

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

C.P. (IB) No. 201/KB/2019

In the matter of:

An application u/s. 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Nu Sri Shyam Pharmaceuticals Pvt. Ltd., a company incorporated under the provisions of the Companies Act, 1956, having CIN : U51909WB2013PTC193074, and having its office at 21, Charu Chandra Place, Kolkata 700033, West Bengal, within the aforesaid jurisdiction.

... Operational Creditor

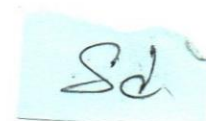
-Versus-

In the matter of:

Gems Care and Cure Health Centre Pvt. Ltd., a company incorporated under the provisions of the Companies Act, 1956, having CIN : U85110WB2009PTC138062, and having its registered office at 629, Diamond Harbour Road, Kolkata – 700 034, West Bengal, within the aforesaid jurisdiction.

... Corporate Debtor



 1

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &
Shri Harish Chander Suri, Hon'ble Member (Technical)**

Counsels appeared:

1. Mr. Anurag Bagaria, Advocate]
2. Ms. Pallavi Gandhi, Advocate] For the Operational Creditor

Date of Pronouncement of Order: 29th August, 2019

ORDER

Per Shri Jinan K.R., Hon'ble Member (Judicial):-

1. This is an application filed by **Nu Sri Shyam Pharmaceuticals Pvt. Ltd.** under Section 9 of the Insolvency and Bankruptcy Code, 2016 (In short, I & B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (In short, CIRP) against the Corporate Debtor, **Gems Care and Cure Health Centre Pvt. Ltd.** claiming that a sum of **Rs. 10,33,261/- (Rupees Ten Lakhs Thirty Three Thousand Two Hundred and Sixty One only)** is the unpaid operational debt due from the Corporate Debtor and that despite demand, the Corporate Debtor did not pay the amount and

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hence defaulted in payment of the operational debt and therefore, the Operational Creditor has filed this application.

2. The facts, in brief, as stated by the Operational Creditor, are as follows:-
 - a) The Operational Creditor, a Company incorporated under the Companies Act, 1956, with CIN: U51909WB2013PTC193074 has been engaged in the business of dealer and/or supplying medicines and diverse pharmaceutical goods. Gems Pharmacy is Corporate Debtor's unit which is under the control and ownership of the Corporate Debtor. Pursuant to the negotiations between Corporate Debtor and Operational Creditor, it was agreed that the Operational would sell and deliver goods as per Corporate Debtor's requirements from time to time. The Corporate Debtor agreed to pay the price for the goods on receipt of the invoice failing which they would pay interest @ 24% per annum.
 - b) Pursuant to the aforesaid agreement, Operational Creditor from time to time, sold and delivered to the Corporate Debtor diverse goods of the specifications required by the Corporate Debtor. The goods supplied by the Operational Creditor were duly received and appropriated by the Corporate Debtor for their commercial use and benefit. Operational Creditor has raised invoices at the agreed rates for the goods supplied by

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the Operational Creditor to the Corporate Debtor. The Corporate Debtor has received and accepted the said invoices without raising any objection in respect thereof. Copies of the said invoices are annexed and marked as "**Annexure D**".

- c) In partial discharge of the said existing liabilities towards the Operational Creditor, the Corporate Debtor has issued four (4) cheques which were returned dishonoured by the Corporate Debtor's Banker, for which the Operational Creditor has instituted proceedings against the Corporate Debtor under the Negotiable Instruments Act, 1881. Copies of the said cheques with return memo are annexed and marked as "**Annexure B**".
- d) Operational Creditor has also issued a Demand Notice in Form 3 dated 24.11.2018 to the Corporate Debtor in terms of Section 8 of the Code, which has been delivered to the Corporate Debtor on 26.11.2018, a copy of which is annexed as "**Annexure C**". The Corporate Debtor has not filed any reply to the said Demand Notice till date. In the circumstances, the Corporate Debtor has unequivocally admitted and acknowledged the debt and has neither replied to the Demand Notice nor have they made any payments on such account. Hence, the Operational Creditor is due Rs. 10,33,261/- on account of the operational debt from the Corporate Debtor and is also entitled to interest @ 24% p.a. on the said sum. As

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no amount has been paid by the Corporate Debtor towards the unpaid operational debt despite requests and demands made by the Operational Creditor, therefore, the Operational Creditor has filed this application.

3. In support of the claim of unpaid operational debt, the Operational Creditor has submitted the following documents:-
- a) Copies of the Invoices raised by the Operational Creditor to the Corporate Debtor, enclosed with the application as **"Annexure – D"**.
 - b) Copy of the Demand notice dated 24.11.2018 issued to the Corporate Debtor, referred to in the application as **"Annexure – C"**.
 - c) Copies of the four (4) cheques issued by the Corporate Debtor in partial fulfillment of the debt liability, along with return memo are annexed in the application and marked as **"Annexure B"**.
 - d) Copy of the Statement of Bank Account maintained by the Operational Creditor, annexed with a separate affidavit dated 30.01.2019 filed in support of the application.
 - e) Affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid

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operational debt, filed by way of an additional affidavit dated 30.01.2019.

4. The Corporate Debtor has failed and neglected to make payment of operational debt of **Rs. 10,33,261/-** in spite of the debt becoming due and receipt of the demand notice and so the Operational Creditor filed the instant application under Section 9 of the I & B Code for initiating Corporate Insolvency Resolution Process as against the Respondent.
5. Notice of admission was successfully served upon the Corporate Debtor via post as well as by e-mail, and Ld. Counsel for the Corporate Debtor also entered appearance. However, he did not choose to file any reply affidavit.
6. This is an application filed under Section 9 of the I & B Code, 2016 for initiating CIRP as against the Corporate Debtor alleging that the Corporate Debtor, who was in receipt of diverse goods of the specifications required by the Corporate Debtor, provided by the Operational Creditor, had failed to make payments for the said goods received, despite demand and had committed default in payment of the unpaid operational debt to the extent of **Rs. 10,33,261/-** payable by the Corporate Debtor to the Operational Creditor, claiming that the amount is due on the basis of invoices raised, copies of which were produced along with the application as "**Annexure D**". The Operational Creditor has supplied the goods, and raised various

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invoices at the agreed rates for the goods supplied by it to the Corporate Debtor, who received and accepted the said invoices without raising any objection in respect thereof. The Corporate Debtor has defaulted in making payments towards the said invoices, and has not made any payment to the Operational Creditor for the goods supplied by it to the Corporate Debtor since 24th August, 2018, which is evident from the endorsement made by the Operational Creditor's Bank on the letter of the Operational Creditor dated 30.11.2018. The said letter in original is produced as part of a separate affidavit affirmed on 30.01.2019, filed in support of the application. A sum of Rs. 10,33,261/- remains outstanding till date, as reflected from the Statement of Account maintained by the Operational Creditor in respect of the Corporate Debtor. A copy of the Statement of Bank Account of the Operational Creditor is also annexed with the aforesaid affidavit as "**Annexure A**".

7. According to the Ld. Counsel for the Operational Creditor, the requirement to be meted out to file an application of this nature by the applicant has been complied with. He has submitted that since the Corporate Debtor did not pay the operational debt due to the Operational Creditor, he has filed this application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and deserves to be allowed.

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8. According to the Ld. Counsel for the Applicant, the Corporate Debtor issued four cheques in partial discharge of its existing liabilities towards the Operational Creditor, which were returned dishonoured by the Corporate Debtor's Bank. Copies of the said cheques with return memo are enclosed with the application as "**Annexure B**". Subsequently, a Demand Notice dated 24.11.2018 as per Section 8(1) of the I & B Code was issued by the Operational Creditor and delivered to the Corporate Debtor. However, the Corporate Debtor did not reply to the said Demand Notice and did not make any payments towards the unpaid operational debt. Copy of the demand notice is annexed with the application and marked as "**Annexure - C**". To fulfill all requirements under Section 9(3), the Operational Creditor has furnished along with the application, (i) copies of the invoices demanding payment and the demand notice delivered by the operational creditor to the corporate debtor as required under Section 9(3)(a); (ii) an affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt as required under Section 9(3)(b), which has been filed by way of an additional affidavit dated 30.01.2019; (iii) statement of bank account showing details of part payments made to the Operational Creditor by the Corporate Debtor towards the operational debt as required under Section 9(3)(c), filed by way of a separate affidavit dated 30.01.2019.

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9. Therefore, the Operational Creditor succeeds in proving that the application is complete, that there is no payment of the unpaid operational debt, also that the demand notice has been delivered by the Operational Creditor and no notice of dispute has been received by the Operational Creditor. The applicant, here in this case, succeeds in proving that it has complied with all the requirements to be meted out for filing an application under Section 9(3) of the I & B Code, 2016 and further proves failure on side of the Corporate Debtor in clearing the debt due to the Operational Creditor, even after receiving the demand notice under Section 8(1) of the Code. Therefore, the application deserves to be allowed.
10. In view of the above-said discussion, we admit this application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 upon the following orders:-

ORDER

- i) The Application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **Gems Care and Cure Health Centre Pvt. Ltd.** is hereby admitted.

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- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- a) 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;
 - b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property

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including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

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- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x) We hereby appoint **Mr. Rajesh Lihala**, an Insolvency Professional registered with Insolvency and Bankruptcy Board of India, having **Registration No. IBBI/IPA-001/IP-P00525/2017-2018/10950** with e-mail id: **lihalaco@gmail.com** and **Mobile no. 9830160201** as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- xi) The Interim Resolution Professional (IRP) should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within **105 days** from the insolvency commencement date.
- xii) The IRP is directed to see that Regulation 40A of IBBI (IRP for Corporate Persons) Regulations, 2016 is complied strictly and file progress report in terms of compliance of the Regulation.
- xiii) The Applicant/Operational Creditor is directed to deposit Rs. 3,00,000/- (Rupees Three Lac only) in the ESCROW Account in SBI to be operated through the Registrar, NCLT,





Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP with in one week of the date of this order.

- xiv) Registry is hereby directed under Section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail.
- xv) List the matter on **30th September, 2019** for the filing of the progress report.
- xvi) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)

Member (T)

(Jinan K.R.)

Member (J)

Signed on this, the 29th day of August, 2019.

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