IN
LLP Services	Address other than R/o where all or any books of account and papers are maintained	-
LLP Services For Business User	Email Id	support@rdpl-india.com
	Whether Listed or not	Unlisted
e-Filing	ACTIVE compliance	ACTIVE Non-Compliant
	Companies Present filing status (defaulted in filing its statutory returns for the last two years i.e. 16-17 and 17-18)	INACTIVE
Company Services	Suspended at stock exchange	-
	Date of last AGM	30/09/2016
Complaints	Date of Balance Sheet	31/03/2016
	Company Status(for efilling)	Active
Document Related Services		
Fee and Payment Services		

25. From perusal of the letter dated 17.01.2017 of the Corporate Debtor, it is observed that the Corporate Debtor has closed its functions and objects. Further from the Master Data of the Corporate Debtor, it is reflected that the Corporate Debtor has not filed its balance sheets post-31.03.2016 and defaulted in filing its statutory

returns for the year 2016-17 and 2017-18. Furthermore, the present filing status of the Corporate Debtor is also reflected as 'inactive'.

26. The above-mentioned facts indicate that the Corporate Debtor has not been carrying out any functions since 2017. Therefore, it can be safely inferred that no Government or sovereign functions of the State have been performed by the Corporate Debtor since 17.01.2017 onwards.

27. Here, it is worthwhile to refer to the Judgment of the Hon'ble Supreme Court passed in the matter of **Hindustan Construction Company Limited and Anr. vs. Union of India, Writ Petition (Civil) No. 1074 of 2019) dated 27.11.2019 :**

“57. As correctly argued by the learned Solicitor General, Shri Tushar Mehta, the first part of ‘corporate person’, as defined in Section 3(7) of the Insolvency Code, means a company as defined in Clause 20 of Section 2 of the Companies Act 2013. Sections 2 (20) and 2(45) of the Companies Act, 2013, which define ‘company’ and ‘Government company’ respectively, are set out herein below:

“2(20). “company” means a company incorporated under this Act or under any previous company law;”

“2(45). “Government company” means any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.”

58. From a reading of the aforesaid definition, Shri Tushar Mehta is clearly right in stating that the three entities who owe monies under arbitral awards to the Petitioner No. 1, being Government companies,

would be subsumed within the first part of the definition. However, so far as NHAI is concerned, Dr. Singhvi's argument of either deleting certain words in Section 3(7) of the Insolvency Code, or adding certain words in Section 3(23)(g) of the Insolvency Code into Section 3(7) cannot be accepted.”

.....

“63. From a conspectus of the above provisions, what is clear is that NHAI is a statutory body which functions as an extended limb of the Central Government, and performs governmental functions which obviously cannot be taken over by a resolution professional under the Insolvency Code, or by any other corporate body. Nor can such Authority ultimately be wound-up under the Insolvency Code. For all these reasons, it is not possible to accede to Dr. Singhvi's argument to either read in, or read down, the definition of 'corporate person' in Section 3(7) of the Insolvency Code.”

28. From the Judgment of the Hon'ble Supreme Court (Supra), it is observed that a “Government Company” as defined under Section 2(45) of the Companies Act, 2013 is covered under the definition of a “Company” as defined under Section 2(20) of Companies Act 2013.

29. Since the Corporate Debtor, has not been performing any Governmental Functions or the Functions of State, the Corporate Debtor cannot be immune from the IBC proceedings merely on the basis of being a Government Company. Therefore, we find that the present Application is maintainable and worth considering on merits.

30. That the objection taken by the Corporate Debtor that the present Application is not maintainable in view of the Arbitration clause in the Agreements between the Parties and Section 5 of

Arbitration and Conciliation Act 1996 bars this Adjudicating Authority from hearing this Application, does not merit consideration since Section 238 of IBC, 2016 is having overriding effect over the Arbitration and Conciliation Act, 1996. The contents of Section 238 of IBC, 2016 are reproduced below -

“238. Provisions of this Code to override other laws. - 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.”

31. That the Corporate Debtor nowhere in its reply has mentioned that there was any deficiency in the works performed by the Operational Creditor nor it had brought any communication of any date prior to the issuance of demand notice, which could depict that there is a pre-existing dispute between the parties.

32. That vide letter dated 17.01.2017 to the Applicant/Operational Creditor, which states that *“.....the outstanding liabilities whatsoever shall be cleared/regularized in accordance with the decision of the authority concerned. You are requested to kindly bear with us till then”*, the Corporate Debtor had shown its intention to clear its liability. And we observe that the aforesaid letter has been issued after raising of all the invoices by the Corporate Debtor. Therefore, the contention of the Corporate Debtor regarding no attachment of measurement sheets along with the invoices cannot be a ground for non-payment of dues the Applicant/Operational Creditor.

33. That the Corporate Debtor has not been able to give any cogent reason as to why the CIR Process shall not be initiated against it.

34. That on perusal of the Affidavit filed by the Operational Creditor under Section 9(3)(b) of IBC 2016, it is observed that it has been averred by the Applicant that no notice of dispute has been given by the Respondent/Corporate Debtor. However, during the course of hearing, Ld. Counsel for the Operational Creditor confirmed that the notice of dispute was received, which is enclosed on Pages from 290 to 295 of the Application. Therefore, we are of the view that since the notice of dispute has been annexed by the Applicant with the Application, no prejudice shall be caused to anyone.

35. In sequel to the facts, circumstances and analysis above, we observe that the Operational Creditor has been able to establish the default on the part of Corporate Debtor in payment of the operational debt. **Therefore, the petition is admitted in terms of Section 9(5) of the IBC, 2016. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the IBC, 2016.**

As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

“(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.”

36. Since there is no IRP proposed by the Operational Creditor, this Bench appoints Mr. Vijay Gupta with IBBI Registration No. IBBI/IPA-001/IP-P01719/2019-2020/12636, as an IRP of the Corporate Debtor with immediate effect from the panel of the IPs recommended by IBBI to this Adjudicating Authority and order that:

“Mr. Vijay Gupta is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes.”

37. The Operational Creditor is directed to deposit Rs. 2,00,000/- (One Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

38. A copy of this Order shall be communicated immediately by all modes to the Operational Creditor, the Corporate Debtor and the IRP named above, by the Registry/Court Officer. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI and ROC concerned for their records.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(AJAY KUMAR VATSAVAYI)
MEMBER (J)