



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

Company Petition (IB) No. 14/KB/2023

***An Application under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 6 of the Insolvency
and Bankruptcy (Application to Adjudicating Authority)
Rules, 2016.***

IN THE MATTER OF:

S. K. Agarwal & Co

... Applicant/ Operational Creditor.

Versus

Kejriwal Sugar Agencies Private Limited

... Respondent/ Corporate Debtor.

Date of Pronouncement: April 22, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

For Applicant:

**Mr. Rishav Banerjee, Adv.
Ms. Joveria Sabbah, Adv.
Mr. Saptarshi Kar, Adv.
Ms. Joyshree Ghosh, Adv.**

For Respondent:

**Mr. Shaunak Mitra, Adv.
Mr. Saurav Jain, Adv.**

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court congregated through hybrid mode.

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2. We have heard the Learned Counsel **Mr. Rishav Banerjee** appearing on behalf of the Applicant and the Learned Counsel, **Mr. Shaunak Mitra** on behalf of the Respondent.
3. This instant application is preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity “IBC” by the **S.K. Agarwal & Co**, hereinafter referred to as the **“Applicant”/ “Operational Creditor”** against Kejriwal Sugar Agencies Private Limited, hereinafter referred to as **“Respondent” / “Corporate Debtor”** seeking direction from this Adjudicating Authority to initiate Corporate Insolvency Resolution Process, (for brevity “CIRP”) in respect of the Corporate Debtor.
4. The total amount claimed to be in debt is **Rs. 2,05,57,612/-** which includes interest at the rate of 18% from 31.07.2021 to 30.11.2022 and date of default is claimed as on **08.03.2021**.

Factual Matrix:

5. The Operational Creditor had engaged the Corporate Debtor for supply of sugar and the Corporate Debtor had been supplying different varieties of sugar to the Operational Creditor, since long on terms and conditions mutually agreed between the parties.
6. The Applicant had engaged the corporate debtor to deliver 6380 quintals of sugar under terms, specifications, and prices as agreed upon between the parties. The Operational Creditor paid the entire sale consideration of Rs.

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2,27,26,765/- as an advance payment, which amount was received, and acknowledged by the Corporate Debtor.

7. It is the contention of the Operational Creditor that despite payment, the goods have not been delivered by the Corporate Debtor within stipulated time. Hence, this application has been preferred.

Applicant's submissions:

8. The Learned Counsel, Mr. Rishav Banerjee appearing on behalf of the applicant submitted that on 08.03.2021, the Corporate Debtor provided the Operational Creditor the details of the consignment carrying 6380 quintals of sugar amounting to Rs. 2,27,26,765/-. The entire amount was paid by the applicant in advance; however, such consignment was not delivered. Whereas the Corporate Debtor had promised to deliver the sugar within April 2021.
9. It is further submitted that the Corporate Debtor supplied 733.90 quintals of sugar of a different quality amounting to Rs. 34,93,045/-. Such amount was appropriated by the Operational Creditor, thus the balance amount of Rs. 1,92,33,720/- was due and payable by the Corporate Debtor. To substantiate its claim, the applicant has placed the Tax Invoices issued by the respondent reflecting the supply of 733.90 quintals of sugar amounting to Rs. 34,93,045/- at pages 21-24 to the application.
10. It is contended that on repeated demands and requests, the corporate debtor refunded Rs. 26,55,000/- by RTGS on July

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28.07.2021 and 30.07.2021. In substantiation thereof, the Bank Statements of the Applicant are annexed at Page 86 to the application. It is claimed that the corporate debtor has defaulted on the remaining amount of Rs. 1,65,78,720 as on 31.07.2021.

- 11.** Further, it is contended that the interest calculated at 18% per annum on the remaining amount i.e., Rs. 1,65,78,720 from 31.07.2021 to 30.11.2022 is Rs. 39,78,892/- and thus, the total amount of debt claimed by the applicant is Rs. 2,05,57,612/-.
- 12.** The Learned Counsel for the applicant submitted that the statutory notice of demand under Section 8 of the Code was issued on 01.12.2022 and delivered on 10.12.2022. The reply to the demand notice was issued on 28.12.2022, thus delivery of the notice is substantiated.

Submissions per contra made by the Respondent:

- 13.** The Learned Counsel, Mr. Shaunak Mitra on behalf of the Respondent would assert that the claim raised in the application is hit by the provisions under Section 10A of the Code.
- 14.** It is claimed that on evidence has been placed on record by the Operational Creditor to substantiate its claim that on 08.03.2021, the Corporate Debtor provided the details of the consignment to the Operational Creditor, which the Corporate Debtor defaulted and thus, the Corporate Debtor continued to remain in default after 08.03.2021. Further

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that, no evidence has been placed on record by the applicant to substantiate the exact date when the goods were to be delivered.

- 15.** The Learned Counsel for the Respondent would further submit referring to the Rejoinder that, the WhatsApp documents annexed at Pages 12-14 to the Rejoinder, shows that the consignment ought to have been delivered in a very short period from 08.03.2021.
- 16.** It is alleged that the date of default indicated in the application of 01.07.2021, is imaginary to avoid the statutory prohibition under Section 10A of the I&B Code.
- 17.** It is asserted assuming that there is a default on part of the Corporate Debtor, refund of advance amount paid by the applicant would arise only after the date, the goods ought to have been delivered.
- 18.** The Learned Counsel for the respondent would refer to the Article 13 of the Limitation Act, 1963 which envisages that **for the balance of money advanced on payment of goods to be delivered**, the period of limitation would be **3 years, when the goods ought to be delivered.**
- 19.** It is averred that if the corporate debtor provided the details of consignment and allegedly failed to deliver and continued to remain in default, that the date of default i.e., on 08.03.2021, falls within the bar Section 10A attracts.

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- 20.** Further, it is submitted that in due course of business, the Operational Creditor approached the Corporate Debtor for supply of sugar to its sister concern namely, one Mannalal Rajendra Prasad Impex Private Limited (“MRPIPL”) which is under control of the relatives and partners of the Operational Creditors. In the financial year of 2020-21, MRPIPL approached the Corporate Debtor with a purchase requisition for supply of sugar which was refused by the Corporate Debtor for huge outstanding on behalf of the MRPIPL to be paid to the Corporate Debtor. It is asserted that payments made by the Operational Creditor to the tune of Rs. 2,27,26,765/- against the said outstanding in various tranches starting from 25.02.2021.
- 21.** That as on 11.07.2021, there existed a dispute between the parties that the Corporate Debtor claimed an amount of approx. Rs. 4.25 Crore receivable from MRPIPL. The applicant had an outstanding of Rs. 1.92 Crore against the Corporate Debtor. Thus, the net receivable by the Corporate Debtor stood at approximately Rs. 2.33 Crore. Both the parties settled the dispute on 12.07.2021 wherein it was agreed that due to some taxation constraints, the applicant shall make the payments to the corporate debtor on behalf of the MRPIPL. As the outstanding from the MRPIPL was due for a long time and the corporate debtor needed funds for its working capital, the same was accepted by the corporate debtor.

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- 22.** That vide an oral agreement dated 12.07.2021 between the parties, the Corporate Debtor agreed to adjust Rs. 1.65 Crore, out of Rs. 1.92 Crore outstanding against MRPIPL and to supply sugar for the remaining amount to the Operational Creditor.
- 23.** Further, the Operational Creditor requested the Corporate Debtor to refund an amount of Rs. 26,55,000/- out of the balance amount to the Applicant on the ground of business needs. The same was refunded by the Corporate Debtor to the Operational Creditor from 28.07.2021 to 30.07.2021.

In counter, the Applicant submits:

- 24.** In rejoinder, the applicant would vehemently deny the contentions of the Corporate Debtor having stated as under:
- i.** The Reply Affidavit is devoid of any merits.
 - ii.** The Debtor has failed to make out any case, far to speak of any bona fide case on behalf of the Corporate Debtor. The Corporate Debtor has not annexed an iota of evidence/ documents/ correspondence to highlight existence of any pre-existing dispute between the parties.
 - iii.** The Corporate Debtor has not raised any dispute prior to the receipt of the statutory notice of demand under section 8 of I&B Code, 2016.

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- iv.** The entire case made out by the Corporate Debtor is based on purported false/illusory oral agreements.
- v.** The Reply Affidavit suffers from gross suppression of material facts and the Corporate Debtor has intentionally failed to bring on record true, correct, and complete facts of this instant proceedings.
- vi.** The claim of the Operational Creditor is an admitted claim that has also been unconditionally and unequivocally admitted and/or acknowledged by the Corporate Debtor while issuing the ledger confirmation which is a part of the Petition at pages 82-87. Further, the Learned Counsel for the applicant would submit that it is incorrectly pleaded in the Reply Affidavit that an advance given for supply of goods does not constitute an operational debt. Law is well settled by the Hon'ble Supreme Court of India in ***Consolidated Construction Consortium Limited vs. Hitro Energy Solutions Private Limited*** reported in **(2022) 7 SCC 164** in paragraph 50.3 that a debt which arises out of advance payment made to the Corporate Debtor for supply of goods and services would be considered as an operational debt.
- vii.** It is denied that the Operational Creditor had approached the Corporate Debtor for engaging the services of the Corporate Debtor for the supply of sugar to MRPIPL.

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- viii.** It is denied that MRPIPL belongs to the Operational Creditor, or its partner have any role to play in the running of MRPIPL or do hold any managerial position which can also be evidenced from a bare perusal of the Master Data as extracted from the portal of MCA, annexed in the Reply Affidavit.
- ix.** It is denied that the Operational Creditor had ever released or made payments to the Corporate Debtor on behalf of MRPIPL that the Operational Creditor led the Corporate Debtor to believe that MRPIPL is a company related to the Operational Creditor which is a fictitious story. As the Corporate Debtor would have taken steps including taking legal measures to recover money from MRPIPL.
- x.** It is denied that the Operational Creditor had ever agreed to make payments to the Corporate Debtor on behalf of MRPIPL or that due to any taxation constraints, the Operational Creditor had agreed to make payments to the Corporate Debtor for and on behalf of MRPIPL any oral agreement between the Operational Creditor and the Corporate Debtor, where it was mutually agreed that the Corporate Debtor shall adjust Rs. 1.65 Crores out of the advance amount of Rs. 2.74 Crores as remitted by the Operational Creditor and shall supply sugar for the remaining amount to the Operational Creditor or that the Operational Creditor had requested

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for a refund of an amount of Rs. 26,55,000/- on the grounds of emergent business needs, has been denied.

- xi.** It is asserted that the dues owed from MRPIPL cannot be the subject matter of this instant proceedings placing reliance on the recent decision of the Hon'ble ***Supreme Court in the Bharti Airtel Limited & Anr. v. Vijaykumar V. Iyer & Ors.*** reported in **2024 SCC Online SC 4.**
 - xii.** It is denied that the default as mentioned in the Petition had occurred during the prohibited period as laid down in Section 10A of the Code or that the Corporate Debtor can seek relief under such provision of the Code.
 - xiii.** It is asserted that the Operational Creditor is a partnership firm, and the partnership Deed of the Operational Creditor is already on record by way of a Supplementary Affidavit a copy of the PAN Card of the Operational Creditor is annexed and marked with the letter "R2".
 - xiv.** It is stated that the payments advanced in terms of supply of goods are not subjected to GST and such advances shall be taxed when the actual delivery occurs (with the effect from November 15, 2017) vide CGST notification no. 66/2017.
- 25.** That, the defence as pleaded by the Corporate Debtor regarding the Section 10A bar is irrelevant. The Learned

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Counsel for the applicant would refer to Section 3(6)(a) of the Code which defines the “**Claim**” as a “**right to payment**” and Section 3(11) of the Code which defines a “**Debt**” as a “**liability or obligation**” in respect of a claim which is due from any person and includes a financial debt and operational debt. Further, the Section 3(12) of the Code has been referred to which defines “**Default**” as “**non-payment of debt**” when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor. Thus, the Learned Counsel for the Applicant would submit that a conjoint reading of the above definitions, would indicate that default occurs when the Corporate Debtor fails to repay/pay the debt and not when the Corporate Debtor fails to supply the goods in question, as has been incorrectly contended by the Respondent during the course of their oral submissions. It is thus contended that it is irrelevant as to when the Corporate Debtor fails to supply the goods. But what is relevant is when the corporate debtor has failed to refund or repay the debt in question thereby committing the default in repayment. Thus, defence taken by the Corporate Debtor that the debt is barred under Section 10A as the date of default in supply of goods falls within Section 10A period is misplaced as the date of supply of the goods does not lead to any default within definition of default under the Code, for default arises when the corporate debtor fails to repay the debt which in instant case in on July 31, 2021.

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- 26.** It is argued that no meeting was scheduled or attended by the applicant after the issuance and receipt of the demand notice to settle the issue and there was no breach of such purported oral agreement dated 12.07.2021 by the applicant.
- 27.** That, dues owed from the MRPIPL cannot be subject matter of this instant proceeding as a set-off dues are not permissible in insolvency proceedings. Reliance was placed on the recent recession of the Hon'ble Apex Court in ***Bharti Airtel Ltd. v. Vijaykumar V. Iyer, reported at (2024) 242 Comp Cas 329: 2024 SCC OnLine SC 4*** that:

*“37. Our finding that the Insolvency and Bankruptcy Code is a complete code relying upon the opening part of the enactment and sections 238 and 243 takes care and nullifies the argument raised by the appellant airtel entities that they are entitled to statutory set-off or insolvency set-off, in the corporate insolvency resolution proceedings under Chapter II, Part-II of the Insolvency and Bankruptcy Code. Regulation 29 of the Liquidation Regulations does not apply to Part-II of the Insolvency and Bankruptcy Code. The legislation or even the legislative intent permits **neither statutory set-off, nor insolvency set-off.** In support of our conclusion, we would like to refer to the statutory provisions, and meet the arguments to the contrary raised by the appellants.”*

(Emphasis Added)

- 28.** Further, to support the contention that payment made in advance by the Operational Creditor to the Corporate Debtor falls under the ambit of an Operational Debt, reliance was placed on the judgment rendered in ***Consolidated***

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Construction Consortium Ltd. v. Hitro Energy Solutions (P) Ltd., reported at (2022) 7 SCC 164: 2022 SCC OnLine SC 142 at page 195 that:

*“50.3. Finally, the judgment of this Court in Pioneer Urban [Pioneer Urban Land & Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416 : (2019) 4 SCC (Civ) 1] , in comparing allottees in real estate projects to operational creditors, has noted that the latter do not receive any time value for their money as consideration but only provide it in exchange for goods or services. Indeed, the decision notes that “[e]xamples given of advance payments being made for turnkey projects and capital goods, where customisation and uniqueness of such goods are important by reason of which advance payments are made, are wholly inapposite as examples vis-à-vis advance payments made by allottees”. Hence, this leaves no doubt that **a debt which arises out of advance payment made to a corporate debtor for supply of goods or services would be considered as an operational debt.**”*

(Emphasis Added)

29. It is urged that the debt to the tune of Rs. 2,05,57,612/- is an admitted debt in terms of the ratio laid down by the Hon’ble Apex Court in ***N. Subramanian v. Aruna Hotels Ltd.***, reported at (2021) 7 SCC 802: 2021 SCC OnLine SC 182 at page 805 that:

*“10. [...] **It is clear that there is an acknowledgment of liability, which therefore shows that there is no “dispute” as to amounts owed to the appellant.** The impugned NCLAT judgment [Subasri Realty (P)*

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Ltd. v. N. Subramanian, 2018 SCC OnLine NCLAT 320] is accordingly set aside. Consequently, NCLT judgment [N. Subramanian v. Aruna Hotels Ltd., 2017 SCC OnLine NCLT 20887] is restored to the file. [...].”

(Emphasis Added)

- 30.** We have duly considered the submission made by the Learned Counsels for both the parties and carefully perused all the documents place before us.

Analysis and Findings:

31. Admitted facts are that:

- a.** An advance amount of Rs. 2.27 Crore was made by the Operational Creditor to the Corporate Debtor for the between from **February 2021 and March 2021**. Bank Statements evincing repayment is annexed at pages 43-47 of the application.
- b.** Consignment details of goods was promised to be sent by the Corporate Debtor on **08.03.2021** but the consignment was not delivered to the Operational Creditor.
- c.** Invoices were raised by the Corporate Debtor for supply of 733.90 quintals of sugar of an aggregated value of Rs. 34,93,045/- delivered on **21.04.2021**.
- d.** Corporate Debtor refunded through RTGS an amount of Rs. 26,55,000/- to the Operational Creditor on **28.07.2021** and **30.07.2021** out of the advance

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received against which no goods were supplied. After deduction of Rs. 34,93,045/- and Rs. 26,55,000/- from the advance amount of Rs. 2,27,26,765/-, an amount of Rs. 1,65,78,720/- is still outstanding.

- e. Statutory Notice of Demand under Section 8 of the Code was issued on **01.12.2022** mentioning the date of default as on **31.07.2021**.
- f. Reply to the Demand Notice by the Corporate Debtor has been issued on **28.12.2022**.

32. Statutory Provisions:

Applicability Section 10A of the I&B Code:

i. Section 10A of the I&B Code, 2016 read as under.

*Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any **default** arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not

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*apply to any default committed under the said sections
before 25th March, 2020.*

The date of default being 31.07.2021, is beyond the Section 10A period, hence bar under Section 10A of the Code is not attracted.

ii. Section 3(6) of the I&B Code, 2016 defines “claim” as:

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

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

The Creditor’s claim against the debtor emanates from the creditor’s right to remedy for breach of contract by the corporate debtor in failing to supply sugar for which it had taken an advance payment from the creditor and creditor’s right to get its money back is its remedy for breach of contract by the debtor.

iii. Sections 3(11) of the I&B Code, 2016 defines “debt” as a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

The obligation of the debtor to delivered goods (herein sugar) for which it has received advance payment from

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the Creditor constitutes a “debt” which is due from the debtor.

- iv. Section 3(12) of the Code defines “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;**

Consequently, the non-payment of “debt” when it has fallen due constitute a default on the part of the Corporate Debtor.

- 33.** A conjoint reading of the statutory provisions supra will exemplify and demonstrate that the bar as envisaged under Section 10A of the Code will be applicable on the default of non-payment of debt and not upon supply of goods. Thus, we would infer that the Learned Counsel Mr. Rishav Banerjee for the Applicant was right in his submissions that the default occurs in the present case **not** when the Corporate Debtor fails to supply the goods in question, but when the Corporate Debtor fails to repay/pay the debt. Thus, provisions under Section 10A of the Code would not get attracted herein.

The Claim:

- 34.** Admittedly as well as clearly evident is the payment of Rs. 2,27,26,765/- by the Creditor. The Bank Statements evincing payments are annexed at Page 43-47 to the application, as such giving rise to a corresponding right to get material supplied.

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- 35.** The creditor claims that the payment is towards advance for supply of 6380 quintals of sugar, while the debtor claim that the payment is towards outstanding amount of MRPIPL, its sister concern, for which no substantiation by way of any documents is made. There is nothing on record to show that the payment was made by the creditor in discharge of the obligation that MRPIPL had towards the Debtor. Further that the Corporate Debtor has supplied and delivered 733.90 quintals of sugar of an aggregated value of Rs. 34,93,045/- on 21.04.2021 is evident.
- 36.** It is also evident that, the Corporate Debtor has refunded through RTGS Rs. 26,55,000/- to the Operational Creditor on 28.07.2021 and 30.07.2021 presumably out of the advance received against which no goods were supplied. Deduction of Rs. 34,93,045/- and Rs. 26,55,000/- from the advance amount of Rs. 2,27,26,765/- would take us to Rs 1,65,78,720/- which is the advance received by the Debtor for supply of sugar against which no supply is made and constitutes a “debt” of the Corporate Debtor in respect of a “claim” of the creditor towards supply of sugar or right to get its money back. The “debt” in default is more than the prescribed threshold financial limit under Section 4 of the I&B Code, 2016.
- 37.** As the balance of Rs. 1,65,78,720/- against which no supply was made, fell due the very next day of part payment on 30.07.21, we are satisfied that the date of default as 31.07.2021 is just the next day of the refund of Rs.

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26,55,000/-. The statutory notice of demand is issued on 01.12.2022 and date of filing of this application on 30.12.2022. Thus, the application is neither barred by the limitation nor hit by Section 10A. Hence, the application is squarely maintainable in terms of forgoing discussions.

38. In the light of the enumerations supra, the application bearing **C.P. (IB) No. 14/KB/2023**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 9 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by the **S. K. Agarwal & Co. (Operational Creditor)**, under **Section 9** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Kejriwal Sugar Agencies Pvt. Ltd. (Corporate Debtor)**.
- ii.** As a consequence of this Application being admitted in terms of Section 9 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

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iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

- 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 asset or any legal right or beneficial interest therein;*
- c)** *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- d)** *The recovery of any property by an owner or lessor where such property is occupied by or in 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 license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, 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;]

iv. 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.

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- v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi. The Applicant has not proposed any name as the “IRP”. Hence, we appoint **Mr. Rajnandan Kumar, Mobile No. +91 9831151505, Email ID: rnk_sa2004@yahoo.co.in** as the **Interim Resolution Professional (IRP)** of the Corporate Debtor, by invoking the provision under Section 16 (3) (a) of the I&B Code, 2016 to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.
- vii. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 9 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b)

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of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. 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.

- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities and/or the Officer-in-Charge of Local Police Station(s)** to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

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- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 9(5)(i) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency

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- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 39.** Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.
- 40.** Post the matter on **12/06/2024** for filing the Periodical Progress Report by the IRP/RP.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on April 22nd, 2024.

Bose, R. K. [LRA]/ Tiwari, V. [LRA]