BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

C.P. (I.B) No.784/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.12.2020

Name of the Company: Neelkanth Medicare Pvt Ltd
V/s
ICI Healthcare Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code, 2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(Through Video Conferencing)

Advocate, Mr. Atul Sharma is present on behalf of the petitioner and Advocate, Ms. Manisha C. Shah is present on behalf of the respondent.

The order is pronounced in the open court, vide separate sheet.

CHOCKALINGAM THIRUNAVUKKARASU **MEMBER (TECHNICAL)**	**MANORAMA KUMARI** **MEMBER (JUDICIAL)**

Dated this the 18th day of December, 2020.

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BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No. (IB) 784/9/NCLT/AHM/2019

In the matter of:

Neelkanth Medicare Private Limited
S-1, Ground Floor
Okhla Industrial Area Phase – II
NEW DELHI : **Petitioner**
Operational Creditor

Versus

M/s. ICI Healthcare Private Limited
504, 5th Floor, Indraprast Apartment
Dilip Nagar, Nani Daman
DAMAN 396 210

Also at

P-18/26 Uppal Southend
Sector 49,Nr. Scottish Mall
Sohna Road
GURGAON 122 018 : **Respondent**
[Corporate Debtor]

Order delivered on 18th December, 2020

Coram: **Hon'ble Ms. Manorama Kumari, Member (J)**
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Petitioner	:	Mr. Atul Sharma, Advocate
Respondent	:	Ms. Manisha C. Shah, Advocate

ORDER

Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Jatinder Kumar, Director, on behalf of **M/s. Neelkanth Medicare Private Limited**, filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

2. The applicant/operational creditor is a private limited company having its registered office at New Delhi having identification No. U24239DL1999PTC098083.

3. The respondent/corporate debtor is a private limited company registered on 19.09.2010 under the provisions Companies Act and having identification No. U24230DN2010PTC000338 and having registered office at Daman. Authorised share capital of the respondent company is Rs. 3,00,00,000/- and paid up share capital is Rs. 65,00,000/-.

4. The applicant/operational creditor has stated that an agreement was entered into on 10.11.2017 whereby the corporate debtor appointed the operational creditor as the clearing and forwarding agent on commission basis for the products distributed and marketed by the corporate debtor. That, in terms of the said agreement, the operational creditor was required to deposit with the corporate debtor an amount of Rs. 1,00,00,000/- (Rupees one crore only) in two equal instalments of Rs. 50,00,000/- (Rupees fifty lacs only) each, as refundable security deposit carrying simple interest at the rate of 9% per annum payable on quarterly basis by the corporate debtor to the operational creditor. Accordingly, on 13.11.2017, by way of cheque, the applicant had paid Rs. 50,00,000/- to the corporate debtor as part of the refundable security deposit. That, balance security deposit of Rs. 50,00,000/- was paid by way of cheque on 30.01.2018.

5. The operational creditor has further stated that from 04.12.2017 onwards the operational creditor has been

rendering services to the corporate debtor in terms of the aforesaid agreement and has been raising various monthly invoices from time to time towards the commission (at the rate of 1.50% of the value of goods sold by the corporate debtor in terms of the agreement) to be paid to the operational creditor by the corporate debtor. That, against a total amount of Rs. 1,21,55,928/-, thus far, a total payment of Rs. 9,05,526/- has been made by the corporate debtor. That, in addition to the outstanding amount as referred to above, the corporate debtor is indebted to the applicant a sum of Rs. 1,00,00,000/- along with the agreed quarterly interest. According to the applicant, corporate debtor is also liable to pay interest on the aforesaid amounts @ 12% per annum from December, 2017 till the actual date of realisation.

6. It is further stated by the applicant that various emails and reminders were sent to the corporate debtor demanding payment for the services rendered, however, corporate debtor did not adhere to the agreement. Therefore, the operational creditor was compelled to issue demand notice in form 3 dated 21.08.2019. That, instead of complying with the terms of the demand notice, undated reply was received by the operational creditor on 31.08.2019, therefore, this petition.

7. In support of its claim, the applicant has furnished copy of documents like; copy of the agreement dated 10.11.2017 (page 21-27), emails sent to the corporate debtor, demand notice dated 21.08.2019 (page 50-52), reply to demand notice (page 53-55), ledger statement etc.

8. The respondent filed affidavit in reply/objections inter alia stating that there is an agreement dated 10.11.2017

between the petitioner and the respondent which reads as under: -

"**Clause No. 32** - whether the termination of this Agreement by either party has been legitimate, the parties shall attempt to settle such dispute amicably between them in the event that such dispute has not been amicably settled within 90 days, then such a question or dispute shall be referred to and finally resolved by arbitration with the Arbitration Rule of Arbitration and Conciliation Act, 1996 and the precise location of the arbitration shall be Gurugram. That, all proceeding of such arbitration, including without limitation, any agreements or awards shall be in English Language".

9. The respondent has further stated that the agreement is binding to both the parties. That, since the petitioner has not performed as per agreement and has filed the instant petition, the petition deserves to be dismissed. That, the demand notice is not in accordance with the provisions of the I & B Code. That, there is no affidavit filed as required under the mandatory law regarding "no dispute". That, the statement of ledger attached to the demand notice issued by the petitioner is not supported by all invoices of commission due from respondent. That, all the payment towards commission on sales and interest on security deposit are paid to the petitioner. That, the petitioner has not handed over the stock to the respondent.

Findings:

10. Heard advocates appearing for both the sides and perused the documents annexed to the application/reply.

11. On perusal of the records it is found that the demand notice dated 21.08.2019 is issued by one Mr. Naveen Jain claiming to be Director of the applicant company. Demand notice, a pre-requisite under section 8 of the Insolvency & Bankruptcy Code, 2016 for filing the petition under section 9, is signed and issued by Mr. Naveen Jain without any authority. On perusal of the record it is found that no document is filed by the applicant authorising Mr. Naveen Jain to sign and issue such demand notice. On perusal of the records it is also found that one Mr. Jatinder Kumar, claiming to be Director of the petitioner company, has signed the application (form 5), but no document is filed whereby Mr. Jatinder Kumar has been given authority to file such application. Thus, due to want of proper authorisation, supported with Board Resolution, demand notice and subsequent filing of the instant application is bad in the eye of law and is not maintainable

12. Notwithstanding above, agreement dated 10.11.2017 entered between the petitioner and respondent stipulates that (Clause No. 32), which read as; "whether the termination of this Agreement by either party has been legitimate, the parties shall attempt to settle such dispute amicably between them in the event that such dispute has not been amicably settled within 90 days, then such a question or dispute shall be referred to and finally resolved by arbitration with the Arbitration Rule of Arbitration and Conciliation Act, 1996 and the precise location of the arbitration shall be Gurugram. That, all proceeding of such arbitration, including without limitation, any agreements or awards shall be in English Language" (sic). Under these circumstances, filing this petition under Section 9 of the I & B Code is gross violation of the agreement entered into between the parties and bad in the eye of law. More so, when the objective of Code is resolution not liquidation. Therefore, the "Code" cannot be used as an arm twisting

weapon. Further, the applicant has admitted that it had paid a sum of Rs. 1.00 crore towards security which is refundable.

13. Under the facts and circumstances as discussed above the petition is not maintainable and bad in the eyes of law.

14. In the result, company petition No. CP (IB) 784 of 2019 stands dismissed and disposed of without cost. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.

Chockalingam Thirunavukkarasu **Adjudicating Authority** **Member (Technical)**	**Ms. Manorama Kumari** **Adjudicating Authority** **Member (Judicial)**

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