

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH-II
KOLKATA
C.P (IB) No.1518/KB/2020**

*An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule
6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,
2016.*

In the matter of:

Aldous Commodities Private Limited [CIN U51109WB1994PTC065331],
having its registered office at 720/2, Block-P, New Alipore, Kolkata-700053, West
Bengal.

... Operational Creditor

Versus

Aanchal Ispat Limited [CIN:L27106WB1996PLC076866] having its registered
office at Mouza- Chamarail National High way 6, Liluah, Howrah -711114.

... Corporate Debtor

**Date of hearing : 09/06/2023
Order Pronounced on : 12 /09/2023**

Coram:

Ms. Bidisha Banerjee, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Counsels appeared through Video Conference

<i>For the Operational Creditor</i>	:	Mr. Abhrajit Mitra, Sr. Adv.
	:	Mr. D. N. Sharma, Adv.
	:	Ms. Nairanjana Ghosh, Adv.
	:	Mr. Saptarshi Kar, Adv.

For the Corporate Debtor : Mr. Ratnanko Banerji, Sr. Adv.
: Mr. Jishnu Chowdhury, Adv.
: Ms. Urmila Chakraborty, Adv.
: Mr. Pranav Sharma

ORDER

Per: Balraj Joshi, Member (Technical)

1. The Court convened via hybrid mode.
2. This petition under section under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by Mr. Naresh Kumar Agarwal, Director, Aldous Commodities Private Limited (***‘Operational Creditor’***) duly authorised *vide* Board Resolution dated 05 December, 2020 to initiate Corporate Insolvency Resolution Process (***‘CIRP’***) against Aanchal Ispat Limited (***‘Corporate Debtor’***).
3. The total amount of debt is stated to be Rs.2,56,04,955/- (Rupees Two Crore Fifty Six Lakh Four Thousand Nine Hundred Ninety Five only) comprising of the outstanding principal sum of Rs.1,82,39,863/- and interest component of Rs.73,65,132 calculation on the principal sum @ 18% per annum up to December 5, 2020. No date of default has been mentioned in the Section 9 petition.
4. Part – I of the Application contains the details of the Operational Creditor. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.22,00,00,000/- (Rupees Twenty Two Crore only) with paid-up capital as Rs.20,85,37,500/- (Rupees Twenty Crore Eighty Five Lakh Thirty Seven Thousand Five Hundred only). Part – III of the Application contains the details of the Interim Resolution Professional to be appointed. The details of transactions are mentioned in part – IV of the application along with documents.

5. *Submissions by the Ld. Sr. Counsel appearing on behalf of the Operational Creditor.*

- 5.1 The Operational Creditor is, inter alia, engaged in the business of trading of iron and steel products, and the Corporate Debtor had engaged the Operational Creditor, for purchasing semi-finished steel products i.e. MS Ingot and MS Billet from time to time on terms and conditions mutually agreed between the parties.
- 5.2 Thereafter, between the period April, 2018 to October, 2018, the Operational Creditor sold and supplied the semi-finished steel products to the Corporate Debtor and such supplies were delivered at the factory of the Corporate Debtor at prices agreed between the parties.
- 5.3 Such supplies of semi-finished steel products were all accepted by the Corporate Debtor in good order and condition at the factory of the Corporate Debtor and appropriated and utilized by the Corporate Debtor for profit.
- 5.4 The Operational Creditor thereafter raised various Invoices from time to time against such supply of semi-finished steel products aggregating to a sum of Rs. 7,43,94,643/-. Such Invoices were received by the Corporate Debtor without raising any dispute as to their correctness at the material time or at any material time thereafter
- 5.5 In acknowledgement of its liability, the Corporate Debtor made part payments towards the amounts covered under the Invoices to the Operational Creditor from time to time.
- 5.6 Around November 2018, the Corporate Debtor handed over 7 Post Dated Cheques to the Operational Creditor of RS. 15,00,000/- each aggregating to a sum of Rs. 1,05,00,000/-. However, when the Operational Creditor deposited one of the cheques bearing no. 000266 dated November 26, 2018 drawn on Karur Vysya Bank Limited, the cheque was dishonored and the reason stated in the Bank Return Memo was 'Funds Insufficient'.
- 5.7 Such dishonor of cheque was informed to the Corporate Debtor and the Corporate Debtor requested the Operational Creditor to return the remaining 6

cheques to them and they would RTGS the payment to the bank account of the Operational Creditor.

- 5.8 Thereafter, the Corporate Debtor had sent a ledger confirmation to the Operational Creditor, wherein it was seen that a sum of Rs. 1,05,00,000 /- was shown to have been allegedly paid to the Operational Creditor. The sum of Rs. 1,05,00,000/- related to the 7 cheques which were issued to the Operational Creditor by the Corporate Debtor but were never realized and no payments received under the above cheques.
- 5.9 Such issue was taken up with the Corporate Debtor, wherein the Corporate Debtor admitted that this was an error and their error in the accounts shall be corrected. The Corporate Debtor continued to make on-account payments to the Operational Creditor and till January 18, 2019, had paid a total sum of Rs. 5,21,54,780/- to the Operational Creditor leaving a sum of Rs. 2,22,39,863/ - due, payable and outstanding.
- 5.10 Thereafter, after several requests and reminders, the Corporate Debtor made a further payment of Rs.30,00,000/- to the Operational Creditor with an assurance that the Corporate Debtor would make full payment of the dues of the Operational Creditor.
- 5.11 On receipt of such sum, an aggregate amount of Rs. 1,92,39,863/- remained due, payable and outstanding. However, thereafter the Corporate Debtor started raising frivolous issues. In one of the meetings held with the Corporate Debtor, the Corporate Debtor informed the Operational Creditor that the sister concern of the Corporate Debtor i.e. Aanchal International Private Limited would make a payment of Rs. 1.40 crores to the Operational Creditor out of the aggregate dues to the Operational Creditor for and on behalf and on account of the Corporate Debtor. And the remaining principal dues of Rs. 52,39,863/- would be paid by the Corporate Debtor subsequently.
- 5.12 The Corporate Debtor issued an email to the Operational Creditor on February 25, 2020 recording that Rs. 1.40 crores shall be paid by Aanchal International Private Limited towards part payment of their dues. A payment of Rs. 10,00,000/- was received by the Operational Creditor from Aanchal

International Private Limited for and on behalf and towards part payment of the outstanding dues of the Operational Creditor.

- 5.13 Such payment was received on February 27, 2020 and on appropriation of such amount a principal balance of Rs. 1,82,39,863/- due, payable and outstanding by the Corporate Debtor.
- 5.14 In the above, facts and circumstances, the Operational Creditor has received an aggregate sum of Rs. 5,61,54,780/- towards part payment of its Invoices and such payments have been appropriated and adjusted against the Invoices raised by the Operational Creditor.
- 5.15 Around July, 2020, the Operational Creditor came to know that the Corporate Debtor by an order dated February 21, 2020 passed by the National Company Law Tribunal, Kolkata Bench was directed to undergo 'Corporate Insolvency Resolution Process' and an Interim Resolution Professional was appointed.
- 5.16 The Operational Creditor was shocked and surprised by such information as several meetings had been held between the parties after February 21, 2020 during course of which such information was never disclosed to the Operational Creditor.
- 5.17 Thereafter, in terms of the provisions of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor submitted their Claim with the Resolution Professional of the Corporate Debtor. The Operational Creditor had submitted a claim for Rs. 2,30,14,436/- comprising of the principal outstanding amount of Rs. 1,82,39,863/- and interest amounting to Rs. 47,74,573/- calculated on the principal sum @18% per annum up to February 21, 2020.
- 5.18 After submission of the Claim Form, the Resolution Professional sent the List of Creditors to the Operational Creditor, where claim of the Operational Creditor was shown to be admitted to the tune of Rs.1,42,39,863.60/- out of Rs.2,30,14,436/-.
- 5.19 The Operational Creditor wrote mails on August 16, 2020 and August 30, 2020 to the Resolution Professional seeking the reason for admitting the claim of the Operational Creditor to the extent of tune of Rs. 1,42,39,863.60/-. The Resolution Professional replied to such mail under which he did not provide

any basis for admission of the claim to the extent of Rs. 1,42,39,863.60/- adding that the request of the Operational Creditor contained in the mails seeking reasons was not in accordance with the Regulations.

- 5.20 The Operational Creditor was informed that by an order dated October 12, 2020, the order initiating Corporate Insolvency Resolution Process over the Corporate Debtor has been recalled.
- 5.21 Thereafter, to the shock and surprise of the Operational Creditor, the Corporate Debtor by a letter dated October 14, 2020, the Corporate Debtor and a mail dated October 15, 2020, raised false and frivolous issues and stated that the Operational Creditor had agreed to give a discount of Rs. 1,75,00,000/- to Corporate Debtor on account of inferior quality of semi-finished steel products supplied to the Corporate Debtor.
- 5.22 In furtherance of such letter, another letter was issued by the Corporate Debtor on October 19, 2020, stating that only a sum of Rs. 17,39,863/- was due and payable to the Operational Creditor. Such allegations have been aptly refuted by the Operational Creditor.
- 5.23 The semi-finished steel products were supplied to the Corporate Debtor between April, 2018 and October, 2018 and had been received without complaint or demur and thereafter appropriated and substantial part-payment had also been made towards payment of the amounts covered in the Invoices raised by the Operational Creditor. Such allegations would also be completely contrary to the contemporaneous documents exchanged qua parties and the claim admitted by the Resolution Professional.
- 5.24 Therefore, the Operational Creditor has issued statutory Demand Notice dated October 22, 2020 in Prescribed Form No. 3 to the Corporate Debtor at its Registered Office Speed Post with A/D. The said Notice has been received by the Corporate Debtor on November 5, 2020.
- 5.25 The Demand Notice was also sent to the Corporate Debtor on their official email ID on October 26, 2020. Copies of the Demand Notice in Form 3 along with postal receipt and track reports as well as the email sent on October 26, 2020.

- 5.26 In the interregnum, on November 3, 2020, the Corporate Debtor after receiving the Demand Notice by email on October 26, 2020, with a mala fide intent sent an email to the Corporate Debtor stating that the attachment sent in the mail could not be opened.
- 5.27 On being intimated that the Operational Creditor was proposing to take steps under the provisions of the Insolvency and Bankruptcy Code, 2016, the Corporate Debtor without any intimation and information to the Operational Creditor made a payment of Rs. 17,39,863/- to the Bank of Account of the Operational Creditor on November 3, 2020. 25.
- 5.28 The Corporate Debtor on receiving the mail dated November 3, 2020 as well as becoming aware of the credit of Rs. 17, 39,863, by two separate emails both dated Novembers 5, 2020, once again served a copy of the Demand Notice under Section of the Insolvency and Bankruptcy Code, 2016 as well as intimated to the Corporate Debtor that the amount of Rs. 17,39,863/- has been credited back to the account of the Corporate Debtor and advised them not to make any further mala fide payments.
- 5.29 The Corporate Debtor replied to the Demand Notice dated October 22, 2020 on November 25, 2020. The letter dated November 25, 2020 was responded by the Operational Creditor by a letter dated December 8, 2020.
- 5.30 The Operational Creditor is entitled to and claims Interest on the outstanding amount calculated @18% per annum from their due dates till the amount is paid and liquidated in full.
- 6. *Per contra, submissions by the Ld. Sr. Counsel appearing on behalf of the Corporate Debtor.***
- 6.1 The present Application is not maintainable, and is liable to be rejected under Section 8(2) (a) read with Sections 5(6) and 9(5) (ii) (d) of Code in view of the pre-existing dispute between parties.
- 6.2 Much prior to the issuance of Demand Notice on 22.10.2020 [pg. 289, Vol. 2 of Application], the Corporate Debtor raised its genuine Pre-existing dispute with the Operational Creditor vide letters dated 18.09.2019 [pg. 255, Vol. 2 of Application], 26.09.2019 [pg. 259, Vol. 2 of Application], 14.10.2020 [pg. 282,

Vol. 2 of Application], 15.10.2020 [pg. 282-285, *Vol. 2 of Application*] and 19.10.2020 [pg. 287, *Vol. 2 of Application*].

- 6.3 Thereafter, post receipt of Demand Notice, the existence of Pre-existing dispute was clearly communicated to the Operational Creditor vide Document dated 25.11.2020 [pg. 308, *Vol. 3 of Application*] signifying a Pre-existing dispute between the parties which pertains to the inferior quality of goods supplied by the Operational Creditor.
- 6.4 In support of above submission, the Corporate Debtor relies on the decision of the Hon'ble Supreme Court in the case of ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd***¹. Suffice to state that in terms of the decision in Mobilox (supra), an application under Section 9 is liable to be rejected if there is a pre-existing dispute, in the nature of plausible contention, which has been communicated to the Operational Creditor. It is submitted that such pre-requisite mentioned in Mobilox (supra) for dismissal of Section 9 application is met in the facts of the present case, therefore, meriting dismissal of the present Application.
- 6.5 In addition to the decision in Mobilox (supra), the Corporate Debtor also relies on the decisions of this Adjudicating Authority in (i) ***The India Trading Company v. Valutech Metaliks Limited***² (ii) ***Eastern Electrodes and Coke Private Limited. Bhaskar Shrachi Limited***³ and (iii) ***Medica Hospitals Private Limited v. OHIO Cardiology Associates India Private Limited***⁴ wherein it has been consistently held that an application under Section 9 cannot be maintained if there is a pre-existing dispute between the parties.
- 6.6 Without prejudice and in any event, it is submitted that the Operational Creditor itself acknowledged the pre existence of dispute by issuing communications dated 21.10.2020 [pg. 324, *Vol. 3 of Application*] wherein the Operational Creditor has baldly and baselessly denied having issued any

¹ (2018) 1 SCC 353

² 2019 SCC Online NCLT 31846

³ 2019 SCC Online NCLT 28082

⁴ 2019 SCC Online NCLT 15642

quality discount to the Corporate Debtor despite its conspicuously silence during the contemporaneous period. Hence, it is submitted that the present Application ought to be dismissed under Section 9(5) (i)(d) of the Code.

- 6.7 Further, the present Application is liable to be rejected under Section 10A of the Code as the date of default falls within the period for which Section 9 of IBC stood suspended. The date of default mentioned by the Operational Creditor in its Demand Notice was 22.10.2020 *[pg. 289, relevant 290, Vol. 2 of Application]*.
- 6.8 Subsequently, the date of default was revised by the Operational Creditor in the present Application to 05.12.2020 *[pg. 1, relevant 12, Vol. 1 of Application]*. Both the aforesaid dates of default fall within the period mentioned at Section 10A of the Code against which no application under Section 9 of IBC can be filed.
- 6.9 A plain and simple reading of Section 10A with the dates of defaults mentioned by the Operational Creditor in its Demand Notice and the present Application reveal that the present Application is barred in law by Section 10A and, as such, not maintainable.
- 6.10 When the above contention was raised by the Corporate Debtor in its Reply to the Application, the Operational Creditor has, in a belated and an afterthought manner, revised the date of default to 03.07.2018 without any documentary basis to establish as to how the debt, if any, became due and payable on such date. Hence, it is submitted that the revised stand of the Operational Creditor is baseless and a mere malafide attempt to evade the application of Section 10A.
- 6.11 The present Application is liable to be rejected and the Operational Creditor is liable to be punished under Section 76 of the Code in view of the wilful and deliberate concealment of facts by the Operational Creditor.
- 6.12 It is submitted that despite being aware of the Pre-existing dispute, the the Operational Creditor has deliberately chosen not to disclose such documents in the body of its Application and has, thereby, attempted to mislead this Adjudicating Authority into believing that there never existed any Pre-existing dispute between the parties.

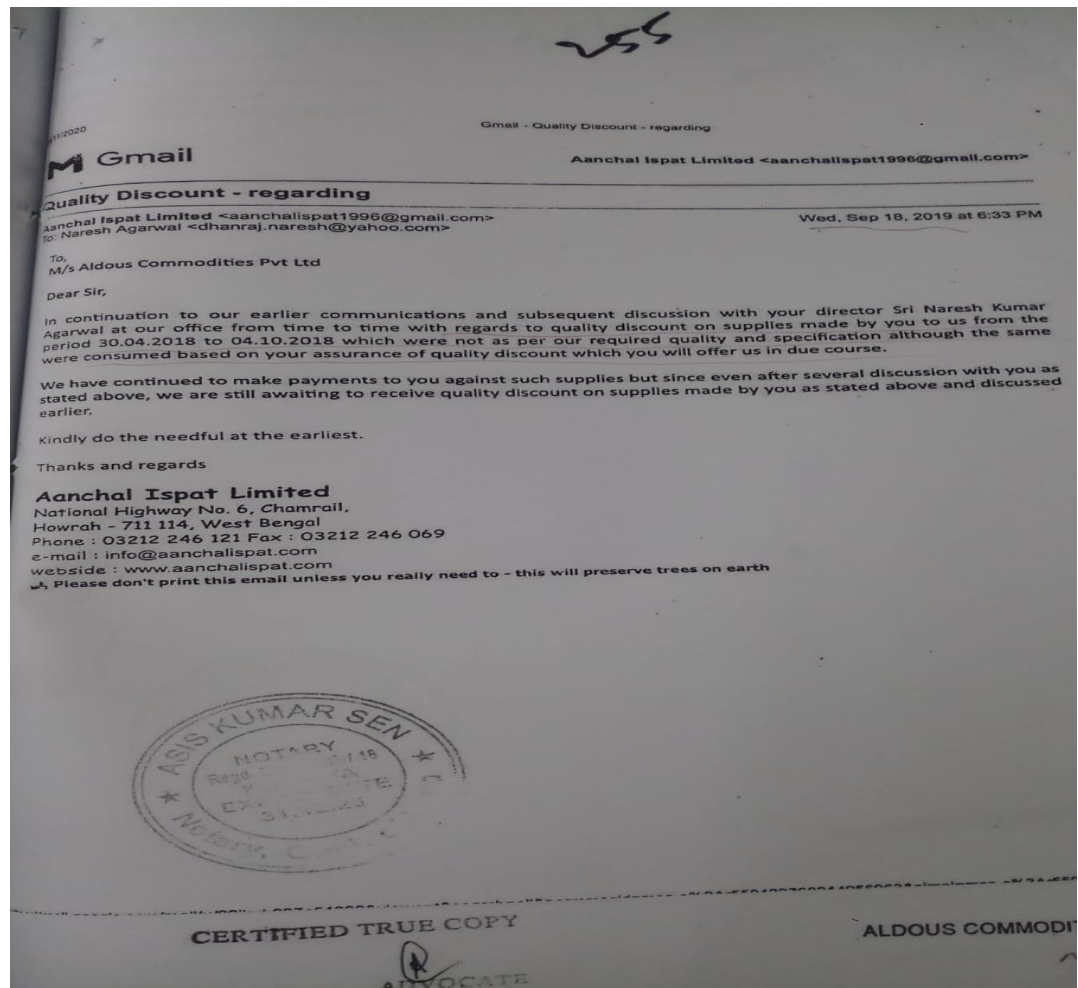
6.13 In this regard, it is submitted that it is a trite law that IBC is not a tool for recovery [*Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17*]. However, by way of the present application, the the Operational Creditor sole intention is to illegally recover the alleged and purported outstanding payable by the Corporate Debtor so as to unjustly enrich at the expense of the Corporate Debtor.

Analysis & Findings

7. We have heard the Ld. Sr. Counsel Mr. Abhrajit Mitra appearing on behalf of the Operational Creditor and Ld. Sr. Counsel Mr. Ratnanko Banerji appearing on behalf of the Corporate Debtor, and perused the records.
8. It is relevant to mention here that the Corporate Debtor had been put under CIRP on an early occasion also on 21st February, 2020. However, he could come out of the CIRP by arranging funds and the previous CIRP thus ended on 12th October, 2020. During the said CIRP, the Operational Creditor had filed a claim with the RP which is placed at page 266, 267 and 268 of the petition in row no. 4 against total claim, the principal amount claimed has been shown as Rs.1,82,39,863/-which is same as claimed in the present petition.
9. An exception has been taken by the CD that since no date of default was mentioned by the Operational Creditor in their Application, the Operational Creditor by way of Rejoinder has mentioned the date of default as 05 December, 2020, which lies in the 10A period. However, this being a new fact need not be countenanced and the fact remains that the Cheques were issued by the Corporate Debtor in November 2018, when one of the cheques presented by the OC bounced and the remaining cheques were not presented. This clearly is the presumption of a liability as per the Section 118(a) and 139 of the Negotiable Instrument Act, 1938. As such the default can be reasonably said to have occurred in November 2018.
10. On 25th February, 2020, the Director of the Corporate Debtor has confirmed that Rs.1.4 Crore is payable to the Operational Creditor. However, it is seen that later on after the CD comes out of the CIRP, the communications

exchanged depict a change of mind of the Corporate Debtor and he has claimed that Operational Creditor has supplied inferior quality products against the supplies and as such the Operational Creditor deserves a quality discount over the goods supplied.

11. It is undisputed that the supplies have been made from April, 2018 to October, 2018 and total cost of Rs.7.43 Crores out of which the Corporate Debtor had made payment of Rs. 5.61 Crores.
12. At page 255 of the petition, an email which is purportedly written by the Corporate Debtor to the Operational Creditor on September, 18, 2019 mention as follows:-



13. It is essentially on the basis of this email that the Corporate Debtor claims that he is entitled to recover a quality discount which to as per his judgment is

about Rs. 1.75 Crore . In this aspect, it is also brought out in the Ledger Account placed at page 284 wherein discount of 50 Lakhs has been claimed by the Corporate Debtor in the account of the operational creditor with a Closing balance of Rs. 1.42 Crores. It is important to mention that this Ledger account is of 31st March, 2020. Further the e-mail has been sent on 18.09.2019, which is long after the supplies were made and part payments released by the corporate debtor. This is clearly an afterthought.

14. At this stage, it could be again relevant to cite that first CIRP had been initiated on 21st February, 2020 and on page 285 another Ledger Account of the Operational Creditor as prepared by the Corporate Debtor is placed covering a period of 1st April, 2020 to 15th October, 2020, which shows quality discount of Rs.1.25 Crore availed by the Operational Creditor on its own thus leaving the balance of only Rs.17,39,863/-
15. In order to give the matter in finality, the Corporate Debtor vide letter dated 19th October, 2020, intimated the Operational Creditor that an amount of Rs.17,39,863/- is payable to the Operational Creditor against the net outstanding as on date and this account was actually transferred to the account of the Operational Creditor. The Operational Creditor on his part after realizing that an amount sent has no relevance to the claim of the Corporate Debtor has been returned same amount on 25th November 2020. It is also worthwhile mention here that on November, 12, 2018. The post dated cheques each of Rs.50 Lakhs aggregating to 1.05 Crores was given by the Corporate Debtor to the Operational Creditor. However, after one cheque was dishonored, the remaining other cheques at the request of the Corporate Debtor were not presented by the Operational Creditor. It was averred that as per section 118(a) and 139 of N. I Act, 1938. This would lead presumption of law since cheques have been issued.
16. In the above conspectus, it is seen that there was a clear admission on behalf of the Corporate Debtor that an amount of Rs. 1.05 crore was due and payable to the Operational Creditor for which even the cheques were issued. This being more than Rs. 1 Crore, which is the threshold value as per Section 4 of

the code, and actually due and payable and from the Corporate Debtor to the Operational Creditor establishes an Operational debt and issuance of Cheques of the like amount and subsequent bouncing of the cheques is a default on the part of the Corporate Debtor. Accordingly, it is, hereby ordered as follows:-

- (a) The application bearing CP (IB) No. 1518/KB/2022 filed by Aldous Commodities Private Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Aanchal Ispat Limited, the Corporate Debtor, is *admitted*.
- (b) There shall be a moratorium under section 14 of the IBC.
- (c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) **Mr. Sriram Mittal**, Registration Number IBBI/IPA-001/IP-P-02276/2021-2022/13677, email: srirammittal.ey@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI).

The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- (f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. No separate notice for cooperation by the suspended management should be expected.
- (g) The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (h) The Operational Creditor shall deposit a sum of ***Rs.5,00,000/- (Rupees Five Lakh 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 (CoC).
- (i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

17. CP (IB) No. 1518/KB/2020 to come up on 11.10.2023 for filing the periodical report

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA**

C.P (IB) No.1518/KB/2020

- 18.** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order Signed on 12th day of September, 2023

PJ