

**NATIONAL COMPANY LAW TRIBUNAL  
"CHANDIGARH BENCH, CHANDIGARH"  
(Exercising powers of Adjudicating Authority  
under the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.167/Chd/Hry/2018**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016**

**In the matter of:**

Darshan Anil Lodha,  
Son of Shri Anil Bansilal Lodha,  
Proprietor of M/s A.B. Lodha,  
Having its office at Mangal Bhawan,  
Opposite Swami Vivekananda School,  
Near Mithil Lodge, Panchavati, Nashik, Maharashtra

...Petitioner-Operational Creditor

Versus

Kopargaon Ahmednagar Tollways (Phase-I), Private Limited,  
Having its office at 510, 5<sup>th</sup> Floor, ABW Tower, IFFCO Chowk,  
Metro Station, M.G. Road, Gurgaon, Haryana- 122002  
And also at:-  
9<sup>th</sup> Floor (901-905), Millennium Tower B, Opp. IFFCO Chowk Metro Station,  
M.G. Road, Gurgaon, Haryana- 122002

...Respondent-Corporate Debtor

**Judgment delivered on 07.10.2019**

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)  
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioner : Mr. Ravi Varma, Advocate  
For the Respondent : None

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

**JUDGMENT**

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 (for short hereinafter referred to as '**Rules**'). The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. Mr. Darshan Anil Lodha, proprietor of M/s A.B.Lodha, (for short hereinafter referred to as the '**petitioner**' and/or '**operational creditor**') has filed the application. The petitioner-operational creditor has authorized Shri Pankaj Dharmadhikari, Manager-Contracts to file petition on its behalf. The letter of Authority authorizing Shri Pankaj Dharmadhikari is annexed as Annexure P-3. The Power of Attorney is filed as Annexure P-25 vide Diary No. 3690 dated 27.09.2018 and the affidavit is filed vide Diary No. 4510, dated 19.11.2018. There is also an affidavit in support of the contents of the application.

3. Kopargaon Ahmednagar Tollways (Phase-I) Private Limited (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the Companies Act, 1956 with authorized share capital of ₹5,00,000/- and paid up capital of ₹1,00,000/-. The CIN of the respondent-corporate debtor is U45203HR2012PTC047422 and its registered office is situated in District Gurugram in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at Annexure P-2 of the petition.

4. The facts of the case, briefly, as stated in the petition, are that petitioner is the proprietorship concern of Mr. Darshan Anil Lodha engaged in the business of infrastructure, construction and related allied works. The Respondent Company is primarily engaged in the business of design, construction and maintenance of Highways, bridges, flyovers, buildings, etc. Respondent Company is a subsidiary of Supreme Infrastructure BOT Private

Limited (“SIBPL”) wherein SIBPL is holding 99.99% shares in the Respondent Company. The Government of Maharashtra (“GOM”) awarded the Four-Laning of Kopergaon – Ahmednagar Road (SH10) KM. 78/120 to 120/100 and construction of Two Lane Shirdi-Rahata bypass (on BOT Basis) Project – I (the “Project”) to M/s Ram Infrastructure Ltd. (“RIL”). Thereafter, a tri-party agreement dated 10.05.2007 was executed between RIL, its SPV Company, M/s Pranjal Infrastructure Limited (“Pranjal”) and GOM. Pranjal issued two Work Orders to the Petitioner. The Petitioner executed the Works in accordance with the drawings, specifications and other requirements as provided in the Work Orders and the Contract and completed the Works within the agreed timelines. Subsequently, the petitioner was issued Completion Certificates by Pranjal. Since the amounts remained unpaid by RIL and Pranjal, the Petitioner issued a notice of demand dated 01.06.2012 to RIL and Pranjal calling upon them to pay the outstanding amounts to the Petitioner. RIL and Pranjal acknowledged the notice but expressed their inability to pay owing to severe financial crisis. The Petitioner was informed that SIBPL (the holding company of the Respondent) is acquiring their shareholding in RIL and its subsidiary, Pranjal and thereby, taking over the said companies with all its assets and liabilities. A Share Purchase Agreement was entered into by RIL, Pranjal and SIBPL wherein the outstanding amounts and liability of SIBPL to pay ₹3,72,19,060/- to the Petitioner was specifically acknowledged. RIL and Pranjal also issued an Acknowledgement of Debt Receipt dated 11.06.2012 in favour of the Petitioner for an amount of ₹3,72,19,060/- towards the Petitioner. The outstanding amounts and liabilities of Pranjal towards its creditors are set out in Article 5.12 of the Share Purchase Agreement which SIBPL undertook to pay. According to the Article 5.2 of the

Share Purchase Agreement, the said outstanding amounts were to be paid within 180 days of receiving a notice of demand for the same. The Petitioner issued a reminder notice of demand dated 29.04.2013 calling upon SIBPL, RIL and Pranjal to jointly and severally make payment of the above stated outstanding amount within 180 days from the date of receipt of the said notice in terms of the Share Purchase SIBPL through the Respondent Company made some payments to the Petitioner between 10.01.2015 to 09.06.2015 totaling to an amount of ₹1,05,36,211/- in part satisfaction of SIBPL's debt. The Petitioner issued reminder letter dated 12.06.2015 and emails dated 30.05.2015 and 20.06.2015 and demanded payment of the outstanding amounts. The Respondent Company replied to the said email dated 20.06.2015 on 23.06.2015 admitting the amounts paid out of the total outstanding due to the Petitioner. SILL and the Respondent Company issued another joint letter on 05.07.2015 acknowledging and confirming their debt towards the Petitioner which further stated that all the debts would be settled and paid by the respondent Company. The Petitioner issued a demand notice dated 11.09.2017 under Section 8 of the Code read with clause (a) of sub-rule 5 of the Code calling upon the Respondent Company to repay the Operational Debt in full within 10 days from the receipt of the Notice. After the death of Mr. Anil Bansal Lodha, Mr. Darshan Anil Lodha became the proprietor of the Petitioner. Thereafter, in order to avoid any technicality, the Petitioner, through Mr. Darshan Anil Lodhan issued another demand notice dated 23.01.2018 under Section 8 of the Code read with clause (a) of sub-rule 5 of the Code calling upon the Respondent Company to repay the Operational Debtor in full within 10 days from the receipt of the Notice.

5. Notice in C.P. was issued to the Corporate Debtor on 08.06.2018, and the petitioner filed the affidavit of service showing that the notice was effected on 12.07.2018 but no one present for corporate debtor on 06.08.2018. However, while directing to list the C.P. on 20.09.2018, for arguments, 3 weeks time was granted to file reply. Though, C.P. was listed on number of occasions thereafter, the corporate debtor neither chosen to be represented nor filed any reply.

6. We have heard the learned counsel for the petitioner and have carefully perused the records.

7. The provisions of Section 9(5)(i) of the Code are as follows:-

*“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—*

*(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—*

*(a) the application made under sub-section (2) is complete;*

*(b) there is no payment of the unpaid operational debt;*

*(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*

*(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*

*(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”*

8. The Hon'ble Supreme Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353, Civil Appeal No. 9405 of 2017***, held as under:-

*“51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice*

*must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

9. In Annexure P-18 dated 05.07.2015 of the respondent-corporate debtor written to the petitioner, categorically admitted and acknowledged the debt of ₹3,72,19,060/- due to the petitioner. Thereafter, after adjusting the amount paid by the respondent-corporate debtor, the debt due was ₹2,66,82,849/- and after adding the interest thereon the total amount of debt due and in default was ₹6,36,10,875/-. Annexure P-5/A of the petition i.e. the certificate under Section 9(3)(c) of the IBC Code, 2016 issued by the State Bank of India also confirms the admission and part payment of various amounts by the respondent-corporate debtor to the petitioner. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

10. In view of the above discussion and since the petition is complete in all respects, the same is admitted.

11. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

12. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

13. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

14. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant case also, the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the Code says that where the application for Corporate Insolvency Resolution Process is made by an operational creditor and –

- “a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;*
- b) x x x x x”*

15. Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

16. In this regard a letter bearing File No.25/02/2019-NCLT dated 28.06.2019 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2018/02/ dated 24.06.2019 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.07.2019 to 31.12.2019. We select Mr.



Vanit Kumar Mittal appearing at Serial No. 49 of the panel to be appointed as Interim Resolution Professional.

17. The Law Research Associate of this Tribunal has checked the credentials of Mr. Vanit Kumar Mittal and there is nothing adverse against him. In view of the above, we appoint Mr. Vanit Kumar Mittal, Registration No. IBBI/IPA-001/IP-P-01483/2018-2019/12252, Mobile No. 98104-91207, E-mail: [vanity.mittal@vmtcorp advisors.com](mailto:vanity.mittal@vmtcorp advisors.com), as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Vanit Kumar Mittal shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance

sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all

cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-  
(Pradeep R.Sethi)  
Member (Technical)

October 7<sup>th</sup>, 2019  
Mohit Kumar

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

Pronounced in open Court. Sd/- 07.10.2019

**NATIONAL COMPANY LAW TRIBUNAL  
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**Judgment delivered on 07.10.2019**

**Coram: HON’BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)  
 HON’BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioner : Mr. Ravi Varma, Advocate  
 For the Respondent : None

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

**JUDGMENT**

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3. Kopargaon Ahmednagar Tollways (Phase-I) Private Limited (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the Companies Act, 1956 with authorized share capital of ₹5,00,000/- and paid up capital of ₹1,00,000/-. The CIN of the respondent-corporate debtor is U45203HR2012PTC047422 and its registered office is situated in District Gurugram in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at Annexure P-2 of the petition.

4. The facts of the case, briefly, as stated in the petition, are that petitioner is the proprietorship concern of Mr. Darshan Anil Lodha engaged in the business of infrastructure, construction and related allied works. The Respondent Company is primarily engaged in the business of design, construction and maintenance of Highways, bridges, flyovers, buildings, etc. Respondent Company is a subsidiary of Supreme Infrastructure BOT Private

Limited ("SIBPL") wherein SIBPL is holding 99.99% shares in the Respondent Company. The Government of Maharashtra ("GOM") awarded the Four-Laning of Kopergaon – Ahmednagar Road (SH10) KM. 78/120 to 120/100 and construction of Two Lane Shirdi-Rahata bypass (on BOT Basis) Project – I (the "Project") to M/s Ram Infrastructure Ltd. ("RIL"). Thereafter, a tri-party agreement dated 10.05.2007 was executed between RIL, its SPV Company, M/s Pranjal Infrastructure Limited ("Pranjal") and GOM. Pranjal issued two Work Orders to the Petitioner. The Petitioner executed the Works in accordance with the drawings, specifications and other requirements as provided in the Work Orders and the Contract and completed the Works within the agreed timelines. Subsequently, the petitioner was issued Completion Certificates by Pranjal. Since the amounts remained unpaid by RIL and Pranjal, the Petitioner issued a notice of demand dated 01.06.2012 to RIL and Pranjal calling upon them to pay the outstanding amounts to the Petitioner. RIL and Pranjal acknowledged the notice but expressed their inability to pay owing to severe financial crisis. The Petitioner was informed that SIBPL (the holding company of the Respondent) is acquiring their shareholding in RIL and its subsidiary, Pranjal and thereby, taking over the said companies with all its assets and liabilities. A Share Purchase Agreement was entered into by RIL, Pranjal and SIBPL wherein the outstanding amounts and liability of SIBPL to pay ₹3,72,19,060/- to the Petitioner was specifically acknowledged. RIL and Pranjal also issued an Acknowledgement of Debt Receipt dated 11.06.2012 in favour of the Petitioner for an amount of ₹3,72,19,060/- towards the Petitioner. The outstanding amounts and liabilities of Pranjal towards its creditors are set out in Article 5.12 of the Share Purchase Agreement which SIBPL undertook to pay. According to the Article 5.2 of the

Share Purchase Agreement, the said outstanding amounts were to be paid within 180 days of receiving a notice of demand for the same. The Petitioner issued a reminder notice of demand dated 29.04.2013 calling upon SIBPL, RIL and Pranjal to jointly and severally make payment of the above stated outstanding amount within 180 days from the date of receipt of the said notice in terms of the Share Purchase SIBPL through the Respondent Company made some payments to the Petitioner between 10.01.2015 to 09.06.2015 totaling to an amount of ₹1,05,36,211/- in part satisfaction of SIBPL's debt. The Petitioner issued reminder letter dated 12.06.2015 and emails dated 30.05.2015 and 20.06.2015 and demanded payment of the outstanding amounts. The Respondent Company replied to the said email dated 20.06.2015 on 23.06.2015 admitting the amounts paid out of the total outstanding due to the Petitioner. SILL and the Respondent Company issued another joint letter on 05.07.2015 acknowledging and confirming their debt towards the Petitioner which further stated that all the debts would be settled and paid by the respondent Company. The Petitioner issued a demand notice dated 11.09.2017 under Section 8 of the Code read with clause (a) of sub-rule 5 of the Code calling upon the Respondent Company to repay the Operational Debt in full within 10 days from the receipt of the Notice. After the death of Mr. Anil Bansal Lodha, Mr. Darshan Anil Lodha became the proprietor of the Petitioner. Thereafter, in order to avoid any technicality, the Petitioner, through Mr. Darshan Anil Lodhan issued another demand notice dated 23.01.2018 under Section 8 of the Code read with clause (a) of sub-rule 5 of the Code calling upon the Respondent Company to repay the Operational Debtor in full within 10 days from the receipt of the Notice.

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6. We have heard the learned counsel for the petitioner and have carefully perused the records.

7. The provisions of Section 9(5)(i) of the Code are as follows:-

*“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—*

*(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—*

*(a) the application made under sub-section (2) is complete;*

*(b) there is no payment of the unpaid operational debt;*

*(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*

*(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*

*(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”*

8. The Hon'ble Supreme Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353, Civil Appeal No. 9405 of 2017***, held as under:-

*“51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice*



*must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

9. In Annexure P-18 dated 05.07.2015 of the respondent-corporate debtor written to the petitioner, categorically admitted and acknowledged the debt of ₹3,72,19,060/- due to the petitioner. Thereafter, after adjusting the amount paid by the respondent-corporate debtor, the debt due was ₹2,66,82,849/- and after adding the interest thereon the total amount of debt due and in default was ₹6,36,10,875/-. Annexure P-5/A of the petition i.e. the certificate under Section 9(3)(c) of the IBC Code, 2016 issued by the State Bank of India also confirms the admission and part payment of various amounts by the respondent-corporate debtor to the petitioner. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

10. In view of the above discussion and since the petition is complete in all respects, the same is admitted.

11. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

12. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

13. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

14. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant case also, the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the Code says that where the application for Corporate Insolvency Resolution Process is made by an operational creditor and –

- “a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;*  
*b) x x x x x”*

15. Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

16. In this regard a letter bearing File No.25/02/2019-NCLT dated 28.06.2019 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2018/02/ dated 24.06.2019 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.07.2019 to 31.12.2019. We select Mr.

Vanit Kumar Mittal appearing at Serial No. 49 of the panel to be appointed as Interim Resolution Professional.

17. The Law Research Associate of this Tribunal has checked the credentials of Mr. Vanit Kumar Mittal and there is nothing adverse against him. In view of the above, we appoint Mr. Vanit Kumar Mittal, Registration No. IBBI/IPA-001/IP-P-01483/2018-2019/12252, Mobile No. 98104-91207, E-mail: [vanity.mittal@vmtcorp advisors.com](mailto:vanity.mittal@vmtcorp advisors.com), as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Vanit Kumar Mittal shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance

sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all

cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-  
(Pradeep R.Sethi)  
Member (Technical)

October 7<sup>th</sup>, 2019  
Mohit Kumar

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

Pronounced in open Court. Sd/- 07.10.2019