

**BEFORE THE AJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
Court Room-2**

**C.P. (I.B) No.506/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 28.01.2020**

Name of the Company: Pharmachen Enterprise  
V/s  
KNM Pharma Pvt Ltd

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

**ORDER**

None appeared on behalf of the parties.

The Order is pronounced in the open court vide separate sheet.

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 28th day of January, 2020

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

**BEFORE ADJUDICATING AUTHORITY (NCLT)  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. No. (IB) 506/9/NCLT/AHM/2019**

**In the matter of:**

**Pharmachem Enterprise**  
203, Shivalik Avenue  
Above Reliance Fresh Store  
Nr. Naranpura Cross Road  
Ahmedabad 380 013. :

**Petitioner**  
Financial Creditor

**Versus**

**M/s. KNM Pharma Private Limited**  
13, Maha Gujarat Industrial Estate  
Opp. Nova Petrol Pump  
Taluka Sanand Moraiya  
Dist. Ahmedabad  
Gujarat State :

**Respondent**  
[Corporate Debtor]

**Order delivered on 28<sup>th</sup> January, 2020**

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

**Appearance:**

Advocate Ms. Manisha C. Shah for petitioner.

**ORDER**

**[Per : Ms. Manorama Kumari, Member (J)]**

1. Mr. Bijal Shah, sole proprietor of operational creditor M/s. **Pharmachem Enterprise** 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.

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*Manorama*

2. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 30.04.2010 having identification No. U24230GJ2010PTC060512 and having registered office at Taluka Sand Moraiya, Dist. Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 9,65,00,000/- and paid up share capital is Rs. 46,34,870/-.
3. The applicant/operational creditor, a proprietary concern is engaged in the business of pharma raw material trader and having address for correspondence at Naranpura Cross Road, Ahmedabad.
4. The applicant/operational creditor has stated that the corporate debtor had approached him for the purpose of procuring certain pharmaceutical products. After being satisfied with the quality of material offered by the applicant, the corporate debtor started procuring commercial resin from time to time from the applicant during the period from November 2016 to February, 2017 as per the purchase order issued by the respondent and invoices-cum-delivery challans raised by the applicant and acknowledged by the respondent company marked and annexed to the application as annexure 1B collectively from page No. 87 to 105 along with the invoices containing the details of delivery challan/proforma invoices .

*Shoekahgeet*

*Chhanna*

5. It is further stated by the operational creditor that the corporate debtor has not raised any dispute or demur with respect to the quality of pharmaceutical products (drugs) supplied by the applicant. On the contrary, between the duration of November 2016 to February 2017, the corporate debtor has procured pharmaceutical products from the applicant for a considerable amount.
  
6. It is further stated by the operational creditor that the applicant used to maintain a running account for the goods supplied to the corporate debtor from time to time and for the supplies made between November 2016 to February 2017, a principal amount of Rs. 11,97,053/- remains outstanding and payable by the corporate debtor.
  
7. It is further stated that there was a specific clause in each invoice whereby the applicant was entitled to claim interest in case of delay in payment of invoice beyond the due date, at the rates mentioned in the respective invoices. Since, there is a gross and admitted delay in making payment for each invoices, interest amount of Rs. 5,70,857/- on delayed payment of invoices is due and payable as on 02.03.2019 as per the working computation of amount and dates of default along with interest in tabular form annexed to the application.

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8. The applicant has further stated that the corporate debtor had assured and agreed to release the payments and clear the invoices as per the terms and conditions contained therein from time to time. That, it was assured that all the payments will be made in timely manner, however, the corporate debtor has failed to clear these admitted and undisputed dues of the applicant.
9. The applicant has further stated that a principal amount of Rs. 11,97,053/- and interest thereon to the tune of Rs. 5,70,857/- remains outstanding and payable by the corporate debtor. Therefore, the total outstanding amount comes to **Rs. 17,67,909/- (Rupees seventeen lacs sixty-seven thousand nine hundred nine only)**.
10. It is further stated by the applicant that time and again, through letters as well as emails, the applicant had reminded the corporate debtor to release the undisputed debts, however, the respondent has failed to release the outstanding payments.
11. The applicant has further stated that having failed to receive the outstanding payment from the corporate debtor, the applicant was compelled to issue demand notice under section 8 of the I & B Code on 04.03.2019 calling upon the corporate debtor to pay an aggregate amount of Rs. 17,67,909/-, however, the respondent company failed to

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reply the said notice and paid only Rs. 2,50,000/- till the date of filing the application in five instalments of Rs. 50,000/- each. Therefore, the net amount claimed in the application is **Rs. 15,17,909/- (Rupees fifteen lacs seventeen thousand nine hundred nine only).**

12. In support of its claim, the operational creditor has annexed to the application copy of all related documents like copy of invoices, demand notice, e-mail communication, proof of service etc.

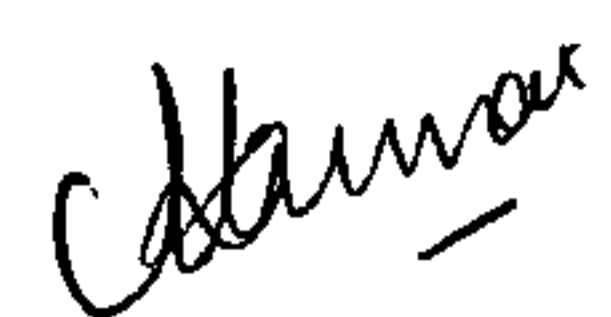
### **Findings**

13. On perusal of the records it is found that despite giving several opportunities the respondent has not appeared either in person or through advocate. Therefore, the matter is heard in absence of the respondent as the service is complete. Heard at length the learned lawyer appearing for the petitioner and perused the documents annexed to the petition.
14. On perusal of the records it is found that as per the order of the adjudicating authority dated 23.08.2019, the operational creditor has effected paper publication and proof thereof has been submitted.

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15. On perusal of the records it is also found that even after the paper publication the respondent has not come forward and has submitted nothing in writing.
16. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt to the Applicant.
17. In the instant case, the documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
18. On perusal of the records it is also found that the corporate debtor has never raised any dispute on issuance of notice u/s 8 of the I & B Code nor have ever raised any dispute prior to the issuance of notice.
19. From the above discussions it is evident that the respondent has defaulted the debt and has admitted the operational debt.
20. It has been observed in **Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ(JP) 2 SC**



that while examining an application under Section 9 of the Act, will have to determine the following: -

- (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?  
**and**
- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

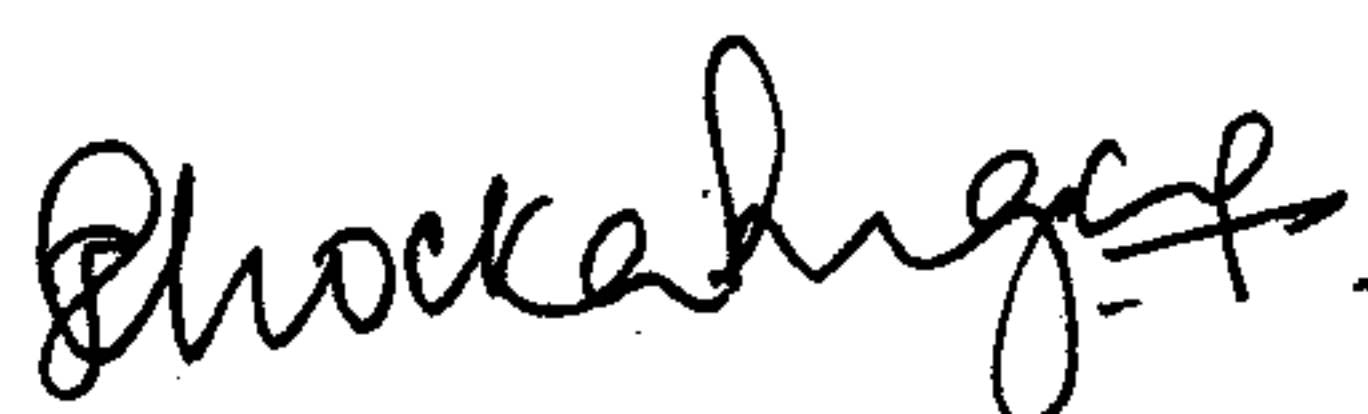
21. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. That, service is complete and no dispute has been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate

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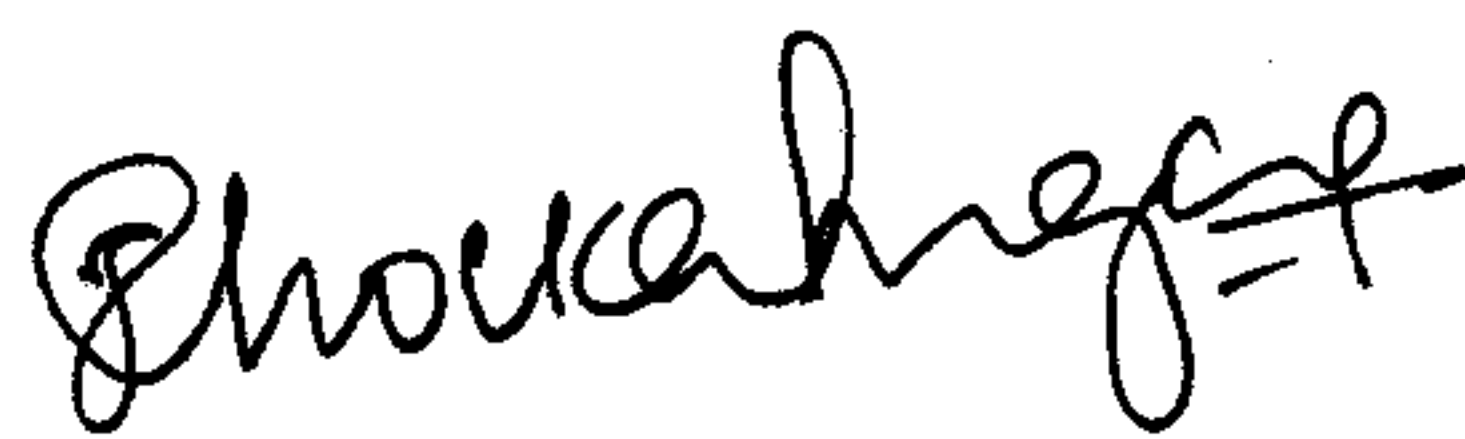
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debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

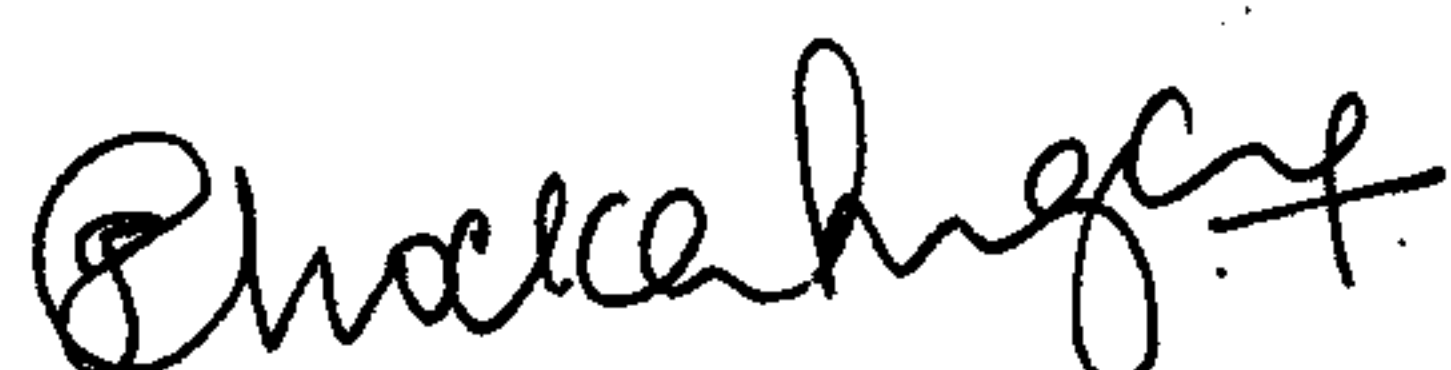
22. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
23. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
24. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -



- (i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
  - (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
25. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



26. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
27. The applicant/operational creditor has proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Ms. Anjali Choksi, A, 4<sup>th</sup> Floor, Galaxy Line Complex, Behind Samartheshwar Mahadev, Law Garden, Ahmedabad 380 006 having registration No. IBBI/IPA-001/IP-P00820/2017-2018/11382 to act as an interim resolution professional under Section 13(1)(c) of the Code.
28. This Petition is accordingly admitted.
29. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
30. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of



Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation and sale of assets to realise the amount for all the stakeholders.



**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**

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**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**