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IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 63/CB/2021

In the Matter of:

An application under section 9 of the Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

-And-

In the matter of:

SKS ENTERPRISES, having its office situated at 5, Sarafa Bazar, Champa- 495 671, District Janjgir-Champa, Chhattisgarh

...Operational Creditor

-Versus-

MADHYA BHARAT PAPERS LIMITED, having its Registered Office at Birgahni Rly & P.O Champa- 495 671, District: Janjgir Champa, Chhattisgarh State.

...Corporate Debtor

Coram:

Shri P. Mohan Raj : **Member (Judicial)**
Shri Kaushalendra Kumar Singh : **Member (Technical)**

Appearances (through hybrid mode):

For the Petitioner : Mr. Jai Anant Dehadrai, Adv.
Mr. Martin G George, Adv.
Mr. Siddharth Sharma, Adv.
Mr. Md Tasnimul Hassan, Adv.

For the Respondent : Mr. Joy Saha, Sr. Adv.
Mr. Rishav Banerjee, Adv.
Mr. Supriyo Gole, Adv.
Ms. Madhuja Barman, Adv.

Order pronounced on: 30.04.2024

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ORDER


1. This petition is filed to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor under Section 9 of Insolvency and Bankruptcy Code, 2016 R/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016.

2. Brief contents of the petition are as follows:

The petitioner/operational creditor supplied waste papers, raw material to the respondent/corporate debtor in response to purchase orders placed by it. The petitioner had raised invoices for the materials supplied and delivered to the respondent. The first invoice of supply of waste paper was raised on 18.11.2016 and the last invoice of supply was raised on 27.12.2018. Total supplies were made for Rs. 7,20,05,044/- (Rupees Seven Crores Twenty Lakhs Five Thousand and Forty-Four only). However, payment for supplies and invoices raised since 23.06.2017 are outstanding. The default of dues has started from 26.01.2019 as the last bill was raised on 27.12.2018. The last payment was received on 06.05.2019. Operational creditor has supplied waste paper to the corporate debtor up to its satisfaction. However, the Corporate Debtor has failed to fulfil its obligation to make payment as per agreed terms despite several requests and reminders via e-mail, letters and telephone. The petitioner has served the Demand Notice upon the CD in Form 3 dated 20.01.2020 to the respondent, then reminders also issued but the CD/Respondent failed to pay the dues. The process of reminders were also continued despite COVID-19 pandemic. However, despite taking delivery of the waste paper on time as regular supplies to the CD, they failed to make the payment and/or did not respond. The total amount of default Rs. 5,00,83,267/- as principal value of Goods supplied to Madhya Bharat Papers Limited, Corporate debtor remains unpaid and interest on the same has accumulated to the extent of Rs. 2,20,50,453/- till 20.01.2020 to corporate debtor. The Total unpaid amount by the corporate debtor is Rs. 7,21,33,720/- as of 20.01.2020. Interest will accrue further till date of realization of dues @24%p.a as per terms of sale stated in invoice. The

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corporate debtor has failed to reply the legal notice and he is not liable to pay. Hence this petition.

3. Brief contents of reply are as follows:

The invoices annexed by the operational creditor in the petition are all forged, fabricated and the same are nothing but fictitious transactions and the operational creditor has raised the fictitious claim without supplying any materials to the corporate debtor. Further, there are several quality issues regarding the various supplies made by the operational creditor. In spite of such quality issues, the Corporate Debtor made the payments. It is stated that the operational creditor has been in association with the corporate debtor for a long period of time but till 2020, did not raise any issue regarding the outstanding invoices. It was only in 2020, that the operational creditor suddenly raised an issue and sent a demand notice for realizing a sum of Rs. 7,21,33,720/- including interest from the corporate debtor. It is also stated that the instant application is not maintainable as the statutory notice of demand under Section 8 of the IBC, 2016 has not been delivered and/or served upon the corporate debtor. There is no proof of receipt of the purported statutory notice of demand issued by the petitioner upon the respondent and no proof of receipt has been annexed by the OC in the instant petition. The petitioner has miserably failed to discharge the burden of proof in the instant case at hand which makes the instant application as not maintainable. The respondent made timely payments of the invoices raised by the operational creditor and stated that no payment is due and remaining on behalf of the corporate debtor. The operational creditor has made a mala fide claim of principal sum of 5,00,83,267/- and for the interest of Rs. 2,20,50,453/-. It is also denied that an interest at the rate of 24% is leviable on the amount which will keep accruing till the date of realization of dues. The corporate debtor is not liable to pay any amount to the operational creditor as nothing is due and payable. Further, it is stated that the purported invoice annexed with the application are ex facie barred by limitation, and the same cannot be part of the Instant petition under Section 9 of the IBC, 2016. Hence this petition is liable to be dismissed.

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4. Brief contents of the rejoinder are as follows:

The contentions of the corporate debtor made in the reply are false, misconstrues and therefore, denied. The payments received against the undisputed invoices issued to the CD have been against a running account which is corroborated in view of the payments pattern of the corporate debtor. Every transaction that was so received were set-off against the previous outstanding amount of the corporate debtor as is evidenced from the chart of payments appended to the application as well as to the rejoinder- affidavit for the sake of convenience. It is also stated that as per banking statement of the operational creditor, the last payment received from the corporate debtor on account was in May, 2019. Therefore, the present application is fully within limitation, as the scope of the present application entails balance due at the foot of an account from the deliveries made in 2018-2019 onwards. The corporate debtor has failed to present even a single piece of evidence in support of its utterly baseless contention of quality issues. The corporate debtor is unable to make up its mind on the reasons for the non-payment of the monies owed to the operational creditor. It is submitted that the Demand Notice dated 20.01.2020 along with a copy of the invoices was issued on behalf of the operational creditor to the corporate debtor via registered post & Email, however, A/D was received back by the operational creditor on 20.01.2020. Therefore, the compliance of proper service of the Demand Notice had been duly met by the operational creditor at the time of invocation of the present application. It is stated that no dispute as to the genuineness or legitimacy of the invoices that form the basis of the application has ever been raised previously or the stage of issuance of the Demand Notice. Therefore, the same are denied, and the counter submissions on behalf of the affidavit to the same are not being repeated.

5. Brief facts of the reply of rejoinder are as follows:

The corporate debtor denies the contention/averment made in the rejoinder of the petitioner. It is stated that the corporate debtor is liable to pay a principal value of Rs. 5,00,83,267/- as the value of goods supplied to the corporate debtor. It is stated that nothing remains unpaid and there is no interest which is accumulated on the said principal value to the extent of Rs. 2,20,50,453/- bringing the total amount to

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Rs. 7,21,33,730/-. It is also stated that the default amount till date of corporate debtor has been settled with many creditors whose claims were genuine. However, the corporate debtor is unwilling to settle with operational creditor as the claims are not genuine and is just a method to harass the corporate debtor to arm-twist it and wriggle money out of it which they will utilize to run their own business. Mr. Ganesh Maheswari who represents the operational creditor has been associated with the corporate debtor for a long-period of time not only as a shareholder but in different key position having control over the corporate debtor and was associated with the corporate debtor when the alleged transaction took place. The operational creditor only raised issues after leaving the corporate debtor that it is just a money-making pathway for the operational creditor. Moreover, as stated earlier, the operational creditor could have produced these documents much earlier if the same were in their possession along with the company petition and no explanation has been provided by the operational creditor as to why they could not provide and/or furnish these documents. Hence this petition is liable to be dismissed.

6. On the respondent side opposed the petition and questioned the competency of the person who filed the petition as follows:

- (i) Petition is barred by limitation.
- (ii) The petitioner is incompetent to file petition under IBC 2016.
- (iii) Petition is filed with collusion of V.K. Khanna and fraudulently.
- (iv) Notice under section 8 of IBC 2016 is not served upon the respondent.
- (v) The petition filed by agent against his principal, is not maintainable.


Now, we will see the objections of the respondent in seriatim.

(i). Limitation:

7. The petitioner claims a due amount of Rs.5,00,83,267/- as principal towards the supply of waste papers covered by the invoices for the period from 23.6.2017 to 27.12.2018. This petition is filed on 11.05.2021. It is stated in the reply that the invoices are dated back to more than three years hence the petition is barred

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by limitation. The petitioner denies this contention of the respondent and submitted that the running account is maintained by the petitioner and part payment was made by the respondent.

8. On the petitioner side stated that the respondent made part payment in the month of May 2019, it amounts to acknowledgement of debt under section 19 of Limitation Act 1963 hence petition is filed well within limitation. Further, it is stated that in the 5th reminder dated 20.07.2020 sent by e-mail, the petitioner claimed a sum of Rs.5,00,83,267/- for which the respondent sent reply on the same day acknowledging the debt. Without going into much, if we approach this limitation issue in light of Apex Court citation in recognizance Suo Moto case the petition is well within limitation. According to the petition the 1st Invoice is dated 23.06.2017 the three years limitation period expires on 22.06.2020. As per Suo Moto case the period from 15.03.2020 to 28.02.2022 are to be excluded from the period of limitation. This petition is filed before the expiry of exempted period of the Apex court. In this case if the period from 15.03.2020 to be excluded, if so the petition filed on 11.05.2021 is well within limitation. Thus, it is answered that the petition is not hit by limitation.

(ii). Petitioner is incompetent to file the petition under IBC 2016:

9. The application under Section 9 has been filed by the Operational Creditor in the name of M/S SKS Enterprises which is a proprietary concern of Ganesh Kumar Maheshwari HUF. It is the case of the respondent that the application being filed by the said Operational Creditor in the trade name of M/S SKS Enterprises is not maintainable as the "Person" defined in Section 3(23) of IBC, 2016 does not include the trade name of a proprietor as any legal entity. In this regard respondent side relied upon the following citations: (i) **Delhi RG Steels vs Berry Auto Ancillaries (P) Ltd 2019 SCC Online NCLT 16194**, there it is held that sole proprietary concern cannot maintain the petition on its own. Further in the citation referred by the respondent Company Appeal No.776 of 2020 **Mateshwari Minerals vs Jet Granite Pvt Ltd** the Hon'ble NCLAT upheld the contention that sole proprietor cannot file petition in the name of proprietary concern and following the citation **Neeta Saha vs Ram Niwas Gupta 2020 SCC Online**

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NCLAT 908 remanded the matter to carry out the correction. However, NCLT Amaravathi Bench held in **Vani Bio chem vs Vaayucon Greentech Private Ltd** had held that a Sole Proprietorship concern will fall under the definition of individual contained in Section 3(23) of the Code since it is an inclusive and not an exhaustive definition. This question is settled by Apex court in **Rasikal Manickchand Dhariwal & Anr. M/s M.S.S. Food Products; 2012** <https://indiankanoon.org/doc/1699212224/> para 63 as follows:

The above description of the plaintiff in the plaint at best may be called to be not in proper order inasmuch as the name of Nilesh Vadhwani must have preceded the business name in the cause title. This is not an illegality which goes to the root of the matter.

10. In the context, we have perused the Section 9 petition and the particulars given in the prescribed form. Part 1 thereof contains the particular of the applicant wherein the name of the Operational Creditor is stated to be M/S SKS Enterprises. The petition is signed by Ganesh Kumar Maheshwari as could be seen from the affidavit enclosed therein. The content of the affidavit is reproduced hereunder:-

*"I, Ganesh Kumar Maheshwari S/o Shri Mahesh Prasad Maheshwari, aged about 59 years Resident of The Metrozone, R-304, 44 Pillaiyar Koil Street, Anna Nagar, Chennai 600 040Karta of Ganesh Maheshwari HUF controlling the affairs of **SKS Enterprises, a Firm of Ganesh Maheshwari HUF having its office at 5, Sarafa Bazar, Champa 495 671, District Janjgir - Champa, Chhattisgarh, India, do hereby solemnly affirm and state on oath as follows:-***

- 1. I state I am, the Operational Creditor/ Applicant in the present application and I am aware of the facts of the case and thereby competent to swear the present affidavit.*
- 2. I say that I issued a demand Notice dated **20.01.2020** in Form 3 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016 and the said notice was duly served upon the Corporate Debtor **and A/D received back by M/S. SKS Enterprises on 30.01.2020.***

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VERIFICATION

I, Ganesh Kumar Maheshwari, swear that the contents of my above affidavit are true and correct to my knowledge and the information derived from the record of the case and nothing material is suppressed or concealed therefrom."

The definition of person as given in Section 3(23) of the IBC is inclusive definition. The "person" includes - (a) an individual (b) a Hindu Undivided Family (c) a company (d) a trust (e) a partnership (f) a limited liability partnership and (g) any other entity established under a statute and includes a person resident outside India. Operational Creditor is defined in Section 5(20) of the IBC and accordingly it means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. Thus, there is no doubt that the Operational Creditor has to meet the criteria of definition given for "Person under Section 3(23) of the IBC. We also note that the proprietary concern can be owned by the individual and also by the HUF. In that context, the name of the Operational Creditor ought to have been stated as Ganesh Kumar Maheshwari HUF, Proprietor of M/S SKS Enterprises. However, the applicant has mentioned it simply "M/S SKS Enterprises". Nevertheless, in the affidavit which is signed by Mr. Ganesh Kumar Maheshwari in support of the said application, has it been stated very clearly that Mr. Ganesh Kumar Maheshwari is the HUF of M/S SKS Enterprises and he is the Operational Creditor/Applicant in the present application. Therefore, keeping in view the aforesaid judicial decision given by the Hon'ble NCLAT in the case of **Mateshwari Minerals (Supra) and Neeta Saha (Supra)** whereby mistake, if any, in mentioning the trade name instead the name of the proprietor was considered to be curable and accordingly the application was allowed to be amended and also the definition of person as given in Section 3(23) which is rather inclusive and not exhaustive and also keeping in view the fact as stated by the proprietor herein in the affidavit that he was the Operational Creditor/Applicant in the subject application, we do not find any further requirement of amendment in the name of the Operational Creditor and consider this petition having been filed by the Ganesh Kumar Maheshwari HUF. Accordingly, this petition filed in the name of M/S SKS Enterprises is to be treated

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as the application filed by the Operational Creditor Ganesh Kumar Maheshwari HUF being proprietor of M/S SKS Enterprises and as such the application is maintainable. In the context, Reliance is also placed onto the decision of Hon'ble High Court of Delhi held in **A. Khandelwal & sons (HUF) vs M/s Sardar Mall Alok Kumar**<https://2008 Latest Case Law 2219 Del /indiankanoon.org/doc/102100025/> as follows:

*In this regard it is significant that there is no statutory compulsion for such trading Joint Hindu Family to affix the words "HUF" to its trading name, as is in the case of a limited company under the Companies Act. Most of such trading families are known not to affix HUF to their trading name, though it is not so in the present case. Order XXX Rule 10 of CPC also permits a **HUF carrying on business under any name to sue and be sued in such name or style as if it were a firm name**. To make only the manager's private properties and the Joint Hindu Family properties liable for debts/liabilities can give a tool in the hands of unscrupulous families of arranging their affairs in a manner to defeat debts/liabilities.*

Accordingly, it is held that the application filed by Ganesh Kumar Maheshwari HUF through its karta in the trade name to M/S SKS Enterprises is maintainable.

(iii). Collusion with Vinod Kumar Khanna and Fraud:

11. On the respondent side alleged that the petitioner in collusion with Mr. Vinod Kumar Khanna fraudulently created the invoices and conclusively filed this petition. The said Vinod Kumar Khanna joined in the respondent company on 18.10.1982 as company secretary and subsequently appointed as additional director and Vice president of the company. He resigned from the company on 01.02.2020. The invoices filed in this petition covered the period from 23.06.2017 to 27.12.2018 and all that emerged during his tenure. This petition is filed on 11.05.2021. In the initial stages, said Vinod Kumar Khanna represented the petitioner company. Further it appears that the Vinod Khanna HUF has business transaction with the petitioner HUF. The statement of account of the petitioner shows receipt of certain payments from the respondent company and remittance of certain amounts thereof to Vinod Kumar Khanna HUF. Only because the account statement of petitioner depicts credit entries of corporate debtor and debit entries

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to Vinod Kumar Khanna HUF the transaction cannot be termed as fraudulent. If Vinod Kumar Khanna indulged in any fraudulent activities in collusion with the petitioner, his resignation would have not been accepted without any demur and respondent would not kept silent without initiating any legal actions. The respondent in his reply stated that petition has been filed to coerce the respondent to pay money which was already paid. Then stated that the invoices are not acknowledged by the respondent since there is no stamp of respondent affixed thereon. On the petitioner side produced certain paid invoices, there also the stamp of the respondent is not affixed, it shows that in practice the respondent used to acknowledge the materials supplied under the invoice without affixing any stamps on the invoices. If the respondent taken plea of discharge, the onerous of proof lies upon it to prove it. Then the respondent taken plea that the invoices are incorrect and fraudulently created documents hence the respondent is not liable to pay the amount. Of course, as a respondent it can take inconsistent plea but here the respondent taken mutually destructive plea. The respondent leveled serious fraudulent allegations against Vinod Kumar Khanna in his absence, without taking any lawful action against him. It is obvious that the petitioner raised the issue of fraud only for the purpose of the petition. Hence the contention of the respondent that the petition is filed in collusion with the Vino Kumar Khanna is unsustainable.

(iv). Non-Service of statutory demand notice:

12. On the petitioner side submitted the demand notice under section 8 of IBC that was sent on 20.01.2020 with invoices by registered post with acknowledgement due to the registered office address of the respondent and filed the postal receipt and acknowledgement card. On the respondent side stated that the demand notice was not served upon the corporate debtor. The postal receipt filed by the petitioner bears the date of dispatch of notice on 20.01.2020 from Rippon Building post office Chennai 600 003 and paid postal charge of Rs.270/-, the letter was addressed to respondent's company to its Champa address with pin code 495671. The acknowledgement card produced by the petitioner does not bear the signature or stamp of the respondent company to prove that the letter/notice was acknowledged. The acknowledgement card bears the delivery date seal of Park

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Town post office, delivered to the petitioner. Even though the acknowledgement card does not bears the office seal of corporate debtor as per section 27 of General Clauses Act 1897 when the document is sent by post after paid the postal charge with correct address of the addressee, it shall be considered as delivered unless contrary it proved. In our case the all the ingredients required under section 27 of General Clauses are full filled, no contrary is proved on the respondent side hence it is held that demand notice is duly served and petitioner complied with the requirement of section 8 of IBC 2016.

(v). The petition filed by agent against principal, is not maintainable:

13. The petitioner karta of HUF Mr. Ganesh Kumar Maheshwari is a former employee of corporate debtor. He held the managerial post in the corporate debtor from 1986-1992. He was Marketing Representative of the corporate debtor for the South Zone from 1992 to 2018. Further the petitioner is authorized signatory of the corporate debtor and operating Current Bank Account of the corporate debtor in respect Bank A/c No.10108115360 of Sowcarpet Branch, Chennai. The corporate debtor executed power of Attorney in favour of Mr. Ganesh Kumar Maheshwari dated 14.12.1995 in pursuance of Board resolution dated 28.11.1995 accordingly Mr. Ganesh Kumar Maheshwari is authorized to manage, control and supervise the business of corporate debtor in its Branch office situate at Madras(Chennai) with inclusion of power to operate the Bank Account of the corporate debtor pertaining to Branch office. It appears that the power deed is still in force Mr. Ganesh Kumar Maheshwari still acts as an agent of corporate debtor and operating the Bank A/c of the corporate debtor. Mr. Ganesh Kumar Maheshwari as power agent of corporate debtor made payments to SGS suppliers his proprietary concern and withdrawn monthly rent of Rs.10,000/- in his spouse name. It is stated that this amount of Rs. 10,000/- per month were paid to wife of Mrs. Sunita Maheshwari wife of Mr. Ganesh Kumar Maheshwari towards rent. The communication from State Bank of India, Sowcarpet Branch dated 11.03.2021 shows that the Authorized signatory of Bank account of the corporate debtor is still Mr. Ganesh Kumar Maheshwari. He acted transparently and operated the Bank Account of the corporate debtor in pursuance of authority given to him under

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power of Attorney. The above factors clearly established that the karta of HUF Mr. Ganesh Kumar Maheshwari acted as power agent of corporate debtor, even now he stands as power agent of corporate debtor because power deed is not yet revoked.

14. He comes under the related party as defined under section 5(24) (b) of IBC 2016. Mr. Ganesh Kumar Maheshwari is authorized by power deed to take care of entire business affairs of corporate debtor pertaining to branch office at Chennai. The petitioner operational creditor SKS Enterprises firm is also having an office in Chennai, from where section 8 notice under IBC 2016 was sent and also transacted business with corporate debtor from Chennai. Thus, Mr. Ganesh Kumar Maheshwari acted in dual role, represented the operational creditor SKS Enterprises, HUF as Karta and represented the corporate debtor as its Power agent. Now he filed this petition as karta of petitioner HUF firm against his principal corporate debtor.

15. It is the duty of the agent to avoid conflict of interest with the principal. This is a very important element for fiduciary relationship. If the agent have a personnel interest in the transactions it amount to conflict of interest. One of the essential elements of agency is trust. The relationship between the karta of petitioner and agent of respondent corporate debtor is fiduciary. The fiduciary relationship connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation.

16. The petitioner HUF firm supplied waste papers/raw materials through karta of HUF Mr. Ganesh Kumar Maheshwari to the respondent. The respondent with the knowledge that Mr. Ganesh Kumar Maheshwari Karta of HUF is power agent of respondent placed an order for supply of raw materials/waste papers. This is evident from the Annexure A7 page 103-114 of I.A.No.65 of 2023 the whatsapp chats held between the parties. The MD of the corporate debtor made several requests to the petitioner for the supply of raw materials, in turn the operation creditor made several requests for payments for the goods supplied. These whatsapp conversation between the parties disclosed that the respondent admitted the supply of materials by the petitioner and respondent owe money to the

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petitioner. All these transactions were held with the consent and knowledge of the respondent/principal.

17. As per section 215 of Indian Contract Act 1872, the agent cannot deal on his own account in the business of agency without the consent of his principal, but here it is obvious that the petitioner/agent had a business transaction with the respondent/Principal with his consent and transactions were carried out transparently. Till the date of filing this petition there is no murmur from the respondent/Principal that the petitioner as an agent concealed any material facts of the transactions or that the actions of the petitioner was disadvantageous to him. In this case it is understand from the correspondence held between the parties and proves that the petitioner was permitted to act as marketing representative of the corporate debtor for the Southern Zone and continue to act as an agent knowing that the petitioner is doing waste paper supply business. There is no suppression or concealment of material facts. As already referred there was no accusation leveled by the respondent/Principal till filing this petition that the transaction carried out by the petitioner/agent is disadvantageous to the interest of the respondent/Principal. Further, in the **judgment of Privy Council Charter Vs Trevelyan 1844 (5th September 1844)** where the agent who was employed to sell a particular commodity himself become the purchaser, the move was questioned in the court. The court held that the move of the agent was a valid one if he could prove that this was with the prior permission of the principal or the full price of the commodity is paid, this must be shown beyond reasonable doubt and clearness. In these situation it is held that the act of the petitioner filing this petition against the respondent is not hit by any law.

18. Thus for the reasons discussed above the defenses taken by the respondent is unsustainable. In turn on the petitioner proves that there is an operational debt and default above the threshold amount as provided under section 4 of IBC 2016 and filed this petition after satisfying all the requirements under the IBC 2016 hence petition is liable to be admitted.

19. The petitioner has not suggested name of any IRP. Hence, we appoint **Mr. Nilesh Mishra**, from the panel of IRP list of IBBI, having registration No:-

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IBBI/IPA-001/IP-P-02802/2023-2024/14308, having contact address- House No. 209, (NP),, Ward No. 7 , Purana Bazar Chowk, Kurud, Dist- Dhamtari, Chhattisgarh having email id: nileshmishraca@yahoo.co.in to act as an Interim Resolution Professional (IRP).

20. In view of the answer arrived to the above points, we hereby **admit** the petition and pass the following Orders:

(i) The Corporate Debtor Madhya Bharat Papers Limited is admitted in the Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the Code.

(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 Securitisation 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.*

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

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(iv) We appoint **Mr. Nilesh Mishra**, having registration No:- **IBBI/IPA-001/IP-P-02802/2023-2024/14308**, having contact address- House No. 209, (NP),, Ward No. 7 , Purana Bazar Chowk, Kurud, Dist- Dhamtari, Chhattisgarh having email id: nileshmishraca@yahoo.co.in to act as an Interim Resolution Professional (IRP) of the corporate debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016. He should submit his written consent in Form No. B within a week. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.


(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vi) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

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(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Financial Creditor is directed to pay an advance of Rs.2,00,000/- (Rupees Two Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and to the concerned Registrar of Companies, of IBBI after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

(xii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

21. Interim Resolution Professional shall file 1st Progress Report within six weeks from the date of this order.

22. Thus, the corporate debtor **Madhya Bharat Papers Limited, CP (IB) No.63/CB/2021 is admitted into CIRP**, since the main petition is disposed of, interlocutory application **IA (IB) No. 247/CB/2022 and IA (IB) No. 41/CB/2023** are stands **dismissed**.

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23. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

24. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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Kaushalendra Kumar Singh
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed on this, the 30th day of April, 2024.

Supriya P.S