



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

**CP(IB)/7(CHE)2023**

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the  
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

*In the matter of M/s. Fashion Influence Clothing India Private Limited*

**SMARTPADDLE TECHNOLOGY PRIVATE LIMITED,**  
Krislon House, 3<sup>rd</sup> Floor,  
Off: Saki Vihar Road, Saki Naka,  
Andheri East, Mumbai,  
Mumbai City, Maharashtra-400 072

*... Applicant / Operational Creditor*

**-Vs-**

**FASHION INFLUENCE CLOTHING INDIA PRIVATE LIMITED,**  
CIN: U52322TN2011PTC082161  
No.1018, New No.84,  
RR Srivaru Complex II Floor,  
6<sup>th</sup> Avenue, Anna Nagar,  
Chennai – 600 040

*... Respondent / Corporate Debtor*

*Order Pronounced on 22<sup>nd</sup> November, 2023*

**CORAM:**

**SANJIV JAIN, MEMBER (JUDICIAL)  
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Operational Creditor: Mr. Raj Jhabakh, Advocate*

*For Corporate Debtor: Mr. Raghav Rajeev Menon, Advocate*

**ORDER**

**(Heard through VC)**

This application under Section 9 of the Insolvency and Bankruptcy  
Code, 2016 (“IBC”) read with Rule 6 of the Insolvency and Bankruptcy



(Application to Adjudicating Authority) Rules, 2016 has been filed by SMARTPADDLE TECHNOLOGY PRIVATE LIMITED (hereinafter referred to as “Operational Creditor”) against FASHION INFLUENCE CLOTHING INDIA PRIVATE LIMITED (hereinafter referred to as “Corporate Debtor”) for initiating Corporate Insolvency Resolution Process (“CIRP”).

2. Part-I of the application sets out of the details of the Operational Creditor. It is stated that the Operational Creditor is a Private Limited company having its registered office situated at Mumbai City. Part-II of the applications sets out the details of the Corporate Debtor which is a Private Limited company incorporated under the Companies Act, 1956 on 02.09.2011 with CIN No. U52322TN2011PTC082161 having its Registered Office at No.1018, New No 84, RR Srivaru Complex II Floor, 6<sup>th</sup> Avenue, Anna Nagar, Chennai- 600 040. In Part-III of the application, the Operational Creditor has not proposed the name of the Interim Resolution Professional and left it to the discretion of this Tribunal to appoint the same.

3. Part-IV of the application details the total amount of debt as Rs.5,15,21,359.82 (Rupees Five Crores Fifteen Lakhs Twenty One Thousand Three Hundred and Fifty Nine and Paise Eighty Two only) which includes a principal of Rs.4,52,12,353/- (Four Crores Fifty Two Lakhs Twelve Thousand Three Hundred and Fifty Three only) and interest due on the principal of



Rs.63,09,037.07 (Rupees Sixty Three Lakhs Nine Thousand Thirty Seven and Paise Seven only) as on 25.11.2022. Further, the Date of Default is shown as 30.06.2022.

4. Part-V of the application describes the particulars of the Operational Debt, documents, records and evidence of the default as below:

- a. Unpaid invoices showing the amount claimed.
- b. Form GSTR-1/Form GSTR-3B & E-way Bills.
- c. **Shortfall undertaking** entered into between the parties showing the acknowledgement of debt dated 15.06.2022.
- d. Table showing computation of amount claimed.
- e. Demand Notice under Section 8 and proof of electronic and physical service.
- f. Cheques issued by the Corporate Debtor that were dishonoured.

**FACTS OF THE CASE:**

5. It is stated that the Operational Creditor was involved in providing solutions to businesses who wanted to order custom- made, made to order goods from other businesses. It used to act as a platform between businesses. It is stated that the Corporate Debtor had placed orders for packaging materials and other products through the platform of the Operational Creditor for its business. In these transactions, the Operational Creditor procured goods from vendors and resold the goods to the Corporate Debtor. It is stated that for the orders placed between 25.12.2021 to 07.04.2022, the



goods were supplied but no payment <sup>is</sup> ~~was~~ forthcoming from the Corporate Debtor. (Invoices issued are annexed in Annexure-D and GSTR-1, GSTR-3B along with E-way Bills attached in Annexure-E of the Application.)

6. It is stated that Operational Creditor and Corporate Debtor negotiated and entered into a binding *Shortfall Undertaking dated 15.06.2022*, wherein the Corporate Debtor agreed to the dues and promised to repay as per the Repayment Schedule decided between the parties. (Copy of the Shortfall Undertaking is annexed as Annexure-F.)

7. It is stated that as per the shortfall Undertaking, the Corporate Debtor was supposed to make payment of Rs.1,00,00,000/- by 30.06.2022 and Rs.60,00,000/- by 15.07.2022 and other amounts as decided in the Shortfall Undertaking. But the Corporate Debtor failed to make any payment to the Operational Creditor. Hence the Operational Creditor has chosen to file petition under Section 9 of IBC, 2016 to this Tribunal.

8. It is stated that the demand notice in Form-4 was issued on 25.11.2022 and was sent by Registered Post to the Registered Office of the Corporate Debtor but the same returned with a caption "Item returned-addressee left without instructions". The demand notice was also sent by e-mail dated 26.11.2022. Therefore, service as contemplated under Section 8 of IBC has been complied with.



9. It is stated that since the statutory period of 10 days lapsed from the date of the service of the demand notice and no response came from the Corporate Debtor in the interim period, the instant application has been filed to initiate CIRP.

10. The Corporate Debtor has filed the reply vide S.R. No. 2059 dated 12.05.2023 stating that the Operational Creditor had been consistently supplying textile materials and ancillary goods to the Corporate Debtor. The Respondent time and again pointed out several issues pertaining to the quantity and quality of goods which had led to the cancellation of invoices raised by the Applicant leading to issuance of Credit Note by the Applicant in Credit Note Nos. CNQKA/23/000064 and CNQKA/23/000065 dated 26.04.2022. It is stated that the Applicant suddenly stopped the business with the respondent due to which Respondent Company went into financial crisis. Non-supply of goods by the Applicant and gross failure to reconcile their account, had been a blow to the Respondent's business. It is stated that it was solely based on the oral assurances of the Applicant that the quality of goods would improve, Respondent did not initiate any proceedings for compensating for the losses and damages suffered for quality goods.

11. It is stated that under the above circumstances, the Applicant proceeded to issue various invoices between the period December, 2021 to



April, 2022 upon the Respondent calling upon the Respondent to make the payment. These invoices were issued without adhering to the plea of the Respondent pertaining to the quality of the Respondent. It is stated that from the above, it is clearly demonstrated that a pre-existing dispute between the parties exists which is yet to be resolved from the Applicant side.

12. It is stated that Pre-Institution Mediation under Commercial Disputes in accordance to Sec. 12-A of the Commercial Courts Act, 2015 was instituted by the Applicant before the Main Mediation Centre, High Court of Judicature at Bombay vide Application dated 19.11.2022, which proves the pre-existing dispute. It is alleged that the conduct of the Applicant is as to the forum shopping for settling its personal scores.

13. It is stated that both the parties had entered into a Settlement Agreement titled "*Shortfall Undertaking*" on 15.06.2022 by agreeing to enter into a settlement based on certain terms and stipulations. The parties were in regular contact with each other to enforce the terms of settlement. It is submitted that the ultimate failure of the Applicant to reconcile the accounts as resulted in not allowing the parties to settle the issues amicably.



14. LEGAL SUBMISSIONS BY THE RESPONDENT:

The Respondent has stated in para 11 to 13 of the reply that the present application under Section 9 of IBC is legally not tenable for the reasons extracted hereunder:

11. *It is submitted that the present application is not maintainable in law as the same has been filed under Section 9 of the Code based on the purported breach of the 'Shortfall Undertaking executed between the parties on 15.06.2022, which will not come under the purview of an 'operational debt under Section 5(21) of the Code. It is evident from Part IV of the Applicant's application that the date of default is 30.06.2022 i.e. the date on which the first payment which was purportedly due as per the \*Shortfall Undertaking' was defaulted upon. It has consistently been upheld by this Ld. Adjudicating Authority and the Hon'ble NCLAT that any breach of an instalment forming part of the settlement agreement will not tantamount to an operational debt under Section 5(21) of the Code.*

12. *It is further pertinent to note that the language used in the Shortfall Undertaking' agreement agreed between the parties is clearly in the nature of a settlement agreement which is evident from certain clauses including but not limited to the language used in Annexure A Repayment Schedule of the said agreement, which grants the Applicant the opportunity to decide on waiver or reduction of any dues from the Respondent. Therefore, any subsequent breach, if any, will not be liable for initiation of proceedings under Section 9 of the Code before this Ld. Adjudicating Authority.*



13. It is further submitted that the Applicant has nebulously filed the present application erroneously declaring on affidavit that there is no pre-existing dispute between the parties. The oral requests preferred by the Respondent with respect to the dwindling quality of supplies by the Applicant coupled with the consequential cancellation of invoices and issuance of credit notes by the Applicant in Credit Note Numbers CNQKA/23/000064 and CNQKA/23/000065 dated 26.04.2022 clearly demonstrate that there existed a pre-existing dispute between the parties rendering the present application non-maintainable. Furthermore, the Applicant herein cannot deny the fact that a Pre-Institution Mediation under Commercial Disputes in accordance to Section 12-A of the Commercial Courts Act, 2015 was instituted by the Applicant herein before the Main Mediation Centre. High Court of Judicature at Bombay vide their Application dated 19.11.2022. This would ultimately prove the pre-existing dispute and the conduct of the Applicant herein who has been forum shopping for his personal scores to corner the Respondent herein. The aspect of a pre-existing dispute being a bar for initiation of proceedings under Section 9 of the Code has ad-nauseam been upheld by this Id. Adjudicating Authority as well as various other Courts of Law including the Hon'ble Apex Court.

15. Further, it is submitted that the present application is incomplete due to absence of Affidavit from financial institutions maintaining accounts for Applicant as contemplated under Section 9(3)(c) of the Code and non-filing of the Information Utility Report as mandated under Section 9(3)(d) of the Code.



16. It is summarised that the present application is not maintainable for the following reasons:

- a. Breach under Shortfall Undertaking will not come under the purview of an operational debt under Section 5(21) of the Code.
- b. There is a pre-existing dispute between the parties with respect to supply, quality and payment.
- c. The application is incomplete as certificate mandated under Section 9(3)(c) of the Code is absent.
- d. Information Utility Report is not filed.
- e. The amount of debt due and payable as per Shortfall Undertaking is not in consonance with the amount as per the Part-V of the present application.

**REJOINDER FILED BY THE APPLICANT:**

17. It is stated that reliance on the Credit Note Nos. CNQKA/23/000064 and CNQKA/23/000065 dated 26.04.2022 by the Respondent is of no avail as the *Shortfall Undertaking* due to non-payment of invoices *was executed on a subsequent date* of 15.06.2022 where the total outstanding debts acknowledged is Rs.4,52,12,322.75 (Rupees Four Crores Fifty Two Lakhs Twelve Thousand Three Hundred and Twenty Two and Seventy Five paise only) and all the previous events were subsumed under the Shortfall Undertaking.

18. It is stated that for the various issues raised by the Respondent in the reply, the Respondent failed to provide any evidence of earlier communication between the parties. The allegations of the Respondent that the Applicant provided substandard supplies leading to losses are false.



19. It is submitted that the Respondent did not appear in the mediation proceedings and the mediation failed. It is stated that the mediation proceedings were initiated by the applicant to amicably settle the legally owed amounts from the Respondent.

20. The Shortfall Undertaking Agreement clearly states that various purchase orders stood unpaid and the Respondent had clearly acknowledged the amount due and payable to the Applicant. Further, the basis of the agreement, flows from the fact that the transaction between the Applicant and the Respondent was for purchase and sale of goods, thereby making the Applicant as Operational Creditor and dues being the Operational Debt.

21. It is submitted that no reply was received from the Respondent to the Form-4 notice issued and there were no pre-existing disputes and all the statements were the moonshine defences by the Respondent. It is stated that certification under Section 9(3)(c) of the Code is not mandatory and hence not furnished. It is stated that the averments by the Respondent do not deny the principal amount due and payable to the Applicant being above Rs.1.00 Crore which is sufficient to maintain the present application.



22. The Applicant has relied on a decision of NCLAT in the matter of “*Mr. Keshav Kantamneni vs. M/s. Kishan Chand Suresh Kumar & Anr. – Hon’ble NCLAT Chennai Bench (CA (AT)(CH)(INS.) No. 260 of 2021 dated 12.12.2022*” wherein it was held as under:

54. *In the instant case, although on the side of the Appellant’, a plea is taken, that the ‘Unpaid Dues’, under a ‘Settlement Agreement’, is not an Operational Debt, and also that, a Violation of the Memorandum of Compromise dated 30.04.2019, cannot be a basis to initiate ‘Corporate Insolvency Resolution Process, against the Corporate Debtor’, it is evident from the “Memorandum of Compromise’ dated 30.04.2019, and other materials available on record that the Outstanding Principal Amount”, remains ‘Unpaid and on this ground alone, the instant “Appeal, deserves to be dismissed, in the considered opinion of this Tribunal’.*

59. *In Law’, the ‘Adjudicating Authority’, is only to ascertain, where there is a ‘Debt’ due in fact’ and ‘in Law’, payable by the Opposite Party’ and that a “Default”, is committed. In reality, the extent or details of ‘Debt, to be decided or not to be gone into by the Adjudicating Authority”, in dealing with the Operational Creditor’.*

60. *No wonder, if a ‘Debt Sum’, of ‘more than Rs.1 Lakh’ is ‘Admitted’, an ‘Application’, under Section 9 of the I & B Code, 2016, is to be ‘Admitted’, by an ‘Adjudicating Authority’.*

64. *It cannot be brushed aside, that the ‘Invoices’ and the ‘Ledger Account’, were the cementing platform, for the ‘1st Respondent / Petitioner / Operational Creditor’, to prefer an ‘Application’ in IBA/751/2020, before the ‘Adjudicating Authority’, (‘National Company Law Tribunal’, Division Bench – I, Chennai).*

65. *In the instant case, the ‘Appellant’, had not produced any ‘Document’, to the subjective satisfaction of this ‘Tribunal’, evidencing the ‘prevalent’ of ‘Pre-existing Dispute’, either prior to the ‘issuance of Notice’, under Section 8 of the I & B Code,*



2016, or in `Reply`, to the `Notice`, issued under Section 8 of the Code, by the `1st Respondent / Petitioner / Operational Creditor`. Also, the `Appellant`, had failed to exhibit any `interest` / `controversy` / `dispute`, when the Section 9 `Application`, was pending before the `Adjudicating Authority`.

23. The Respondent has placed reliance on the case "***Trafigura India Private Limited v. TDT Copper Limited (Company Appeal (AT) (Insolvency) No. 742 of 2020 NCLAT, Principal Bench, New Delhi***" wherein it has been held in para17 at page 14 <sup>is</sup> as under:

*The Adjudicating Authority has considered the Settlement Agreement and rightly come to the conclusion that default of instalment of Settlement Agreement does not come within the definition of 'operational debt' as it does not fall within the definition of additional debt as per Section 5(21) of the IBC and further prayer made by the Corporate Debtor that the matter be referred to the Arbitration under Section 8 of the Arbitration and Conciliation Act, the Adjudicating Authority has also rightly held that the role of National Company Law Tribunal is very limited while exercising its power under Section 7, 9 and 10 of the IBC, 2016, it is beyond the scope of Section 9 of the IBC.*

24. The relevant extracts from Shortfall Undertaking dated 15<sup>th</sup> June 2022 executed by the applicant and respondent are appended below:



**SHORTFALL UNDERTAKING**

प.सु.वि.क्र. ८००००९९  
- 8 MAR 2022  
L

THIS SHORTFALL UNDERTAKING (this "Undertaking") executed at [Chennai] on this 15<sup>th</sup> day of June, 2022

BY

1. **FASHION INFLUENCE CLOTHING INDIA PRIVATE LIMITED**, a company incorporated under the laws of India, and having its registered office 84/101B, 2nd floor, 6th Ave, Anna Nagar West, Anna Nagar, Chennai, Tamil Nadu 600040, India. hereinafter referred to as the "FASHION INFLUENCE CLOTHING INDIA PRIVATE LIMITED," which expression shall, unless it be repugnant to the subject, meaning or context thereof, be deemed to include its successors and permitted assignees); GSTN- 37AABCF7989F1Z5 (Trade GST)

IN FAVOUR OF

2. **SMARTPADDLE TECHNOLOGY PRIVATE LIMITED**, a company incorporated under the laws of India, having its registered office at Bizongo HQ, Krislon House, A wing, 3rd Floor, Saki Naka, Krishanlal Marwah Marg, Opp Marwah Center, Ganesh Nagar, Marol, Andheri East, Mumbai, Maharashtra, 400072, India., (hereinafter referred to as the "Bizongo", which expression shall be deemed to include its successors and permitted assigns and the trustee or trustees for the time being).

**FASHION INFLUENCE CLOTHING INDIA PRIVATE LIMITED** are hereinafter individually referred to as a "Customer" and are collectively referred to as the "Customers".

The Customers and the Bizongo are hereinafter individually referred to as a "Party" and are collectively referred to as the "Parties".

**WHEREAS:**

- (A) The Customers are in the business of supplying qualitative range of Wheat - Unbranded (the "Business").
- (B) Bizongo is, inter alia, engaged in the business of offering solutions in B2B segment pertaining to packaging design, development and procurement challenges with technology catering to the packaging and material handling industry verticals along with supply of packaging material, shoe components, textiles amongst others.
- (C) The Customers had procured various types of packaging material and other products ("Products") from Bizongo on the basis of multiple purchase orders ("POs") raised by the Customers from time to time.
- (D) The Customers acknowledge that Bizongo acts in a capacity of a trader and is responsible to make the payment to its vendors for the Products procured for making the relevant supplies to the Customers.
- (E) It is agreed between the Parties that Outstanding's shall be secured *inter alia* by this a shortfall undertaking to be issued by the Customer on terms and conditions acceptable to Bizongo.
- (F) In pursuance thereof, the Customer has agreed to execute, this Undertaking in favour of Bizongo in the manner as set out herein.



**SCHEDULE 1** of this Undertaking to be issued by Bizongo for the purpose of invoking this Undertaking.

**“Event of Default”** shall mean the occurrence of any of the following events: (i) default in payments of the Outstandings or any part thereof on the due dates corresponding thereto; or (ii) application filed under Insolvency and Bankruptcy Code, 2016 and such application not being dismissed, withdrawn or disposed off within a period of 7 (Seven) days; or (iii) fraud, or misrepresentation, or gross negligence and shall include any event of default howsoever defined under the other Relevant Documents.

**“Final Settlement Date”** shall mean the date on which all the Outstanding of the Customer under the Relevant Documents or arising out of the commitments and agreements made by the Customer under or pursuant to any of the Relevant Documents shall have been unconditionally paid and discharged in full to the satisfaction of Bizongo, in writing.

**“Financial Year”** shall mean the accounting year of the Customer commencing each year on April 1 and ending on March 31 of the succeeding year.

**“Outstandings”** shall means an aggregate of outstanding amounts due under the invoices, Default Interest (if any) and other charges (if any), as on the date of calculation, payable by the Customer to Bizongo.

**“Person”** shall mean any individual, corporation, partnership, (including, without limitation, association), joint stock Customer, trust, unincorporated organization or Governmental Authority or political subdivision thereof.

**“Relevant Documents”** shall mean all purchase orders (including all previous purchase orders issued to Bizongo prior to the date of this Undertaking), undertaking issued by the Customer, post-dated cheques and other such relevant documents in relation to the transaction.

DOC NO – STAMP DUTY MUMBAI # 270313  
DOC NO – STAMP DUTY CHENNAI # AL.636087

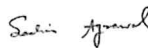
ANNEXURE A  
REPAYMENT SCHEDULE

- 1- Total outstanding on account as 15<sup>th</sup> June 2022- INR 45212322.75 CRORES
  - 2- Total Due as on 15<sup>th</sup> June 2022- INR = 33849726 CRORES
  - 3- Fashion Influence will pay 1 Crore by 30 Th June
  - 4- Fashion Influence will pay amount 60 lakhs before 15<sup>th</sup> July
  - 5- Rest of business call will be worked once we have 1.65 Crores commit is done -
- Interest will be applicable as per delayed tenure Delayed -

SIGNED AND DELIVERED by the within named FASHION INFLUENCE CLOTHING INDIA PRIVATE LIMITED

  
Name: [CHANDRA SEKHAR BUSAREDDY]  
Designation: [Managing Director]

SIGNED AND DELIVERED by the within named SMARTPADDLER TECHNOLOGY PRIVATE LIMITED by the hand of Mr. Sachin Agrawal, an authorized signatory of Bizongo.

  
Name: MR. SACHIN AGRAWAL  
Designation: CO FOUNDER AND VP







25. It is observed from the above extracts that on 15.06.2022:
- i. 'outstanding' had been defined as aggregate of amount outstanding due under the invoices, default interest, etc.
  - ii. The details about the amount due and how the amount should be repaid had been set out in Annexure A of the Shortfall Undertaking.
  - iii. 'Relevant Documents shall mean all purchase orders (including previous purchase orders prior to the date of undertaking), Undertaking issued by the customer, post dated cheques and other relevant documents relating to the transaction'.

26. As per Shortfall Undertaking, on 30.06.2022, the Corporate Debtor was supposed to pay a sum of Rs.1 crore. As the amount had not been paid, the Date of default has been taken as 30.06.2022 in the CIRP application.

27. Corporate Debtor's defence of pre-existing dispute is a mere moonshine defence as no documentary evidences have been produced. On 15.06.2022, after mutual discussions, Shortfall undertaking was signed by both the parties.

28. Corporate Debtor has submitted that the application is incomplete due to absence of Affidavit from financial institutions maintaining accounts for Applicant as contemplated under Section 9(3)(c) of the Code and non-



filing of the Information Utility Report as mandated under Section 9(3)(d) of the Code. We are of the view that these stipulations are directory in nature. Only in June 2023, IBBI has issued a circular about obtaining Record of Default from Information Utility.

29. Regarding Pre-Institution Mediation under Commercial Disputes in accordance to Sec. 12-A of the Commercial Courts Act, 2015, it is seen that the Operational Creditor had filed the application. Since the Corporate Debtor did not appear in the hearings, the case was dismissed.

30. The contention of Corporate Debtor that by signing the Shortfall Undertaking, the Operational Debt had been converted into financial debt and hence applicant is not eligible to file under Section 9 of IBC is also not correct as it is clear from the definitions of the 'Financial Creditor' and 'Financial Debt' as defined under Section 5(7) and (8) that the above claim of the applicant does not fall under any of the categories of the "Financial Debt" and the Petitioner does not fall under definition of "Financial Creditor" within the meaning of the Code.

31. Underlying debt secured by Shortfall Undertaking dated 15.06.2022 was to secure the amounts due under the invoices raised by the Applicant in respect of goods supplied to the Corporate Debtor. Invoices were the



cementing platform for the applicant to file as Operational Creditor. As provided for in McLeod Russel India Ltd case, the underlying nature of debt does not change its character subsequent to execution of the Shortfall Undertaking.

32. Taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the application, as filed by the Operational Creditor, is required to be **admitted** under Section 9(5) of the IBC, 2016. We order accordingly.

33. In the present case, the Operational Creditor has not named the Insolvency Resolution Professional in Part – III of the Application and accordingly this Tribunal appoints *Mr. Mutharasapuram Ganesan Chandrasekaran* with *Registration No: IBBI/IPA-003/00337/2021-2022/13620 (email id: sekaranirp@gmail.com)* who is having Authorization for Assignment till **30.05.2024** as the “Interim Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a



consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

34. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or



continuation of the license or a similar grant or right during moratorium period;

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

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

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

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

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

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

36. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:



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

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

37. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/- (Rupees Two Lakhs only)** to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

38. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be



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

**VENKATAKAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**SANJIV JAIN**  
MEMBER (JUDICIAL)