

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.760/MB/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

State Bank of India

[PAN: ADYPM0155D]

...Financial Creditor/Applicant

V/s

M/s Aaj Ka Anand Papers Limited

[CIN: U22110MH1993PLC034813]

...Corporate Debtor/Respondent

Order Dated: 31.03.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Shlok Parekh, Advocate.

For the Respondent(s) : Mr. Mayank Bagla, Advocate.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is an application being CP (IB) No.760/MB/2021 filed by State Bank of India, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against M/s Aaj Ka

Anand Papers Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Financial Creditor is a bank and a body corporate constituted under the State Bank of India Act, 1955. This application is filed by Mr. Vikrant Saxena, Assistant General Manager and Case Officer Team-7 of the Financial Creditor vide its Authority Letter dated 08.04.2021, claiming a total default of Rs. 248,46,99,997.23/- (Rupees two hundred and forty-eight Crore forty-six Lakh ninety-nine thousand nine hundred ninety-seven and paise twenty-three only).
3. The Date of Default as mentioned in the Petition is 28.06.2014. The date of classification of the Corporate Debtor as a Non-Performing Asset (NPA) is 27.09.2014 in the Petition. The Petition has been filed on 12.04.2021.
4. The case of the Financial Creditor is as under:
 - a. The Financial Creditor submits that it has sanctioned the following credit facilities (Principal Amount) to the Corporate Debtor outstanding as on 31.03.2021 as under:
 - i. Total Cash Credit Loan (Account Number - 10318675277) of Rs.47,08,68,906.70/- (Rupees forty-seven Crore eight lakh sixty-eight thousand nine hundred six and paise seventy only).
 - ii. Working Capital Term Loan (Account Number - 32245584461) of Rs.11,80,00,000/- (Rupees eleven crore and eighty lakh only).

- iii. Funded Interest Term Loan (Account Number - 34246064451) of Rs.11,25,00,000/- (Rupees eleven crore and twenty-five lakh only).
 - iv. Term Loan I (Account Number - 34249871938) of Rs.9,11,00,000/- (Rupees nine Crore and eleven lakh only).
 - v. Term Loan II (Account Number - 34249818272) of Rs.2,58,96,899/- (Rupees two Crore fifty-eight lakh ninety-six thousand eight hundred and ninety-nine only).
- b. While covering the chain of events with regards to the above-mentioned credit facilities, the Financial Creditor submits that the Corporate Debtor had approached them with an application dated 08.10.2004 seeking sanction of loan/credit facilities to the tune of Rs. 15.27 Crore. The said application was accepted and credit facilities worth Rs. 15.27 Crore were granted via sanction letter dated 01.01.2005. The loan documents of the said facilities were duly signed and executed by the directors of the Corporate Debtor.
- c. A Working Capital Consortium Agreement was also executed on 30.10.2007 between Axis Bank and Barclays Bank PLC which subsequently led to a Master Joint Lenders Forum ("JLF") Agreement dated 25.06.2014 executed to convert the Working Capital Consortium into JLF. In addition to the members of the consortium who were also part of the JLF, Bank of Baroda and Edelweiss Asset Reconstruction Company Limited ("Edelweiss ARC") were included in the JLF. The

Financial Creditor submits that Cash Credit Facility, Working Capital Loan facility and Funded Interest Term Loan Facility were provided by them to the Corporate Debtor on both standalone and consortium/JLF basis.

- d. A Sanction Letter dated 28.08.2014 was issued to the Corporate Debtor thereby appointing a Security Trustee by all the lenders involved (i.e Financial Creditor (SBI), Bank of Baroda and Edelweiss ARC) and also included terms for restructuring of all the credit facilities granted to the Corporate Debtor on standalone basis by the Financial Creditor as well as the Consortium/JLF while also granting a letter of credit (inland/import DP/DA 270 days) facility. Further, a Security Trustee Agreement (annexed as Exhibit 'H' at page 153-200 of the Petition) dated 26.09.2014 was executed creating a common security in favour of SBICAP Trustee Company Limited and a Restructured Facility Agreement (annexed as Exhibit 'I' at page 201-266 of the Petition) dated 26.09.2014 was executed in favour of the Financial Creditor (SBI), Bank of Baroda and Edelweiss ARC.
- e. While reiterating, the Financial Creditor submits that the above-mentioned facilities were originally granted in 2005 and were subsequently modified /enhanced/restructured from time to time.
- f. As far as Security Interest was concerned, it has been submitted that the cash credit facilities were secured by executing various documents such as Deed of Hypothecation of Goods and Assets dated 26.09.2014 (annexed as Exhibit 'G' at page 109-

152 of the Petition) and Agreement of Loan dated 03.09.2013. Further, these cash credit facilities were secured by personal guarantees given via Agreement of Guarantee dated 26.09.2014 (annexed as Exhibit 'J' at page 267-291 of the Petition) by Mr. Shyam Gyaniram Agarwal, Mr. Anand Shyam Agarwal, Mr. Navin Shyam Agarwal, Mrs. Vidya Shyam Agarwal and Mrs. Ritu Anand Agarwal. In addition to this, a Deed of Pledge dated 27.12.2014 (annexed as Exhibit 'K' at page 292-312 of the Petition) was also executed by the guarantors mentioned above whereby 8,78,000 shares of the Corporate Debtor were pledged in favour of SBICAP Trustee Company and a Deed of Ratification and Rectification dated 02.02.2015 (annexed as Exhibit 'N' at page 415-425 of the Petition) as well as a Deed of Mortgage dated 26.12.2015 were executed by the Corporate Debtor.

- g. The Financial Creditor submits that the Corporate Debtor first defaulted on 28.06.2014. Upon continued failure of the Corporate Debtor to service its account with the Financial Creditor, it was repeatedly requested to regularize its account.
- h. As the Corporate Debtor continued to default in repayments of its debt to the Financial Creditor, its account was classified as an NPA on 27.09.2014 as per the directions issued by the Reserve Bank of India. Further, The Financial Creditor also issued a Legal Demand Notice dated 16.08.2017 upon the Corporate Debtor and the Personal Guarantors (as stated in para 4(f)) recalling the total outstanding liability due and owed to the Financial Creditor. In addition to sending a Legal Demand Notice, the Financial Creditor also filed an

application dated 01.10.2018 against the Corporate Debtor and all the Personal Guarantors before the Debts Recovery Tribunal ("DRT") under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 for a claim amount of Rs.112,63,72,114 (exclusive of interest)

- i. During the pendency of application before DRT, the Corporate Debtor admitted its liability in a letter dated 29.05.2019 (annexed as Exhibit 'C' at page 28-37 of the Petition) sent to the Financial Creditor stating its willingness to settle the dues whereby it stated the intention of the promoters to offer a one-time settlement scheme, however, the same was never offered.
- j. The Financial Creditor submits the Corporate Debtor in addition to the points mentioned above has admitted its liability in its Audited Financial Statements as on 31.03.2017 and 31.03.2019.
- k. Despite the various extensions given and approaches made as stated by the Financial Creditor, the Corporate Debtor has categorically failed to remedy its default and repay its debts and therefore, the Financial Creditor has filed a Company Petition under Section 7 of the I&B Code seeking admission for initiation of the corporate insolvency resolution process of the Corporate Debtor.

5. The case of the Corporate Debtor is as under:

- a. Mr. Anand Shyam Agarwal who is the duly Authorized Signatory of the Corporate Debtor (Board Resolution dated 01.10.2021 is annexed as Exhibit 'A' at page 22 of the Affidavit

in Reply) submits Affidavit in Reply dated 28.01.2022 on behalf of the Corporate Debtor.

- b. The Corporate Debtor submits that it was served with the court notice directing its appearance for hearing dated 15.12.2021 and that a copy of the Financial Creditor's petition was served on them on the date of the hearing itself.
- c. The Corporate Debtor at the outset denies all and singular statements, averments, contentions and submissions made by the Financial Creditor in its Petition.
- d. The Corporate Debtor states that the Financial Creditor has failed to qualify their claim as a Financial Debt in terms of Section 5(8) of the I&B Code and that the application was untenable and non-maintainable in law but also suppressed crucial, vital and material facts which relates to the present company petition in question.
- e. Under Para 10 of its Affidavit of Reply, the Corporate Debtor submits that the company petition has been filed against the principles of natural justice as it was filed without the issuance of any demand notice for the said default/claim in question.
- f. The Corporate Debtor further submits that the present company petition is not maintainable as it is barred by the law of limitation. While explaining the reason for the same, it has been submitted that the account of the Corporate Debtor was declared Non-Performing Asset ("NPA") as on 27.09.2014 and therefore, the latest date by which an application can be filed would be 27.09.2017 in terms of Limitation Act, 1963.

Declaring the Corporate Debtor as NPA was an admission on part of the Financial Creditor that a default had occurred on part of the Corporate Debtor. In this regard the Corporate Debtor has relied on decision of the Honourable Supreme Court in the case of B.K. Educational Services (P) Ltd. V. Parag Gupta & Associates – (2019) 11 SCC 633 where it was held that –

“.... “The right to sue” therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application”

- g. The Corporate Debtor further comments on the genuineness of the mortgage deed executed on 26.12.2014 thereby stating that it is faulty and incorrect insofar as the coverage of mortgage assets in the deed is concerned. The Corporate Debtor submits that certain shops and offices covered under the Deed of Mortgage were never owned by them at the time when the deed was entered into and therefore, mortgaging the entire building along with all the shops was never valid.
- h. The Corporate Debtor also submits that the interest charged by the Financial Creditor was much higher than the agreed upon rate as per the re-schedulement letter and that there were also discrepancies with regards to the cut-off date.

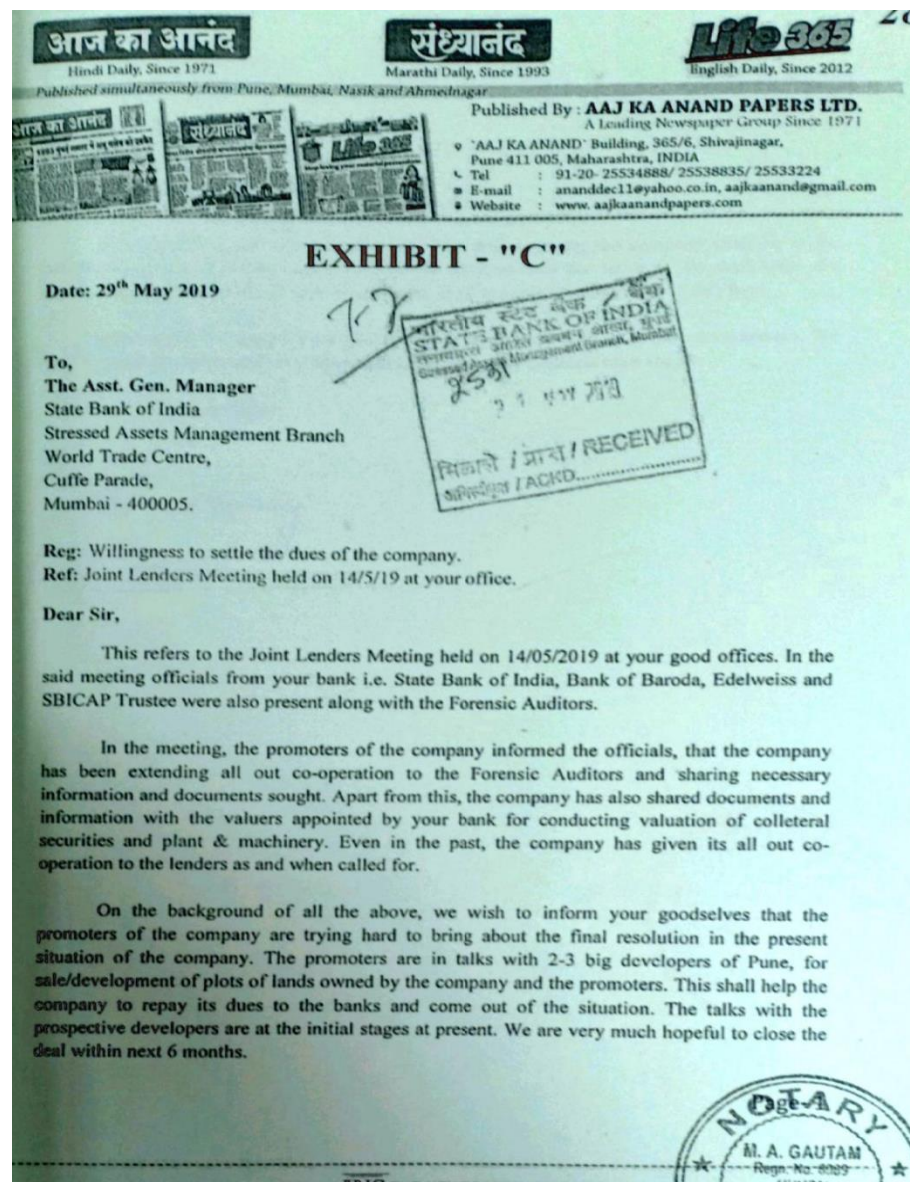
- i. The Corporate Debtor submits that it is a 50-year-old company publishing 3 daily newspapers (Aaj Ka Anand; Sandhyanand; and Life-365) in 3 different languages. It has around 150 permanent employees and 300 indirect employees in terms of suppliers, contractors, agents, agencies, etc.
6. Both the Financial Creditor and Corporate Debtor have submitted their Written Submissions and the same have been duly considered.

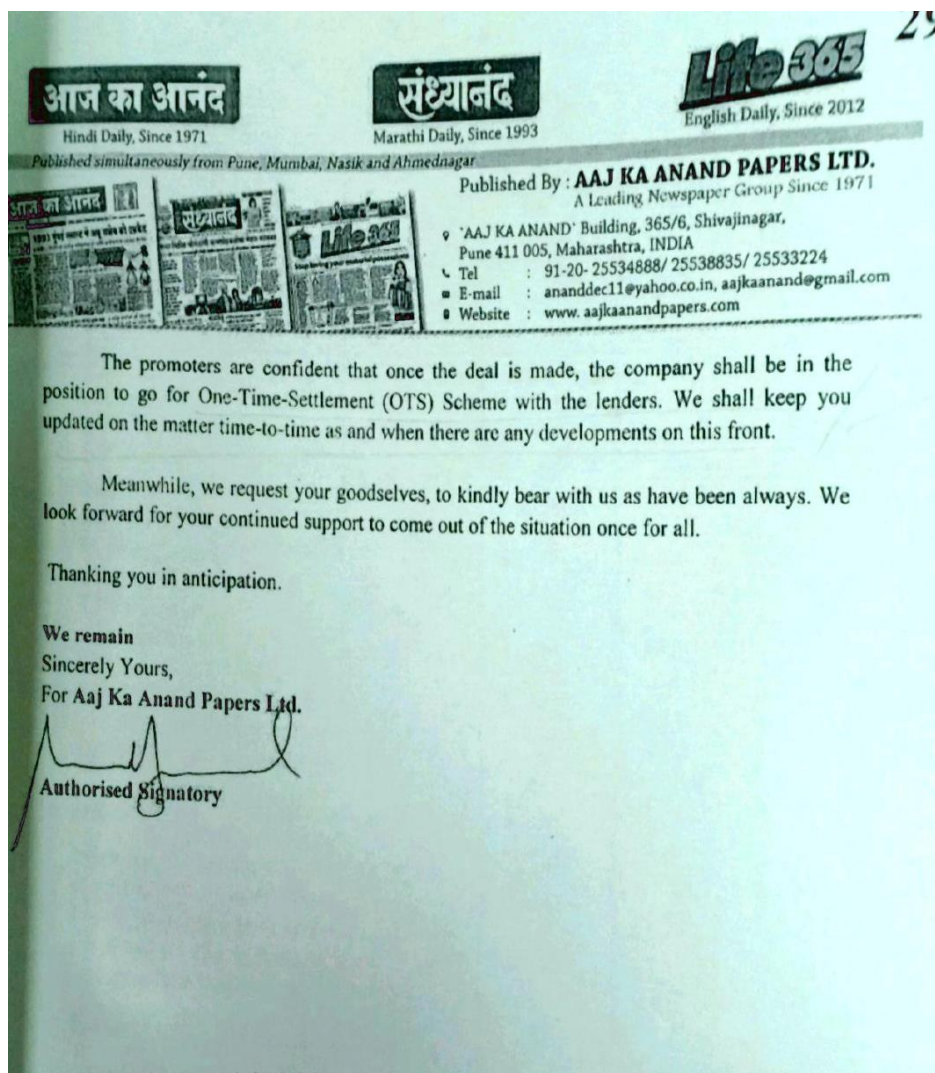
Findings/Observations:

7. We have heard the submissions made by the counsel on both the sides and perused the records.
8. We have prudently gone through the pleadings available on record and observed as under:
9. Barred by Limitation in terms of Limitation Act, 1963:
 - a. One of the contentions raised by the Corporate Debtor in its reply dated 28.01.2022 was that the present application filed by the Financial Creditor was barred by Limitation. The Corporate Debtor contended that since its account with the Financial Creditor was declared a Non-Performing Asset (NPA) on 27.09.2014 the latest date by which an application can be filed in terms of Limitation Act, 1963 would be 27.09.2017.
 - b. The Financial Creditor in its petition submitted (under Para 9 of the Synopsis on Page C) that while an application was pending before the Debts Recovery Tribunal (DRT) at Pune, Maharashtra, the Corporate Debtor had admitted its liability in response to the application filed with DRT in its letter dated

29.05.2019 stating its willingness to settle the pending dues. A copy of this letter was also provided for our reference (annexed as Exhibit 'B (Colly)' at page 25-27 of the Petition). In the said letter the Financial Creditor was informed that the promoters of the Corporate Debtor were contemplating on offering a one-time settlement scheme.

c. Extracts of the above-mentioned letter have been shown below:





- d. This letter which was issued by the Corporate Debtor to the Financial Creditor clearly highlights the existence of Debt due and Corporate Debtor's willingness to settle the same. There are clear contradictions in what the Corporate Debtor has contended before this bench and what it has communicated to the Financial Creditor.
- e. In addition to the above-mentioned letter, the Financial Creditor and Corporate Debtor had entered into a Deed of Pledge dated 27.12.2014 and a Deed of Ratification and Rectification dated 26.12.2015. Further, the bench has also

observed that the Corporate Debtor has also admitted its liability in its Audited Financial Statements as on 31.03.2016, 31.03.2017, 31.03.2018 and 31.03.2019.

- f. It is clear from the records that the Corporate Debtor has time and again acknowledged the debt which was due and payable to the Financial Creditor.
- g. Relying on the Judgment of Justice Indira Banerjee, in **Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr.**, this letter of admission of liability dated 29.05.2019 fulfils the requirement of Section 18 of the Limitation Act, 1963.
- h. In view of the above-mentioned points, this bench finds no merit in the contentions of the Corporate Debtor w.r.t the petition being barred by limitation in terms of the Limitation Act, 1963.

10. Non-issuance of Demand Notice:

- a. It has been observed that the Corporate Debtor under para 10 of its Affidavit of Reply has contended that the present application filed by the Financial Creditor is not maintainable as it was filed without the issuance of any 'Demand Notice' on them for the alleged default/claim.
- b. In this regard, we would like to highlight that the present application has been filed under Section 7 of the I&B Code. Issuance of Demand Notice being one of the pre-requisites to file an application is a requirement under Section 9 of the I&B Code and not under Section 7.
- c. In view of the above-mentioned points, this bench finds no merit in the contentions of the Corporate Debtor w.r.t the petition being non-maintainable due to non-issuance of Demand Notice for the alleged default/claim.

11. Genuineness of the Mortgage Deed and charging of higher interest by the Corporate Debtor:

- a. The Corporate Debtor in its submissions has stated that the Mortgage Deed which was executed on 26.12.2014 was incorrect and faulty insofar as the coverage of mortgage assets in the deed was concerned. It was further submitted that certain shops and offices covered under the Mortgage Deed were never owned by the Corporate Debtor at the time when the deed was entered into and therefore, mortgaging the entire building along with all the shops was never valid.
- b. Further, the Corporate Debtor has also submitted that the interest charged by the Financial Creditor was much higher than the agreed upon rate as per the re-schedulement letter and that there were also discrepancies with regards to the cut-off date.
- c. In this regard, we would like to cite the judgement of the Honourable Supreme Court in the Case of **M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr. Civil Appeal Nos. 8337-8338 of 2017** where it was held under Para 28 that:

“It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7

days of receipt of a notice from the adjudicating authority.”

- d. In view of the above-mentioned points, it can be clearly seen that it is not in the spirit of the I&B Code for this bench to determine whether the Mortgage Deed entered into was genuine or that higher interest was charged by the Corporate Debtor. It is the role of the Resolution Professional to determine the validity of these claims made by the Corporate Debtor.
 - e. Therefore, this bench finds no merit in the contentions of the Corporate Debtor w.r.t the petition being non-maintainable due to the Mortgage Deed entered into not being genuine or higher interest being charged by the Corporate Debtor as opposed to what was agreed upon.
12. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is hereby admitted.
13. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established and the application deserves to be admitted.
14. The Applicant has proposed the name of Ms. Vineeta Maheswari, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00185/2017-2018/10364] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code

and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being **C.P. (IB) No. CP (IB) No.760/MB/2021** filed under Section 7 of I&B Code, 2016, presented by State Bank of India, Financial Creditor/ Applicant against **M/s Aaj Ka Anand Papers Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 possession of the corporate debtor.

- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- VI. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VII. That this Bench appoints Ms. Vineeta Maheswari, a registered insolvency resolution professional having Registration Number [IBBI/IPA-003/IP-P00185/2017-2018/10364] as an Interim

Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-
Kishore Vemulapalli
Member (Judicial)

31.03.2022

Sd/-
Rajesh Sharma
Member (Technical)