

NATIONAL COMPANY LAW TRIBUNAL

CUTTACK BENCH

CP(IB) No. 36/CB/2022

(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:

MSTC LIMITED

(Government of India Enterprise),

Incorporated under the provisions of the Companies Act, 1956,
having its registered office at

Plot No. CF- 18/2, Street No. 175,
Action Area IC, New Town, Kolkata, 700156,

..... **APPLICANT/OPERATIONAL CREDITOR**

Vs.

BALASORE ALLOYS LIMITED

[CIN: L2730WB1964GOI026211],

Having its Registered Office At
Balgopalpur, Dist. Balasore,
Odisha- 756020

..... **RESPONDENT/CORPORATE DEBTOR**

DATE OF PRONOUNCEMENT: 12.06.2025

CORAM: DEEP CHANDRA JOSHI (MEMBER JUDICIAL)

BANWARI LAL MEENA (MEMBER TECHNICAL)

APPEARANCE:

FOR APPLICANT: MR. ANUPAM DASH, ADVOCATE

MR. BAGMI NANDA, ADVOCATE

FOR RESPONDENT: MR. SANDEEP S LADDA, ADVOCATE

MR. PRABHU PRASNNA BEHERA, ADVOCATE

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ORDER

PER DEEP CHANDRA JOSHI, MEMBER(J):

1. The present application has been filed on 07.08.2022 under Section 9 of the Insolvency and Bankruptcy Code,2016 (hereinafter '**IBC/Code**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 (hereinafter **Adjudicating Authority Rules**) by **MSTC Limited** (hereinafter **Operational Creditor/Applicant**) against **Balasore Alloys Limited** (hereinafter **Corporate Debtor /Respondent**) alleging a default of **Rs.18,69,06,540/-** (Eighteen Crores Sixty Nine Lakhs Six Thousand Five Hundred and Forty Rupees Only) as on 31.03.2022 which included Principal amount of Rs. 13,15,90,266/-, interest of Rs. 5,19,83,780/- and warehouse Custodian charges to the tune of Rs. 33,32,494/-. The date of default as mentioned in Part IV of the application is 31.03.2022.

2. The applicant in its application has made the following averments:

a. The corporate debtor entered into an agreement with the applicant on 01.04.2014, for facilitation of procurement of anthracite coal, LAM Coke, nut coke and other items as per international specifications, to be procured indigenously /internationally by the applicant on its account, on purchase-sale mode and/or Facilitator Mode. The agreement was extended periodically and four addenda dated 18.01.2016, 17.04.2017, 26.03.2018 and 26.03.2019 were also executed between the parties in furtherance of the agreement.

b. In order, to facilitate the corporate debtor to procure the goods the Operational Creditor had made payment of sums in excess of Rs.16,45,68,455/- and the goods were received by the Corporate Debtor which were kept in the manner required under the agreement at the precincts of the Corporate Debtor under the custody of the appointed supervising agent and the same shall be



released in favour of the Corporate Debtor on cash and carry basis. The goods stored in the precincts of the corporate debtor were pledged in favour of the operational creditor to secure the payment made.

c. The Operational Creditor has demanded payment of the amounts due on multiple occasions through letters and email communications and the Corporate Debtor has responded by its e-mail dated 13th October, 2020 and its letter dated 24th November, 2020 wherein the Corporate Debtor has admitted its outstanding dues and has promised to make payment.

d. The Corporate Debtor filed an application under Section 9(1) of the Arbitration and Conciliation Act, 1996 being Misc. Case (Arbitration) No. 1247 of 2020 which was dismissed by an order dated 26th April, 2022. The CD in that application has admitted the existence of his liability, *albeit* in part and only to the extent of Rs. 13 crores.

e. The Operational Creditor issued a statutory demand notice under section 8 of the Insolvency and Bankruptcy Code, 2016, on 05.05.2022 demanding the entire amount in default i.e., unpaid operational debt in default as on 31st March, 2022, for a total sum of Rs.18,69,06,540/- (Rupees Eighteen Crore Sixty-Nine Lakhs Six Thousand Five Hundred and Forty) including interest and warehouse custodian fees.

f. In the reply to the demand notice, dated 16th May, 2022, it has been incorrectly contended that there have been pre-existing disputes. There are no disputes at all between the Operational Creditor and the Corporate Debtor. Even if any alleged dispute is sought to be raised, it would be evident that the same are moonshine, false, frivolous, and motivated.

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g. Amounts have fallen due under the agreement on different dates and the agreement is continuing. The Corporate Debtor has acknowledged the debt on 24th March, 2020, 18th March, 2022 and in its application under Section 9 of the Arbitration and Conciliation Act, 1996 affirmed on 14th December, 2020. No part of the cause of action is therefore barred by limitation.

h. The date of default for the purpose of the present proceeding is 31st March, 2021 as despite the undertaking and/or assurance by the Corporate Debtor in its letter dated 27th October, 2020, it failed to make payment. Therefore, a total amount of Rs. 18,69,06,540/- (Rupees Eighteen Crore Sixty-Nine Lakhs Six Thousand Five Hundred Forty only) is due as on 31st March, 2022.

3. The Corporate debtor/respondent took leave of this court in IA(IB) No.319/CB/2022 to file a belated reply in which it raised the following contentions:

a. The present petition is not maintainable due to the pre-existing disputes between the parties before the issuance of demand notice under section 8(1) of the Insolvency and Bankruptcy Code, 2016 and in relation to such dispute Corporate Debtor had already filed a Petition under Section 9(1) of the Arbitration & Conciliation Act 1996, being Misc. Case 1247 of 2020, well before filing of this present Petition.

b. Miscellaneous Case No.1247 of 2020 was never dismissed but was rather disposed of, by the Hon'ble City Civil Court, Calcutta, whereby the Hon'ble Court upon hearing the arguments therein simply held that it was of the view that the amount involved in the case were beyond the limits of its pecuniary jurisdiction and the Hon'ble Court was further pleased to mention that in the passing of the said order the Hon'ble Court did not go into the merits of the case. Thus, what flows from the said order

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is that Corporate Debtor right to seek appropriate relief by way of the said Petition under Section 9(1) of the Arbitration & Conciliation Act, 1996 with respect to the same subject matter was never closed and the Corporate Debtor is already well under the process of filing the said Petition before the appropriate court of law, keeping in mind the pecuniary Jurisdiction. This alone, makes the dispute between the Corporate Debtor and Operational Creditor a pre-existing one.

c. The Corporate Debtor had already taken steps in respect of a pre-existing dispute by filing an application u/s 9 of the Arbitration and Conciliation Act, 1996 and being well aware of it the Corporate Debtor are opting to maliciously use The Insolvency & Bankruptcy Code, 2016 as a mere tool to recover their alleged dues, which is not only punishable under Section 65 of the Insolvency & Bankruptcy Code 2016.

d. In view of Clause 23 of the Memorandum of Association dated. 01.04.2014. executed between Operational Creditor and Corporate Debtor which specifically mentions that, in the event of any dispute or difference between the parties hereto relating to the interpretation, construction, fulfillment or otherwise of the agreement, such dispute or difference shall be settled by the process of arbitration of a sole arbitrator, any dispute whatsoever will have to be adjudicated upon by the Arbitral Tribunal. The Corporate Debtor has already sent the Arbitration notice for Invocation of Arbitration clause which was never responded to by the applicant.

e. The Operational Creditor has not annexed any document which has been acknowledged or confirmed by the Corporate Debtor showing that there are outstanding dues and the Operational Creditor, with regards to accounts and payments,

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has only annexed self-serving documents which the Corporate Debtor strictly denies the same.

4. The applicant through IA (IB) No.17/CB/2023 took leave to file rejoinder in which the following averments were raised:

a. The CD has admitted through his e-mail dated 13.10.2020 that an amount of Rs. 13 crores is due upon it and the same is payable to the Operational Creditor.

b. In its petition filed under Section 9(1) of the Arbitration and Conciliation Act, 1996 before the learned City Civil Court, Kolkata vide Miscellaneous Case (Arbitration) No. 1247 of 2020, the Corporate Debtor has categorically admitted under oath at paragraphs 6 and 7(g) that it owes the Operation Creditor an amount of Rs. 13 crores and that it has failed to clear the dues.

c. All the averments and contentions raised in Miscellaneous Case (Arbitration) No. 1247 of 2020 ceased to exist in law the moment the petition was closed by the learned City Civil Court, Calcutta and further more at the time of issuance of the Section 8, IBC Notice dated 05.05.2022, the Corporate Debtor had neither filed any other petition before any other Court, nor had challenged the order of the learned City Civil Court, Calcutta before a higher Forum, hence it cannot be said there was any pre-existing dispute at the time of issuance of notice.

d. The contention of the Corporate Debtor regarding 'pre-existing dispute' is completely hypothetical, spurious and mere moonshine as there exists no real dispute.

e. The contention of initiation of arbitration proceedings is completely irrelevant for the purpose of the adjudication of the present petition, since the same was invoked, by the Corporate Debtor on 08.07.2022, after a period of more than two months

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since the issuance of the Section 8, IBC Notice by the Operational Debtor i.e. on 05.05.2022.

f. The Arbitration Notice dated 08.07.2022 was never been received by any official of the Operational Creditor. A perusal of the notice would indicate that the same was addressed to one 'Mr. Goshal' and it was sent through email dated 8.7.2022 at 4:59P.M to the email id pgoshal@mstcindia.co.in The Corporate Debtor should have firstly clearly mentioned the exact name of the person to whom it wanted to address the notice dated 08.07.2022 invoking arbitration and that the email id pgoshal@mstcindia.co.in does not exist at all. The Corporate Debtor is very well aware of the email ids of all officials of MSTC Ltd. as the same are available on the website of MSTC Ltd. under the Section 'Contact Us' which is in public domain and hence sending the notice invoking arbitration on the wrong email address does not amount to proper service of notice in the eye of law.

g. Miscellaneous Case (Arbitration) No. 1247 of 2020 was pending from 2020 till its disposal on 26.4.2022 and during this period, the Corporate Debtor never took any step for appointment of Arbitrator or for that matter for commencement of arbitral proceedings as mandated u/s 9(2) of the Arbitration and Conciliation Act, 1996. This conduct of the Corporate Debtor shows that it never had genuine intention to initiate any arbitration proceedings.

5. The Corporate Debtor took leave from this court in IA(IB)130/CB/2023 to file reply to the rejoinder, to bring on record new developments that have taken place during the pendency of the main application, wherein it stated the following:

a. The Corporate Debtor had already paid an amount of Rs. 13,16,00,000/- to the Operational Creditor vide RTGS UTR No.

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SBINR52023011125845578 dated January 11, 2023 amounting to Rs. 6,60,00,000/-, RTGS UTR No. SBINR52023030129565076 dated February 1, 2023 amounting to Rs. 6,53,00,000/- and 3 Lakhs vide RTGS UTR No. SBINR5202302213311183 on 21.02.2023 which is the Principal Amount as mentioned and claimed by the Operational Creditor in the petition filed before this Court.

b. Corporate Debtor has already paid the entire principal amount and the Interest amount is disputed, hence the Operational Creditor cannot use the Insolvency Process maliciously to recover debt in relation to which there is already a pre-existing dispute.

c. The Operational Creditor has lodged two separate complaints for same subject matter, one on 21 November 2019 before Magistrate court of Balasore Odisha U/sec.190 of CrPC seeking direction u/s 156(3) to local Police station at Balasore with respect to same subject matter and other before Central Bureau of Investigation, Economic Offence Branch, Kolkata 700020 bearing no. RC Case No.0732022E0005 dated December 31, 2022 under Sections 120B/403/409/420 of the Indian Penal Code, 1860 and Sections 13(2) read with 13(1)(a) of the Prevention of Corruption Act, 1988 pending before the Court of the learned Special Judge, CBI (Special), Calcutta. The Corporate Debtor had subsequently filed Criminal Revision Petition before the Hon'ble Calcutta High Court for Quashing of RC Case No.0732022E0005 dated December 31, 2022 and the same has been admitted by Hon'ble Calcutta High Court vide order dated 04.04.2023 and the investigating Agency is restrained from taking any coercive steps against the Corporate Debtor.

d. The Corporate Debtor has issued legal notice dated 11.04.2023 to the Operational Creditor for claiming an amount

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of Rs. 17 crores which is much more than the total Claim of the Operational Creditor.

6. The OC filed a reply in response to the additional reply of the CD wherein the following are alleged:

a. The deponent namely Mr. Saivenkat Chitisuresh Babu Chigurupali who has sworn the Additional Reply has no authority to do so as no Board Resolution or any equivalent document like Letter of Authorisation etc has been filed along with the affidavit to show that he is authorized to swear the affidavit

b. The Corporate Debtor paid the principal amount during the pendency of the present application which goes to show that there is no pre-existing dispute in the instant case. Hence the stand of the Corporate Debtor that there is a pre-existing dispute in the present case is a mere moonshine defence which ought to be rejected. Though the Corporate Debtor had paid the principal amount but that does not ipso facto absolve the Corporate Debtor from paying the interest since the Agreement dated 01.04.2014. Since the agreement provides for payment of interest, then a Section 9 IBC petition cannot be rejected merely because the Corporate Debtor has paid the principal amount during the pendency of the Section 9 IBC petition.

c. The Corporate Debtor had vide letter dated 25.2.2023 requested the Operational Creditor to provide the breakup of the interest component as it was claimed in its letter that the principal amount is paid and there is no statement of accounts in support of the interest computation, which was also duly replied by the Operational Creditor vide its letter dated 4.3.2023, with detailed computation of the outstanding interest amount.

d. The filing of the complaint case i.e. I.C.C. No. 96 of 2021, cannot qualify as pre-existing dispute since the same was filed by the Operational Creditor based on a separate cause of action

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which involved the criminality on the part of the Corporate Debtor and its officials for hypothecating the goods purchased by the Operational Creditor, as per the Agreement dated 01.04.2014 and the subsequent addenda, in favour of State Bank of India, SME Branch, Balasore which was done deliberately by the Corporate Debtor in order to cheat MSTC Ltd. and to cause wrongful financial loss to the Operational Creditor.

e. The Corporate Debtor through its additional reply wants to introduce new documents like F.I.R registered by CBI, which came to existence much after the filing of the present application u/s 9 to somehow or the other show that there are pre-existing disputes when there are actually none.

f. The contention of the corporate Debtor that the operational creditor has committed breach of the terms and conditions of the agreement dated 01.04.2014 and the subsequent four addenda is baseless and the Corporate Debtor has also not specified as to which of the clauses of the Agreement has been violated by the Operational Creditor.

g. The Operational Creditor is not liable to pay a single penny to the Corporate Debtor. The claim of Rs.17 Crores in the legal notice dated 11.4.2023 for mental agony for causing harassment by misusing criminal process and for breach of terms and conditions of agreement by the Operational Creditor is wrong, baseless and legally untenable and hence is liable to be rejected. The Operational Creditor has also replied to the legal notice dated 11.4.2023 through its Advocate vide letter dated 02.05.2023

7. We have heard the learned counsels of both the parties and perused the materials brought on record. This application was filed by the corporate debtor with a claim of an outstanding debt of Rs.18,69,06,540/- as on 31.03.2022 which included Principal

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amount of Rs. 13,15,90,266/-, interest of Rs. 5,19,83,780/- and warehouse Custodian charges to the tune of Rs. 33,32,494/-.

8. At the very outset it is noted that, the Corporate Debtor after initially denying any liability towards the operational creditor has during the pendency of the proceedings, on its own volition, has paid an amount to the tune of Rs.13,16,00,000/- to the Operational Creditor in three tranches i.e. *vide* RTGS UTR No. SBINR52023011125845578 dated 11.01.2023 amounting to Rs. 6,60,00,000/-, RTGS UTR No. SBINR52023030129565076 dated 01.02.2023 amounting to Rs. 6,53,00,000/- and Rs.3,00,000/- *vide* RTGS UTR No. SBINR52023022133111183 on 21.02.2023. The receipt of this amount is not disputed by the corporate debtor.

9. After this development the only outstanding amount left unpaid from the amount stated in Part IV is the interest component to the tune of Rs. 5,19,83,780/- and warehouse Custodian charges to the tune of Rs. 33,32,494/- . Now the issue that is left before us for consideration is that in light of the part payment made to the Operational Creditor can the Corporate Debtor be admitted to CIRP for default in repayment of the remaining outstanding amount that comprises of the interest component and the warehouse custodian charges.

10. The respondent has contended that since the principal amount is completely paid off hence this petition is no more maintainable for two reasons, *first*, as there is a dispute regarding the interest computation and *second*, no application under section 9 of IBC can survive just for default of interest amount.

11. It is noted that while filing a belated reply with the leave of this court through IA(IB) 319/CB/2022 the respondent has denied any liability towards the applicant and has stated that there is a pre-existing dispute in regard to the debt claimed to be in default. The

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relevant part of the reply of the respondent is reproduced herein below:

7. *I deny the purported liability of Rs. 13,15,90,266/- (Rupees Thirteen Crores Fifteen Lacs Ninety thousand two hundred and Sixty Six only/-) and since the same is denied, there is no question of payment of any interest of Rs. 5,19,83,780/- (Rupees Five Crores Nineteen Lacs Eighty Three Thousand Seven Hundred Eighty only/-) or Custodian Charges of Rs. 33,32,494/- (Rupees Thirty three lacs Thirty Two Thousand Four Hundred Ninety Four only/-) as claimed by the Operational Creditor.*

8. *I say that primarily the present petition is not maintainable due to the pre-existing disputes between the parties before the issuance of demand notice under section 8 (1) of the Insolvency and Bankruptcy Code, 2016.*

9. *I say that the issues being raised by the Operational Creditor through this Application, are the subject matter of a pre-existing dispute and in relation to which Corporate Debtor had already filed a Petition under Section 9 of the Arbitration & Conciliation Act 1996, being Misc. Case 1247 of 2020, well before filing of this present Petition which in itself is a sign of pre-existing dispute.*

12. The respondent in its additional reply filed through IA (IB) No. 130/CB/2024 for the first time raised the issue of dispute in relation to the computation of interest. Though the respondent has not brought on record any document to substantiate its submission, be that as it may, the applicant has brought on record a letter dated 25.02.2023 of the respondent. The respondent in this letter had sought detailed rationale for the computation of interest and has disputed the computation of the applicant but the same is of no avail as under IBC a valid pre-existing dispute is one which existed at the time of issuance of notice under section 8 of IBC but in this case this dispute was raised almost after 10 months of issuance of the notice during the pendency of the present proceedings and that too after paying the principal amount. Hence the argument that there exists dispute in regard to interest amount is unacceptable.

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13. It is further noted that the respondent who had been vehemently denying any liability, whatsoever, towards the applicant citing pre-existing dispute with respect to the debt amount without any direction from any authority or valid reason and rationale decided to pay back Rs. 13.16 Crores against the outstanding principal due of Rs.13,15,90,266/- . It is also noted that, it was never the case of the respondent before this Adjudicating Authority that the pre-existing dispute pertains only to the interest amount or the warehouse custodian fees and such an action of the respondent, which is in sharp contrast with its own submissions made under affidavit, strongly questions the truthfulness of the submissions made by the respondent before this court.

14. The respondent has also contended that since the principal amount has been paid in full hence the present application cannot continue just for the default of the interest component. The respondent in furtherance of the argument has relied on the judgements of Hon'ble NCLAT in **(I) Rohit Motawat Vs. Madhu Sharma Proprietor Hind Chem Corporation & Anr.** [CA (AT) (Ins) No. 1152 of 2022], **(II) Amsons Communication (P) Ltd. v. ATS Estates (P) Ltd** [CA (AT) (Insolvency) No. 540 of 2020], **(III) S. S. Polymers VS Kanodia Technoplast Ltd.** [CA(AT)(Ins) 1227/ND/2019], **(IV) Krishna Enterprises v. Gammon India Ltd.** [CA (AT) (Insolvency) No. 144 of 2018] and **(V) SNG Synthetics Limited v Pepsico India Holdings Private Limited** [CA (AT) (Insolvency) No. 386 of 2025].

15. The applicant had refuted this contention of the respondent on the ground that the interest was levied as per the clauses of the Agreement dated 01.04.2014 executed by both the parties and the respondent has never disputed the imposition of interest at any time prior to the demand notice u/s 8 of IBC. So much so, even during the pendency of proceedings no specific contention was raised regarding the imposition of the interest or the computation of the interest

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component as shown in Part-IV of the application, until at a very belated stage.

16. It is noted that the interest component in default as per Part-IV of the application is above the threshold amount required under IBC, hence the issue of threshold does not arise. We have perused the judgments relied upon by the respondent.

17. In ***Krishna Enterprises (Supra)*** at **Para 5** the Hon'ble NCLAT has held the following:

5. In the present appeals, as we find that the principal amount has already been paid and as per agreement no interest was payable, the applications under Section 9 on the basis of claims for entitlement of interest, were not maintainable. If for delayed payment Appellant(s) claim any interest, it will be open to them to move before a court of competent jurisdiction, but initiation of Corporate Insolvency Resolution Process is not the answer.

18. In ***Rohit Motawat (Supra)*** at **para 6 and 10** while relying on **S. S. Polymers (Supra)** the following is observed:

*6. Counsel for the Appellant has submitted that the Respondent has claimed the amount on the basis of two invoices i.e. Invoice No.401 dated 10/12/16 issued for an amount of Rs. 21,96,744 and Invoice No. 468 dated 16/01/17 issued for an amount of Rs.16,62,250, total amounting to Rs. 38,58,994/- . It is submitted that in the purchase order there is no reference of payment of interest in case of delay. However, the interest has been claimed by the Respondent on the basis of the said invoices in which it is mentioned that if the amount is not paid within the due date then 21% interest shall be charged. The Legal issue raised by Counsel for the Appellant is as to whether the interest, to be charged in the invoice, not signed by the Appellant, is a 'unilateral document' and cannot be recovered? In this regard, he has relied upon the decision rendered by 'this Tribunal' in case of '**S.S.Polymers Vs. Kanodia Technoplast Limited**' in '**Company Appeal (AT) (Ins) No. 1227 of 2019 decided on 13.11.2019**' in which a similar controversy was involved and the following observations have been made which read thus:*

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3. The Adjudicating Authority has noticed that a sum of Rs.25,00,000/- out of Rs.32,71,800/- was paid to the Appellant by 31st December, 2018 through RTGS(s). The remaining amount of Rs.7,71,800/- was also paid by 'Corporate Debtor' to the Applicant by 17th January, 2019 through NEFT(s). The said amounts were paid before the admission of the application under Section 9 of the I&B Code. Even after receiving the total amount due, the Appellant pursued the application under Section 9 of the I&B Code for a sum of Rs.2,16,155/- towards interest. **In these background, the Adjudicating Authority observed that in the absence of any Agreement, no such amount can be claimed.**

4. The Learned Counsel for the Appellant relied on 'Invoices' to suggest that in the 'Invoices', the claim was raised for payment of interest. **However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'Corporate Debtor'.**

5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the 'Corporate Debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Corporate Debtor' and which is barred in view of Section 65 of the I&B Code.

6. We find no merit in this Appeal and it is accordingly dismissed.

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10. We have heard counsel for the parties and after perusal of record, are of the considered opinion that the impugned order is patently illegal and deserves to be set aside. The question which has been raised by the Appellant, is hereby answered in favour of the Appellant in view of the decision taken by this Court in case of 'S.S.Polymers' (Supra), 'Permali Wallace Pvt. Ltd.' (Supra) as well as the decision of the 'Hon'ble Karnataka High Court' in the case of 'Jyothi Limited' (Supra). Before parting, we are constrained to observe that the Adjudicating Authority has erred in not looking into the facts that the principal amount has

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entirely been paid and the issue was only regarding to interest for which the application under Section 9 of the Code was not maintainable as the spirit of the legislation of the Code is for 'resolution of debt' and not for 'recovery'.

19. In **Amsons Communication (P) Ltd (Supra)** the Hon'ble Principal Bench of NCLAT at para 13 to 18 has observed the following:

13. The learned Counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court in *Vijay Industires vs. NATL Technologies Ltd. (2009) 3 SCC 527* wherein it was held that interest is also part of 'operational debt'. He submits that Hon'ble Supreme Court while interpreting Section 433 (e) and (f) and Section 434(1) (a) and Section 439 of the Companies Act, 1956 has laid down that failure to pay the agreed/ statutory interest is covered under the word "debt". There can be no dispute to the proposition of law as laid down by the Apex Court in the above case. When an amount of interest is agreed or statutory, the same shall be clearly part of the debt. However, the judgment of *Vijay Industries (supra)* is clearly distinguishable from the facts of the present case, since in the above case the claim of interest was not disputed, which facts is reflected in paragraphs 30 and 31 of the judgment, which are to the following effect:

"30. The fact that despite receipt of a legal notice dated 23-12-2003, no payment has been made to liquidate the debt on the part of the Company is not in dispute. Admittedly, the appellant had been supplying castor oil to the respondent. The fact that the respondent did not pay the price of the said supplies, on presentation of the invoices, is also not in dispute. It also stands admitted that the parties negotiated as regards the manner in which the payments could be made. In a meeting held on 25-11-2003, promises were made to square up the old outstanding dues and bring it into the system for the purpose of rotation. The agreement spoke of payment of compensation to the appellant for the delay in payment on account of earlier supplies after clearing the entire old dues. There cannot be any doubt whatsoever that when, in principle, the respondent had agreed to compensate the appellant for the delay in payment, the same must be

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by way of interest payable on the principal amount or otherwise.

31. The respondent never denied the demand of interest as such, but in its reply dated 30-12-2003 merely stated that a sum of Rs 16,80,468 (sic Rs 15,80,460) was due.”

14. In the present case, when the Corporate Debtor in its reply to Section 9 Application has clearly and categorically denied its liability to pay any interest, there was no case of payment of any agreed interest.

15. We may also refer to a judgment of this Tribunal where this Tribunal has refused to proceed with the insolvency proceedings after noticing that Application was being pursued only for realization of interest amount. In **S.S. Ploymers vs. Kanodia Technoplast Limited, Company Appeal (AT) (Insolvency) No. 1227 of 2019** in paragraph 5 following was laid down:

“5 Admittedly, before the admission of an application under Section 9 of the I&B Code, the ‘Corporate Debtor’ paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the ‘Corporate Debtor’ and which is barred in view of Section 65 of the I&B Code.”

16. We may also notice one more fact, which has been highlighted by Respondent in its reply filed in this Appeal. In Section 9 Application, which was filed by the Appellant in Part-IV of the Application stating that rate of interest claimed by the Appellant is @ 3% monthly, whereas in Invoices, which have been filed and has also been brought on record where one of the contention is as follows:

“If payment is not paid within 5 days from bill date, interest @ 5% interest per month will be charged.”

17. In certain calculation sheets filed before the Adjudicating Authority, the Appellant has calculated interest for some period @2.5% per month. There is no clarity even on the part of the Appellant as to what rate of interest is liable to be paid by the Respondent. The Appellant was only advertising

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agency and as per Invoices, the claim of interest @ 5% monthly comes to interest @ 60% per annum and @ 3% it comes to 36% per annum. The Adjudicating Authority after taking into consideration of all facts and circumstances has rightly in paragraph 9 has turned the claim of interest as unconscionable, irrational and unjustified. In paragraph 9 of the judgment of the Adjudicating Authority following has been observed:

“9. In view of the above facts, this Bench is satisfied that as the principal amount has already been paid by the Corporate Debtor, the claim of the petitioner for Rs.71,18,908.04 as interest is unconscionable, Company Appeal (AT) (Insolvency) No. 540 of 2020 12 irrational, unjustified and in the opinion of this Bench does not qualify as a operational claim, default of which would entitle the petitioner to seek resolution of the Corporate Debtor. The claim for interest on delayed payment is a disputed fact by the Corporate Debtor and as such can only be adjudicated by a court of competent jurisdiction. Initiation of Corporate Insolvency Resolution Process is certainly not an answer in this facts and circumstances of the case. Recovery of interest alone can be initiated before a civil court for its due adjudication.”

18. The Adjudicating Authority has also recorded finding that claim for interest on the delayed payment is a disputed fact by the Corporate Debtor and it can only be adjudicated by a court of competent jurisdiction. The claim of interest being disputed, no error has been committed by the Adjudicating Authority in rejecting the Application under Section 9 of the Code. The provisions of Code cannot be allowed as a recovery mechanism or to recover the claim of interest by Operational Creditor. The Application under Section 9 cannot be converted into proceedings for recovery of interest by Operational Creditor on delayed payment, that is not the object of IBC. The object of the IBC is to resolve the insolvency of the Corporate Debtor and to bring back the Corporate Debtor on its feet. The present is not a case where there is any insolvency resolution of Corporate Debtor. We are thus of the view that Adjudicating Authority has rightly rejected the Company Appeal (AT) (Insolvency) No. 540 of 2020 13 Application of the Appellant filed under Section 9 of the Code, which warrants no

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interference in this Appeal. There is no merit in the Appeal, the Appeal is dismissed. No order as to costs.

20. In **PepsiCo India Holdings Private Limited (Supra)** the NCLAT at Para 12 to

12. Since there has been no amendment of the Agreement, the terms agreed between the parties in the Supply Agreement prevail over unilateral invoices. Even though invoices can play a crucial role in defining the rights and obligations between parties, however, there has to be an element of mutual consent, which can be discernible from conduct. When the ingredient of levy of interest on delayed payment is absent in the written contract, stipulation of interest payment in invoices can override the written contract only if there is mutual consent and mutual understanding between the parties in this regard which in the present case has not been demonstrated by conduct and practice. There is no evidence of payment of interest by the Respondent which has been substantiated by the Appellant. We are therefore inclined to agree with the Adjudicating Authority that unilaterally generated invoices signed by only one party cannot overrun or recast the terms of bi-partite agreements and create binding obligations on the other party to pay interest.

13. In this regard attention has been adverted by the Respondent to the judgement of this Tribunal in **Krishna Enterprises vs. Gammon India Limited in CA (AT) (Ins) No. 144 of 2018** wherein it has been held therein that if no interest was payable, in terms of the contractual agreement, then only the principal amount would constitute the claim, basis which Section 9 application can be filed. We find the ratio of the above judgment to be squarely applicable to the facts of the present case and for easy reference reproduce the relevant portion of the said judgment as below:

"4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principle amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor.

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5. In the present appeals, as we find that the principle amount has already been paid and as per agreement no interest was payable, the applications under Section 9 on the basis of claims for entitlement of interest, were not maintainable. If for delayed payment Appellant(s) claim any interest, it will be open to them to move before a court of competent jurisdiction, but initiation of Corporate Insolvency Resolution Process is not the answer.”

(Emphasis supplied)

14. We also agree with the Adjudicating Authority that the facts of the present case are distinguishable from the **Prashat Agarwal judgment supra** in view of the fact that in the present case the payment of interest clause on delayed payment does not figure in the Supply Agreement which was a bi-partite agreement. Moreover, the invoices basis which interest has been claimed by the Appellant in the present case were not even counter-signed by the Respondent thereby making the imposition of interest unilateral. There is nothing to substantiate that the Respondent has accepted the obligation to pay interest on delayed payment. Even the reliance placed on **Anuj Sharma judgment supra** also does not come to the rescue of the Appellant as in that case also the Purchase Order containing interest clause on advance payment was issued basis a Distributorship Agreement which contained the terms of payment and delivery.

15. We further notice that the Adjudicating Authority has taken note that the Respondent has paid off the principal amount to the Appellant after reconciliation. The principal amount was paid off after it was revised downwards by the Appellant from Rs 91.63 lakhs to Rs 77.37 lakhs. The Adjudicating Authority has also noticed the stubborn reluctance on the part of the Appellant to revise the interest amount corresponding to reduced principal amount. Despite clear directions by the Adjudicating Authority on 20.04.2023 to furnish a detailed computation, the Appellant has been intransigently sticking to the same figure of interest amount leading the Adjudicating Authority to rightly question the basis and legitimacy of the interest claimed. For reasons of fairness and transparency, the Appellant should have offered a credible explanation to

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the Adjudicating Authority as to why the claim of interest amount remained unchanged inspite of scaling down of principal amount post reconciliation. This opacity on the part of the Appellant lends force to the contention of the Respondent that the interest component of Rs 1.05 Cr was being insisted upon to artificially to cross the threshold limit of Rs 1 Cr.

16. In the given circumstances when the principal amount claimed by the Appellant has already been paid, we agree with the Adjudicating Authority that there was no legally enforceable unpaid operational debt as required under Section 9(5) of IBC to trigger CIRP. We are also guided by the decision rendered by this Tribunal in the case of **S.S. Polymers Vs Kanodia Technoplast Limited in CA (AT)(Ins.) No. 1227 of 2019** in which a similar issue had arisen and this Tribunal had held that claim of interest basis one-sided invoices cannot be the foundation for a Section 9 application.

The relevant extracts of the judgment is as reproduced below:

“3. The Adjudicating Authority has noticed that a sum of Rs.25,00,000/- out of Rs.32,71,800/- was paid to the Appellant by 31st December, 2018 through RTGS(s). The remaining amount of Rs.7,71,800/- was also paid by ‘Corporate Debtor’ to the Applicant by 17th January, 2019 through NEFT(s).

The said amounts were paid before the admission of the application under Section 9 of the I&B Code. Even after receiving the total amount due, the Appellant pursued the application under Section 9 of the I&B Code for a sum of Rs.2,16,155/- towards interest. In these background, the Adjudicating Authority observed that in the absence of any Agreement, no such amount can be claimed.

4. The Learned Counsel for the Appellant relied on ‘Invoices’ to suggest that in the ‘Invoices’, the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the ‘Corporate Debtor’.

5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the ‘Corporate Debtor’ paid the total debt. The application was pursued for

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realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Corporate Debtor' and which is barred in view of Section 65 of the I&B Code.

6. *We find no merit in this Appeal and it is accordingly dismissed."*

(Emphasis supplied)

17. *The preambular objective of the IBC being insolvency resolution has been often emphasised by the Hon'ble Supreme Court in a catena of judgements. The provisions of IBC cannot be turned into a debt recovery proceeding. Hence, the Adjudicating Authority has not committed any infirmity in not allowing the CIRP of the Corporate Debtor to be initiated solely on the basis of the claim of the contested and unsubstantiated interest component. The provisions of IBC cannot be turned into a debt-recovery proceedings and to commend any such course of action would tantamount to pushing the Corporate Debtor to face the perils of corporate death instead of being rejuvenated and revived. We also notice that the Appellant has relied on the provisions of other laws like MSME Act or Interest Act to justify their claim of interest payment. Without making any observation on the merits of their contention, we would only like to add that neither the Adjudicating Authority nor this Appellate Tribunal is the appropriate forum for making any such determination on the liability of the Respondent- Corporate Debtor to pay interest under the MSME Act or Interest Act.*

18. *For the aforesaid reasons, we find no merit in the Appeal. There is no good ground which warrants interference of the impugned order. Appeal stands dismissed. No costs.*

21. We also are inclined to refer to the judgment of Hon'ble NCLAT in ***Prashat Agarwal v. Vikas Parasrampuria in CA(AT)(Ins.) No. 690 of 2022*** wherein the following was held:

(iv) *We have also noted that Adjudicating Authority has also referred to one Judgment of this Tribunal i.e **Pavan***

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Enterprises v. Gammon India while allowing interest on delayed payment to be part of total debt for calculation of minimum threshold limit for Section 4 of IBC in the Impugned Order itself (at Page – 22 of the 'Memo of Appeal', Volume-I).

"(f).....

judgement dated 27th July 2018 in Company Appeal No.148 of 2018 in Pavan Enterprises v. Gammon India, wherein the NCLAT has held that "If in terms of any agreement interest is payable to the Operational or Financial Creditor then the debt will include interest".

In this context, as discussed above, all 9 invoices clearly stipulated provision of Interest on delayed payment. It is also observed that payments of three invoices has been made in full and for one invoice in part against said invoices by CD and no dispute on this clause was ever raised as noted from record available before us.

(v) Before coming to any conclusion, it will also be pertinent to go through legal definition of debt. The definition of debt as per section 3(11) of IBC is as under:-

3(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt."

Since, the word "claim" is mention in definition of debt in Section 3(11) we need to refer to definition of claim under Section 3(6) of IBC which is as follows:-

"3(6) "claim" means

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

Since, interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for "right to payment" (Section 3(6) IBC) and therefore will form part of "debt" (Section 3(11) IBC)

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(vi) It is, therefore, clear from these facts that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself. It is noted that the total principal debt amount of Rs. 97,87,220/- along with interest the total debt makes total outstanding as Rs. 1,60,87,838/- . Thus, the total debt outstanding of OC is above Rs. 1 crore as per requirement of Section 4 IBC read with notification No. S.O 1205 (E) dated 24.3.2020 (*Supra*), and meets the criteria of Rs. 1 crore as per Section 4 of IBC and Application is therefore maintainable in present case. We concur with the orders of the Adjudicating Authority on this issue also.

(vii) We, therefore, do not find any merit in the present appeal and dismiss the same.

22. Upon perusal of all the judgements as relied on by the respondent, it is noted that all these cases are clearly distinctive from the present case in hand in respect of existence of *consensus ad idem* in regard to imposition of interest. In all the cited cases cited either there was no agreement between the parties regarding imposition of interest or it was imposed unilaterally or the same was in dispute. which is not the case in here. The agreement dated 01.04.2014 since its very inception contained clauses no. 8.0 to 8.5 which enumerated the imposition of interest. It is also not the case of the respondent that these clauses were waived off with mutual consent or was overridden with any other document. In nutshell it is not the case of the respondent that there was no consensus in regard to imposition of interest. Moreover, in light of the principle laid by the Hon'ble Supreme Court in ***Vijay Industires (Supra)*** which has also been followed by Hon'ble NCLAT in ***Amsons Communication (P) Ltd (Supra)*** and the judgment of Hon'ble NCLAT in ***Prashat Agarwal (Supra)*** it is unambiguous that interest component, that is mutually agreed between the parties' form part of 'operational debt'.

23. In the present case it is undisputed that the Agreement dated 01.04.2014 clearly provided for imposition of interest and the same was

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claimed by the applicant as part of the default amount of approximately Rs.18 Crores in Part-IV of the application. As far as existence of dispute is concerned, the respondent other than the plea of section 9(1) petition under Arbitration and Conciliation Act,1996, has not been able to show anything that even remotely indicates that there existed any form of dispute on the date of issuance of demand notice. As already noted, the respondent had not disputed the imposition of interest ever, neither in the reply to demand notice nor the reply to the petition but it was done at a very belated stage during the pendency of the present application, that too after paying the principal amount, as discussed above.

24. In regard to the stance of the respondent that it has filed an application under section 9(1) seeking 'interim relief' before the Ld. 12th City Civil Court at Calcutta in the form of Miscellaneous Case (arbitration) No. 1247 of 2020. We perused the contents of the application. (**"Misc Case No. 1247"**)

For brevity Para 6 of the application, which clearly indicates the objective of filing the application is reproduced hereinbelow:

6. In light of diverse transactions between the parties herein during Financial Year 2018-19 and Financial Year 2019-20, Balasore is liable to pay about Rs. 13 crores to MSTC as on date. However, due to the ongoing Corona / Covid-19 pandemic, the consequent economic meltdown and consequent rising financial distress, Balasore has not yet paid the aforesaid sum to MSTC, in view of which the Respondent is now proceeding, arbitrarily and unlawfully, with a risk sale of the pledged materials lying at the plant premises of Balasore at Balgopalpur, Odisha. The Respondent, ignoring the proposal for repayment as presented by the Petitioner, seeks to wrongfully proceed with the risk sale of pledged materials i.e. the subject matter of arbitration.

25. We have gone through entire contents of the application and it is seen that the respondent through this application in Misc Case No.

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1247 only wanted to restrain the present applicant from redeeming its pledge on the goods and preventing him from carrying out auction of the goods pledged with the applicant. There is nothing in the contents of the application in Misc Case No. 1247 which shows that there was any dispute in regard to the liability of the respondent.

Furthermore, we also did not find anything in the contents of Misc Case No. 1247 which will indicate that there was any dispute between the applicant and respondent in regard to the imposition of interest amount. Rather upon perusal of Para 7(f) and (g) of the application in Misc Case No. 1247 at Page 93 of the present application, it is inferred that as per the respondent himself, the total claim of the present applicant was of Rs. 13 Crores and the same was admitted in full by the respondent and the reason for nonpayment was not any dispute but rather the economic slowdown caused by Covid Pandemic.

26. Furthermore, it is also noted that this application was filed in 2020 and was disposed of in 2022 but as rightly pointed out by the present applicant, the respondent did not take any step to even invoke the arbitration clause until 08.07.2022 i.e. 2 months after a demand notice under section 8 of IBC was sent by the applicant and no proceeding was pending at the time of issuance of notice under section 8 of IBC. Hence in adherence to the principle laid down by the Hon'ble Supreme Court of India in ***Mobilox Innovations Private Limited v Kirusa Software Private Limited (2018) 1 SCC 353***, we find that there is no 'real dispute' that ever existed between the applicant and respondent in respect to the principal amount or the interest amount.

27. In light of the above observations, we are inclined to hold that there exists an outstanding operational debt above the threshold amount and a default and hence the present Petition bearing CP (IBC) No. 36/CB/2022 under Section 9 of the Code read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP of **BALASORE ALLOYS LIMITED** [CIN: L2730WB1964GOI026211], Corporate Debtor is '**ADMITTED**'.

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28. The **Moratorium under section 14** of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of section 14(1) 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 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.

29. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33 of the Insolvency & Bankruptcy Code, 2016.

30. The applicant has not proposed any name for the position of IRP, hence we hereby appoint **Mr. Sikhar Chand Jain** having **registration No. IBBI/IPA-001/IP-P00495/2017-18/10883** and **Email Id: kaijain92@gmail.com** as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to him possessing a valid Authorisation for Assignment in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.

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31. The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by section 13(1) (b) of the Code.

32. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

33. The IRP shall perform all his functions as contemplated, *inter alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or cooperate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority u/s 19(2) of the Code with a prayer for passing an appropriate order.

34. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

35. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

36. The Operational Creditor shall deposit a sum of **₹2,00,000/- (Two Lakhs only)** with the within two weeks from the date of receipt

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this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

37. In terms of section 9(5)(i) of the Code, the Registry is hereby directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, within seven (7) working days and upload the same on website immediately after pronouncement of the order.

38. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Commercial Tax, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

39. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

40. The Resolution Professional shall submit his periodic reports before this Adjudicating Authority as per rules/regulations.

The petition **CP (IB) No. 36/CB/2022** stands “**ALLOWED**”.

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BANWARI LAL MEENA
Member (Technical)

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DEEP CHANDRA JOSHI
Member (Judicial)