IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) NO.17/ALD/2021

In the matter of

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of:

Dr. Raj Pal Singh Bhardwaj

S/o Late Sri Durga Singh

R/o 3/33, Vishnupuri,

Kanpur, Uttar Pradesh

………… Applicant/Financial Creditor

Versus

Anand Nirogdham Hospital Private Limited,

Having its Registered Office at:

A-1, Damodar Colony, Garh Road,

Meerut, Uttar Pradesh-250005

……Respondent/Corporate Debtor

Order pronounced on 12th March, 2024

Coram:

Mr. Praveen Gupta.	:	Member (Judicial)
Mr. Ashish Verma	:	Member (Technical)

-Sd- -Sd-

Appearances:

Sh. Ujjawal Satsangi, Adv. : *For the Financial Creditor*

Sh. Rohan Gupta, Adv. : *For the Corporate Debtor*

ORDER

1. The Present Application has been filed on 8.12.2020 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "***I & B Code, 2016***") by the Applicant/Financial Creditor namely, Dr. R.P.S. Bharadwaj seeking initiation of the Corporate Insolvency Resolution Process (hereinafter referred as "***CIRP***") against the Respondent /Corporate Debtor i.e. M/s Anand Nirogdham Hospital Pvt. Ltd. read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form.

2. M/s Anand Nirogdham Hospital Pvt. Ltd., (hereinafter referred as the "Respondent/Corporate Debtor") is a private limited company which was incorporated on 28.4.2005 (CIN. U85110UP2005PTC029887) under the provisions of the Companies Act, 1956. The Corporate Debtor's registered

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office is at A-1, Damodar Colony, Garh Road, Meerut, Uttar Pradesh- 250005.

3. The Applicant, Dr. Raj Pal Singh Bharadwaj is a Financial Creditor within the meaning of Section 5(7) of the IBC, 2016 (PAN No. AAPPB8303G) and (ID No.719278042054) having his registered office at 3/33, Vishnupuri, Kanpur, Uttar Pradesh- 208002.

4. As stated in the application that the Respondent availed multiple financial facilities from the Applicant between 2009 and 2018, the sum total of which amounted to Rs. 2,20,00,000, along with interest at 15% per annum payable on a monthly basis and the said financial facility was periodically extended from time to time. The said amount was repayable on demand or on the failure of payment of 15% interest and the same was paid until January 2019. Thereafter, the Respondent Corporate Debtor through its managing director, Sh. Hari Om Anand informed the Applicant that due to bad financial condition, the Respondent is unable to continue to pay any interest on the financial facility from January 2019 onwards.

-Sd- -Sd-

5. As regards the repayment of outstanding loan amount, it is stated in the application that the Applicant was given assurance by the Managing Director of the Respondent Company, Sh. Hariom Anand that the same will be repaid at the earliest. However, on insistence of the Applicant, the Respondent/Corporate Debtor later, acknowledged through a letter dated 17.6.2020 the outstanding amount of Rs. 2,20,00,000/- with an interest of 15% p.a. to be paid on monthly basis to the Applicant but expressed its inability to pay the interest amount to Applicant/Financial Creditor w.e.f. Feb. 2019 due to bad financial condition. For repayment of the principal amount, the Corporate Debtor issued two cheques one for Rs.1,60,00,000/- being cheque No.000787 and another for Rs.60,00,000/- being cheque No.000790 both drawn on HDFC Bank in favour of the Financial Creditor. However, these two cheques were returned dishonoured by the bank with the reason "funds insufficient".

6. After multiple failed requests by the Applicant Financial Creditor to the Respondent Creditor to repay the due amount, two demand notices dated 4.9.2020 were issued for

-Sd- -Sd-

repayment of both amounts to the Respondent Corporate Debtor but no response was received and thereafter, even the two cheques issued by the Corporate Debtor, could not be encashed as discussed in previous para.

7. Thereafter, as further stated in the Application that the Applicant sent a legal notice under Section 138 of Negotiable Instruments Act, 1881, on 21.9.2020 and demanded the repayment of entire outstanding amount of Rs. 2,20,00,000/ within fifteen days from receipt of the notice. The Respondent replied to this notice by again acknowledging the two cheques drawn in favor of the Applicant/Financial Creditor but it failed to repay to the Financial Creditor the entire sum of Rs. 2,20,00,000/-, hence the present Application u/s 7 of the I & B Code has been filed by the Financial Creditor.

8. Against the above Application, the Respondent Corporate Debtor submitted its reply on 18.09.2021 wherein it has denied all the averments made by the Applicant Financial Creditor in the Application and states that the same is not maintainable and liable to be dismissed *in-limine* since the Applicant has failed to file the statement of accounts of the Respondent as per the provisions of the Bankers Book

-Sd- -Sd-

Evidence Act, 1891 as provided by the IBC, 2016 and related Regulations. It is further pointed out that there is not a single document which has been annexed under Part V, which provides for the particulars of the Financial Debt-Documents, Records and Evidence, and therefore in the absence of any proof of debt, the instant application is liable to be dismissed.

9. It is further stated in the Reply that the amount transferred to the Respondent/Corporate Debtor was only Rs. 60 lacs and not Rs. 2.20 crores as claimed by the Applicant in the Application and an amount of Rs. 74,48,650/ has so far been paid as interest on the aforesaid amount. The Respondent annexed an audited ledger as Annexure CA 2 with the Reply in support of its submission. And since the alleged financial debt amount does not meet the prescribed threshold limit of Rs. 1.0 crore, the instant application is stated as liable to be dismissed. As regards the second amount of Rs.1.60 crores, it is stated that this amount was never received by the Respondent/Corporate Debtor.

10. As regards the proceeding u/s 138 of the Negotiable Instrument Act initiated against the Respondent/Corporate Debtor, it is stated that suitable reply to the notice issued by

the Financial Creditor in this regard, has been sent. Against the complaint filed by the Financial Creditor as per section 138 of the Negotiable Instruments Act,1881 before the concerned Magistrate at Kanpur, a revision petition has been preferred by the Corporate Debtor before the District Judge, Kanpur, which is pending.

11. As the outstanding debt against the Corporate Debtor is below the threshold limit of Rs.1.0 crore and the Financial Creditor has also failed to bring on record the necessary and mandatory documents which would reveal the particulars of the financial debt of Rs.2.20 crore, as has been sought to be alleged by the applicant, the Application filed by the Financial Creditor is stated to be devoid of merit, hence as per the Respondent/Corporate Debtor, is liable to be dismissed.

12. The Respondent further filed a supplementary counter-affidavit on 23.11.2021, in order to explain the two cheques, one of Rs. 60 lac and another of Rs.1.60 crore explaining that the former director of the Respondent, in an unsound state of mind suffering from immense depression, issued the acknowledgment for Rs.60 lacs as well as 1.60 crores. However, it was clarified that the amount of Rs. 1.60 crores

-Sd- -Sd-

was never received by the Respondent/Corporate Debtor, and the Applicant/Financial Creditor has not provided any evidence in support of the claim. The Respondent also filed a second supplementary counter affidavit on 25.07.2023 and submits that within 10 days of the issuance of the said acknowledgement of Rs. 60 lacs and Rs. 1.60 crores on 17.06.2020, the ex-director of the Company, Sh. Hari Om Anand committed suicide on 26.06.2020. Therefore, for this reason too, the acknowledgement cannot solely be relied upon, especially without any other evidence being filed by the Applicant to substantiate his claim in this regard. It is also emphasized by the Corporate Debtor in its reply that the mere issuance of an acknowledgement by the Managing Director under depression, without any amounts being transferred into the accounts of the Corporate Debtor cannot fasten the liability upon the Corporate Debtor. It is also clarified that such acknowledgment is without any authority since no such amounts had been taken by the Corporate Debtor.

13. The Respondent has filed a written submission wherein the contentions raised in the reply and supplementary counter affidavits about non submission of any document evidencing

-Sd- -Sd-

the debt, non-receipt of amount of Rs. 1.60 crores, debt not `being above the minimum threshold limit and the background under which the alleged acknowledgement was issued by the Managing Director, Sh. Hari Om Anand that cannot solely be relied upon in absence of any supporting evidence showing receipt of the alleged amount by the Corporate Debtor, have been reiterated, therefore need not be discussed again for the sake of brevity.

14. In view of the counter affidavit filed by the Corporate Debtor disputing the debt of Rs. 1.60 crore as having been not received by it, the Ld. Counsel representing the Applicant Financial Creditor as mentioned in the order dated 4.8.2023 of this tribunal, undertook to place on record the documents showing disbursement of the loan amounts which had been agreed *inter se* between the parties along with dates of such disbursal.

15. In a supplementary affidavit filed on 31.10.2023, it has been submitted that the Corporate Debtor runs another entity named Anand Medical Store to which the amount of Rs. 1,60,00,000/- was paid. The said entity was a sole proprietorship firm run by the deceased former managing

-Sd- -Sd-

director of the Respondent Company, Sh. Hari Om Anand. In support of the above contention, reference to the Balance Sheet of the Corporate Debtor has been made showing that as per the Balance Sheet of the Corporate Debtor dated 31.03.2019, the Financial Creditor was shown as Unsecured Creditor for Rs. 60,00,000/- whereas Rs. 9,83,02,700.83 was shown as Trade payable to Sundry Creditor i.e. Anand Medical Store. It is then argued that this debt was transferred to the Corporate Debtor as evident from the two acknowledgements dated 17.06.2020, issued by the then Managing Director of the Corporate Debtor i.e. Sh. Hari Om Anand. The copy of the Balance Sheet of the Corporate Debtor dated 31.03.2019 has been annexed as Annexure no.2 with the affidavit.

16. The Respondent has also filed a supplementary counter affidavit on 08.12.2023 in pursuance to the order dated 31.10.2023 of this tribunal wherein the financial statements ending on 31.3.2020 and 31.3.2021 have been directed to be brought on record. In this Supplementary Counter Affidavit, the Corporate Debtor placed on record its Balance Sheet as on 31.03.2020 and 31.03.2021. As per these two Balance

-Sd- -Sd-

Sheets, an amount of Rs. 60,00,000 only has been found recorded to be outstanding as Unsecured Loan towards the Financial Creditor, Sh. Rajpal Singh Bharadwaj. However, the amount of trade payable towards M/s Anand Medical Store has been found to have gone down from Rs. 9,83,02,700 as on 31.03.2019 to Rs. 3,35,78,518 as on 31.03.2020 and it has further gone down to Rs. 13,38,518/- as on 31.03.2021. By relying on these outstanding amounts as reflected in the financial statements of the Corporate Debtor, the Ld. Counsel representing the Corporate Debtor argued that the amount of debt payable towards the Financial Creditor is only Rs. 60 lac and the allegation of the Financial Creditor that the amount of Rs. 1.60 crores paid to M/s Annand Medical Store was transferred to the Corporate Debtor i.e. M/s Anand Nirogdham Hospital Pvt. Ltd. is also not correct as it is clear from these balance sheets that now even the outstanding amount towards M/s Anand Medical Store is only Rs. 13,38,518/- and therefore, question of transferring of Rs. 1.60 crore from M/s Anand Medical Store to M/s Anand Nirogdham Hospital Pvt. Ltd. i.e. the Corporate Debtor does not arise at all. Moreover, there is no evidence produced showing that any such transfer of funds have taken place between M/s Anand Medical Store and the Corporate Debtor. It is also explained that the nature of outstanding amount shown towards M/s Anand Medical Store is on account of supply of medicines and therefore, it is shown under the head "Trade Payable" and not under the head "Unsecured Loan", which makes it very clear that no amount was transferred by M/s Anand Medical Store to the Corporate Debtor as alleged by the Financial Creditor and hence, the debt of Rs. 1.60 crores cannot be owed by the Corporate Debtor to Financial Creditor in absence of any evidence of payment of such amount to the Corporate Debtor by the Financial Creditor.

17. The Ld. Counsel appearing on behalf of the Financial Creditor heavily relied in his arguments on the acknowledgement letters dated 17.06.2020 for both amounts i.e. Rs. 60 lacs and Rs. 1.60 crore, issued by the managing director of the Corporate Debtor i.e. Sh. Hari Om Anand and took the plea that the amount of Rs. 1.60 crores paid to M/s Anand Medical Store was transferred to the Corporate Debtor otherwise why such acknowledgement letter would have been

-Sd- -Sd-

issued by the Corporate Debtor through its Managing Director but he could not produce any evidence showing transfer of any such funds from M/s Anand Medical Store to the Corporate Debtor. His reliance of outstanding balance of Rs. 9,83,02,700/ shown in the name of Anand Medical Store in the Balance Sheet of the Corporate Debtor as on 31.03.2019 as being a reflection of transferring of such funds also could not be sustained as the same has substantially gone down to Rs. 13,38,518/- and hence, any outstanding amount to the tune of Rs. 1.60 crore has not been found existing from the Corporate Debtor to M/s Anand Medical Store which can be said to be on account of transfer of funds provided by the Financial Creditor in absence of any evidence to show that such transfer of funds occurred between M/s Anand Medical Store and the Corporate Debtor out of the amounts paid by the Financial Creditor to the Corporate Debtor.

18. The Financial Creditor further filed a written submission also on 27.02.2024 taking the similar plea stating that between 2009 to 2018, the Financial Creditor advanced Rs. 60,00,000/- in the account of Corporate Debtor while Rs.

-Sd- -Sd-

1,60,00,000/- in one Anand Medical Store, a sole proprietorship firm of Hari Om Anand (now deceased), the erstwhile Managing Director of Corporate Debtor. While Rs. 60,00,000/- is the admitted debt by the Corporate Debtor, the remaining Rs. 1,60,00.000/- was transferred through Anand Medical Store to Corporate Debtor. For the repayment of dues, on 17.06.2020, the Corporate Debtor issued two acknowledgement letters, along with cheques for the repayment of dues, in the tune of Rs. 2,20,00,000/-. It has been argued that in the corporate scheme of things, the body corporate is liable for the actions and acknowledgements of its employees and agents. In the instant case, where the Managing Director, vide the acknowledgement letters dated 17.06.2020, has accepted the liability of Rs. 2,20,00,000/-, no other document or evidence, including transactional details are required to be brought on record to show transfer of funds. It is also argued that the Respondent failed to raise any grievance over the acknowledgment letters either by way of reply to the Demand notice or in response to the Demand notice under Section 138 of the NI Act, 1881. Therefore, as further argued that the failure of Corporate Debtor to raise

-Sd- -Sd-

any such grievance on earlier occasion and raising it in the reply to the Application under Section 7 is not justified and clearly is an afterthought. The remaining contentions raised in the petition, as well as the supplementary affidavit, have been reiterated and therefore need not be discussed for the sake of brevity.

FINDINGS AND ORDER

19. We have considered the submissions made by the Ld. Counsels in the hearing and perused the material available on record as well as further arguments taken in written submissions.

20. We find that in the present case, one of the grounds raised by the Applicant is that a financial facility, to the extent of Rs. 2.20 crores, was extended along with interest at the rate of 15% per annum to be paid in case of default. The aforementioned amount of Rs. 2.20 crores was stated to have been provided in two tranches—Rs. 60 lakh to the Respondent Corporate Debtor and another amount of Rs. 1.60 crores to Anand Medical Store, a proprietary firm of the Managing Director of the Corporate Debtor i.e. Sh. Hari Om

-Sd- -Sd-

Anand (now deceased), which was further alleged to have been transferred to the Respondent Corporate Debtor.

21. There is no dispute on outstanding financial debt of Rs. 60 lakhs. However, as regards the financial debt of Rs. 1.60 crores, it is the case of the Applicant that the amount of Rs. 1.60 crores was intended to be given to the Respondent but was routed through Anand Medical Store, for which the Managing Director of the Respondent is the sole proprietor. The basis for showing default for the alleged outstanding is the acknowledgement dated 17.6.2020 given by the erstwhile Managing Director of the Respondent, stating that the said amount of Rs. 1.60 crores is not possible to be repaid due to bad financial conditions, and in order to secure the said amount, a cheque drawn on HDFC Bank of Rs. 1.60 crores had been issued.

22. Apart from this acknowledgement letter, no evidence has been presented by the Applicant to demonstrate that the said amount of Rs. 1.60 crores, which, according to him, was intended to be transferred to the Respondent, actually reached to the account of the Respondent through Anand Medical Store except for the fact that the then Managing

-Sd- -Sd-

Director of the Respondent has given this acknowledgment, who happens to be the sole proprietor of Anand Medical Store. The cheque issued in security has since then bounced, and proceedings under Section 138 of the Negotiable Instrument Act have been initiated.

23. The ground raised by the Applicant has been vehemently contested by the Respondent, as discussed hereinabove while referring to the pleadings filed by both parties. The Respondent states that the above amount of Rs. 1.60 crores never reached them, and the alleged acknowledgment given by the then Managing Director would not constitute any debt, as mere acknowledgment in the absence of the disbursement itself would not be a ground for initiating the CIRP. This needs to be considered in the context of the acknowledgment given solely by the Managing Director, who is reported to have passed away soon thereafter by committing suicide. The transfer of the amount has to be examined based on the relevant documents enclosing the ledger accounts, for which the onus was on the Applicant to prove that the amount actually reached the Respondent.

-Sd- -Sd-

24. The Applicant has also failed to produce any tripartite agreement that could reflect that the amount of Rs. 1.60 crores, admittedly given to Anand Medical Store, was at the instance of the Respondent and intended to be transferred to the account of the Respondent. In the absence of any such agreement or any entry in the books of account or in bank statement and financial statements of parties concerned, it cannot be inferred that the amount of Rs. 1.60 crores was in the form of financial facility provided by the Applicant to the Respondent. Instead, it is established that the said facility was provided to Anand Medical Store, for which the then Managing Director was the sole proprietor, and who subsequently passed away.

25. Reliance of the Financial Creditor on the outstanding balance of Rs. 9,83,02,700/ shown in the name of Anand Medical Store in the Balance Sheet of the Corporate Debtor as on 31.03.2019 as being a reflection of transferring of such funds cannot be accepted, firstly because it is under the head "trade payable", which shows outstanding balance on account of pending payments for supply of goods and not for transfer of money, which is usually shown under the head either

-Sd- -Sd-

"unsecured loan" or "advances received", secondly this outstanding amount has gone down from Rs. 9,83,02,700 as on 31.03.2019 to Rs. 3,35,78,518 as on 31.03.2020 and further gone down to Rs. 13,38,518/- as on 31.03.2021 and hence, any outstanding amount to the tune of Rs. 1.60 crore has not been found existing from the Corporate Debtor to M/s Anand Medical Store which can be said to be on account of transfer of funds provided by the Financial Creditor in absence of any evidence to show that such transfer of funds occurred between M/s Anand Medical Store and the Corporate Debtor out of the amounts paid by the Financial Creditor to the Corporate Debtor or on account of any tripartite agreement.

26. In view of above facts and circumstances of the case discussed above, we find that the Applicant has failed to establish the disbursement of Rs. 1.60 crores to the Respondent Corporate Debtor. Section 5(8) of the I & B Code which deals with financial debt, has provided that Financial Debt is a debt which is **disbursed**. In ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416***, the Hon'ble Supreme Court has elaborately discussed

-Sd- -Sd-

the concept of 'financial debt' in the light of several earlier judgments including ***Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407 and Swiss Ribbons (P) Ltd. v. Union of India (2019) 4 SCC 17.*** The relevant excerpts are as extracted under:

> *"70. The definition of "financial debt" in Section 5(8) then goes on to state that a **"debt" must be "disbursed"** against the consideration for time value of "Disbursement" is defined in Black's Law Dictionary (10th Edn.) to mean:*
>
> > *"1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable. 2. The money so paid; an amount of money given for a particular purpose."*
>
> *71. In the present context, it is clear that the expression "disburse" would refer to the payment of instalments by the allottee to the real estate developer for the particular purpose of funding the real estate project in which the allottee is to be allotted a flat/apartment. The expression "disbursed" refers to money which has been paid against consideration for the "time value of money". In short, the **"disbursal" must be money and must be against consideration for the "time value of money", meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money.***
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> ***[Emphasis Supplied]***

27. In another case of ***Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. Vs. Axis Bank Limited & Ors. (2020 8 SCC 401),*** the Hon'ble Supreme

-Sd- -Sd-

Court has emphasized that for existence of a financial debt, there should be disbursement of money to the Corporate Debtor from whom debt is claimed to have become due , holding as under:

> *"46. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code,* ***we have not an iota of doubt that for a debt to become "financial debt" for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursal against the consideration for time value of money. It may include any of the methods for raising money or incurring liability by the modes prescribed in clauses (a) to (f) of Section 5(8);*** *it may also include any derivative transaction or counter-indemnity obligation as per clauses (g) and (h) of Section 5(8); and it may also be the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in clauses (a) to (h). The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of "disbursement" against "the consideration for the time value of money" could be forsaken in the manner that any transaction could stand alone to become a financial debt. In other words, any of the transactions stated in the said clauses (a) to (i) of Section 5(8) would be falling within the ambit of "financial debt" only if it carries the essential elements stated in the principal clause or at least has the features which could be traced to such essential elements in the principal*

-Sd- -Sd-

clause. In yet other words, ***the essential element of disbursal, and that too against the consideration for time value of money, needs to be found genesis of any debt before it may be treated as "financial debt" within the meaning of Section 5(8) of the Code.*** *This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursal against consideration for the time value of money."* ***(Emphasis supplied)***

28. Considering the definition of financial debt and various judicial pronouncements as discussed above, the disbursal of loan as financial debt by the Applicant claiming to be financial creditor to the other party shown as Corporate Debtor, is an essential element apart from such disbursal being against the consideration for the time value of money which may be with or without interest. It is also held by the Hon'ble Supreme Court that the disbursal should be in such manner that money is now no longer with the lender, but is with the borrower, who then utilises the money. In the present case, the amount of Rs. 1.60 crores could not be shown by the Applicant to have been disbursed to the Corporate Debtor, rather it is admittedly disbursed to a proprietary firm belonging to a managing director of the Corporate Debtor, which is a distinct legal entity not under

-Sd- -Sd-

the control of the Corporate Debtor and it could also not be shown that the said fund of Rs. 1.60 crore reached to the Corporate Debtor and the said fund of Rs. 1.60 crores was utilized by the Corporate Debtor. Therefore, in absence of any corroborative evidence to satisfy the above ingredients of a financial debt, we are not inclined to accept a mere letter issued by a managing director of the Corporate Debtor acknowledging the receipt of Rs. 1.60 crore on behalf the Corporate Debtor as evidence for creation of financial debt making the Corporate Debtor liable to repay it. Accordingly, in our considered opinion, the Applicant has failed to establish the financial debt to the extent of Rs. 1.60 crores.

29. In view of our findings hereinabove, we are unable to declare any default on the part of the Respondent Corporate Debtor to the extent of Rs. 1.60 crores since they did not avail of the financial facility of Rs. 1.60 crores. However, default has admittedly occurred due to non-repayment of an unsecured loan of Rs. 60 lakhs taken from the Applicant and it is duly reflected in the Balance Sheet of the Corporate Debtor also but as the default amount is below the threshold limit of Rs. 1.0 crore as provided under the I & B Code, the Corporate

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Debtor cannot be brought within the ambit of the provisions of Section 7 of the Code. Accordingly, the application filed u/s 7 for initiating CIRP against the Corporate Debtor cannot be admitted, hence dismissed.

Ordered accordingly.

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(Ashish Verma) **(Praveen Gupta)**
Member (Technical) **Member (Judicial)**

Date: 12th March, 2024