

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

C.P. (IB) No. 293/KB of 2024

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. This Court convened via hybrid mode of conferencing.
2. Ld. Counsels for both the sides were heard in extenso.
3. This petition has been filed by **Dhanuka Udyog Pvt. Ltd.** who claims to be an Operational Creditor of **Kamala Box Pvt. Ltd.** the alleged Corporate Debtor to seek initiation of Corporate Insolvency Resolution Process ("CIRP" in short) against the Corporate Debtor Kamala Box Pvt. Ltd. for an alleged default of Rs. 1,42,31,573.96/- (One crore Forty-Two Lakhs Thirty-one Thousand Five Hundred Seventy Three and Ninety Six Paise Only) as on 20.02.2024.

4. Submissions of the Operational Creditor:

a. The Operational Creditor states that it is engaged in the business of supplying Kraft Paper. That the Corporate Debtor had approached the Operational Creditor to purchase such Kraft Paper and the Operational Creditor agreed to supply the same.

b. Further that, the Operational Creditor supplied and delivered the goods to the Corporate Debtor on the basis of purchase orders and thereafter raised invoices for the period from July 2019 to December 2020.

c. That despite successful delivery and receipt of goods, the corporate Debtor failed to make payment of Rs. 1,42,31,573.96/- (Rupees One Crore Forty-Two Lakh Thirty-One Thousand Five

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Hundred Seventy-Three and Ninety-Six Paise Only), which is still outstanding.

d. The Operational Creditor contends that it has raised various invoices from time to time for the goods delivered and which were duly accepted and signed by the corporate debtor without any demur.

A total of 87 invoices as in Annexure "I" are still not paid. All payments in respect of the said invoices were to be made by the corporate debtor within 90 days from the date of the respective invoices.

The last of such invoice was raised on 10th December 2020.

e. That the Corporate Debtor having failed to pay the pending amount to the Operational Creditor, was served with a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 on 28th July 2021, as in Annexure 'E'. The Corporate Debtor replied to this demand notice dated 9th August 2021.

f. Further that the Corporate Debtor started making part payments on and for 31st July 2021 and the last part-payment was made on 20th January, 2024. From July 2021 till January 2024 a total amount of Rs. 44,50,000/- (Rupees Forty-Four Lakh Fifty Thousand only) was paid by the Corporate Debtor to the Operational Creditor in instalments.

g. The Operational Creditor claims that, after 20th January 2024, the Operational Creditor time and again sought for

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payments from the Corporate Debtor and in turn despite repeated assurances the Corporate Debtor failed and neglected to reply to the Operational Creditor.

h. The Operational Creditor contends that it was thus compelled to send another demand notice dated 2nd May 2024. To which the Corporate Debtor replied on 14th May 2024 stating that there was a bill that was disputed and questioned the calculations that were deduced thereof.

i. The Operational Creditor contends that to avoid any ambiguity and to ensure clarity, the operational creditor issued a fresh and revised demand notice on 13th June 2024 calculating interest solely on specific invoices that were delayed in payment, while expressly stating that the disputed bill of 3rd December 2012 had already been excluded. The Corporate Debtor replied on 24th June 2024, questioning the calculations once again.

j. Thus, the Operational Creditor contends that despite several opportunities, the operational debt is still not been discharged. Hence, the present application.

5. The defence of the Corporate Debtor and the counter of the Operational Creditor:

Default occurred during Section 10A bar

a. Per contra, the Corporate Debtor would allege that the default occurred during the period protected under Section 10A of the Code and thus certain invoices must not be considered and once the amount is excluded the debt would be wayless back prescribed threshold rendering the petition a non-starter. The Operational

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Creditor would, however, refute the contentions submitting that the default having taken place on 20th February, 2024 after the last payment was made.

Next, the Corporate Debtor would urge that the account between the Operational Creditor and the Corporate Debtor is a running and continuous account, and the last payment made by the Corporate Debtor was 20th January, 2024 and that substantial portion of the debt fell due within the Section 10A period. The Operational Creditor would, however vehemently deny the allegation as factually incorrect and without merit.

The Operational Creditor has vehemently denied the allegation that the account between the Operational Creditor and the Corporate Debtor is a running and continuous account, and the last payment made by the Corporate Debtor was on 20th January, 2024, as that substantial portion of the debt falls within the protection of Section 10A, as factually incorrect and without merit.

Interest has been added to cross the threshold amount

- b.** The Corporate Debtor would, further allege that interest has been combined with the principal amount merely to meet the threshold under Section 4 of the Insolvency and Bankruptcy Code although nothing was agreed upon.

The Operational Creditor would retaliate stating that the interest rate of 18% was levied solely on the invoices where the Corporate Debtor delayed in making payment and since the Corporate Debtor has made part payment without making demur it is estopped from claiming otherwise the Operational Creditor states that the Corporate Debtor has relied upon an email dated 8th April, 2024 to contend that the outstanding balance as Rs.1,09,00,277.85/-

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(Rupees One Crore Nine Lakh Two Hundred Seventy-Seven and Eighty-Five Paise only), does not include interest component, but the said email was system-generated and, therefore, did not include the interest component.

Further that even after excluding the disputed bill of Rs. 1,98,803.00 (Rupees One Lakh Ninety-Eight Thousand Eight Hundred Three only), the amount in default stands at Rs. 1,42,31,573.96 (Rupees One Crore Forty-Two Lakh Thirty-One Thousand Five Hundred Seventy-Three and Ninety-Six Paise only), which is the total sum claimed by the Operational Creditor in the Company Petition filed against the Corporate Debtor and it is way above the threshold.

Payments have been adjusted against interest due and not against principal

c. Further, the Corporate Debtor would allege that the Operational Creditor has adjusted part payments made by the Corporate Debtor towards interest, leaving the principal amount intact, and has charged 18% without any prior agreement.

The Operational Creditor would repeal the contention having submitted that it had applied an interest at the rate of 18% only to those invoices which the Corporate Debtor had defaulted in making timely payments of.

Further that invoices containing the interest clause were duly accepted and signed by the Corporate Debtor.

Further, since the Corporate Debtor did not specify whether the part payments were to be adjusted towards the principal or interest, the

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Operational Creditor was well within its rights to appropriate such payments at its discretion.

The petition is barred by limitation

d. The Corporate Debtor would allege that the petition is barred by laws of limitation. To contend that the petition is not hit by Limitation the Operational Creditor would submit that several opportunities were given to the corporate debtor to repay the operational debt of Rs. 1,42,31,573.96/- (Rupees One Crore Forty-Two Lakh Thirty One Thousand Five Hundred Seventy Three and Ninety Six Paise Only), but it failed. Further that the Corporate Debtor did not raise any dispute regarding interest and duly accepted and signed all invoices. There are no pre-existing disputes between the parties. The Company Petition is also not barred by limitation. Hence the petition deserves to be allowed under Section 9 of the Code.

To support its stand the Operational Creditor has relied upon the Hon'ble NCLAT's decision in ***Beetel Teletech Ltd. V. Arcelia IT Services Pvt. Ltd.*** where the finding of the Adjudicating Authority was challenged on the ground that a creditor is entitled to apply his own discretion to appropriate any on-account payment received from the debtor against any outstanding debt(s) due from the debtor in terms of the Indian Contract Act, 1872.

The Hon'ble NCLAT while referring to Section 60 of the Indian Contract Act observed,

“Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not

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*barred by the law in force for the time being
as to the limitations of suits.”*

At this stage, it may be useful to have a look at Section 60 of the Indian Contract Act, 1872 which is as follows:

Section 60. Application of payment where debt to be discharged is not indicated. – *Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits.”*

The Hon’ble NCLAT elaborated that:

“A plain reading of Section 60 of the Indian Contract Act, 1872, shows that if the debtor makes any payment without any appropriation, then the creditor can use his discretion to wipe out any of the remaining debt(s) which is/are due. (The right of appropriation lies with the creditor) if the debtor does not indicate in what manner the debt is to be discharged. In such circumstances, the creditor has a lot of scope for exercising his right in such a manner so as to put himself in the most advantageous position. It is also a well settled business practice that in a debt where the principal amount is outstanding and interest has also accrued on the debt, sums paid by the debtor is applied by the creditor first to the interest. In the present facts of the case, payments received by the Operational Creditor have been duly adjusted also against the principal amount or interest accrued in respect of invoices other than RV 1927813879 which were all pending for

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payment. Without explaining how this action has Operational Creditors has been in contravention of the statutory provisions contained in the Indian Contract Act, it has therefore been unreasonable on the part of the Adjudicating Authority to hold that there is an inconsistency in the pattern adopted by the present Appellant while adjusting payments received against outstanding dues.”

6. Ld. Counsels were heard and records perused.

The issues that fell for consideration are as under:

- i. Whether the petition is hit by Section 10A bar.
- ii. Whether the threshold Under Section 4 of IBC is met.
- iii. Whether interest could be levied at 18% per annum without a specific contract to that effect.
- iv. Whether payment received from the Corporate Debtor could be adjusted towards interest due first.

7. Analysis and Findings

Whether the petition is hit by Section 10A bar.

- a. The Corporate Debtor to support its defence that the default fell under Section 10A period has given full chart of the invoice number, bill dates, receipt dates, due date and due amount, which is reproduced hereunder for clarity:

Bill No.	Bill Date	Receipt Date	Due Date	Amount

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436	26.12.19	28.12.19	27.03.20	471447.00
461	12.01.20	13.01.20	12.04.20	77361.00
467	15.01.20	17.01.20	16.04.20	213347.00
481	24.01.20	24.01.20	23.04.20	141281.00
484	25.01.20	27.01.20	26.04.20	278611.00
496	03.02.20	03.02.20	03.05.20	107843.00
499	03.02.20	04.02.20	03.05.20	62254.00
501	05.02.20	06.02.20	06.05.20	258732.00
506	06.02.20	06.02.20	06.05.20	57228.00
510	09.02.20	11.02.20	11.05.20	193052.00
511	09.02.20	11.02.20	11.05.20	82594.00
519	13.02.20	14.02.20	14.05.20	287461.00
538	19.02.20	20.02.20	20.05.20	1726225.00
551	21.02.20	22.02.20	22.05.20	101473.00
552	21.02.20	22.02.20	22.05.20	122849.00
557	22.02.20	22.02.20	22.05.20	176549.00
591	01.03.20	02.03.20	31.05.20	176124.00
596	03.03.20	04.03.20	02.06.20	277859.00
20	23.05.20	23.05.20	21.08.20	289267.00
31	27.05.20	28.05.20	26.08.20	266335.00
39	04.06.20	05.06.20	03.09.20	268858.00

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43	08.06.20	10.06.20	08.09.20	253847.00
65	23.06.20	24.06.20	22.09.20	224695.00
78	03.07.20	03.07.20	01.10.20	252289.00
83	06.07.20	06.07.20	04.10.20	294092.00
94	12.07.20	13.07.20	11.10.20	254652.00
103	15.07.20	16.07.20	14.10.20	283442.00
118	19.07.20	20.07.20	18.10.20	249956.00
159	12.08.20	14.08.20	12.11.20	322504.00
195	04.09.20	05.09.20	04.12.20	283298.00
202	06.09.20	07.09.20	06.12.20	85650.00
206	12.09.20	14.09.20	13.12.20	110221.00
207	13.09.20	14.09.20	13.12.20	126685.00
219	23.09.20	24.09.20	23.12.20	201566.00
220	24.09.20	25.09.20	24.12.20	119099.00
230	02.10.20	03.10.20	01.01.21	259484.00
242	14.10.20	15.10.20	13.01.21	240022.00
247	17.10.20	17.10.20	15.01.21	21080.00
268	05.11.20	07.11.20	05.02.21	222058.00
DN/TCS/6	30.11.20	02.12.20	02.03.21	57.00
309	09.12.20	10.12.20	10.03.21	270581.00
310	10.12.20	11.12.20	11.03.21	52920.00

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Total	82,11,348.00
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b. The Corporate Debtor would claim that at least Rs. 82,11,348/- (Rupees Eighty-Two Lakhs Eleven Thousand Three Hundred Forty-Eight only) of the alleged due fell within the Section 10A bar, hence excluding the same from total due will not meet the threshold. However, the default continued even thereafter and according to the Operational Creditor the date of default is 20.02.2024 (30 days from the date of last payment. As the non-payment continued beyond the 10A period.

c. In *Beetel Teletech Ltd vs. Arcelia IT Services Pvt. Ltd.* Hon'ble NCLAT has held as under:

“It is an established case that the default prior to and during Section 10 A period continued even thereafter, and therefore, initiation of proceedings under Section 9 as the instant one is not barred.”

d. We would note that the first invoice annexed to the petition is of 30.7.2019, payable within 90 days. Thus, the default occurred long before, during 10A period and default continued even thereafter. In terms of the decision in **Beetel Teletech Ltd vs. Arcelia IT Services Pvt. Ltd.** Petition under Section 9 is not barred.

e. Hence, the present petition is not hit by the Section 10A bar.

8. Whether the threshold is met:

a. To allege that the threshold prescribed under Section 4 of IBC, is not met and the petition is not maintainable, the

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Corporate Debtor would submit that if the tax invoice against which default occurred is during this specified period between 25.03.2020 and 24.03.2021, that is the period covered under Section 10 A, the amount due against such invoices would stand excluded in calculation of the threshold limit for the purpose of maintaining the instant application and in that case, the effective amount in default will be wayless than the threshold limit of Rs.1,00,00,000/- (Rupees One Crore Only). Hence, the Corporate Debtor would dispute the amount as payable and would deny that it has committed any default in payment of outstanding dues within the meaning of Section 2(12) of the IBC, 2016 as it continued to pay the Operational Creditor in consideration of the long-drawn business relationship between them.

- b.** The Corporate Debtor would also dispute the alleged default of Rs.1,42,31,573.96/- (Rupees One Crore Forty-Two Lakhs Thirty-One Thousand Five Hundred Seventy Three and Ninety-Six Paise only).The Corporate Debtor would submit that if according to the Operational Creditor, the principal amount due is Rs.1,53,50277.85/- (Rupees One Crore Fifty-Three lakhs Fifty Thousand Two Hundred Seventy Seven and Eighty-Five paise only), the interest component at the rate of 18% per annum is allegedly Rs. 33,30,099.11/- (Rupees Thirty-Three Lakhs Thirty Thousand Ninety-Nine and Eleven Paise only). The total debt due could never be Rs.1,42,31,573.96/- (Rupees One Crore Forty-Two Lakhs Thirty-One Thousand Five Hundred Seventy Three and Ninety-Six Paise only). Thus

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assuming that the principal due is 1,53,50,277.87/- and interest component is 33,30,099.11/- and repayment as of 44,50,000/- the amount in default is still above the prescribed threshold.

Hence, we hold that the threshold is met.

- c. The Corporate Debtor has submitted that after the year 2020, the Operational Creditor did not supply any goods, however, an amount of Rs. 44,50,000/- was still paid by the Corporate Debtor. Hence, admittedly the amount repaid is only Rs. 44,50,000/- out of payable Rs. 1,53,50,277.85/- (Principal amount) and Rs. 33,30,099.11/- (interest component) being unpaid dues of Rs. 1.42 crores and odds. Hence, the threshold is met.

9. Whether interest @18% could be levied on unpaid dues and the same was proper:

- a. The Corporate Debtor has disputed the fact that it had agreed to the levying of interest by the Operational Creditor and that too at an exorbitant rate of 18% on the principal amount, or that it had agreed to the adjustment of its repayment against the interest component keeping the principal outstanding intact. It has termed the same as unlawful trade practice.
- b. The Operational Creditor, on the other hand, has categorically admitted the payment of Rs. 44,50,000/- received from the Corporate Debtor since 37.07.2021 and that has adjusted Rs. 33,30,099.11/- (Rupees Thirty-Three Lakhs Thirty Thousand Ninety-Nine and Eleven Paise only)

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against interest due and Rs. 9 lakhs and odds as against principal due, leaving the principal amount almost intact.

- c. However, there is nothing on record to prove that the corporate debtor had agreed to levying of interest of 18% on the default in repayment of the operational debt, but at the same time, it had not raised any demur and had happily signed the invoices that contained the interest clause.
- d. Hence, by necessary implication Corporate Debtor has agreed to levying of interest on delayed payments @ 18% and thereby the Corporate Debtor is estopped from raising any hue and cry about the same.
- e. Hence, we hold that interest was rightly levied as against the dues.

10. Whether the payment received from the Corporate Debtor was rightly adjusted against the interest due:

- a. It is not in dispute that the default claimed is Rs.1,42,31,573.96/- (Rupees One Crore Forty-Two Lakhs Thirty-One Thousand Five Hundred Seventy Three and Ninety-Six Paise only) as on 10.06.2024 whereas the repayment was of Rs. 44,50,000 (Rupees Forty-Four Lakh Fifty Thousand) only.
- b. Had the payment of Rs. 44,50,000/- received from the Corporate Debtor been adjusted against the principal

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amount due, the principal amount would have fallen below the threshold of Rs. 1,00,000,00/-. But it was adjusted against the interest first and then, the balance was adjusted against the principal amount due, leaving the outstanding principal almost intact.

11. Legal Provision:

Section 60 of the Contract Act:

c. The provision reads as under:

“A plain reading of Section 60 of the Indian Contract Act, 1872, shows that if the debtor makes any payment without any appropriation, then the creditor can use his discretion to wipe out any of the remaining debt(s) which is/are due. (The right of appropriation lies with the creditor) if the debtor does not indicate in what manner the debt is to be discharged. In such circumstances, the creditor has a lot of scope for exercising his right in such a manner so as to put himself in the most advantageous position. It is also a well settled business practice that in a debt where the principal amount is outstanding and interest has also accrued on the debt, sums paid by the debtor is applied by the creditor first to the interest. In the present facts of the case, payments received by the Operational Creditor have been duly adjusted also against the principal amount or interest accrued in respect of invoices other than RV 1927813879 which were all pending for payment. Without explaining how this action has Operational Creditors has been in contravention of the statutory provisions contained in the Indian Contract Act, it has therefore been unreasonable on the part of

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the Adjudicating Authority to hold that there is an inconsistency in the pattern adopted by the present Appellant while adjusting payments received against outstanding dues.”

- d.** The implication of Section 60 has been clarified by NCLAT’s decision in ***Beetel Teletech Ltd. V. Arcelia IT Services Pvt. Ltd.***

“A plain reading of Section 60 of the Indian Contract Act, 1872, shows that if the debtor makes any payment without any appropriation, then the creditor can use his discretion to wipe out any of the remaining debt(s) which is/are due. (The right of appropriation lies with the creditor) if the debtor does not indicate in what manner the debt is to be discharged. In such circumstances, the creditor has a lot of scope for exercising his right in such a manner so as to put himself in the most advantageous position. It is also a well settled business practice that in a debt where the principal amount is outstanding and interest has also accrued on the debt, sums paid by the debtor is applied by the creditor first to the interest. In the present facts of the case, payments received by the Operational Creditor have been duly adjusted also against the principal amount or interest accrued in respect of invoices other than RV 1927813879 which were all pending for payment. Without explaining how this action has Operational Creditors has been in contravention of the statutory provisions contained in the Indian Contract Act, it has therefore been unreasonable on the part of the Adjudicating Authority to hold that there

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is an inconsistency in the pattern adopted by the present Appellant while adjusting payments received against outstanding dues.”

e. Thus in essence Section 60 of the Indian Contract Act, 1872, dictates appropriation of payments. When the debtor makes payment to a Creditor and the debt to be discharged is not specified by the debtor and the debtor has multiple debts outstanding, Section 60 allows that the Creditor to apply the payment received to lawful debts due and payable, regardless of whether those debts are time barred.

f. However, the term “multiple debts” cannot mean the “Principal” debt that is due and the “interest” payable on the same debt. It should mean several distinct debts each giving rise to a separate cause of action to sue separately.

It is only in case of multiple and distinct debts that the debtor is required to specify which debt is to be discharged first, as indicated in **Jai Ram vs. Sulakhan Mal** [AIR 1941 LAHORE 386] the “Principal” and “Interest” were not separate debts.

g. However, under common law, the rule that applies is one based on common justice that sums paid must be applied to the interest first, else it would deprive the

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creditor of the benefit, he is entitled to under the Contract Act.

h. Hence, we hold that the Creditor has rightly adjusted payments against the interest due first and then the balance as against principal due.

12. Whether Interest could be levied on default occurring Under Section 10 A Period.

a. In Company Appeal (AT) (Insolvency) No. 1459 of 2022 (***Beetel Teletech Ltd. V. Arcelia IT Services Pvt. Ltd.***) the Hon'ble NCLAT Principal Bench has categorically held the following:

“It is an established case that the default prior to and during Section 10 A period continued even thereafter, and therefore, initiation of proceedings under Section 9 as the instant one is not barred.”

b. In Company Appeal (At) (Ins.) No. 914 of 2023 in the matter of ***Raghavendra Joshi v. Axis Bank Limited & Anr.***, the Hon'ble NCLAT having relied upon ***Ramesh Kymal vs. M/s. Siemens Gamesa Renewable*** [Civil Appeal No. 4050 of 2020] noted that if the default is after 25.03.2020, the application is hit by Section 10A and if the default is committed prior to Section 10 A period and default continues there is no prohibition in initiating proceedings under Section 7. The Bench observed that “If the default is committed prior to Section 10A period and default continues there is no prohibition in initiating proceedings under Section 7 and we are not persuaded to accept the submission of the

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counsel for the respondent that the liability of interest which occurred during Section 10A period should be ignored or should not be computed in the amount while finding the threshold. Liability to pay interest which default committed prior to Section 10 A period continues and is not obliterated by Section 10 A.”

- c. Thus, if default was committed prior or during to Section 10 A period and liability to pay interest accrued during Section 10 A period and continued further, the argument as advanced here that, it should be ignored or should not be computed for triggering CIRP has been in clear terms held to be misconceived.
 - d. Hence, we hold that the claim is not hit by Section 10A bar.
- 13.** In view of the findings as above, we find merit in the application and accordingly we **admit** this application being C.P.(IB) No. 293/KB of 2024 filed under **Section 9 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:
- i. The Application filed by the **Dhanuka Udyog Private Limited (Operational Creditor)**, under **Section 9** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Kamala Board Box Private Limited (Corporate Debtor)**.
 - ii. As a consequence of this Application being admitted in terms of Section 9 of the I&B Code, moratorium as

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envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

- 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 asset 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 (54 of 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.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

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- iv.** 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.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has proposed the name of **Mr. Sandip Mitra, Registration No. IBBI/IPA-001/IP-P00497/2017-18/10885, Address: 53/C Harish Mukherjee Road, Kolkata 700025, West Bengal, Email ID: sasoso@gmail.com** as the “IRP”. We have perused that there is a written communication, annexed as **Annexure “B”** at **Page 19-21**, to this Application as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or the Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by **Mr. Sandip Mitra** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 9(4) of the Code. Hence, we appoint **Mr. Sandip Mitra** as the **Interim Resolution Professional (IRP)** of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional)

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Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

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- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities and/or the Officer-in-Charge of Local Police Station(s)** to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 9(5)(i) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal,

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Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

- xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
 - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
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- 14.** Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.
 - 15.** Post the matter on **08/10/2025** for filing the Periodical Progress Report by the IRP/RP.

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**Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 19th Day of August, 2025.

S.C. (steno)/ Bose, R. K. [LRA]