C.P. (IB) No.10/KB/2025

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH-II

KOLKATA

C.P. (IB) No.10/KB/2025
Date of Order: 16.10.2026

In the Matter of:

SREI EQUIPMENTY FINANCE LIMITED,
A Company within the meaning of
Companies Act 2013, having its
Registered office at:
Viswakarma 86C, Topasia Road(S),
Kolkata-700086 and also at:
Room No. 12 & 13, 6A,
Kiran Sankar Ray Road,
Kolkata-700001

APPLICANT/FINANCIAL CREDITOR

Versus

Samsara Energy Limited,
A company within the meaning of
Companies Act 2013, having its
Registered Office at:
Unit No. 709, 7th Floor,
Merlin Infinite DN-51,
Sector-V, Salt Lake City,
Kolkata, Bidhan Nagar CK Market,
North 24 Parganas, Salt Lake,
West Bengal-700091

CORPORATE DEBTOR

C.P. (IB) No.10/KB/2025

Coram: **Labh Singh Hon'ble Member(Judicial)**
Rekha K Shah Hon'ble Member(Technical)

Present:

For the applicant(s): Mr. Aditya Kanodia Ld. Advocate
Mr. Sankarsan Sarkar Ld. Advocate
Mr. Tanmony Sett Ld. Advocate
Mr. Pratik Dutta Ld. Advocate

For the respondent.: Ms. Priyanka Mitra Ld. Advocate

ORDER

Labh Singh Member(Judicial)

1. The SREI Equipment Finance Limited(hereinafter referred "SEFL) claiming itself to be Financial Creditor has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as "the IBC Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company, Samsara Energy Limited, (hereinafter to be referred to as "the corporate debtor").

2. It is appropriate to mention that the applicant SEFL, is a Non-Banking Financial Company, incorporated on 13th June 2006 under the provision of the Companies Act having its

Registered Office at Vishwakarma Building, 86C, Topasia Road(S), Kolkata West Bengal.

3. Mr. Sohan Kumar Jha, duly authorized on behalf of applicant, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under the IBC Code. A copy of the Power of Attorney dated April 16, 2024 along with a certified copy of Board Resolution dated 28.03.2024 has been placed on record.

4. The Respondent Company, Samsara Energy Limited, against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 20.09.2007 having its registered office situated at Unit No. 709, 7th Floor, Merlin Infinite DN-51, Sector-V, Salt Lake City, Kolkata, Bidhan Nagar CK Market, North 24 Parganas, Salt Lake, West Bengal-700091. Since the registered office of the respondent corporate debtor is situated at Kolkata, this Tribunal having territorial jurisdiction over the State of West Bengal is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

5. Briefly stated the case of the applicant is that the Corporate Debtor approached the Financial Creditor for

financial assistance. The Financial Creditor, after considering request of the Corporate Debtor, which was sanctioned amongst others a loan to the tune of Rs. 50,00,00,000/- (Rupees Fifty crore Only) vide sanction letter dated December 29, 2018 followed by a loan agreement being contract no. 176738 dated December 31, 2018 revised by the letter dated March 13,2020.

5.1 It is further submitted that pursuant to the contract no. 116738, the Corporate Debtor availed disbursement of a sum of Rs. 39,00,00,000/-(Rupees Thirty Nine Crores) in several tranches. In order to secure the aforesaid contract, the Corporate Debtor had executed a deed of hypothecation. The obligation of the Corporate Debtor under the said Loan Agreement was payment of interest on a timely basis which the corporate Debtor failed to do. Thus, the Corporate Debtor committed defaults in making payments under the said Loan Agreement.

5.2 The Financial Creditor, in view of default committed by the Corporate Debtor, vide letter dated April 30, 2021 called upon the Corporate Debtor to make up to date failing which the Financial creditor would become entitled to recall the entire loan. The Corporate Debtor, by a letter dated May 4, 2021 admitted its dues but sought time to make repayment.

5.3 In view of such a default that had occurred till date, the Financial creditor had filed CP (IB) No. 328 of 2021 before this Tribunal. Subsequently, it transpired that the default of the other facilities, for which Loan Agreement was entered, falls within the blackout period under section 10A of the Code; and hence, the part of the default comes within the purview of Section 10A of the Code. The Financial Creditor, instead of amending the petition, was advised to withdraw the same with liberty to file a fresh one. Accordingly, the said CP(IB) No. 32 of 2021 was withdrawn with liberty as recorded in the order dated January 12, 2023.

5.4 The Corporate Debtor continued to default in its payment obligation and since the Corporate Debtor did not cure the defects in the ongoing defaults under the Loan Agreement and also under the other facilities, the Financial Creditor written several letters to which the Corporate Debtor, while admitting its debts and defaults, has neglected, refused and/or avoided payment. The Financial creditor recalled the Loan Agreement No. 176488 dated December 31, 2018 by its letter dated May 24,2024. The Corporate Debtor failed to make payment within seven days granted by the Financial creditor, and hence, the default has occurred.

5.5 It is further submitted that the earlier proceedings were initiated on the basis of default of payment of interest for the quarter. After withdrawal of the previous proceedings, fresh default for the quarter ended December, 2023, March, 2024, June, 2024 and September, 2024 have occurred which have given a fresh cause of action to the Financial creditor to file the instant proceedings.

5.6 It is further submitted that since the present debt in default claimed by the Financial creditor is restricted to contract No. 176738 dated December 31, 2018 being a financial debt, there is no requirement of any statutory notice of demand. The default itself is sufficient to file and maintain the present proceedings.

5.7 The Financial Creditor for the corporate Debtor has not clubbed other debts outstanding to the Financial creditor and reserves its right to make a claim in respect thereof at the appropriate stage, including filing a claim for the entire debt, upon initiation of corporate insolvency resolution process of the Corporate Debtor.

5.8 Thus, the Corporate Debtor is in default of a sum of Rs. 25,75,97,096/- as on May 15, 2024. The Financial Creditor, acting through the Administrator appointed by the Reserve Bank of India, has initiated proceedings against the Corporate Debtor under Section 66 of the said Code. The

application filed under Section 66 of the said code being independent of the remedies available to a Financial creditor, the instant application can be entertained by this Tribunal, and necessary order can be passed therein for the commencement of the CIRP process of the Corporate Debtor.

5.9 Sub-section (3)(b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Jitendra Lohia, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/P00170/2017-18/1003339 resident of 2/7 Sarat Bose Road, Vasundhara Building 2nd Floor, Kolkata-700020 with email id-jitulohia@knjainco.in. Mr. Jitendra Lohia has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Jitendra Lohia as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7(3)(b) of the Code has been satisfied.

5.10 The Financial Creditor, in order to prove its case, relied upon documents such as a copy of the Power of Attorney dated April 16, 2024 along with the true photocopy of the certified copy of the resolution adopted at the meeting dated March 28, 2024 of the Board of Directors of the Company (**Annexure B**); A Copy of Power of Attorney authorising Mr. Aditya Kanodia appointing as an Advocate (**Annexure C**); a copy of the Certificate of Incorporation of the Corporate Debtor pursuant to change of name along with the Memorandum of Association and Article of Association (**Annexure D**); a copy of the master data of the corporate debtor downloaded from the MCA portal (**Annexure E**); a copy of Written communication in Form-2 by the proposed Interim Resolution Professional along with the certificate of registration and AFA (**Annexure F**); copies of the sanctioned letters dated December 29,2018 and March 13,2020 (**Annexure G**); a copy of the contract no. 176738 (**Annexure H**); a schedule of the disbursement details (**Annexure I**), a copy of deed of hypothecation (**Annexure J**); a copy of letter dated April 30, 2021 (**Annexure K**), a copy of the letter dated May 4, 2021 (**Annexure L**); a copy of the order dated January 01.02.2023 (**Annexure M**); a copy of Statement of Account (**Annexure N**); report of the contracts no. IT6T38 (**Annexure O**); and a copy of the CIBIL Report (**Annexure P**).

5.11 The applicant has also placed on record a copy of record of Information (**Annexure-O**) filed with NeSL (Information Utility) in respect of default on the part of the Corporate Debtor in its repayment owed to the Financial Creditor. The said record shows that a loan amount of Rs. 50 crores was sanctioned by the Financial Creditor in favour of the Corporate Debtor and total outstanding is Rs. 25,75,97,096.00. The date of default is shown as 31.05.2024 with an overdue amount of Rs. 6,09,91,577. The overdue amount is with respect to interest payable by the Corporate Debtor.

5.12 Therefore, as per part IV of the application, it is claimed that as on 15.05.2024 a sum of Rs. 25,75,97,096/- is due and payable by the respondent company. The Corporate Debtor requires to be admitted in the CIRP process.

6. Respondent/the Corporate Debtor appeared in pursuance of notice issued and filed its reply raising preliminary objection that the present application is misconceived, not maintainable, bad in law and the same is liable to be dismissed in limine. The present application has been made in gross suppression and misrepresentation of material facts warranting the dismissal.

6.1 The applicant's assertion regarding the date of default being 31st May 2024 is wholly misconceived and

unsustainable. A bare perusal of Schedule 1 and Schedule 1A of loan agreement dated 31.12.2018 reveals that the repayment obligation arises only after a period of 9 year from the date of execution of the loan agreement. The said period of moratorium of 9 years has not expired as on date of filing the present application. The said Schedule makes no reference whatsoever to the alleged default being claimed as 31st May 2024 as claimed in the present application. Therefore, the present application is premature and the alleged date of default is legally untenable.

6.2 It is further submitted that the loan agreement dated 31st December 2018 contains an arbitration clause which provides for arbitration in the event of any dispute or default; however, the applicant has chosen to bypass the agreed terms of the agreement and invoked provision of the Code for recovery mechanism.

6.3 The clause 2.10.1(a) of the loan agreement specifically provides for the repayment schedule which shall commence after the moratorium of 9 years. The applicant itself claimed initial disbursement under the loan agreement was made on 2nd January 2019 and consequently moratorium would end on 1st January 2028 and the repayment would commence after the first instalment would fall due on 2nd January 2028. Therefore when there is express contractual

moratorium, the claim that default occurred on 31st May 2024 is entirely misplaced, premature and contrary to agreed term of loan agreement. It is settled law that a party cannot be held in breach of a contract unless an obligation to perform has actually arisen. Thus. applicant's reliance on alleged default, prior to the expiry of moratorium, is contributed to the express term of the contract and consequently the alleged default as on 31st May 2024 is premature and unsustainable in the law

6.4 It is further submitted that the Corporate Debtor is registered as a Small Enterprises under the Micro Commerce Small and Medium Enterprise Development Act 2006. Thus, the MSME status of the Corporate Debtor entitles it for protection under guidelines issued by the Government and Reserve Bank of India. The Reserve Bank of India, through its circular dated 1st January 2019 and RBI Resolution Framework bearing no. RBI /2020/21/16 dated 6th August 2020 has explicitly permitted restructuring of loan granted to the MSME borrower under the prescribed condition, caused due to COVID-19 pandemic without downgrade of asset clarification. These restructuring mechanisms are aimed at ensuring continuity of business and financial rehabilitation. The same was requested by the Corporate Debtor from the applicant by virtue of a letter dated 4th

May 2021, wherein the Corporate Debtor sought extended support from the applicant during the testing time of COVID-19 pandemic.

6.5 It is further submitted that the Corporate Debtor approached the applicant for restructuring of loan highlighting the temporary nature of financial stress and expressing willingness to honour obligation through an extended repayment schedule; however despite the bonafide efforts, the applicant failed to engage in any constructive discussion and refused for restructuring proposal arbitrarily undermining the intent of RBI policy and MSME protection framework.

6.6 It is further submitted that the applicant earlier filed C.P(IB) No. 32/2021 before this Tribunal on sustainability of the same cause of action. The said application was filed during the period under which initiation of insolvency process was suspended as per provision of section 10A of the Code. Since part of the default fell within such period when initiation of CIRP was suspended as per provision of the Code, the application was dismissed as withdrawn as per order dated 12th January 2023 by this Tribunal.

6.7 It is further submitted that the applicant is now seeking to resuscitate the same cause of action by isolating instalment allegedly due for quarter ending December 2023 to March 2024

despite the fact that no repayment obligation under the contract commences before 2nd January 2028. The Corporate Debtor continue to operate as a going concern and has commercial contract suppliers and employees and the invocation of CIRP process at this juncture would lead to disruption of essential operation, loss of job and adverse impact on stakeholders contrary to objective of the value maximization and economic revival.

6.8 It is further submitted that the application filed by the applicant under section 66 of the Code is pending adjudication against the Corporate Debtor in respect of the very same loan agreement. The applicant claims that the loan transactions are fraudulent and on the other hand, the applicant has initiated the present proceeding under Section 7 of the Code by alleging default under the same loan agreement. Thus, the contrary stand are taken by the applicant warranting dismissal of the present application. The applicant cannot be permitted to approbate and reprobate on the same transaction. Thus simultaneous proceedings under Section 66 and 7 of the Code is inconsistent, contradictory and amount to abuse of the insolvency framework and the process of law. The present application requires to be dismissed with cost.

7. The Financial Creditor filed its rejoinder denying the averment made in the reply and reiterating the facts as pleaded in the present petition which are not reproduced here for sake of brevity.

7.1 It is submitted that the Financial Creditor had disbursed an amount of Rs. 39 Crores to the Corporate Debtor under the Rupee Loan Agreement dated 31, 2018. The Corporate Debtor was required to pay interest on the disbursed loan amount of Rs. 39 crores on monthly basis on each interest payment date. The Corporate Debtor has made payment to the Financial Creditor in term of clause 2.6.1 read with Schedule 1 of the Loan Agreement dated 31.12.2018; and therefore, the moratorium was not applicable on interest payment to be made.

7.2 It has categorically been agreed by Clause 7.1.2 of loan agreement that non payment of interest by the Corporate Debtor to the Financial Creditor on the days when such interest amount falls due for payment shall amount to an event of default. Further, as per Clause 7.3.1, 7.3.4 and 7.3.6 of the Loan Agreement dated 31.12.2018, on occurrence of default, the Financial Creditor is entitled to declare the loan facility to be cancelled and may recall the entire loan amount due and payable by the Corporate Debtor.

7.3 The entire loan amount of Rs. 39,00,00,000(Rupees Thirty Nine Crore Only) was dispersed to the Corporate Debtor in 4 tranches on January 2nd, 2019. After January 2nd, 2019 till the final repayment date, the Corporate Debtor is liable to pay interest on the disbursed loan amount to the Financial Creditor.

7.4 It is further submitted that in view of the previous default, the Financial Creditor had instituted an application under Section 7 of the Code being C.P(IB) No. 328 of 2021. It, later on, transpired that the default was within Section 10A period of the Code and as such instead of amending the petition, the Financial Creditor was advised to withdraw the same with liberty to file a fresh one. Accordingly, the said partition was withdrawn on 12th of January 2023.

7.5 The Corporate Debtor continued default in payment obligation under the loan agreement and did not cure the ongoing default; and therefore, a fresh default occurred on or from the date of withdrawal of the earlier petition. The Financial Creditor had to recall the entire loan along with interest by issuance of the letter dated May 24th, 2024.

7.6 It is further submitted that from the Quarter ended December 2023, the Corporate Debtor again defaulted in making payment of interest on the disbursed loan amount of Rs. 39 crores.

The default continued for the quarter ending March 2024, June 2024 and September 2024 and continued thereafter. Therefore the Financial Creditor was constrained to recall the loan agreement dated December 18, 2018 by issuance of letter dated May 24, 2024 and requested the Corporate Debtor to make the payment of the entire loan within a period of 7 days thereof. The Corporate Debtor failed to make the payment of the entire loan facility to the Financial Creditor within a period of 7 days from May 24th, 2024; and hence, the date of default has been as on May 31st 2024.

7.7 The existence of an arbitration clause in the loan agreement dated December 18, 2018 does not preclude the Financial Creditor from invoking jurisdiction of this Tribunal under Section 7 of the Code in view of section 238 of the Code. It is a well settled principle of law that an application under Section 7 of the Code and application under Section 66 of the Code can proceed together simultaneously. This position has been settled by Hon'ble NCLAT in case of New Era Popcorn Private Limited Vs. Swastik Infrasolutions Private Limited vide order dated 16th, April 2024, Company Appeal No. 264 of 2024. Therefore, there is no defence of the Corporate Debtor against the application filed by the Financial Creditor. The application deserves to be allowed and the Corporate Debtor should be admitted in CIRP process.

8. Based on pleading of the parties and the rival contentions raised by the Ld. Counsels for both the parties, the following points have arisen for determination:

   (i) Whether pendency of application under Section 66 of the Code bars filing of the present company petition?

   (ii) Whether there is default in repayment of debt as on 31.05.2024 as claimed in the present application?

   (iii) Relief, if any, to which the applicant is entitled?

9. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

Issue No.(i)

10. The first issue involved is whether pendency of application under Section 66 of the Code bars filing of application under Section 7 of the Code.

11. The Corporate Debtor has taken plea that the Financial Creditor is already prosecuting an application under Section 66 of the Code claiming to be loan as fraudulent transactions. Therefore, the Financial Creditor cannot proceed under Section 7 of the Code for initiation of CIRP

process till the said application under Section 66 of the Code is decided.

12. The application under Section 66 of the Code has been filed against the Corporate Debtor by the Administrator of Financial Creditor for avoidable transactions involving the Financial Creditor and the Corporate Debtor(earlier known as Quippo Energy Limited). The application under Section 66 of the Code has been filed on the ground that the loans were disbursed to respondent no. 1, a connected entity of the Financial Creditor without complying with other mandatory formalities. Thus, there is no dispute with regard to disbursal of loan amount under Rupee Loan Agreement by the Financial Creditor to the Corporate Debtor. The only dispute is that there is no default as on 31.05.2024 as there is a moratorium for a period of 9 years.

13. A similar question came for decision before Hon'ble NCLAT in case of New Era Popcorn Private Limited etc Vs. SREI Equipment Finance Limited & Ors (2024) ibclaw.in 248 NCLAT, after held in para no. 8 that:

> *"8. The submission of the Appellant is that the transaction which is sham or collusive can only create an illusion that money has been disbursed to a borrower. The present is a case where there is no dispute raised that money has not been disbursed.*

The disbursement of money is not an issue raised. The filing of Section 7 application by the Administrator of SEFL was on the basis that loan was sanctioned and in pursuance of the loan amount was disbursed. Copy of the Statement of Account was also filed along with the Section 7 application which also indicate that amount was disbursed. The observation made by the Hon'ble Supreme Court in Para 48 of the judgment in "Phoenix ARC Private Limited vs. Spade Financial Services Limited & Ors." that where a transaction is sham or collusive, it would only create an illusion that money has been disbursed to a borrower is not applicable in the present case. Present is a case where disbursal is not an issue. The question whether the loan transaction is fraudulent transaction within the meaning of Section 66 is engaging attention of the Adjudicating Authority in a separate application filed by Administrator of SEFL which needs no consideration or observation in the present proceeding".

14. Therefore, in the facts of the present case and law applicable thereon, we have no hesitation to hold that the present petition is maintainable at law despite the pendency

of application filed under Section 66 of the Code filed by the Administrator of the Financial Creditor.

Issue No. (ii) & (iii)

15. It is a settled proposition of law that an application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs. One crore. In view of the Section 4 of the Code, the moment default is of Rupees one crore or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.

16. In the facts, it is seen that the applicant clearly comes within the definition of Financial Creditor. The material placed on record further confirms that applicant, Financial Creditor had disbursed an amount of Rs. 39 crores under Rupee Loan Agreement dated 31.12.2018. It is undisputed fact that it was agreed in loan agreement dated 31.12.2018 that the Corporate Debtor was required to pay interest on the disbursed loan amount of Rs. 39 crores on monthly basis on each interest payment date. It is also undisputed fact that the Corporate Debtor has made payment to the Financial Creditor in term of Clause 2.6.1 read with Schedule 1 of the

Loan Agreement dated 31.12.2018; and therefore, the moratorium was not applicable on interest payment to be made.

17. It was also agreed by Clause 7.1.2 of loan agreement that nonpayment of interest by the Corporate Debtor to the Financial Creditor as and when the interest amount falls due for payment shall amount to an event of default. The Clause 7.3.1, 7.3.4 and 7.3.6 of the Loan Agreement dated 31.12.2018 entitle the Financial Creditor, consequent upon default, to declare the loan facility to be cancelled and recall the entire loan amount due and payable by the Corporate Debtor.

18. It is also evident from perusal of CIBIL Report(Annexure-P) of the Corporate Debtor filed with the present Company Petition that the Corporate Debtor has availed credit facility from the Financial Creditor amount to Rs. 39 crores. Thus, the CIBIL report also corroborates the existence of debt availed by the Corporate Debtor from the Financial Creditor.

19. As per record of Financial Information-Form ‘C’ submitted with the NeSL as on 06.01.2025 reveals that a loan amount of Rs. 50 crores by sanctioned by the Financial Creditor to the Corporate Debtor and total outstanding is Rs.

25,75,97,096.00 with overdue amount of Rs. 6,09,91,577 in the term loan account.

20. Therefore, the plea of the Corporate Debtor that there was no default in view of the moratorium of 9 years is devoid of merits. The non-payment of interest on the due date constitutes default to invoke the provision of Section 7 of the Code.

21. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

22. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

23. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present application is admitted with the following orders:

(i) Mr. Jitendra Lohia, having registration number IBBI/IPA-001/P00170/2017-18/1003339 resident of 2/7 Sarat Bose Road, Vasundhara Building 2nd Floor, Kolkata-700020

with email id-jitulohia@knjainco.in is appointed as an Interim Resolution Professional for the corporate debtor.

(ii) In pursuance of Section 13(2) of the Code, We direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency and Bankruptcy Code, 2016.

(iii) We direct the applicant Financial Creditor to deposit a sum of Rs. 3 Lakhs with the Interim Resolution Professional namely Mr. Jitendra Lohia to meet out the expenses to perform the functions/duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.

(iv) The moratorium is declared in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

"(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

(v) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to

the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

(vi) The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all

his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

24. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, West Bengal at the earliest possible but not later than three days from today.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)