IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-IV

C.P. (IB) No. 600/2024

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

In the matter of

Unipharma Ampoules & Vials Private Limited

Registered office: Floor 19, United Classic SN, 49/2, Near Nirmal Building, Kondhwa, Pune- 411048.

…Operational Creditor

Versus

Aegis Ampoules & Vials Limited

Registered office: A-502 Kumar Gulmohar, CTS no. 1436 Survey No. 70A/1/212B Wanowrie, Pune- 411040.

…Corporate Debtor

Pronounced: 15.09.2025

CORAM:

SHRI ANIL RAJ CHELLAN	**SHRI K. R. SAJI KUMAR**
HON'BLE MEMBER (TECHNICAL)	**HON'BLE MEMBER (JUDICIAL)**

Hearing: Hybrid

<u>Appearances:</u>

For Operational Creditor	:	Adv. Rohan Agrawal i/b Adv. Priyank Daga
For Corporate Debtor	:	Adv. Vidit Divya Kumat

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. <u>BACKGROUND</u>

1.1 This Company Petition No. C.P. (IB) No. 600/MB/2024 was filed on 09.08.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Unipharma Ampoules & Vials Private Limited, the Operational Creditor, through Mr. Naser Kasam Shaikh, Director of the Operational Creditor, authorised *vide* Board Resolution dated 08.01.2024 for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Aegis Ampoules & Vials Limited, the Corporate Debtor**.**

1.2 The total amount of default alleged is Rs. 46,91,92,6491/- (Forty-Six Crore Ninety-One Lakh Ninety-Two Thousand Six Hundred and Forty-Nine Rupees) comprising the principal amount of Rs. 29,00,86,247/- along with interest of Rs.17,91,06,401.71/-, calculated at the rate of 18% p.a. during the period from 11-09-2020 to 15-02-2024. The Operational Creditor's alleged outstanding dues are based on the amount defaulted by the Corporate Debtor *vide* Debt Settlement Agreement dated 27.03.2023, payable to the Operational Creditor.

1.3 The date of default as mentioned in Part IV of the Application is 01.08.2023, i.e., the date on which the payment as mentioned under the Debt settlement agreement fell due to the Operational Creditor, by the Corporate Debtor. As the Corporate Debtor defaulted in payment of its outstanding dues, the Operational Creditor prays that CIRP may be initiated in respect of the Corporate Debtor under Section 9 of the Code.

2. <u>SUBMISSIONS OF OPERATIONAL CREDITOR</u>

2.1 The Operational Creditor has been engaged in the business of manufacturing Ampoules and Vials. In and around 2004, the Applicant was desirous of starting a unit to manufacture Ampoules and Vials and was in direct competition with the Corporate Debtor. The Corporate Debtor also wanted to increase its production capacity by importing machinery for that purpose from Europe. Accordingly, both the Applicant and the Corporate Debtor amicably decided to work together and bring an end to the competition.

2.2 As a result, the Applicant and the Corporate Debtor entered into an agreement dated 04.08.2004, wherein it was agreed between the parties that the Operational Creditor would lease 3 Ampoule Lines and 2 Lines of Vials finishing machines, which were part of the Rehabilitation Scheme approved by State Bank of India (SBI), *vide* their Sanction Letter Ref No. IFB/AUR/CBD-1/S08 dated 10.03.2004 to the Corporate Debtor, upon payment of rent. SBI issued no-objection dated 03.08.2004 for the installation of the said machines in the premises of the Corporate Debtor. The term of the agreement was set at 7 years. In case of default by the Corporate Debtor for the payment, the Operational Creditor retained the right to terminate the agreement without any notice to the Corporate Debtor.

2.3 As there was delay in the sanction and implementation of the Rehabilitation Scheme by SBI, the Corporate Debtor was finding it difficult to pay the monthly lease rent to the Operational Creditor. Hence, the Corporate Debtor requested the Operational Creditor to sell the said machinery to the Corporate Debtor and also consider the payment of the lease as a bullet repayment towards the sale of the said machinery. Consequently, a Memorandum of Understanding (MOU)/Agreement dated 28.02.2005 was executed between the Operational Creditor and Corporate Debtor, setting out the terms and conditions of the sale of the machinery.

2.4 In continuation of the MOU dated 28.02.2005 and the agreement dated 04.08.2004, another agreement dated 28.03.2012 was executed between the parties as an acknowledgement cum extension of time for the bullet repayment towards the sale of the said machinery, as agreed in the MOU dated 28.02.2005.

2.5 The Corporate Debtor failed to pay the sale price as agreed under the MOU dated 28.02.2005 and the Agreement dated 28.03.2012. Subsequently, Operational Creditor decided to discontinue the said agreements with Corporate Debtor, by invoking the termination clause and take back the custody of the machinery to avoid further losses by settling the accounts with the Corporate Debtor. Accordingly, the Operational Creditor and Corporate Debtor executed a Termination Agreement dated 31.12.2019. However, Operational Creditor and Corporate Debtor were unable to determine the exact default amount payable by the Corporate Debtor, as the amount claimed by Operational Creditor was not acceptable to Corporate Debtor. Both parties, therefore, agreed in the agreement that the Corporate Debtor shall pay the amount decided by the Arbitrator within 30 days from passing of the Arbitral award, failing which the Operational Creditor shall have the right to enforce the same through the process of court.

2.6 Accordingly, the matter was subjected to Arbitration before the sole arbitrator Mr. Sujit S. Patil, Advocate, wherein an award was passed on 11.09.2020 in favor of the Operational Creditor directing the Corporate Debtor to pay an amount of Rs.29,00,86,247/- (Twenty-Nine Crore Eighty-Six Thousand Two Hundred and Forty-Seven Rupees) along with future interest payable at 18% p.a. till the date of realization of the amount from the date of filing the claim.

2.7 In pursuance of the award, the Operational Creditor filed a decree claim against the Corporate Debtor in the District Court of Aurangabad, followed by an application before this Tribunal to initiate CIRP. The Corporate Debtor approached Operational Creditor with a request to settle the matter and to withdraw the application filed before this Tribunal. The Corporate Debtor also requested to waive off 2/3rd of the award amount to be calculated without interest. The Operational Creditor agreed to settle the matter at 50% of the arbitral award amount, i.e., Rs.14,50,00,000/-, without any interest payable on the said amount.

2.8 Accordingly, both parties executed a Debt Settlement Agreement dated 27.03.2023 which provides that Rs.14,50,00,000/- shall be paid by the Corporate Debtor in the manner provided in the Debt Settlement Agreement and in case the agreed-upon payments were not received as per the terms of the Debt Settlement Agreement or if the Corporate Debtor failed to make payments for a period exceeding 90 days after the due date, the Operational Creditor would be entitled to demand entire balance due and pursue any legal recourse to recover the outstanding dues, including approaching this Tribunal or any other relevant forum or court or even pursuing enforcement of the arbitration award before the appropriate court.

2.9 However, the Corporate Debtor still defaulted in making the payment as per the Debt Settlement Agreement; hence, the Operational Creditor approached the Corporate Debtor requesting to make the necessary payments. Upon failure to make the payment, Operational Creditor issued a demand notice dated 23.11.2023 under Section 8 of the Code demanding Rs. 45,71,75,925/- inclusive of interest at a rate of 18% p.a. calculated till 23.11.2023. However, the Corporate Debtor has not replied or repaid the due amount to the Operational Creditor.

2.10 In the circumstances, the Operational Creditor filed this application claiming a debt of Rs.46,91,92,649/ (Forty-Six Crore Ninety-One Lakh Ninety-Two Thousand Six Hundred and Forty-Nine Rupees) as on 14.02.2024. The date of default is stated as 01.08.2023, being the due date specified under the Debt Settlement Agreement.

3. CONTENTIONS OF CORPORATE DEBTOR

3.1 The Corporate Debtor, *vide* its reply affidavit dated 05.12.2024, denied the averments contained in the application unless admitted. It is contended that there is no 'operational debt' arising under the purported agreements and Debt Settlement Agreement, as these are mere agreements between the parties.

3.2 The proceedings under the Code are not recovery proceedings. In the event of a breach of an agreement, the appropriate remedy for the Applicant is to approach a competent civil court, complaining of breach of contract, and filing a money suit to pray for and/or claim the alleged dues. However, in the instant case, the Applicant has filed the application for the purpose of recovering amounts under unregistered and insufficiently stamped documents, and not for the resolution of the Corporate Debtor.

3.3 Under the Debt Settlement Agreement, the total debt amount was reduced to a final amount of Rs. 14,50,00,000/-- (Fourteen Crore Fifty Lakh Rupees) without any interest payable on the said amount to be paid in 31 instalments starting from April, 2023 and ending on October 2025. However, the Corporate Debtor has experienced a significant increase in losses in recent years and is currently undergoing severe financial distress. The business of a sister concern of the Corporate Debtor, namely Aegis Glass Container Pvt. Ltd. and Aegis Medicine Private Limited, was expected to start production; however, it was at a standstill due to delay in release of funds from the creditors and hence the Corporate Debtor faced financial instability and was unable to do the timely repayment as stated under the MOU dated 23.02.2005. Both these sister companies of the Corporate Debtor are in financial stress, namely, Aegis Glass Container Pvt Ltd, in which a company petition under section 7 of the Code is filed before the Tribunal, and Aegis Medicine Private Limited, is currently under Liquidation. These financial constraints have adversely affected the execution of its projects, resulting in substantial reversals in profit. As a consequence, the Corporate Debtor has been unable to meet its payment obligations under the Debt Settlement Agreement.

3.4 It is contended that as per Section 2(e) of the Arbitration and Conciliation Act, 1996, for the Award Arising out of an India Seated Arbitration not being an International Commercial Arbitration, the appropriate court to try and enforce the arbitral awards would be the Principal Civil Court of Original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration. Therefore, the Arbitral Award as per the Arbitration and Conciliation Act, 1996, is not enforceable before this Tribunal in this matter.

3.5 Though the Corporate Debtor admitted defaults under the Debt Settlement Agreement, it is prayed that the circumstances stated in the reply are to be considered. The CIRP should not be initiated against the Corporate Debtor, and a final opportunity should be granted to the Corporate Debtor to repay the outstanding debt along with the accrued interest thereon.

4. ANALYSIS AND FINDINGS

4.1 We have duly considered the arguments advanced by the Ld. Counsel for both parties and perused the records carefully.

4.2 The records reveal that the transaction began as a lease of machines under the terms and conditions contained in the agreement dated 04.08.2004. This arrangement was revised to a sale as per the MoU dated 28.02.2005. Subsequently, the time period for payment of the sale consideration was extended by an agreement dated 28.03.2012. Thereafter, the Operational Creditor chose to terminate the agreements with the Corporate Debtor by invoking the termination clause and take back the custody of the machinery on the terms and conditions contained in the Termination Agreement dated 31.12.2019. As the parties could not arrive at an agreement with respect to the exact default amount payable by the Corporate Debtor, the matter was referred to a sole arbitrator, who passed an award on 11.09.2020, directing the Corporate Debtor to pay an amount of Rs.29 crore along with future interest at 18% p.a till realisation. However, the parties entered into a Debt Settlement Agreement dated 27.03.2023 for accepting a reduced amount of Rs.14.50 crore if paid in the manner provided therein. If the Corporate Debtor failed to comply, the Operational Creditor retained the right to pursue enforcement of the entire amount under the arbitration award. Accordingly, the Operational Creditor issued a demand notice for the entire Rs. 45,71,75,925/- inclusive of interest at a rate of 18% p.a., calculated till 23.11.2023, and filed the present application.

4.3 As per Part IV of the application, the date on which the default is stated to have occurred is 01.08.2023 (being the date on payment as mentioned under the Debt Settlement Agreement). Therefore, there cannot be any dispute that the Operational Creditor considers the default 01.08.2023 under the Debt Settlement Agreement as the cause of action for making this application under Section 9 of the Code.

4.4 In the above background, the primary question that arises for our consideration is whether the debt stated in this application qualifies as ‘operational debt’.

4.5 An ‘operational debt’ as defined in Section 5(21) of the Code means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. In the present case, the original transaction, though operational debt, has undergone various changes. These changes include the termination of the arrangement to take back the machinery, the determination of the default amount through an arbitration award, and entering into a settlement agreement for payment of the arbitration amount. In other words, the claim in the application is limited to the defaulted amount at the time of termination of the arrangement, which was agreed to be settled between the parties as per the settlement agreement. Therefore, the settlement agreement constitutes a contract separate from the original lease or sale of machinery.

4.6 The Learned NCLT, Allahabad Bench expressly held in ***Delhi Control Devices Pvt. Ltd. v. Fedders Electric and Engineering Ltd. (May 14, 2019),*** **as under:**

"12. Further, unpaid instalment as per the settlement agreement cannot be treated as operational debt as per section 5(21) of IB Code. The failure or Breach of settlement agreement can't be a ground to trigger CIRP against Corporate Debtor under the provision of IBC 2016 and remedy may lie elsewhere not necessarily before the Adjudicating Authority."

4.7 The Learned NCLT, Kolkata, in the case of **M/s. Amrik Cranes and Infrastructure v. Simplex Infrastructures Limited** has held that "*Thus, in light of the judgment rendered in Trafigura (Supra) and Maldar (Supra), we are of the view that this Adjudicating Authority is not a forum to recover money arises in default of instalment of a settlement agreement. Breach of the terms and conditions of payment in accordance with a settlement agreement does not constitute an "Operational Debt" as per the definition under Section 5 (21) of the I&B Code and accordingly that cannot be a ground to trigger CIRP against the Corporate Debtor. Thus, the outstanding due claimed herein has lost its substratum of being an "Operational Debt" under the I&B Code."*

4.8 In the backdrop of the facts described above and taking into account the legal position followed by other benches of NCLT, we are of the considered view that the claim made in the application is no longer an operational debt under the Code. Furthermore, it is pertinent to note that the Code is not just another statute for the recovery of dues.

4.9 In view of the aforesaid discussions, this application deserves to be dismissed as it does not fall within the definition of operational debt and is liable to be dismissed.

ORDER

This Application bearing C.P. (IB) No. 600/MB/2024 filed by Unipharma Ampoules & Vials Private Limited for initiating CIRP in respect of Aegis Ampoules & Vials Limited, the Corporate Debtor, is **rejected**. No order as to costs. Ordered accordingly.

Sd/-	**Sd/-**
ANIL RAJ CHELLAN	**K. R. SAJI KUMAR**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**