

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

C.P. (IB)No.210/BB/2018  
U/s. 9 of IBC, 2016  
R/w Rule 6 of I&B (AAA) Rules, 2016

**In the matter of:**

M/s. Indu Projects Ltd.,  
*Rep. by Mr. GopiKrishna Byadigera,IRP*  
No. 1009, Indu Fortune Fields,  
13<sup>th</sup> Phase, KPHB Colony,  
Hyderabad – 500 085 - Petitioner/Operational Creditor

**Versus**

M/s. ABB India Limited  
*(Erstwhile ABB Ltd.)*  
("ABB"), No.21<sup>st</sup> Floor,  
World Trade Centre,  
Brigade Gateway,  
No.26/1, Dr. Rajkumar Road,  
Malleshwaram West,  
Bengaluru – 565 055 - Respondent/Corporate Debtor

**Date of Order: 10<sup>th</sup> October, 2019**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

**Parties/Counsels Present:**

For the Petitioner : Shri M.Anil Kumar  
For the Respondent : Shri V. Srinivasa Raghavan, Sr. Counsel  
along with Ms. Sahana Devanathan



**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (Judicial)

1. C.P.(IB)No.210/BB/2018 is filed by M/s. Indu Projects Ltd., (Petitioner/Operational Creditor) U/s 9 of IBC, 2016, R/w Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. ABB India Limited (Respondent/Corporate Debtor) on the ground that the Corporate Debtor has committed default for total amount of Rs.5,80,78,443/- (Rupees Five Crore Eighty Lakhs Seventy Eight Thousand Four Hundred and Forty Three only) which includes Principal amount and Interest.
2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:
  - (1) M/s. Indu Projects Ltd., (herein after referred as Petitioner/Operational Creditor) is a Company incorporated under the provisions of the Companies Act, 1956. Its main objects of the Company are to carry on in India or elsewhere, either along or jointly with one or more persons, government, local or other bodies the business to construct, build, alter, convert, design, erect, establish, design, brokers of all types of building etc.
  - (2) M/s. ABB India Limited (Respondent/Corporate Debtor) is a Company, which is incorporated under the provisions of the Companies Act, 1956. Its Authorized Share Capital, as per the information derived from the website of the ROC is Rs.50,00,00,000/- (Rupees Fifty Crores only) Paid-up Share Capital is Rs.42,38,16,750/- (Rupees Forty Two Crores



Thirty Eight Lakhs Sixteen Thousand Seven Hundred and Fifty only), divided into 4,23,81,675 Equity Shares of Rs.10/- each. Their main objects are to acquire and take over the business of importers, Engineers, and Machinery Merchants now carried on at Bombay and elsewhere by Dharamsinh Dabubhai Desai under the name and style of "Hindustan Electric Company" as the sole proprietor thereof and with a view thereto to adopt the Agreement referred to in clause (4) of the Company's Articles of Association and to carry the same into effect etc.

- (3) Initially, a Letter of Award (LOA) was awarded by Chhattisgarh State Power Generation Corporation Ltd. (herein after referred to as CSPGCL) to M/s. Tecpro Systems Ltd., Chennai on 25.08.2009 for Design, Engineering, Manufacturing, Shop Fabrication, Assembly, Inspection and Testing at Supplier's/Sub-contractor's works, Packing, Forwarding to site of all equipment/materials for the Balance of Plant (BOP) package for CSPGCL, Korba West Thermal Power Project (Extn. Stage-III (1x500MW)).
- (4) M/s. Tecpro System Ltd., Chennai, in-turn awarded the contract for providing Balance of Plant for Extn. Stage III (1x500MW) for CSPGCL to M/s. Indu Projects Ltd., on 15.12.2009. The Petitioner/Operational Creditor, in turn, after obtaining permission/approval Principal employer/CSPGCL, has awarded the same work to the Corporate Debtor viz., M/s. ABB India Ltd., for design and execution on Engineering, Procurement and Construction (EPC) for Rs.72 Crores i.e. Rs.70,27,84,000/- against supply and Rs.1,72,16,000/- for the services as per the Letter of Intent agreed by both the parties. The Letter of Intent was issued,

after several rounds of discussions with the technical as well as commercial persons and finally the Letter of Intent was agreed to and signed by both the parties.

- (5) The Petitioner/Operational Creditor issued a detailed purchase order dated 16.06.2010 in addition to the Letter of Intent to the Corporate Debtor along with the Scope of work, schedule of prices, contract sum price basis, price variation, duration of appointment, payment terms, supply, mode of payment etc. As per the Purchase Order Clause 4 – Price Basis was indicated that includes Transportation and other statutory dues like taxes and duties. If any statutory variations including increase in Central Excise Duty will be reimbursed on receipt of the same from M/s. Tecpro Systems Ltd./CSPGCL (principal employer) will be paid to the Corporate Debtor from the Operational Creditor. As per the purchase order Clause 5 – Price variation, the prices will be adjusted in accordance with the conditions of contract with base date as 5<sup>th</sup> May, 2009 with a ceiling as specified by CSPGCL (principal employer) on back to back basis.

As per the purchase order Clause 6 – during of appointment, unless terminated under Clause 24 of this purchase order, the date of commencement shall be the date of issue of LOI-BOP/KORBA/LOI/01 dated 30.12.2009 and the completion time shall be within 24 months from the date of the letter of intent/LOI-BOP/KORBA/LOI/01 dated 30.12.2009 and further it was stated in the purchase order that “Completion” means of scope of supply relating to the supply of various BOP electrical systems and equipments in terms of the technical documents for the project by

M/s. ABB India Ltd. i.e. Corporate Debtor. However, the Corporate Debtor shall ensure the completion of supplies to suit the project commissioning by September 2011, on best effort basis and the time is essence of this purchase order. As per the Purchase order, the project supplies should be completed by September, 2011, however, the fact remains, even today, the Corporate Debtor has not completed the work by violating the terms and conditions mentioned in Clause 6. In view of the delay of the project supply by the Corporate Debtor in completing the work allotted to them, the Operational Creditor has incurred huge loss. Resultantly, the principal employer is likely to impose liquidated damages, as per the work order issued to M/s. Tecpro Systems Ltd., which ultimately, is liable to be borne by the Operational Creditor for delay committed by the Corporate Debtor. However, the liquidated damages cannot be quantified at this stage without completing the work assigned and this amount was not specifically mentioned/nor claiming any amount in the present Petition.

- (6) As per the Clause 7 – Payment Terms, shall be (i). 10% of contract price value as advance against equivalent “advances back guarantee” valid up to completion of the supplies; and as per Clause 7(ii) of the Letter of Intent, 80% of Contract price on dispatch of materials (backed by SIGHT Letter of Creditor (L/C) negotiable against submission of proof of dispatch like Lorry Receipt (L/R); and as per Clause 7(iii). 5% against commissioning and trial operation for E-BOP equipments; and as per Clause 7(iv) of Letter of Intent, 5% against PG test by owner/EPC or within 90 days



of commissioning whichever is earlier. In this regard, it is submit that, the Corporate Debtor has violated the above Clauses (i) to (iv) by not extending the “advance bank guarantee” which should be valid upto the date of completion the work and not extended the Advance Bank Guarantee to the Operational Creditor. Regarding supplies and services, the Corporate Debtor yet to be done work up to the tune of Rs.9,05,86,765/- as per the Reconciliation statement attached with the demand notice along with Form 3 & 4. As per Clause 7(ii), as against 80% payment on contract price, while the works were progressing payment was released by the Operational Creditor to M/s. ABB Ltd. i.e. Corporate Debtor as and when the same was released by CSPGCL – Principal employer and Tecpro Systems Ltd. – main contractor. During the execution stage, when Corporate Debtor had financial difficulties and finding it difficult to supply certain materials like cables, Tecpro Systems Ltd., as principal contractor intervened and supplied the same and necessary debits were raised on Petitioner/Operational Creditor and Respondent/Corporate Debtor, which is in the knowledge of CSPGCL (Principal employer) also. Tecpro Systems Ltd., has levied a debit note of Rs.13,31,34,989/- for the materials supplies, while Corporate Debtor projected that the value of the materials was only Rs.6,94,67,190/-. Whereas, as the principal contractor M/s. Tecpro Systems Limited, who was on CIRP under the orders of the Tribunal, finalised the statement of accounts of Operational Creditor, in line with their book of accounts, and has considered Rs.13,31,34,989/- as debit towards supply of materials to the Corporate Debtor and



has not considered any further adjustments, in spite of repeated requests in written as well as oral. As Corporate Debtor was the sole agency involved in completing the electrical works of the Plant at Korba, accordingly the above said amount has to be adjusted to the Corporate Debtor's account. Further, when Corporate Debtor insisted on balance payment of 5%, but still the Operational Creditor has paid an amount of Rs.1.00 Crore to the Corporate Debtor. As regards balance amounts could not paid because the cables and other materials was supplied by the Operational Creditor, through Tecpro Systems Limited i.e. Principal contractor, has taken care of the balance 5% amount on commissioning, and the trial operations for E-BOP equipments has not been commenced yet. Even otherwise also they are not entitled to receive any of the amount as per clause 7 (iii) and (iv) of the Letter of Intent, but still the Operational Creditor paid an amount of Rs.1.00 Crore to the Operational Creditor. As per clause 7(iv), 5% against Performance Guarantee test by the owner/EPC or within 90 days from the date commissioning whichever is earlier. In this regard, the principal owner/CSPGCL has not triggered the trial operations even as on today, therefore as per Clause 7(iv) of the Letter of Intent and main contract, 5% against Performance Guarantee test by Principal owner has not been done so far, therefore this 5% of the contract price also cannot be paid to Corporate Debtor and the Operational Creditor also not received any amount from the Principal Employer.

- (7) It is further contended that the Corporate Debtor has violated the terms and conditions mentioned in the work



order/purchase order, as per the work order, the Corporate Debtor has to provide a permanent software license and also to provide telemetry facilities to the principal employer, but the Corporate Debtor has provided only demo software. This was informed to the Corporate Debtor by the principal employer viz., CSPGCL several times, but the Corporate Debtor has not changed the software. For this also the Corporate Debtor is liable to pay whatever the expenditure likely to be incurred by the Operational Creditor. In this connection, the Principal employer's letter No.03-06/PRG-II/KW/512 dated 6<sup>th</sup> November, 2017, and the same was forwarded vide Operational Creditor's by mail dated 9<sup>th</sup> November 2017, CSPGCL Letter No.03-06/PRG-II/KW-60/741 dated 18<sup>th</sup> January, 2018 and forwarded vide mail dated 18<sup>th</sup> January 2018 and CSPGCL Letter No.03-06/PRG-II/109 dated 16<sup>th</sup> May 2018 and forwarded vide mail dated 17<sup>th</sup> May, 2018.

- (8) The Principal employer viz., CSPGCL vide letter No.03-06/PRG-II/107 dated 16<sup>th</sup> May 2018, forwarded vide mail dated 17<sup>th</sup> May, 2018 informed that the "Real time Transmission of status free governing mode operation/restricted governing mode operation (FGMO/RGMO) Active/Inactive to SLDC through SCADA and keeping FGMO/RGMO in service as per guidelines of CERC/CSERC" has to be commissioning, the Corporate Debtor has not commissioned in spite of repeated reminders given by the principal employer. In this connection Principal employer vide letter no.03-06/PRG-II/232 dated 4<sup>th</sup> July, 2018.



- (9) The Principal employer viz., CSPGCL vide letter No.SE/ET&1-III/1X500MW/2018/346 dated 20<sup>th</sup> April, 2018 was forwarded by M/s. Tecpro Systems Limited to the Corporate Debtor vide mail dated 4<sup>th</sup> May 2018, informed that the transformer installed by the Corporate Debtor was failed, when the transformer were on “No Load Condition” and that they are proceeding with repair of these transformers immediately which may cost Rs.25 Lakhs and that actual cost will be intimated after placing confirm order to the firm for repairing.
- (10) As per the letter 03-06/PRG-II/KW-501/MDCC/58 dated 26<sup>th</sup> April 2018 of CSPGCL i.e. Principal Employer, the Corporate Debtor has not done the works as per the work order and identified certain irregularities in commissioning the works and directed the Operational Creditor to complete the works as per the contract agreement and accordingly the Operational Creditor agreed to complete the work as per terms and conditions of the contract for the said work was done by the Operational Creditor and going to incur further amount of Rs. 4,84,54,402/-. Therefore, even according to this letter issued by the principal employer, the entire work is not yet completed by the Corporate Debtor and therefore, the Corporate Debtor is liable to pay the above said amount to the Operational Creditor. This amount was not included in the present claim.
- (11) The CSPGCL vide their letter No.03-06/PRG-II/KW-60/361 dated 2<sup>nd</sup> September, 2016 forwarded vide their mail dated 2<sup>nd</sup> September 2016, wrote to Corporate Debtor i.e., to Mr. N Venu, Lead Division Manger, Power Grid, AMEA of M/s. ABB India Ltd., that the project is over delayed and



contribution of the Corporate Debtor to these delays is not ruled out. It was informed that it has been discussed with Corporate Debtor's representatives time and again for improvement and putting up their best efforts for early completion of the balance of works. CSPGCL wrote to the Corporate Debtor "that the payment made to ABB is Rs.6.49 Crs., more than due and it is not understood why M/s. ABB is not able to smoothly execute the works and it seems that the retention money has also been taken by ABB". Further, CSPGCL "felt it is essential to review the complete matter, accordingly, a meeting was scheduled on 6<sup>th</sup> September, 2016 at Rajpur and requested to ABB to depute a senior representative to explain the valid and sustainable reasons for not completing the work in time and breaching of trust". But, the Corporate Debtor's representative did not attend the meeting and CSPGCL vide letter No.03-06/PRG-II/BOP/KW-60/372 dated 8<sup>th</sup> September, 2016 forwarded vide their mail dated 9<sup>th</sup> September 2016 wrote "As it is well known fact that 1X500 MW Korba (W) is a prestigious project of the CG Government and it is our endeavour to provide cheaper power of the benefit of our State. Thus, delay in supply/execution of the e-BOP works not only delayed the project completion but also deprived the state of CG in getting cheaper power; besides national loss and breach of trust on the strength of which ABB was approved as sub-vendor for which M/s. ABB cannot be absolved of its obligations.

- (12) The Corporate Debtor has earlier issued Demand Notice in Form No.3, under Code to the Operational Creditor on



24.07.2018, and reply was also given by the Operational Creditor on 03.08.2018 by denying the alleged debt and thus the Respondent has not initiated any action thereafter.

- (13) The Petitioner issued a Statutory Demand Notice in Form -3 Under Rule 5 of the I&B(AAA) Rules, 2016 dated 07.09.2018, by inter alia demanding to pay the default amount of Rs.5,80,78,442/-, by furnishing all the material documents in respect of the claims. In pursuant to the Demand Notice, the Respondent has issued a Reply dated 18.09.2018, by inter alia disputing the status of Indu Project Limited, **which reads as under:**

“At the outset ABB is surprised to have received the Demand Notice from IPL under Section 8 and Section 9 of the IBC, 2016 as IPL does not qualify as an Operational Creditor in accordance with the provisions of the Code. In this regard we draw your kind attention to certain provisions of the Code.

*“Section 5(20) provides:*

*Operational Creditor - means a person to whom an Operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”.*

It is clear from the above that only person to whom an operational debt is owed qualify as an Operational Creditor. It is thus relevant to also draw your attention to the definition of ‘operational Creditor’ as provided in Section 5(21) of the Code.

Section 5(21) provides:

*“Operational Debt - means a claim in respect of the provision of goods or services including employment*

*or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”*

It is clear from the definition of operational debt that a claim shall qualify as Operational debt only if the same is raised with respect to provision of goods and services or employment. As is relevant for the matter under consideration if any goods or services had been provided by IPL to ABB the payments relating to it would have qualified as operational debt. Since, IPL has not provided any goods or services against the amounts claimed in the Demand Notice issued to ABB it does not qualify as operational debt. Therefore, a claim under Section 8 & 9 of the Code is not maintainable and the Demand Notice is thus illegal, unwarranted and liable to be ignored.

Therefore, it is claimed that their defense cannot be termed as dispute as per law.

(14) IPL has also filed I.A No. 228 of 2019 U/s 18 & 20 of Code by inter alia seeking to amend the cause title as “M/s. Indu Projects Ltd. Rep. by Interim Resolution Professional Mr. Gopikrishna Byadigera”, instead of “M/s. Indu Projects Ltd., rep by its Director”.

3. The Respondent/Corporate Debtor has filed Statement of Objections dated 09.04.2019, by opposing the Company Petition, by inter alia submitting are as follows:

- (1) It is alleged that M/s. Indu Projects Limited (herein after referred as IPL) has presented a wholly distorted and inaccurate version of events preceding the mischievous issuance of the demand notice dated 07.09.2018 purportedly under Section 8 of the IB Code (“the alleged demand notice”) and the filing of the above Application on the one hand and the commencement of arbitration by ABB on the other.
- (2) A consortium led by Tecpro Systems Limited (“TSL”) consisting of Gammon India, VA Tech WABAG, Tecpro Systems Limited and Tecpro Ash Tech Limited was awarded a Letter of Award dated 25.08.2009 by Chhattisgarh State Power Generation Corporation Limited (“CSPGCL”) for design, engineering, manufacturing, shop fabrication, assembly, inspection and testing at supplier’s/sub-contractor’s works, packaging, forwarding to site of all equipment/materials for the Balance of Plant (“BOP”) package for CSPGCL’s Korba West Thermal Power Project [Extension Stage -III (1 x 500MW)]. The said consortium sub-contracted parts of its scope of work to IPL vide Letters of Award dated 15.12.2009. In turn, IPL sub-contracted its scope of work to ABB vide Letter of Intent dated 30.12.2009 for supply of plant and equipment required for balance of equipment associated with electrical BOP (“e-BOP”) package for 1x500 MW Korba West TPP Extension Stage III at Chhattisgarh (“the Services Contract”). The total contract value was agreed at INR 70,27,84,000/-. The said Letter of Intent also provided for an optional item involving supply of recommended spares for the balance of equipment associated with electrical BOP package valued at INR



1,50,00,000/-. It was also agreed that a detailed agreement shall be mutually discussed and executed. The total contract value was agreed at INR 1,72,16,000/-. It was also agreed that a detailed agreement shall be mutually discussed and executed.

- (3) In pursuant to the Letter of Intent for the Supply Contract, the Purchase Order dated 16.06.2010 ("The Purchase Order") was issued by IPL to ABB. *The aggregate liability towards liquidated damages for delay and performance shall be limited to a maximum of 10% of the Total Contract price.* The Purchase Order was amended vide Letter No. IPL/SCM/Korba/e-BOP/ABB/LTR/11 dated 11.09.2015 ("the PO Amendment No. 1") and it was agreed that 80% of the Contract Price shall be directly released to ABB by CSPGCL within 30 days of MRC at site. Further, the payment of 5% of contract price was to be released on commissioning and trial operation of e-BOP equipment and 5% of contract price payable against PG test or within 90 days of commissioning, whichever is earlier was agreed to be paid directly by CSPGCL, based on recommendation of IPL. It was also agreed that IPL would request CSPGCL to make direct payments of price variation claims, extra claims to ABB. The PO Amendment No. 1 provided that notwithstanding the contents of the said amendment, IPL shall remain liable for the payments due to ABB under the Purchase Order as well as the PO Amendment No. 1.
- (4) The Work Order was amended vide Letter No. IPL/SCM/Korba/e-BOP/ABB/LTR/12 dated 11.09.2015 ("the WO Amendment No. 1") wherein it was agreed that 80% of the Contract Prices shall be directly released to ABB



by CSPGCL within 30 days of date of submission of invoice. Further, payment of 5% of contract price was to be released on commissioning and trial operation of e-BOP equipment and 5% of contract price payable against PG test or within 90 days of commissioning, whichever is earlier was agreed to be paid directly by CSPGCL, based on recommendation of IPL. It was also agreed that IPL would request CSPGCL to make direct payments of price variation claims, extra claims to ABB. The WO Amendment, IPL shall remain liable for the payments due to ABB under the Work Order as well as the WO Amendment and IPL agreed to request CSPGCL to pay the said amount directly to ABB. However, since IPL was in severe financial distress and unable to make timely payments to ABB, a tripartite agreement dated 27.08.2015 was executed between IPL, ABB and VA Tech Wabag Limited ("The Tripartite Agreement"). As per the Tripartite agreement, VA Tech Wabag Limited agreed to pay INR 3,00,00,000/- to ABB. The said amount was to be paid in three instalments of INR 1,00,00,000/- each payable on 31.08.2015, 30.09.2015 and 31.10.2015. VA Tech Wabag Limited also agreed to pay INR 56,00,000/- towards price variation claims raised by ABB pending before CSPGCL. Further, a comfort letter dated 22.09.2015 was issued by CSPGCL to TSL and ABB confirming that amounts recommended by TSL vide its letter dated 12.09.2015 shall be paid directly to ABB. It is pertinent to mention here that in terms of the Tripartite Agreement, the ultimate responsibility to make payments to ABB lies with IPL. VA Tech Wabag Limited released the first instalment in April 2016 and even after the lapse of about three years, VA Tech



Wabag Limited has failed to release the remaining amounts as agreed under the Tripartite Agreement. Despite being aware of this, and despite several reminders and constant follow-up by ABB, IPL has neither taken any steps to have the payments released by VA Tech Wabag Limited nor has it made the payments itself.

- (5) It is further submitted that the project was completed and synchronized on 22.03.2013 and commercial operations commenced on 05.09.2013 barring some ancillary scope for which delay is attributable solely to IPL. ABB has periodically raised invoices under the Purchase Order and the Work Order. In this regard, reference may be had to email dated 22.03.2013 addressed by TSL and letter dated 04.09.2019 issued by CSPGCL, whereas Rs.18,29,74,017/- was due as per books of account of ABB. Upon signing of the Reconciliation Statement, the parties agreed that IPL would pay a sum of INR, 3,89,57,554/- towards admitted sums overdue and payable to ABB in the following manner:

i) INR 49,07,770/- to be paid immediately to ABB;

And

ii) INR 3,40,49,784/- to be paid to ABB upon completion of the Performance Guarantee Test in March, 2018.

Further, as per the books of ABB, in terms of the aforesaid reconciliation of accounts, the following amounts were to be paid by IPL in addition to the overdue amount under the following heads:

i) INR 2,70,00,000/- towards reversal of back charge/debits by IPL;

- ii) INR 1,04,73,735/- towards scope deletion and billing breakup re-appropriation; And
- iii) INR 10,36,02,289.
- (6) It is alleged that instead of paying the dues owed to ABB, IPL frivolously and baselessly issued the alleged demand notice dated 07.09.2018 purportedly under Section 8 of the IB Code and the same was suitably responded to by ABB vide its reply dated 18.09.2018 wherein ABB also notified IPL of pre-existing disputes pertaining to the alleged claims of IPL. It is evident from the exchange of communications between ABB and IPL that ABB disputed the claims of IPL from the very beginning and further that these disputes pertain to a matter which is the subject of the arbitration agreement between the parties hereto. Accordingly, ABB issued an arbitration notice dated 12.12.2018 invoking clause 17 of the Purchase Order dated 16.06.2018 and IPL issued an interim reply dated 14.01.2019 stating that they are in the process of preparing a detailed reply which would be issued within 16 days of the date of issue of their letter. IPL then issued a frivolous and untenable reply dated 11.02.2019 requesting time till 28.02.2019 to provide a detailed rebuttal due to paucity of staff. Thereafter, IPL issued a reply dated 25.02.2019 baseless and incorrectly stating that the notice dated 12.12.2018 issued by ABB is only a counterblast to the above Application and no arbitration is maintained.
- (7) It is submitted that the National Company Law Tribunal (Hyderabad Bench) at Hyderabad has ordered the commencement of corporate insolvency resolution process of IPL vide its Order dated 25.02.2019 in

C.P.(IB)No.372/7/HDB/2018. One Mr. Gopikrishna Byadigera has been appointed as the Interim Resolution Professional, who has affected the public announcement dated 07.03.2019 in this regard as well. ABB is not aware of any appeal that has been filed by IPL before the National Company Law Appellate Tribunal at New Delhi, challenging the aforesaid Order dated 25.02.2019 in C.P. (IB) No. 372/7/HDB/2018. Moreover, in response to the public announcement dated 07.03.2019, ABB has submitted a statement of its claims amounting to INR 22,97,55,868/- to the IRP and the IRP has duly acknowledged receipt of the same. Therefore, in view of IPL undergoing corporate insolvency Resolution process, IPL is ineligible to seek to initiate corporate insolvency resolution process against any other entity, leave alone ABB, pursuant to Section 11 of the IB Code. Hence, the above Application is not maintainable and the same is liable to be dismissed.

- (8) In light of what is stated hereinabove, it is evident that the above Application filed by IPL is malicious, baseless and untenable. It is further submitted that the above Application is not maintainable as the alleged 'debt' does not qualify as an 'operational debt' under the IBC as the same has not arisen out of provision of any goods and services or employment by IPL to ABB. Despite the serious disputes raised by ABB in response to the alleged demand notice dated 07.09.2018, IPL has filed the instant Petition in a bid to covert this Tribunal into a recovery forum for monies not legally due and payable and it is wholly misconceived, frivolous, and baseless attempt to sidestep arbitral proceedings sought to be initiated in good faith by



ABB in order to recover sums lawfully due to it from ABB under the Reconciliation Statement.

4. Heard Shri M Anil Kumar, learned Counsel for the Petitioner and Shri V. Srinivasa Raghavan, learned Sr. Counsel for the Respondent. We have carefully perused the pleadings of the parties and extant provisions of the Code and the Law on the issue.
5. Shri M Anil Kumar, learned Counsel for the Petitioner, after arguing the case, has also filed written arguments dated 20.12.2018, by inter alia contending as follows:
  - (1) It is submitted that, as per the purchase order Clause 4 Price Basis was indicated, that the price basis shall be Firm and includes Transportation and other statutory dues like taxes and duties. If any statutory variations including increase in Central Excise Duty will be reimbursed on receipt of the same from M/s. Tecpro Systems Ltd./CSPGCL (principal employer) will be paid to the Corporate Debtor from the Operational Creditor.
  - (2) As per the purchase order Clause 5 – price variation the prices will be adjusted in accordance with the conditions of contract with base date as 5<sup>th</sup> May, 2009 with a ceiling as specified by CSPGCL (principal employer) on back to back basis.
  - (3) It is submitted that in view of non-completion of the work by the Corporate Debtor the principal employer is likely going to impose liquidated damages (Clause 15 of the Purchase order) as per the work order issued to M/s. Tecpro Systems Ltd., the same damages has to be borne by the Operational Creditor and the said amount is



also going to borne by the Corporate Debtor. Until unless the work is completed, the liquidated damages contributed cannot be quantified at this stage, therefore, this amount was not specifically mentioned/nor claiming any amount in the present Petition.

- (4) As per the Statement of Account of the Operational Creditor as on 06.09.2018, the Corporate Debtor is still liable to pay an amount of Rs.4,86,49,726/-. This amount does not include the liquidated damages of Rs.7,95,34,504.80. The total contract value is Rs.79,53,45,048/- and the liquidated damages will be 10% as per Clause 7. The Corporate Debtor has made gross billing for Rs.67,15,44,587/- as per the invoices of the Corporate Debtor. The total amount to be debited to the Corporate Debtor on account of material supplied by Principal Contractor M/s. Tecpro Systems Ltd, and the net amount to be debited towards the Corporate Debtor is Rs.9,76,20,521/- against the actual balance amount payable to the Corporate Debtor is Rs.8,30,20,579/-. After adjusting the said amount the Corporate Debtor is still liable to pay to the Operational Creditor, an amount of Rs.1,45,99,942/- (i.e. 9,76,20,521 – 8,30,20,579). It is further submitted that, as per Clause 7 (iv) of the purchase order and the work order, the Operational Creditor has to withhold 5% towards retention money that it comes to Rs.3,40,49,784/- as per the purchase order Clause – IV and this amount should be paid by the Operational Creditor only after completion of the entire work as per the Letter of Intent and also to the satisfaction of the principal employer i.e. CSPGCL. The Operational



Creditor has paid entire amount without withholding 5% of the retention money and therefore the said amount of Rs.4,86,49,726/- (1,45,99,942 + 3,40,49,784) is also liable to pay by the Corporate Debtor.

(5) *He has relied upon the following judgements:*

- a) *The Hon'ble Supreme Court in the matter of Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd<sup>1</sup>.*
- b) *The Hon'ble Supreme Court in the matter of K.Kishan Vs. M/s. Vijay Nirman Company Pvt. Ltd<sup>2</sup>.*
- c) *The Hon'ble Supreme Court in the matter of Macquarie Bank Ltd., Vs. Shilpi Cable Technologies Ltd<sup>3</sup>.*
- d) *The Hon'ble NCALT in the matter of M/s. Rajeev K Aggarwal Vs. Panipat Texo Fabs Pvt. Ltd. and another<sup>4</sup>.*
- e) *The Hon'ble NCLAT, Kolkata Bench in the matter of M/s. Agarwal Coal Corporation Pvt. Ltd. Vs. M/s. Impex Ferro Tech Ltd.<sup>5</sup>*

6. Shri V. Srinivasa Raghavan, learned Sr. Counsel for the Respondent after arguing the case, has also filed his written gist of arguments dated 19.09.2019, by inter alia contending as follows:

- (1) It is submitted that the statutory definition of 'operational debt', as per Section 5(21) of the IBC, that a claim shall qualify as an operational debt only if the same has been raised in respect of the provisions of goods and services or

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<sup>1</sup> Civil Appeal No.9405 of 2017

<sup>2</sup> Civil Appeal No.21824 of 2017

<sup>3</sup> Civil Appeal No.15135 of 2017

<sup>4</sup> Company Appeal (AT) (Insolvency) No.715 of 2018

<sup>5</sup> Company Petition No. 440/KB/2017

employment. IPL has admittedly not provided any goods or services whatsoever in favor of ABB.

(2) In support of the above, he has relied upon the following judicial decisions:

i. In Tata Chemicals Ltd. Vs. Raj Process Equipment's and Systems Pvt. Ltd., it has been noted that:-

“22. It is also important to point out that Petitioner had neither provided any goods nor any services to the Corporate Debtor. There is no amount given by the Petitioner to the Respondent in nature of debt. On the other hand, the Corporate Debtor is a vendor, and the applicant has not made payment to it. Hence the Petitioner is not an Operational Creditor as defined under the IBC.”

ii. In Ranual Technology Pvt. Ltd. Vs. Calprin Ads Pvt. Ltd., it has been noted that:-

“12. Coming to the factual aspect of this case, the Petitioner herein has neither supplied any goods nor has rendered any service so as to acquire status as an operational creditor. The payment owed by Calprin Ads could, therefore, not be considered as operational debt and the applicant could not be considered as Operational Creditor”.

(3) It is well settled law that any claim for damages does not give rise to a debt until the liability is adjudicated authority. When there is a breach of contract, the party who commits the breach does not eo instanti incur any pecuniary obligation and the party complaining of the breach does not become entitled to a debt due from the other party. The only right which the party aggrieved by

the breach has is the right to sue for damages, and this is not an actionable claim. Damages become payable only when they are crystallised upon adjudication. Until and unless adjudication takes place with a resultant decree for damages, there is no debt due and payables. Damages require adjudication. Until then the liability of a party in alleged breach of a contract does not become crystallised. Therefore, neither a Petition for winding up nor an application for initiation of CIRP is maintainable against any company on the claim of damages unless and until the same has been adjudicated upon following a thorough trial.

In support of the above contentions, he has relied upon the decisions rendered in the cases of Union of India Vs. Raman Iron Foundry, Greenhills Exports Private Limited, Mangalore Vs. Coffee Board, Bangalore, E-City Media Private Limited Vs. Sadhrta Retail Limited and Tata Chemicals Ltd. Vs. Raj Process Equipments and Systems Pvt. Ltd.

- (4) The Petitioner is under CIRP vide its Order dated 25.02.2019 passed in C.P(IB)No.372/7/HDB/2018. The said order became final having no Appeal filed against it.
- (5) The terms and consequence of the Purchase Order dated 16.06.2018 and the Work Order dated 16.08.2018, ABB has performed its scope of work and periodically raised invoices. Many of these invoices remained unpaid and hence, ABB and IPL mutually discussed and agreed to a reconciliation statement on 12.01.2018. As per the Reconciliation Statement, INR 3,89,57,554/- was shown as due and payable to ABB as per the Books of accounts of

IPL, whereas INR 18,29,74,017/- was due as per the books of accounts of ABB. As IPL failed to pay any of the amounts agreed under the Reconciliation Statement, ABB was forced to issue notice of demand dated 24.07.2018 under Section 8 of the IBC. ABB claimed an amount of INR 18,29,74,017/- which is as per the amounts due according to ABB's books of accounts and also claims an interest of INR 1,64,67,661/-. IPL vide its letters dated 03.08.2018 and 06.08.2018, responded to the aforesaid demand notice dated 24.07.2018 and denied any sums payable to ABB. The ABB has disputed the claims of IPL from the very beginning and further that these disputes pertain to a matter which is the subject of the arbitration agreement between the parties hereto. The issue in question cannot be decided in a summary proceeding under the IBC and ought to be adjudicated upon before a duly constituted Arbitral Tribunal.

- (6) The project in question was completed and synchronized on 22.03.2013 and commercial operations commenced on 05.09.2013 barring some ancillary scope for which delay is attributable solely to IPL. ABB has periodically raised invoices under the Purchase Order and the Work Order. In the reconciliation Statement, IPL has provided for credit for a sum of INR. 5,20,71,628/- towards goods already supplied by IPL/TSL on behalf of ABB. However, in the aforesaid letter dated 06.08.2018, IPL took the wholly untenable stand that the amount ought to have been reflected as a debt as the materials have already been supplied by IPL and TSL and accepted by ABB. On this basis, IPL unilaterally modified the Reconciliation



Statement and changed the credit of INR 5,20,71,628/- to debit and arbitrarily claimed that ABB is liable to pay a sum of INR 22,90,66,309/- to IPL.

- (7) In the light of the above, it is evident that there is no 'Operational debt' owed by ABB in favour of IPL. Further, IPL has furnished no documentary evidence that show that the amount claimed by IPL is due and payable by ABB. The instant Petition is filed in order to convert this Tribunal into a recovery forum for monies not legally due and payable. Therefore, applying the test laid down by the Hon'ble Supreme Court in Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd., the instant Petition is liable to be rejected.

7. The Respondent/Corporate Debtor has further filed an I.A.No.187/2019 U/s 8 of Arbitration and Conciliation Act, 1996, by inter alia to refer the present dispute to Arbitration in accordance with clause 17 of Purchase order dated 16.06.2010 and Clause 16 of Work order dated 16.08.2010.

- (1) It is submitted that the C.P(IB)No.210/BB/2018 has been filed by IPL, frivolously and baselessly alleging that monies are due to them from ABB under the Agreements and ABB has failed to pay the same. The instant Company Petition is devoid of merits and neither maintainable in law nor on the facts of the case. Therefore, the instant Company Petition is liable to be dismissed in limine.
- (2) It is further submitted that, without prejudice, this Tribunal has no jurisdiction to adjudicate upon the disputed claims of IPL against ABB as IPL has sought to bring before this Tribunal such disputed claims in a matter which is the

subject of the arbitration agreement between ABB and IPL viz. Clause 17 or Purchase Order dated 16.06.2010. The existence as well as the execution of the Agreements, including the parties agreement to resolve inter-se disputes through arbitration, is admitted. Therefore, its terms and consequence of the Agreements, particularly the arbitration agreement captured therein, ABB and IPL are bound to resolve disputes between them through arbitration.

(3) It is further submitted, without prejudice, even assuming without conceding that IPL has any claims against ABB, the proper recourse would be to approach a duly constituted arbitral Tribunal in terms of the Agreements executed by the parties and not before the Tribunal under the IBC, 2016. IPL has not disputed either the execution of the Agreement or its contents. In other words, the Purchase Order dated 16.06.2010 and the Work Order dated 16.08.2010, as amended from time to time, are admitted documents and the arbitration clauses in the Agreement are binding on the parties hereto. There is a valid and enforceable arbitration agreement in the Agreements and all the claims and counter-claims of the parties hereto ought to be adjudicated only by a duly constituted arbitral Tribunal in terms and consequences of Clause 17 of the Purchase Order dated 16.06.2010 and Clause 16 of Work Order dated 16.08.2010.

8. Shri Gopikrishna Byadigera, Interim Resolution Professional has filed an I.A.No.228/2019, by inter alia seeking to permit the Operational Creditor to amend the cause title as "M/s. Indu



Projects Ltd. Rep by the Interim Resolution Professional” instead of “M/s. Indu Projects Ltd., Rep by the Director”.

9. The case is listed for admission on various dates viz., 27.11.2018, 20.12.2018, 24.01.2019, 05.02.2019, 21.02.2019, 22.03.2019, 01.04.2019, 03.04.2019, 09.04.2019, 06.05.2019, 28.05.2019, 12.06.2019, 28.06.2019, 08.07.2019, 22.07.2019, 13.08.2019 and 04.09.2019, and it is adjourned on those dates at the request of the parties, in order to serve the notice and also to give an opportunity to explore the possibility of settlement, etc. However, learned Counsel for the Respondent submits that there is no question of any settlement as the amount in the instant Company Petition is frivolous and they are not liable to pay. Therefore, the Adjudicating Authority has no other alternative except to consider the case as per merits.
10. By perusal of the pleadings of both the parties, the following main issues arise for consideration:
- 1) Whether the Petitioner falls under the definition of Operational Creditor and the claim can be Operational debt so to come to under the purview of the Code.
  - 2) Whether the Petition is maintainable at the instance of Operational Creditor as it is undergoing CIRP vide C.P(IB) No.372/7/HDB/2018 filed by Bank of India against the Indu Projects Limited at NCLT Hyderabad Bench, Hyderabad.
  - 3) Whether the Petition has to be referred to Arbitration as claimed by Petitioner vide I.A No. 187 of 2019.
  - 4) Whether Debt and default in question are in dispute.

11. So far as the first issue about the maintainability of the Company Petition at the instance of Indu Project Limited i.e. Corporate Debtor is concerned, it is necessary refer to Purchase order dated 16.06.2010 and Tripartite Agreement dated 27<sup>th</sup> August, 2015, The Purchase order various services of design, engineering, testing, testing and Supply of plant & Equipment for end customer CSPGCL, Korba. Similarly, the Tripartite Agreement dated 27<sup>th</sup> August, 2015 executed between Indu Projects Ltd (Referred to as Purchaser) and M/s. ABB India Ltd (referred to as Supplier) and M/s. VA Tech Wabag Limited (referred to as Confirming Party) (filed at *at Page No. 89 Annexure 14 in the main CP*). As per this agreement, it is not in dispute that Indu Project Limited had placed an order vide Letter dated 30.12.2009 and Purchase Order dated 16.06.2010 on the Supplier(ABB) for Supply of Plant and Equipment for the balance of equipment associate to e-BOP Package for IX500 MW CSPGCL, Korba (Chhattisgarh West) TTP ext. stage III ("Supply Contract"). It is also mentioned therein that the Purchaser (IPL) shall effect all the payments for supply of material under the Supply Contract and Services performed under the Service Agreement. It was also agreed mutually that the Confirming Part shall make the penultimate milestone payment in terms of the Supply and Service Contract to the Supplier directly on and behalf of the Purchaser. In this, there is an Arbitration Clause *under para VII* available to resolve the dispute, arises out of the agreement by way of Arbitration. Therefore, it is not in dispute the Contract is for supply of Plant and Equipment in question. Therefore, the contention of the Respondent that there are no services and goods involved in the instant Company Petition so as to maintain the instant Petition/Application, under Section 9

of the IBC is not at all tenable and the same is without any basis. Therefore, the instant Petition is maintainable as Petitioner deemed to be an Operational Creditor and the debt claimed in Company Petition deemed to be an Operational debt so as to come under the Provisions of the Code.

12. So far as second issue is concerned, by virtue of amendment I.A No. 228 of 2019 filed by Mr.GopiKrishna Byadigera, IRP appointed in C.P(IB)No.372/7/HDB/2018 filed by Bank of India, (since we hereby allowed) it is deemed to be filed by IRP representing IPL. By perusal of the extant provisions of the Code with regard to moratorium, it is to be held that moratorium operate against Corporate Debtor to initiate cases against it but it does not operate bar to initiate case(s) against parties, who are liable to pay to Corporate Debtor but such litigation should be conducted by IRP/RP appointed by Adjudicating Authority. In the instant case, the Petitioner, being a Corporate Debtor in earlier C.P(IB) No.372/7/HDB/2018, can initiate instant case by IRP appointed in that case. Therefore, the contention of the Respondent that the instant case barred by Section 11 of the Code is baseless and not tenable. It is relevant to refer the judgment relied upon by the Petitioner, in the case of Forech India Ltd Vs. Edelweiss Assets Reconstruction Co. Ltd.<sup>6</sup> rendered in Civil Appeal No.818 of 2018. The instant case was filed on 10<sup>th</sup> October, 2018 duly complying the requisite provisions of the Code, whereas C.P.(IB)No. 372/7/HDB/2018 was admitted on 25.02.2019 by NCLT Hyderabad Bench. Subsequently, Mr.Gopikrishna Byadigera (Regn. No. IBBI/IPA-001/IP-P00206/2017-18/10406 was appointed as IRP vide order dated

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<sup>6</sup> 2019 0 Supreme (SC) 77

05.03.2019. The Respondent has issued a Form-3 under the Code dated 24<sup>th</sup> July, 2018 to the Petitioner, by inter alia demanding to pay the alleged default amount of Rs.18,29,74,017/-. Accordingly, the Petitioner has issued a suitable reply dated 3<sup>rd</sup> August, 2018 by disputing the claim of Respondent. However, the Respondent is admittedly has not initiated any CIRP proceedings against the Petitioner, though it claims that the Petitioner is liable to pay the amount by issuing notices earlier. Therefore, the instant Petition is maintainable.

13. So far as issue of referring the matter to Arbitration as contented by the Respondent vide I.A. No.187 of 2019, under Section 8 of the Arbitration and Conciliation Act 1996 is concerned, it is to point out here that the instant Company Petition is filed on 10<sup>th</sup> October, 2018, whereas the Arbitration notice was issued subsequent to the initiation of Instant Company Petition i.e. on 12<sup>th</sup> December, 2018. Moreover, the Petitioner has not taken any legal course of action, after issuing the notice dated 12<sup>th</sup> December, 2018, and the Respondent has also filed suitable reply to the Demand Notice. The Respondent failed to invoke any legal course of action in pursuance to early demand notice dated 24<sup>th</sup> July, 2018 and the Arbitration notice. Therefore, issue of Arbitration notices without any further prosecution before the Court of law, cannot constitute a dispute so as to bar the initiation of CIRP at the instance of the Petitioner.

14. The next question arises is whether the instant Company Petition is filed in accordance with law by complying the pre-requisite conditions like debt, default and dispute. As detailed supra, before filing present case, the Petitioner issued a Statutory Demand Notice in Form - 3 Under Rule 5 of the



I&B(AAA) Rules, 2016 dated 07.09.2018, by inter alia demanding to pay the default amount of Rs.5,80,78,442/-, by furnishing all the material documents in respect of the claims. In pursuant to the Demand Notice, the Respondent has issued a Reply dated 18.09.2018, by inter alia disputing the status of Indu Project Limited, as Operational Creditor, there is an arbitration clause and denying its liability and on the contrary claiming from the Petitioner etc.

The IRP has filed a Counter Affidavit dated 14.05.2019 to I.A No. 187 of 2019, by inter alia contending that there is no dispute of the claims made in the Company Petition, and the contentions and allegations made by the Respondents against the Petitioner are not at all tenable and without any basis. The IRP is an authority to examine the claim of Petitioner and after examining its claim only, he has certified that the claim of Petitioner is justified as per documents and the Respondent is liable to pay the outstanding amount in question. Therefore, the debt and default in question prima facie proved and the instant Petition is filed in accordance with provisions of the Code. The dispute raised by the Respondent as per the Reply dated 18.09.2018 to the demand notice issued by the Petitioner is without any basis and it would not constitute any dispute.

15. So far as, IA No. 187 of 2019 is filed by ABB India Limited i.e Corporate Debtor, under Section 8 of the Arbitration and Conciliation Act, 1996, by inter alia seeking to refer the matter to Arbitration is not at all maintainable on the simple ground that Arbitration notice dated 12.12.2018, subsequently to the filing of instant Company Petition. As stated supra, the Respondent though issued a Statutory Demand Notice dated



24<sup>th</sup> July, 2018 prior to the issue of the instant demand notice dated 07.09.2018 by the Petitioner, the Respondent not initiated any proceedings against the Respondent. Therefore, filing this instant Application under Section 8 of the Arbitration and Conciliation Act, 1996 is not at all maintainable and does not constitute a dispute. Moreover, I.A No. 187 of 2019 was filed simultaneously along with objection of even dated 09.04.2019. As per law, an Application under Section 8 should be filed before filing main Objection to the main Company Petition. Therefore, filing the Application under Section 8 of the Arbitration and Conciliation Act, 1996, and also filing objection is not in compliance with the requisite condition as mentioned under the Arbitration Act, to refer the matter for arbitration. Therefore, the Application is liable to be dismissed.

16. So far as, I.A. No. 228 of 2019 is filed by Mr.Gopikrishna Byadigera, IRP, U/s 18 & 20 of the IBC, 2016, by inter alia seeking to permit the Operational Creditor to amend the cause title as M/s.Indu Projects Limited, Rep. by IRP instead of M/s. Indu Projects Ltd., Rep. by the Director is concerned, it is necessary to allow it as he is competent person to initiate the instant case as he was duly appointed by NCLT, Hyderabad Bench in C.P.(IB)No.372/7/ HDB/2018. It is only IRP can prosecute the litigation on behalf of the Corporate Debtor undergoing CIRP. Moreover, at the time of filing the instant Company Petition (10.10.2018) and the other cases was not admitted and it was later admitted only on 25.02.2019. Therefore, IRP is justified to seek amendment to the cause title. Accordingly, we are inclined to allow the said Application by permitting IRP to substitute the name of IRP instead of the Director.

17. For the aforesaid reasons and circumstances, we are of the considered view that the instant Petition/Application is filed in accordance with requisite provisions of Code and debt and default in question, which are duly certified by duly appointed IRP in respect of Corporate Debtor, are prima facie proved subject to further detailed verification to be undertaken by the IRP, who is going to be appointed in the case; And the alleged disputes raised by the Respondent have not been substantiated. Since, the Petitioner has not suggested suitable IRP and left to the Adjudicating Authority to nominate as per law, we have decided to appoint Insolvency Professional, namely, Mr. Konduru Prasanth Raju bearing IP Registration No. IBBI/IPA-002/IP-N00708/2018-2019/12200, who also has filed her Written Consent in Form-2 dated 11.09.2019 by inter alia affirming that he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor herein and that there are no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency. Therefore, it is a fit case to admit to initiate CIRP against the Corporate Debtor by appointing IRP, imposing moratorium etc.
18. In the result, by exercising powers conferred on the Adjudicating Authority, under Section 9(5)(i) and other extant provisions of the Code, Company Petition bearing C.P.(IB)No.210/BB/2018 is hereby admitted with the following consequential directions:
- 1) We hereby appointed Mr. Konduru Prasanth Raju bearing IP Registration No. IBBI/IPA-002/IP-N00708/2018-2019/12200 as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor namely M/s. ABB India



Ltd., and to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.

- 2) The following moratorium is declared prohibiting all of the following, namely:
- i. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - ii. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - iii. any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
  - iv. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
  - v. 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.
  - vi. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.



- vii. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time to carry out the CIRP process as expeditiously as possible.
- 4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by the IBBI.
- 5) The IRP is directed to file his progress reports to the Tribunal from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
19. I.A. No.228 of 2019 filed by Mr. Gopikrishna Byadigera, IRP to substitute his name in the place of existing Director is hereby allowed by inserting his name in the cause title.
20. I.A.No.187 of 2019 filed by M/s. ABB Ltd., (Respondent/ Corporate Debtor), U/s 8 of Arbitration and Conciliation Act, 1996 to refer the matter for arbitration is hereby dismissed.
21. Post the case for report of the IRP on **11.11.2019**.

  
**(ASHOK KUMAR MISHRA)**  
**MEMBER, TECHNICAL**

  
**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**