

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

CP (IB) No. 168/Chd/CHD/2018

Under Section 9 of Insolvency and  
 Bankruptcy Code, 2016.

In the matter of :

**CTC Projects Pvt. Ltd.,**  
 having its registered office at:  
 11, Feroze Gandhi Road,  
 Lajpat Nagar-III,  
 New Delhi-110024.

... Applicant/Operational Creditor

Versus

**Hind Inns and Hotels Ltd.,**  
 having its registered office at:  
 Plot No.15, Industrial Area, Phase-I,  
 Chandigarh-160002

... Respondent/Corporate Debtor

Judgement delivered on: 31.10.2019

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)**  
**Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

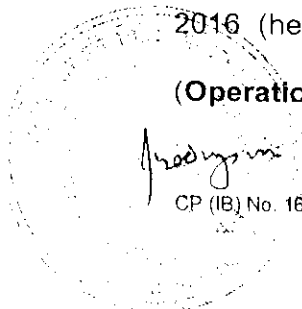
For the Operational Creditor : Mr. Akashdeep Singh, Advocate

For the Corporate Debtor : Mr. Anil Kumar Aggarwal, Advocate

**Per: Pradeep R. Sethi, Member (Technical)**

**JUDGEMENT**

This petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as **Rules**) by M/s CTC Projects Pvt. Ltd. (**Operational Creditor**) for initiating the Corporate Insolvency Resolution

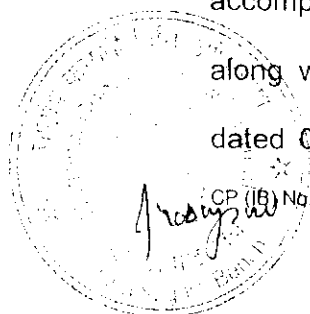


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Process (**CIRP**) in the case of M/s Hind Inns & Hotels Ltd. (**Corporate Debtor**). As per master data at page 252 of the petition, the registered office of the Corporate Debtor, is at Plot No.15, Industrial Area, Phase-I, Chandigarh-160002. Therefore, the jurisdiction lies with this Bench of the Tribunal. The application is signed by Sh. Chandanpal Singh Chawla, Director of the operational creditor. Board Resolution dated 05.02.2018 giving authority to him is at Annexure A-12 of the petition. The affidavit of Sh. Chandanpal Singh Chawla, Director of the operational creditor verifying the contents of the application is at page 36 of the petition.

2. It is stated that the operational creditor was awarded a work order dated 19.08.2011 by the corporate debtor for civil work of construction of Ginger Hotel at Plot No.15, Industrial Area, Phase-I, Chandigarh. As per the work order 5% of the amount in running bill (**R.A bill**) was to be retained by the corporate debtor, called as retention money. The Operational Creditor issued 18 R.A. bills and as per the final RA Bill No.18, the total amount of retention money to be paid by the corporate debtor to the operational creditor was ₹24,74,085/-. In Part 4 of Form 5 the total amount claimed in default is stated to be ₹24,74,085 along with ₹12,98,894/- being 18% interest calculated up to 01.03.2018. The debt is stated to be fell due from 21.07.2015.

3. A demand notice in Form No. 3 is stated to be issued on 01.03.2018 (Annexure A-9 of the petition). The demand notice was accompanied by the duly issued 18 RA bills in the name of corporate debtor along with the work order, dated 19.08.2011, virtual completion certificate dated 04.04.2014 and correspondence between the parties. The demand



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notice in Form No. 3 is stated to be served by speed post on the corporate debtor on 06.03.2018 (Page No. 243 to 244 of the petition). The affidavit of Mr. Chandan Singh Chawla stating therein that the corporate debtor had received the demand notice on 06.03.2018 as per the tracking report is at Annexure A-13 in which it is stated that the operational creditor received a reply to the demand notice on 22.03.2018 and as per the reply, the corporate debtor has not disputed the operational debt but has raised other legal objections. It is also stated in the affidavit that there is no dispute of unpaid operational debt pending between the parties in any court of law or authorities as on date. A certificate from the banker of the operational creditor is enclosed at Annexure A-8.

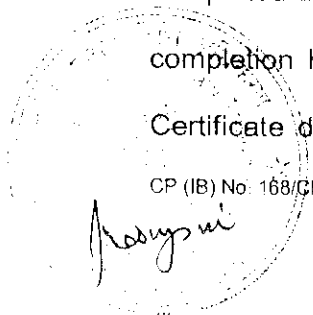
4. In Part III of Form No.5, no Interim Resolution Professional (**IRP**) has been proposed.

5. Vide order dated 08.06.2018, notice of this petition was directed to be issued to the corporate debtor to show cause as to why the petition be not admitted.

6. The authorized representative of the operational creditor filed compliance affidavit vide Diary No.2788 dated 31.07.2018 along with postal receipt and tracking report showing that the copy of the notice to the corporate debtor was delivered by Speed Post on 14.07.2018.

7. The Corporate Debtor filed reply dated 05.12.2018 vide Diary No.4773 dated 05.12.2018. It is stated in the reply that the applicant completed the work much beyond the period of 12 months within which the completion has to be achieved, as borne out from the Virtual Completion Certificate dated 04.04.2014 (page 87 of the petition). Further, it is stated

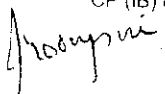
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that the applicant failed to cure the defects during the Defect Liability Period (DLP) and in fact, it abandoned the works claiming subsequently that the works were actually beyond the DLP (page 134-145 of the paper book) and the respondent had to engage third party contractors at its own expense and spent a sum of ₹49,00,119 for carrying out required rectifications. Correspondence in this regard is attached as Annexure R-1 of the affidavit. Therefore, no Defect Liability Certificate was issued by the respondent in terms of clause 6.29 of the contract. It is also submitted that no affidavit in accordance with section 9(3) of the Code has been filed by the applicant operational creditor since the affidavit filed along with the petition does not contain any assertion whatsoever to the effect that no notice given by the corporate debtor relating to, a dispute of the unpaid operational debt. It is stated that the operational creditor is not entitled to release of the retention money under contract, the claim of the operational creditor is barred by law; as per Clause 8.2 of the contract, no interest is payable to the contractor on the retention money; the corporate debtor is solvent, going concern with assets worth ₹33.72 crores as per last Balance Sheet.

8. In response to the reply filed by the respondent corporate debtor, the authorised representative of the Petitioner filed rejoinder dated 16.05.2019 (Diary No.2522 dated 17.05.2019) stating therein that the assertion of the respondent that the defects during the DLP from 31.03.2014 till 01.04.2015 were not cured is false because on collective perusal of email dated 14.07.2015, 21.07.2015 and 27.07.2015 exchanged between the petitioner and Mr. Nitin Sondhi (General Manager of the site in dispute of the respondent) shows that the respondent had specially mentioned that the

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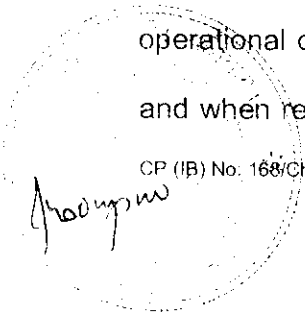
builder i.e. the operational creditor had attended all the concerns and rectified the same during the DLP. Further, it is stated that the emails mentioned by the respondent only reveal further issues to be rectified by the petitioner beyond the DLP. Further the operational creditor has filed an affidavit dated 11.05.2019 stating therein that the corporate debtor has not given any notice to the operational creditor relating to any dispute of unpaid operational debt till the present petition was filed. The affidavit is attached as Annexure A-17 of the rejoinder. It is also stated that the pre-condition for the DLP to end successfully is that employer should certify at the end of DLP which has been done as per mail dated 21.07.2015 (page 135 of the petition).

9. We have carefully considered the submissions of the learned counsel for the operational creditor and the corporate debtor and have also perused the records.

10. The amount claimed to be in default of ₹24,74,085/- relates to retention money. The amount is stated to be contained in the final bill for work done up to September 24, 2013 (page 89 of the petition).

11. The first objection raised by the learned counsel for the corporate debtor is that the debt is barred by limitation. We find that in Column No.2 of Part-IV of Form No.5, the operational creditor has stated that the right to recover the retention money first accrued to the operational creditor on 01.04.2015. However, the debt fell due from 21.07.2015 i.e. when the Ginger Hotels sent a mail to the operational creditor stating that the operational creditor had attended all the concerns and rectified the same as and when required and the liability is still continuing as the corporate debtor

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has not paid the retention money. The e-mail dated 21.07.2015 (page 135 of the petition) is as under:-

*As we spoke – We very much appreciate that you have attended all our concerns and rectified the same as and when required.*

*Keeping the same into consideration, kindly please ask someone from your office to attend this issue as a Special case request, which shall be of great help.*

12. In view of the above facts, the contention of the learned counsel for the corporate debtor that the debt is barred by limitation cannot be accepted.

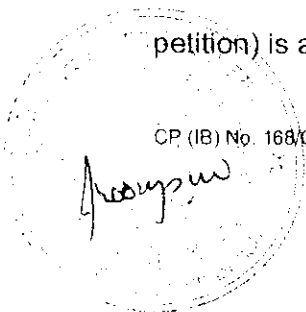
13. Learned counsel for the corporate debtor has pleaded that as per the work order, the defect liability certificate was to be requested by the operational creditor but no such request was made and therefore, the defect liability period cannot be said to have expired.

14. We find that in the virtual completion certificate issued by the corporate debtor on 04.03.2014 (Annexure A-3 of the petition), it is stated that the work is certified to be virtually completed on 31.03.2014 subject to rectification of defects, as pointed out by engineering/operations department.

It was further stated as under:-

*The defect liability period for the subject work shall commence on March 31<sup>st</sup>, 2014 and will cover the entire period of One Year up to April 1<sup>st</sup>, 2015. We will retain 5% of the final contract value as retention amount in your final bill and will release the same at the end of the defects liability period or on the submission of a Performance bank guarantee for the same which has to be valid for the defect liability period.*

15. Para 6.29 of the terms and conditions (Annexure A-2 of the petition) is as follows:-



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## 6.29 DEFECTS LIABILITY PERIOD

6.29.1 a) Defects period shall be twelve calendar months after completion of the works as certified under clause 6.28. Any defects in material or workmanship observed in the entire work during execution of work or within defect liability period shall be notified by him<sup>2</sup> at his own cost within time as specified by Employer.

b) to facilitate prompt attention to the defects the contractor shall comply a team of tradesmen like Masons, Plasterers, Carpenters, Plumbers, Fitters and Labours covering all trades along with necessary material and spares. A supervisor will also be available along with the maintenance team to take instructions from Employer. The maintenance team will be available through out the defects liability period. The composition of the tradesmen will vary according to the nature of recurring defects noticed in the buildings.

In case of default the Employer may employ any other person to rectify or make good such defects. All expense consequent thereon or incidental thereto shall be born by the Contractor and shall be recoverable from him by the Employer and shall deducted form R/A bills.

6.29.2 Should any defective works have been done or material supplied by any sub contractor employed, the contractor shall be liable to make good in the same manner as if such work or material has been done or supplied by the contractor. The contractor shall remain liable under the provisions of this clause notwithstanding the signing by the Architect of any certificate or passing any account.

6.29.3 The Employer shall also certify at the end of the defects liability period regarding the state of rectification pointed out during defect liability period.

16. In the rejoinder<sup>e</sup>, the operational creditor has stated that as per email dated 21.07.2015 (supra), the representative of the employer / owner / corporate debtor has specifically mentioned that all the concerns have been rectified as and when required during the defect liability period.

17. We find that as per para 6.29.1 (a) of the terms and conditions (supra) the defect period is 12 calendar months after completion of the works

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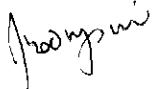
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as certified under Clause 6.28. Further, the virtual completion certificate of 04.03.2014 (supra) states that the defect liability period shall commence on 31.03.2014 and will cover the entire period of one year up to 01.04.2015. The email dated 21.07.2015 (supra) clearly accepts that all concerns have been attended to and rectified as and when required. The email dated 13.07.2015 at page 137 of the petition from the Hotel Manager, Ginger, Chandigarh is for redoing the slope in -1 parking first basement and regarding this work, in the email dated 21.07.2015 (supra) it is requested to "ask someone from your office to attend this issue as a Special case request, which shall be of great help." Therefore, the work in -1 parking first basement was requested to be done by the corporate debtor as a special case, thereby implying that the defect liability period was over on 31.03.2015.

18. In view of the above discussion, the plea of the corporate debtor that the defect liability period cannot be said to have expired is not accepted.

19. The learned counsel for the corporate debtor has pleaded that in view of the emails to the operational creditor as per Annexure R-1(colly) of the reply, the defects have not been removed and therefore, there is a pre-existing dispute. As regarding the emails up to 24.03.2015, the successful rectification of such defects is available in the email dated 21.07.2015 (supra) in which all concerns are stated to be attended and rectified as and when required. The later emails relate to redoing the slope of -1 parking first basement. The first email in this regard from the corporate debtor is dated 13.07.2015. The same was followed by email dated 14.07.2015 of the operational creditor. It was stated therein that the work was completed as

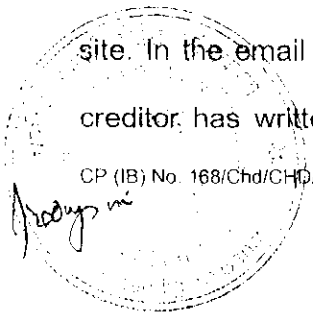
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per the site instructions/details and drawings issued from time to time and the property handed over in September, 2013; all problems attended and rectified to the satisfaction; defect liability period successfully completed in March, 2015; this is to be treated as a maintenance issue to be taken care by the owner itself. The next email was from the side of the corporate debtor on 21.07.2015 for asking someone from the office of the corporate debtor to attend this issue as a Special case request, which shall be of great help. The learned counsel for the corporate debtor has referred to three reminders issued thereafter on 11.08.2015, 21.08.2015 and 19.05.2016. We may state that in the last email dated 19.05.2016, the request was made again to attend the issue as a "Special case request". In view of the Special case request made in the emails, it cannot be said that there was any dispute.

20. We may add here that in the reply, the corporate debtor has stated that it was constrained to engage third party contractor to get the work done and a sum of ₹49,00,119 had to be spent by the corporate debtor in carrying out rectification including towards civil works, concrete work, masonry boundary wall completion, finishing and painting. However, even though it was stated that the copies of the invoices by the other contractors through whom the work was got done will be filed through affidavit on the next date, no such affidavit was filed. Therefore, no evidence of incurring the claimed expenditure of ₹49,00,119 for the purpose as claimed above has been filed. Moreover, the emails at Annexure R-1 (colly) relate only to cracks developing on site and water accumulation absorbed in -1 parking on site. In the email dated 15.11.2014 at page 17 of the reply, the operational creditor has written to the corporate debtor that the cracks developed are

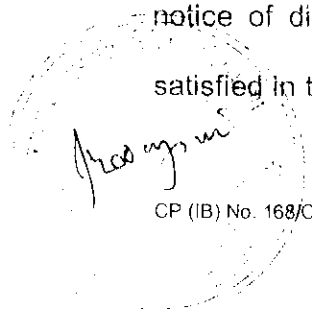
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superficial hair line cracks on plaster surface only and these are not at all structural cracks and the defect can be said to be removed in view of the email dated 21.07.2015 (supra). We have discussed above that in respect of water accumulation in -1 parking on site, the redoing of slope was as a "Special case request."

21. The learned counsel for the corporate debtor has pleaded that the claim of interest @ 18% per annum on the alleged retention money due is not justified in view of Clause 8.1.2. of the contract, which specifically states that no interest is payable to the contractor on the retention money. Clause 8.1.2 of the contract has reference to payment of interest to the contractor on the amount retained in cash towards retention money. On completion of the defect liability period, the retention money became due to the corporate debtor on 01.04.2015. The claim of interest of ₹12,98,894 in the application is for the period from 01.04.2015 to 01.03.2018 i.e. after the defect liability period had ended. Therefore, Clause 8.1.2 of the contract would not have application.

22. The learned counsel for the corporate debtor has pleaded that the corporate debtor is solvent, going concern with assets worth ₹33.72 crores as per the last Balance Sheet and it is trite law that no insolvency proceedings ought to be commenced against the company which is a going concern. We find that Section 9 of the Code has application where the operational creditor does not receive payment from the corporate debtor or notice of dispute under Section 8(2) of the Code. These conditions are satisfied in the present case and the issue whether the corporate debtor is a

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going concern becomes irrelevant to the admission of the application under Section 9 of the Code.

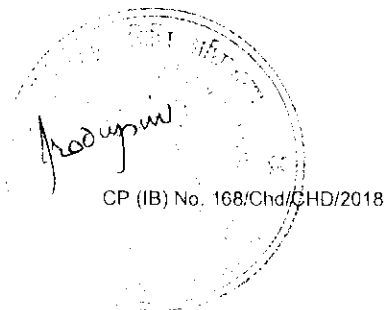
23. In the reply, it was stated by the corporate debtor that the affidavit in accordance with Section 9(3) of the Code is not properly filed. In the rejoinder, the operational creditor has stated that the corporate debtor had never issued a notice in regard to any dispute of the unpaid operational debt and that a specific affidavit is being filed along with the rejoinder in this regard.

24. In view of the above discussion, the contentions raised by the corporate debtor in its reply are not accepted.

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

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

- (i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—*
  - (a) the application made under sub-section (2) is complete;*
  - (b) there is no payment of the unpaid operational debt;*
  - (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*
  - (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*
  - (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any."*

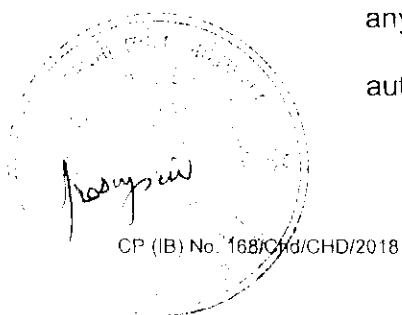


26. We have gone through the contents of the application filed in Form No. 5 and find the same to be complete. As discussed above, there is an unpaid operational debt amounting to ₹24,74,085/- plus interest @18% p.a.. Copy of the work order dated 19.08.2011 is attached as Annexure A1. Moreover, demand notice in Form No. 3 was also sent on 01.03.2018 stating that the amount due from the corporate debtor to the operational creditor is ₹37,72,979/- including interest. We have held above that the demand notice in form No.3 dated 01.03.2018 was properly delivered by the operational creditor and the reply has been examined above and found to be not acceptable. IRP is not proposed in Part III of Form No.5.

27. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIRP process in the case of the Corporate Debtor M/s Hind Inns & Hotels Limited and direct moratorium and appointment of Interim Resolution Professional as below.

28. We declare the Moratorium in terms of sub-section (1) of Section 14 of the Code as under:-

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;



(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

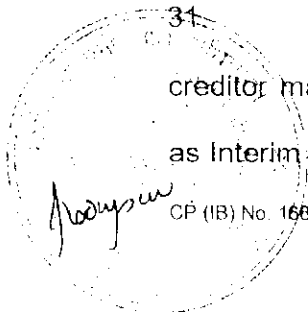
(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

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

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

31. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant



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case also the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional.

Section 16(3)(a) of the Code says that where the application for corporate insolvency resolution process is made by an operational creditor and –

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

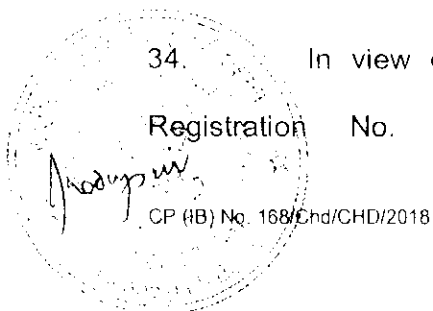
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Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom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

32. In this regard a letter bearing File No. 25/02/2019-NCLT dated 28.06.2019 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2018/02 dated 24.06.2019 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.07.2019 to 31.12.2019. We select Ms. Mandeep Gujral appearing at Serial No.11 of the panel to be appointed as Interim Resolution Professional

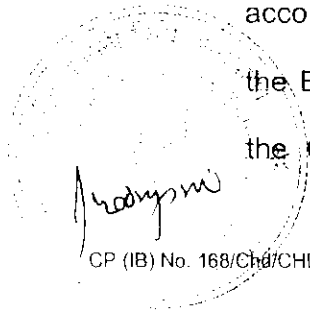
33. The Law Research Associate of this Tribunal has checked the credentials of Ms. Mandeep Gujral and there is nothing adverse against her.

34. In view of the above, we appoint Ms. Mandeep Gujral, IP Registration No. IBBI/IPA-001/IP-P00507/2017-18/10908, email Id:



mandeepgujral.ip@gmail.com, Mobile No.9814228288 as the Interim Resolution Professional, with the following directions:-

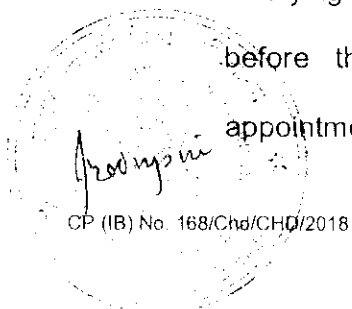
- i) The term of appointment of Ms. Mandeep Gujral shall be in accordance with the provisions of Section 16(5) of the Code;
- ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct' governing his profession and as an



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Insolvency Professional with high standards of ethics and moral;

- iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee



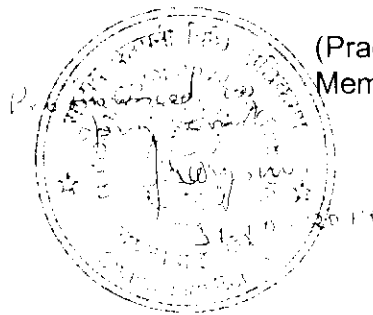
within seven days of filing the report of constitution of the committee; and

- vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

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

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

October 31, 2019  
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*Sd/-*  
(Pradeep R. Sethi)  
Member (Technical)

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DD / DR / AP / Clerk of the  
National Company Law Tribunal  
Chandigarh Bench, Chandigarh