

**THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH  
AT NEW DELHI**

**Company Petition No. (IB)-752 (PB)/2019**

**Under Section 7 of the Insolvency and Bankruptcy Code,  
2016**

In the matter of:

Mansi Brar Fernandes

Applicant/Financial Creditor

Vs.

Gayatri Infra Planner Private Limited

Respondent/Corporate Debtor

***Judgment delivered on: 02.01.2020***

**CORAM**

**MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT**

**MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)**

For Applicant: Mr. Sunil Fernandes, Mr. Darpan Sachdeva,  
Advocates.

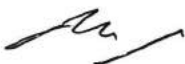
For the Respondent: Mr. Kunal Sharma, Mrs. Tania Sharma & Ms.  
Shankari Mishra, Advocates.



## ORDER

**S. K. Mohapatra, Member**

1. Mrs. Mansi Brar Fernandes claiming as the financial creditor has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company, M/s. Gayatri Infra Planner Private Limited referred to as the corporate debtor.
2. The Respondent Company M/s. Gayatri Infra Planner Private Limited (CIN No. U45400 DL 2011 PTC 300950) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 16.12.2011 having its registered office situated at 1/7098, 2<sup>nd</sup> Floor, Gali No. 5, Shivaji Park, Shahdara Delhi, East Delhi - 110032. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of



Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is the case of the applicant that an Agreement/ MoU was entered between Ms. Mansi Brar Fernandes ("Applicant / Financial Creditor") and M/s Gayatri Infra Planner Private Limited ("Respondent/ Corporate Debtor") on 06.04.2016.
4. A provisional allotment of an under construction located in Sector 16, Noida Extension, Uttar Pradesh, having an apartment area of 6,740 sq ft (approx.) in a project named "Gayatri Life" was made in favour of the Financial Creditor-Applicant at an agreed consideration of Rs.1,03,78,521/- (Rupees One Crore Three Lacs and Seventy Eight Thousand and Five Hundred and Twenty One Only).
5. It is submitted that as part-payment an amount of Rs. 35,00,000/- (Rupees Thirty-Five Lacs Only) was paid at the time of signing of the said Agreement.



6. As per the said agreement, the construction was likely to be completed within a period of 12 months from the date of execution of the agreement, i.e. by April 2017.
7. There was a compulsory buy-back provision in the agreement which stipulates that upon the expiry of the period contained in the said agreement the Corporate Debtor was to return Rs. 35,00,000/- (Rupees Thirty Five Lacs Only) paid by the Financial Creditor and also an additional payment of Rs.65,00,000/- (Rupees Sixty Five Lacs Only) as premium.
8. In lieu of the same, at the date of execution of the said Agreement, the Corporate Debtor issued two Post Dated Cheques ("PDCs") in favour of the Financial Creditor, namely (i) Cheque No. 016173 dated 06.04.2017 for an amount of Rs. 65,00,000/- (Rupees Sixty-Five Lacs Only) (ii) Cheque No. 016174 dated 06.04.2017 for an amount of Rs. 35,00,000/- (Rupees Thirty-Five Lacs Only).
9. It is further contended that on the expiry of the said Agreement, the Financial Creditor inquired from the Corporate Debtor whether it intends to allot the said Flat to the Financial Creditor and confirm the provisional



allotment or does he intend to exercise the compulsory buy-back. The Corporate Debtor exclaimed his interest to buy- back the said Flat from the Financial Creditor.

10. Accordingly, in view of buy- back, the said two cheques were deposited for encashment but both the cheques were dishonoured. It is alleged that besides false assurances no payment has been made by the corporate debtor.
11. It is the case of applicant that thereafter, another MoU dated 07.04.2017 was entered between the Financial Creditor and Corporate Debtor seeking extension of 6 months of the Original MoU. However, even after expiry of 6 months ("first extension"), no money was repaid.
12. Thereafter another Extension letter dated 07.10.2017 was entered between the Parties wherein extension of MoU till 07.10.2018 was sought, however despite second opportunity ("second extension"), no money was repaid.
13. It is alleged that even after lapse of more than three years from the date of execution of the MoU, there has been no reimbursement of the money paid nor the possession of the property was given.



14. It is claimed that Applicant-Financial Creditor has sent several reminders and are made to run pillar to post with respect to the reimbursement of the amount already paid and the additional amount promised as per the terms of the MoU. However, besides hollow promises and assurances by the Respondent/ Corporate Debtor, neither the entire amount paid nor possession of the Apartment was given.
15. Therefore, the instant Application under Section 7 of the Code has been filed for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, since the Respondent/Corporate Debtor failed to refund the amount or give possession of the apartment.
16. Respondent company has filed its reply on 04.09.2019. We have heard the Learned Counsels for the parties and have perused the case records.
17. One of the main objections raised by the respondent is that the applicant does not come under the definition of 'financial creditor' and therefore the present application under Section 7 of the Code is not maintainable.



18. The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the “Financial Creditor” is delineated under Section 7 of the Code, wherein only “Financial Creditor” / “Financial Creditors” can file an application. As per Section 7(1) of the Code an application could be maintained by a Financial Creditor either by itself or jointly with other Financial Creditors. Section 7 of the Code thus mandates that only the applicant “Financial Creditor” has to prove the default. In other words, even if there is a clear default, the application under Section 7 of the Code is not maintainable in case the applicant is not a financial creditor. Therefore, in order to maintain the present application filed under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor, the present applicant has to satisfy that it comes within the definition of “Financial Creditor”.

19. The expressions “Financial Creditor” and “Financial debt” have been defined in Section 5 (7) and 5 (8) of the Code respectively, which are reproduced below.



“ 5. In this part, unless the context otherwise requires,

.....

(7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

- a) money borrowed against the payment of interest;
- b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;
- c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such



*other accounting standards as may be prescribed;*

*e) receivables sold or discounted other than any receivables sold on non-recourse basis;*

*f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the effect of a borrowing;*

*Explanation – For the purposes of this sub-clause-*

*(I) Any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing and*

*(II) The expressions, “allottee” and real estate project shall have the meanings respectively assigned to them in clauses (d) and (zn) of Section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016)*



- g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) and (h) of this clause.”*


20. Clause (8) of Section 5 of the Code has been amended by the Insolvency and Bankruptcy (Second Amendment) Act, 2018 with effect from 6th June, 2018. In view of the explanation inserted in the revised definition, it has been abundantly made clear that any amount raised from an allottee under a real estate project shall be deemed to be



an amount having the commercial effect of a borrowing and thus will come within the definition of 'Financial Debt' under the Code. Definition of 'Financial Debt' has been amended to remove any cloud and to specifically include dues of the home buyers. Amendment Act leaves no doubt that home buyers are "Financial Creditors". Accordingly, allottees/home buyers being "Financial Creditors" in terms of Explanation to Section 5 (8) (c) of the Code, can initiate Corporate Insolvency Resolution Process against the defaulting builder or developer.

21. Hon'ble Supreme Court in the case of Pioneer Urban Land and Infrastructure Limited and Anr. Vs. Union of India and Ors. reported in 2019 SCC OnLine SC 1005; held that the allottees/home buyers were included in the main provision, i.e. Section 5(8)(f) with effect from the inception of the Code, the explanation being added in 2018 merely to clarify doubts that had arisen.

22. In view of the proposition of law settled by the Hon'ble Supreme Court allottees/home buyers are to be regarded as financial creditors in terms of Section 5(8)(f) of the Code. Hon'ble Supreme Court further made it clear that the



allottees/home buyers can avail the remedies available under the provisions of the Code.

23. In the present case Petitioner was allotted apartments totalling 6740 sq. ft. build-up super area in a Real Estate Project named as "Gayatri Life" vide Memorandum of Understanding dated 06.04.2016 duly executed between the parties. Since the amount has been raised from the petitioner/allottee under a real estate project, not only the debt has a commercial effect of borrowings and come within the scope of 'financial debt' but also the petitioner comes within the definition of 'financial creditor'.

24. Even if in the case of buy back, the MoU provides for refund of the amount paid by the petitioner plus the premium amount of Rs. 65 Lacs. There is no dispute that at the date of execution of the said Agreement, the Corporate Debtor issued two Post Dated Cheques ("PDCs") in favour of the Financial Creditor, namely (i) Cheque No. 016173 dated 06.04.2017 for an amount of Rs. 65,00,000/- (Rupees Sixty-Five Lacs Only) (ii) Cheque No. 016174 dated 06.04.2017 for an amount of Rs. 35,00,000/- (Rupees Thirty-Five Lacs Only). Subsequently



post-dated cheques for principal as well as towards premium amount was also given. Parties agreed that the amount disbursed by the applicant shall be enhanced considerably during the period of investment. The amount raised from the petitioner has clearly a commercial effect of borrowings and therefore comes within the scope of 'financial debt' and the petitioner comes within the definition of 'financial creditor'.

25. Accordingly, the petitioner being a financial creditor can invoke Corporate Insolvency Resolution Process under Section 7 of the code against the respondent corporate debtor in case of default in repayment of financial debt.

26. Initiation of Corporate Insolvency Resolution Process by Financial Creditor is regulated by the provision engrafted in Section 7 of the Code, which reads as under:

**"7. Initiation of corporate insolvency resolution process by financial creditor. —**

*(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against*



a corporate debtor before the Adjudicating Authority when a default has occurred.

*Explanation.* — For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board. (4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the



records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary -6- Company Appeal (AT) (Insolvency) No. 428 of 2018 proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

**Provided** that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.



(6) *The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).*

(7) *The Adjudicating Authority shall communicate—*

*(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;*

*(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.”*

27. Dealing with the ambit and scope of Section 7 of the Code in “Innovative Industries Ltd. Vs. ICICI Bank and Ors.” reported in (2018)1 SCC 407, the Hon’ble Supreme Court has observed as under:

*“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor - it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such*



form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred,



*that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”*

- 28.** The present application under Section 7 of the Code for initiation Corporate Resolution Insolvency Process has been filed by petitioner financial creditor in Form-1 in terms of Rule 4 of Insolvency and Bankruptcy (application to Adjudicating Authority) Rules, 2016 accompanied with required information, documents and records as prescribed under the Rules.



29. Sub-section (3) (b) of Section 7 of the Code further mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Manish Sukhani, for appointment as Interim Resolution Professional having registration number IBBI / IPA-001 / IP-P006668/ 2017-18 / 11137 with e-mail id as ca.m.sukhani@gmail.com and address as B-213, Orchard Road, all Royal Plam, Aarey Colony, Goregoan, Mumbai-400065. Mr. Manish Sukhani has agreed to accept the appointment as the interim resolution professional and has signed a communication dated 04.03.2019 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Manish Sukhani as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.



30. It is reiterated that the Form-1 filed in the present case under Section 7 of the Code read with Rule 4 of the Rules, shows that the Form is complete in all respect and there is no infirmity in the same.

31. The next objection raised by respondent is for consideration as to whether respondent corporate debtor has committed default in payment of the financial debt.

32. There is no dispute that applicant has paid an amount of Rs. 35,00,000/- (Rupees Thirty-Five Lacs) to the respondent vide cheque no. 036518 dated 04.04.2016. The receipt of the said amount has been duly acknowledged at the time of signing of the MoU dated 06.04.2016. The respondent has not denied the receipt of Rs. 35,00,000/- (Rupees Thirty-Five Lacs) from the petitioner.

33. That apart the execution of MoU dated 06.04.2016 between the parties has not been denied. Some of the relevant terms of MoU dated 06.04.2016 are reproduced below:



*“WHERAS*

*A. The first party is a reputed and leading developer engaged in the business of real estate development and allied activities.*

*B. The first party has approached the second party with an offer to purchase under buy back scheme under construction apartments in its project namely “Gayatri Life” located at Plot No. 1F, Sector – 16, Noida Extension on the terms and conditions set out herein and the second Party, has agreed to accept the said offer on the following negotiated cost/terms in view of the quantum involved, subject to the understanding as recorded hereunder.*

*NOW, THEREFORE, THIS MEMORANDUM OF UNDERSTANDING AS MUTUALLY AGREED RECORDS AS UNDER:*

- i. The offer under the MOU is valid only for 12 (Twelve months) months starting from the date of the execution of this agreement.*



- ii. *This MOU shall stand terminated on the completion of 12 months from the day of this MOU i.e. 06.04.2017 subject to the completion of the terms and conditions contained in this MOU.*
- iii. *The first party agrees to allot an apartment or apartments, totalling 6740 Sq. Ft. built-up super area (hereinafter referred to as the "Apartment(s)", more particularly described in Annexure A hereto, in its project namely "Gayatri Life" at Plot No. 1F, Sector - 16, Noida Ext. for a total all inclusive consideration of Rs. 10,378,521/- (Rupees One Crore Three Lakh Seventy Eight Thousand Five Hundred Twenty One Only) i.e. Rs. 1539.84/- per Sq. Ft. (approx.) all inclusive subject to 1% TDS subject to applicable TDS Rules. The breakup of the consideration per flat will also appear from Annexure A hereto.*



iv. The Second Party has paid an amount of Rs. 35,00,000/- (Rupees Thirty-Five Lakhs Only) (subject to TDS as applicable) in favour of the First Party towards Aggregate Sale Consideration for the said flat vide following cheques towards consideration of apartment/penthouse as mentioned in Annexure A, at the time of signing this MOU.

<i>Cheque No.</i>	<i>Dated</i>	<i>Amount</i>	<i>Drawn on</i>	<i>Name of Drawee</i>
036518	04.04. 2016	35,00,000/-	HDFC Bank	Gayatri Infra Planner Pvt. Ltd.

1. (a). *The First Party shall execute separate Provisional Allotment Agreements in respect of the Apartment in favour of the Second Party simultaneously with this Agreement*

(b) *The First Party has entered into an irrevocable contract with second party that they*



shall compulsorily buy back the said apartments at the end of the term of this MOU and it is further confirmed that Second Party is duly bound for execution of this Buy Back and, First Party shall refund the amount paid by the Second Party plus premium of Rs. 1,00,00,000/-.

(c) The First Party undertakes that they will not sell/transfer/mortgage/part with possession or in any manner deal with all the Apartment(s) till the buy back is completed of all the Apartments.

.....

7. The First Party has delivered to the Second Party, in advance, at the time of execution of this Agreement post-dated cheques for Rs. 1,00,00,000/- (Rupees One Crore Only) consideration amount to execute buyback. Details of cheques given by First Party to the Second Party is as under: -

Sr. No	Cheque No.	Cheque Date	Amount (Rs)	Drawn on
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1.	016173	06.04.2017	65,00,000/-	OBC Bank
2.	016174	06.04.2017	35,00,000/-	OBC Bank

9. *The First and Second party both will be compulsorily obliged to effect the buyback of the said reserved space on the completion of 12 months from the day of this MOU or any extended period agreed to by the Second Party in writing.*

.....

15. *In the event of failure of First Party to complete the buyback by the end of the 12 month as aforesaid then second party shall have right to get the whole or part of the Apartments transferred in its name or in the name of its nominees or to sell the same in the open market at the prevailing market price and no demand shall be payable by second party or its nominee by way of other charges, transfer charges or balance BSP. In the event of default it shall be deemed that the amount paid*



*under this MOU is the full and final payment for the apartments mentioned in Annexure "A".*

..... *(emphasis given)*

34. Upon expiry of 12 months period contained in the MoU neither allotment in favour of the petitioner was made nor the post-dated two cheques as detailed at clause 7 of the MoU was honoured. Subsequently with first extension of six months respondent corporate debtor issued another two post-dated cheques numbering 000047 and 000048 for Rs. 65 Lacs and Rs. 35 Lacs respectively which also got bounced. Thereafter again with 2nd extension corporate debtor issued further two post-dated cheques numbering 024119 and 024118 both dated 06.10.2018 for Rs. 65 Lacs and Rs. 35 Lacs respectively in favour of the applicant financial creditor which were also again bounced.

35. All the post-dated cheques given by the CD in favour of the applicant financial creditor on three occasions were dishonoured.

36. In the present case neither the possession of the flats has been given to the petitioner nor the Corporate Debtor has returned even the amount collected from the



petitioners since the year 2016. Post-dated cheques given by the CD in favour of the applicant financial creditor on several occasions have been dishonoured. There is thus sufficient material on record to conclude that respondent corporate debtor has committed default in repayment of the financial debt.

**37.** Hon'ble Supreme Court in the case of Shalini Ranbah Vs. Unitech Limited reported in 2017 SCC online NCDRC 525 decided on 05.10.2017 has observed that when a Builder is not in a position to deliver possession of property for long time, has to refund the amount with interest as the allottee cannot be expected to wait for possession of the apartment for indefinite period.

**38.** In the present case Financial debt is outstanding since the year 2016. There is no denial of default and the amount of default exceeds much more than Rupees 1 lakh. The threshold limit to trigger the Code is purposely kept low at only one lakh rupees, making it clear that even small individuals may also trigger the Code as financial creditors. In view of Section 4 of the Code, the moment default is Rupees one lakh or more, the application to



trigger Corporate Insolvency Resolution Process under the Code is maintainable. Once there is a debt and default and the application are complete the Adjudicating Authority is bound to admit the application preferred under Section 7 of the Code.

39. Under sub-section 5 (a) of Section 7 of the code, the application filed by the applicant financial creditor has to be admitted on satisfaction that:

1. *Default has occurred.*
2. *Application is complete, and*
3. *No disciplinary proceeding against the proposed IRP is pending.*

40. Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited V. Kirusa Software Private Limited* reported in AIR 2017 SC 4532 at Para 19 has observed that:

*"Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional,*



*it shall admit the application. The adjudicating authority/Tribunal is not required to look into any other criteria for admission of the application." (emphasis given)*

41. As a sequel to the aforesaid discussion it is seen that the applicant clearly comes within the definition of Financial Creditor. The material placed on record further confirms that applicant financial creditor had disbursed Rs. 35 Lakhs to the respondent corporate debtor in terms of MoU dated 06.04.2016. Though considerable period has since lapsed neither the possession of the flats has been given to the petitioner nor even the principal amount disbursed has been refunded by the respondent corporate debtor. It is accordingly reiterated that respondent corporate debtor has committed default in repayment of the outstanding financial debt which exceeds much above the statutory limit of rupees one Lakh. Besides it is also seen that the application filed in Form – I under Section 7 of the Code read with Rule 4 of the Rules is complete and there is no infirmity in the same. Moreover, the material



on record reveals that there is no disciplinary proceeding pending against the proposed IRP.

42. In the facts we are satisfied that the present application is complete and there has been a default in payment of the financial debt and that no disciplinary proceeding is pending against the proposed IRP and therefore, the applicant financial creditor is entitled to initiate Corporate Insolvency Resolution Process against the respondent corporate debtor under Section 7 of the Code.

43. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

44. Mr. Manish Sukhani, having registration number IBBI / IPA-001 / IP-P006668/ 2017-18 / 11137 with e-mail id as ca.m.sukhanl@gmail.com and address as B-213, Orchard Road, all Royal Plam, Aarey Colony, Goregoan, Mumbai-400065 is appointed as an Interim Resolution Professional.

45. We direct the applicant Financial Creditors to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional



namely Mr. Manish Sukhani to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per rules and shall be paid back to the Financial Creditor.

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

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



*“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

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

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



provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

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



shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

50. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

  
(M.M. KUMAR)  
PRESIDENT

  
(S. K. MOHAPATRA)  
MEMBER (T)