

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

C.P (IB) No.1832/KB/2019

In the matter of

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.

And

In the matter of:

Riya Travel & Tours (I) Pvt. Ltd. (CIN: U99999MH1992PTC066873), a company incorporated under the Companies Act, 1956 having its registered office at 237, Gulab Building, P.D. Mello Road, Mumbai, Maharashtra-400001.

... Operational Creditor

Versus

In the matter of:

Linbert Travels Pvt. Ltd., (CIN: U63040WB2004PTC098329) a company incorporated under the provisions of the Companies Act, 1956, having its Registered office at First Floor, Room No.2, 9 Mangoe Lane, Kolkata-700001.

...Corporate Debtor

Date of hearing :10/12/2021

Order Pronounced on :13 /01/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr.Sunil Gupta, Adv.] For Operational Creditor
2. Mr. Soumava Mukherjee,Adv.

1. Ms. Sunita Mukherjee, Adv.] For Corporate Debtor
2. Mr.Abhijat Das, Adv.

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under section 9 of the IBC has been filed by **Riya Travel & Tours (I) Pvt. Ltd. (CIN: U99999MH1992PTC066873)**, a corporate entity, having its registered office at 237 Gulab Building, P.D. Mello Road, Mumbai, Maharashtra-400001,(hereinafter referred as the Operational Creditor), through Mr. Prasun Ghosh, authorised representative of the Operational Creditor, vide Board Resolution dated 5th July, 2019 seeking initiation of corporate insolvency resolution process in respect of **Linbert Travels Pvt. Ltd., (CIN: U63040WB2004PTC098329)**, having its Registered office at First Floor, Room No.2, 9 Mangoe Lane, Kolkata-700001 (hereinafter referred as the Corporate Debtor).
3. It is submitted by the Operational Creditor in the petition that the Operational Creditor had provided travel related services to the Corporate Debtor during the period between 02.04.2018 to 07.07.2018, and accordingly raised 104 invoices, the aggregate values of which amounted to Rs.9,73,307/- (Rupees Nine Lakhs Seventy Three Hundred and Seven only) with SGST and CGST. It is stated that the Corporate Debtor has not made any payment till date against any of the aforesaid invoices. It is stated that the ledger of the Corporate Debtor in the books of accounts of the Operational Creditor showed a debit of Rs.9,73,307/- It is further stated that as no credit period was agreed, the amount became due and payable on the dates of the respective invoices but the same have remained unpaid and not settled till date leading to default by the Corporate Debtor.

4. It is further mentioned in the petition that the Corporate Debtor has filed its last balance sheet on 31st March, 2018 for the Financial Year 2017-2018 (Annexure-C/1). This is reflected in the information available on the website of the MCA and can be corroborated with the master data of the Corporate Debtor (Annexure-1/1).
5. The Operational Creditor has filed the computation of default in tabular form as Annexure-E.
6. The Operational Creditor has filed a certificate issued by Standard Chartered Bank, maintaining the account of the Operational Creditor (however, later on it was mentioned in the supplementary affidavit that the name of the Standard Chartered Bank was inadvertently mentioned and the correct name is Federal Bank), confirming that there is no payment of unpaid operational debt for the period from 3rd June, 2018 to 27th August, 2019 (Annexure-F).
7. The Operational Creditor further submitted that Demand Notice dated 6th June, 2019 was issued to the Corporate Debtor demanding the payment of Rs.9,73,307/- in terms of Rule 5 of the Insolvency and Bankruptcy(Application to Adjudicating Authority), Rules 2016 to the Corporate Debtor (Annexure-G) which was duly served and delivered to the Corporate Debtor as per the Track Report obtained from the website of India Post showing delivery of the notice (Annexure-H). The Operational Creditor also placed on record with the petition the email correspondence between the parties in relation to the transactions (Annexure-I).
8. In reply to the petition, however, the Corporate Debtor filed reply affidavit of Sri Vivek Jhunjhunwala, an authorised representative of the Corporate Debtor and submitted that all the allegations and contentions

which are not specifically dealt with and/or **denied** shall be deemed to have been denied. It is submitted that the application is misleading, vexatious, mala fide and suffers from defects and therefore not sustainable. It is submitted that the Demand Notice has not been served as per the provisions of the Code and as per the prescribed format and therefore, the application is not maintainable. The Corporate Debtor has denied the allegation that the Operational Creditor has business relationship with the Corporate Debtor since, 2016 for providing travel related services. It is stated that it was a rolling business and whenever transactions took place, amounts were paid, settling the previous dues and current dues. It is submitted that sometimes advance payments were made to the Operational Creditor which was adjusted with the subsequent bills. The Corporate Debtor has denied that the bills for an amount of Rs.9,73,307/- as according to the Corporate Debtor, the copies of the purported invoices marked Annexure-'D' to the application contained no signature and stamp of the Operational Creditor and these have been manufactured subsequently and have no legal validity being unsigned. It is stated that these tax invoices are required to be signed and in the absence of the signature, no reliance can be placed on the tax invoices. The Corporate Debtor has denied that the Corporate Debtor is a defaulter or that a sum of Rs.9,73,307/- is due to the Operational Creditor by the Corporate Debtor.

9. It is submitted that furthermore, the purported tax invoices annexed at Annexure "D" are from 03.06.2018 to 10.08.2018 and one invoice is at Annexure "E" from 03.07.2018 to 10.08.2018 and one tax invoice is of Rs.69,918/- dated 30.11.30.11.2018. the letter dated 27.08.2019 of Federal Bank Limited shows several receipts in the account of the Operational Creditor from the Corporate Debtor from 08.07.2018 to 28.08.2018 which were in settlement of transactions between June, 2018 to August,2018 and it is not correct that there is an outstanding of Rs.9,73,307/- for the said period. Further stated that an amount of Rs.50,000/- has been paid on 30.11.2018. The Corporate Debtor denied

the allegation that there is no payment of an unpaid operational debt for the period 03.07.2018 to 27.08.2019.

10. It is submitted that with reference to the email correspondence being Annexure "I" of the said application , it is submitted that the said correspondence are vague and do not call upon the Corporate Debtor for payment of Rs.9,73,307/- for settlement of the alleged dues raised in the purported invoices annexed at Annexure-"D" of the said application. There is no reference to any tax invoice numbers. The said correspondence are irrelevant for adjudication 9 of the instant application and no reliance ought to be placed on them.
11. It is submitted that there is no operational debt due and payable by the Corporate Debtor to the Operational Creditor and as such, no proceedings are maintainable under section 9 of the IBC. The Corporate Debtor stated and submitted that no operational debt has been proved to have been due to the Corporate Debtor.
12. In its rejoinder of the Operational Creditor submitted that the Operational Creditor carries on business, inter alia, of providing travel services under the name and style of 'Riya: the travel expert' and have carved a niche for itself in the travel industry.
13. It is submitted that early 2016, the Corporate Debtor had approached Operational Creditor for obtaining travel related services such as booking air tickets and other travel related services through Riya Travels, upon which operational creditor had accepted and agreed to provide access to our online portal for obtaining such services.
14. It is submitted admittedly the business relations continued by and between the parties since 2016 and the corporate debtor used to avail travel related services during the relevant period from our platform. Shortly after commencement of such relations, the corporate Debtor has requested for credit facility and considering their request operational

creditor has agreed to provide credit facility on the understanding that payment should be made within the agreed period. It is pertinent to note that even after such indulgence corporate debtor have failed and neglected to make timely payments of their dues. It is germane to state that such defaults became more chronic during July 3, 2018 to August 10,2018, when Corporate Debtors have obtained credit facility against our services to the tune of Rs.10,22,608/- rendered on different dates, detailed calculation whereof is enclosed with the petition being Annexure-‘E’. On November 30,2018 a further invoice was raised amounting to Rs.699.74/- on account of ‘Old Outstanding –CR Card Charges’, thereby increasing the outstanding amount to Rs.10,23,307.72/- It is stated that against such a paltry sum of Rs. 50,000/- was received on November 30,2018 and in view thereof, a sum of Rs.9,73,307.72/- became due and payable by the Corporate Debtor.

15. It is stated that several email correspondences were exchanged by and between the parties during relevant time wherein Corporate Debtor has categorically admitted and acknowledged their liability to pay the said outstanding dues. In this regard, reference may be made to it email dated August 21, 2018, whereunder detailed account statement indicating pending dues was sent to the Corporate Debtor. The Operational Creditor vide their email dated September 21,2018, has further indicated that a sum of Rs. 10,47,378/- was due and payable, in response whereof, the Corporate Debtor vide their email dated September 21, 2018 has unequivocally admitted and acknowledged such debt and sought for indulgence on the pretext of their deplorable financial conditions. In the same email, the Corporate Debtor has proposed to pay a portion of said due as soon as possible. This unequivocally indicates that said debt was duly admitted and acknowledged by the Corporate Debtor and therefore it cannot reprobate from its liability to pay such dues. Since then several emails were sent requesting for payment of such dues, the last of such email being dated May 16,2019 ascertaining status for payment of Rs.9,37,307/- pending

due since long.

16. The Operational Creditor has denied all the averments of the Corporate Debtor in the reply affidavit except those which have been admitted, and those of the petition have been reiterated and reaffirmed. It is stated that the Corporate Debtor has duly admitted the business relationship since 2016 between the parties. The Operational Creditor has categorically denied that the payments were made upon completion of the transactions thereby settling the previous dues as alleged in the reply affidavit. It is further denied in the rejoinder that any advance payments were ever made by the Corporate Debtor or that the same was adjusted with the subsequent bills. It is stated that the invoices were duly served upon the Corporate Debtor in accordance with law and interestingly the Corporate Debtor has unequivocally acknowledged and admitted the debt vide their email dated September 21,2018 and therefore no receipt of the invoices will become irrelevant because the claims have been duly admitted by the Corporate Debtor.
17. The Operational Creditor has denied that the invoices were manufactured or do not have any legal validity being unsigned. In the rejoinder, it is clarified by the Operational Creditor that due to inadvertence, instead of Federal Bank, the name of the Standard Chartered Bank was mentioned in the body of the application though the Bank statements issued by the Federal Bank has been correctly enclosed as Annexure-D. It is stated that the typographical error should not impact the merit of the matter.
18. The Corporate Debtor filed supplementary affidavit stating therein that he was informed by Ld. Counsel on record that on 3rd February, 2020 when the matter came up for hearing the Ld. Counsel for the Corporate Debtor wanted to submit preliminary objection to the instant application. As the said preliminary objection was not in the affidavit in opposition filed by the Corporate Debtor, this Adjudicating Authority by order dated

03.02.2020 for the ends of justice was pleased to give liberty to the Corporate Debtor to file a supplementary affidavit in respect of the preliminary objection.

19. It is submitted that pursuant to the liberty given from the said order dated 03.02.2021, the Corporate Debtor has filed the Supplementary Affidavit.
20. It is stated and submitted that the purported application under section 9 of the Insolvency and Bankruptcy Code, 2016 being CP (IB) No. 1832/KB/2019 (hereinafter referred to as the said application) signed by one Prasun Ghosh, on behalf of Riya Travel & Tours (India) Private Limited, the Operational Creditor is defective and not in accordance with the authority given to the said Prasun Ghosh by the Board of Directors.
21. It is stated that according to the certified copy of resolution passed at the meeting of the Board of Directors of Riya Travel & Tours (India) Private Limited held on 5th July, 2019 which is at Annexure-“B” of the said application. Mr. Prasun Ghosh, authorised signatory of the company has been authorized to sign verify, pursue and present petition but the said petition in Form 5 has been presented and signed by Mr. Prasun Ghosh as Regional Manager, Riya Travel & Tours (India) Private Limited in which capacity, the Board of Directors has not given him power to sign. The Board of Directors in the Board Resolution dated 5th July, 2019 has not described Mr. Prasun Ghosh as Regional Manager of Riya Travel & Tours (India) Private Limited.
22. It is submitted that in Part-II of Form -5 against serial No.6 where the name address and authority of persons submitting applications on behalf of Operational Creditor is required to be given Mr. Prasun Ghosh describes his authority as Regional Manager. The Board Resolution has authorised Mr. Prasun Ghosh to submit application on behalf of Riya Travel and Tours (India) Private Limited as the authorised Signatory and

- not in any other capacity.
23. It is submitted that the information provided against serial no. 6 in Part II of Form 5 is not in accordance with the Board Resolution and the authority given to Mr. Prasun Ghosh.
24. It is submitted that the affidavit under section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016 has been affirmed by Mr. Prasun Ghosh as Regional Manager of the Operational Creditor and not as the authorised signatory I which capacity Mr. Prasun Ghosh has been authorised to sign and verify petitions. It is stated that the said affidavit is defective and without legal force and ought not to be relied upon.
25. It is submitted by the Corporate Debtor that the Board Resolution dated 5th July 2019 of the Operational Creditor Riya Travel and Tours(India) Pvt. Ltd. has authorised Mr. Prasun Ghosh, the authorised signatory to sign, verify, pursue and present petition, suit appeals Revision, Applications, Petitions before the appropriate Court at Kolkata against Linbert Travels Private Limited but no authority has been given to Mr. Prasun Ghosh authorised signatory to appoint advocate and execute Vakalatnama in favour of Advocates. The appointment of the Advocate and to execute Vakalatnama in favour of Advocates. The appointment of the Advocate who filed this petition and the Vakalatnama executed by Mr. Prasun Ghosh in favour of the Advocate is therefore, without authority.
26. It is submitted by the Corporate Debtor that in view of the above defects and want of authority of Mr. Prasun Ghosh to sign affirm and present the instant petition and to engage an Advocate and execute Vakalatnama in his favour, the present petition is defective and ought not to be entertained.
27. It is submitted that this supplementary affidavit in opposition be treated as part of the Affidavit in opposition filed by the Corporate Debtor.
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28. It is submitted that in Early 2016, the Corporate Debtor had approached Operational Creditor for obtaining travel related services such as booking air tickets and other travel related services through Riya Travels, upon which Operational Creditor had agreed to provide access to online portal for obtaining such services.
29. It is submitted that admittedly the business relations continued by and between the parties since 2016 and the Corporate Debtor used to avail travel related services during the relevant period from our platform. Shortly after commencement of such relations, the Corporate Debtor has requested for credit facility and considering their request operational creditor has agreed to provide credit facility on the understanding that payment should be made within the agreed period. It is pertinent to note that even after such indulgence corporate debtor have failed and neglected to make timely payments of their dues. It is germane to state that such defaults became more chronic during July 3, 2018 to August 10, 2018, when corporate debtor have obtained credit facility against our services to the tune of Rs. 10,22,608.00/- rendered on different dates, detailed calculation whereof is enclosed with the main application being Annexure-‘E’ (Page 131 of the petition) thereto. On November 30, 2018 a further invoice (Page 130 of petition) was raised amounting to Rs.699.72/- on account of ‘Old Outstanding –CR Card Charges’, thereby increasing the outstanding amount to Rs.10,23,307.72/- It is stated that against such due a paltry sum of Rs.50,000/- was received on November 30, 2018 and in view thereof, a sum of Rs. 9,73,307.72/- became due and payable by the Corporate Debtor.
30. It is stated that several email correspondences were exchanged by and between the parties during relevant time, wherein Corporate Debtor has categorically admitted and acknowledged their liability to pay said outstanding dues. In this regard reference may be made to our email dated August 21, 2018 (Page 155 petition), whereunder detailed account statement indicating pending dues was sent to the Corporate Debtor.
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The Operational Creditor vide their email dated September 21,2018 (page 144 of petition), has further indicated that a sum of Rs. 10,47,378/- was due and payable, in response whereof, the Corporate Debtor vide their email dated September 21,2018 (Page 144 of the petition) has unequivocally admitted and acknowledged such debt and sought for indulgence on the pretext of their deplorable financial conditions. In the same email, the Corporate Debtor has proposed to pay a portion of said due as soon as possible. Since then several emails were sent requesting for payment of such dues, the last of such email being dated May 16, 2019 ascertaining status for payment of Rs.9,73,307/- pending due since long.

31. Under such compelling circumstances, the Operational Creditor has invoked the provisions of the Code and issued a Demand Notice dated 06/06/2019 in Form 4 with invoices as required under Rule 5 of the IB (Application to Adjudicating Authority) Rules, 2016. No reply and/or objection to such notice was received within the statutory period of ten days. Consequently, Operational Creditor filed the instant application on August 30, 2019.
32. The Ld. Counsel for the Operational Creditor has shown us all the relevant documents placed on record. The Ld. Counsel for the Corporate Debtor has raised the following objections in the application:
 - i. The Corporate Debtor did not receive copy of Application: (Para-6 (II))
 - ii. Corporate Debtor categorically admitted that parties have business relation since 2016: Para- 7(I).
 - iii. Tax invoices must bear authentication and in absence of signature no reliance can be placed : Para- 7(II)
 - iv. No statement from Standard Chartered Bank as pleaded in Part V, the statement enclosed with application being Annexure F thereto

is of Federal Bank: Para-9(I)

- v. Form 5 is not proper form as such it requires name of the sender in block letter, which was not given: Para-10 (I).

33. Ld. Counsel for the Operational Creditor argued the following points:-

- i. It is stated that advance copy of said application was duly served upon the Corporate Debtor, nevertheless service was refused at their end. Para-10(I).
- ii. Alleged non-receipt of invoices becomes irrelevant in view of the categorical admission of liability in their email dated September 21,2018.(Para -8)
- iii. System generated invoices do not require any signature.(Para-8)
- iv. Due to inadvertent error instead of the Federal Bank, the name of Standard Chartered Bank has been mentioned at the body of the application (Para-10).
- v. Such technical defect in Form 5 will not deprive the Operational Creditor from pursuing his lawful remedy.(Para 11).
- vi. Moreover, the alleged disputes under reference are not pre-existing disputes and therefore bereft of any consideration. Even otherwise such disputes does not fall within the ambit of Section 5(6) of the Code.

34. The Ld. Counsel for the Operational Creditor has relied upon the following judgements in support of its case, which are under:-

- i. Jitendera Impex Private Limited vs. Compack Enterprise India Private Limited: in CA(AT) (Insolvency) No. 1083 of 2019 (NCLAT) : Para-2(ii)-(v), 11, 15,18,20,23.*
- ii. Rajendra Bhai Panchal Vs. Jay Manak Steels; CA (AT)*

(Insolvency) No. 592 of 2020 (NCLAT): Para-24,25,40,43,46

iii. Silvassa Cement Products Pvt.Ltd. Vs. Noor India Buildcon Pvt.Ltd.: CA (AT) (Insolvency) No. 675 of 2020 (NCLAT): Para 69.

iv. Ericsson India (P) Ltd. Vs. Reliance Infratel Ltd. [2018] 148SCL257: Para-5

35. Notice was admittedly received by the Corporate Debtor. The business relation ship is also admitted in the email sent by the Corporate Debtor in email dated September 21,2018 which is reproduced as under:-

“ Dear all,

I am writing to inform you that our current financial situation is not enough for us to be able to pay the total amount at this point of time, though we are in process to pay a portion of debt as soon as possible.

Meanwhile I request you to allow us to take ticket from your office for which we will be paying you on ASAP basis. This will help us to mobilize the account.

Regards

Jaydeep Das

Director

Linbert Travels Pvt.Ltd.

9 Mangoe Lane, 1st Floor, Room-2

Kolkata- 700001

Phone: 9831198989

Phone: 9831165606”

36. No reply to the notice however was sent by the Corporate Debtor to the Operational Creditor.
37. **Section 8(2)** is mandatory for the Corporate Debtor to send reply to the demand notice and specify if there is any pre-existing dispute, if no such reply is sent or pre existing disputes are intimated to the Operational Creditor within 10 days.

Section 8- Insolvency resolution by operational Creditor –

“(2)- The Corporate Debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor-

(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the [payment] of unpaid operational debt-

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or-

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the Corporate Debtor.”

38. The Operational Creditor has filed affidavit under section 9 (3)(b) of the IBC,2016 wherein the Operational Creditor has submitted that the Corporate Debtor has failed to bring to the notice of the Operational Creditor, the existence of any dispute or pendency of a suit or arbitration proceedings filed before the service of the Demand Notice and that the Corporate Debtor has also failed to repay the unpaid operational debt as specified in the Demand Notice sent by the Operational Creditor. It is further submitted that the Operational Creditor has also filed a copy of the Bank Statement. The Operational Creditor has also complied with Section 9(3)(c) by filing a certificate issued by the Federal Bank maintain the account of Operational Creditor, confirming that there is no payment of the unpaid operational debt for the period from 3rd July,2018 to 27th August, 2019.

39. In view of the aforesaid facts and circumstances and after considering all the pleadings of the parties and hearing Ld. Counsel appearing on both sides, we find that the Corporate Debtor has failed to make the payment of the outstanding operational debt due to the Operational Creditor and had not replied to demand notice under section of the IBC, which provides a Golden opportunity to the Corporate Debtor to come out with any dispute which they have with the Operational Creditor as regards the amount claimed in the demand notice within 10 days of receipt of demand notice. Since the Corporate Debtor has not replied to the Demand Notice, we suppose there was no pre existing dispute between

the parties. Even in the pleadings and also in the arguments advanced by the Ld. Counsel for the Corporate Debtor, neither the business relationship has been denied nor has any justification for non payment of the operational debt been given in the pleadings, rather the Corporate Debtor in its email sent to the Operational Creditor mentioned “ ***I am writing to inform you that our current financial situation is not enough for us to be able to pay the total amount at this point of time, though we are in process to pay a portion of debt as soon as possible.***

Meanwhile I request you to allow us to take ticket your office for which we will be paying you on ASAP basis. This will help us to mobilize the account”. This is a clear admission on the part of the Corporate Debtor of the operational debt that was due on that date. The Operational Creditor has been able to make out their case. In these circumstances , we admit the petition.

40. The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, we appoint **Mr. Surendra Kumar Agarwal, IRP** having Reg. No. **IBBI/IPA-001/IP-P00825/2017-2018/11401** to act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
41. We have heard Ld. Counsel for the parties and gone through the pleadings on the record. What is surprising is that the Corporate Debtor has not chosen to send the reply notice under section (2) sent by the Operational Creditor. Section 8(2) specifically gives a ‘Golden Opportunity’ to the Corporate Debtor to send its reply and vent out its grievance if any against the Operational Creditor by informing within a period of 10 days of the receipt of demand notice or a copy of the invoice served upon the Corporate Debtor, and it is rather mandatory for the Corporate Debtor to bring to the notice of the Operational Creditor the existence of dispute if any or record of the pendency of the suit or

arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute, the Corporate Debtor is further obliged to inform the Operational Creditor if any payment of unpaid operational debt being claimed by the Operational Creditor by sending an attested copy of the record of electronic transfer of the unpaid amount from the Bank account of the corporate debtor or by sending an attested copy of record that the Operational Creditor has encashed a cheque issued by the Corporate Debtor. If the Corporate Debtor does not avail itself of this opportunity, it cannot later on claim the existence of outstanding operational debt on some other vague or technical grounds. In the present case the Corporate Debtor has categorically admitted the liability in their email dated September 21, 2018. No substance has been found in the reply affidavit also. The business relationship which had been denied by the Corporate Debtor, is very much proved from the record and is rather admitted from the correspondence/ emails since 2016 because the Operational Creditor has been providing travel related services to the Corporate Debtor. On the basis of the invoices and the Bank statements, the outstanding debt of Rs.9,73,307/- is proved against which no payments has been made except Rs.50,000/- which has been made on 30th November, 2018. The Corporate Debtor has failed to provide any justifiable defence except bald and vague defence. We, therefore, find it a good case for admission of the petition and initiation of CIRP against the Corporate Debtor.

42. The application is complete in all respects.
43. Having gone through and considered the pleadings and documents placed on record by both the parties, we consider it to be a fit case for admission of the present petition, and initiation of CIRP against the Corporate Debtor. We have thus no hesitation but to admit this petition with the following orders:

ORDERS

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate

Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.

- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) 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 the 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.
- ix) **Mr. Surendra Kumar Agarwal, IRP**, registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP-P00825/2017-2018/11401,IRP** email surendraca@gmail.com and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective

Resolution Applicant within 105 days from the insolvency commencement date.

- xi) The Operational Creditor/Applicant is directed to deposit **Rs. 2,00,000/- (Rupees Two Lacs only)** with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

44. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

45. List the matter on **22/03/2022** for filing of **Progress Report**.

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

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on the 13th day of January, 2022

PJ.