IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –II, CHENNAI

CP(IB)/30(CHE)/2021

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of **RAM CHARAN COMPANY PRIVATE LIMITED**

RUBAMIN PRIVATE LIMITED
CIN: U24299GJ1987PTC009942
Reg. off:-
"ARK", 4th Floor,
Shri Krishna Industrial Estate,
Opp. BIDC, Gorwa, Vadodara – 390 016
Gujarat ... Applicant/ Operational creditor

-Vs-

RAM CHARAN COMPANY PRIVATE LIMITED
CIN: U51909TN2012PTC085868
Reg. off:-
No. 505, 5th Floor, Delta Wing,
Raheja Towers Old no. 113-134,
New no. 177, Anna Salai,
Chennai – 600 002
Tamil Nadu ... Respondent/ Corporate Debtor

Along with

IA/762(CHE)/2021 IN CP(IB)/30(CHE)/2021

(filed under Section 4 read with Section 65 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016)

RAM CHARAN COMPANY PRIVATE LIMITED
CIN: U51909TN2012PTC085868
... Applicant/ Corporate Debtor

-Vs-

RUBAMIN PRIVATE LIMITED
CIN: U24299GJ1987PTC009942
... Respondent/ Operational creditor

CORAM

DR. DEEPTI MUKESH, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Operational Creditor : Shashvata Shukla

For Corporate Debtor : *K. Gaurav Kumar, PCS*
Alpha Jain, PCS

Order Pronounced on ***13th December 2022***

<u>ORDER</u>

Per: **DR. DEEPTI MUKESH, MEMBER (JUDICIAL)**

CP(IB)/30(CHE)/2021 is an Application filed by one **RUBAMIN PRIVATE LIMITED** (hereinafter referred to as "Operational Creditor") on 10.03.2021, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **RAM CHARAN COMPANY PRIVATE LIMITED** (hereinafter referred to as "Corporate Debtor") seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor

2. From *Part-I* of the Application, it is seen that the Operational Creditor is a Private Limited Company incorporated under The Companies Act, 1956 on 01.09.1987 with CIN: U24299GJ1987PTC009942. The registered office address of the Operational Creditor as per the Application is stated to be situated at "ARK", 4th Floor, Shri Krishna Industrial Estate, Opp. BIDC, Gorwa, Vadodara – 390 016 Gujarat.

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 14.05.2012 with CIN: U51909TN2012PTC085868. The

registered office of the Corporate Debtor as set out in the application is situated at No. 505, 5th Floor, Delta Wing, Raheja Towers Old no. 113-134, New no. 177, Anna Salai, Chennai – 600 002 Tamil Nadu. Further, Part-II lays down that One Mr. Ajay Upadhyay, Senior Manager-Taxation was authorised vide the Resolution passed in the Meeting of Committee of Managing Directors dated 21.09.2020, the same is placed at page 23 of the typed set filed along with the Application.

4. From *Part-III* of the Application, it is seen that the Operational Creditor has not proposed the name of any Insolvency Professionals for appointment as Interim Resolution Professional.

5. From *Part-IV* of the Application, it is seen that the Operational Creditor has claimed dues as follows;

S. No.	**Particulars**	**Amount**
1	Principal Amount due	**Rs. 98,38,558/-**

with further 18% interest from the due date of invoices till the date of payment. The details of outstanding principal along with the interest as on 23.09.2020 is as extracted hereunder, Customer Codes: 1778, 1787 1858, 2118

DETAILS OF OUTSTANDING AMOUNT AND INTEREST FROM RAM CHARAN COMPANY PRIVATE LTD AS ON 23rd SEPTEMBER , 2020

Sr. No.	SAP Invoice No	GST Invoice No	Invoice/Document Date	Financial Year	SAP Document No	Invoice Amt (INR)	Invoice Amt Outstanding (INR)	Interest Amt (INR) (@18% pa on outstanding invoice amt for overdue days)	Due Date	Overdue in days	Customer Code in SAP	Remarks	Overdue Ageing
1	158080	N10000001165	26 March 2019	2018-19	1800006727	914,500.00	0.00	0.00	25 May 2019	487	2118	Nil balance against invoice No N1-1165 as on date , after adjusting credit note of Rs. 803,250/- and adhock Rs.100,000/- received on 12/12/2019 & Rs.11,250/- (out of Rs. 50,000/-) received on 31/08/2020.	181 Days or More.
	143025	30026222	20 March 2017	2016-17	1600005469	-803,250.00					1787	Sales return against invoice No 0000143025 Dt 30/11/2016- adjusted against due on FIFO basis	
	158080		12 December 2019	2019-20	1914003152 & 1947000513	-100,000.00					2118	Rs.100,000/- received on 12/12/2019 adjusted on FIFO basis of due for interest calculation	
			31 August 2020	2020-21		-11,250.00						Received Rs. 50,000/- on 31 August 2020, Adjusted on FIFO basis	
2	158089	N10000001174	25 March 2019	2018-19	1800006801	72,570.00	33,820.00	8,072.32	28 May 2019	484	1778	Rs.8077.32 outstanding against invoice No N1-1174 after adjusting Rs.37,820/- out of Rs. 50,000/- received on 11/08/2020	181 Days or More
			31 August 2020	2020-21		-38,750.00						Received Rs. 50,000/- on 31 August 2020, Adjusted on FIFO basis	
3	158312	N10000000014	06 April 2019	2019-20	1900000061	362,850.00	362,850.00	85,175.31	05 June 2019	476	1778		181 Days or More
4	158391	N10000000100	30 April 2019	2019-20	1900000507	731,600.00	731,600.00	163,076.65	29 June 2019	452	2118		181 Days or More
5	437454	HL0000000604	27 May 2019	2019-20	1900000952	111,510.00	111,510.00	23,371.27	26 July 2019	425	1858		181 Days or More
6	158483	N10000000195	03 June 2019	2019-20	1900001064	708,000.00	708,000.00	145,944.99	02 August 2019	418	2118		181 Days or More
7	158542	N10000000261	20 June 2019	2019-20	1900001412	362,850.00	362,850.00	71,754.83	19 August 2019	401	1778		181 Days or More
8	158583	N10000000307	03 July 2019	2019-20	1900001640	3,776,000.00	3,776,000.00	722,509.15	01 September 2019	388	1858		181 Days or More
9	437765	HL0000001134	13 July 2019	2019-20	1900001832	3,322,880.00	3,322,880.00	619,421.25	11 September 2019	378	1858		181 Days or More
10	158621	N10000000352	16 July 2019	2019-20	1900001857	357,540.00	357,540.00	66,120.41	14 September 2019	375	1778		181 Days or More
11	158667	N10000000400	02 August 2019	2019-20	1900002110	71,508.00	71,508.00	12,624.59	01 October 2019	358	1778		181 Days or More
			TOTAL			9,838,558.00	9,838,558.00	1,918,070.77					
						9,838,558.00							

As on date	23 September 2020

Total outstanding invoice Amount	9,838,558.00
Interest	1,918,070.77
	11,756,628.77

6. *Part-V* of the Application describes the particulars of the Financial Debt, list of documents as annexed with the typed set filed are as follows,

- *a) Ledger Account of the Corporate Debtor in the books of the OC*
- *b) Copies of Purchase orders*
- *c) Copies of 11 unpaid invoices drawn against respective purchase orders*
- *d) A copy of balance confirmation letter by the Corporate Debtor*
- *e) Copies of 3 dishonoured part payment cheques*
- *f) Copy Demand Notice in Form -3 & Form – 4*

g) Reply notice from Corporate Debtor dated 13.10.2020

h) Copies of legal notices

7. SUBMISSIONS MADE BY THE OPERATIONAL CREDITOR

7.1. The Learned PCS for the Applicant Company submitted that the Corporate Debtor had purchased various products of zinc derivate under multiple tax invoices during 2019 from the Operational Creditor. It is further submitted that there are eleven unpaid invoices and the last invoice is dated 02.08.2019. The credit terms as included in each of the invoice is 60 days from the date of receipt and that the payment made post the due date will be charged interest at the rate of 18%.

7.2 The Learned PCS for the Applicant Company had further submitted that the representatives of the Corporate Debtor herein had issued three cheques towards the payment of the outstanding dues and that to their dismay the cheques issued were dishonoured. The details of the cheques issued are as follows,

S. No.	Date of Issuance of Cheque	Cheque No.	Amount (in Rs.)	Cheque Returned on
1	07.02.2020	986844	10,00,000	**10.02.2020**
2	12.02.2020	986845	10,00,000	**14.02.2020**
3	16.02.2020	986846	10,45,998	**19.02.2020**

The copies of the above mentioned cheques along with the return memos are attached between pgs. 73-79 of the Part-I of the typed set of papers filed along with the application.

7.3 Thereafter Notices of Demand under the provisions of Negotiable Act, 1881 dated 09.03.2020 were addressed to the Corporate Debtor and its directors demanding the payment against the respective cheques issued and the total outstanding dues.

7.4 It is further submitted that owing to non-receipt of the outstanding dues from the Corporate Debtor, the Operational Creditor had thereafter sent demand notice under Form 3 & Form 4 vide e-mail dated 15.10.2020. In response to the same, the Corporate Debtor in its reply e-mail dated 17.10.2020 had expressed their willingness to pay the outstanding and assuring that they will send the schedule of payments at the earliest.

7.5 It is further submitted since the Corporate Debtor had not released any payment towards the outstanding dues, the applicant herein had approached this Adjudicating Authority on 01.03.2021 under section 9 of the I&B Code, 2016 for initiation of Corporate Insolvency Resolution Process.

8. SUBMISSIONS MADE BY THE CORPORATE DEBTOR

8.1. The Corporate Debtor has not filed any reply to the petition in CP(IB)/30/(CHE)/2021 despite sufficient opportunities. However, has filed a memo dated 28.07.2022. It is submitted that the Authorised officer lacks locus standi to enter appearance on behalf of the applicant company by virtue of the board resolution passed referring that the representative is not authorised to initiate action before this Adjudicating Authority, and that the principal amount is below the threshold of Rs. 1 crore as mandated in the I&B Code, 2016.

8.2 The Corporate Debtor further submitted that the copies of invoices and purchase orders produced by the Operational Creditor is invalid as the said invoices does not hold seal and sign of the Operational Creditor and vice versa in case of the purchase order.

8.3 The Corporate Debtor had submitted that the locus of the applicant herein is put to question since the amount claimed here is already recovered from the Insurance Company by the Operational Creditor.

8.4 In relation to the said context an interlocutory application being IA/762(CHE)/2021 was filed by the Corporate Debtor under section 4 read with 65 of the I&B Code, 2016 seeking dismissal of CP(IB)/30(CHE)/2021 as fraudulent and malicious submitting that the debt was settled by the insurance company and that they have also obtained right of subrogation. The Operational Creditor had filed their reply to the said Interim application and had submitted that, the insurance company did not obtain any rights of subrogation. Be that as it may, it is further submitted that on partial reimbursement, no right of subrogation shall flow to the insurer company and that the operational creditor shall enjoy all the rights to claim the payment. In other words, it is that the no assignment of debt was done by the operational creditor as such it was only an indemnity.

8.5 In light of the above statements the Ld. PCS for the Corporate Debtor had referred relevant citations praying that the instant application in CP(IB)/30(CHE)/2021 must be dismissed for the above discussed reasons.

8.6. The Operational Creditor by way of a reply affidavit had countered each and every paragraph of the interim application and the common objections raised by the Corporate Debtor.

9. ANALYSIS AND FINDINGS OF THIS TRIBUNAL

9.1. The matter was heard in detail on 07.11.2022, It is seen that during the pendency of the instant main company petition, the Respondent has filed an interim application stating that the instant application is filed fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, both the matter were argued and thus orders were reserved.

9.2. We have heard the submissions made by the Learned PCS for both the parties and have also meticulously gone through the documents filed by both the parties.

9.3. 9.9 At this Juncture, it is necessary to mention that, a series of applications under section 7/9 of I&B code, 2016 have been filed against the Corporate Debtor herein before this Tribunal's Division Bench –I. An order Admitting the Corporate Debtor into CIRP was passed in CP(IB)/157/(CHE)/2021 on 21.04.2022.

Based on such an Admission order, another matter in CP(IB)/79(CHE)/2021 was closed with a direction to the applicant to file its claim before the IRP appointed in CP(IB)/157/(CHE)/2021. Thereafter, on 21.06.2021, a 'dismissed as withdrawn' was passed in IA/553/(CHE)/2022 in CP(IB)/157/(CHE)/2021 since the matter was settled between the parties.

9.4 On perusal of the order in CP(IB)/157/(CHE)/2021 it is seen that Mr. K. Gaurav Kumar, PCS & Ms. Alpha Jain, PCS had appeared for the Financial Creditor i.e., M/s. Classic Exports, against the same Corporate Debtor. Thereupon, in an appeal before the Hon'ble NCLAT against the order passed in CP(IB)/157/(CHE)/2021 dated 21.04.2022 it is seen that Ld. PCS Mr. K. Gaurav Kumar had appeared for M/s. Classic Exports. Be it as it may, to our appal in the instant matter the duo PCS has entered appearance for the Corporate Debtor. This indirectly expresses that the conduct of the duo PCS is denounced for their impropriety.

9.5 On mere perusal of Section 8 & 9 of IBC 2016, it is patently clear that when there is an undisputed debt and a default in payment thereof, the Operational Creditor is entitled to trigger CIRP. On the other hand if the claim of the Operational Creditor is undisputed and the operational debt remains unpaid CIRP must commence. Thus, this Adjudicating Authority is required to see as to whether there is any 'Operational debt' and whether the Corporate Debtor has committed any 'default' in repayment of such 'debt'.

9.6. As to the present case, it is seen from the detailed outstanding amount due as on 23.09.2020 that the total principal amount is Rs. 98,38,558/- and the interest Rs. 19,18,070.77/- collectively to the tune of Rs. 1,17,56,628.77/- as per Exhibit 1 filed in part II of the typed set of papers filed along with the application at pg. no. 39. Thus, this Adjudicating Authority is satisfied that the amount due and payable is beyond the minimum threshold of Rs. 1,00,00,000/-. At this juncture, we rely upon the Order passed by the Hon'ble NCLAT, Principal Bench in Company Appeal (AT) (Ins) No. 690 of 2022 in which it has held that,

> *"Since, interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for "right to payment" (Section 3(6) IBC) and therefore will form part of "debt" (Section 3(11) IBC)*
>
> *(vi) It is, therefore, clear from these facts that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself. It is noted that the total principal debt amount of Rs. 97,87,220/- along with interest the total debt makes total outstanding as Rs. 1,60,87,838/- . Thus, the total debt outstanding of OC is above Rs. 1 crore as per requirement of Section 4 IBC read with notification No. S.O 1205 (E) dated 24.3.2020 (Supra), and meets the criteria of Rs. 1crore as per Section 4 of IBC and Application is therefore maintainable in present case.*
>
> *We concur with the orders of Adjudicating Authority on this issue also.*

(vii) We, therefore, do not find any merit in the present appeal and dismiss the same."

In the present case, the tax invoices attached along with the application clearly shows that the delayed payments are charged interest at the rate of 18%. A copy of invoice is as extracted hereunder,

Tax Invoice

(Under Section 31 of the CGST Act, 2017 & Rule 46 of the CGST Rules, 2017) Quadruplicate for Suppl

Name	Rubamin Limited	Invoice No.	N10000000400
Address	Plot No.100 & C-1-B/113,85,86A & 86B Nandesari Notified Area, GIDC Nandesari Dist. Vadodara - 391340 , Gujarat	Invoice Dt.	02.08.2019
GSTIN	24AAACR8758H1Z4 PAN No. : AAACR8758H	Place Of Supply	(19) West Bengal
CIN No.	U24299GJ1987PLC009942		

Details of the Receiver (Billed to)

Name	Ram charan Company Private Limited
Address	P - 48, TRANSPORT DEPORT ROAD., NEAR TARATALLA, KOLKATTA KOLKATTA, Postal Code : 700088
State	West Bengal Country : India
State Code	19
GSTIN/Unique Id	19AAGCR0435H1ZF PAN No. : AAGCR0435H

Details of the Consignee (Shipped to)

Name	Ram charan Company Private Limited
Address	P - 48, TRANSPORT DEPORT ROAD., NEAR TARATALLA, KOLKATTA KOLKATTA, Postal Code : 700088
State	West Bengal Country : India
State Code	19
GSTIN/Unique Id	19AAGCR0435H1ZF PAN No. : AAGCR0435H

Sr. No.	Description of Goods	HSN	Qty.	Unit	Rate (Per Item)	Total Amount	Dis count	Taxable value	CGST Rate	CGST Amt	SGST Rate	SGST Amt	IGST Rate	IGST Amt
1	ZINC OXIDE ACTIVE	28170010	300.000	KG	202.00	60,600.00	0.00	60,600.00	0.00	0.00	0.00	0.00	18.00	10,908.0
	Freight		0.00	INR										
	Insurance		0.00	INR										
	P & F charges/Others		0.00	INR										
	Total			INR		60,600.00				0.00		0.00		10,908.0

Total Invoice Value (In Figure) : INR 71,508.00
Total Invoice Value (In Words) : RUPEES SEVENTY ONE THOUSAND FIVE HUNDRED EIGHT

GST Payable on Reverse Charge : No

Customer PO No	POD/CHN/1920/00298 Dt. 08.07.2019	LC No	Dt.
LR No.	VDR 18124 / 02.08.2019	Despatch Through	Hari Om Freight Carriers Pvt. Ltd.
Test Cert. No.	373 Dt. 02.08.2019	Payment Terms	CREDIT - WITHIN 60 DAYS OF DISPATCH
Freight	TO PAY	Due On	01.10.2019
Vehicle Reg. No.		No. of Packages	12 BAGS OF 25 KGS EACH
Inco terms	EXW Nandesari		
Mode of Transport	Road		
Our Reference No.	168687		
Remarks			

For Rubamin Limited

Authorised Signatory
Date 02.08.2019

Declaration : We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.
Note : 1. No Quality And Quantity Claim Will Be Entertained After 7 Days Of Delivery At Your Place.
2. Interest at the rate of 18% will be charged after Due Date.

Please remit the payments to Bank Details mentioned below :

Beneficiary Name	*Rubamin Limited*
Name of Bank	*STATE BANK OF INDIA*
Bank Branch	*INDUSTRIAL FINANCE BRANCH (Branch Code : 0001946)*
Address	*3rd & 4th FLOOR MID TOWN HEIGHTS, , JETALPUR ROAD, VADODARA - 390007*
Bank Account Type	*CASH CREDIT Bank Account Number : 10565103408*
IFSC / RTGS / NEFT Code	*SBIN0001946*

Principal Place of Business : "ARK", 4th Floor, Sub-Plot No.1, of Plot No. A/27, 28 & B/29 - 32 Part, Shree Krishna Industrial Estate, Opp. BIDC, Gorwa,

9.7. Upon perusal of the documents filed along with the applications, more particularly the reply to the demand notice dated 17.10.2020 the Corporate Debtor has expressed its willingness for payment of the amount due and payable. The reply mail sent is as reproduced hereunder,

*"Dear sir,
We are in receipt of your communication and acknowledge receipt of your notice.*

We have already initiated alternative source of funding which should be uploaded in our working capital limits in due course.

This matter was delayed due to various approvals needed from statutory authorities which did not happen due to post covid staff jitters creating roadblocks in process flow of documentation process and this would have completed at the speedy process normally which would take just 4 weeks.

Helpless as we are due to this hurdle, it is our intension to pay. We request you to kindly await our message till middle of next week wherein we will inform you a proper schedule of payments which will be done soonest we are eligible to utilize this fresh working capital limit. This feedback is followed up and once this is done, we will bounce back to normalcy. Please not we are facing liquidity crises and the Company does not wish to delay further

*Thanking you for your understanding.
Divyesh A Palicha"*

9.8 During the course of arguments, the Ld. PCS for the Corporate Debtor had submitted that there is no proof for dispatch of goods and that the interest part was never agreed by the Corporate Debtor. From the Consignment notes attached along with the tax invoices it is evident that the goods were supplied by the Operational Creditor to the respective units who had placed purchase orders. Further, on perusal of the e-mail dated 02.03.2020 sent from the Corporate Debtor it is seen that they are making arrangements to make the payment with the overdue interest which express that the Corporate Debtor had agreed with the interest rate as stipulated. The extract of the said e-mail is as reproduced below,

Mayank Joshi

From:	Kaushik Pallcha [kp@ramcharan.org]
Sent:	Monday, March 2, 2020 6:16 PM
To:	mayank.joshi; haridoss@ramcharan.org; sriram.vn@ramcharan.org. krishnan@ramcharan.org
Cc:	'Pradeep Gupta'; 'Vijay Ajmeri'; shastri@ramcharan.org
Subject:	Re: Rubamin - Release overdue payments - by 03rd March,2020
Importance:	High

Dear Mr Joshi

Thank you for the mail .

We understand the considerable delay this transaction has caused upon you & appreciate the financial causes of the same. We understand from the finance department that we should be able to make partial payments in this week for you and should definitely be able to close the same.

The cheques were given to you for safekeeping towards the outstanding, as the entire amount was unsecured with us. We are committed to making the payment with the overdue interest and request you to bear with us in this regard.

Thanks

Kaushik

Ram Charan

9.9. It is seen from the arguments made by the Applicant that, no assignment of debt has been carried out in the instant case; the insurance entered by the Applicant herein is a mere independent contract to which the Corporate Debtor is not even a party. *Moreover, under an insurance contract if the insurer pays anything to the insured, **it is not an assignment**. During the course of hearing the Operational Creditor admitted that certain amounts were received by them from the insurance company. At this Juncture, it is to be noted that mere receipt of insurance claim does not absolves the Corporate Debtor of its liabilities and that the debt continues to stand in the pockets of the Corporate Debtor.* Since no assignment of debt was carried out and that it is only an indemnity in the hands of the insurance company, the defence taken by the Corporate Debtor doesn't take off as expected.

9.10 Be that as it may, not venturing into the insurance part, considering that the 'debt' and 'default' on the part of the Corporate Debtor is proved beyond reasonable doubt by way of their own acknowledgment and reply mail, as such it is a fit case for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

10. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Application, as filed by the Operational Creditor, is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between June 2022 - December 2022 appoints ***Mr.* KATHIRESAN NACHIMUTHU** with Registration Number **[IBBI/IPA-001/IP-P-01733/2019-2020/12795]** (E-mail ID:-kathir.fca@outlook.com) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. 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 Code and file his report within 20 days before this Bench. 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.

11. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the 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 the 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;

12. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) 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 the 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 arrangements 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.

13. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(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.

14. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** *(Rupees Two Lakh Only)* to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

15. Based on the above terms, the Application in **CP(IB)/30(CHE)/2021** stands **admitted** in terms of Section 9(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 Operational 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 is also furnished with a 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.

16. In view of the order in CP(IB)/30(CHE)/2021, **IA(IBC)/762(CHE)/2021** in CP(IB)/30(CHE)/2021 is **dismissed** and stands **disposed of.**

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Mohanapriya

Order pronounced under rule 151 of NCLT Rules 2016 by Dr. Deepti Mukesh, Member (Judicial) on behalf of the bench comprising of Dr. Deepti Mukesh, Member (Judicial) and Shri. Sameer Kakar, Member (Technical).

M. Nallamchceyal
(Court Officer)