

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, COURT-III

C.P. (IB) -397(ND)/2024

Order 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. METRO TYRES LIMITED

Having Its Registered Office at:

201, Square One, C-2,

District Centre, Saket Place,

South Delhi, New Delhi-110017.

Through its Authorized Representative:

Sh. Anurag Dwivedi

.... Operational Creditor/Applicant

VERSUS

M/s. HERO ELECTRIC VEHICLES PVT. LTD

Having Its Registered Office at:

50, Okhla Industries Estate, Phase- III,

New Delhi- 110020

.... Corporate Debtor/Respondent

Order Pronounced On: 20.12.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For Petitioner: Mr. Pallav Saxena, Mr. Syed Arsalan, Mr. Prateek Khaitan,
Mr. Chatanya Sharma, Advs.

For Respondent: Mr. Alok Dhir, Ms. Varsha Banerjee, Mr. Udit Singh, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This is a 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 M/s. Metro Tyres Limited ('Operational Creditor'), against the Corporate Debtor for the purpose of initiating Corporate Insolvency Resolution Process ('CIRP') against M/s. Hero Electric Vehicles Pvt. Ltd. ('Corporate Debtor').
2. The Operational Creditor is a company incorporated under the Provision of the Companies Act, 1956 and is engaged in the business of manufacturing of rubber products. The registered office of the Operational Creditor is at 201, Square, C- 2, District Centre, Saket Place, South Delhi -110017.
3. The Corporate Debtor i.e., M/s. Hero Electric Vehicles Pvt. Ltd. is a company incorporated under the Provision of the Companies Act, 1956 and is engaged in the field of electric mobility solutions. The Company offers electric two wheelers. The registered office of the Corporate Debtor is at 50, Okhla Industries Estate, Phase III, New Delhi- 110020.
4. The Corporate Debtor approached the Operational Creditor for the purchase of Cycle tyres and tubes on the basis of reputation of the Operational Creditor. Pursuant to the request of the Corporate Debtor, the Operational Creditor supplied goods to the Corporate Debtor and in lieu of the same various invoices were raised by the Operational Creditor upon Corporate Debtor from 09.08.2022 to 03.12.2022 amounting to a sum of Rs. 3,69,53,071/ - (Rupees Three Crore Sixty-Nine Lakhs Fifty-Three Thousand and Seventy-One only). Out of which Rs. 4,27,698/- (Rupees Four Lakhs Twenty-Seven Thousand Six Hundred and Ninety-Eight only) were received by the Operational Creditor from the Corporate Debtor. As per the said Statement of Accounts, there is an outstanding amount of Rs 1,85,25,373/- (Rupees One Crore Eighty-Five Lakh Twenty-Five Thousand Three Hundred and Seventy-Three only) which is due and payable by the Corporate Debtor as on 31.03.2024.

Hence, the present petition.

5. Submissions of the Operational Creditor

- i. The Applicant submitted that the Operational Creditor has performed its services with due care and diligence and supplied the said goods at the respective delivery sites with consonance to the instructions of the Corporate Debtor and no dispute was ever raised by the Corporate Debtor in respect to the aforesaid transactions.
- ii. The Operational Creditor, on various occasions, had requested the Corporate Debtor for payment of the pending amount in respect to the abovementioned invoices for the period of 09.08.2022 to 03.12.2022. On 09.09.2023, the Corporate Debtor sent an email approximately after nine months from the last invoice, on the basis of field feedback received by the Corporate Debtor, wherein Corporate Debtor took a moonshine defense and stated that in 90/90x10 tyre and 90/90x12 tyre supplied by Corporate Debtor, there is issue of Tread Separation, Bubbles and Air Leakage.
- iii. In response to the email dated 09.09.2023, the Operational Creditor sent an E-mail dated 11.09.2023 to Corporate Debtor and categorically stated that Operational Creditor has not supplied any substandard product to any OEM and even if some difficulty has been faced in field, the Operational Creditor has a claim policy for the purposes of the same.
- iv. The Corporate Debtor has never raised any quality issue or any sort of dispute in any manner whatsoever from their end in terms of their own inspection policy and the same is evident from the Balance Confirmation Letter dated 29.06.2023 certified through Corporate Debtor's Manager Accounts confirming the Balance Confirmation as on 31.03.2023.
- v. It is submitted that the moonshine defense raised by the Corporate Debtor is devoid of merit and has been raised on the basis of field feedback which is primarily attributable towards the manner/usage of tyres. The Corporate Debtor is well aware of the fact, that Operational Creditor has a Customer friendly claim policy wherein the end user i.e. consumer of tyre can raise its claim, either through itself or through Dealer/OEMs.

- vi. Due to the aforesaid circumstances, the Operational Creditor was compelled to send a Demand Notice (Form-3) under Section 8 of the Insolvency and Bankruptcy Code, 2016 at the registered office of the Corporate Debtor demanding the payment of the outstanding operational debt on 18.11.2023. The aforesaid Demand Notice/Form-3 was sent to the last known address/registered office of the Corporate Debtor. However regardless of the same, Corporate Debtor failed to clear the dues of the Operational Creditor and sent a baseless reply dated 25.11.2023 raising frivolous/wrong contentions. The Operational Creditor in response to the Reply to Demand Notice dated 25.11.2023 sent a detailed rejoinder dated 04.12.2023 addressing all the issues raised by the Corporate Debtor.
- vii. Subsequent to the aforementioned, the Corporate Debtor paid an amount of Rs. 1,80,00,000/- on 08.12.2023 to the Operational Creditor out of total outstanding of Rs. 3,65,25,373/ - duly receivable from the Corporate Debtor as on 07.12.2023. The Corporate Debtor requested the Operational Creditor to enter into Memorandum of Settlement for the payment of remaining outstanding amount. However, as parties failed to agree amicably to the terms and conditions of the same, the Memorandum of Settlement Agreement was not executed between the parties.
- viii. In response to the reply dated 16.04.2024 sent by the Corporate Debtor, the Operational Creditor sent a rejoinder dated 07.05.2024, wherein Operational Creditor again apprised the Corporate Debtor that the Operational Creditor has not supplied any substandard product to Corporate Debtor or to any other OEM and even if some difficulty has been faced, by any "Consumer" attributable towards the manner/usage of tyres, the Corporate Debtor is well aware that, Operational Creditor has a Customer friendly claim policy wherein the end user i.e. consumer of tyre can raise its claim, either through itself or through Dealer/OEMs, therefore, requested the Corporate Debtor to make the payment of the outstanding amount within 7 days from the receipt of the rejoinder dated 07.05.2024. However, corporate debtor again failed to make payment of the outstanding amount and is now making dilatory tactics and raising moonshine defense to avoid repayment to the Operational Creditor.

6. Submissions of the Corporate Debtor

The Corporate Debtor has filed reply affidavit dated 21.08.2024 denying the averments and contentions raised by the Applicant and raised the following objections against the maintainability of the present petition.

A. THE INSTANT CASE IS A CLEAR CASE OF PRE-EXISTING DISPUTE

- i. It is submitted that initially there were no issues between the Parties herein and accordingly, the Corporate Debtor was making payment towards the goods supplied by the Operational Creditor. However, the issues started arising after 28.09.2022, when the Operational Creditor started supplying inferior quality of products. The goods supplied by the Operational Creditor were of such kind and nature that their quality could have been assessed only when the two wheelers were sold in the market and the Corporate Debtor gathered feedback and market data for the same and therefore, there was a time lapse between procurement of goods from the Operational Creditor and quality assessment of the same. Therefore, since the market feedback as well as quality assessment of the goods supplied post 28.09.2022 was yet to be conducted, the Corporate Debtor had confirmed the balance of Rs. 3,65,30,54.90/-, allegedly payable to the Operational Creditor, as on 31.03.2023.
- ii. It is submitted that the Operational Creditor has itself admitted to having customer friendly claim policy wherein even Original Equipment Manufacturer, i.e., the Corporate Debtor can raise a claim. However, it is submitted that mere confirmation of the balance, as on 31.03.2023, did not preclude the Corporate Debtor from conducting a quality assessment of the products supplied by the Operational Creditor.
- iii. The Corporate Debtor had made a payment of Rs. 5,00,000/- to the Operational Creditor on 28.03.2023. However, for arbitrary and mala fide reasons, the Operational Creditor has adjusted only a sum of Rs. 4,27,698/- towards the said goods and therefore, the balance confirmation provided by the Corporate Debtor, as on 31.03.2023 does not match with the amount alleged to be due and payable, by the Operational Creditor, which in itself is evidence of pre-existing dispute.

- iv. The goods supplied by the Operational Creditor, were not only substandard but also posed a hazard to life and safety of the customers of the Corporate Debtor. On becoming aware of the said quality issues in the goods supplied by the Operational Creditor, the Corporate Debtor had forthwith, vide its e-mail dated 09.09.2023 raised the concerns with the goods supplied by the Operational Creditor. The Operational Creditor, vide its e-mail dated 11.09.2023 not only took notice of the quality issues raised by the Corporate Debtor, but also duly admitted to the inferior quality of the products raised by the Corporate Debtor.
- v. It is submitted that the Operational Creditor, in order to coerce and arm twist the Corporate Debtor into paying the disputed quantum of dues, hurriedly issued a Demand Notice dated 18.11.2023 under Section 8 of the Code, for an alleged amount of Rs. 3,65,25,373/- despite the fact that there were pending issues pertaining to the quality of the goods supplied. the Corporate Debtor, vide its reply dated 25.11.2023 forthwith brought to the notice of the Operational Creditor, the pre-existing disputes vis-a-vis the quality of the goods supplied as well as non-reconciliation of the accounts.

B. THE PETITION IS LEGGALY UNTENABLE AS THE PETITIONER HAS SUPPRESSED MATERIAL FACTS AND SUBMITTED DEFECTIVE AND INCOMPLETE PETITION

It is submitted that record of default, as generated by Information Utility, is a sine qua non to establish the existence of authenticated default on part of Corporate Debtor. However, in the instant case, after the Operational Creditor sought to create record of default on Information Utility, the Corporate Debtor, vide its Letter dated 16.04.2024 has raised the dispute and accordingly, no record of default was generated on the Information Utility. However, in order to mislead this Tribunal, the Operational Creditor has placed on record Form-C i.e., the Record of Financial Information, and disguised the same as Form-D, i.e., Record of Default. Such a mala fide practice is clearly contrary to the well-recognized objects of the Code and thus, the captioned Petition is liable to be out rightly dismissed on this ground alone.

7. ANALYSIS & FINDINGS

- i. We have heard the Learned Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the records.
- ii. It is an admitted case of the Applicant and Operational Creditor that supplied tyres to the Corporate Debtor and in lieu of the same various invoices were raised by the Operational Creditor upon Corporate Debtor from 09.08.2022 to 03.12.2022 amounting to a sum of Rs. 3,69,53,071/- out of which Rs. 4,27,698/- were duly received by the Operational Creditor from the Corporate Debtor. Thereafter, the Operational Creditor sent a Demand Notice dated 18.11.2023 under Section 8 of the Code to the Corporate Debtor demanding an amount of Rs 3,65,25,373/- along with an interest of 18% per annum towards the pending amount. The Corporate Debtor paid an amount of Rs.1,80,00,000/- on 08.12.2023 to the Operational Creditor out of total principle outstanding of Rs.3,65,25,373/-. Therefore, the Corporate Debtor is liable to pay Rs 1,85,25,373/- along with interest to be calculated at 18% per annum to the Operational Creditor.
- iii. The Ld. Counsel for the Corporate Debtor submitted that the alleged debt, to the tune of Rs. 1,85,25,373/- is neither due nor payable by the Corporate Debtor in terms of Section 9 of the Code as there exists a pre-existing dispute with respect to the quality of goods supplied and also a non-reconciliation of accounts. Therefore, in terms of Section 5(6) of the Code there is a dispute and the present Petition is liable to be rejected.
- iv. It is contended that the Corporate Debtor in its Reply to Demand Notice dated 25.11.2023 raised an objection of pre-existing dispute basis on E-mail dated 09.09.2023 purportedly issued before Section 8 Demand Notice dated 18.11.2023 which reads as under:

"Dear Sir/Madam

We have observed the following quality issues in the field, in the products supplied 90/90x10 tyre and 90/90x12 tyre fitted in our electric Vehicle Scooters-

1) Tread separation

2) Bubbles

3) Air leakage

Some of these defects may result in blowing out of the tyres these are serious concerns and are related to customer safety. As OEM we do not expect you to deliver us substandard products."

- v. The Operational Creditor sent its Reply to the above E-mail dated 11.09.2023 seeking details of the tyres in which quality issues were found out, the contents whereof are reproduced herein below for easy reference:

"Dear Mr. Aman

Sorry to inform you that Metro us not supplying any substandard product to any OEM. But it may be issue in some tyres in the field and we have claim policy for that. Kindly share the complete details of the tyres and in case any issue is there in future, kindly contact to the below persons zone wise ..."

- vi. The Corporate Debtor, vide its reply dated 25.11.2023 to the Demand Notice of the Operational Creditor, raised issues about the inferior and sub-standard quality of the goods supplied as well as non-reconciliation of the accounts. The relevant extracts of the reply dated 25.11.2023 are reproduced herein below:

"c. It would be pertinent to state here that pursuant to the PO's raised by us from time to time it was solely and entirely your responsibility to manufacture, sell, package, dispatch and deliver goods ordered by us in conformity with the provisions of all applicable laws, rules and regulations.

d. However, the goods supplied by you on the basis of our purchase orders were found to be of inferior and sub-standard quality. Certain defects detected in the tyres supplied by you included tread separation, bubbles and air leakages. This raised grave safety concerns for our customers and potential liabilities that could arise on us as a result thereto. Having due regard to such defects and resultant losses incurred by us, the question of paying you the amount claimed by you just cannot and does not arise.

f. Without prejudice to the above, you have also failed and neglected to consider and account for the amount of INR 5,00, 000/- paid by us to you on 28th March, 2023. For reasons best known to you, you have manipulated your account statement and considered only a sum of INR 4,27,698/-. This is obviously to suit your mala die motives of harassing and embroiling us and into unnecessary litigation. Consequently, the alleged balance confirmation statement and the alleged statement of account appended by you do not match and there is an inherent dispute between the amounts due, if at all any due."

vii. The Ld. Counsel for the Operational Creditor relied upon the decision of Hon'ble NCLAT in **Deepak Modi v. Shalfeyo Industries Pvt Ltd** (Company Appeal (AT)(Insolvency) No.1019 Of 2022) wherein it was held that:

"13...law is settled on the point that there must be pure pre-existing dispute. Meaning thereby that genuine pre-existing dispute must exist in rejecting an application Section 9 of the code. In the present case it is reflected from inspection report of SGB Infra Ltd dated 16.12.2019 which is at page 147 that the Corporate Debtor was asked by the SGB Infra Ltd to remove the flooring. This fact is itself enough to draw an inference that the Corporate Debtor had accepted the delivery of granite slabs made by the Operational Creditor without raising any dispute or objection. Otherwise, the Corporation Debtor would have rejected the entire materials at the time of unloading of the same. However, it is clear that the granite slabs supplied by the Operational Creditor were utilised by the Corporate Debtor and had placed the same in the premises of Airport Authority of Jaipur. There may be plausible reasons for SGB Infra Did to ask, the Corporate Debtor to remove the flooring but fact remains that the Corporate Debtor had accepted the granite slabs supplied by the Operational Creditor without raising any dispute or objection. On this score itself we are of the opinion that such plea of the Corporate Debtor regarding dispute can be termed as moon shine defence. On this plea there is no reason to accept as if there

was pre-existing dispute in between the Operational Creditor and Corporate Debtor”

- ix. It is amply clear from the records that the Corporate Debtor, being the purchaser of goods never raised any quality issue or any sort of dispute in any manner whatsoever as per their own inspection/quality control policies immediately after the receipt of the goods and continued to purchase goods. It is only after nine months from the last invoice, the Corporate Debtor sent an E-mail dated 09.09.2023, on the basis of field feedback received by the Corporate Debtor, wherein the Corporate Debtor took a moonshine defence and stated that in 90/90x10 tyre and 90/90x12 tyres supplied by the Corporate Debtor, there is an issue of Tread Separation, Bubbles and Air Leakage. Further, the Corporate Debtor itself has declared in the User Manual/Warranty Policy for its products that “Tyres/Tubes” are not covered under its warranty and they are not liable for tyres/tubes and the original manufacturer (in this case Operational Creditor is the manufacturer) is liable for all or any claim for tyres and tubes. Therefore, no dispute in any manner whatsoever can be raised by the Corporate Debtor at such a later stage. The Corporate Debtor delayed the payment for long duration of time, however, after the issuance of FORM-3 dated 18.11.2023, the Corporate Debtor made a payment of Rs. 1,80,00,000/- (Rupees One Crore and Eighty Lakhs only) on 08.12.2023. Therefore, it is evident that the dispute raised by the Corporate Debtor is a frivolous moonshine defence to wiggle out of its liabilities.
- x. The Ld. Counsel for the Corporate Debtor has also submitted that it has raised another dispute with respect to non-reconciliation of accounts. The said issue is evident from the fact that despite the Corporate Debtor making a payment of Rs. 5,00,000/- towards the alleged invoices on 28.03.2023, the Operational Creditor has only adjusted a sum of Rs. 4,27,698/-. The said issue was duly raised by the Corporate Debtor in its reply to the Section 8 Demand Notice. Therefore, the said issue clearly demonstrates the non-reconciliation of accounts, which is a pre-existing dispute as held by the Hon'ble NCLAT, New Delhi in **East India Udyog Ltd. versus SPML Infra Ltd.** (Company Appeal (AT)(Ins) No. 256 of 2023).

- xi. The Operational Creditor in its Rejoinder dated 04.12.2023 to the Reply of Section 8 Demand Notice given by the Corporate Debtor negated the said contention raised by the Corporate Debtor and clarified that the Corporate Debtor indeed remitted Rs.50,00,000/- (Rupees Fifty Lakh only), and the same had already been utilized to settle previous outstanding invoices, raised prior to 09.08.2022, and are not included in the current Demand Notice (FORM-3). Furthermore, the amount of Rs. 4,27,598/- was appropriated against adjustments out of other earlier payments/credits, as made by Corporate Debtor, from time to time, and hence been duly deducted/reduced from the overall unpaid invoices mentioned in the Petition filed by the Operational Creditor against the Corporate Debtor.
- xii. Though the Corporate Debtor has raised an objection of non-reconciliation of Accounts. The Respondent/Corporate Debtor have not filed any record/documentary evidence to substantiate payment of Rs.5,00,000/- to the Operational Creditor. Therefore, it would not come in the purview of a pre-existing dispute and the judgment relied upon by the Corporate Debtor would not be applicable in the facts and circumstances of the present case.
- xiii. The Ld. Counsel for the Corporate Debtor also raised an objection regarding filing of Form-C, i.e., the Record of Financial Information, and disguised the same as Form-D, i.e., Record of Default while filing the present Section 9 Petition.
- xiv. The Ld. Counsel for the Operational Creditor submitted that the submission of record of default is not mandatory under Section 9 of IBC, 2016 rather it is supporting evidence of debt due and payable by the Corporate Debtor. At the time of filing of Petition under Section 9 of IBC, 2016, duly filed the Record of Financial Information (FORM-C), however, this Tribunal at the time of issuance of Notice vide order dated 16.07.2024 directed the Operational Creditor to file the record of default, and in compliance to the Order dated 16.07.2024 has duly filed the record of default and the same is on record before this Tribunal.
- xv. The Ld. Counsel for the Corporate Debtor raised another contention that the Respondent has duly paid the genuine dues of the Operational Creditor, after

issuance of the demand notice. However, without issuance of fresh demand notice, after considering the said payment, the Operational Creditor has filed the Section 9 Petition under reply.

- xvi. The Ld. Counsel for the Operational Creditor negated the objection raised by the Corporate Debtor and submitted that the Operational Creditor has duly taken into account and has adjusted all the payments made by the Corporate Debtor. Furthermore, the Operational Creditor with clean hands has also brought on record, the payment made by the Corporate Debtor subsequent to issuance of FORM-3 and the said amount has not been claimed by the Operational Creditor in the present Petition.
- xvii. It is also submitted that multiple demand notices are beyond the ambit of the IBC, 2016. Reliance has been placed upon the Judgment of Hon'ble NCLAT, New Delhi in **Ultratech Cement Ltd. Vs. Universal Journeys (India) Pvt. Ltd. and Ors.**, MANU/NC/4268/2023 wherein it was held that:

“... There is no such provision in the IBC, 2016 and in the Regulation made thereunder that allows the Operational Creditor to issue multiple demand notices to the Corporate Debtor. Hence, we are of the view that the multiple demand notices are beyond the ambit of the IBC, 2016.”

- xviii. Upon hearing the rival contentions on the objections raised by the Corporate Debtor, we are of the considered view that the objections raised by the Corporate Debtor are not tenable in law and have been duly negated by the Operational Creditor.
- xix. The Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. Vs Kirusa Software Private Limited**, reported in (2018) 1 SCC 353 and **Transmission Corporation of Andhra Pradesh Limited v. Equipment Conductors and Cables Limited** reported in (2019) 12 SCC 697 laid down that “IBC” was not intended to be a substitute to a recovery forum and that whenever there was existence of a real dispute, IBC provisions could not be invoked.

xx. As per the law laid down by Hon'ble Supreme Court, if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument, it would suffice for the Adjudicating Authority to reject the petition filed under Section 9 of the Code, the Adjudicating Authority being precluded from determining as to whether the Corporate Debtor would be successful or not, with regard to the said dispute, at the time of decision making.

xxi. In the facts and circumstances of the instant case, we are of the view that the Corporate Debtor has not been able to raise a plausible contention regarding the pre-existence of "dispute" between the parties. Hence, the present petition filed under Section 9 of the IBC, 2016 ought to be **admitted**.

8. **Order**

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present Applicant fulfills the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- i) The Petition bearing **IB-397/ND/2024** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **admitted**.
- ii) We also declare a 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:
 - i. *"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;*
 - ii. *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

- iii. *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;*
- iv. *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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, concession, clearances or a similar grant or right during the moratorium period;]

- iii) 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.
- iv) The Operational Creditor has proposed the name of **Mr. Bhoopesh Gupta** for the Interim Resolution Professional (“IRP”). Therefore, we appoint Mr. Bhoopesh Gupta as Interim Resolution Professional (“IRP”) having address:

645, A/533B, Janki Vihar Colony, Sector-I, Prabhat Chauraha, Jankipuram, Lucknow, Uttar Pradesh-226031. His Email id is cabhoopesh@rediffmail.com. His Contact No. is 9450457403. His registration number is IBBI/IPA-001/IP-P01468/2018-2019/12271. The Operational Creditor filed a copy of the Consent Issued by Mr. Bhoopesh Gupta in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(1) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B.

Accordingly, Mr. Bhoopesh Gupta is appointed as IRP.

- v) In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this petition under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- vii) The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

- ix) The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (“CoC”).
- x) In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- xi) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- xii) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**