

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P.(I.B) No. 630/NCLT/AHM/2019

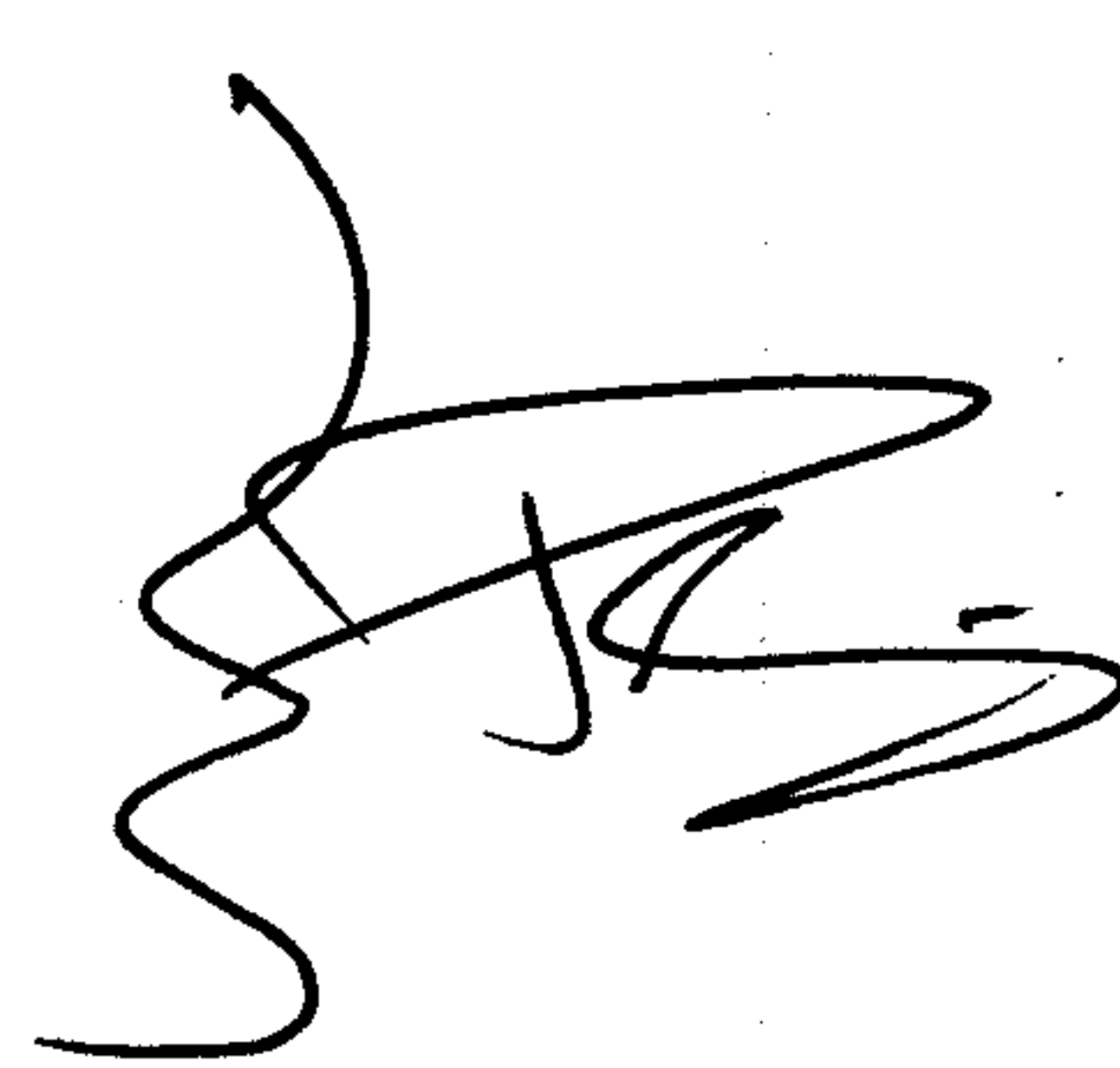
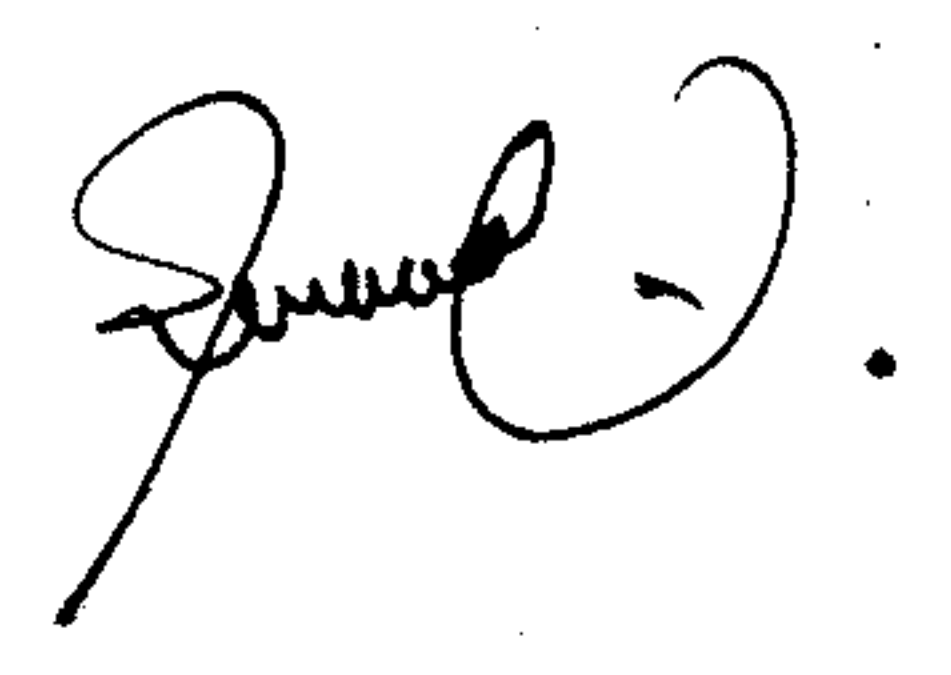
Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.01.2020**

Name of the Company: Indiabulls Consumer Finance Ltd
V/s
Shakti Refoils & Agro Foods Products
Pvt Ltd

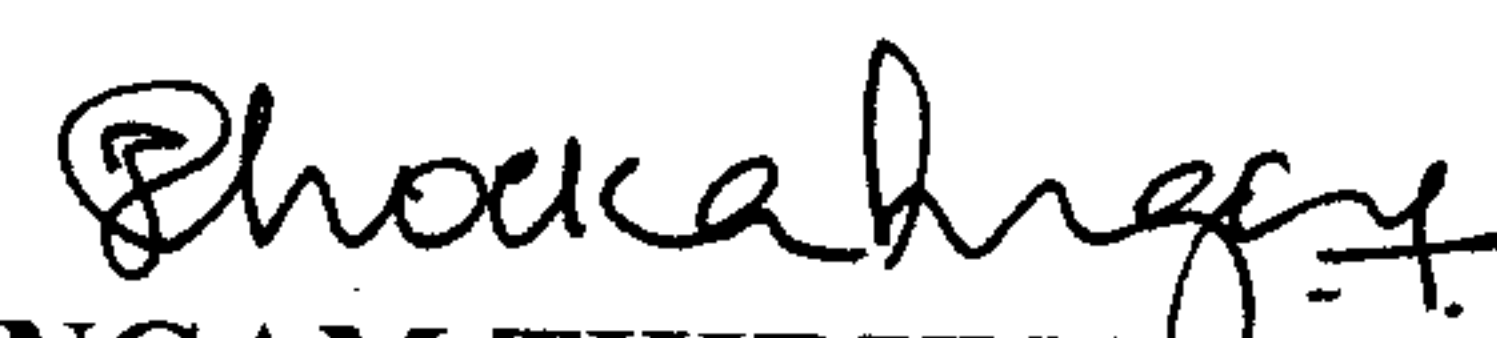
Section of the Companies Act : Section 7 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.	Jaimin R. Dave Pratik S. Dave Shivam R. Parulkar Himang R Dave	AD V.	RESP.	
2.	SUNIL BHASKAR I/B. LALIT M. PATEL	ORDERS ORDER	APPLICANT.	

The parties are represented through learned counsels.

The Order is pronounced in the open court vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 27th day of January, 2020


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. (IB) 630/9/NCLT/AHM/2019

In the matter of:

Indiabulls Consumer Finance Limited

M-62& 63, First Floor

Conaught Place,

NEW DELHI 110 001

:

Petitioner
Financial Creditor

Versus

M/s. Shakti Refoils & Agro Foods Products Private Limited

9, 1st Floor

Sahajanand Shopping Centre

Opp. Shreenath Travels

Shahibaug

Ahmedabad 380 004

Gujarat State

:

Respondent
[Corporate Debtor]

Order delivered on 27th January, 2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Advocate Mr. Lalit M. Patel for petitioner.

Advocate Mr. Jaimin R. Dave for respondent

ORDER

[Per : Ms. Manorama Kumari, Member (J)]

1. Mr. Kaushik Harjani, Legal Manager, being authorised signatory of financial creditor **India Bulls Consumer Finance Limited** (formerly known as IVL Finance Limited), filed this petition under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with

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Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 7(5)(a) and Section 13(1)(a)(b)(c) of the Code.

2. That the applicant/financial creditor is a company incorporated on 27.10.1994 having identification No. U74899DL1994PLC062407 having its registered office at New Delhi and having one of its branch at C.G. Road, Ahmedabad inter alia engaged in the business of providing various types of financial facilities including business loans, personal loans, consumer loans, loan against property, term loan etc. and it is a non-banking finance company.
3. The respondent/corporate debtor is a company incorporated under the Companies Act, 1956 on 24.05.2007, having identification No. U01111GJ2007PTC050938, having its registered office at Shahibaug, Ahmedabad, Gujarat State. That, Authorised share capital of the respondent company is Rs. 3,50,00,000/- and paid up share capital is Rs. 3,50,00,000/-.
4. That, the applicant has submitted that the respondent company approached the financial creditor for availing loan facilities. Subsequently, after accepting the request of the corporate debtor, loan agreements were executed by and

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between the corporate debtor and the financial creditor vide loan agreement dated 30.06.2018 for Rs. 35,37,646/-.

5. It is stated by the financial creditor that at the time of availing the said loan, the respondent company assured the petitioner that the amount of the said loan facilities will be repaid by way of 36 equal monthly instalments (EMIs) as per the terms and conditions and repayment schedule of the loan agreement dated 30.06.2018 and there will be no default in making payment of the instalments and repayment of loan facility. However, after availing the aforesaid loan, the respondent did not care to make payment of the instalments regularly as per agreed terms and conditions and made default in payment of the instalments.

6. The applicant has further stated that despite repeated requests/reminders and personal follow up over telephone and in person the respondent company failed and neglected to pay the pending instalments and thereby committed breach of the loan agreement and defaulted the instalments due and payable on 05.09.2018, 05.10.2018, 05.12.2018 to 05.06.2019. Therefore, the petitioner issued legal notices dated 20.02.2019 and 30.04.2019 and called upon the respondent to make payment of the outstanding amount due but the respondent neither made any payment nor even bothered to give any reply to the notices. In these

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circumstances, the financial creditor was constrained to recall the loan facilities. Since the corporate debtor failed to pay the overdue instalments, the petitioner company has the right to foreclose the loan account and as per the foreclosure statement an amount of **Rs. 38,25,124/- (Rupees thirty-eight lacs twenty-five thousand one hundred twenty-four only)** is due and payable to the petitioner as on **18.06.2019** which includes the principal amount, interest and other charges.

7. In support of its claim, the applicant has submitted copy of all the following documents: -

Sl. No.	Particulars	Page No.
1	Certificate of incorporation pursuant to change of name dated 18.09.2018	20
2	Board resolution dated 14.09.2017 along with authority letter dated 06.08.2019	21-22
3	Vakalatnama	23
4	Corporate debtor's master data	24-25
5	Written communication of IRP	26-28
6	Loan agreement dated 30.06.2018	29-42
7	Statement of accounts as on 18.06.2019	43-45
8	Foreclosure statement as on 18.06.2019	46
9	Repayment schedule	47-49
10	Table containing working for computation of amount and days of default	50
11	CIBIL report	51-99
12	Notice under I & B Code dated 20.02.2019	100-101
13	Loan recall notice dated 30.04.2019	102-103

Findings

8. On perusal of the records it is found that the respondent has not filed reply even after given sufficient opportunities from 11.09.2019. On perusal of the records it is found that on 20.01.2020 the matter was fixed for filing affidavit from the side of the corporate debtor in view of admitting the debt,

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but, the corporate debtor has failed to file affidavit. However, during the course of hearing, the learned lawyer appearing on behalf of the corporate debtor admitted the debt on receiving instructions from the corporate debtor.

9. On perusal of the records it is found that the letter of authority dated 06.08.2019 issued by Legal head of the applicant company authorising Mr. Kaushik Harjani, is proper and valid.
10. In view of the above discussions, the Adjudicating Authority is of the considered view that there is a debt due to "financial creditor" and there is default on the part of the corporate debtor. In view of the judgement of the Hon'ble Supreme Court in "**Innoventive Industries Ltd. vs. ICICI Bank & Anr.(2018) 1 SCC 407**" the Hon'ble Supreme Court while explaining section 7 and 8 of the IB Code, observed and held as under: -

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a 'debt' becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3 (12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.

For the meaning of "debt", we have to go to Section 3 (11) which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of claim, we have to go back to Section 3 (6) which defines claim to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by

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the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5 (7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5 (8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7 (1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor. It need not be a debt owed to the applicant financial creditor. Under Section 7 (2), an application is to be made under Sub-Section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in part I, particulars of the corporate debtor in part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4 (3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or sped post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7 (5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt" which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is complete, in which case it may give notice to the applicant to rectify the defect within seven days of receipt of a notice from the adjudicating authority. Under Sub-section (7), the adjudicating authority shall then

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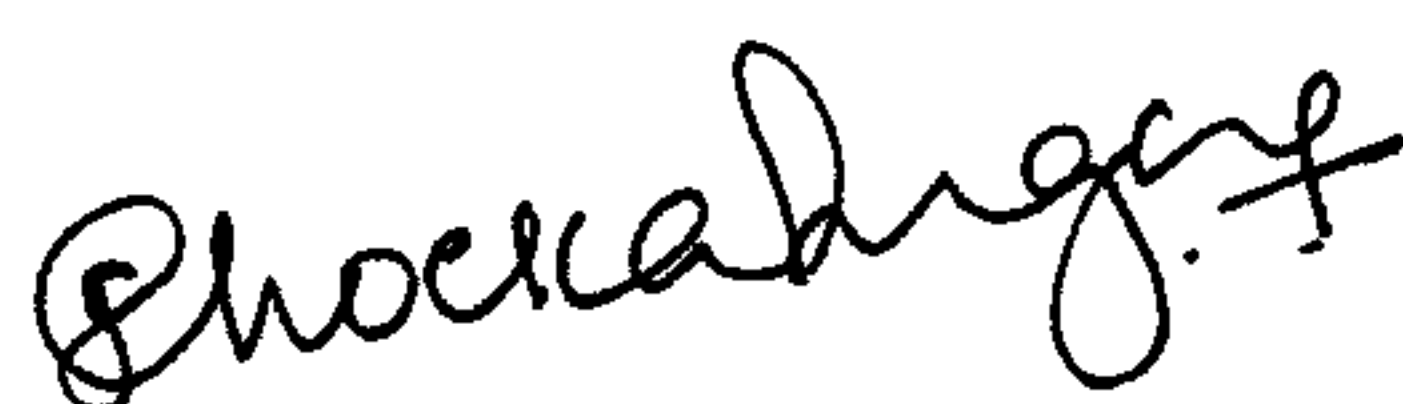
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communicate the order passed to the financial creditor and corporate debtor within seven days of admission or rejection of such application, as the case may be.

11. It is also held in **Mobilox Innovations (P) Ltd. vs. Kirusa Software (P) Ltd. (2018) 1 SCC 353** as under: -

"38.....in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility or other evidences produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due", i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority then the adjudicating authority may reject an application and not otherwise.....".

12. That, the application is found to be complete in all respect. Hence it does not warrant any rejection or dismissal.
13. That, the records available shows that the applicant had sanctioned loan facility to the respondent company, to be repaid within the stipulated period as per the terms and conditions agreed between the parties. That, the applicant had issued notice dated 20.02.2019. Records available shows that the respondent has not cared to reply the notice issued by the applicant.
14. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the financial debt to the





Applicant and the respondent company has acknowledged the debt.

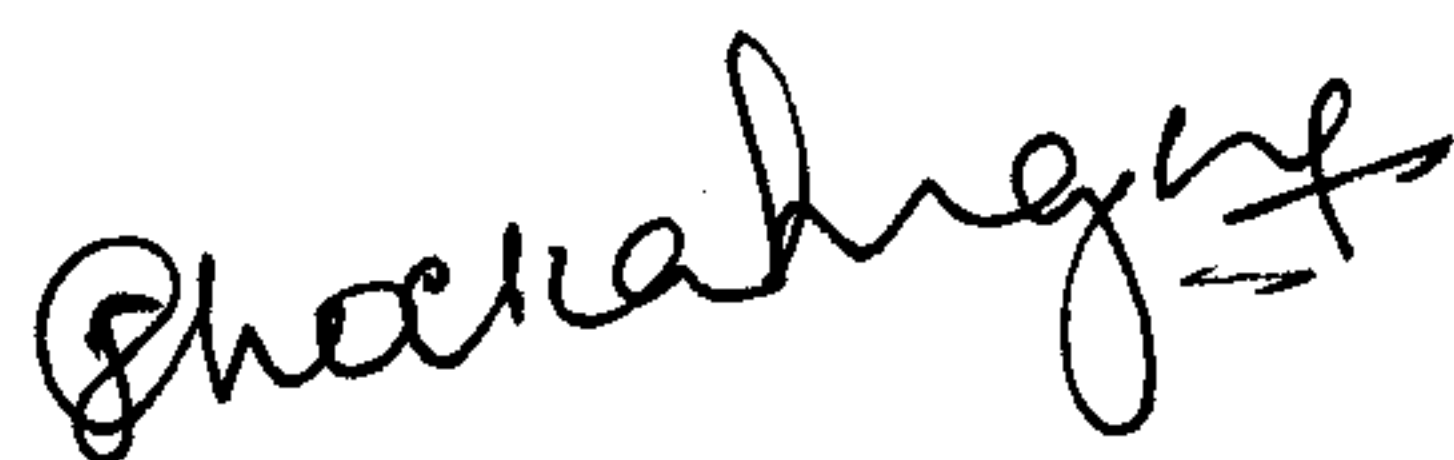
15. In the instant case, the documents produced by the Financial Creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'financial debt'.
16. There is no dispute in the case that the petitioner is the financial creditor. The application is also furnished in the prescribed form - 1 of the Rules and the prescribed fee has also been paid. Along with the application, the applicant proposed the name of the Resolution Professional namely Mr. Navin Khandelwal. Therefore, this Adjudicating Authority hereby appoint Mr. Navin Khandelwal, 206, Navneet Plaza, 5/2, Old Palasia, Indore, Madhya Pradesh 452 018 (navink25@yahoo.com) having registration No. IBBI/IPA-001/IP-P00703/2017-2018/11301 to act as an interim resolution professional under Section 13(1)(c) of the Code. Form 2 of the proposed interim resolution professional has been annexed and placed at page No. 26-28 of the application where declaration is made that no disciplinary proceeding is pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.
17. In the aforesaid background and as also discussed above, the application under Section 7 (2) of the IB Code is complete in all respects and there is debt due to the




"financial Creditor" and there is default on the part of the "corporate debtor". Hence, there is no alternative but to admit the application in absence of any infirmity.

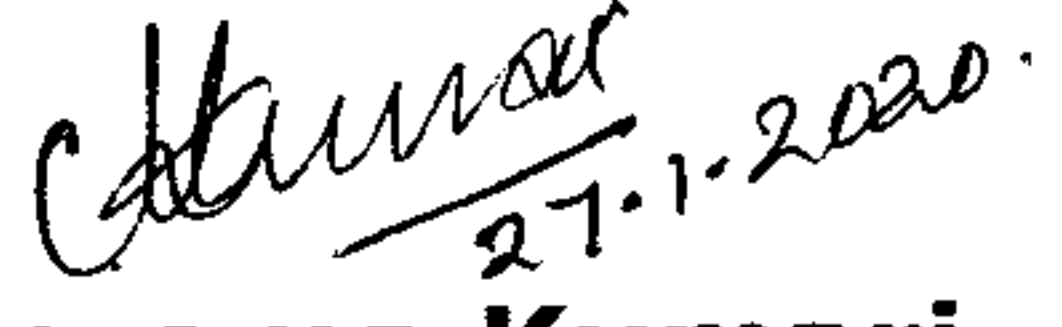
18. In view of the above, the petitioner/financial creditor having fulfilled all the requirements of Section 7 of the Code, the instant petition deserves to be admitted.

19. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
 - (i) 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;
 - (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.



20. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.
21. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
22. This Petition stands disposed of accordingly with no order as to costs.
23. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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