

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

*(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)*

(Through web-based video conferencing platform)

C.P. (IB) No.122/BB/2021

U/s 7 of I&B Code, 2016

R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of:

1. Anup Tripathi

R/o Flat 303, #151, Y.S. Residency,

24th Main, 6th Cross, HSR Sector 1,

Bangalore – 560 102. **& 38 Ors.**

... Petitioners / Financial Creditors

VERSUS

M/s. Nandhini Hotels Pvt. Ltd.

Regd. Off.: #114/2,

Lal Bagh Fort Road,

Bangalore – 560 004.

... Respondent / Corporate Debtor

Order delivered on: 20th October, 2022

Coram:

1. Hon'ble Shri Kishore Vemulapalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Petitioners : Shri Piyush Singh, Adv.

For the Respondent : Shri Ricab Chand, Adv.

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present Petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC/Code') r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on 27.07.2021 by

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Mr. Anup Tripathi and 38 others (hereinafter referred to as 'Petitioners / Financial Creditors') with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against **M/s. Nandhini Hotels Private Limited** (hereinafter referred to as 'Respondent / Corporate Debtor').

2. The Respondent Company - the Corporate Debtor, was incorporated on 10.05.1991 with CIN No. U55209KA1991PTC011956 with its registered office situated at #114/2, Lalbagh Fort Road, Bengaluru-560004. Hence, the jurisdiction lies with this Adjudicating Authority. Its Authorised Share Capital is Rs.2,00,00,000/- (Rupees Two Crores Only) and Paid-up Share Capital is Rs.2,00,00,000/- (Rupees Two Crores only).

3. Brief facts of the Petition are given hereunder:

- i.) The Financial Creditors had made bookings in a Project being developed by the Corporate Debtor herein, namely, '**Prakruthi Solitaire**' situated at Survey No. 11/2 and 130/5, Katha Nos.5284/5188/5195, Kammasandra Village, Anekal Taluk, Bangalore, Karnataka (hereinafter referred as the 'Project'). Thereafter, Construction Agreements were executed by and between the Financial Creditors and the Corporate Debtor. The Financial Creditors were allotted different Unit Numbers, the details of which are described in Annexure P-67. Furthermore, Agreements for Sale of undivided share of land were executed by and between the Corporate Debtor and the Financial Creditors. There were a total of 39 Applicants having been allotted 20 Units filing this application jointly, as reflected from Form-1.
- ii.) The Financial Creditors were to make payments in terms of the payment plan annexed to the Agreements. The Financial Creditors have diligently been making timely payments. Some of the Financial Creditors in order to make timely payments to the Corporate Debtor had availed loan facility from various Banks / FIs. The Financial Creditors were under added financial constraint as apart from

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- unilaterally making payments to the Corporate Debtor, the Financial Creditors were also burdened with the repayment of the availed loan.
- iii.) As per Clauses 9 and 10 of the Construction Agreements, the Corporate Debtor was bound to deliver the possession of the Units between 30.06.2014 to 30.09.2014 inclusive of the three-month grace period. Despite the stipulated date of possession, the Corporate Debtor failed to hand over possession of the Units. The Corporate Debtor had given the Financial Creditors an undertaking, stating that they were liable to pay the EMI to the Financial Creditors against the loan availed by the Financial Creditors.
- iv.) In view of the considerable delay in handing over the possession of the Units by the Corporate Debtor, the Financial Creditors terminated the Agreements with the Corporate Debtor and demanded refund of the entire principal amount paid along with the requisite interest. Despite multiple communications, the Corporate Debtor failed to return the amount to the Financial Creditors and the same can be evidenced from the Bank Statements of the Financial Creditors.
- v.) The Corporate Debtor furnished an evasive reply to the notice sent by the Financial Creditors. The Corporate Debtor made several averments with regard to the non-compliance of the debt mentioned in the Notice. The Corporate Debtor failed to address any of the merits pointed out by the Financial Creditors in the notice furnished by them. The Corporate Debtor has sought to dodge its contractual liabilities and leave the Financial Creditors empty handed after enjoying an interest free loan for the past several years.
- vi.) It is also stated that the Corporate Debtor is liable to refund the money with 10.25% p.a. simple interest in terms of Section 18 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017 issued by the Govt. of Karnataka.

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- vii.) It is stated that the Corporate Debtor has failed to deliver the possession of the Units within the stipulated period of time, clearly substantiating that the amounts raised through the Financial Creditors have been used as commercial borrowings.
- viii.) As per Part-IV of Form-1, the amount claimed to be in default is **Rs.13,05,25,856** (Rupees Thirteen Crore Five Lakh Twenty-Five Thousand Eight Hundred and Fifty-Six only) and the date of default is in December, 2019.

ix.) In support of its submissions, the Petitioners have also relied upon the following judgments:

(a) *Innoventive Industries Limited v. ICICI Bank and Another* (2018) 1 SCC 407;

(b) *Pioneer Urban Land and Infrastructure Limited & Ors. v. Union of India* (Writ Petition (Civil) 43 of 2019);

(c) *Flat Buyers Association Winter Hills – 77, Gurgaon v. Umang Realtech Private Limited through IRP & Ors.* [Company Appeal (AT) (Insolvency) No.96 of 2019];

(d) *Manish Kumar v. Union of India & Anr.* (2021 SCC Online SC 30);

x.) It is stated that the present application is maintainable as it is in alignment with the provisions of the I&B Code (Amendment) Act, 2020.

xi.) Further, in terms of the 2018 amendment to the Code, any amount raised from an allottee under a real estate project shall be deemed to be an amount having the effect of a commercial borrowing and therefore, the instant amount payable by the Corporate Debtor falls under the definition of a financial debt in terms of Section 5(8) of the Code. In view of the above facts, the Financial Creditors herein falls within the definition of the Financial Creditor u/s 5(7) of the Code. The instant debt of the Financial Creditors falls squarely u/s 5(8) of the Code and the fact that such financial debt has incurred on account of the non-payment of the Corporate Debtor stands substantiated from the Bank Statements. Hence, the application.

4. In support of its submissions, the Petitioners *inter alia* filed the following documents, in respect of all the persons making this Application u/s 7 of the Code:

- i.) Copy of Construction Agreements
- ii.) Copy of Payment Receipts along with the Loan Disbursement Schedule
- iii.) Copy of Loan Sanction Letter
- iv.) Copy of the notice along with the Postal Receipt and Email Service
- v.) Copy of Bank Statement of the Financial Creditors
- vi.) Copy of reply to the notice sent by the Corporate Debtor
- vii.) Copy of computation chart calculating the total amount due
- viii.) Copy of the list of Financial Creditors and their respective Unit holdings
- ix.) Copy of the Layout Plan for Phase-II of the Project including the total number of Units.
- x.) Copy of the PAN Card of the Financial Creditors.

5. The Respondent filed its statement of objections dated 19.04.2022, by *inter alia* contending as under:

- i.) The instant Petition is hit by law of *res judicata* as the Petitioner had filed a Petition earlier in CP (IB) No.75/BB/2020 on the same cause of action by the 1st 1 to 6 Applicant/Financial Creditors against the Respondent, and the same was dismissed with the observation that there should be 25 flats to file a Petition and no liberty was obtained to file a Petition on the same ground.
- ii.) The Respondent submits that the sale and construction agreement was of year 06.06.2013 it has to be completed by 30.06.2014 and extended for a period of three months, the Petitioner ought to have filed the complaint within three years of 2014 for not completing the flats in time, thus the same is not maintainable and is barred by limitation since by the time in 2019 all the Applicants' flats was ready. Out of 140 flats more than 120 flats are registered and they are residing in the flats.
- iii.) The Respondent / Corporate Debtor are not going to dispute or comment on the documents enclosed with the Petition. The claim of the Applicant was

cancellation of flats / are barred by law of limitation they ought to have filed / given notice within three years from 2014.

- iv.) It is contended that, Petitioner made an Agreement with landlords for purchase of the site along with Respondent, and landlords are not made parties to the Application and thus needs to be dismissed.
- v.) The Agreement was entered with the Respondent only during the year 2013, whereas the Real Estate (Regulation and Development) Act came into effect from 2016 and the IBC came into effect much later than 2013 and thus the above Acts are not applicable to the Respondent.
- vi.) There is a clause in Agreement to Sell for appointment of Arbitrator in case any dispute with the Respondent and Applicant could have referred it to the Arbitrator.
- vii.) The Respondent as a Developer constructed nearly 180 flats in the name of 'Prakruthi Solitaire', out of that, 50 flats go to the share of the landlord. More than 80% of flats are registered in the name of the Buyers. It is further stated that more than 10 of the Applicants have got the Flats registered in their name and residing in the Flats.

6. The Petitioner filed its rejoinder by *inter alia* further stating as under:

- i.) Pursuant to amendment made to Section 7(1) of the Code and since the CP (IB) No.75/BB/2020 which was filed by 5 allottees, who are Financial Creditors herein, did not meet the requisite threshold, the said application was disposed of by order dated 27.01.2021 with liberty to file fresh CP in accordance with law. Therefore, it is denied that the present application is hit by the law of *res judicata* because there was no final adjudication on the merits of the case. Moreover, the Respondents have made a totally incorrect claim that in the order dated 27.01.2021, this Tribunal has mentioned that there should be 25 Flats to file a Petition; and that the Tribunal had granted no liberty to file a fresh Petition.

- ii.) The Financial Creditors have correctly made the Corporate Debtor a party as it was the Corporate Debtor that was responsible for the construction of the Project. The Agreements which were executed between the Corporate Debtor and the Financial Creditor also bear the stamp of the Corporate Debtor. The Corporate Debtor itself issued the payment receipts against the money paid by the Financial Creditors and thus the Corporate Debtor is the correct party.
- iii.) The construction of the Project was to be completed by the Corporate Debtor latest by September 2014 with a grace period of 3 months (and for Financial Creditor Nos.24 and 25 by 30.09.2016), however, the Project has not been completed till date, the Corporate Debtor has failed to obtain the Occupation Certificate and has failed to offer legal possession of the Units to the Financial Creditors. Being aggrieved by the empty promises of the Corporate Debtor, in October 2019 the Financial Creditors terminated the said Agreement and sought refund of money along with interest. However, the Corporate Debtor failed to do so and thereby committed a default under the Code. The Project remains incomplete even as on date as there is no Occupation/Completion Certificate issued by concerned authorities. Although the Project was to be completed by September 2014, by Minutes of Meeting dt.03.09.2016 (copy filed), the Corporate Debtor promised to deliver it by March 2017. However, the same was not delivered even by March 2017 and by October 2019 (i.e., within 3 years from the extended due date of possession expiring in March 2020), the Financial Creditors terminated the Agreements. It is further contested that the Project was completed in 2019; since the Corporate Debtor itself gave an undertaking dated 09.11.2019 (copy annexed) promising to complete the Project by 21.01.2020. Further, no Completion / Occupancy Certificate has been issued to the Corporate Debtor even as on date. Thus, by applying the provisions of Section 18 of Limitation Act, 1963, the present application is well within limitation and is maintainable.

- iv.) The Petitioners further relied on the decision rendered by the Hon'ble Supreme Court in *Meerut Development Authority v. Mukesh Kumar Gupta (SLP (C) No.8481 of 2012; decided on 09.05.2012)* and the decision of Hon'ble Principal Bench, NCLT in *Satyajeet Panda & Anr. V. M/s. ANS Apartments Pvt. Ltd. in CP (IB) No.1481 (PB) of 2019; decided on 06.12.2019.*
- v.) It is further submitted that the landowners had entered into a Joint Development Agreement dt.12.08.2011 with the Corporate Debtor for development of the Project and has also executed a General Power of Attorney dt.29.08.2011 in favour of the Corporate Debtor for development of the Project. The Agreement for Sale that was signed with the landowners was limited to purchase of the proportionate undivided share in the Project and by the Financial Creditors and the contractual obligation to construct the Project was solely of the Respondent.
- vi.) Provisions of the Code are applicable to the Corporate Debtor and there is no provision under law which exclude the applicability of the Code to the Corporate Debtor merely because the agreements in question were executed in 2013, prior to its enactment. Therefore, the argument regarding the date of execution of agreements being in 2013, which are prior to enactment of the Code or RERA Act, 2016, is devoid of merit and liable to be rejected. Further, it is stated that the existing of an arbitration clause cannot take away the right of the Financial Creditors to trigger the Code.
- vii.) It is further submitted that the Respondents have made a totally incorrect statement in Para 11 of the Reply that 10 Financial Creditors have registered the Units in their name and are residing in the Units, and that under the influence of the first six Financial Creditors, the other Financial Creditors have filed the instant Application for unlawful gain. The Respondent throughout the Reply, made vague statement, unsupported with evidence.
7. The Respondent vide its sur-rejoinder dated 07.06.2022, has *inter alia* further submitted as under:

- i.) The Authority Letters annexed at pages 81-100 to the Petition and authority emails at pages 17 to 29 of the Statement of Rejoinder are in the form of letter / email and therefore are not valid authority letters as required under Law. It is stated that Shri Anup Tripathi (Financial Creditor No.1) has signed on behalf of himself, Financial Creditor Nos. 2, 3, 20 and 21. However, no authority letter in Petition/Rejoinder issued by Financial Creditor Nos. 20 and 21, and thus Financial Creditor No.1 has no authority to sign on their behalf. It is stated that Financial Creditor No.20 has already executed Sale Deed dated 22.10.2020 and having executed the same, Financial Creditor Nos.20 and 21 could not have been made party to this Petition. Further, Shri Uttam Kumar Dubey (Financial Creditor No.34) has signed on behalf of himself, Financial Creditor Nos.35, 4, 5, 28 and 29. However, no authority letter was given to him by Financial Creditor Nos.28 and 29 and thus cannot be treated as Parties to this Petition.
- ii.) 'Prakruthi Solitaire' Project consists of totally 338 units. Therefore, the minimum number of Financial Creditors have to be at least 34 allottees. The Respondent have already handed over more than 290 Flats and thus the Petition is not maintainable.
- iii.) It is further stated that each Agreement, except for Financial Creditor No.3, has two joint purchasers and they cannot be treated as two separate Financial Creditors and therefore, the Petition filed by alleged 19 Financial Creditors does not meet the requirement of threshold.
- iv.) The said Project consists of two Phases. Phase I consists of 146 flats & Phase 2 consists of 192 flats and all the Petitioners belong to Phase 2 of the development which has 192 flats. Both the Phases are of the same Project and thus cannot be treated as a separate Project. Further, majority of the Petitioners have not paid the entire consideration and therefore cannot call upon the Respondent to refund as the promises are reciprocal in nature.


- v.) It is stated that there is no letter of termination on record and the notice issued u/s 8 of the Code cannot be treated as termination notices. The Respondent vide reply to the above notice clearly stated that the Flats are ready and that only when the Petitioner pay the balance amount due can the Respondent hand over the possession and registration can be done. Further, the date of default is stated to be December 2019, which is a date taken without any basis and thus the Petition is barred by limitation.
- vi.) The Respondent has relied upon the judgment of the Hon'ble NCLAT in the matter of *Flat Buyers Association Winter Hills-77, Gurgaon v. Umang Realtech Pvt. Ltd. through IRP & Ors. in Company Appeal (AT) (Insolvency) No.926 of 2019; Univalue Projects Pvt. Ltd. v. Union of India (2020) SCC OnLine Cal 1452.*
8. The Petitioners have also filed its written submissions by *inter alia* further stating that they fulfil the criteria as provided u/s 7 of the Code. The Financial Creditors herein are 39 in number and were allotted 20 real estate units whereas the total number of allotted units in the said phase of the project was 170. Therefore, the minimum number of real estate unit allottees required in terms of *Manish Kumar v. Union of India & Ors. [(2021) 5 SCC 1]*, is 17 which is met by the Financial Creditors herein at the time of filing of the Petition. As per Clause 9 and 10 of the respective construction agreements, the possession of the respective units was to be delivered between June, 2014 to September, 2016. The Financial Creditor No.24 and 25 who were allotted unit number F-001 and has the construction agreement dated 18.01.2016 was to be delivered possession of the said unit by 30.09.2016 in terms of Clause 9 and 10 of the said Construction Agreement. The Corporate Debtor vide Minutes dated 03.09.2016 admitted that they were unable to complete the Project, thus the default was admitted; and assured that the Project will be completed by March, 2017. The Corporate Debtor failed to fulfil its obligation and issued an undertaking dated 09.11.2019 whereby it undertook to complete the project by 21.01.2020. Till date it has failed to complete the Project. As a result of the default

committed by the Corporate Debtor time and again, the Financial Creditors sent termination emails to the Corporate Debtor to claim their money with interest in terms of the judgment of the Hon'ble Supreme Court in *'Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor [2022 SCC Online SC 416]*.

9. The Respondent also filed its Propositions by *inter alia* further stating that the Sec.7 application is not duly signed by Financial Creditors as required under Form-1 of IBC Rules, the Petition does not have a verifying affidavit as prescribed, no proper authorisation, total number of Petitioners below the threshold limit as required under Sec. 7 of the Code; the Petition is barred by limitation; the Petition is not maintainable as the same has been filed vis a vis the Corporate Debtor as an entity and not vis a vis the Project; the Petitioners have purported to produce further documents without any leave or accompanying verifying affidavit, etc. It was contended by the Ld. Counsel for the Respondent that the total number of Flats should be considered as 338 considering both the Phases together. For this it is stated that since the Two Phases had common amenities like swimming pool, club house, etc., it should be treated as one single Project. Moreover, it is contended that only Lifts, amenities and minor finishing work was pending, for which some photos were also submitted with the sur-rejoinder. Therefore, the Project should be treated as complete and only because the instalments were not paid fully, the possession was not given within the stipulated period of time.

10. The Respondent had relied upon the following decisions:

- i.) *Theco India Pvt. Ltd. v. Dental Ceramists (India) Pvt. Ltd. (2020) SCC Online NCLT 1016;*
- ii.) *Usha Verma v. Swaayam Ksheer (2018) SCC Online NCLT 26211;*
- iii.) *Potluri Raja Mohan Rao v. Chalasani Rao (2019) SCC Online NCLT 18145;*
- iv.) *IDBI Capital Markets & Securities Ltd. v. JPF Petrochemicals Ltd. (2020) SCC Online NCLT 5510;*
- v.) *AKK Nambiar v. Union of India (1969) 3 SCC 864;*
- vi.) *M. Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd. (2020) 14 SCC 643;*

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vii.) *BK Educational Services Pvt. Ltd. v. Parag Gupta & Associates (2019) 11 SCC 633;*

viii.) *Santosh Kapoor v. Radha & Ors. (Civil Suit No.194/16).*

11. Heard Shri Piyush Singh, learned Counsel for the Petitioners and Shri Ricab Chand, learned Counsel for the Respondent and perused the pleadings on record.

12. At the outset, it is observed that the Petitioners have rightly explained in the Rejoinder that in CP (IB) No.75/BB/2020 dated 27.01.2021, it was not stated that there should be 25 Flat Owners to file the Petition; nor is it correct that no liberty was granted by this Tribunal to file a fresh Petition. The last part of the impugned order states as under:

"5. Admittedly, there are only 5 (five) Petitioners in the present Petition, and they are not satisfying the criteria as laid down under section 7(1) of the IBC. Therefore, the instant Petition is not maintainable, and thus we are not inclined to entertain this Petition, and to dispose of it with a liberty to file appropriate Petition in accordance with law.

6. In the result, CP (IB) No.75/BB/2020 is hereby disposed of by granting liberty to the Petitioners to file fresh Company Petition in accordance with law."

Thus, the Respondents have made incorrect claims in the objection dated 19.04.2022.

13. In the present case, as per the documents produced by the Petitioners the subject Project i.e., *Prakruthi Solitaire* consisted of a total number of 170 Flats whereas the Petitioners in the instant C.P. are 39 holding 20 Flats and accordingly have satisfied the threshold limit condition. In fact, in the objections dated 19.04.2022 in para 9 the Respondent has admitted that there were nearly 180 Flats in *Prakruthi Solitaire* Project. Copy of the list of Financial Creditors and their respective Unit holdings was annexed and marked as Annexure P-67 of the Petition.

14. The other issue to be examined is whether the C.P. is within the period of limitation. As per the documents of the Respondent / Corporate Debtor itself the project has to be

completed and the flats are required to be delivered between June, 2014 to September, 2016. The Corporate Debtor had vide its Minutes of Meeting dated 03.09.2016 had admitted to the default that they were unable to complete the Project in time and assured the Financial Creditors that the Project would be completed by March, 2017. The Corporate Debtor again failed to fulfil its obligation and issued an undertaking dated 09.11.2019 whereby it undertook to complete the Project by 21.01.2020. Copy of the Minutes of Meeting dated 03.09.2016 is at Page 30 of the Rejoinder and Undertaking of the Corporate Debtor dated 09.11.2019 is at Page 31 of the Rejoinder. Since the C.P. is filed on 27.07.2021, the same is within the period of limitation. The remaining issue to be examined is whether the debt and default thereof are proved. The various documents filed along with the C.P. confirm the debt. The Construction Agreements along with the Agreement for Sale of Undivided share of land executed between the parties herein coupled with the receipts issued by the Respondent / Corporate Debtor confirm the various payments made by the Petitioners. The amount claimed to be in default as per Part-IV of Form-1 itself is Rs.13,05,25,856/- (Rupees Thirteen Crore Five Lakh Twenty-Five Thousand Eight Hundred and Fifty-Six Only) i.e., more than the threshold limit of Rs.1 Crore. The Corporate Debtor has not disputed the claim amount nor denied the Agreement entered between the Parties. It is further noticed that in the objections dated 19.04.2022, the Respondents have stated that they are not going to dispute or comment on the documents submitted with the Petition. Regarding completion of the Project, the Counsel for the Petitioner during hearing states that the Project is not yet completed and no Occupancy Certificate has yet been issued by the Authorities. Further, it is stated that only bare shell is done till now for which photos were also submitted in the written submissions. It was also submitted that the RERA may in fact be treated as an Information Utility in the case of Homebuyers; and the document filed at Page 37 of Written Submissions shows that the Project of the Corporate Debtor is not registered with the RERA and some investigations were also going on. The respective demand notices were issued by some of the Financial Creditors during October, 2019. Before us, it is reiterated by the Ld. Counsel for the

Corporate Debtor that there are Two-Phases of the Project and two Commencement Certificates and the entire Project is having 338 Flats, so the threshold criteria is not satisfied. The Counsel for the Respondent argued that the Project should be treated as completed because only some minor works like lifts, other amenities and minor finishing work was pending for which some photos were also submitted with the sur-rejoinder. It was repeated that the possession was not given only because the instalments were not paid fully. However, the Counsel for the Petitioner explained that the non-completion of the Flats and non-refund of the amount paid by the Flat buyers when demanded, proved that the default was established. In view of the same, the C.P. is liable to be admitted.

15. We have carefully considered the arguments of the respective Counsels. The objection of the Respondents that provisions of the IBC and also RERA which both came into effect from 2016 cannot be applied since these Agreements were signed in 2013; is not tenable in Law. In view of the facts and circumstances discussed above, the present Petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/- (Rupees One Crore Only), the **Petition is admitted** in respect of "**Prakruthi Solitaire**" Project of Respondent-**Nandhini Hotels Pvt. Ltd.** under Section 7 of the IBC, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, 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;
- (e) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- (f) The provisions of sub-section (1) shall however, not apply to 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, and to a surety in a contract of guarantee to a Corporate Debtor;
- (g) The order of moratorium shall have effect from the date of this order till 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.

16. The Petitioners have proposed the name of Mr. Vineet Gupta, a qualified insolvency professional having Registration No. IBBI/IPA-001/IP/P-00810/2017-2018/11377 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Written Consent given by the IRP in Form 2 dated 01.07.2021 has been filed along with the C.P at Page Nos.612-613, wherein he has declared that no disciplinary proceedings are pending against him. However, since the Certificate of Registration is not filed, the IRP shall file the same within one week from the receipt of this order.

17. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Vineet Gupta, and there is nothing adverse against him. In view of the above, the Bench appoints **Mr. Vineet Gupta**, bearing Registration No. IBBI/IPA-001/IP/P-00810/2017-2018/11377 and registered address at #408, 4th Floor, Laxmideep Building, Laxmi Nagar, District Centre, Vikas Marg, New Delhi-110092, as the Interim

Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

18. The Financial Creditors shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
19. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
20. A copy of the order shall be communicated to both the Parties. The learned Counsel for the Petitioners shall deliver a copy of this Order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this Order to the Interim Resolution Professional at his e-mail address forthwith.

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MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

JSR

- Sd -

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)