



1. The present application has been filed by the Operational Creditor, namely **Noble Co-operative Bank Limited** under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016) for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP) against the Corporate Debtor, namely **Garvit Innovative Promoters Limited**.
2. It is stated in the application that Respondent/Corporate Debtor had approached the Applicant/Operational Creditor being a banking institution for opening of a current cum over draft bank account by filling up a form dated 31st July, 2018. The said current account was open with the facility of overdraft as well as, in case the Corporate Debtor does not maintain proper/minimum balance/funds in the current account then the over drawn balance was supposed to be charged with an interest rate of 19 % per annum along with a default penal interest rate at the rate of 2.5 % per month. With these terms and conditions, the Operational Creditor/Bank open the bank account of the Corporate Debtor on 31st July, 2018.
3. It is stated by the Applicant that during the course of the operations of the said Bank Account, the Corporate Debtor didn't maintain proper financial discipline with reference to the maintenance of minimum balance in the bank account. Further, being big company having huge turnover amongst various other banks, the Corporate Debtor usually issued heavy value of cheques which were presented in clearing and owing to insufficient balance, the same were returned for which the Corporate Debtor was issued due and proper notices and in the month of January and February 2019, the Corporate Debtor issued multiple cheques to its investors. In furtherance of the same, the investors of the Corporate Debtor presented such cheques

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in the clearing system, which consequently got bounced due to insufficient funds.

4. Further, it is stated that the Bank Account of the Corporate Debtor always remained overdrawn due to continuous non-maintenance of requisite funds in the said Current Account, over which the Applicant bank continuously levied interest @19% p.a and penal interest @2.5% per month. Arising out of the aforesaid course of events the overall Operational Debt came out to Rs.4,90,54,254.31 (Rupees Four Crore Ninety Lakhs Fifty-Four Thousand Two Hundred Fifty-four and Thirty-one Paisa Only).
5. Subsequently, the Applicant bank issued demand notice dated 10.03.2021 which is annexed as Annexure A-10 at page no. 144-155 in the present application, demanding payment of the unpaid operational debt. The applicant also filed the details of default on the platform of National E-Governance Services Limited (NeSL), and the said default has also been authenticated by the NESL through a Report dated-13.10.2021.
6. In response to the aforesaid demand notice dated 10th March, 2021, the Respondent/Corporate Debtor sent a reply dated 14th September, 2021 which is annexed as Annexure A-11 at pg no. 156 of the present application mentioning therein that due to some financial crises and due to some business reasons, the company's business failed and could not run properly and therefore, the company could not maintain proper bank balances and could not pay its dues to the bank. It has also further been stated in the reply that the company as of now is not functioning and is under liquidity crises therefore, the company will not be able to pay any of the above said dues as demanded by the Operational Creditor vide their notice dated 10th March, 2021.

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7. The relevant part of the reply dated 14th March, 2021 sent by the Respondent/ Corporate Debtor is extracted hereunder:

In the said respect, the company as of now is not functioning and is under liquidity crisis, therefore, we will not be able to pay any of your above said dues as demanded by you through your notice dated 10.03.2021. Further, the company is in no condition to maintain the bank balances with your bank or to pay for any loan/debt which is being demanded by you. Though we admit the fact that we have not been able to pay the outstanding Bank dues w.r.t. the minimum balances, cheque returning, overdrawn current account/Overdraft Account, incidental charges, simple and penal interest charges over such amount etc. and other operational dues of the Bank, however, we are not in any position to pay the said over dues to your Bank and we shall request you not to demand such payment of dues from us.

8. After filing of the present application under Section 9, the notice was issued on 22nd February, 2022. On the next date of hearing i.e. on 12th April 2022, it was recorded that the court notice has been returned back and undelivered by the postal authority with the remarks door locked. When the matter came up for hearing on 11th July, 2022, it was observed by this Tribunal that the Respondent/Corporate Debtor had been served through publication in daily news paper dated 28th April, 2022 and since no one had appeared, the Respondent/Corporate Debtor was ordered to be proceeded against as ex-parte. The order dated 11th July, 2022 passed by this Tribunal is reproduced hereunder:

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“It is submitted by the learned counsel for the petitioner that the respondents had been served through publication in daily newspaper (Financial Express in English and Jansatta in Hindi) dated 28th April, 2022, the clipping of the newspapers have been placed on record.

It is further submitted that all the Directors of the Respondent Company are behind the bars in some scam. None has appeared on behalf of the respondent. The service has also been effected on the registered email of the respondent company.

In these circumstances, the respondent/corporate debtor is proceeded against ex-parte.

List the matter on 20th September, 2022 for ex parte arguments. In the meantime, the learned counsel for the petitioner is directed to file the short written submission, one week before the next date of hearing.”

We have heard the Ld. Counsel representing the Operational Creditor and perused the record.

9. It is averred in the application that due to continuance of non maintenance of requisite funds in the current account, the bank account always remained overdrawn over which there was continuous levy of interest at the rate of 19 percent per annum and penal interest at the rate of 2.5 percent per month, the overall estimated Operational Debt in the form of bank interest and charges accruing and arising out of the aforesaid course of events, came out to Rs. 4.90 crore (approximate) as on 31st January, 2020. It is also submitted by the Ld. Counsel representing the petitioner that numerous

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communications were made as well as the aforesaid demand notice dated 10th March, 2021 was issued to the Respondent/Corporate Debtor, wherein the Respondent/Corporate Debtor has shown its inability to pay the Operational debt on account of the funds crises as per their reply dated 14th September, 2011 annexed as Annexure A-11 at pg no.156 of the application. The Ld. Counsel further submits that an affidavit under Section 9 (3)(b) of the Code has also been furnished vide Annexure A-12 at page 157 of the paper book of application. The total Operational Debt is stated to be Rs. 4,90,54,254.30/- and the due date of debt is 31st January, 2020. The amount of the operational debt is above the threshold limit of Rs. 1,000,00,00/- (One Crore), and there is no pre-existing dispute within the meaning of provisions of Section 8 & 9 of the IBC. In the present application debt become due on 31st January, 2020 and the application was filed on 18th January, 2022 therefore, the present application is found well within the limitation.

10.The Operational Creditor has proposed the name of the IRP in the present application hence, on perusal of the same the verification of the said IRP has been verified by Law Research Associate of this Tribunal, namely Sh. Sarvesh Shukla, there is no proceeding pending against the proposed IRP hence, this Adjudicating Authority hereby appoint Mr. Dinesh Kumar Gupta having IP Registration No.IBBI/IPA-001/IP-P00959/2017-2018/11580 registered address at B1/26, Sector 18, Noida-201301, Gautam Buddha Nagar as the IRP.

11.Accordingly, we find this, a fit case for admission of the present application under Section 9 on the following terms and conditions:

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- I. It is noted that the application filed under Section 9 is complete and complies with the requirement of the relevant provisions of the I&B Code, 2016 r/w Rules and Regulations made thereunder. The outstanding amount is more than the threshold limit of 1,00,00,000/- (Rupees One Crore). The application is also well within the limitation. There does not exist any dispute within the meaning of provisions of Sections 8 & 9 of IBC, 2016.
- II. Thus, the application on the face of it, is liable to be admitted.
- III. Accordingly, this application is admitted on the following terms and conditions:-
 - i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. **Garvit Innovative Promoters Limited** is hereby admitted.
 - ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
 - iii) This Adjudicating Authority hereby appoints Mr. Dinesh Kumar Gupta IBBI (Registration No. IBBI/IPA-001/IP-P00959/2017-18/11580) having address at B1/26, Sector 18, Noida-201301, Gautam Buddha Nagar Email ID. irp.jarvis@gmail.com to act as the IRP under Section 13(1)(c) of the Code. The consent affidavit is at annexure A-4 page 81 the Law Research Associate namely Sh. Sarvesh Shukla of

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this Tribunal has checked the credentials of Mr. Dinesh Kumar Gupta and there is nothing adverse against him.

- iv)** The IRP shall cause a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v)** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
- 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 (54 of 2002);

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- 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.
- vi)** The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vii)** The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- viii)** The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- ix)** 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 the 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.
- x)** The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

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- xi)** The Operational Creditor/Applicant is directed to deposit Rs.2,00,000/- (Rupees Two lakh only) with the IRP appointed hereinabove within two weeks from this order. IRP can claim the preliminary expenses and fees subject to approval by the CoC and after the constitution of the CoC.
- xii)** Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii)** List the matter on 28.03.2023 for filing of the progress report. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)