



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD**

**COURT - II**

**CP (IB) 110/NCLT/AHM/2021**

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

**In the Matter of:**

**NAMAN GLOBAL IMPEX  
PRIVATE LIMITED**

**APPLICANT/  
FINANCIAL CREDITOR**

**Versus**

**RATHOD PHARMACHEM PRIVATE LTD.**

**RESPONDENT/  
CORPORATE DEBTOR**

**Order Pronounced on: 23/12/2022**

**CORAM:**

**DR. DEEPTI MUKESH  
HON'BLE MEMBER (JUDICIAL)  
AJAI DAS MEHROTRA  
HON'BLE MEMBER (TECHNICAL)**



**MEMO OF PARTIES**

**Naman Global Impex Private Limited**

Shop No. 3 & 4, Ground Floor

Plot – 13, Balaram Chamber,

Barrack Road,

New Marine Lines,

MUMBAI 400 020

...

**Applicant/Financial Creditor**

**Versus**

**Rathod Pharmachem Private Limited**

Plot No. 117,

Pipaldhara,

Kharel-Gandevi Road

Gandevi

NAVSARI 396 430

Gujarat State

...

**Respondent/Corporate Debtor**

**Appearance:**

For the Applicant : Mr. Pavan Godiawala, Advocate

For the Respondent : Mr. Aniruth Purusothaman, Advocate



## **ORDER**

1. The Present Application is filed on 16.07.2021 under Section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by **Naman Global Impex Private Limited** through its authorised signatory Mr. Sanjaykumar Sakaria, Director duly authorised vide Board Resolution dated 09.06.2021 (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency process against **Rathod Pharmachem Private Limited** (for brevity 'Corporate Debtor').
  
2. The Applicant is a private limited company incorporated on 25.03.2014 duly registered with the Registrar of Companies, Mumbai with CIN: U24110MH2014PTC254968 having registered office at Shop No. 3 & 4, Ground Floor, Plot-13, Balaram Chamber, Barrack Road, New Marine Lines, Mumbai 400 020. The applicant is in the business of trading of pharma products.
  
3. The corporate debtor is a private limited company, incorporated under the provisions of the Companies Act, on 07.01.2020, duly registered



with Registrar of Companies, Ahmedabad with CIN: U24230GJ2020PTC111937 and having registered office at Plot No. 117, Pipaldhara, Kharel Gandevi Road, Gandevi, Navsari 396 430, Gujarat State. The Authorized share capital of the Respondent is Rs. 5,00,00,000/- and paid up share capital of the company is Rs. 81,00,000/-. The respondent company is engaged in the business of manufacturing pharmaceutical products.

4. It is submitted by the applicant that an amount of Rs. 1.00 crore was paid to the corporate debtor on 11.11.2020 as equity share application money for shares of the corporate debtor. As the shares remain unallotted for a period of more than 60 days and the amount was not refunded within 15 days after expiry of 60 days, as on 11.06.2020, the applicant is eligible to receive an amount of Rs. 1,04,99,726/- from the corporate debtor which includes interest @ 12% per annum, as per the provisions of Section 2 (31) (vii) (a) of the Companies Act, 2013.
5. It is further submitted by the applicant that having failed to receive payment from the corporate debtor, the applicant has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016.



6. The corporate debtor filed affidavit in reply stating that:
- The application filed by the applicant is towards refund of Rs. 1.00 crore towards equity contribution along with penal interest @ 12% p.a. from the date of default till the date of realisation of the said amount.
  - As per the Companies Act, 2013, share application money cannot be utilised unless the shares are allotted.
  - The applicant agreed to contribute more than Rs. 300.00 lacs towards the project for manufacture of pharma products.
  - The amount paid by the applicant was never intended to be towards equity as the applicant never signed and sent the share application form. The share application form sent by the corporate debtor was never signed and sent back by the applicant. Duly signed application form is the pre-requisite for allotment of shares.
  - The respondent time and again followed up with the applicant for additional funds as promised by the applicant, but, never received. Due to lack of promised funds, project got delayed and for faster implementation of project the respondent had approached bank for a term loan of Rs. 300.00 lacs.
  - There is no agreement or any other document on record to support the alleged claim.



- The applicant has not placed on record any correspondence demanding the alleged money after expiry of 60 days.
  - The applicant is not a financial creditor within the meaning of Section 5 (7) of the Code and the debt is not a financial debt as provided under Section 5 (8) of the Code.
  - Except notice issued on 12.06.2021 no document is produced by the applicant and the application under Section 7 of IBC was filed on 29.06.2021 which shows that no reasonable time was given to the respondent.
7. The applicant filed rejoinder, along with affidavit to the reply filed by the corporate debtor, inter alia stating that:
- The respondent undertook to allot shares in exchange of funds transferred by the applicant and failed to keep their end of the bargain.
  - A simple understanding between the two parties was that Rs. 1,00,00,000/- will be advanced by the applicant towards share application money and the applicant will be allotted a total of 10,00,000 shares of the respondent company. Based on this understanding, it was agreed by the respondent that in order to protect the interest of the applicant, a Nominee Director on the Board of the respondent will be appointed. Copy of master data of the corporate



debtor evidencing appointment of Nominee Director Mr. Sunil Ambavat dated 06.11.2020 is annexed to the original application.

- Pursuant to appointment of Mr. Sunil Ambavat as a Director of the Board of the respondent company, a payment of Rs.1,00,00,000/- (Rupees one crore only) was made by the applicant on 11.11.2020 by way of bank transfer.
- Email dated 04.12.2020 was sent to CA Ashish Lodha and Mr. Anil Rathod, Director and authorised representative of the respondent company for allotment of 10,00,000 shares of the respondent company, but, no such allotment was made.
- The respondent has agreed in its reply that share application form was sent by the respondent itself to obtain signature of the applicant, thus acknowledging receipt of Rs. 1,00,00,000/- as share application money. If the shares remained un-allotted for a period of more than 60 days and the debt amount was not refunded, the amount given has to be treated as deposit under Section 2 (31) (vii) (a) of the Companies Act, 2013 and rules made thereunder and interest of 12% per annum is applicable on the same.
- The applicant states that the share application form sent by the respondent recorded many discrepancies towards the ratio of proportion of share allotment to the applicant and the same was conveyed to the respondent via emails but no corrections were made.



Further, Mr. Anil C. Rathod of the respondent company had illegally siphoned off monies from the accounts of the respondent company on 30.11.2020.

8. The applicant filed written submissions inter alia stating that:
- The email communication dated 27.11.2020, 28.11.2020, 28.11.2020, 29.11.2020, 30.11.2020 and 04.12.2020, copies of which are annexed to the rejoinder, demonstrates that the money was given for allotment of shares and was share application money.
  - Statement made by the corporate debtor that the money paid may be treated as advance for the material to be purchased is false and no proof is produced by the corporate debtor to this effect.
  - The corporate debtor while referring to the definition of financial debt overlooked sub-clause (f) which states that any amount raised under any other transaction, including, any forward sale or purchase agreement, having the commercial effect of borrowing. Hence, the respondent is under a statutory obligation to allot the shares and in case of failure to allot the equity shares is under the statutory obligation to return the share application money within 60 days and in case of failure the corporate debtor is under statutory obligation to pay interest @ 12% per annum.



- Considering mandatory provisions of Section 2 (31)(vii)(a) of the Companies Act, 2013, the applicant is a statutory financial creditor and is entitled and eligible for interest @ 12% per annum.
9. The corporate debtor filed written submissions inter alia stating that:
- The applicant suo moto agreed to contribute more than Rs. 3.00 crore towards the project for manufacture of pharma products which was towards share application money for allotment of shares, however, the applicant paid only Rs. 1 crore on 11.2020 and thereafter even after many follow ups, the applicant did not pay any further amount as a result of which the project got delayed and the respondent was forced to approach bank for a loan of Rs. 3 crores.
  - The applicant never signed and has never sent the share application form and in absence of the signed share application form the shares cannot be allotted.
  - The respondent has failed to show any correspondence demanding the money after expiry of 60 days.
  - Applicant is not a financial creditor within the meaning of Section 5 (7) of the Code and the debt is not financial debt as provided under Section 5 (8) of the Code.



- There is no agreement between the applicant and the respondent to substantiate that money was paid as a financial debt or that the money was borrowed against the payment of interest.
- The respondent filed copies of the following judgements relied upon by it during the arguments.

Sr. No.	Authority
1	Vidarbha Industries Power Limited vz. Axis Bank Ltd. Supreme Court of India in Civil Appeal No. 4633 of 2021
2	Pramod Kumar Sharma vs. Karanya Heart Care P. Ltd. NCLT, New Delhi Bench – VI in IB – 1970/(ND)/2019
3	Pramod Kumar Sharma vs. Karanya Heart Care P. Ltd. NCLAT, Principal Bench, New Delhi in Comp.App.(AT) (Ins.) No. 426 of 2022

10. As per Form 1, part IV, the corporate debtor is in default of total Rs. 1,04,99,726/- (Rupees one crore four lacs ninety-nine thousand seven hundred twenty-six only) and date of default is 19.06.2021. Therefore, the application filed on 09.07.2021 is within limitation and not barred by law.
11. The registered office of the corporate debtor is situated in Navsari, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.
12. Heard the submissions and perused the documents on record. It is found that to validate their claim that the amount of Rs. 1.00 crore



was given as share application money, none of the parties have provided copy of the agreement stated to have been entered into between them showing that the money was borrowed against the payment of interest. The corporate debtor has placed reliance on the judgement of National Company Law Tribunal, Bench – IV, New Delhi dated 02.03.2020 in the matter of Mr. Pramod Kumar Sharma vs. Karanya Heart Care Private Limited (IB-1970/(ND)/2019) wherein the authority held as under:

*“The share application money does not fall under any of the clauses of Section 5 (8) of the Code and it cannot be said to fall under the definition “a debt along with interest, if any, which is disbursed against the consideration for the time value of money. Thus, since the claim is not a financial debt the present application under Section 7 of the Code is not maintainable and is dismissed with no costs.”*

13. The corporate debtor has placed reliance on the judgement of National Company Law Appellate Tribunal, Principal Bench, New Delhi (constituted of three members) in the matter of *Mr. Pramod Kumar Sharma vs. Karanya Heart Care Private Limited [Company Appeal (AT) (Ins.) No. 426 of 2022]* dated 21.04.2022 wherein the authority held as under:

*“Admittedly, the amount was given, as per the case of the appellant, as a share application money on which no share was allotted. Under some settlement, the principal amount was refunded and thereafter, the application under Section*



*7 was filed by the appellant. We are of the view that the Adjudicating Authority rightly took the view that the amount which was given by the appellant as share application money cannot be treated to be a financial debt so as to enable the appellant to trigger the Insolvency Resolution Process under Section 7 of the Code.”*

14. In view of the decision of Hon’ble NCLAT cited supra, which is binding on Adjudicating Authority, we decide on the line of same observation that share application money does not fall under the definition of “financial debt”. Under the facts and circumstances and as discussed above, we are of the considered view that the instant application deserves to be rejected. Accordingly, CP (IB) 110/NCLT/AHM/2021 is dismissed and disposed of.
15. A copy of the order shall be communicated to the applicant and the corporate debtor. In addition, a copy of the order shall also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal and shall forward the compliance report to the Registrar, NCLT.

**Sd/-**

**AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)**

**Sd/-**

**DR. DEEPTI MUKESH  
MEMBER (JUDICIAL)**

*Nair*