

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH – I, CHENNAI**

IBA/617/2020

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

Along with

IA(IBC)/668(CHE)/2022 in IBA/617/2020

*(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
r/w Rule 11 of NCLT Rules, 2016)*

*In the matter of **M/s. Easun Products of India Private Limited***

DBS BANK INDIA LIMITED

Anna Salai Branch,
Ground Floors, 11 & 12 and First Floors
110 to 115, Capital Point BKS Marg,
Connaught Place, New Delhi – 110 001

... Financial Creditor

-Vs-

EASUN PRODUCTS OF INDIA PRIVATE LIMITED

Temple Tower, 6th Floor,
Anna Salai, Chennai – 600 035

...Corporate Debtor

*Order Pronounced on **19th September 2022***

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Financial Creditor : Varun Srinivasan, Advocate
NVS Associates*

For Corporate Debtor : T.K. Bhaskar, Advocate

ORDER

Under consideration is IBA/617/2020 filed by DBS Bank India Ltd. (*hereinafter referred to as 'Financial Creditor'*) under Section 7 of Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as "IBC, 2016"*) seeking initiation of Corporate Insolvency Resolution Process (CIRP) as against Easun Products of India Private Limited (*hereinafter referred to as 'Corporate Debtor'*)

2. From Part – I of the Application it is seen the Financial Creditor is a Bank incorporated on 07.02.2018. From Part – II of the Application it is seen the Corporate Debtor is a Private Limited Company with CIN No. U51102TN1964PTC005248 and was incorporated on 09.10.1964 under the provisions of the Companies Act, 1956. As per the Application the Authorized Share Capital of the Corporate Debtor is Rs.10,00,000/- (Rupees Ten Lakh) and its paid-up capital is Rs.10,000/- (Rupees Ten Thousand). The Registered office Address of the Corporate Debtor as per the Application is stated to be situated at Temple Tower, 6th Floor, Anna Salai, Chennai – 600 035.

3. From Part – III of the Application it is seen that the Applicant has proposed the name of one Mr. Ravindra Chaturvedi as the Insolvency Resolution Professional.

4. Part – IV of the Application discloses details of the 'Financial debt' from which it is seen that the Financial Creditor has claimed a sum of Rs.42,50,02,894.15p. (Rupees Forty-Two Crores Fifty Lakhs Two Thousand and Eight Hundred and Ninety-Four and Fifteen Paise only) which is due and payable by the Corporate Debtor as on 30.06.2020.

5. In Part – IV in the Application the Financial Creditor has attached following list of documents in support of the 'Financial debt':-

- i. Copy of the Working Capital Facilities dated 16.10.2008 issued by Financial Creditor to the Corporate Debtor, annexed hereto as "Annexure-I-(6)"
- ii. Copy of the Agreement for Hypothecation dated 17.10.2008 executed by Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(7)"
- iii. Copy of the Working Capital Facilities Agreement dated 17.10.2008 executed by Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(8)"
- iv. Copy of the Guarantee, dated 17.10.2008 executed by Mr. Raj.H.Eswaran the Guarantor to the Financial Creditor, annexed here to as "Annexure-I-(9)"
- v. Copy of the Buyers Credit Undertaking Agreement dated 20.10.2008 executed by

Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(10)"

- vi. Copy of the Demand Promissory Note for sum of Rs. 125 Million dated 20.10.2008 executed by Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(11)"
- vii. Copy of the Letter of Continuity dated 20.10.2008 executed by Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(12)"
- viii. Copy of the Letter for increase in Working Capital Facilities from the existing facility dated 02.09.2009 by the Financial Creditor to the Corporate Debtor, annexed hereto as "Annexure-I-(13)"
- ix. Copy of the Supplemental Working Capital Facilities Agreement dated 03.09.2009 executed by the Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(14)"
- x. Copy of the Demand Promissory Note for sum of Rs.250 Million dated 03.09.2009 executed by Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(15)"
- xi. Copy of the Letter of Continuity dated 03.09.2009 executed by Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(16)"
- xii. Copy of the Letter dated 09.09.2009 in respect of Enhancement of working capital facilities by Financial Creditor to Axis Bank Limited, HSBC Bank, Standard Chartered Bank and ICICI Bank annexed hereto as "Annexure-I-(17)"

- xiii. Copy of the Sanction of Additional Working Capital Facilities from the existing facility dated 09.09.2009 by the Financial Creditor to the Corporate Debtor, annexed hereto as "Annexure-I-(18)"
- xiv. Copy of the first Supplemental Working Capital Facilities Agreement dated 09.09.2009 executed by the Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(19)"
- xv. Copy of the Supplemental Agreement for Hypothecation dated 30.01.2010 executed by the Corporate Debtor to the Financial Creditor, "Annexure-I-(20)"
- xvi. Copy of the Certificate of Registration for modification of Mortgage dated 17.03.2010, between Corporate Debtor and Financial Creditor, annexed hereto as "Annexure-I-(21)"
- xvii. Copy of the Demand Promissory Note for sum of Rs.250 Million dated 27.09.2012 executed by the Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(22)"
- xviii. Copy of the Acknowledgement of Debt dated 27.09.2012 executed by the Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(23)"
- xix. Copy of the Letter of Continuity dated 27.09.2012 executed by the Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(24)".
- xx. Copy of the Renewal of Working Capital Facilities dated 31.05.2013 by the Financial Creditor to the Corporate Debtor, annexed hereto as "Annexure-I-(25)"

- xxi. Copy of the Demand Promissory Note for sum of Rs.222 Million dated 21.09.2015 executed by the Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(26)"
- xxii. Copy of the Letter of Continuity dated 21.09.2015 executed by the Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(27)"
- xxiii. Copy of the Letter of Continuity enclosed with Demand Promissory Note dated 09.10.2018 executed by the Corporate Debtor to the Financial Creditor, annexed hereto as "Annexure-I-(28)".
- xxiv. Copy of the Statement of Accounts along with balance confirmation pertaining to the Corporate Debtor maintained by the Financial Creditor is annexed hereto as "Annexure-I-(29)".

6. The Learned Counsel for the Financial Creditor submitted that on 20.10.2008, the Board of Directors of the Corporate Debtor agreed to avail credit Facilities on the terms and conditions as per the Letter of sanction of reference CDT/ADMIN/241/2008 dated 16.10.2008. It was submitted that in this regard, a Demand Promissory Note for sum of Rs.125 Million and the Letter of Continuity in favour of Financial Creditor were executed by the Corporate Debtor.

7. The Learned Counsel for the Financial Creditor submitted that additional Working Capital Facilities was also provided by the

Financial Creditor to the Corporate Debtor and in pursuance of the same certain supplemental Working Capital Facilities agreement was also executed by the Corporate Debtor with the Financial Creditor.

8. Thereafter, it was submitted that on 31.05.2013 the Board of Directors of the Corporate Debtor approved to avail Financial Assistance from DBS Bank Ltd., for an amount of INR 250 Million in terms of the Applicant sanctioned Letter No. CDT/ADMIN/395/2013. Pursuant thereto, it was submitted on 21.09.2015 the Corporate Debtor by a Letter of Continuity and by executing a Demand Promissory Note acknowledge the debt owed to the Financial Creditor. Further, it was submitted that on 09.10.2018, the Corporate Debtor by a Letter of Continuity along with Demand Promissory Note had further acknowledged the debts owed to the Financial Creditor.

9. Hence, it was submitted that the present Application is filed by the Financial Creditor before this Tribunal on 20.10.2020 on the basis of the debt due and payable by the Respondent /Corporate Debtor, which the Corporate Debtor has failed to repay and thus sought initiation of Corporate Insolvency Resolution Process as against the Corporate Debtor.

10. The Respondent/Corporate Debtor has filed counter and the preliminary ground which was raised by the Learned Counsel for the Corporate Debtor was that the present Application is barred by Limitation. It was submitted that the Corporate Debtor has availed certain credit facilities from the Financial Creditor in the year 2008 and the said Facilities have been enhanced and extended from time to time by way of Letters of Continuity ("LOC") executed on 20.10.2008, 03.09.2009, 27.09.2012, 21.09.2015, and 09.10.2018. It was submitted that the subsequent to the Letter of Continuity (LOC) dated 21.09.2015, the Respondent did not execute or give any further acknowledgment of debt to the Applicant bank. It was submitted that the Applicant Bank seeks to rely on a purported LOC dated 09.10.2018 in order to sustain the present application as being within the period of limitation. However, it was submitted that the said purported LOC is dated beyond the period of three (3) years from the previous acknowledgement debt which was given on 21.09.2015. Therefore, it was submitted for the purposes of Section 18 of the Limitation Act, 1963, the purported LOC dated 09.10.2018 is not written acknowledgment of debt and the bank cannot seek to enforce its right in respect of the same.

11. The Learned Counsel for the Corporate Debtor further submitted that only a written acknowledgement made during the

subsistence of the three (3) year limitation period under Article 137 of the Limitation Act, 1963, would trigger a fresh period of limitation and any written acknowledgement given after the expiry of the usual period of limitation is insufficient to keep the Applicant bank's right to file the present Application. Further, the Learned Counsel for the Corporate Debtor submitted that the purported LOC dated 09.10.2018 is also not in the nature of contract for the purposes of Section 25(3) of the Indian Contract Act, 1872 and also it was submitted that the words used in the LOC is not in the nature of a promise made in writing to pay wholly, or in part, the alleged debt which is time barred. Hence, it was submitted that the Applicants bank reliance on the purported LOC dated 09.10.2018 is unsustainable for the purpose of maintaining present Application which is barred by limitation. Under these circumstances the Learned Counsel for the Corporate Debtor sought dismissal of the present Application.

12. In reply to the Counter dated 28.04.2022 filed by the Corporate Debtor, the Financial Creditor has filed its rejoinder on 23.05.2022 along with supporting documents. It is seen from the record of the proceedings dated 24.05.2022 that the Learned Counsel for the Corporate Debtor has objected to the filing of the documents along with rejoinder dated 23.05.2022. Thereafter, it is

seen that the Financial Creditor has filed IA(IBC)/668(CHE)/2022 before this Tribunal on 01.06.2022 seeking relief as follows:-

It is, therefore, most respectfully prayed that the Hon'ble Tribunal may be pleased to allow this Application and thereby take on record the documents filed by the Applicant as additional documents along with its Rejoinder and pass such other Order that this Hon'ble Tribunal deems fit and necessary in facts and circumstances of the case and thus render justice.

13. In relation to the IA referred above, the Learned Counsel for the Corporate Debtor submitted that the Financial Creditor has filed the said IA after the Corporate Debtor has filed its counter in the main petition and after the lapse almost two years since the main Section 7 petition was filed and the pleadings from both sides have been completed. It was submitted by the Learned Counsel for the Corporate Debtor that the Financial Creditor for the first time has sought to file certain documents and has also not provided any reasons as to the inordinate delay in filing the above documents.

14. Further, it was submitted by the Learned Counsel for the Corporate Debtor that the Financial Creditor was already in possession of these documents at the time of filing the main petition under Section 7 of IBC, 2016 and the present document has been filed belatedly and with *malafide* intention to abuse the

process of Law. In support of the said contention the Ld. Counsel for the Corporate Debtor relied upon the judgment of the Hon'ble Supreme Court in the matter of **Dena Bank (now Bank of Baroda) v/s C. Shivakumar reddy and Anr. (2021) 10 SCC 330** (para No.142).

"142.Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the Adjudicating Authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the Adjudicating Authority to entertain and/or to allow the request of the Appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal.

15. By placing reliance of the aforesaid judgment, the Learned Counsel for the Corporate Debtor submitted that there is a discretion vested upon this Tribunal to decline the request of the Applicant to file additional documents / pleadings in case there is an inordinate delay. As to the present case, it was submitted that there is an inordinate delay of two (2) years in filing the additional documents and especially when there is no *bonafide* on behalf of the Applicant in filing the additional documents, the present Application is required to be dismissed.

16. In reply to the same, the Learned Counsel for the Financial Creditor placed reliance upon the judgement of the Hon'ble Supreme Court in the matter of **Kotak Mahindra Bank -vs- Kew Precision Parts Private Ltd. and others** in *Civil Appeal No. 2176 of 2020*, wherein at para 61 it was held as follows;

61. The judgment in Babulal Vardharji Gurjar (supra) was rendered in the facts and circumstances of that case where there were no pleadings at all. As held by this Court in Dena Bank (supra), an application under Section 7 of the IBC in statutory form which requires filing in of particulars cannot be judged by the same standards as a plaint or other pleadings in a court of law. Additional affidavits filed subsequent to the filing of the application, by way of additional affidavits or applications would have to be construed as pleadings, as also the documents enclosed with or relied upon in the application made in the statutory format. Furthermore, pleadings can be amended at any time during the pendency of the proceedings.

17. Thus, by placing reliance on the aforesaid judgment of Hon'ble Supreme Court, the Learned Counsel for the Financial Creditor submitted that the pleadings can be amended at any time during the pending of the proceedings and as such there is no bar for the Financial Creditor to file additional documents at this stage.

18. Heard the submissions made by the Learned Counsel for both the parties and perused the voluminous documents filed by both the parties. In the present case, the question which is required to be decided is that whether the IA(IBC)/668(CHE)/2022 filed by the

Financial Creditor to take on record additional documents along with its rejoinder is to be allowed or rejected.

19. In the present case, it is not in dispute that the said additional documents has been filed by the Financial Creditor after an inordinate delay of almost two (2) years from filing of the main company petition. As to the facts and circumstances of the present we rely upon the judgment of the Hon'ble Supreme Court in the matter of **Dena Bank** (*supra*) which cast a discretion upon this Tribunal while allowing the Application filed for Additional documents / pleadings.


20. A perusal of para 142 of the Judgment of the Hon'ble Supreme Court in **Dena Bank** (*supra*) would make it clear that depending on the facts and circumstances of the case, when there is an inordinate delay the Adjudicating Authority might at its discretion decline the request of an Applicant to file additional pleadings or documents and proceed to pass the final order.

21. In the present case, it is seen that the Application under Section 7 of IBC, 2016 was filed before this Tribunal 20.10.2020 and preliminary Counter was filed on 08.09.2021 and the final counter was filed on 28.04.2022 in reply to the said counter the Financial Creditor has filed rejoinder on 25.03.2022. Thereafter

IA(IBC)/668/CHE/2022 dated 01.06.2022 was filed by the Financial Creditor to take on record Additional documents.

22. At this juncture, it is required to be noted that after the Corporate Debtor has raised a preliminary ground on the aspect of limitation, the Financial Creditor has filed IA(IBC)/668(CHE)/2022 dated 01.06.2022 seeking permission to file additional documents to overcome the ground of limitation. Further, we have perused averments made in the IA and it is seen that the Financial Creditor / Applicant has nowhere in said IA has stated as to why these documents were not filed along with the time of filing of the Section 7 petition. It is also seen that the Financial Creditor was already in possession of these documents and has been lethargic in not filing these documents at the time of filing of the Section 7 Petition. Also, it is required to be noted that nowhere in the averments made in the Applicant the Financial Creditor has stated the reasons for delay in filing the Additional documents.


23. Hence, for the reasons aforesaid we are not inclined to allow the IA(IBC)/668(CHE)/2022 filed by the Financial Creditor to take on record the Additional documents and accordingly the said IA(IBC)/668(CHE)/2022 stands **dismissed**.



24. Be that as it may, since the request for additional documents has been declined by this Adjudicating Authority, based upon the documents filed along with the Application this Adjudicating Authority is duty bound to examine the present Application in terms of Section 7(5) of IBC, 2016 and ascertain whether there is a debt and default on the part of the Corporate Debtor.

25. In the paragraph 5 *supra* we have already extracted the documents filed by the Financial Creditor which is captured in Part - V of the Application. The Financial Creditor has filed a total of 24 documents along with the Application in order to prove its 'financial debt.'

26. The main contention raised by the Learned Counsel for the Corporate Debtor is that the Letter of Continuity dated 09.10.2018 issued by the Corporate Debtor is beyond the period of three (3) years from 21.09.2015 and as such it does not constitute as acknowledgement of debt under Section 18 of the Limitation Act, 1963. Further, in the counter to the main Section 7 Petition, the Corporate Debtor has stated that the said LOC is not in the nature of promise made in writing and as such it does not attract Section 25(3) of the Indian Contract Act 1872.



27. However, upon perusing the documents filed along with main Application, at page No. 186 of the main typeset, it could be seen that the Corporate Debtor has executed a Demand Promissory note in favour of the Financial Creditor on 09.10.2018 in which the Corporate Debtor **has promised to pay** a sum of INR 222 Million with interest. The copy of the said Demand Notice is captured hereunder.

186

DEMAND PROMISSORY NOTE

INR 222,000,000/-

Dated: 9th Oct 2018
Place: Chennai

To
DBS Bank Ltd.
Chennai Branch

Dear Sirs,

ON DEMAND We Easun Products of India Private Limited, unconditionally promise to pay DBS Bank Ltd. (the "Bank") or order at their office mentioned above, the sum of INR 222,000,000/- (Indian Rupees Two Hundred and Twenty Two Million Only) with interest thereon at the rate as mentioned in the offer letter dated 31st May 2013 bearing reference no.CDT/ADMIN/295/2013(as amended / supplemented from time to time).

For Easun Products of India Private Limited

[Signature]
Director/Authorized Signatory



The common seal of Easun Products of India Private Limited)
Was affixed hereunto pursuant to a resolution)
Passed by the board of Directors at their meeting)
Held on 09-10-2018)
In the presence of _____)
Of the company who has /have in token thereof)
Affixed his / her signature /signatures hereto)

[Signature]



2016 Version 1

28. Thus, from the documents filed by the Financial Creditor at Sl. No. 23 of Part – V of the Application the Corporate Debtor has executed a Demand Promissory Note in favour of the Financial Creditor in and by which, the Corporate Debtor has **promised** to pay to the Financial Creditor a sum of INR 222 million with interest. The said Demand Promissory Note would amount to Promise made by the Corporate Debtor as such the said Demand Promissory note will squarely attract Section 25(3) of the contract Act. In this regard, we place reliance upon the decision of the Hon'ble Supreme Court in the matter of **Kotak Mahindra Bank - vs- Kew Precision Parts Private Ltd. and others** in *Civil Appeal No. 2176 of 2020*, wherein at para 29 to 33 it has held as follows;

"29. *From the above, it is clear that any agreement to pay a time barred debt, would be enforceable in law, within three years from the due date of payment, in terms of such agreement. It appears that Section 25(3) of the Indian Contract Act was not brought to the notice of the NCLAT. The NCLAT also did not consider the aforesaid Section.*

30. *In this appeal, it is contended that the last offer of 20th December, 2018 was followed by an agreement. Whether there was such agreement or not would have to be considered by the Adjudicating Authority. To invoke Section 25(3), the following conditions must be satisfied:*

- (i) *It must refer to a debt, which the creditor, but for the period of limitation, might have enforced;*

- (ii) *There must be a distinct promise to pay such debt, fully or in part;*
- (iii) *The promise must be in writing, and signed by the debtor or his duly appointed agent.*

31. *Under Section 25(3), a debtor can enter into an agreement in writing, to pay the whole or part of a debt, which the creditor might have enforced, but for the limitation of a suit in law. A written promise to pay the barred debt is a valid contract. Such a promise constitutes novation and can form the basis of a suit independent of the original debt, for it is well settled that the debt is not extinguished, the remedy gets barred by passage of time as held by this Court in Bombay Dyeing and Manufacturing Company Limited vs. State of Bombay.*

32. *Section 25(3) applies only where the debt is one which would be enforceable against the defendants, but for the law of limitation. Where a debt is not binding on the defendant for other reasons, and consequentially not enforceable against him, there is no question of applicability of Section 25(3).*

33. *There is a distinction between acknowledgment under Section 18 of the Limitation Act, 1963 and a promise within the meaning of Section 25 of the Contract Act. Both promise and acknowledgment in writing, signed by a party or its agent authorised in that behalf, have the effect of creating a fresh starting of limitation. The difference is that an acknowledgment under Section 18 of the Limitation Act has to be made within the period of limitation and need not be accompanied by any promise to pay. If an acknowledgment shows existence of jural relationship, it may extend limitation even though there may be a denial to pay. On the other hand, Section 25(3) is only attracted when there is an express promise to pay a debt that is time barred or any part thereof. Promise to pay can be inferred on scrutinising the document. Only the promise should be clear and unconditional."*

29. Thus, in the present case, to invoke Section 25(3) of the Contract Act, 1872, the following test has been laid down by the Hon'ble Supreme Court in the matter of **Kew Precision** (*supra*)

- (i) It must refer to a debt, which the creditor, but for the period of limitation, might have enforced;
- (ii) There must be a distinct promise to pay such debt, fully or in part;
- (iii) The promise must be in writing, and signed by the debtor or his duly appointed agent.

30. In the present case, the Demand Promissory Note dated 09.10.2018 executed by the Corporate Debtor has referred to the debt which the creditor, but for the period of limitation, might have enforced; has a distinct promise to pay such debt, fully; the said promise has been made in writing and signed by the Corporate Debtor. Thus, the said Demand Promissory Note dated 09.10.2018 fulfils the conditions laid down by the Hon'ble Supreme Court under Section 25(3) of the Contract Act, 1872 and as such it gives a fresh cause of action for the Financial Creditor to file the Section 7 Petition. The present petition under Section 7 of IBC, 2016 was filed by the Financial Creditor before this Adjudicating Authority on 20.10.2020 and as such the present petition is well within the period of limitation. This issue was not argued by the Learned

Counsel for the FC eventhough the document was already filed along with the typed set at timing of filing the Company Petition.

31. The Financial Creditor has also proved that the Corporate Debtor has committed default in repayment of the said 'financial debt'. Further the 'default' in the present case has occurred much prior to the period stipulated under Section 10A of IBC, 2016. Under the said circumstances, we are of the view that this Application filed by the Financial Creditor is required to be admitted under Section 7(5) of IBC, 2016.

32. The Financial Creditor has proposed the name of one **Ravindra Chatruvedi**, having Registration Number **[IBBI/IPA-001/IP-P00792/2017-2018/11359]**, having Authorisation for Assignment valid upto 05.12.2022 as Interim Resolution Professional (IRP) and written communication in the format prescribed under Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board

of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

33. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

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 or a similar grant or right during moratorium period;

34. However, during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

- (b) a surety in a contract of guarantee to a corporate debtor.

35. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the 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, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

36. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

37. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

38. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

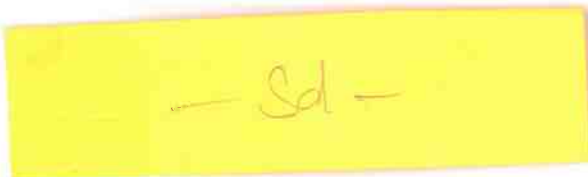
39. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

40. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated

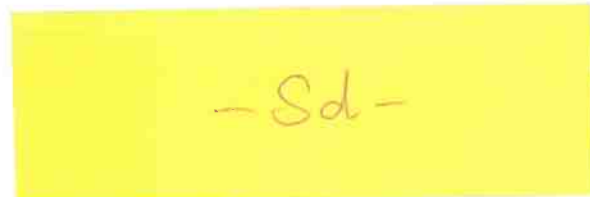
to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

41. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

42. Accordingly, the present Petition stands **admitted**.



SAMEER KAKAR
MEMBER (TECHNICAL)



JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Raymond