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

CP (IB)/159(CHE)2021

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **SHRI PKP SPINTEX MILLS PRIVATE LIMITED***

ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED

REGISTERED OFFICE AT :

THE RUBY, 10TH FLOOR, 29 SENAPATI BAPAT MARG,
DADAR (WEST), MUMBAI – 400 028

... Financial Creditor

-Vs-

SHRI PKP SPINTEX MILLS PRIVATE LIMITED

No.5A, SOUTH RAILWAY ROAD,
KUMARASAMPET, DHARMAPURI,
TAMILNADU – 636 703

...Corporate Debtor

*Order Pronounced on **09th November 2022***

CORAM:

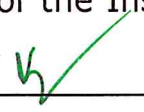
**Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Financial Creditor : Abitha Banu, Advocate
For Corporate Debtor : Venkat Raman, Advocate*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed by one **ASSET RECONSTRUCTION
COMPANY (INDIA) LIMITED** (hereinafter referred to as 'Financial
Creditor') on 23.06.2021 under Section 7 of the Insolvency and
Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and



Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **SHRI PKP SPINTEX MILLS PRIVATE LIMITED** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Financial Creditor is a ARCIL. The registered office address of the Financial Creditor as per the Application is stated to be situated at The Ruby, 10th Floor, 29 Senapati Bapat Marg, Dadar (West) Mumbai – 400 028. Further, Part-I lays down the Authorized Representative of the Financial Creditor to be one Mrs. Manjula, Authorised Signatory of the Financial Creditor by virtue of a power of Attorney dated 23.08.2019 which is placed at Page Nos.3 to 5 of the Application typeset.

3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Private Limited Company incorporated under the Companies Act, 1956 on 01.06.2006 with CIN: U17111TZ2006PTC012807. The registered office of the Corporate Debtor as per the MCA master data is situated at No.5A, South Railway Road, Kumarasamypet, Dharmapuri, TamilNadu – 636 703.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Santhanam Rajashree, Reg. No. IBBI/IPA-002/IP-N00330/2017-18/10935.

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a debt amount of Rs.13,00,00,000/- (Rupees Thirteen Crores Only) which is due and payable by the Corporate Debtor. The date of default as averred in Part-IV of the Application is 30.11.2018 and the date of default is available in the clean copy of the Petition by way of a separate typeset in the Present Application as per the order of this Tribunal dated 22.09.2022

6. Part V of the application describes the particulars of Financial Debt, documents and the list of documents between the Financial Creditor and the Corporate Debtor is reproduced hereunder:

List of Documents for loan Amount of Rs.12,00,00,000/-

- i. Application from the Shri PKP Spintex Mills Private Limited for Term Loan dated 29.07.2010
- ii. Sanction Letter issued by State Bank of Mysore dated 14.09.2010
- iii. Letter from the Shri PKP Spintex Mills Private Limited to State Bank of India dated 17.09.2010
- iv. Extract of Board Resolution of the Shri PKP Spintex Mills Private Limited dated 11.10.2010
- v. Agreement of Guarantee and Indemnity executed by P.K. Pounraj and P.Thilagavati dated 11.10.2010
- vi. Guarantee agreement executed by P.K. Pounraj and P.Thilagavati. dated 17.02.2011
- vii. Deed of Guarantee executed by P.K. Pounraj, P.Thilagavati, M/S Sathya granites, M/S PKP Minerals Private Limited



- viii. Letter of Undertaking issued by P.K. Pounraj and P. Thilagavati dated 17.02.2011
- ix. Letter of Undertaking issued by the Shri PKP Spintex Mills Private Limited for not creating any further charge over their property and assets including uncalled capital dated 17.02.2011
- x. Letter of Undertaking issued by P.K. Pounraj and P. Thilagavati dated 17.02.2011
- xi. Letter of Undertaking executed by Shri PKP Spintex Mills Private Limited for creating Second charge on fixed assets
- xii. Letter issued by Shri PKP Spintex Mills Private Limited to State Bank of Mysore cash credit account medium term loan/ rate of interest dated 17.02.2011
- xiii. Agreement of Loan Cum Hypothecation dated 17.02.2011
- xiv. Supplemental Agreement of Loan Cum Hypothecation dated 17.02.2011
- xv. Letter from State Bank of Mysore to State Bank of India dated 28.02.2011
- xvi. Letter from State Bank of India to Shri PKP Spintex Mills Private Limited dated 05.03.2011
- xvii. Certificate of Utilisation of funds issued by Shri PKP Spintex Mills Private Limited dated 25.10.2011
- xviii. Letter from Shri PKP Spintex Mills Private Limited to State Bank of India dated 05.11.2011

List of Documents for loan amount of Rs.1,00,00,000/-

- i. Letter issued by the Shri PKP Spintex Mills Private Limited to State
- ii. Bank of Mysore dated 28.07.2011
- iii. Sanction letter issued by State Bank of Mysore to the Shri PKP Spintex Mills Private Limited dated 23.12.2011
- iv. Letter from Shri PKP Spintex Mills Private Limited to State Bank of India dated 05.02.2012
- v. Inter Se Agreement among State Bank of Mysore and State Bank of India
- vi. Board Resolution passed by the Shri PKP Spintex Mills Private Limited dated 17.08.2012
- vii. Joint Deed of Hypothecation by Shri PKP Spintex Mills Private Limited in favor of State Bank of India dated 17.08.2012
- viii. Revival Letter issued by the Corporate Debtor in favour of State Bank of India dated 17.08.2012
- ix. Working Capital Consortium Agreement executed by the Shri PKP Spintex Mills Private Limited and State Bank of Mysore dated 17.08.2012
- x. Letter of Authority authorizing the lead bank to make the first disbursement on behalf of other consortium member banks dated 17.08.2012
- xi. Letter of Authority to lead bank dated 17.08.2012



List of Other Documents

- i. Letters confirming the Deposit of Title Deeds executed by P.K Pounraj to State Bank of India dated 11.08.2010
- ii. Memorandum of Deposit of Title Deeds registered as Document No. 3076 of 2010 executed by P.K. Pounraj and P.Thilagavati dated 24.09.2010
- iii. Memorandum of Deposit of Title Deeds registered as Document No. 4182 of 2010 executed by Shri PKP Spintex Mills Private Limited dated 24.09.2010
- iv. Demand Notices issued to Shri PKP Spintex Mills Private Limited dated 03.07.2014
- v. Demand Notices issued to P.K. Pounraj and P.Thilagavati dated 03.07.2014
- vi. Demand Notices issued to P.K. Pounraj dated 03.07.2014
- vii. Representation/objection to the Demand notice by Shri PKP Spintex Mills Private Limited dated 02.09.2014
- viii. Reply issued by State Bank of India to objections raised by the Shri PKP Spintex Mills Private Limited dated 16.09.2014
- ix. Assignment Agreement executed between State Bank of Mysore and Asset Reconstruction Company India Limited dated 30.09.2014
- x. Settlement letter issued by the Shri PKP Spintex Mills Private Limited dated 08.06.2015
- xi. Letter issued by the Applicant to Shri PKP Spintex Mills Private Limited dated 10.06.2015
- xii. Settlement letter from Shri PKP Spintex Mills Private Limited to Applicant dated 30.09.2015
- xiii. Settlement letter from Shri PKP Spintex Mills Private Limited to Applicant dated 14.03.2016
- xiv. Settlement letter from Shri PKP Spintex Mills Private Limited Applicant dated 01.07.2016
- xv. Settlement letter from Shri PKP Spintex Mills Private Limited to Applicant dated 22.07.2016
- xvi. Letter issued by Shri PKP Spintex Mills Private Limited to the Corporate Debtor dated 26.09.2018
- xvii. Letter issued by Shri PKP Spintex Mills Private Limited to the Corporate Debtor dated 23.11.2018
- xviii. Settlement letters given by Shri PKP Spintex Mills Private Limited to State Bank of India dated 15.01.2019
- xix. Settlement letters given by Shri PKP Spintex Mills Private Limited to the Applicant dated 26.12.2019
- xx. Settlement letters given by Shri PKP Spintex Mills Private Limited to the Applicant dated 26.12.2019
- xxi. Reply letter given by the Applicant dated 02.01.2020
- xxii. Recovery Certificate issued by Debts Recovery Tribunal III in DRC No 701 of 2017 in OA No 443 of 2015 dated 28.11.2017

FACTUAL BACKGROUND OF THE CASE:

7. It is submitted by the Learned Counsel for the Financial Creditor that the Corporate Debtor initially availed financial facilities from the State Bank of India. In the year 2010, the Corporate Debtor availed Term Loan to the tune of Rs 12 Crores from State Bank of Mysore. In order to secure the said loan the Corporate Debtor executed various financial documents which includes agreement of guarantee, agreement of hypothecation, Letter of Undertaking, etc. The mortgage created in favour of State Bank of India has been extended to the loan availed from State Bank of Mysore also.

8. Thereafter, in 2011 the Corporate Debtor availed Rs 1 Crore from State Bank of Mysore. Further, the Corporate Debtor also executed mortgaged deed dated 24.09.2010 in favour of State Bank of Mysore. Therefore, the total amount of debt granted is 13 Crores and the details of disbursement is reproduced in the tabular format hereunder:

DATE OF DISBURSEMENT	AMOUNT (Rs.)
14.09.2010	12.00 Crores
28.07.2011	1.00 Crore
TOTAL	13.00 Crores

9. It is averred in the application that the operation and conduct of the account was irregular with respect to servicing of interest and repayment of principal. The account of the Corporate Debtor was

declared as a Non-Performing Asset on 01.12.2012. As per the Notice, dated 03.07.2014, issued by the State Bank of Mysore under Section 13(2) of SARFAESI Act, 2002, the amount of default as on 30.06.2014 to State Bank of Mysore, Salem was:

- a) Rs.1.99,66,578 (Rupees one crore ninety-nine lakh sixty-six thousand five hundred and seventy-eight only in respect of cash credit facility.
- b) Rs.16,14,75,786 (Rupees sixteen crores fourteen lakhs seventy five thousand seven hundred and eighty six only) in respect of Term Loan -1 facility. Total amount of default as on 30.06.2014 was Rs 18,14,42,364 (Rupees Eighteen crores fourteen lakhs forty two thousand three hundred and sixty four only) and the copy of Notice, dated 03.07.2014 issued by the Applicant under Section 13(2) of SARFAESI Act, 2002 is annexed as Document No 50 to 52 of the application typeset. The objection raised by the Respondent and the reply issued is filed as Document No 53 and 54 of the application typeset.

10. The State Bank of Mysore vide assignment deed dated 30.09.2014 has assigned the debts in favour of the Applicant herein viz. ARCIL and the same is annexed as Document No.55 of the application typeset.

11. Thereafter, the Corporate Debtor approached the Applicant for settlement and issued various letters dated 02.09.2014, 08.06.2015, 14.03.2016, 01.07.2016, 26.09.2018 and 26.12.2019 acknowledging

the liability and the same is annexed as Document No 56 to 68 of the application typeset.

12. It is further averred in the application that Since, the outstanding dues have still not been paid by the Corporate Debtor to the Financial Creditor namely ARCIL as on 12.02.2021 a sum of Rs 59,51,29,538/- (Rupees Fifty Nine Crore Fifty One Lakhs Twenty Nine Thousand Five Hundred and Thirty Eight Only) is due and recoverable from the Corporate Debtor along with pendent-lite and future interest as per the loan documents.

COUNTER FILED BY THE RESPONDENT:

13. The Learned Counsel for the Respondent had filed a counter wherein it was stated that the present application filed by the applicant is barred by limitation and hence it is not maintainable and liable to be dismissed.

14. The main bone of contention of the Respondent is that the Applicant/ Financial Creditor has not mentioned the date of default in Form -1 of the Application. For this, the applicant placing heavy reliance on the catena of decisions of the Hon'ble Supreme Court in the matter of ***Gaurav Hargovindbhai Dave vs Asset Reconstruction Company (India) Limited and Anr 2019 (10) SCC 572, Jignesh Shah vs Union of India 2019 (10) SCC 750, Sagar Sharma vs***

Phoenix Arc Pvt Ltd. 2019 (11) SCC 633, Babulal Vardharji Gurjar vs Veer Gurjar Aluminium Industries Private Limited and Anr 2020 (15) SCC 1 and Vashdeo R Bhojwani vs Abhyudaya Co-Operative Bank Limited and Anr. 2019 (9) SCC 158 has held that held that the period of Limitation for Section 7 or 9 and Applications under the Insolvency and Bankruptcy Code 2016 would be governed by Article 137 of the Limitation Act, 1963. Therefore, even if the date of default is taken to be the last of the two dates, when the account of the Corporate Debtor was classified as NPA, i.e. 27.01.2013, then also it is clear that default occurred prior to 27.01.2013. As per Article 137 of the Limitation Act, three years period of Limitation ended on 26.01.2016. However, this Application is filed on 23.06.2021, i.e. beyond three years from the time, when account of the Corporate Debtor was classified as NPA on 27.01.2013.

REJOINDER FILED BY THE APPLICANT :

15. The Learned Counsel for the Applicant had filed the rejoinder wherein it was stated in para 9 that the Respondent vide letter dated 23.11.2018 agreed to pay 13.5 crores as OTS and the said proposal of the Respondent was accepted by the applicant by its Sanction letter dated 23.11.2018. Thereafter, the Respondent was called upon to pay Rs. 1.35 crores within 7 days of issuance of the said letter out of the OTS amount of Rs.13.5 Crores, and the remaining amount to be paid from 30.11.2018 to 31.03.2019.

16. It was further averred in para 11 of the rejoinder that the Respondent has failed to honour the commitment as stipulated in the Sanction letter and hence the date of default was revoked on 15.01.2019. Thus the date of default by the Respondent is 30.11.2018 by which date the Respondent has failed to make the payment as agreed.

17. The Learned Counsel for the Applicant further submitted that the Respondent has admitted their liability and has committed default whenever he was asked to make the payment. The following are the events in which the Corporate Debtor committed default and the is reproduced in the tabular format:

S.No.	DATE	PARTICULARS	EXTENSION OF LIMITATION
1	17.08.2012	Working capital consortium Agreement executed by Shri PKP Spintex Mills Private Limited and State Bank of Mysore	
2	27.01.2013	State Bank of Mysore declared the accounts as NPA	3 Year expires on 26.01.2016
3	08.06.2015	The Respondnet gave proposal for one time settlement. The Respondent agreed to pay Rs.10 Crores. The letter reads as follows: "Hence we again inform you that we are very much interested in settling the dues and we will pay an amount of Rs.10 Crores (Ten Crores) as one time settlement amount to be payable within a period of 1 year"	Extended to 07.06.2018

4	30.09.2015	Respondent was requested to improve the offer	
5	14.03.2016	Respondent gave offer for Rs.11 crores	Extended to 15.03.2019
6	22.07.2016	The Respondent admitted that they could not honour their commitment. The letter reads as follows: "However due to certain economic factors which were beyond our control we could not honour the commitments"	
7	26.09.2018	The Respondent agreed to make Rs. 13.50 Crores as one-time settlement. As per the said letter the Respondent to make 1.35 Crores immediately on sanction of OTS and remaining Rs. 12.15 Crores by March 2019.	Extended to 25.09.2021
8	23.11.2018	Applicant agreed to the proposal and requested the Respondent to make Rs.1.35 Crores within 7 days of the said letter and remaining amount to be paid between 30.11.2018 and 31.03.2019.	
9	15.01.2019	The Respondent committed default and the sanction was revoked by the Applicant	
10	26.12.2019	The Respondent again approached for one-time settlement and agreed to pay Rs.9.85 crores s one -time settlement	Extended to 25.12.2022
11	02.01.2020	The Applicant requested the Respondent to make 15% of the total settlement amount. The Respondent did not make the said payment.	

18. It was further averred in the rejoinder that the last default was committed on 30.11.2018 when the Respondent failed to make the payment as per settlement letter dated 26.09.2018 and 23.11.2018 and on 02.01.2020 when the Respondent did not come

forward to make 15% of the settlement amount. It is relevant to point out that the present application is filed on 23.06.2021 and therefore it is not barred by limitation.

19. The Learned Counsel for the Applicant has placed heavy reliance on the decision of Hon'ble Supreme Court in the matter of ***Dena Bank (Now Bank of Baroda) vs C.Shivakumar Reddy and others*** and the Hon'ble NCLAT, New Delhi in the matter of ***Hussan Kadri vs Edelweiss Asset Reconstruction Company Ltd and others*** has clearly held that the offer of OTS will be construed as an acknowledgment to attract Section 18 of the Limitation Act. Thus it is clear that Application filed by the Applicant is within the period of Limitation.

FINDINGS OF THIS TRIBUNAL:

20. Heard the submissions made by the Learned Counsel for both the parties and perused the records including the pleadings placed on record. It is seen from the records that on 26.09.2018 the Corporate Debtor had given a OTS proposal the Respondent to make a payment of Rs.1.35 Crores within 7 days of the said letter and remaining amount to be paid between 30.11.2018 and 31.03.2019. Further on 23.11.2018, the said OTS Proposal was agreed by the Applicant and requested the Respondent to make a payment of Rs.1.35 crores within



7 days of the said letter and remaining amount to be paid between 30.11.2018 and 31.03.2019.

21. In continuum, it is further seen from the records that on 15.01.2019 the Respondent committed default and the sanction was revoked by the Applicant. This manifestly made clear that there is a case of debt and default on the part of the Corporate Debtor. Hence, this Tribunal after comprehensively hearing the said matter is of the view that, the debt and default had been proven beyond reasonable doubt and the application filed by the applicant is well within the limitation period.

22. With regard to the limitation aspect it is pertinent to mention the Hon'ble Supreme Court Judgement in the matter of **Dena Bank(now Bank of Baroda) vs C.Shivakumar Reddy and Anr.** wherein it was held in para 126, 127 and 141 of the Judgement as follows:

126. The finding of the NCLAT that there was nothing on record to suggest that the 'Corporate Debtor' acknowledged the debt within three years and agreed to pay debt is not sustainable in law, in view of the Statement of Accounts/Balance sheets/Financial Statements for the years 2016-2017 and 2017-2018 and the offer of One Time Settlement referred to above including in particular, the offer of One Time Settlement made on 3rd March, 2017.

127. Section 18 of the Limitation Act speaks of an Acknowledgment in writing of liability, signed by the party against whom such property or right is claimed. Even if the writing containing the acknowledgment is undated, evidence

might be given of the time when it was signed. The explanation clarifies that an acknowledgment may be sufficient even though it is accompanied by refusal to pay, deliver, perform or permit to enjoy or is coupled with claim to set off, or is addressed to a person other than a person entitled to the property or right. 'Signed' is to be construed to mean signed personally or by an authorised agent....

141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In *Gaurav Hargovindbhai Dave* (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.

23. Apropos, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited**, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

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 speed 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 incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence 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 that the adjudicating authority may reject an application and not otherwise.

24. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

25. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

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

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted

under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

26. However during the pendency of 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

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

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

27. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (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.

28. The Financial Creditor has proposed the name of **Santhanam Rajashree, (Email id: rajashrees66@gmail.com), Reg. No. IBBI/IPA-002/IP-N00330/2017-18/10935** as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person holds valid Authorization for Assignment till 02.12.2022.

29. **Santhanam Rajashree** is appointed as the IRP and is directed to take charge of the Corporate Debtor's management immediately.

The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

30. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

31. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

32. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated

to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

33. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

34. Accordingly, the present petition stands **admitted**.



SAMEER KAKAR
MEMBER (TECHNICAL)



JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Sriram Ananth V