

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III**

IB-2688/ND/2019

IN THE MATTER OF

Standard Chartered Bank Singapore (Ltd.)

...Operational Creditor/Applicant

Versus

RCI Industries and Technologies Limited

...Corporate Debtor/Respondent

Coram:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Dr. Binod Kumar Sinha
Hon'ble Member (Technical)

Delivered on: 25.11.2022

Appearances:

Operational Creditor	: Mr. Krishnandu Dutta, Sr. Advocate, Ms. Vatsala Rai, Advocate
Corporate Debtor	: Mr. Mohit Chaudhary, Mr. Prakhar Mithal, Advocates

IB-2688/ND/2019

Date of order: 25.11.2022



ORDER

Per: Bachu Venkat Balaram Das, Member (Judicial)

1. The Present Application has been filed on 15.10.2019 under Section 9 of the IBC 2016 by the Standard Chartered Bank (Singapore) Ltd, the Applicant/Operational Creditor, seeking to initiate Corporate Insolvency Resolution Process in respect of RCI Industries and Technologies Ltd., Respondent/Corporate Debtor, on account of default in payment of the debt aggregating to USD 2,997,506.93 equivalent to INR 21,05,65,569.56.
2. It is the case of the Applicant that the Applicant and M/s Sizer Metals Pte Limited (Supplier) entered into a Factoring Agreement/Receivable Purchase Facility (RPA) on 11.07.2017 which was executed on 01.08.2017 assigning all the receivables (present and future) from the Corporate Debtor in relation to supply of goods and services, to the present Applicant. The Respondent was duly informed about the said assignment vide notice of assignment of debt which was duly acknowledged by the Respondent/Corporate Debtor on 03.05.2018. Therefore, all dues payable by the Respondent/Corporate Debtor to the Supplier in pursuance of different sale contracts were assigned to the Applicant. It may be mentioned that the Corporate Debtor approached the Supplier to purchase Tin Ingots and Nickel Full Plate and hence contract dated 03.08.2019 was executed between the Corporate Debtor and the Supplier for supply of 175 metric tonnes of Tin

IB-2688/ND/2019
Date of order: 25.11.2022



Ingots. There were six transactions which took place between the parties and six invoices were issued which are as follows:-

Sr. No.	Invoice	Date of Invoice	Initial Date of default	Revised date of default	Amount in	
					INR	USD
1	SMPL/786/100	28.09.2018	26.01.2019	25.04.2019	3,45,57,997.58/-	491,950.50/-
2.	SMPL/786/109	09.10.2018	06.02.2020	07.05.2019	3,48,41,699.52/-	495,989.14/-
3.	SMPL/786/111	11.10.2018	08.02.2019	09.05.2019	3,50,71,660.47/-	499,262.75/-
4.	SMPL/786/147	31.12.2018	30.04.2019		2,86,08,744.06/-	407,259.88/-
5.	SMPL/786/156	01.01.2019	01.05.2019		3,93,21,670.98/-	559,763.79/-
6.	SMPL/786/161	16.01.2019	16.05.2019		3,81,63,796.95/-	543,280.87/-
Total Amount					21,05,65,569	2,997,506.9

3. Since, the Corporate Debtor failed to make the payments to the Operational Creditor/Applicant, the Operational Creditor issued a demand notice under Section 8 of IBC in Form-3 in accordance with Rule 5 of Insolvency Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on 18.05.2019. The Corporate Debtor did not give any response to the said demand notice. Hence, the present

IB-2688/ND/2019

Date of order: 25.11.2022




application has been filed by the Applicant seeking initiation of CIR Process against the Corporate Debtor.

4. The Corporate Debtor/Respondent filed a reply affidavit denying the facts and averments made in the petition. The Respondent submitted that the Applicant has not provided any goods and services to the Respondent and the amount claimed by the Applicant does not fall under the definition of operational debt as envisaged in Section 5(21) of IBC. The transaction mentioned in the Application was between the M/s Sizer Metals Pte Limited (Supplier) and the Respondent and was not with the Applicant herein. The Corporate Debtor has contended that the invoices were raised by M/s Sizer Metals Pte Limited (Supplier) not by the Applicant and therefore no amount is due to be paid to the Applicant. It is further stated that the Respondent raised a dispute in relation to the quality of the goods supplied to them and duly informed to M/s Sizer Metals Pte Limited (Supplier) in January, 2019 before the delivery of demand notice dated 18.05.2019. The Respondent has referred to email dated 21.01.2019 and 07.06.2019 wherein, he has claimed to have raised the dispute. It is further submitted by the Respondent that M/S Sizer Metals Pte Limited (Supplier) has already initiated arbitration proceedings against the Respondent by invoking the arbitration clause vide notice dated 16.11.2019 and 25.11.2019 claiming USD 163,022.38 as the said six invoices mentioned in Schedule B of the present petition is disputed and therefore the present Application is liable to be dismissed.



IB-2688/ND/2019

Date of order: 25.11.2022



5. Since, the pleadings in the matter were completed, the matter was heard on merits on different dates i.e., 17.12.2021, 11.03.2022, and 17.03.2022 and the matter remained as part heard before this Tribunal. At this stage, the Respondent filed an Interlocutory application, being IA No. 1408/2020, under Rule 11 of NCLT Rules 2016 read with Section 33 of the Stamp Act seeking the following directions from this Tribunal:-
- i. To examine the documents (alleged to be the documents of 'assignments') in terms of Section 33(2) of the Indian Stamp Act and impound the same in terms of Section 33(1) of the Indian Stamp Act and/or
 - ii. Pass an order that the documents (alleged to be the documents of 'assignments') are not been stamped therefore, in terms of Section 35 of the Indian Stamp Act cannot be relied upon by the Operational Creditor/Applicant.
6. The Applicant in the said IA (Respondent in the present matter) contended that the two documents relied upon by the Applicant i.e.:- (i) 'Receivable Purchase Facility' between a 'Supplier and OC dated 11.07.2017 and (ii) Factoring Agreement, which were executed at Singapore have not been duly stamped under the provisions of Indian Stamp Act and therefore cannot be acted upon by the Applicant/Operational Creditor.
7. The Applicant (Respondent in the IA) filed a note of submission in response to the said IA objecting to the said application. The

IB-2688/ND/2019

Date of order: 25.11.2022



Applicant contended that the main matter was heard on merits on different dates i.e., 17.12.2021, 11.03.2022 and 17.03.2022 and was part heard before the Tribunal. This Interlocutory Application (IA) was filed by the Respondent on the grounds which were not raised in the reply affidavit filed by the Respondent to the main Application. The said Interlocutory Application (IA No 1408/2020) was dismissed by this Tribunal. The Respondent filed an appeal to the NCLAT against the said order dated 21.04.2022. The Hon'ble NCLAT dismissed the IA with the following observations: -

"We are of the view that the order of rejection passed by the Adjudicating Authority on the application need no interference in this appeal. We, however, make it clear that any observations made by the Adjudicating Authority while rejecting the application IA 1408 of 2022 have no bearing when the issues are decided by the Adjudicating Authority in accordance with law and merits. All contentions of both the parties are left open"

8. The Respondent filed a Writ Petition under Article 227 of the Constitution of India before the Hon'ble High Court of Delhi challenging the said order passed by the Hon'ble NCLAT which was also dismissed with the following observations: -

"17. The Learned NCLT has adequately taken a view, albeit at an interim stage, that section 238 of the IBC would prevail over sections 33 and 35 of the Stamp Act. That view may be right or may be wrong. The petitioner appealed against the said decision. The learned NCLAT has relegated the petitioner to the learned NCLT keeping in mind all issues of fact and law alive. The learned NCLAT has wiped the slate clean. the tabula is, thus, once more rasa. It is open, therefore, to the petitioner to again attempt to



convince the learned NCLT regarding the interpretation that the petitioner seeks to place on section 33 and 35 of the Stamp Act.

20. It is for the learned NCLT to take a call, de novo, on the applicability of the Stamp Act vis a vis the IBC, after hearing both sides”.

9. In view of the observations made by Hon'ble Delhi High Court as well as the Hon'ble NCLAT, we heard both the Ld. Counsel extensively on the issue as to whether the documents ought to have been properly stamped under the provisions of the Indian Stamp Act and whether non-stamping of the said documents are fatal to the present case.
10. Mr. Mohit Chaudhary, Ld. Counsel for the Applicant in IA No. 1408/2020 (Respondent/Corporate Debtor) submitted that Section 3 of the Indian Stamp Act mandates affixation of stamp as per Schedule 1. He further submitted that Section 18 of Indian Stamp Act mandates that a document executed outside India must be stamped within three months. He further submitted that under Section 35 of the Stamp Act the instruments which are not duly stamped are inadmissible in evidence.

Section 35 of the Stamp Act reads as follows:

*“35. Instruments not duly stamped inadmissible in evidence, etc.
No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:*

Provided that

IB-2688/ND/2019

Date of order: 25.11.2022




(a) to (e). xx xx xx"

He also relied upon Section 33 of the Stamp Act, which reads as follows:

"33. Examination and impounding of instruments;-

- (1) *Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.*
- (2) *For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:*
Provided that
 (a) xx xx xx"

Relying upon the aforesaid provisions of the Indian Stamp Act, Mr. Mohit Chaudhary submitted that the assignments/agreements in question have been executed in Singapore and have not been stamped as required under Section 4 as amended under Section 35 of the Indian Stamp Act and therefore those documents have to be impounded under Section 33 of the Indian Stamp Act.

11. In response, Mr. K. Dutta, Ld. Sr. Advocate appearing for the Applicant submitted that there is no requirement to get the documents stamped and relied upon the Judgment passed by the Hon'ble NCLAT, New Delhi, in the case of 'Koncentric




Investments Ltd. and Ors. v. Standard Chartered Bank, London and Ors. [CA (AT) (Ins) No. 911 of 2021], wherein it is held that:

'It is true that in the present case the Facility Agreement dated 22nd May, 2013 and 19th August, 2013, were not duly stamped but there were other materials on record which could be relied on for coming to the conclusion that default has been committed by the Corporate Debtor in paying the debt.'

Further, the Ld. Sr. Advocate relied upon a Judgement of Hon'ble NCLAT, Chennai Bench, in the case of '*Ashique Ponnambath v. the Federal Bank Limited*' [CA (AT) (CH)(Ins.) No. 22 of 2021], wherein it is held that:

'Even if it is considered that the Term Loan Agreement is insufficiently stamped and it can't be accepted in evidence, then also alleged debt and default are proved beyond doubt. The application filed under Section 7 is complete.'

The Ld. Sr. Advocate also relied upon a Judgment of Hon'ble NCLAT New Delhi Bench, in the case of '*Lalan Kumar Singh, Executive Director (Under Suspension) & Shareholder of M/S GPI Textiles Ltd., vs M/s Phoenix ARC Pvt Ltd & Anr*' [CA (AT) (Ins) No. 485 of 2018], wherein it is held:

'The assignment cannot be challenged in the petition under section 7 and that too by a party which had knowledge of 'assignment deed' as back as in the year 2012, and when the same was never challenged before a court of competent jurisdiction'



IB-2688/ND/2019

Date of order: 25.11.2022



The Ld. Sr. Advocate further relied upon a Judgment of Hon'ble NCLT Mumbai Bench, in the case of '*Vistra ITCL India Limited v. Satra Properties (India) Limited*' [2022SCC online NCLT 15], wherein it is held:

'Application without getting into the issue of stamp duty as it is irrelevant and uncalled for in a section 7 application more so when the 'debt' and 'default' are proved otherwise without looking into those documents'

12. Having heard the Ld. Counsel for the parties on the issue of requirement of stamping of the Assignment/Agreements and considering the view taken in the judgments of the Hon'ble NCLAT and Hon'ble NCLT, which have been relied upon by the Ld. Senior Counsel, we are of the view that even if the documents in question i.e., the assignment/agreements have not been stamped under the provisions of Indian Stamp Act, such non-stamping of the said documents shall not render the instant application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 as non-maintainable, in view of other material on record which can be relied upon to come to the conclusion that the Corporate Debtor has committed default in payment of debt. Therefore, the present Application under Section 9 of IBC is maintainable. This question is answered accordingly.
13. We have heard the submissions made by Mr. K. Dutta, Ld. Sr. Advocate appearing on behalf of the Applicant/Operational Creditor and Mr. Mohit Chaudhary, Ld. Counsel appearing on behalf of the Corporate Debtor/Respondent on other issues involved in the matter, which are-

IB-2688/ND/2019

Date of order: 25.11.2022



- i. **Issue No. 1:-** Jurisdiction of this Tribunal to entertain the present application.
- ii. **Issue No. 2:-** The status of the Applicant as an operational creditor.
- iii. **Issue No. 3:-** Admission of Liability
- iv. **Issue No. 4:-** Pre-existing dispute
- v. **Issue No. 5:-** Submissions with regard to Factoring Agreement and applicability of provisions of the Factoring Regulation Act, 2011

Issue No. 1:- Jurisdiction of this Tribunal to entertain the present application:

We noticed that in Part I Form 5 of the Petition, the Applicant is represented by its Authorized Representative who is the Managing Director and Head of Commercial Bank, Singapore and the Bank is situated at Singapore. The Respondent i.e., RCI Industries & Technologies Limited is having its Registered Office Address at B-97, All Heavens Building, Wazirpur, Ring Road, New Delhi, 110052. Since the registered office of the Corporate Debtor is situated at New Delhi, we feel that this Tribunal has jurisdiction to entertain the present petition in terms of Section 60 of the Code. This aspect has not been disputed by the Corporate Debtor. Accordingly, this issue is decided in affirmative.

Issue No. 2:- The status of the Applicant as an operational creditor:

Mr. K. Dutta, Ld. Sr. Advocate appearing on behalf of the Applicant had broadly submitted that the debt has been assigned in




favour of the Applicant and the Applicant is an Operational Creditor as defined under Section 5(20) of IBC. Mr. K. Dutta submitted that M/s Sizer Metals Private Limited (supplier) entered into a Factoring Agreement/Receivable Purchase Facility (RPA) on 11.07.2017 which was executed on 01.08.2017 assigning all the receivables (present and future) in relation to supply of goods and services to the Applicant. This was duly intimated to the Respondent and was duly acknowledged by the Respondent/Corporate Debtor on 03.05.2018. In terms of the said assignment, all dues payable by the Respondent to the supplier in pursuance of different sale contracts stood assigned to the Applicant. He, therefore, submitted that the operational debt in question pertains to the payment for tin ingots and ferro-alloys supplied to the Respondent by the supplier which relates to a claim for goods and services as specified under the operational debt as per Section 5 (21) of IBC. He relied upon the judgments of the Hon'ble Supreme Court in the matter '*Macquarie Bank v. Shilpi Cable Technologies*', 2017 SCC Online NCLT 1688 wherein it has been held that for an entity to be the Operational Creditor under the Code, it need not necessarily supply goods or render services and can be an assignee of debt. Therefore, the present Applicant being an assignee of the debts falls under the category of Operational Creditor as defined under Section 5(20) of the I&B Code.

The Respondent raised an objection with regard to the validity of the documents i.e., Factoring Agreement/Receivable Purchase Facility (RPA) which were executed in Singapore and submitted

IB-2688/ND/2019

Date of order: 25.11.2022



that the said documents cannot be acted upon in India and the present petition cannot be filed basing on the said documents because of the fact that the said documents have not been stamped under the provisions of the Indian Stamp Act, which we have already dealt with and answered with Para No. 11, 12 and 13 of this Judgement . We further add that this objection was never raised by the Respondent in the reply affidavit filed to the main petition and such objection was raised by the Respondent for the first time by way of filing of an IA 1408/2020 when the matter was partly heard. Upon consideration of the issue, we have already come to the conclusion that the assignment of debt by virtue of the impugned assignment deed cannot be challenged by the corporate debtor before this Adjudicating Authority on the ground of insufficiency of stamp duty as held by the Hon'ble NCLAT, that insufficiency of stamp shall not be fatal to proceedings under IBC.

We therefore agree with the submission of Mr Dutta, Ld Senior Counsel that the Applicant is an 'Operational Creditor' within the meaning of Section 5 (20) IBC, 2016 and the debt in question falls within the definition of 'Operational Debt', as envisaged u/s 5(21), IBC,2016.

14. Issue No. 3:- Admission of Liability:

Mr. K. Dutta, Ld. Sr. Advocate strenuously argued that the Respondent/Corporate Debtor has admitted his liability. In support of his contention he placed reliance on certain documents which are as follows:



IB-2688/ND/2019

Date of order: 25.11.2022



- a) Copy of the notice of assignment of debt dated 03.05.2018, duly acknowledged by the Corporate Debtor.
- b) Copy of the email dated 31.07.2018 addressed from the Corporate Debtor to the Operational Creditor.
- c) Copy of the settlement proposal dated 18.06.2020 addressed by the Corporate Debtor to the Counsel for the Operational Creditor.
- d) Copy of the email proposing settlement dated 17.01.2020 addressed by the Counsel for the Corporate Debtor to the Counsel for the Operational Creditor.
- e) Copy of the email dated 08.02.2019 whereby the Corporate Debtor admitted its liability to pay outstanding debt to the Counsel for the Operational Creditor.
- f) Copies of emails between 27.02.2019 and 08.03.2019 regarding payment of dues and settlement regarding the same.

Mr. K. Dutta, Ld. Sr. Advocate submitted that the Respondent/Corporate Debtor received the notice of Assignment of Debt dated 03.05.2018 and had duly acknowledged the same.

He further submitted that vide e-mail dated 31.07.2018, the Respondent agreed to make the payment to the Petitioner as per the notice of assignment. He also refer to e-mail dated 17.01.2020 addressed by the Counsel for the Corporate Debtor to the Counsel for the Operational Creditor proposing one time settlement. Mr. K. Dutta, Ld. Sr. Advocate relied upon e-mail dated 08.02.2019,



whereby the Corporate Debtor admitted its liability to pay outstanding debt to the Counsel for the Operational Creditor.

Ld. Senior Counsel contended that the debt in default is an acknowledged debt and in support of his contention, relied upon the judgment of NCLAT Chennai Bench, in '*Ashique Ponnamparambath v. The Federal Bank Limited [CA (AT) (CH)(Ins.) No. 22 of 2021]*' and the matter of NCLT Mumbai Bench, in '*Edelweiss Asset Reconstruction Co. Ltd. vs. Sejal Glass Ltd. [CP 1799 (IB)/MB/2018]*'.

We have carefully perused the notice of Assignment of Debt and aforesaid e-mails relied upon by the Petitioner and satisfied that the Corporate Debtor has admitted his liability.

15. Issue No. 4:-Pre-existing dispute:-

It is submitted by Ld. Counsel appearing on behalf of Corporate Debtor that vide e-mail dated 29.01.2019, prior to the issuance of demand notice, the respondent had raised dispute with regard to the quality of the materials supplied by the supplier and reminder was sent to the supplier vide e-mail dated 07.06.2019. In reply to the said contention, Mr. K. Dutta, Ld. Sr. Advocate submitted that Respondent/Corporate Debtor did not respond to the demand notice issued under Section 8 of IBC within 10 days about any "existence of dispute." He further submitted that in the reply filed by the Corporate Debtor, the Corporate Debtor did not cite any existence of dispute. Mr. K. Dutta submitted that e-mail dated 29.01.2019 and 07.06.2019 which have been relied upon by the Respondent were not addressed to the Petitioner. Therefore, these two e-mails cannot

IB-2688/ND/2019

Date of order: 25.11.2022



be considered to be pre-existing dispute between the Operational Creditor and the Corporate Debtor.

We accept the submissions of Mr. K. Dutta that there was no pre-existing dispute between the parties.

16. **Issue No. 5:-** Submissions with regard to Factoring Agreement and applicability of provisions of the Factoring Regulation Act, 2011:

Mr. Mohit Chaudhary, Ld. Counsel for the Corporate Debtor relied upon the provisions of the Factoring Regulation Act, 2011 ("FRA") submitted that the Petitioner is a foreign bank and has no certificate of registration under Reserve Bank of India Act, 1934 and therefore, it cannot be considered a 'factor' under the FRA. He further submitted that the Petitioner is not legally capable of factoring receivables and that if factoring in this matter is permitted to be done, it would violate Section 23 of Indian Contract Act. In response to the said submissions, Ld. Counsel for the Petitioner submitted that the Receivable Purchase Agreement was executed in 'Singapore' and therefore, the requirements under the Factoring Regulation Act, 2011 need not be complied with the Petitioner is not seeking to enforce the Factoring Agreement but has initiated an action under the IBC for initiation of CIRP against the Respondent/Corporate Debtor.

We find force with the submissions made by Mr. K. Dutta, Ld. Sr. Advocate and hold that the provisions of Factoring Regulation Act, 2011 will not be coming into play in the present case.

17. In view of the abovementioned discussions, we are of the considered view that the Petitioner has established that the Corporate Debtor

has defaulted in making the payment and therefore the present application under Section 9 of IBC ought to be admitted.

Accordingly, the instant application bearing IB No 2688/ND/2019 is admitted.

18. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

19. Since the Applicant has not proposed the name of the IRP, this Tribunal appoints Mr. Brijesh Singh Bhadauriya as Insolvency Resolution Professional, who is be and hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-002/IP-N01045/2020-21/13385 (email-bsb@bsbandassociates.in) as IRP subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

20. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Brijesh Singh Bhadauriya to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done

IB-2688/ND/2019

Date of order: 25.11.2022



within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

21. In pursuance of Section 13 (2) of the Code, this Tribunal direct that Interim Insolvency Resolution Professional shall immediately make public announcement with regard to admission of this application under Section 7 of the Code. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

- 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."*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything

IB-2688/ND/2019

Date of order: 25.11.2022




contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

However, during the pendency of the moratorium period in terms of Section 14(2) 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—

IB-2688/ND/2019

Date of order: 25.11.2022




a. such transaction as may be notified by the Central Government in consultation with any financial sector regulator.

b. a surety in contract of guarantee to a Corporate Debtor.

(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.

22. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

—Sd—

(Dr. Binod Kumar Sinha)
Hon'ble Member (Technical)

—Sd—

(Bachu Venkat Balaram Das)
Hon'ble Member (Judicial)