

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - I**

ITEM No.301  
C.P.(IB)/85(AHM)2023

**Order under Section 9 IBC**

**IN THE MATTER OF:**

ANM Pharma Pvt Ltd  
V/s  
Centurion Laboratories Pvt Ltd

.....Applicant

.....Respondent

**Order delivered on 30/04/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

**-Sd-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-I**

**CP (IB) No.85/AHM/2023**

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

**In the Matter of:**

**ANM Pharma Private Limited**  
(CIN: U24233DL2013PTC262682)  
Registered office at  
208, Okhla Industrial Estate,  
Phase III, New Delhi– 110 020

Also having its address at:  
P-2, Savli Bio-Tech Park,  
Manjusar, Tal-Savli,  
Vadodara-391 775.

**...Applicant/Operational Creditor**

**VERSUS**

**Centurion Laboratories Private Limited**  
(CIN: U73100GJ2006PTC049620)  
Registered office at  
G/6, Industrial Estate, Gorwa,  
Vadodara, Gujarat– 390 016.

**...Respondent/Corporate Debtor**

**Order Pronounced On: 30.04.2024**

**CORAM:**

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**  
**SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

For the Applicant/FC : Mr. Anuj K Trivedi, Advocate  
For the Respondent/CD : Mr. Devan Parikh, Sr. Adv. a.w.  
Mr. Masoom K Shah, Adv.

**O R D E R**

1. The Present Application is filed on 16.03.2023 by the Applicant ANM Pharma Private Limited (hereinafter referred to as **“the Applicant/Operational Creditor”**) against the Respondent Centurion Laboratories Private Limited (hereinafter referred to as **“the Respondent/Corporate Debtor”**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“IBC, 2016”**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as **“IB (APPLICANT) Rules, 2016”**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as **“IRP”**) and declare the moratorium for having defaulted payment of the operational debt of **Rs.2,95,60,315/-** alongwith interest. The date of default is stated to be 22.09.2022 and 30.11.2022.

2. A perusal of Part-I of the Form-5 reveals that this application is filed by one Mr. Bharat B. Shah who has been authorised by an Authority letter/Board Resolution which is annexed at Annexure-X
3. On perusal of Part-II of the Form-5 it reveals that the Respondent/Corporate Debtor is one M/s Centurion Laboratories Private Limited having CIN No. U73100GJ2006PTC049620 The Respondent/Corporate Debtor was incorporated on 21.12.2006 and having registered office at G/6, Industrial Estate, Gorwa, Vadodara, Gujarat- 390 016.
4. On perusal of Part-III of the Form-V it reveals that applicant has not named any IRP under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**).
5. On perusal of Part-IV of the Form-5 it reveals that total operational debt as claimed by the Applicant/Operational Creditor is Rs. 2,95,60,315/- consisting of Rs. 2,78,53,771/- being principle and amount of Rs. 17,06,544/- as interest up-to 10.03.2023 as well as interest @18% per annum from 11.03.2023 till the date of payment and/or actual realization thereof.
6. It is stated that sometimes in April-2022, Corporate Debtor approached the applicant with the intent of engaging Applicant's services for procuring various quantities of 'Rifampicin', pursuant to which the Corporate Debtor has

issued two purchase order bearing Nos. CMRP220045 and CMRP220046 dated 16.04.2022 for purchasing of the following:

- i) 4,000 kgs of Rifampicin drug @ Rs. 9,979/- per kg, total amounting to Rs. 4,71,00,880/- and
- ii) 6,000 kgs of Rifampicin drug @ Rs. 14,253/- per kg, total amounting to Rs. 10,09,11,240/-

Total consideration amount of Rs. 14,80,12,120/-. The said purchase orders are attached as Annexure-I (Colly.).

7. As per the said purchase order, the payment was to be made "90 days PDC".
8. Pursuant to the above, the Applicant proceeded to procure the material from supplier based in china and thereafter supplied 7500 Kgs of material under 6 different tranches. 5500 Kgs were delivered on different dates under the purchase order No. CMRP220046 and 2000 kgs under purchase order No. CMRP220045.
9. It is stated that the aforesaid quantities supplied by the Applicant were accepted without any demur or protest.

10. The Applicant thereafter raised 6 tax invoices aggregating to Rs. 11,60,32,452/-. The first tax invoices dated 30.05.2022 and the last tax invoices dated 01.09.2022.
11. It is the contention of the applicant that as per the tax invoices; they were entitled to receive 18% interest on “amount remaining unpaid after the due date of the bill”.
12. Some of the goods aggregating to nearly 75 Kg were found to be damaged in transit for which both the parties agreed to give credit amounting to Rs. 8,83,141/-.
13. Against the above invoices, the Corporate Debtor made part payment of Rs. 8,72,22,147/- post deduction of TDS.
14. It is stated that four cheques were handed over by the Corporate Debtor being cheque No. 931973, 931980, 931981 and 932230 on 22.09.2023, 10.11.2022, 20.11.2022 and 01.12.2022 respectively to the Applicant herein. These cheques were presented on 13.10.2022 and 07.01.2023 and were returned by the bank with the remark “payment stopped by drawer”.

15. It is stated that an amount of Rs. 2,78,53,771/- remains outstanding for which despite several reminders, the Corporate Debtor failed to pay the same. Thereafter, a demand notice under Section 8 was issued on 13.02.2023, the said demand notice is attached as Annexure-7. The date of default is stated to be 13.02.2023. The said demand notice was delivered to the Corporate Debtor on 16.02.2023 as per the tracking report on page No. 64/A. The affidavit under Section 9 (3) (b) is attached at page No. 68-69.

16. The Applicant/Operational Creditor has relied upon the following documents which are as under:-

- a. Purchase order no.CMRP220045 dated 16.04.2022;
- b. Purchase order no. CMRP220046 dated 16.04.2022;
- c. Tax Invoice No. ANM0047 dated 30.05.2022;
- d. Tax Invoice No.ANM0048 dated 30.05.2022;
- e. Tax Invoice No.ANM0065 dated 24.06.2022;
- f. Tax Invoice No.ANM0066 dated 24.06.2022;
- g. Tax Invoice No.ANM0095 dated 03.08.2022;
- h. Tax Invoice No.ANM00106 dated 01.09.2022;
- i. Ledger of the Applicant pertaining to the Corporate Debtor.
- j. Bank Account Statement reflecting receipt of payment through encashment of cheques and RTGS.
- k. Cheque No.931973 dated 22.09.2023;
- l. Cheque No.931980 dated 10.11.2022;
- m. Cheque No.931981 dated 20.11.2022;

- n. Cheque No.932230 dated 01.12.2022;
- o. Return memos of the said cheques.
- p. Emails exchanged between the Applicant and the Corporate Debtor.
- q. Demand Notice dated 13.02.2023.
- r. Copy of the payment receipt for the requisite filing fee produced at Annexure-IX
- s. Copy of the company resolution of the applicant produced at Annexure-X.

17. Reply was filed by the Corporate Debtor, in reply has placed following defence.

- (i) No board resolution attached,
- (ii) Petition is defective

18. Reply to the demand notice was given by the Corporate Debtor on 02.03.2023 and on page 26 the Postal receipt is attached. In the said reply, the Corporate Debtor had specifically mentioned that in order to maintain good and healthy business relations, it is making payment of certain cheques to the tune of Rs. 1.00 Cr.

19. It is stated that the respondent is making “Anti Tuberculosis Medicine” for public at large and for making the same the two purchase orders were placed by the Corporate Debtor with following conditions.

No.	Purchase	Amount	Delivery Schedule
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	order		
1	CMRP220045	4000 Kg @ rate of Rs. 9979/-	02.05.22 – 3000 Kg 02.06.22 – 1000 Kg
2	CMRP220046	6000 Kg @ rate of Rs. 14253/-	10.06.22 – 2000 Kg 02.07.22 – 2000 Kg 02.08.22 – 2000 Kg
3	Total Order		10,000 Kg

20. The Corporate Debtor admits that 7500 Kg has been received. However, two purchase order has not been fully supplied.

21. Due to which Corporate Debtor had to face various difficulties in meeting its targets as firstly untimely deliveries were made and secondly even the P.O.s have not been complied by Operational Creditor and has made incomplete deliveries of product. Moreover, due to incomplete delivery the Corporate Debtor herein had to purchase said quantities from other suppliers due to which it had to incur trouble and extra payment in regards to same goods, the quantity of which is not properly delivered by the Operational Creditor.

22. It is stated that it is the own case of the Operational Creditor that 75 Kgs goods were found to be faulty for which

credit note was issued. It is stated that the Operational Creditor has sent white colour powder instead of dark brown colour and these were replaced and credit note was given when this pointed out. Eventually this led to disruption in the schedule and late delivery by the Corporate Debtor.

23. The Corporate Debtor thereafter, pointed out that 4000 Kg was to be supplied under 1<sup>st</sup> PO at the rate of Rs. 9979 per kgs and that under the 2<sup>nd</sup> PO 6000 kgs was to be supplied at the rate of Rs. 14253 per Kg. Admittedly, there was huge rate difference between the pricing of the two Purchase orders, albeit for the same goods. The quantity in the 1<sup>st</sup> PO was to be supplied first and thereafter quantities under the 2<sup>nd</sup> PO were to be supplied. However, contrary to this, shipment were first made for the 2<sup>nd</sup> PO in all 2000 Kgs of goods were supplied against 1<sup>st</sup> PO which was for Rs. 9979 per Kg and 5500 Kgs were supplied under the 2<sup>nd</sup> PO which was at the rate of 14253 per Kg. Due to which the Corporate Debtor had to pay a sum of Rs. 1.28 Cr. extra to the Operational Creditor.

24. Further to this the supplies were delayed. It is stated that due to delayed supply the Corporate Debtor was unable to supply in time to the various Government Department and had to ultimately bear penalty of Rs.69,96,445/- vide e-mails from Central Medical Services Society, to this affect are attached at Annexure – R/4. Due to above, Corporate Debtor suffered a loss of Rs. 65.84 Lakhs due to delayed supply and for which Annexure - R/5 from Fortune Health Care is attached with reply. The Corporate Debtor is entitled to the damages on the above count.

25. It is stated by the Corporate Debtor that certain cheques were handed over to the Operational Creditor for security purpose and which were deliberately deposited in order to harass the Corporate Debtor. The Corporate Debtor is claiming following damages.

No.	Loss Occurred to Corporate Debtor due to OC	Amount claimed by OC
1.	Government Penalty – Rs. 69,96,445/-	
2	Loss of Contract – Rs.65,84,256/-	
3	Loss incurred due to improper delivery of 2 <sup>nd</sup> P.O prior to 1 <sup>st</sup> P.O delivery date Rs. 1,28,22,000/-	

4	Loss of Reputation Rs. 2,00,00,000/-	
5	Total Rs.4,64,02,701/-	Total Rs. 2,78,53,771/-

26. The Corporate Debtor stated that there are pre-existing dispute. That disputes was raised on various occasions orally and vide e-mail. On 17.06.2022 the Corporate Debtor herein had specifically asked the Operational Creditor to send the goods as per old rate of invoice being the rate as per 1<sup>st</sup> PO and raised dispute over sending of goods as per higher rate in light of 2<sup>nd</sup> PO. Thereafter, on again 24.06.2022 the Corporate Debtor has sent an e-mail to Operational Creditor asking to send goods as per only old rate. Copies of e-mails are attached as Annexure – R/7. It is stated by the Corporate Debtor that Operational Creditor herein was completely aware that goods are being supplied by the Corporate Debtor to be various Government Department.
27. Rejoinder was filed under Diary No. 3895 dated 09.10.2023, which is signed by one Mr. Bharatbhai Shah, stated to be Director of the Applicant, in rejoinder it is stated as under:

- (i) The resolution is attached at page – 67 and copy of the same is also attached to the rejoinder.
- (ii) It is stated that reply of the Corporate Debtor dated 02.03.2023 is in response to the notice of the applicant for dishonouring of the cheques under the Negotiable Instrument Act.
- (iii) Reply dated 02.03.2023 to the demand notice was never received by the Applicant. The Corporate Debtor is trying to portray an illusion of dispute which none exist. It is stated that out of the 10000 Kgs, 7500 Kgs was supplied and the applicant herein was well within its legal right not to supply further goods in absence of payment of the goods already supplied.
- (iv) The issue regarding faulty goods to the extent of 75 Kgs is of no consequences since the same were damaged in transit and the issue settled. It is stated that an issue of losses suffered by the Corporate Debtor was never raised prior to the reply of the Corporate Debtor.
- (v) It is stated that the Applicant is not a party to the alleged dealings between the Corporate Debtor and Central Medical Services Society and for that matter, the other parties and they are not privy to any loss whatsoever suffered by the Corporate Debtor.

- (vi) The Operational Creditor thereafter has attached Whatsapp messages exchange between the Corporate Debtor and Operational Creditor to show that the delivery schedule was modified by the Corporate Debtor through Whatsapp messages.
28. To the rejoinder a sur-rejoinder was filed by the Corporate Debtor under Diary No. 4457 dated 08.11.2023. The sur-rejoinder has been considered, both the parties have filed their written submissions, the same has also been considered.
29. The Applicant/Operational Creditor has filed Form-D being record of debt and default issued by National E-Governance Services Limited (“**NeSL**”) in which date of default is recorded as 22.09.2022 with status “Deemed to be Authenticated”.
30. We have heard the learned Counsels appearing from both the sides and perused the documents as placed before us. Following are the admitted facts in the matter:
- (i) The Respondent has placed two purchase orders upon the Applicant, details of which are given under para-6.

- (ii) The applicant has supplied the certain goods for which tax invoices aggregating to Rs. 11,60,32,452/- was made.
- (iii) Quality issue with respect to 75 Kg material was raised by the Corporate Debtor for which credit note was issued by the Applicant.
- (iv) There was huge rate difference between the two purchase orders the goods were same.
- (v) 4000 Kgs was to be supplied at the rate of Rs. 9979/- per kg of which 2000 Kgs has been supplied. As per the delivery for purchase order for lower rate was to be completed before supply of material under the second purchase order.
- (vi) The second purchase orders was for 4000 Kgs at the rate of Rs. 14,253/- per kg of which 5500 Kgs has been supplied.

31. Balance material (2500 Kgs – being 2000 Kg under lower price purchase order and 500 Kgs under higher price purchase order) has not been supplied citing non-payment of the amount involved for the supplies already made.

32. The respondent has withheld the payment citing non-supply of material under lower rate contract and has notified the same through reply to the demand notice.
33. Respondent states that reply to the demand notice was sent on 13.02.2023 through RPAD for which relevant receipt is attached at page – 26 of the reply.
34. In our view the respondent has clearly made a case demonstrating that their exist plausible dispute between the parties and hence, relying upon the judgment of **Mobilox Innovations Private Limited vs. Kirusa Software Private Limited** reported in (2018) 1 SCC 353, the present petition is hereby dismissed with no order as to costs.
35. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

MD