

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-206
IB-3131/ND/2019

IN THE MATTER OF:

M/s. Jindal Stainless Ltd.

....Applicant

Vs.

M/s. Singhal Strips Ltd.

.....Respondent

SECTION

U/s 9 IBC

Order delivered on 30.10.2023

CORAM:

**SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-3131/ND/2019 stands **admitted**.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

CP IB NO. 3131/(ND)/2019

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:

M/s Jindal Stainless Ltd.

O.P. Jindal Marg, Hisar,
Haryana- 125005

...Operational Creditor

Versus

M/s Singhal Strips Ltd.

440/1, Bholanath Nagar,
Shahdara,
Delhi- 110032

...Corporate Debtor

Order Delivered on: 30.10.2023

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Adv Shruti Kanodia, Adv Ishita Jain, Adv Rishika Garg

For the Respondent:

O R D E R

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***“the Code”***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Shiv Kumar Garg, Authorized Signatory of **M/s Jindal Stainless Limited** (***“Operational Creditor”***) duly authorized for initiation of Corporate Insolvency Resolution Process (***“CIRP”***) against **M/s Singhal Strips Limited** (***“Corporate Debtor”***).
2. **M/s Jindal Stainless Limited** (Operational Creditor) is a company, having its office at O.P. Jindal Marg, Hisar, Haryana, 125005. **M/s Singhal Strips Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN- U74899DL1988PLC031426], having its registered office at 440/1, Bhola Nath Nagar, Shahdara, Delhi- 110032. The Corporate Debtor has Authorized Share Capital of Rs. 8,50,00,000/- (Eight Crore Fifty lakhs) and Paid-Up Share Capital of Rs 8,25,93,400/- (Eight Crore Twenty-five Lakhs Ninety-three Thousand Four Hundred).
3. The present Petition was filed on 22.11.2019 before this Adjudicating Authority by Mr. Shiv Kumar Garg, the Authorized Signatory of the Operational Creditor’s entity, duly authorized to initiate Corporate Insolvency Resolution Process (***“CIRP”***) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***“Code”***). The total amount claimed is Rs. 1,08,26,175.63/- (Rupees One Crore Eight Lakhs Twenty-Six Thousand One Hundred and Seventy-Five and Sixty-Three Paise Only). The date of default is 31.09.2019.
4. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - a) That the Operational Creditor and the Corporate Debtor engaged in business where the Respondent ordered goods after confirming the price

- orally. The Respondent then issued purchase orders to the Applicant for those goods and in lieu of the said purchase orders, the Applicant provided the goods as per the purchase orders. The parties also executed a Job Conversion Agreement, where the Respondent would convert the supplied products into cold rolled stainless steel coils/ strips and issue debit notes to the Applicant in respect of the work performed by it. These debit notes were used to offset the outstanding balance from goods supplied by the Applicant in a first-in-first-out manner. Upon payment, the Applicant would issue actual invoices for the amount paid in advance. The Respondent made periodic lump sum payments, unrelated to specific invoices, which were then adjusted against the overall outstanding balance.
- b) The Respondent defaulted in payment of certain invoices, and the Applicant issued a Demand Notice dated 25.05.2019 under Section 8 of Insolvency and Bankruptcy Code, 2016 upon the Respondent in respect of such unpaid invoices being the operational debt for the following amounts:
- i. Principal amount- Rs. 1,08,26,175.62/-
 - ii. Interest @18% per annum from the respective dates of default in payment till 31.03.2019 - Rs. 21,51,099.92/-.
 - iii. Aggregate amount- Rs. 1,29,77,275.55/-.
- c) Thereafter, on 03.06.2019 the Respondent replied to the Demand Notice wherein it denied liability to make payments. Moreover, the Respondent admittedly did not dispute 2 invoices being Invoice Nos. 8150135721 and 8150140969 aggregating to Rs. 2,02,094. Further, the Applicant, also responded to the Respondent's claims against the other 5 defaulted invoices by its letter dated 16.09.2019. However, no response was received from the Respondent to such Rejoinder Notice.
- d) Pursuant to the above, the Applicant filed an application under Section 9 of IBC bearing CP(IB) No. 3131 of 2019 on 22.11.2019 before NCLT, Delhi. Thereafter, on 30.01.2020 the Respondent filed its Reply to the Application wherein, for the first time, the Respondent made a bald and baseless

objection in respect of the defaulted invoices, without submitting any document/ evidence in support thereof. It is pertinent to mention that, the Respondent has denied and disputed the receipt of the Rejoinder Notice. However, the Rejoinder Notice dated 16.09.2019 was duly delivered to the counsel of the Respondent and the same is evident from the courier receipt which is placed on record by the Respondent in Annexure C.

e) Thereafter, on 21.12.2021 an order was passed by Adjudicating Authority, NCLT Delhi rejecting the Application of the Applicant on the grounds of a pre-existing dispute between the parties. That the Adjudicating Authority dismissed the Application for being non-maintainable reading an e-mail dated 04.09.2018 sent by the Applicant as Respondent's counter claim. It is stated that the Adjudicating Authority in its order has admitted that the following bills and invoices have not been paid by the Respondent:

- i. Invoice dated 09.08.2018 for Rs. 23,928.79/- and
- ii. Invoice dated 26.09.2018 for Rs. 4,52,675.32/-

Hence, the aggregate amount of the aforesaid invoices is more than threshold of Rs. 1 Lakh as required to be fulfilled for filing an application under Section 9 of IBC.

f) Thereafter, the Applicant filed an appeal on 11.04.2022 bearing Appeal no. CA (AT) (Ins.) 522 of 2022 challenging the NCLT Order. In the said Appeal, notices were issued to the Respondent by way of all the possible modes of service, including, speed post, email, dasti and publication, however, none appeared for the Respondent. On 16.01.2023, the Hon'ble NCLAT held that the Adjudicating Authority erred in rejecting the Application relying on the email dated 04.09.2018 reading it as a counter claim of the Respondent whereas the said email was in fact sent by the Applicant to the Respondent and hence, the same cannot be said to be raising any counter claim by the Respondent. The Hon'ble Appellate Tribunal also observed that the assumption of the Adjudicating Authority that there was a counter claim, and a pre-existing dispute is wholly unfounded and hence, directed the

Adjudicating Authority to revive the Application filed by the Applicant and consider the matter afresh.

- g) In view of the Hon'ble NCLAT Order, Applicant filed an application before this Adjudicating Authority seeking to revive the proceedings. The Adjudicating Authority vide its order dated 15.02.2023 allowed the said revival application and issued notice to the Respondent for appearing in the matter for hearing it afresh.
- h) The Applicant states in the petition that the Respondent has defaulted in making payment of the outstanding operational dues, i.e., 7 invoices, being Invoice Nos. 8150089994, 8150089995, 8150089993, 8150126728, 8150129735, 8150135721 and 8150140969 issued by the Applicant. That with respect to the 5 defaulted invoices i.e., 8150089994 8150089995, 8150089993, 8150126728, and 8150129735, the Respondent raised the contentions for the first time in its Reply that the same has allegedly either been paid through RTGS or has been adjusted against the invoices of the Applicant. It is pertinent that the said invoices were neither paid nor called into question before the Demand Notice was raised to the Respondent by the Applicant. In view of the delivery of raw materials, a table containing the details of invoices raised by the Applicant and adjustments of amounts made by the Respondent is placed on record.
- i) That the Respondent has failed to bring evidence on record to demonstrate the payment of the defaulted invoices. The following defenses have been taken by the Respondent in its Reply:
- i. Adjustment of the invoices against the debit notes.
 - ii. Payment by way of RTGS against proforma invoices.
 - iii. Invoices disputed for the first time.
- j) That the Respondent in its Reply further contended that there exists a counter claim of Rs. 1.20 Crores against the Applicant for the performance done on the basis of the Job Conversion Agreement, which has not been accounted in the ledger provided by the Applicant. It is pertinent to note

that the email dated 04.09.2018 was sent by the Applicant to the Respondent to issue job work bills for Rs. 1.20 Crores, subject to addressing the two concerns raised in the said email. Vide the said email, the Applicant requested the Respondent to raise “job work bills of approx Rs. 1.20 Crore for completed job challan. In this regard, it is submitted that the job work challans of 0.64 Lakhs is for Hisar plant of the Applicant while 0.56 Lakhs are for the Jajpur plant of the Applicant and the same does not constitute any counter claim.

- k) That the Respondent failed to explain the existence of pre-existing dispute through communication between the parties or pendency of any suit or arbitration. Further, it is also pertinent to note that the Respondent did not respond to the Rejoinder Notice and even in its Reply to Demand Notice, the Respondent did not dispute 2 of the defaulted invoices being Invoice Nos. 8150135721 and 8150140969 aggregating to Rs. 2,02,094 which has been duly acknowledged by the Adjudicating Authority in its order dated 21.12.2021. It is for the first time, in the Reply to the Application that the Respondent objected to these invoices without submitting any document in support thereof and no record of pre-existing dispute was raised prior to the Demand Notice regarding the defaulted operational debt.
- l) It is submitted that in order to admit an application under Section 9 of the IBC, Adjudicating Authority has to be satisfied of three things, i.e., defaulted operational debt with threshold of Rs. 1 Lakh and above, demand notice under Section 8 of IBC and no pre-existing dispute. It is pertinent to mention that in NCLT order it is observed that the Respondent has contended that payment of 5 invoices has already been made, however, 2 invoices, have not been paid by the Respondent, and the aggregate amount of the aforesaid invoices alone is more than the threshold of Rs. 1 Lakh. Further, the Demand Notice under Section 8 of IBC was duly sent by the Applicant and the same has not been disputed, however, the Respondent denied its liability on baseless grounds, without furnishing any evidence in

support thereof. Therefore, the Applicant has made out a clear case of default against the Respondent in the instant case. Hence, the present Application is preferred by the Applicant.

5. Submission by the Learned Counsel appearing on behalf of the Corporate Debtor

- a) The Corporate Debtor has filed a reply dated 29.01.2022. However, despite several notices to the Corporate Debtor by the Financial Creditor and e-notice by the Court Officer, the Corporate Debtor chose not to appear to advance their arguments. Therefore, vide order dated 24.07.2023 the Corporate Debtor was proceeded ex-parte. Although the Corporate Debtor has been set ex-parte, the reply filed on record by the Corporate Debtor, in the interest of justice, is taken into consideration for the adjudication of the present case.
- b) The Corporate Debtor states that the present application is without cause of action and is not maintainable as operational creditor has not delivered the alleged demand notice dated 16.09.2019 to the Corporate Debtor. It is submitted that the alleged fresh demand notice dated 16.09.2019 has been issued after receiving the reply dated 03.06.2019. However, the alleged fresh demand notice has not been sent to the Corporate Debtor and has not been received by the Counsel for the Corporate Debtor. Therefore, there was no occasion that Corporate could have replied to the said demand notice dated 16.09.2019.
- c) That, the Operational Creditor has not filed the proper accounts statement that is the account statement which is bill wise and reflects payments made against those bills. The Operational Creditor has deliberately clubbed various accounts to confuse the Respondent and mislead this Adjudicating Authority.
- d) That the Operational Creditor and the Corporate Debtor had been in business since 2011. The Operational Creditor is in the business of manufacture and supply of stainless steel and its products, and the

Corporate Debtor is in the business of cold rolling of stainless-steel and its products. In addition to supply of material from Operational Creditor to Corporate Debtor, the parties also had a job conversion agreement.

- e) Under the job conversion agreement, the Corporate Debtor would convert the products supplied by the Operational Creditor into Cold Rolled Stainless Steel Coils/Strips in 2B finish as per the requirements of the Operational Creditor, for which monies were payable by the Operational Creditor. As a standard practice, the Corporate Debtor would supply the products to the Operational Creditors along with the records of self-consumption and Debit Notes, which would then be adjusted against the amounts payable for the Debtor for that month, or future payments. Additionally, the Corporate Debtors would also return scrap material to the Operational Creditors, which would also be adjusted in the amounts due by the Corporate Debtors to the Operational Creditors.
- f) Along with adjustment of job conversion charges, the Operational Creditors would raise proforma invoices to the Corporate Debtor who would then pay the amount according to that proforma invoice. After the Corporate Debtor paid the said amount via RTGS or LC, the Operational Creditors would issue the actual invoices for the amount paid in advance in accordance with the proforma notice. That the main arrangement of the parties was supplemented by the Memorandum of Understanding signed by the parties vide which the Operational Creditor promised turnover and quantity discounts both monthly and annually. A copy of the MoU between the parties is placed on record.
- g) That the Operational Creditor on 22.05.2019 sent the Corporate Debtor a demand notice under Rule 5 of the Insolvency and Bankruptcy Rules demanding payment of allegedly unpaid invoices that the Corporate Debtor owes to the Applicant. On 3.06.2019, the Corporate Debtors replied to the said notice clarifying the account claimed with the details of the payments the Corporate Debtor has already made.

- h) That the Respondent did not receive any response to the said letter and assumed the accounting error on the part of the Operational Creditor had been resolved. However, Corporate Debtor received the present application with this Adjudicating Authority and discovered that on 16.09.2019 the Operational Creditor had allegedly sent another letter that is being claimed by the Applicant as a fresh notice. The operational creditor in the said letter has made fabricated and misleading averments in an attempt to harass the Corporate Debtor into paying unreasonable and unwarranted amounts to the Operational Creditor. Since, the letter was never served to the Corporate Debtor or their counsels, the Corporate Debtor did not get a chance to respond to the letter within a reasonable period and had to directly furnish a reply to the present claim. The tracking report of the letter dated 16.09.2019 as available on the courier service is placed on record as Annexure C.
- i) It is also pertinent to note that job work bills of approximately Rs.1.20 crores for job done by the Corporate Debtors have been pending that have not been accounted in the ledger provided by the Operational Creditor. The same amount has been acknowledged by the Operational Creditor in the email communication dated 04.09.2018.
- j) At the outset, given the practice used by the parties, there could never be a dispute of outstanding invoices in the past since the amounts were disbursed by the Respondent via RTGS or LC before the actual invoices were raised. Additionally, since under the job conversion agreement the Operational Creditors received the products with a list of self-consumption, there could be no dispute of pricing or existence of debit notes since the rates were already mutually agreed by the parties. Therefore, allegations of adjustment of such payments against fictitious accounts is misdirected and malicious from the very arrangement between parties.
- k) Hence, in light of bogus assertions made by the Applicant in the so-called demand notice and the supporting documents of accounting malpractices

discussed above, it becomes clear that the Applicant's entire claim for monies is based on fabricated and bogus grounds. Therefore, such application for Insolvency and Bankruptcy based on bogus claims to money must be dismissed by this Adjudicating Authority.

Analysis & Findings

6. We have heard the Learned Counsels for the Operational Creditor, and further perused the averments made in the petition, reply filed by the Corporate Debtor, rejoinder filed by the Operational Creditor and written submissions presented by the Operational Creditor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.
7. It is to be noted that the 'Operational Creditor' had sent a demand notice dated 25.11.2019 via speed post and 29.11.2019 via e-mail to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs. 1,13,20,703 (One Crore Thirteen Lacs Twenty Thousand Seven Hundred Three) which includes principal amount of Rupees 74,72,075/- (Seventy-Four Lacs Seventy-Two Thousand Seventy-Five) along with interest @ 12 % p.a. Further, the present petition meets the pecuniary threshold limit of Rs. 1 Lac (as it was before the amendment dated 24.03.2020), as required by Section 4 of the Code.
8. In order to determine the admissibility of petition for initiating CIRP under Section 9 of the Code, the judgment of the Hon'ble Supreme Court in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:

- a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
 - 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 if the unpaid operational debt in relation to such dispute?
9. In the first instance, to determine that whether the said amount claimed by the Operational Creditor would fall under the ambit of 'Operational Debt', it is pertinent to analyze the definition of 'Operational Debt' as mentioned under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under said Section, the 'Operational Debt' is defined as:

“A claim in respect of the provision of goods or services including employment or a debt in respect of the payment 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”.

While analyzing the present facts in the light of Section 5(21), the Operational Creditor and the Corporate Debtor had been into the business of manufacture and supply of stainless steel since 2011. The Corporate Debtor used to place the order for required supply of goods with the Operational Creditor from time to time and the Operational Creditor supplied the goods as per the order placed, and upon finalization of price orally, the Corporate Debtor would issue purchase orders upon the Operational Creditor for the same. It was asserted that the Corporate Debtor defaulted in making the payment to the Operational Creditor for which an action is preferred by the Operational Creditor before this Adjudicating Authority. The said Creditor claims the outstanding amount

worth Rs. 1,08,26,175.63/- (Rupees One Crore Eight Lakhs Twenty-Six Thousand One Hundred and Seventy-Five and Sixty-Three Paise Only) from the Corporate Debtor. Furthermore, on the appreciation of the transactional invoices and the Ledger Account maintained by the Operational Creditor, as annexed by the Operational Creditor, and placed before us, we are of the view that there has been a transaction between the said parties and that the Operational Creditor had supplied goods to the Corporate Debtor for which the Corporate Debtor has defaulted in making the payment. Hence, this Adjudicating Authority is inclined to agree with the Operational Creditor that the debt claimed by the petitioner comes under the definition of 'Operational debt' within the meaning of Section 5(21) of the Code.

10. In the instant case, there were seven invoices raised by the Operational Creditor to the Corporate Debtor. The Operational Creditor has sent Demand Notice dated 22.05.2019 to the Corporate Debtor, to which the Corporate Debtor has filed the reply dated 03.06.2019. The Corporate Debtor in its reply submits that out of seven invoices, five invoices have been paid by the Corporate Debtor through RTGS and therefore, have been adjusted against the invoices of the Applicant. It is pertinent to note that the said invoices were neither paid nor called into question before the Demand Notice was raised to the Respondent by the Applicant. Also, the Respondent failed to place on record any supporting documents to demonstrate the payment of the defaulted invoices.
11. Further, it is pertinent to note that the Operational Creditor and the Corporate Debtor had also entered into Job Conversion Agreement where the Respondent would convert the supplied products into cold rolled stainless steel coils/ strips and issue debit notes to the Applicant in respect of the work performed by it. The Corporate Debtor also contends that there exists a counter claim of Rs. 1.20 Crores against the Applicant for the performance done on the basis of the Job Conversion Agreement, which has not been accounted in the ledger provided by the Applicant. However, an email dated 04.09.2018 was sent by

the Applicant to the Respondent to issue job work bills for Rs. 1.20 Crores (approx.), subject to addressing the two concerns raised in the said email. In the said email, it was the Applicant only who requested the Respondent to raise “job work bills of approx. Rs. 1.20 Crore for completed job challan (64 Lakhs for Hisar plant and 56 Lakhs for Jaipur plant)”. The said email is placed on record as Annexure D. Therefore, the job work challans of Rs. 64 Lakhs is for Hisar plant of the Applicant while 56 Lakhs are for the Jaipur plant of the Applicant and the same does not constitute any counter claim. Therefore, the contention of the Corporate Debtor, that there exists a Counter Claim with respect to the said invoices, does not hold ground, as the said email was sent by the Applicant to the Corporate Debtor.

12. The Corporate Debtor in its reply to the Demand notice has stated that out of Seven invoices, the amount with respect to the five invoices have been adjusted against the default by debit notes. However, no evidence is placed on record to substantiate the fact that the default with respect to these invoices has been paid. That the Corporate Debtor in its reply to the demand notice, did not dispute 2 of the defaulted invoices being Invoice Nos. 8150135721 and 8150140969 aggregating to Rs. 2,02,094 which has been duly acknowledged by this Adjudicating Authority in its order dated 21.12.2021. These two invoices were objected to for the first time by the Corporate Debtor in its reply filed before us, wherein the Corporate Debtor alleged that these two invoices are hypothetical. However, the Corporate Debtor failed to place any document/evidence supporting the same.
13. The contention of the Corporate Debtor that payment of 5 invoices has already been made, however, 2 invoices (Invoice dated 09.08.2018 for Rs. 23,928.79/- and Invoice dated 26.09.2018 for Rs. 4,52,675.32/-) have not been paid by the Corporate Debtor, and the aggregate amount of the aforesaid invoices alone is more than the threshold of Rs. 1 Lakh (which was the pecuniary threshold limit at the time of filing the present application). Therefore, the Corporate Debtor failed to explain the existence of pre-existing dispute through

communication between the parties or pendency of any suit or arbitration. Additionally, the Corporate Debtor had not enclose any relevant document in support of its claim as to existence of a counter claim, or as to the payment of the 5 invoices. We are of the view that without any substantiating document by the Corporate Debtor, it is mere a contention and cannot be acted upon. Therefore, the defence of the Corporate Debtor does not substantiate any plausible ground. Hence, the defence of the Corporate Debtor appears to be moonshine.

14. Therefore, in view of the transactional invoices accompanied with the Ledger Account maintained by the Operational Creditor, we are satisfied that there exists a 'debt'. Furthermore, ledger account of the Operational Creditor signifies that there exists an Operational Debt and that the Corporate Debtor has defaulted in the payment of such debt. Hence, we are of the view that there is a *debt due and payable* and that there has been *default* on the part of the Corporate Debtor.
15. In view of the above facts and circumstances, we are satisfied that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Insolvency and Bankruptcy, Code. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. In the light of the above facts and circumstances, it is, hereby ordered as follows: -

- a) The application bearing **CP (IB) No. 3131/ND/2019** filed by, **Mr. Siv Kumar Garg, the Authorised Signatory of M/s Jindal Stainless Ltd.**, the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Singhal Strips Ltd.**, the Corporate Debtor, stands **admitted**.
- b) The Applicant has not proposed the name of any IRP in Part-III of the application and leaves it at the discretion of this Adjudicating Authority.

Therefore, Mr. Hemant Sethi, Registration Number IBBI/IPA-002/IP-N01107/2021-2022/13628, Email: hemantmlsethi60@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to submission of a valid Authorization of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. It is pertinent to mention that the IRP has a valid AFA.

- c) We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Hemant Sethi, to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
- d) We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.”

(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”

- e) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
- f) The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the ‘Corporate Debtor’.
- g) In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the ‘Corporate Debtor’ as a part of its obligation

imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- h) A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

Sd/-
(RAHUL BHATNAGAR)
Member (Technical)

Sd/-
(MAHENDRA KHANDELWAL)
Member (Judicial)