

extended to Rs.28,94,00,000.00 (Rupees Twenty Eight crore Ninety Four lacs only). The credit facilities continued to be revised and extended from time to time till 2016. Lastly, the credit facilities were revised and extended through sanction letter dated 06.02.2016. The aforesaid credit facilities were secured in favour of the Creditor. The secured assets are more fully described in the sanction letters, demand notice dated 18.01.2017, Section 13(2) notice under the SARFAESI Act, 2002, Form –D under Regulation 18 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and **letters of Guarantee annexed with the Petition.**

3. **For the purpose of securing the credit facilities, the Respondent herein, Mr. Tshering Pintso Bhutia and Mrs. Ongmu Bhutia, the wife of the Respondent here, another personal guarantor executed letters of guarantees on 12.06.2013. The Corporate Debtor failed to operate the accounts in accordance with the terms and conditions on which the said credit facilities were granted and committed defaults in payment and in spite of requests and negotiations, the CD did not regularize the account with the Petitioner / FC. The Corporate Debtor started to commit default in repaying the instalments as well as the interest.**

4. The account of the CD was finally classified as Non-Performing Asset (NPA) on 30.11.2016 and a notice under Section 13(2) of the SARFAESI AC, 2002 was issued by the Petitioner / FC Bank on 18.01.2017. The Respondent, Corporate Debtor and other guarantors, not having paid its dues within the statutory time frame of 60 days, the Petitioner / FC Bank issued Possession Notice on 16.01.2018 under the provisions of the Act. The Petitioner Bank also took action under Section 19 of the FDDDBFI Act, 1993 against the CD and **the Personal Guarantors before the learned Debts Recovery Tribunal, Guwahati.** The same was subsequently transferred to the learned DRT, Siliguri and was renumbered as TOA/1208/2018 and the matter is pending before the learned DRT.

5. **The erstwhile Dena Bank, now Bank of Baroda, Applicant Bank/Creditor initiated steps against the Corporate Debtor by filing application under Section 7 of the Insolvency and Bankruptcy Code, 2016,**

being C.P.(IB) No.5/GB/ 2018. An order of CIRP against the Corporate Debtor was passed by the Hon'ble National Company Law Tribunal, Guwahati against the Corporate Debtor vide order dated 21.12.2018. An order of liquidation was passed against the Corporate Debtor vide order dated 06.09.2019. The Applicant Bank being Financial Creditor has submitted its claim first through Form C under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and subsequently through Form D under Regulation 18 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 before the Learned Resolution Professional and Learned Liquidator respectively.

6. The Personal Guarantor to the Corporate Debtor, including respondent herein, was duly served by the Applicant a statutory notice dated 08.09.2020 vide Form B, under the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, requesting him to make the requisite payment to the Applicant Bank. Despite receipt of the notice, the Respondent has neither made any payment nor reverted to the same. The Applicant under such circumstances is filing the present applicant seeking insolvency resolution process against the Respondent by virtue of the being the Personal Guarantor to the Corporate Debtor.

7. In support of that, the Applicant has filed the following documents:-

Sr. No.	Particulars	Annexure	Page
1	A copy of sanction letter dated 06.02.2016	A1	29-32
2	A copy of the order admitting CIRP against the Corporate Debtor passed by NCLT, Guwahati dated 21.12.2018 passed in CP(IB) No.5/GB/2018	A2	33-37
3	A copy of the liquidation order passed by NCLT, Guwahati dated 06.09.2019 passed in IA 62/2019 in CP(IB) No.05/GB/2018	A3	38-43
4	A copy of the last order dated 17.03.2021 passed by Ld. Debts Recovery Tribunal, Siliguri in TOA 1208 of 2018 along with a copy of the case status report	A4	44-46

5	Letters of Guarantee dated 12.06.2013 in order to guarantee the repayment of sanctioned loan facility to the extent of Rs.28,94,00,000.00 (Rupees Twenty Eight Crores Ninety Four lacs) only, plus unpaid interest, other charges and costs till full and final repayment executed by Mr. Tshering Pintso Bhutia and one Mrs. Ongmu Bhutia, jointly and severally.	A5	47-78
6	A copy of the notice under Section 13(2) of the SARFAESI Act, 2002 dated 18.01.2017 issued by the Applicant Bank	A6	79-80
7	Statement of Account as on 13,.01.2021 evidencing transactions between the Bank and the Corporate Debtor	A7	81-84
8	Notice vide Form B under the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 dated 08.09.2020 sent by the Applicant Bank/Creditor to the Personal Guarantors along with the postal receipt and delivery report.	A8	85-87
9	Claim filed by the Applicant Bank before the Learned Liquidator vide Form D under Regulation 18 of the Insolvency and Bankruptcy Board of India(Liquidation Process) Regulations, 2016.	A9	88-90
10	Copy of Certification of Registration and Form B being Authorization for Assignment of Mr. Sanjit Kumar Nayak, the Insolvency Professional	A10	91-92
11	Copy of Power of Attorney of Mr. Gaurishankar Bhaiya dated 26.10.2012 along with copy of Board Resolution dated 14.11.2017 of the Applicant Bank	A11	93-102
12.	Vakalatnama		

8. As on date the CD is under liquidation from 06.09.2019. It is appropriate to look into the last order of this Bench dated 09.09.2021 on the application filed by the Liquidator in the main Company Petition No. CP (IB) 05/GB/2018, directing the Liquidator to complete the Liquidation Process within 05.012.2021:

"1. It is stated by the Liquidator that CP (IB) 05/GB/2018 had been filed by the Financial Creditor namely, Bank of Baroda, hereinafter referred to as the "Financial Creditor", under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP in the matter of Bluefern Ventures Private Limited, hereinafter referred to as the

"Company", claiming dues amounting to Rs.37,68,62,983.00 (Rupees Thirty Seven Crores Sixty-eight Lakhs Sixty-two thousand Nine Hundred and Eighty Three only) owed to the said Financial Creditor by the Company.

2. It is also submitted that the aforesaid petition was heard by this Bench, hereinafter referred to the "Hon'ble Tribunal" and upon the said hearings the Hon'ble Bench was pleased to pass an order initiating CIRP in the matter of Bluefern Ventures Private Limited vide order dated 21.12.2018 and appointed the Applicant herein as the Interim Resolution Professional vide order of the Hon'ble Tribunal dated 31.12.2018. The said order of appointment was served upon the Applicant herein on 02.01.2019 vide order dated 02.01.2019 of this Bench. Subsequently, the Applicant herein was confirmed as the RP with 100% majority of the 1st CoC meeting held on 28.01.2019 and the appointment was confirmed by the Hon'ble Tribunal vide order dated 01.03.2019.

3. **It is submitted that the Resolution Plan submitted by the promoter of the Company in liquidation was not acceptable to the CoC. Thus, the CoC in its 10th meeting, held on 13.08.2019, with 100% majority, recommended liquidation of the said company. Therefore the Hon'ble Tribunal passed an order of liquidation in the matter of Bluefern Ventures Private Limited vide order dated 06.09.2019 and appointed the Applicant herein as the Liquidator.**

4. **It is also stated that the 1st Meeting of Consultative Committee of Stakeholders was held on 20.12.2019 wherein it was informed that the land on which the building of the company is situated does not belong to the Liquidation estate and it is only the building and the contents thereof which form part of the liquidation estate. The said land is in the personal name of the promoters of the Company. It was further informed that the Secured Creditor/Stakeholder has already approached the Ld. Debts Recovery Tribunal, Siliguri, vide TOA/1208/2018 arising from OA/162/18, for realization of its security, on the said land, as it was a guarantee against the loan given to the Company (in liquidation).**

5. **Subsequently, it was discussed that the said creditor shall transfer the land to the liquidation estate so that the land and the building could be dealt with together. Thereafter, simultaneous e-auction of the land and building was attempted by the said creditor and the liquidator respectively. The same failed.** Copies of the minutes of the 2nd, 3rd adjourned, 4th, 5th, 6th and 8th meeting of the Stakeholders Consultative Committee are annexed hereto and marked with the **letters "A", "B", "C", "D", "E" and "F" respectively.** E-auction notice by the Liquidator and the e-auction report are annexed hereto and marked collectively with the

letter "G". E-auction notice and recall notice by the Secured creditor is annexed hereto and marked collectively with the **letter "H"**.

6. ***It is submitted that the Government of West Bengal and the Government of Sikkim announced lockdown in various zones from 17.04.2021 till recently wherein*** mandatory state-wise restrictions and/or lockdown was observed affecting inter-state and inter-district movement among other things. It is important to note here that the registered office of the Company is situated in Sikkim whereas the Liquidator is situated in Kolkata.

7. *It is submitted that due to the 2nd wave of the Covid-19 pandemic and the consequent lockdown and the resultant travel restrictions, limited progress was possible in the instant liquidation process and unless a period of 90 days i.e. from 17.04.2021 till 16.07.2021, rendered un-utilizable is excluded from the liquidation period, the instant liquidation process shall be severely prejudiced and rendered inefficient and ineffective and the maximization of the value of the assets of the Company shall not be achieved. It may be noted that although e-auction was conducted and attempts were made by the Liquidator to continue the process but the results could not be achieved due to the pandemic despite the best efforts of the Liquidator.*

Heard the Counsel appearing for the Liquidator. In view of the Second wave of Covid 19, the prayer made by the Liquidator to exclude 90 days from 17/04/2021 till 16/07/2021 is accepted and the above 90 days is excluded from the Liquidation Completion Period. It is observed that the Liquidation order was passed on 06/09/2019 and there is no progress in the liquidation process during last 2 years. Liquidation Process should have been completed within One Year. Hence, the Liquidator is directed to ensure the completion of the Liquidation Process without further loss of time but within 05/12/2021."

9. This Application filed under Section 95 of IBC was taken up on 03.08.2021 and this Bench has passed the following Order:-

"The matter is taken up for hearing through video conferencing. This Petition is filed by the Bank of Baroda, FC under Section 95 of the IBC, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for initiation of Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and Regulation 4 (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), 2019 for initiation of CIRP against the Personal Guarantor Mr. Tshering Pintso Bhutia.

2. *No one is present on behalf of the Respondent. Heard the learned Counsel appearing for the Petitioner. The Petitioner is directed to send a hard copy of the Petition to the Respondent by speed post /courier service with e-mail within 7 days from today and convey the next date of hearing to the Respondent. The Resolution Professional, who has filed this Petition is to be present in the next hearing. The Petitioner has to file the copy of the confirmation of delivery of Notice and the copy of the Petition to the Respondent who is reportedly staying in Gangtok, Sikkim.*

3. ***List the matter on 17.08.2021.***

10. The matter was further taken up on 17.08.2021 by this Bench and passed the following Order:

"The matter is taken up for hearing through video conferencing. No one is present on behalf of the Respondent. Heard the learned Counsel Mr. Abhishek Guha appearing for the Petitioner.

2. *It is submitted that the Petitioner could not serve the copy of the Petition to the Respondent even through Courier Service as because the Respondent is in a very remote area. Track report has also been shown by the Learned Counsel for the Petitioner. The Liquidator has been unsuccessful in disposing of the assets of the Respondent. The learned Counsel of the Petitioner has requested to allow him for paper publication of the notice, since liquidation period is likely to be over very recently. As requested, the Petitioner is permitted to serve notice to the Respondents in the News Papers one in Assam (Guwahati) and the other in Sikkim within 10 days from today and to submit service report before the next date of hearing. The Petitioner is to take all efforts even through the FC to ensure delivery of the Petition to the Respondents so that the matter can proceed without further loss of time.*

3. ***List the matter on 08.09.2021.***

11. This Application was again taken up on 08.09.2021 by this Bench and the relevant part of the Order is reproduced here: -

"The matter is taken up for hearing through video conferencing. Learned Counsel appearing for the Petitioner Mr. Abhishek Guha has submitted that as per earlier direction of this Bench vide Order dated 17.08.2021, the notice has been served through publication in "The Financial Express" [English newspaper] on 20.08.2021 having wide publicity in Assam as well as in Sikkim. Copies of the News Paper has been submitted to the Registry and the same may be kept on record. As requested, the same is taken on record. The learned Counsel has submitted that Notice was given to the Respondent through News Paper

Publication giving clear 10 days' time to appear before the Tribunal today i.e. 08.09.2021 but the Respondent is not appearing deliberately. Even the officials of the FC are not able to meet him as the Respondent is avoiding. The learned Counsel has prayed for admission of the Application.

11.2. It is observed that clear 10 days' time was given to the Respondent to appear before this Tribunal today. Eighteen days have since been passed between the date of publication of the Notice through the News Paper and the date of hearing today.

11.3 Heard the learned Counsel at length and we observe that the Applicant has filed necessary documents to prove about the debts owed by the Debtor, failure by the Debtor to pay and relevant evidence of the default

- (i) The Respondent is the Guarantor to the CD M/s. Blue Fern Ventures Pvt. Ltd.
- (ii) Application is filed by the FC through the RP Shri Sanjit Kumar Nayak
- (iii) The Application filed by the FC through the RP, shows that the Debt owed by the Respondent to the FC is more than Rs.1.00 Crore.
- (iv) The matter was taken up earlier on 17.08.2021. Since the Respondent is not appearing 14 days' Notice between the date of publication to the date of hearing was made available to the Respondent through News Paper published on 20.08.2021 and
- (v) Evidence of default has been established.

11.4 Considering the materials / papers filed by the Applicant on record, the Application filed under Section 95 of IBC is found to be complete for the purpose of appointing the Resolution Professional under Section 97 of IBC, 2016.

11.5 Hence, the Resolution Professional Shri Sanjit Kumar Nayak, Professional Membership No.ICA/N/0079 and IBBI Registration No.IBBI/A003/IP-N0079/2017-18/10702, resident of Harmohan Ghosh Lane, "Suryadeep", Flat-2B, Beliaghata, Kolkata – 700085, Email address sknayak31@gmail.com, contact number 9932002234 is hereby appointed as Resolution Professional. The RP is to file a Assignment Declaration within 2 (two) days from today.

11.6 The Resolution Professional is directed to transact the proceedings with dedication, sincerity, honesty and strictly in accordance with the provisions under Section 99 of IBC and Rules and Regulations of IBBI. The Resolution Professional

- (1) Shall examine the application referred to in Section 95 of the IBC Code, 2016 within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.
- (2) Where the application has been filed under Section 95, the Resolution Professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing –
 - (a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;
 - (b) evidence of encashment of a cheque issued by the debtor; or
 - (c) a signed acknowledgment by the creditor accepting receipt of dues.
- (3) Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.
- (4) For the purpose of examining an application, the Resolution Professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the Resolution Professional may provide such information.
- (5) The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.
- (6) The Resolution Professional shall examine the application and ascertain that –
 - (a) the application satisfies the requirements set out in section 95;
 - (b) the applicant has provided information and given explanation sought by the Resolution Professional under sub-section (4).
- (7) After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.
- (8) Where the Resolution Professional finds that the debtor is eligible for a fresh start under Chapter II, the Resolution Professional shall submit a report recommending that the application by the debtor under Section

94 be treated as an application under Section 81 by the Adjudicating Authority.

- (9) The Resolution Professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).
- (10) The Resolution Professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.

11.7 The matter was listed again on 22.09.2021 for further proceedings.

12. The matter was taken up on 22.09.2021. The RP has submitted the report on 21.09.2021. The RP has opined the following in his report and recommended for acceptance of the Application filed by the FC under Section 95 of IBC:

12.1 The Applicant Bank, Bank of Baroda applied through Resolution Professional to the Hon'ble NCLT, Guwahati Bench for initiating an Insolvency Resolution Process under Section 95(1) of IBC, 2016 by submitting an application.

12.2 The Applicant Bank as mentioned in the application filed, had granted term loan facility (also referred to as Term Loan –I) in several documents to the Respondent with limit of Rs.10,33,00,000.00 (Rupees Ten crores Thirty Three lacs) only in favour of M/s. Blue Fern Ventures Pvt. Ltd. (hereinafter referred to as "Corporate Debtor") (in liquidation), in terms of sanction letter dated 09th November, 2010. Subsequently, the term loan facility limit was extended to Rs.28,94,00,000.00 (Rupees Twenty Eight crore Ninety Four lacs) only.

12.3 The purpose of securing the credit facilities, the Respondent, herein Mr. Tshering Pintso Bhutia and one Mrs. Ongmu Bhutia, Personal Guarantors executed letters of guarantees, all dated 12th June, 2013. Copy of the Guarantee executed by Mr. Tshering Pintso Bhutia is attached and marked as "Annexure –D".

12.4 The Corporate Debtor failed to operate the accounts in accordance with the terms and conditions on which the said credit facilities were granted and the account of the Corporate Debtor was finally classified as Non Performing Asset (NPA) on 30th November, 2016.

12.5 The Personal Guarantor to the Corporate Debtor was duly served by the Applicant a statutory notice dated 8th September, 2020 vide Form B under the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 requesting the Respondent to make the requisite payment to the Applicant Bank. Despite receipt of notice, the Respondent has neither made any payment nor reverted to the same.

12.6 After appointment, the Resolution Professional (RP) has tried to communicate by sending letter through speed post, through e-mail to the Respondent and personal visit to his place by the RP and noted that Mr. Tshering Pintso Bhutia, PG has been trying to avoid meeting. The followings have been observed by the Resolution Professional:

(1) The Respondent Mr. Tshering Pintso Bhutia has committed default in repayment of his debts as stated by the Applicant in their application.

(2) For the purpose of securing the credit facilities, the Respondent herein, Mr. Tshering Pintso Bhutia has executed letters of guarantees dated 12.06.2013.

(3) An Order of liquidation passed by this Bench against M/s. Blue Fern Ventures Pvt. Ltd. (Corporate Debtor) on 06.09.2019 in which the Respondent is a Personal Guarantor.

(4) The Personal Guarantors to the Corporate Debtor, including the Respondent herein was duly served by the Applicant a statutory notice dated 08.09.2020 vide Form B under the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 requesting him to make the requisite payment to the Applicant Bank. According to applicant, despite receipt of notice, the Respondent has neither made any payment nor reverted to the same.

(5) The Resolution Professional has also tried to get the present status from the Respondent by sending letter through speed post,

through e-mail and even personal visit to the place of the Personal Guarantor.

(6) The Respondent has given Personal Guarantee of Rs.28.94 crores to the Applicant Bank of Baroda.

(7) The Resolution Professional intimated the Respondent to prove repayment of the debt claimed as unpaid by the Creditor by furnishing:

- (a) Evidence of electronic transfer of a cheque issued by the debtor, or
- (b) Evidence of encashment of a cheque issued by the debtor, or
- (c) A signed acknowledgement by the creditor accepting receipt of dues.

12.7 No reply was received from the Respondent Mr. Tshering Pintso Bhutia.

12.8 Respondent has not responded to the queries of the Resolution Professional and has not mentioned anything regarding payment to the Applicant, Bank of Baroda. The Applicant has stated in their application in respect of excluded debts as follows:

The Insolvency Resolution Process application filed does not include any:

- (i) Liability to pay any fine imposed by a Court or Tribunal;
- (ii) Liability to pay damages for negligence, nuisance or breach of statutory, contractual or other legal obligation;
- (iii) Liability to pay maintenance to any person under any law for the time being in force;
- (iv) Liability in relation to a student loan;
- (v) Any other debt prescribed under Section 79 (15) (e) of the Code.

The Creditor has confirmed vide letter dated 20.09.2021 as under:

- (i) There is no record of default with the information Utility
- (ii) The Guarantor has not made any payment in connection with the loan accounts of Corporate Debtor M/s. Blue Fern Ventures Pvt. Ltd.

Copy of the letter dated 20.09.2021 is attached and marked as [Annexure-E].

12.9 The Resolution Professional examined the application referred to in Section 95 and tried to get information from the Respondent i.e. the Personal Guarantor but could not get any co-operation from the Respondent despite all efforts by the Resolution Professional. It is also submitted that as per direction of this Bench vide order dated 17.08.2021, the notice has been served through publication in "The Financial Express" [English newspaper] on 20.08.2021 having wide publicity in Assam as well as Sikkim. Notice was given to the Respondent through News Paper giving 10 days' time to appear before the Hon'ble Tribunal on 08.09.2021 but the Respondent did not appear deliberately. Even the officials of the Bank of Baroda, i.e. the Applicant are not able to meet him as the Respondent is avoiding.

12.10. Keeping the above in view, the Resolution Professional states that

(a) The application satisfies the requirements set out in Section 95.

(b) The Applicant has provided information and given explanation sought by the Resolution Professional under Section 99(4) and

Recommends acceptance of the application filed by the Applicant.

ORDER

13. **Considering the materials and facts made available by the Petitioner, arguments of the learned Counsel of the RP and FC, the RP in person and the facts mentioned in the report of the RP, this Adjudicating Authority is satisfied that,**

(i) The Corporate Debtor, M/s. Bluefern Ventures Pvt. Ltd. availed the loan / credit facilities from the Financial Creditor and the Respondent herein has given Personal Guarantee for the said loan availed by the CD from the FC.

(ii) Account was declared NPA and CIRP of the CD started on 21.12.2018.

- (iii) The CD is under liquidation from 06.09.2019. The liquidation proceeding is going on. The Liquidator Mr. Hrisikesh Dasgupta for the CD Bluefern Ventures Pvt. Ltd. was also the RP for the CD. The Liquidator has already reported that he is not able to proceed in the Liquidation Process as because the land on which the Hotel building of the Company is constructed belongs to the Respondent, when the fund was made available by the FC for construction of the Hotel.**
- (iv) The Respondent is the Guarantor to the CD M/s. Blue Fern Ventures Pvt. Ltd. and executed Letters of Guarantee on 12.06.2013.**
- (v) The FC has also invoked the guarantee against the Respondent for an amount of Rs.28,94,00,000.00 (Rupees Twenty Eight crore Ninety Four lacs only).**
- (vi) Application is filed by the FC through the RP Shri Sanjit Kumar Nayak.**
- (vii) The Application filed by the FC through the RP, shows that the Debt owed by the Respondent to the FC is more than Rs.1.00 Crore.**
- (vii) The matter was taken up earlier on 17.08.2021. Since the Respondent, Mr. Tashering Pintso Bhutia is not appearing deliberately except once on 10.02.2021 before this Bench during the liquidation proceedings of the Main Petition, 14 days' Notice, between the date of publication to the date of hearing, was served on the Respondent through News Paper – The Financial Express having wide publication in Sikkim and Assam published on 20.08.2021.**
- (viii) Enough opportunity has been given to the Respondent to place his submission but there was no response from him at all.**
- (ix) Evidence of default has been established.**

Hence, the present IB Petition is hereby admitted with the following directions/observations. The date of admission of this petition is 30.09.2021.

14. As per the provisions of Section 101 of the IB Code on the date of commencement of insolvency, this Adjudicating Authority declares moratorium with effect from today for prohibiting all of the following, namely :-

Moratorium. - (1) When the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

(2) During the moratorium period—

(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and

(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

15. The Provisions of sub-section (1) shall not apply to-

(a) Such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

16. This Adjudicating Authority hereby appoints, as proposed by the Applicant, Resolution Professional Mr. Sanjit Kumar Nayak, having IP Registration No.IBBI/IPA-003/IP-N00079/2017-18/10702 as Resolution Professional. The Resolution Professional is further directed to issue Public Notice and claims from the creditors etc. and strictly follow the provisions

under Section 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112,113 and other relevant provisions of the Insolvency and Bankruptcy Code.

17. The RP is hereby further advised to adhere the time limit as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP") and perform the duties as specified under various Sections of IB Code. The RP shall perform all his functions contemplated, inter-alia, various Sections of the Code and transact proceedings with utmost dedication, honest and strictly in accordance with the provisions of the 'Code', Rules and Regulations.

18. One of the prime objectives of the Insolvency and Bankruptcy Code, 2016 is to quickly find out a viable Insolvency Resolution Plan for the Corporate Debtor and in order to have a Resolution Plan Viable, feasible and implementation successful, in the era of Minimum Cost of funds-based Lending Rate ("MCLR")/ Repo Linked Interest Rate/ Interest rate falling regime and competitive market condition, the Committee of Creditors (COC) / Resolution Professional may explore, while finalizing the Resolution Plan or Repayment Plan for the Corporate Debtor, the possibility of loading maximum interest at the Applicant Bank's Base Rate (BR) +1% from the date of default to the date of implementation of MCLR and further from the date of implementation of MCLR till the date of approval of the Resolution Plan or Repayment Plan at the rate of Petitioner Bank's One Year MCLR or One Year MCLR + 1% without any penal/overdue interest.

19. Since the CD is an MSME Unit and under liquidation, the sole Financial Creditor – Bank of Baroda, the Liquidator of the CD, Mr. Hrishikesh Dasgupta as well as the RP, Mr. Sanjit Kumar Nayak are hereby directed to co-operate with each other and work together to find a viable Resolution Plan for the CD at this stage also. Assets of the CD and the Guarantors can be consolidated so that a Resolution Applicant willing to take over the Management of the CD will find this process lucrative, if personal guarantors' assets are taken into account together.

20. **The Notice in this regard is to be published in The Economic Times or Indian Financial Express published in Sikkim, Siliguri, Guwahati, Kolkata, New Delhi and Mumbai so that possibility of a viable Resolution Plan for the CD may be high.**

21. **In addition to that, this notice is also to be published in a News Paper published in Vernacular Language having wide publicity in Sikkim. The publication of the notice in different places is essential to get a viable Resolution Plan as the CD is a Hotel project in Sikkim yet to start operation. Copy of the Publications in the News Papers shall be filed with the Registry within 10 days from the date of publication.**

22. The Registry is hereby directed to communicate the authenticated copy of this order to the Financial Creditor, the Respondent, Corporate Debtor Company, the RP and also to the Registrar of Companies, NER, Guwahati immediately through speed post / registered post and e-mail, if any.

23. The commencement of Personal Guarantee to the CD Insolvency Resolution Process shall be effective from the date of this order.

24. **Thus, the present IB Petition CP (IB) No.16/GB/2021 filed under Section 95 of the IBC stands admitted on the date of this order i.e. 30.09.2021 with the above observations and directions.**

Sd/-

(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority
/D-30.09.2021/

Sd/-

(H. V. Subba Rao)
Member (Judicial)
& Adjudicating Authority