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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI BIKKI RAVEENDRA BABU – MEMBER JUDICIAL


**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 28.08.2018 AT 10.30
AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No. 414/9/HDB/2018
NAME OF THE COMPANY	Thexa Pharma Pvt Ltd
NAME OF THE PETITIONER(S)	Shree G. Engineering Corporation
NAME OF THE RESPONDENT(S)	Thexa Pharma Pvt Ltd
UNDER SECTION	Sec 9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
T. Sujan Kumar Reddy	advocate	9160001435	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
S. Sandeep Reddy	advocate	91	

ORDER

Learned counsel Mr.T.Sujan Kumar Reddy present for Petitioner. Learned counsel Mr.S.Sandeep Reddy present for Respondent.

Order pronounced in open court.

Petition is allowed.

Moratorium ordered.

IRP proposed.

Vide separate order.

List the matter on 03.09.2018.


(MEMBER JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**C.P. (IB)/414/9/HDB/2018.
Under Section 9 of the IB Code 2016**

In the matter of:

M/s SHREE G. ENGINEERING CORPORTION,
Shop No.11, 1st Floor,
5-1-523, Hill Street,
Secunderabad,
Telangana – 500 003

... Petitioner
Operational Creditor

Versus

M/s THEXA PHARMA PRIVATE LIMITED,
Survey No.40/13,
Kolkulapally Village,
Modgul Mandal,
Mahaboobnagar District – 509 327

... Respondent/
Corporate Debtor.

Date of Order:28.08.2018.

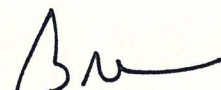
CORAM:

**Hon'ble Shri Bikki Raveendra Babu, Member
Judicial.**

Parties / Counsels Present:

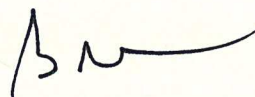
For the Petitioner/ : Mr. T. Sujan Kumar Reddy
Operational Creditor Counsel

For the Respondent/ : Mr. Mr. Sandeep Reddy Sama
Corporate Debtor



ORDER

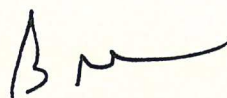
1. **M/s SHREE G. ENGINEERING CORPORATION**, Operational Creditor, filed this Petition under Section 9 of the Insolvency and Bankruptcy Code 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking commencement of Corporate Insolvency Resolution Process (CIRP) in respect of M/s Thexa Pharma Private Limited.
2. Petitioner (Operational Creditor) given Special Power of Attorney to Mr. Pinkal J Parikh to file this petition. Petitioner filed copy of the Special Power of Attorney dated 29.06.2018 along with the petition.
3. The Operational Creditor is a sole Proprietorship. Operational Creditor is engaged in the business of trading in engineering parts used in Pharma Projects.
4. The Respondent is a Company under the provisions of the Companies Act. The Corporate Debtor engaged in the business of manufacturing of drugs and medicines. Operational Creditor has been transacting with the Corporate Debtor for the past eight years. The Operational Creditor that has been supplying



engineering parts used in Pharma projects to the Corporate Debtor and has been maintaining a running ledger account for the same in the books of the Operational Creditor. All the payments made for the supplies to the Corporate Debtor has been duly credited to the Corporate Debtor Account.

5. During the Financial Year 2016-17, the Operational Creditor supplied goods to the Corporate Debtor aggregating to Rs.1,24,98,116/- which includes an amount of Rs.47,49,665/- which is a 'balance carry forward' due from Corporate Debtor during the Financial Year 2015-16. Against the said total outstanding amount Corporate Debtor paid only a sum of Rs.66,05,298/-. The balance amount outstanding amount due from Corporate Debtor is Rs.58,92,818/-

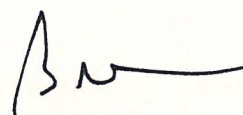
6. During the Financial Year 2017-18, Operational Creditor supplied material aggregating to Rs.68,01,285/- which includes the carry forward amount of Rs.58,92,818/- against the total outstanding amount corporate debtor has defaulted. The balance outstanding amount due from the Corporate Debtor is Rs.68,01,285. It is stated by the



Operational Creditor that material supplied by the Operational Creditor was to the Corporate Debtor's satisfaction and the Corporate Debtor never raised any dispute with regard to the price, quality or quantity of the same.

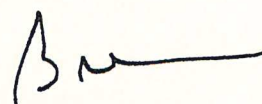
7. Operational Creditor has been requesting the Corporate Debtor from time to time to pay the outstanding amount. Pursuant to the repeated requests of the Operational Creditor, the Corporate Debtor issued a running ledger account duly attested by the Managing Director of the Corporate Debtor on 15.05.2018 maintained by it in respect of the payments to be made to the Operational Creditor. Even as per the ledger account, the Corporate Debtor has to pay Rs.68,01,285/- to the Operational Creditor. Operational Creditor wrote a letter dated 13.06.2018 requesting the Corporate Debtor to pay the amount. The Managing Director of the Corporate Debtor acknowledged the letter and admitted the claim as due and payable.

8. Operational Creditor issued a Demand Notice in Form-3 on 03.07.2017 to the Registered Office



address of the Corporate Debtor demanding the Corporate Debtor to pay the outstanding amount of Rs.68,01,285/- due and payable by the Corporate Debtor as on 22.04.2017. The Demand Notice was delivered to the Managing Director of the Corporate Debtor and acknowledged the same. Corporate Debtor did not give any reply to the said notice.

9. Operational Creditor filed the following documents:-
- a) Copy of the ledger account for the period 01.04.2016 to 22.04.2017 maintained by the Operational Creditor in respect of the transactions it had with the Corporate Debtor;
 - b) Copy of Extract of the running (ledger) account maintained by it in respect of the payments to be made to the Operational Creditor;
 - c) Copy of the letter sent by the Operational Creditor duly acknowledged by Corporate Debtor dated 13.06.2018;
 - d) Tabular form showing workings for computation of amount and dates of default.
 - e) Copy of Bank statement of the Operational Creditor for the relevant period ;



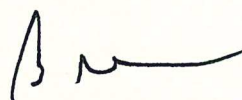
- f) Affidavit in support of the application in accordance with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.
10. Operational Creditor did not propose the name of the Insolvency Professional to act as IRP
11. Operational Creditor served a copy of the petition on the Corporate Debtor. This Adjudicating Authority issued notice to the Corporate Debtor. The Corporate Debtor appeared through counsel and filed the Counter.
12. In the Counter, the Corporate Debtor disputed the claim of Rs.86,01,285/-. Corporate Debtor also took a plea that the material supplied by the Operational Creditor to the Corporate Debtor was defective and the amount has to be reconciled between both the parties before finalizing the same.
13. In a petition filed under Section 9 of the Insolvency & Bankruptcy Code this Adjudicating Authority, in view of the Judgement of the Hon'ble Supreme Court in Mobilox Innovations

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Private Limited Vs Kirusa Software Private Limited in Civil Appeal No.,9405 of 2017 decided on September 21, 2017, has to determine the following aspects:-

- a) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? ;
- b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? ;
- c) 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; and
- d) Whether Petition is complete in all respects.

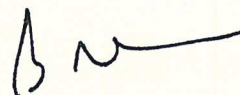
14. A perusal of the invoices filed by the Operational Creditor clearly goes to show that certain material was supplied by the Operational Creditor to the Corporate Debtor and the claim amount relates to the cost of the said material. Operational debt is



defined in Section 5(21) of the Code which reads under:-

“*operational debt*” means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment 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.

15. Therefore, the claim in this case is an operational debt.
16. Operational Creditor in order to establish that Operational debt is due and payable and it has not been filed:
 - a) Copy of the ledger account maintained by the Operational creditor;
 - b) Copy of the running account maintained by the Corporate Debtor in respect of payment to be made to the Operational Creditor;
 - c) Operational Creditor also filed the letter dated 13.06.2018 wherein there is an endorsement of the Managing Director of the Corporate Debtor that the outstanding amount as per the



books of accounts is rupees Sixty Eight Lakhs.

17. That the above said document clinchingly establish that operational debt is due from Corporate Debtor. A copy of the Bank Statement filed by the Operational Creditor establish that the Operational debt is remain unpaid.
18. In the Judgement of the Hon'ble Supreme Court referred to supra it is clearly held that the dispute must be in existence prior to the issuance of the demand notice and such dispute is not patently feeble legal argument or an assertion of fact unsupported by the evidence. It is further held in that decision if the dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the application.
19. In the case on hand prior to the issuance of demand notice a letter was issued by the Operational Creditor to the Corporate Debtor on 13.06.2018. No reply is given to the said notice. On the other hand the Managing Director admitted the claim amount by making an endorsement on letter dated 13.06.2018 issued by the Operational Creditor to the Corporate Debtor. Corporate

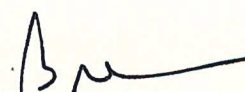
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Debtor also did not choose to give any reply to the Form-3, issued on 03.07.2018.

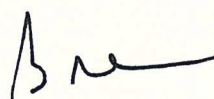
20. It is for the first time in the Counter, Corporate Debtor raised the plea that the material supplied by the Operational Creditor was defective and the claim amount has to be reconciled. Prior to the issuance of the demand notice no dispute was raised by the Corporate Debtor. Moreover Corporate Debtor admitted the claim amount even before the issuance of the demand notice.
21. Therefore, the dispute raised by the Corporate Debtor for the first time in the counter is an illusory dispute raised for the sake of a feeble legal argument. There is no material on record to show that dispute has been raised by the Corporate Debtor regarding the quality of poor material supplied to it by the Corporate Debtor.
22. In view of the above discussion this Adjudicating Authority is of the opinion that there exist no dispute between the Operational Creditor and the Corporate Debtor and the dispute raised in the counter is illusory dispute.

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23. A perusal of the petition clearly goes to show that it is complete in all respects.
24. Hence, this Petition deserves to be admitted and accordingly admitted.
25. This Adjudicating Authority is hereby proposing the name of Mr. Gonugunta Madhusudhan Rao, Insolvency Professional, IBBI-IPA-001/IP-P00181/2017-18/10360 to act as Interim Resolution Professional U/Sec. 13(1)(b) of the code. Registrar is directed to send intimation to proposed IRP requesting him to file declaration and written communication in Form II within two days.
26. Section 13 of the Code says that after admission of the application under Section 9, the Adjudicating Authority shall pass an order declaring moratorium for the purposes referred to in Section 14. Therefore, in view of the commencement of Corporate Insolvency Resolution Process with the admission of this Petition and appointment of the Interim Resolution Professional, this Adjudicating Authority hereby passes the order declaring moratorium under Section 13(1)(a) prohibiting the following as laid down in section 14 of the Code;




- 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 including any action under the Securitisation and Reconstruction under the 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.
 - i. The moratorium order in respect of (a), (b), (c) and (d) above shall not apply to the



transactions notified by the Central Government.

- ii. However, the order of moratorium shall not apply in respect of supply of essential goods or services to Corporate Debtor.
 - iii. The Applicant shall also make public announcement about initiation of Corporate Insolvency Resolution Process, as required by Section 13(1)(b) of the Code.
27. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.
28. This Petition is ordered accordingly.
29. Communicate a copy of this order to the Applicant Operational Creditor, Corporate Debtor and to the proposed Interim Resolution Professional.

List the matter on 03.09.2018.


BIKKI RAVEENDRA BABU
Member Judicial