

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.301  
CP(IB) 784 of 2019

**Proceedings under Section 9 IBC**

**IN THE MATTER OF:**

Neelkanth Medicare Pvt Ltd  
V/s  
ICI Healthcare Pvt Ltd

.....Applicant

.....Respondent

**Order delivered on: 01/07/2026**

**Coram:**

Mrs. Chitra Hankare, Hon'ble Member(J)  
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

**ORDER**

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet.

Sd/-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

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**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH, COURT - II  
CP (IB) No. 784 of 2019**

*(Filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**In the Matter of:**

**M/s. Neelkanth Medicare Private Limited**  
CIN No.: U24239DL1999PTC098083  
S-1, Ground Floor Okhla  
Industrial Area Phase - II New Delhi

...Applicant/  
Operational Creditor

V/s.

**M/s. ICI Healthcare Private Limited**  
CIN No.: U24230DN2010PTC000338  
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 122018

...Respondent/  
Corporate Debtor

**Order pronounced on 01.07.2026**

**Coram:**

**MRS. CHITRA HANKARE  
HON'BLE MEMBER (JUDICIAL)**

**DR. V. G. VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**

sd/-

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**Present:**

For the Applicant : Mr. Varun Garg, Adv., Mr. Shubham Paliwal, Adv., Ms. Komal Bihani, Adv., Mr. Nipun Gupta, Adv. Mr. Arpit Singhvi, Adv. and Mr. Vivek Singh Pawar, Adv.  
For the Respondent : Mr. Rajesh Bohra, Adv. and Ms. Sangeeta Bohra, Adv.

**JUDGEMENT**

1. This Petition has been filed under Section 9 of the Insolvency and Bankruptcy code, 2016 (“IBC”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Neelkanth Medicare Private Limited seeking to initiate Corporate Insolvency Resolution Process against M/s ICI Healthcare Private Limited for having default of an amount of Rs. 1,21,55,928/- The date of default is stated to be 18.12.2018.
2. The factual backdrop averred by the applicant and respondent is as under:
  - a. 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

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products distributed and marketed by the corporate debtor. it is stated 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.

b. The operational creditor has further stated that from 04.12.2017 onwards the operational creditor has been rendering services to the corporate debtor 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. It is stated 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. Further stated 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. Applicant stated that corporate debtor is also liable to pay interest on the aforesaid amounts @ 12% per annum from December, 2017 till the actual date of realisation.

c. The applicant/operational creditor issued demand notice in form 3 under section 8 of the IBC, 2016 dated 21.08.2019. The Corporate Debtor sent undated reply to the operational creditor on 31.08.2019, therefore, this petition.

d. The applicant/operational creditor has relied on the following documents

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- i. copy of the agreement dated 10.11.2017
  - ii. emails sent to the corporate debtor,
  - iii. demand notice dated 21.08.2019,
  - iv. reply to demand notice,
  - v. ledger statement etc.
- e. 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 and it has Clause 32 which provides that any dispute regarding the legitimacy of termination of the agreement shall first be attempted to be resolved amicably within 90 days. If unresolved, the dispute shall be referred to arbitration under the Arbitration and Conciliation Act, 1996, with the seat of arbitration at Gurugram. The respondent submitted that there are serious dispute regarding breach of agreement, resignation, accounts, custody of goods, commission, security deposit etc.
- f. The respondent has further stated that the agreement is binding to both the parties and the applicant has not performed as per agreement. Further stated that the demand notice is not in accordance with the provisions of

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the IBC Code. Further submitted that there is no affidavit filed as required under the mandatory law regarding “no dispute”. Further it is submitted that applicant breached the clause 27 of the agreement by not sending the notice of termination of agreement through post with acknowledgement due or by courier service instead of this applicant sent e-mail dated 18.12.2018 and it was not accepted by the respondent. Hence agreement still continues till 21.08.2019.

g. The respondent submitted that the statement of ledger attached to the demand notice issued by the applicant is not supported by all invoices of commission due from respondent. The Respondent has paid Rs. 29,70,524/- towards commission on sales and interest on security deposit to the applicant. Further stated that the statement produced in the demand notice shows receipt of only Rs. 16,50,160/- The applicant has not handed over the stock worth Rs. 90,55,105/- to the respondent. Therefore, respondent suffered loss and due to principal to principal relationship the applicant is liable for loss.

h. The Respondent stated that the Applicant wrongly

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calculated its claim on the basis of a minimum sales guarantee amount, which is not contemplated under the Agreement. Respondent stated that commission was payable only on actual sales as per the agreed percentages.

3. Vide order dated 18.12.2020 this tribunal dismissed and disposed the CP(IB)784 of 2019 on the issue of maintainability. Aggrieved by this order the applicant filed appeal before Hon'ble NCLAT on 09.03.2022 it was held that the order passed by the AA is affirmed and the appeal was dismissed.
4. The Hon'ble Supreme Court, vide order dated 21.10.2024, allowed the appeal and set aside the orders of the NCLT and NCLAT rejecting the Section 9 application, observing that the Tribunals had erroneously relied upon the Board Resolution of the Corporate Debtor instead of that of the Operational Creditor while questioning the authorization to initiate proceedings. The Hon'ble Court further noted that the rejection of the application on the ground of the existence of an arbitration clause was not sustainable, as only a notice under Section 21 of the Arbitration and Conciliation Act had been issued and no arbitration

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- proceedings had commenced. The Court also observed that the issue regarding the existence of a bona fide pre-existing dispute had not been examined by the Tribunals despite being raised by the Respondent. Accordingly, holding that the matter required fresh consideration on merits, the Hon'ble Supreme Court remitted the application for adjudication afresh.
5. In compliance with the order the respondent filed written submission and submitted that there is a pre-existing disputes long before issuance of the demand notice under Section 8, the Respondent had raised several disputes regarding Inflated commission bills, Non-reconciliation of accounts, Retention of stock and Wrongful termination.
  6. The applicant filed reply and denied all the allegation of respondent. It is submitted that the allegations regarding Curamed transactions are contrary to the Corporate Debtor's own email dated 21.11.2018, wherein the Corporate Debtor itself informed the Operational Creditor about discontinuation of the Curamed business, cancellation of the Curamed agreement and transfer of Curamed stock. It is contended \_\_\_\_\_ that mere

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assertions that reconciliation is required or that accounts are complex cannot defeat a Section 9 application.

7. The Operational Creditor had duly dispatched the Corporate Debtor's goods to its Corporate Debtor's warehouse; however, delivery failed solely because the warehouse was locked due to the Corporate Debtor's own default. Operational Creditor was appointed as a Carry and Forwarding Agent, Clause 22 does not impose obligation of immediate return of stock in the manner as alleged by the Corporate Debtor. Respondent filed rejoinder.
8. Applicant submitted the affidavit and stated that the operation creditor has made efforts to resolve the matter, including communication through counsel and an email proposing return of goods against refund of the security deposit however, the Corporate Debtor did not respond.
9. The Respondent filed affidavit and stated that the Petitioner's refusal to verify accounts, failure to return stock, incorrect commission and interest calculations, and non-accounting of payments demonstrate the existence of a genuine and pre-existing dispute between the parties.

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further submitted that after proper reconciliation of commission, interest, security deposit, receivables, and unreturned stock, amounts are in fact recoverable from the Petitioner. It is further submitted that such disputed claims requiring detailed examination of facts and accounts cannot be adjudicated in the summary jurisdiction under the IBC.

10. Perused the documents on record alongwith written submissions of the parties.

**Observations & Conclusions:**

- a. The Hon'ble Supreme Court in its order dated Oct 21, 2024 allowed the appellant petitioner's appeal against this CP(IB) 784 of 2019 which was rejected by this Tribunal and Hon'ble NCLAT on the two grounds of lack of board resolution and that the dispute was to be referred to Arbitration under the Arbitration and Conciliation Act 2016. It further observed in its order that in their considered view this aspect as to whether there was a bona fide pre-existing an or not has to be considered by the Tribunal and Appellate Tribunal which has not been dealt with nor the application under Section 9 of the IBC has

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been rejected on the above ground.

b. The Agreement clearly provided:

- i. Commission payable only on actual sales effected (Clause 12, 16),
- ii. Monthly reconciliation of accounts (Clause 18),
- iii. Return of unsold stock on termination,
- iv. Disputes to be resolved through arbitration at Gurugram (Clause 32).

c. However, the Petitioner unilaterally raised inflated claims by calculating commission on an alleged "minimum sales guarantee", which is not contemplated under the Agreement. The Petitioner continues to hold Respondent's goods worth Rs. 90,55,105/- in its godown, in breach of the Agreement. Instead of returning stock or reconciling accounts, the Petitioner has rushed to invoke IBC as a recovery mechanism.

d. The petitioner has filed records to substantiate that the respondent CD is a solvent company and the petitioner who was appointed as clearing and forwarding agent and certain terms of payment of commission of sales were adjusted against the amount payable,

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- e. From the material available on record, it is evident that the Respondent had, prior to the issuance of the demand notice, disputed the Operational Creditor's claim by way of a detailed reply dated 02.09.2019. The disputes raised therein are not vague or illusory but relate to the very basis of the operational debt claimed and arise out of the contractual relationship between the parties.
- f. The record reflects a substantial dispute regarding computation of commission. The Respondent has specifically contended that under Clause 16 of the Agreement, commission was payable only on actual sales and subject to the agreed slabs, whereas the Operational Creditor/Applicant calculated commission on an alleged minimum guaranteed turnover not contemplated under the Agreement. The dispute, therefore, concerns contractual interpretation and quantification of liability and cannot be adjudicated in summary proceedings under Section 9 of the IBC, 2016.
- g. The material on record further reveals that the accounts between the parties were never mutually reconciled. The Respondent has disputed the outstanding amount claimed

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by the Operational Creditor and has asserted that, upon proper reconciliation, amounts are recoverable from the Operational Creditor.

- h. The Respondent has also raised a dispute regarding retention of stock. In terms of Clause 22 of the Agreement, the Operational Creditor was required to return the unsold stock upon termination. However, according to the Respondent, stock of substantial value continued to remain with the Operational Creditor despite repeated demands, giving rise to reciprocal claims between the parties. Such dispute directly concerns the contractual obligations of the parties and requires adjudication by a competent forum.
- i. The rival claims regarding settlement of accounts, commission, security deposit, and return of stock demonstrate that the contractual relationship between the parties had become contentious much before the issuance of the demand notice. These issues involve disputed questions of fact and contractual obligations which cannot be adjudicated in proceedings under Section 9 of the IBC, 2016.

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j. We observe that there is both pre-existing dispute, reconciliation differences, scheme of targeted sales and commission to be paid unverifiable for arriving debt for services, retention of goods supplied to the applicant. We also rely on the judgments in the matter, particularly by the Hon'ble Supreme Court Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) SCC 353, which affirms that once there exists a plausible pre-existing dispute, the petition under Section 9 of IBC 2016 must be rejected.

**ORDER**

CP(IB) No. 784 of 2019 is rejected and disposed of.

Sd/-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

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**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

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