


**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL**

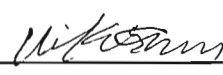
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 04.02.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.243/9/HDB/2019
NAME OF THE COMPANY	MN Takshila Industries Pvt Ltd
NAME OF THE PETITIONER(S)	Cerestra Advisors Pvt Ltd
NAME OF THE RESPONDENT(S)	MN Takshila Industries Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):


Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Rajew Ratna on behalf of Naresh Kumar Sangam	Adv	9000666072	


Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
D. Narenderan Naidu	Adv	98619387366	
Vikram. C. puttapaga	Adv	9160876539	

ORDER

Matter is listed today for orders.
Orders passed vide separate sheets.


Member (T)


Member (J)

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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD**

CP (IB). No. 243 /9/HDB/2019

Petition under Section 9 of Insolvency & Bankruptcy Code, 2016

(Under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of

M/s Cerestra Advisors Private Limited
N-226, Lower Ground Floor, Greater Kailash-I
New Delhi, South Delhi
India - 110048

.. Petitioner/
Operational Creditor

VERSUS

M/s MN Takshila Industries Private Limited
Building-450, Genome Valley
Turkapally (V)
Shamirpet Mandal
Hyderabad – 500078

.. Respondent/
Corporate Debtor

Date of order: 04.02.2020

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narendra Kumar Bhola, Member (Technical)

Appearance:

For Petitioner:

Shri S. Ravi, Senior Advocate assisted by
Shri Naresh Kumar Sangam, Advocate



For Respondent: Shri R. Raghunandan Rao, Senior Advocate
assisted by Shri D. Narendar Naik and
Shri Vikram C. Puttapaga, Advocates

Heard on: 08.11.2019, 19.11.2019, 20.11.2019, 28.11.2019,
04.12.2019, 20.12.2019, 02.01.2020 & 10.01.2020.

PER: Hon'ble Shri Ratakonda Murali, Member (Judicial)

ORDER

Under consideration before us is the petition filed by Messrs Cerestra Advisors Private Limited/ Operational Creditor herein stating that Messrs MN Takshila Industries Private Limited/ Corporate Debtor committed default of Rs. 4,17,13,343/-. Hence, this petition is filed under Section 9 of Insolvency & Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, commencement of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. BRIEF FACTS

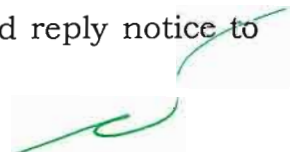
- (1) M/s Cerestra Advisors Private Limited / Operational Creditor is a company incorporated under the Companies Act, 1956 which is engaged in the business of investing in "Real Estates".
- (2) M/s M.N. Takshila Industries Private Limited/ Corporate Debtor is a Company registered under the Companies Act, 1956 which is into the business of leasing out office space to Pharma, Research and Development and Life Science Companies.
- (3) The Corporate Debtor along with M/s MN Science & Technology Limited, M/s MN Gachibowli Tech Park Private Limited, M/s MN Gachibowli II Tech Park Private Limited, M/s Deccan Bio Ventures Private Limited, M/s





MN Science Centre (Pagnapur) Pvt Ltd, M/s Takshila Tech Parks & Incubators (India) Private Limited, M/s Genome Valley Tech Parks & Incubators Pvt Ltd, M/s MN Bio-Technology Private Limited (herein after referred to as "**Fund Subsidiaries**") approached the Operational Creditor for providing services and executed Advisory Agreement dated 05.09.2016 followed by first addendum to the Advisory Agreement dated 01.03.2018 (ANNEXURE-7) between M/s Lighthouse Canton Pte Ltd (herein after referred to as **FUND MANAGER**, appointed by LC Core Opportunities Fund (herein after referred to as **FUND**) and the Operational Creditor herein. Under these agreements, the Fund subsidiaries including Corporate Debtor are required to pay Advisory fee for the services availed.

- (4) As agreed between the parties, the operational creditor raised invoices amounting to Rs. 4,67,13,343/- which the Corporate Debtor agreed to pay within 30 days from the date of respective invoices.
- (5) According to the Petitioner, services were provided to the Corporate Debtor which were never disputed by the Corporate Debtor. The TDS amount deducted was also paid to the Government by the Corporate Debtor thereby issuing TDS certificate to the Operational Creditor.
- (6) It is further the case of the petitioner that the Corporate Debtor only cleared Rs. 50,00,000/- out of Rs. 4,67,13,343/-. The debt fell due on various dates and the last date of default being 10.03.2019 i.e. after 30 days of all the invoices. The remaining balance of Rs. 4,17,13,343/- is still outstanding.
- (7) Having left with no other alternative, the Operational creditor was bound to send demand notice under Section 8 of I&B Code, 2016 on 20.03.2019. The Corporate Debtor gave reply on 29.03.2019 accusing the Operational Creditor with baseless allegations only to avoid payment of debt. The Operational Creditor issued reply notice to



the Corporate Debtor on 04.04.2019 denying the allegations as false. Despite requests, when Corporate Debtor failed to make payments so far, the Petitioner has filed the present petition under Section 9 of IBC.

3. REPLY DATED 08.07.2019 BY CORPORATE DEBTOR

- (1) Counter is filed by Corporate Debtor. There are several objections raised against the averments made in the Petition stating that it is filed with malicious intention by suppressing material information and documents.
- (2) The first objection raised by the Respondent is that the Petitioner's claim lies against the Fund Manager in Singapore and not the Respondent herein. It is stated that LC Core Opportunities Fund (herein after referred to as FUND) which is based at Singapore had appointed Lighthouse Canton Pte Ltd **as Fund Manager** to manage and provide advice on the Fund's assets in India which are owned through the Fund subsidiaries including the Respondent herein which is into the business of leasing out space to pharmaceutical and Research & Development Industry, in turn engaged the services of Operational Creditor. Both the Petitioner and Fund Manager executed an Advisory Agreement dated 05.09.2016. The Respondent was not a party to this Agreement as such no services were provided to the Respondent. That as per the terms of Advisory Agreement, the advisory fee is to be paid only subject to satisfactory performance and compliance, out of the management fees received by the Fund Manager from the Fund. In other words, once the Fund Manager receives its fee from the fund, it would further pay fees to the Operational Creditor/ Petitioner herein. However, it is alleged that the petitioner failed in its obligations which caused cash flow constrains and the Fund suggested to defer payment of advisory fees to the Petitioner to October 2020 extendable by another 2 years. Further the purpose of executing

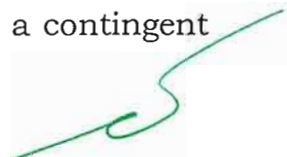




Addendum Agreement dated 01.03.2018 was to enable the Fund and Fund Manager to make payments to the Petitioner directly from the Respondent subject to approval of invoices by the Fund Manager. **According to the Respondent there was no consideration between the Petitioner and Respondent because Advisory Agreement provides for consideration of contract only between the Petitioner and Fund Manager and that Petitioner provided services only to the Fund Manager and not to the Respondent herein. Hence there is no Creditor-Debtor relationship between the Petitioner and Respondent.** It is the case of Respondent that there is liability / debt cast upon Fund Manager to pay if any, to the Petitioner as per the Advisory Agreement and not that of Fund Subsidiaries including the Respondent. This arrangement was made for ease of payment. As such it cannot be treated as "debt" and Respondent cannot be treated as "Corporate Debtor" according to I & B Code.

- (3) The second objection raised by the Respondent herein is that the Petitioner's claim is a contingent claim as it is subject to approval of invoices by the Fund Manager, which is still pending. The Respondent relied on Clause 2.2 of the Addendum Agreement. It means any payment made by the Respondent herein is not payment of money due from the Respondent to the Petitioner, but it is for the payment of any money due from the Fund Manager to the Petitioner. This arrangement is said to have been made by parties for ease of payment and that it cannot be treated as a liability cast on the Respondent.
- (4) The Respondent further cited various instances / acts of wilful negligence and gross defaults and constant failure on the part of Petitioner in performing its obligations under the Agreement which resulted in rent loss and significant erosion for the Fund that had direct cascading effect on the Fund Manager, ultimately led to non-payment to the Petitioner. Until the disputes are resolved between the parties, the claim is said to be a contingent

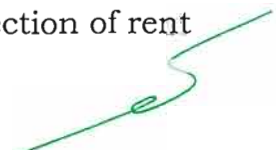




claim. Pursuant to Notice of Breach dated 29.10.2018 all Advisory fees are deferred till the end of life of Fund i.e. 02.09.2020, extended by 2 years and payment, if any would be subject to determination finally in arbitration and that any claim made by the Petitioner, would be subject to satisfaction of all the applicable contingencies contemplated in the Advisory Agreement.

- (5) Respondent alleged that there are several pre-existing disputes even before issuance of demand notice under I & B Code. According to Respondent, the Petitioner not only failed to perform the services as per Advisory Agreement but infringed the Trademarks, Intellectual property and goodwill of the Fund and Fund Subsidiaries and illegally incorporated several companies using intellectual property and Trademark of the subsidiaries of the Fund and further in control of domain name "mnreit.in" and "mnpark.in". Consequently, Notice of Breach dated 29.10.2018 was issued bringing to the notice of the Petitioner, its breaches with a direction to transfer the Intellectual property illegally misappropriated by the Petitioner. The Fund Manager on receipt of sale consideration of Vivo, transferred Rs. 50,00,000/- on 26.02.2019 to the Petitioner. The Respondent's Board was under the Management and control of the Petitioner till the breaches of Petitioner were identified by Fund, Fund Manager and Respondent took measures to rectify them.
- (6) The next allegation is that TDS was paid to the Petitioner at the instructions of one Mr. Vikas Malpani, Director, common to both Petitioner and Respondent Companies which is a breach of Advisory Agreement as no prior approval of the Fund Manager was obtained. According to the Respondent, the Petitioner cannot rely on such illegally siphoned off TDS amounts to maintain this petition.
- (7) Respondent claim that it sustained huge loss due to failure on the part of Petitioner in timely collection of rent

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from the tenants of Respondent / Fund namely Vivo Biotech Limited. The said tenant also offered to purchase the asset of Fund for Rs. 20 crores less than the value certified by Respondent's valuers CBRE. It is submitted that the Petitioner advised the Respondent not to proceed legally against the said tenant and instead sell the asset to them when tenant did not have any other option to close the transaction. This illegal and dishonest inducement of Fund Manager by the Petitioner led into loss making transaction which is put to approximately Rs. 42 crores. The Petitioner acknowledged the failure to perform its part of the contract and decided at a meeting held between the Petitioner and the Fund Manager on 23.08.2018 that any amounts payable to it, to be paid by the Fund Manager out of the consideration received against the proposed sale transaction between a Fund Subsidiary and Vivo. Aggrieved by the poor performance of the Petitioner, a Term Sheet dated 27.08.2018 for 100% acquisition of shares by Vivo for a sum of Rs. 37 crores was executed by MN Life Science (Pragnapur) Pvt Ltd, Respondent herein, Fund Subsidiaries and Vivo.

- (8) Having resorted to serious breaches, which purportedly led to issuance of notice dated 29.10.2018 by the Fund Manager calling upon the Petitioner to immediately transfer the Intellectual property illegally misappropriated by the Petitioner. This notice is said to have been issued by the Fund Manager several months before the notice issued by the Petitioner under IBC, which is dated 20.03.2019. According to Respondent, the disputes are to be resolved through arbitration process at Singapore. It is also brought to the notice by the Respondent that parties failed to settle their disputes amicably.
- (9) It is also the case of Respondent that it is a solvent Company and that there is no insolvency situation to resolve. This Petition is filed by petitioner only to circumvent arbitration procedure under the Advisory Agreement.





4. REJOINDER DATED 14.08.2019 BY PETITIONER

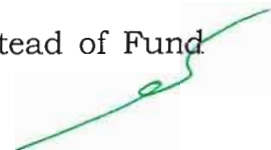
Rejoinder is filed by Petitioner denying the contentions raised by the Corporate Debtor.

- (1) The Petitioner is relying on Clause 1.2 and Clause 2 of the Addendum Agreement that Corporate Debtor has availed services from the Petitioner. The notice of breach dated 29.10.2018 is with respect to alleged breach of terms of the Advisory Agreement and Addendum Agreement by Fund Manager to Operational Creditor and not by Corporate Debtor to Operational Creditor. As such, there is no pre-existing dispute between Operational Creditor and Corporate Debtor.
- (2) As per Clause 2 of the Addendum Agreement, the Operational Creditor provided services to Corporate Debtor and raised invoices. The Corporate Debtor availed the services without any objection and made part payment of Rs. 50,00,000/- out of total debt of Rs. 4,67,13,343/-. The Petitioner is not accepting the contention of Corporate Debtor that there is no Creditor-Debtor relationship, notwithstanding deduction of TDS by the Corporate Debtor, which depicts that bills have been accounted for and TDS paid.

5. ADDITIONAL AFFIDAVIT DATED 28.09.2019 BY OPERATIONAL CREDITOR

- (1) According to the Petitioner, several incorrect statements transpired from the side of Corporate Debtor during the hearing held on 25.09.2019, which necessitated the Petitioner to file additional affidavit dated 28.09.2019 to place on record additional documents that were not filed earlier on the ground that the documents were bulky. In the additional affidavit, the Petitioner relied on Clause 2.1 and 2.3 of the Agreement that stipulates the Petitioner to raise invoices on the Corporate Debtor instead of Fund

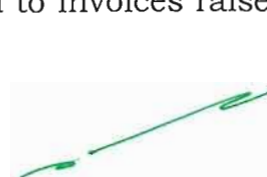




Manager and that all the payments to be made on the basis of invoices raised by the Petitioner immediately upon approval of invoices by the Fund Manager, respectively. Further, according to the Petitioner only after receipt of confirmation from the Corporate Debtor, the following invoices were raised upon the Corporate Debtor :

- (i) Invoice dated 30.03.2018 amounting to Rs. 1,40,00,000/- was raised on the Corporate Debtor. However, it was submitted only after receipt of confirmation e-mail dated 26.04.2018. Copies of said Invoice and e-mail communication are at ANNEXURE-1 (page 10).
 - (ii) Invoices dated 06.06.2018 amounting to Rs. 44,71,565/- and Rs. 35,60,000/- were raised on the Corporate Debtor after receipt of email dated 05.06.2018. Copies of said Invoices and e-mail communication are at ANNEXURE-3 (page 41).
 - (iii) Invoice dated 23.10.2018 amounting to Rs. 84,91,117/- was raised on the Corporate Debtor after receipt of email dated 22.10.2018. Copies of said Invoice and e-mail communication are at ANNEXURE-4 (page 46).
 - (iv) Invoice dated 23.01.2019 and Additional Invoice dated 07.02.2019 were raised for Rs.84,91,117 and Rs.9,12,135/- respectively. E-mail message were exchanged between the operational creditor and the corporate debtor regarding Invoices. Copies of said Invoices and e-mail messages are at ANNEXURE-5 (Page 52).
 - (v) Balance confirmation letter dated 14.09.2018 has been issued by the Corporate Debtor showing amount of Rs. 1,63,80,000/- due to Petitioner as on 31.03.2018. Said letter is at ANNEXURE-2 (Page 39).
- (2) The Petitioner avers that Notice of Breach dated 29.10.2018 by Fund Manager was issued prior to depositing of TDS amount with the Government on 05.11.2018 by the Corporate Debtor which goes to prove that there is no dispute with regard to invoices raised by the Corporate Debtor.





- (3) The next contention of the Petitioner is that the trademark "MN" belonged to it even before the Advisory Agreement was entered on 05.09.2016.
- (4) It is the case of Petitioner that there was litigation on the property leased to ViVo which ultimately led to selling the same for a consideration of Rs. 37 crores to Vivo. It is also stated that the property leased to vivo does not belong to the Corporate Debtor and is still held by one of the subsidiaries, as such it does not have any bearing on the invoices raised by the Petitioner.

6. REPLY DATED 24.10.2019 TO THE ADDITIONAL AFFIDAVIT

- (i) The Corporate Debtor filed reply dated 24.10.2019 contending that the additional affidavit filed by the Petitioner deserves no consideration as it is filed after the arguments were completed on 25.09.2019 without seeking leave of this Tribunal, which is an afterthought as admitted by the Petitioner. It is alleged the documents filed by the Petitioner are irrelevant to this case.
- (ii) The Corporate Debtor relied on Clauses 13.1 and 2.1 of the Advisory Agreement and Clause 2.3 of the Addendum Agreement and categorical admission of the Petitioner is that payment to be made only upon receipt of approval of Fund Manager. According to the Corporate Debtor, the Petitioner failed to produce any document that shows the Invoices were approved by the Fund Manager.
- (iii) As regards to balance confirmation letter issued by the Corporate Debtor is concerned, it was issued without any approval from the Fund Manager.
- (iv) It is the case of Corporate Debtor till date approval of the Fund Manager has not been obtained for the alleged invoices and that the contingency term of





payments is not satisfied, as such there is no amount outstanding or payable by the Corporate Debtor to the Petitioner.

- (v) According to the Corporate Debtor, the Petitioner failed to comply with the conditions as raised in the email dated 11.03.2019 by the Fund's representative which is much before the issuance of demand notice under IBC, as such the disputes to be resolved by arbitration only.

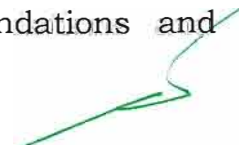
7. We have heard the learned counsel for the operational creditor and the learned counsel for the corporate debtor. The learned counsel for the operational creditor as well as the learned counsel for the corporate debtor filed written submissions. The points raised in the written submissions will be dealt with in the course of the order.

8. The operational creditor has filed the present petition under section 9 of the Insolvency & Bankruptcy Code, 2016 against the corporate debtor to initiate Corporate Insolvency Resolution Process (CIRP) for the alleged default of operational debt of Rs.4,17,13,343/-. The averments in the application filed in Form-5 and averments in the reply including the averments in the additional affidavit as well as rejoinder and reply to the additional affidavit are all stated as above.

9. The learned counsel for the applicant would contend that the operational creditor is real assets focussed private equity firm which is, inter alia, engaged in the business of investing in 'real assets'. The corporate debtor is involved in the business of leasing out office space to pharma, research and development and life science companies.

10. The learned counsel contended that the corporate debtor along with fund subsidiaries approached the operational creditor, engaged its services and sought assistance, inter alia, the provision of non-binding investment recommendations and





research and management services relating to certain investments, more specifically described under Advisory Agreement dated 05.09.2016 and First Addendum to the Advisory Agreement dated 01.03.2018. As per the provisions of Addendum to the Advisory Agreement, the Fund Subsidiaries including the corporate debtor were required to pay to the operational creditor the advisory fee for its services rendered under said two agreements.

11. The Advisory Agreement was entered between Messrs Lighthouse Canton Private Limited, the operational creditor, the corporate debtor and its subsidiaries.

12. The learned counsel contended that as per Clause 2.1 of the Addendum, the operational creditor was required to raise Invoices on the corporate debtor in respect of Fund Manager and as per Clause 2.3 all the payments to be made basing on the Invoices raised by the operational creditor upon approval by the Fund Manager. The learned counsel contended that an invoice of Rs.1,40,00,000/- for the period from July 2017 to March 2018 was raised only after receiving confirmation from the Fund Manager. The invoice was raised on the corporate debtor dated 30.03.2018 and submitted to the corporate debtor on receipt of confirmation from the Fund Manager on 26.04.2018. The corporate debtor also confirmed it through E-mail dated 18.09.2018 the amount due to the operational creditor at the end of the financial year, viz. 31.03.2018 and the total amount due and payable to the operational creditor by the corporate debtor was Rs.1,63,80,000/- as on 31.03.2018. The balance confirmation letter signed by the corporate debtor is shown as Annexure-2.

13. The learned counsel contended that the operational creditor requested the corporate debtor to give invoicing details for the period from April 2018 to June 2018 so as to raise Invoices. There was no reply to E-mail. The learned counsel contended that again a reminder was issued to the corporate debtor on 04.06.2018. The corporate debtor on the other hand



confirmed the rental details for raising invoice through E-mail dated 05.06.2018 marking a copy to the Fund Manager. The operational creditor raised invoice on 05.06.2018 and 06.06.2018 basing on the information submitted by the corporate debtor. The learned counsel contended that the corporate debtor committed default in paying the amount. Similarly, again the operational creditor requested the corporate debtor to submit details for raising Invoices for the quarter ending September 2018 and the information was furnished by the corporate debtor and invoice was raised. The learned counsel contended again the operational creditor requested the corporate debtor to furnish details for the quarter ending December 2018. The same was furnished by the corporate debtor. The details of Invoices were furnished.

14. The learned counsel contended that the corporate debtor in fact, deducted TDS in respect of Invoices under section 194J of the Income Tax Act, 1961. The account of the corporate debtor was operated by a person nominated by the operational creditor and another person nominated by the Fund Manager. Money cannot go from the account of the corporate debtor unless the nominee of the Fund Manager gives consent. Mr. Atul Bhardwaj was nominated by the Fund Manager to operate the account of the corporate debtor. The learned counsel contended that notice of breach was issued by the Fund Manager dated 29.10.2018, but no damages were claimed. No dispute is raised basing on the Invoices raised. TDS deducted was deposited with the Government on 05.11.2018, which is subsequent to the notice issued by the Fund Manager alleging breach. Thus, the learned counsel contended that there is absolutely no dispute that an amount of Rs.50,00,000/- was also paid by the corporate debtor towards the amount due under the invoice. Trade Mark 'MN' belongs to the operational creditor. The operational creditor incorporated a company in the name and style as 'MN Industrial Park Private Limited' on 09.07.2016, which was prior to the Advisory Agreement dated 05.09.2016. The learned counsel for the operational creditor further contended that Invoices were raised basing on the Advisory Agreement as well as Addendum only on the instructions of M/s Lighthouse Canton Private





Limited, the Fund Manager. The learned counsel contended that services were provided by the operational creditor to the corporate debtor. The corporate debtor received the services without any objection or demur. There was correspondence with the corporate debtor. At no point of time the corporate debtor raised any dispute. In fact, TDS was also paid to the Government. The corporate debtor issued TDS Certificate to the operational creditor. Yet no payment is made. Only part payment was made. The balance remained unpaid. Thereafter, Demand Notice was issued on 20.03.2019 and reply was received on 29.03.2019. Thus, the learned counsel contended that a futile attempt was made by the corporate debtor denying liability and tried to establish that there was prior dispute between the operational creditor and the Fund Manager. On the other hand voluminous documentary evidence is filed which would establish that the operational creditor has rendered services to the corporate debtor and Invoices were properly raised and there was no prior dispute and the petition deserves to be admitted.

15. On the other hand learned counsel for the corporate debtor would contend that Demand Notice was issued, after issuance of notice of breach, to the operational creditor dated 29.10.2018. Thus, the operational creditor suppressed the Notice of Breach issued prior to the Demand Notice. The learned counsel contended that the operational creditor committed breach of using brand name 'MN', which was raised way back on 17.02.2017, through E-mail. The learned counsel for the corporate debtor would contend that the operational creditor addressed letters to the Fund Manager dated 12.07.2018 and 24.10.2018 requesting payment against Invoices. They are shown at pages 44-46 and 41-43, in reply to the Additional Affidavit. The learned counsel contended that Notice of Breach and Dispute was issued to the operational creditor dated 29.10.2018 by the Fund Manager for and on behalf of its subsidiaries including the corporate debtor. They are shown at pages 21-22 of the reply. An E-mail was also sent to the operational creditor to settle the dispute which was prior to the Demand Notice. There was Notice of Termination dated 22.03.2019.

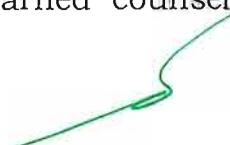




16. The learned counsel contended that the operational creditor failed to perform its duties under the Advisory Agreement. Payment was to be made to the operational creditor by Fund Manager. The learned counsel contended that the Addendum to the Advisory Agreement was entered into between the Fund Manager, the operational creditor and the Fund Subsidiaries including the corporate debtor. The learned counsel contended that the purpose behind entering into Addendum was to make payment to the petitioner directly from the corporate debtor subject to approval of the same by the Fund Manager. The learned counsel contended that it is the Fund Manager, who appointed the operational creditor and the Fund Subsidiaries agreed to pay each of the invoice to the operational creditor subject to approval by the Fund Manager. The learned counsel contended that there is no creditor and debtor relationship between the operational creditor and the corporate debtor. Claim, if any, lies against the Fund Manager. The learned counsel contended that the claim does not fall within the definition of 'debt', since the claim was to be approved by the Fund Manager. Till then it is only a contingent claim, which does not fall within the definition of 'debt'.

17. The learned counsel contended that the petitioner is providing services to the Fund Manager. Thus, the corporate debtor is, in no way, connected to the services rendered by the operational creditor to the Fund Manager. Thus, if any payment is made by the corporate debtor, it is for and on behalf of the Fund Manager, which will be subject to the satisfaction of the Fund Manager with reference to the services rendered by the operational creditor. Therefore, no liability is created by the corporate debtor. The learned counsel contended that there were disputes as is evident from the documents filed by the operational creditor. The claim by the operational creditor is illegal against the corporate debtor. Thus, there was dispute with regard to breach of terms of Agreement. The learned counsel has relied on Annexure-2 to the Advisory Agreement. The learned counsel

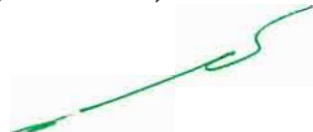




further relied on Clause 2.3 of the Addendum to Advisory Agreement, which reads as under:

“The Advisory Fees shall be paid on the basis of Invoices raised by the Asset Advisory to the Fund Subsidiaries from time to time for the services rendered under the Advisory Agreement. Such Invoices shall be approved by the Fund Manager before payment of the Advisory Fees.”


18. Thus, the learned counsel contended that each and every Invoice raised by the operational creditor to be approved by the Fund Manager before payment. The learned counsel for the corporate debtor contended that the operational creditor is appointed by the Fund Manager and the operational creditor to render services to the Fund Manager. It is the Fund Manager, who has to make payment to the operational creditor. Fund Manager can defer payment till the end of the life of the Fund, which is on 02.09.2020, which is further extendable by two years. There was Notice of Breach issued to the operational creditor dated 29.10.2018. The Fund Manager made it clear to the operational creditor through E-mail dated 11.03.2018 that payment will be released subject to defaults being cured by the operational creditor. One more letter was addressed by the Fund Manager dated 16.10.2018 stating that the Advisory Fee is deferred till the end of the life of the Fund. The learned counsel contended that there is a clear admission by the operational creditor that payment under the Invoice to be made after approval by the Fund Manager. When there is dispute between the Fund Manager and the operational creditor the question of payment does not arise. The learned counsel also referred to using the brand name by the operational creditor. The learned counsel contended on the advice of the nominee of the operational creditor and the Board of Directors, money towards TDS was deducted. All the Invoices were rejected by the Fund Manager till breaches under the Agreement are cured. Thus, the learned counsel for the corporate debtor vehemently contended that there is absolutely no liability on the corporate debtor to honour the Invoices unless and until they are approved by the Fund Manager in terms of Agreement as well as Addendum. The petition, therefore, deserves to be dismissed.



19. The learned counsel for the corporate debtor relied on the following decisions:

- (i) Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, reported in (2018) 1 SCC 353,
- (ii) V. Sreekantha Reddy and others Vs. Varanasi Rajeeana Venugopal Reddy, rendered by Hon'ble Andhra Pradesh High Court at Hyderabad vide order dated 16.03.2004 in CMA No.1836 of 1995,
- (iii) Kesoram Industries & Cotton Mills Ltd. Vs. Commissioner of Wealth Tax (Central), Calcutta, rendered by the Hon'ble Supreme Court of India vide order dated 24.11.1965 in Civil Appeal No.539 of 1964,
- (iv) Prayag Polytech Pvt Ltd. Vs. Gem Batteries Pvt Ltd., rendered by the Hon'ble NCLAT, New Delhi vide order dated 24.09.2019 in Company Appeal (AT) (Insolvency) No.713 of 2019,
- (v) Rahul Jain Vs. Vasant Raj Pandit, decided by the High Court of Delhi vide order dated 12.08.2015 in CS (OS) 623/ 2005, reported in 2015 SC OnLine Del 10900,
- (vi) M/s Utility Powertech Ltd. Vs. M/s Amit Traders, decided by the Hon'ble High Court of Delhi vide order dated 15.05.2018 in RFA 515/ 2015, reported in 2018 SCC OnLine Del 9096,
- (vii) S.P. Brothers Vs. Biren Ramesh Kadakia, decided by the Hon'ble High Court of Bombay vide order dated 11.03.2008 and 27.03.2008 in Appeal No.628 of 2007, reported in 2008 SCC OnLine Bom 1599,
- (viii) Shree Associates Vs. Gammon India Ltd., decided by the Hon'ble High Court of Bombay vide order dated 30.01.2015 in Company Petition No.108 of 2014, reported in 2015 SCC OnLine Bom 2223,
- (ix) J.K. Engineering Pvt Ltd. Vs. ANE Industries Pvt Ltd., decided by the Hon'ble High Court of Calcutta, vide order dated 07.02.2019 in G.A. No.2522 of 2016 and C.S. 213 of 2016.





20. The corporate debtor is challenging the application filed by the operational creditor on three grounds, namely,

- (i) The operational creditor rendered services to the Fund Manager,
- (ii) The Invoices, if any raised, to be approved by the Fund Manager at the first instance and there is no proof that the Fund Manager has approved the Invoices, and as such the Invoices cannot be enforced against it, and
- (iii) There was a prior dispute as the operational creditor has violated the terms of the Advisory Agreement in respect of Trade mark and that the Fund Manager has raised dispute by issuing notice of breach dated 29.10.2018.

The admitted fact is that the operational creditor entered into Advisory Agreement with the Fund Manager. The operational creditor has relied on the Advisory Agreement dated 05.09.2016 shown as Annexure-6, at page 64 onwards of the Paper Booklet. The operational creditor relied on the terms of the Advisory Agreement shown as Clauses '(A)', '(B)' and '(C)' at page 65. They are as follow:

“(A) The Fund Manager has been retained by LC Cerestra Core Opportunities Fund (the ‘Fund’) in relation to the management, of the Investments of the Fund.

(B) The Fund Manager wishes to engage the Asset Advisor to avail itself of the advice and assistance of the Asset Advisor with respect to, inter alia, the provision of non-binding investment recommendations and research and management services relating to certain investments, more specifically described under the definitions below, that the Fund Manager may consider in respect of the Fund (‘investments’).

(C) The Asset Advisor is willing to provide the Fund Manager with such services on the terms and subject to the conditions of this Agreement.”

21. Thus, the operational creditor has to render services to the Fund Manager, is to be appointed by the Fund Manager. The operational creditor, the Asset Advisor has to act as Investment Advisor of the Fund Manager as per Clause 2.1 of the Advisory

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Agreement. The corporate debtor is contending that Advisory Fee is payable by the Fund Manager to the operational creditor. The corporate debtor is heavily relying on Clause 13.1 of the Advisory Agreement and contending that Advisory Fee for rendering services by the operational creditor is to be paid by the Fund Manager as provided in Annexure-2, at page 104. Clause 13.1 of the Advisory Agreement is as follows:

“13.1 As compensation for the Asset Advisor’s services hereunder, the Fund Manager shall pay the Asset Advisor such fee as provided in Annexure II of this Agreement (the “Advisory Fees”), unless otherwise agreed between the Fund Manager and the Asset Advisor from time to time.”

22. Thus, the contention of the corporate debtor that the operational creditor has to render services to the Fund Manager and it is the Fund Manager who shall pay to the operational creditor/ Asset Advisor.

23. It is true that there was agreement between the Fund Manager, viz. Messrs Lighthouse Canton Private Limited and the operational creditor. Messrs Lighthouse Canton Private Limited is the Fund Manager of the Fund. According to the said Advisory Agreement, the operational creditor has to render services to the Fund Manager and fee is also to be paid by the Fund Manager. However, the Advisory Agreement was subsequently amended and as a consequence, Addendum Agreement was entered into between the Fund Manager, the operational creditor, the corporate debtor and other subsidiaries of the Fund. The Addendum was executed among them on 01.03.2018. The contention of the operational creditor that by virtue of the terms of the Addendum, the operational creditor was empowered to raise Invoices on the corporate debtor and payment to be made soon after raising of Invoices. The operational creditor is relying on the Addendum shown as Annexure-7 starting from page 105 of the Paper Booklet. The corporate debtor is a party to this Addendum. Terms of Addendum are binding on the corporate debtor. It is an amendment to the Advisory Agreement.

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24. The operational creditor relied on various clauses of the Addendum. Clauses (A), (B) and (C) (at page 111) are as follow:

“(A) The Fund Manager has been retained by LC Cerestra Core Opportunities Fund (the ‘Fund’) in relation to the management, of the Investments of the Fund.

(B) The Fund owns controlling shareholding and interests in the Fund Subsidiaries. The Fund Subsidiaries along with their Corporate Identification Numbers as listed in Annexure

(C) The structure of ownership of the Fund (directly and through its wholly owned subsidiaries) in each of the Fund Subsidiaries and the assets owned by each of the Fund Subsidiaries is described below:

S. No.	Name of the Fund Subsidiary	% of Fund ownership	Particulars of the Assets held by the Fund Subsidiaries
1.	MN Science & Technology Park Pvt Ltd.	95.45%	142,668 sq ft – Building Nos.450 and 900 of MN Park, Genome Valley; Acres 26.00 – MN Park Phase I & Phase II pre-development parcel and Building 900 expansion site.
2.	MN Takshila Industries Private Limited	100.00%	Special Purpose Vehicle.
3.	MN Gachibowli Tech Park Private Limited	100.00%	Acres 9.00 – Pre-development parcel 1 in MN Park.
4.	MN Gachibowli II Tech Park Private Limited	100.00%	Acres 9.00 – Pre-development parcel 2 in MN Park.
5.	Deccan Bio Ventures Private Limited.	100.00%	Acres 5.00 – pre-development parcel 3 in MN Park.
6.	MN Life Science Centre (Pragnapur) Private Ltd.	100.00%	86,200 sq ft – Vivo Biotech, Pragnapur; Acres 51.00 – Vivo Land Parcel, Pragnapur.
7.	Takshila Tech Parks & Incubators (India) Pvt Ltd.	100.00%	300,695 sq ft – building Nos.1800 and 2700 of MN Park, Genome Valley; Acres 7.00 – MN Centre for Science & Innovation expansion site.

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8.	Genome Valley Tech Parks & Incubators Pvt Ltd.	100.00%	34,667 sq ft – MN Bio-Tech, Genome Valley.
9.	MN Bio-Technology Pvt Ltd.	100.00%	Special purpose vehicle.”

25. LC Cerestra Core Opportunities Fund is called as ‘Fund’. Messrs Lighthouse Canton Private Limited is the Fund Manager, which is retained by Fund. Ownership of the Fund in the corporate debtor is 100%.

26. The operational creditor heavily relied on Clauses 2.1 to 2.4. For easy reference said clauses as shown at page 113 of the Addendum are referred to herein:

“2.1 It is hereby agreed by all the parties that notwithstanding any of the provisions in contrary, on and after July 1, 2017, an amount equal to the Advisory Fees (to the extent possible) shall be paid to the Asset Advisor by the Fund Subsidiaries in such proportion among the Fund Subsidiaries as may be mutually agreed by the Fund Manager and the Fund Advisor.

2.2 For the avoidance of doubt, where an amount equal to the Advisory Fees is paid by the Fund Subsidiaries to the Fund Advisor, no further amounts shall be due and payable by the Fund Manager to the Fund Advisor pursuant to the Advisory Agreement.

2.3 The Advisory Fees shall be paid on the basis of the Invoices raised by the Asset Advisor to the Fund Subsidiaries from time to time for the services rendered under the Advisory Agreement. Such Invoices shall be approved by the Fund Manager before payment of the Advisory Fees.

2.4 All other provisions contained in the Advisory Agreement (including Annexure II to the Advisory Agreement, subject to Clause 2.2 above), inter alia, for payment of Advisory Fees shall remain in full force and effect.”

27. By virtue of the terms of Addendum, fee to the Assets Advisory, viz. the operational creditor to be paid by the Fund Subsidiaries. The corporate debtor and other entities are all Fund Subsidiaries and therefore, the Advisory Fee is to be paid by the subsidiaries, which includes the corporate debtor, towards Advisory Fee for the operational creditor. This is very clear in

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Clause 2.1. If an equal amount towards Advisory Fee is paid by the Fund Subsidiaries to the Fund Advisor, the operational creditor herein, then no further amount shall be due and payable by the Fund Manager to the Fund Advisor. Advisory Fee shall be paid on the basis of Invoices raised by the Estates Advisor, viz. the operational creditor to the Fund Subsidiaries from time to time for the services rendered under the Advisory Agreement, but the Invoices to be approved by the Fund Manager before payment. All other provisions of the Advisory Agreement shall prevail. The Addendum to the Advisory Agreement makes it clear that the Invoices are to be raised on the Fund Subsidiaries and payment is to be made by the Subsidiaries for the services rendered under the Advisory Agreement. The corporate debtor cannot be allowed to contend that there was no liability on it to pay the Advisory Fee to the operational creditor. It is not the case of the corporate debtor that it had paid the amounts covered under the Invoices. The contention of the corporate debtor that liability to pay Advisory Fee is on the Fund Manager. This contention of the corporate debtor cannot be accepted in view of the provisions in Clauses 2.1 to 2.4 of the Addendum. We do not agree with the contention of the learned counsel for the corporate debtor that liability to pay the amount covered under the Invoices lie on the Fund Manager. The corporate debtor being a party to the Addendum is bound by the terms of the Addendum. The corporate debtor cannot escape the liability basing on the terms of the Advisory Agreement, which was later amended.

28. Thus, raising of Invoices on the corporate debtor by the operational creditor is in terms of the Clauses of the Addendum. There is neither illegality nor irregularity in raising Invoices in the name of the corporate debtor. The operational creditor has relied on the unpaid Invoices, six in number, raised on the corporate debtor, shown as Annexure-8, at pages 119-124 of the Paper Booklet filed by the operational creditor. All the Invoices are raised in the name of the corporate debtor. It is also not the case of the corporate debtor that the amount under Invoices was paid by the Fund Manager. The operational creditor can proceed only against the corporate debtor, because the Addendum has

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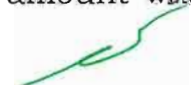
expressly provides raising Invoices in the name of the Fund Subsidiary and payment to be made by the Fund Subsidiary. The operational creditor is able to establish that it has raised Invoices for the services rendered to the corporate debtor.

29. The next contention of the corporate debtor is that there is no debtor-creditor relationship between it and the operational creditor. It is also the case of the corporate debtor that the Fund Manager may defer the fee to be paid to the Estates Advisor/operational creditor to the end of the life of the Fund and hence it is only a contingent fee. The Fund Manager was appointed to manage the Fund invested in the corporate debtor. The operational creditor is providing services for investment to be made by the corporate debtor. The ultimate beneficiary is the corporate debtor for the services rendered by the operational creditor. Invoices to be raised only on the corporate debtor as per the Addendum, but not on the Fund Manager. So the relationship of debtor- creditor is existing between the corporate debtor and the operational creditor. When the corporate debtor being a party to the Addendum gave liberty to the operational creditor to raise Invoices, then it falls within the definition of 'operational debt'. So it can never be said that there was no operational debt and that there was no liability on the corporate debtor to honour the Invoices.

30. The next contention raised by the corporate debtor that even as per the terms of Addendum, all the Invoices were to be approved by the Fund Manager before payment. The corporate debtor relied on Clause 2.3 of the Addendum and contended that there must be prior approval of the Invoices by the Fund Manager. Since this condition in Clause 2.3 is not complied with the operational creditor cannot proceed against it.

31. It is interesting to note that there was payment of Rs.50,00,000/- in respect of the amount due under the Invoices. It was a part-payment. There is no dispute of payment of Rs.50,00,000/- by the corporate debtor to the operational creditor. It can be safely concluded that the said amount was





part-payment towards the amount due under the Invoices. If really there was no prior approval of the Invoices by the Fund Manager as contended by the corporate debtor, then why the corporate debtor made part-payment. The mere fact that the corporate debtor made part-payment to the operational creditor itself suggests that there must be prior approval of the Invoices by the Fund Manager. Without the knowledge of the Fund Manager part-payment of Rs.50,00,000/- could not be made to the operational creditor. There was no objection from the Fund Manager for making part-payment of Rs.50,00,000/- to the operational creditor. Part-payment was made with the knowledge of the Fund Manager; safest conclusion that it was paid basing on the prior approval. Interestingly, this part-payment of Rs.50,00,000/- does not match with any single Invoice. This part-payment therefore, to be considered as part-payment towards the amounts due under different Invoices. In other words, it is a part-payment due towards payment in respect of total amount due under the Invoices. Of course, the corporate debtor is giving lame excuses that this was given under the directions of the operational creditor. Being aware of the terms of the Addendum, it is not open to the corporate debtor to contend that part-payment was made without any prior approval by the Fund Manager.

32. It is very interesting to note that the corporate debtor deducted TDS for the amounts covered by the Invoices. It is not in dispute that TDS was deducted. It was deducted under section 194J of the Income Tax Act, 1961, which is applicable to the services rendered by the operational creditor to the corporate debtor.

33. Payment of Rs.50,00,000/- as well as deduction of TDS mandatorily required to be approved by the Fund Manager through on-line banking system. Therefore, TDS was deducted and part-payment was made. It cannot be said that there was no prior approval of the Invoices by the Fund Manager.



34. The contention of the corporate debtor that TDS was paid at the instance of one Vikas Malpani. However, TDS Certificate was issued by Shri Atul Bhardwaj, which is shown at page 141 of the Paper Booklet. Shri Atul Bhardwaj is still with the corporate debtor as CEO. The record shows that he is the representative of the Fund Manager. Thus, we do not accept the contention of the corporate debtor that there was no prior approval of the Invoices by the Fund Manager. There was no correspondence by the corporate debtor with the operational creditor questioning the liability on the ground that there was no prior approval of the Fund Manager. Had it been the case that the Invoices were not approved by the Fund Manager, the immediate reaction from the corporate debtor was to raise objection. It is very surprising that the corporate debtor never raised such an objection, but on the other hand made part-payment as well as deducted TDS. Therefore, we are not accepting the contention of the corporate debtor that raising of Invoices is in contravention of Clauses 2.3 of the Addendum.

35. Third ground raised by the corporate debtor is that there was a prior dispute. The contention of the corporate debtor that there was breach of agreement and notice of breach was given by the corporate debtor dated 29.10.2018. The contention of the corporate debtor is that this notice of breach was even prior to the Demand Notice and that there was pre-existing dispute. As such the operational creditor cannot maintain this petition. Demand Notice was issued on 20.03.2019. Fund Manager issued notice of breach to the operational creditor. The operational creditor is not disputing the notice, surprisingly, the Fund Manager has not claimed any damages for initiating action against the operational creditor. It is very interesting to note that the amount deducted towards TDS was deposited with the Government on 05.11.2018, which was subsequent to the alleged notice of breach. Notice of breach is between the Fund Manager and the operational creditor. The corporate debtor did not raise any dispute. The corporate debtor, on the other hand made a part-payment. This money was paid in February 2019. Thus, deposit of TDS as well as part-payment were subsequent to the

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alleged notice of breach. Even if there is any dispute between the Fund Manager and the operational creditor, the same has nothing to do with the Invoices raised. This dispute has nothing to do with the services rendered to the corporate debtor. The Tribunal is to see whether any prior dispute exists between the operational creditor and the corporate debtor. The alleged dispute between the Fund Manager and the operational creditor cannot be extended to the liability arising under the Invoices. As regards the services rendered, no dispute is raised. It cannot be said that there was prior dispute basing on the alleged notice of breach. The alleged breach is in connection with the Trade Mark. The corporate debtor is totally unconnected with the dispute. It is stated that the operational creditor registered a company with the brand name 'MN' long prior to entering into the Advisory Agreement with the Fund Manager. The dispute, if any, over Trade Mark is neither directly nor indirectly connected to the services rendered to the corporate debtor by the operational creditor. Therefore, we do not agree with the contention of the corporate debtor that there was a pre-existing dispute.

36. The contention of the learned counsel is that mere fact that deduction of TDS does not mean that there was an admission of liability. In this connection the learned counsel for the corporate debtor has relied on the decisions cited supra. On the other hand the operational creditor has produced relevant forms filed with the Income Tax Department to show that TDS is under section 194J of the Income Tax Act, 1961, which deals with the services rendered. This TDS is deducted in connection with the Invoices, which is not in dispute. So the amount deducted towards TDS is directly connected to the Invoices. The fact is that deduction of TDS affords an additional ground that raising Invoices is proper and that they are raised in connection with the services rendered to the corporate debtor. There is no transaction other than the transaction between the corporate debtor and the operational creditor, which is of rendering services by the operational creditor to the corporate debtor. Therefore, deduction of TDS can be safely held to be in connection with raising Invoices. Thus, the operational creditor is able to establish that the corporate debtor

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committed default of operational debt and the petition deserves to be admitted.

37. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

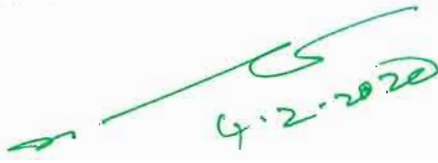
- (a) The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from **4th February 2020** till the completion of the Corporate Insolvency Resolution Process or until this

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Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

- (e) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (f) That this Bench hereby appoints **Shri Kranthi Kumar Kedari**, having Registration No. **IBBI/ IPA-001/ IP-P00173/ 2017-18/ 10342**, as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.
- (g) Accordingly, this Petition is admitted.
- (h) Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.


NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)


RATAKONDA MURALI
MEMBER (JUDICIAL)

Karim/
BINNU