

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT 1**

C.P. (I.B) No.92/9/NCLT/AHM/2018

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 17.02.2020**

Name of the Company:

ATO (I) Ltd.

V/s.

C. Doctor & Co. Pvt. Ltd.

Section:

Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Rachna Pasare	Adv	Petitioner	
2.	for Natasha D. Shah			

ORDER

The present matter is kept for pronouncement of order today.

Hence, the C.P (I.B) No. 92/9/NCLT/AHM/2018, is admitted.

Detailed order is recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated 17th February, 2020

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 92/9/NCLT/AHM/2018

In the matter of:

M/S. ATO (INDIA)LIMITED,
Having its Registered Office at:
60-C, Collotolla Street,
Kolkata-700073.

..... Petitioner/Operational Creditor

Versus

M/S. C.DOCTOR & CO. PVT. Ltd.,
Having its Registered Office at:
3rd Floor, Bank of Baroda Building,
Gandhi Road, Fuvara,
Ahmedabad-380001.

.....Respondent/Corporate Debtor

Order delivered on 17.02.2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member(J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Ms. Natasha D. Shah, Advocate for the Petitioner/Operational Creditor.

Ms. Sakshi, Advocate for the Respondent/Corporate Debtor.



[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present petition has been preferred by the Operational Creditor, M/s. ATO (India) Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate Debtor Company namely, M/s. C. Doctor & Co. Private Limited.
2. The Petitioner/Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) – U63090WB1983PLC035817. The registered office of the Petitioner is situated at 60-C, Collotolla Street, Kolkata-700073. The present Petition is filed through Authorised Person Shri Prashant Christian having address: 15 Eden Garden Society near Bansidhar Garden Narayan Nagar, Paldi, Ahmedabad-380007.
3. The Respondent/Corporate Debtor, namely C.Doctor & Co. Private Limited was incorporated on 09.02.1944 with CIN: U74999GJ1944PTC077348. The authorised capital of the company is INR.2,75,00,000.00 (Rupees Two Crores Seventy-Five Lakhs Only) and the paid-up capital is INR.2,75,00,000.00 (Rupees Two Crores Seventy Five Lakhs Only). The registered office of the

Corporate Debtor Company is situated at: 3rd Floor,
Bank of Baroda Building Gandhi Road, Fuvara,
Ahmedabad-380001.

4. The present petition has been preferred by the Operational Creditor, M/s. ATO (India) Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate Debtor Company namely, M/s. C. Doctor & Co. Private Limited. It is submitted by the Petitioner that the Respondent/Corporate Debtor is indebted to the Petitioner for **INR.23,86,700.00** (Rupees Twenty Three Lakhs Eighty Six Thousands Seven Hundred Only) **along with interest @ 16% per annum** pending payment. That the Operational Creditor is Public Limited Company, Engaged in the business of Public Carrier, Transporters and carriers of goods, passengers, merchandise commodities and other products. That Corporate Debtor approached the Operational Creditor for transfer of material from the premises of Corporate Debtor/Sirkol Works/Vendor's Place or any other place as may be specified from time to time by Corporate Debtor to different sites such as ventilation system project at Rourkela Steel Plant Site, Odisha or any other place. Accordingly, the Applicant/Operational Creditor had transferred the materials in due

compliance of the terms and conditions specified by the Respondent. The Operational Creditor quoted the transportation charges for the delivery of the consignment from time to time and was duly accepted by the same.

In this regard various invoices/bills were raised by the Operational Creditor in proportion to the work carried on by the Operational Creditor and the same were duly accepted by the Corporate Debtor.

5. It is submitted that the said invoices/bills are still outstanding and have remained unpaid till date. That as on date there is an outstanding amount of INR.23,86,700.00 (Rupees Twenty Three Lakhs Eighty Six Thousands Seven Hundred Only) which is **due and defaulted and payable by** the Corporate Debtor. **Date on which the first Default occurred is 30.04.2015**
6. It is submitted that the Form No.3 demand notice was issued by the operational creditor on 01.11.2017 under the provisions of Insolvency and Bankruptcy Code, 2016.
7. It is Submitted that the Operational Creditor has submitted an additional affidavit dated 11.07.2018 stating that the demand notice dated 01.11.2017 had been duly issued to the Respondent/Corporate Debtor as on 14.11.2017 at 3rd Floor, Bank of Baroda Building,

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Gandhi Road, Fuvara, Ahmedabad-380001 i.e. at the address of the Corporate office of the Respondent.

8. Further, it is Submitted that, vide the said order dated 17.05.2019 read with order dated 17.06.2019 this Hon'ble Tribunal issued notice under section 9(5) of the IB Code, 2016 for removal of the defects, in compliance thereof the applicant had filled an additional affidavit dated 22.08.2019 stated that as per the Ministry Of Corporate Affairs, the registered office of the Company was shifted from BOB Building to GIDC Vatva w.e.f. 28.08.2018 (As per INC-22). Thus issue of Demand Notice at the registered office situated at BOB Building was served on 14.11.2017 by the applicant is in accordance with the Code.
9. It is submitted that on 31.03.2018, this Tribunal was pleased to issue notice to the respondent Corporate Debtor and directed the respondent to file its reply.
10. It is submitted that an objection raised by the Respondent that a complaint is pending before the Police Authority Calcutta. The Applicant submits that vide order dated 09.09.2019, this Hon'ble Adjudicating Authority, directed the Police Commissioner, Calcutta to report on the said Complaint, in reply to the said context the Police Commissioner, Calcutta submitted its report before this Hon'ble Adjudicating Authority that an agreement was made between the Applicant

and Respondent on 26.11.2014 for transportation of their goods in various places in India. The petitioner's company started providing vehicles for transportation of the cargoes of M/s C. Doctor & Co. Pvt. Ltd. to their destined places. On 22.01.2015 the Petitioner's Company has raised their First Invoice as transportation charge amounting to INR.33,88,486.00 and submitted the same to M/s. C. Doctor & Co. Pvt. Ltd. **On 22.11.2015 the alleged company has made a payment of INR.3,00,000.00 to the Petitioner's Company**, but after that Company didn't pay the balance amount of INR.30,88,486.00 to the Petitioner's Company. During Enquiry it could be learnt from the Petitioner that after filing the petition at the Police Station, the E.O of the Police Station has enquired the matter thoroughly and called the Directors of M/s. C. Doctor & Co. Pvt. Ltd. and a negotiation was made between the Companies and the alleged Company has paid INR.4,00,000.00 to the Petitioner's Company, Cheque dated 07.10.2016. The Respondent also made commitment to pay the balance amount of INR.26,00,000.00 within a few months from November 2016 onwards by the RTGS. Further, Enquiry reveals that after receiving the letter of Complaint from M/s ATO (India) Ltd., E.O of the Police Station made thorough enquiry and the alleged Company M/s. Doctor & Co. Pvt. Ltd. was started giving their dues to

the Petitioner's Company in instalments and at that time **no criminal case has been initiated against the Directors of the alleged Company M/s C. Doctor & Co. Pvt. Ltd. as the matter was found civil in nature. Hence the matter is of civil nature.**

11. It is submitted that the Applicant filed a Case No. 21 of 2017 in WBSMSE Facilitation Council before the West Bengal State Micro Small Enterprise Council (herein after referred to as "WBSMSE") under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006; **which was withdrawn on 06.06.2017 by the Applicant itself.**

12. In response to the present I.B. Petition filed by the Petitioner, **the Respondent has filed its objections as:**

13.1 It is submitted that the service of notice under Form No.3 by an Operational Creditor on the Corporate Debtor is crucial and mandatory for the institution of Corporate Insolvency proceeding under Section 9 and the Operational Creditor had the knowledge of non service of Form No.3 on the Corporate Debtor than they ought to have taken alternate recourse for service of notice i.e. by electronic mode, by mail, which even otherwise is provided under Rule 5(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016).

13.2 It is further submitted that the Operational Creditor had filed a Criminal Complaint against the Corporate Debtor on 26.07.2016 in Jorashako Police Station, Kolkata i.e. much before the initiation of present proceedings before this Hon'ble Tribunal. That when the pendency of said complaint was raised as a defence by the Corporate Debtor, the Operational Creditor produced an affidavit dated: 22.08.2019 contending that the parties had arrived on a settlement with Police intervention and after entering into the settlement **the Criminal/Police complaint, was withdrawn by them.** After conducting the thorough enquiry of the Corporate Debtor, the office-in-charge of Jorashako Police Station, Kolkata observed that no criminal case has been initiated against the directors of the alleged Company **as the matter was Found Civil in nature.**

13.3 It is further stated that Operational Creditor has also filed a Case No.21 of 2017 (M/s ATO (I) Limited vs. C. Doctor & Co. Pvt. Ltd.) before West Bengal Micro Small Medium Enterprise (WBMSME) Facilitation Council on 21.03.2017 i.e. before initiation of the present proceeding before this Hon'ble Tribunal. When pendency of the said proceeding was raised as a defence by the Corporate Debtor through their affidavit dated 11.07.2018 contending that the proceeding before WBMSME Facilitation Council has

been withdrawn. The Operational Creditor placed reliance upon the letter dated 06.03.2017. However, neither the said letter was served on the Corporate Debtor nor any Formal order of Closure of the Proceeding is produced by the Operational Creditor before this Hon'ble Tribunal. Thus, it is stated that as the matter is sub-judice between the parties before the WBMSME Facilitation Council, the institution of present insolvency proceeding is arbitrary and unjustified.

13. In light of the abovementioned facts and circumstance the Applicant's Prayer before this Adjudicating Authority is to Cause public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims in accordance with Clause (b) of Sub-section (1) of Section 13 read with Section 14 of the Insolvency and Bankruptcy Code, 2016 to be dismissed and be pleased to pass any further order in the interest of justice.
14. Now, the Petition is filed on 23.01.2018 under the Section 9 of the Insolvency and Bankruptcy Code, 2016 for **the unpaid Operational Debt due of INR.23,86,700.00**
15. The case was taken up by this Adjudicating Authority on 27.02.2018 on the request of the Petitioner's Counsel. The matter was heard on 21.03.2018,

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23.04.2018, 01.06.2018, 11.07.2018, 08.09.2018, 19.09.2018, 25.10.2018, 04.12.2018, 17.05.2019, 17.06.2019, 17.07.2019, 22.08.2019, 09.09.2019 Arguments of the counsels of the Operational Creditor and Respondent were heard. On 01.01.2019, 21.11.2019 written submission was submitted on behalf of the applicant. On 28.03.2018 affidavit in reply was submitted by the Corporate Debtor and on 24.11.2018 and 08.11.2019 written Arguments was submitted on behalf of the Corporate Debtor.

16. The Counsel for the Operational Creditor argued that the notice was served at **registered office on 14.11.2017**.and the application before **WBMSME Faciliation Council for realisation of dues has been withdrawn by Operational Creditor itself. Moreover, the complaint before the Police Station Kolkata is also of Civil Nature for recovery of dues only. Police came to the conclusion also cites that the case is of civil nature. Hence, the Operational Creditor has come to Hon'ble Tribunal Only.**
17. The matter was finally heard on 03.09.2019. During the arguments, the Learned Counsel for the Operational Creditor submitted that the Petition may **be admitted** and an Interim Resolution Professional **appointed in** accordance with the provisions of the Section 16 of the Insolvency and Bankruptcy Code, 2016. Further, it is

submitted that the Corporate Insolvency Resolution Process be initiated as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium period may also be declared.

18. Further, the Operational Creditor **has not suggested any** name of an Interim Resolution Professional ("IRP" for short). If, this I.B. Petition is admitted, an IRP needs to be appointed.

OBSERVATIONS

19.

- 19.1 The Application has been filed on 23.01.2018 for **operational debt due** and defaulted of INR.23,86,700.00 (Rupees Twenty Three Lakhs Eighty Six Thousand Seven Hundred Only) as per the respective Invoices enclosed.
- 19.2 Date of invoice is from 16.12.2014 to 29.04.2015.
- 19.3 Date of first default is **30/04/2015**.
- 19.4 Application is filed within the limitation period **as the date of default is 30/04/2015 and the date of filing this petition under Section 9 of IBC is 23/01/2018. Corporate Debtor has paid INR.3,00,000.00 on 22.11.2015**
- 19.5 The Petitioner has gone to different Organisation like WBSMSC and the Police Station, Kolkata to recover the outstanding dues. Subsequently, the

Operational Creditor itself has withdrawn the case from WBSMSC and the Police has come to the conclusion that the matter is of civil in nature. There is no dispute from the Corporate Debtor about its liabilities and they have never disputed their liabilities at any point of time before the demand notice is issued. Action initiated by the Operational Creditor has been withdrawn.

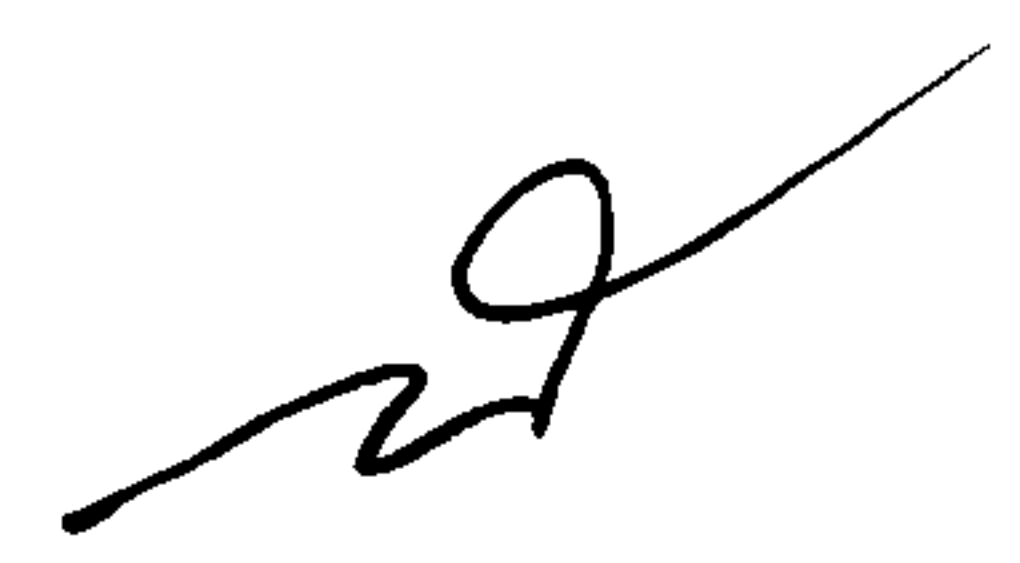
19.6 No pre-existing dispute before the filing of this application is observed.

ORDER

21. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. **19, 19.1, 19.2, 19.3, 19.4, 19.5,& 19.6** this Adjudicating Authority is **satisfied that,**

- a) Existence of operational debt is above Rs. One Lac;
- b) Debt is due;
- c) Default has occurred on **30/04/2015;**
- d) Petition has been filed within the limitation period as the date of default is **30/04/2015** and the petition has been filed on **23/01/2018** and the last payment of **INR.3,00,000.00** is made on **22.11.2015.**

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- e) **Existence of dispute prior to the notice issued by the Operational Creditor is not found.**

Hence, the **present IB petition is admitted on 17.02.2020 with the following directions:**

21. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this adjudicating authority shall declares moratorium for prohibiting all of the following, namely: -

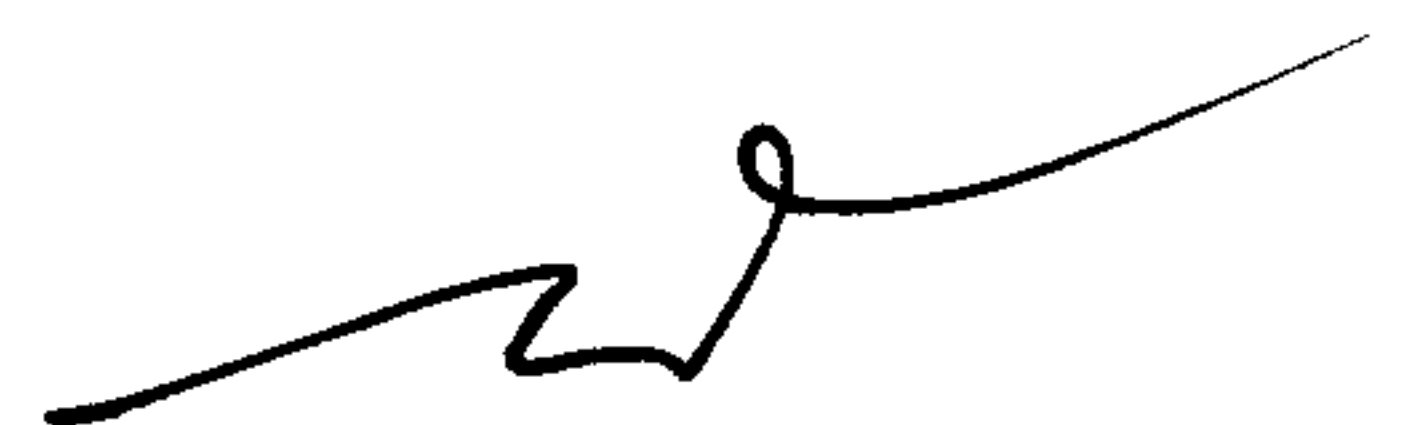
- I.(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority.*
- (b) Transferring, encumbering, alienating or disposing of by the corporate 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 (54 of 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.*
- II. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*

*III. 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.*

*IV. The order of moratorium shall have effect from the
date of this order till the completion of the Corporate
Insolvency Resolution Process.*

22. The Petitioner/Operational Creditor has not suggested the name of any Interim Resolution Professional in the present Petition. Though it is not mandatory on the part of the Applicant to propose an Interim Resolution Professional when the application is filed under Section 9 of the IBC, 2016, but in that case, the Adjudicating Authority shall appoint an Insolvency Professional from the panel prepared by the IBBI and meant for this Bench on admission of the application. But if it is observed that when an Operational Creditor does not suggest the name of any Interim Resolution Professional and the Interim Resolution Professional is appointed by the Adjudicating Authority from the panel of Insolvency and Bankruptcy Board of India available for NCLT, Ahmedabad, the dispute is arising for payment of Interim Resolution Professional fees, paper publication costs etc., in the first month of the Corporate Insolvency Resolution Process. This is more, when Financial Creditor or other Operational Creditor is not there, CoC is not formed and the Operational Creditor is not able to bear the CIRP expenses.

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23. **Hence, this Adjudicating Authority hereby appoints Shri Samir Ganeshbhai Marathe having Insolvency Professional Registration Number IBBI/IPA-001/IP-P00830/2017-2018/11415, having Email-Id:casgmarathe@gmail.com, Address: 1st Floor Sumati Avenue, opp. Rajkamal Bakery Bhairavnath Road, Maninagar, Ahmedabad Gujarat, 380008 an Interim Resolution Professional.**

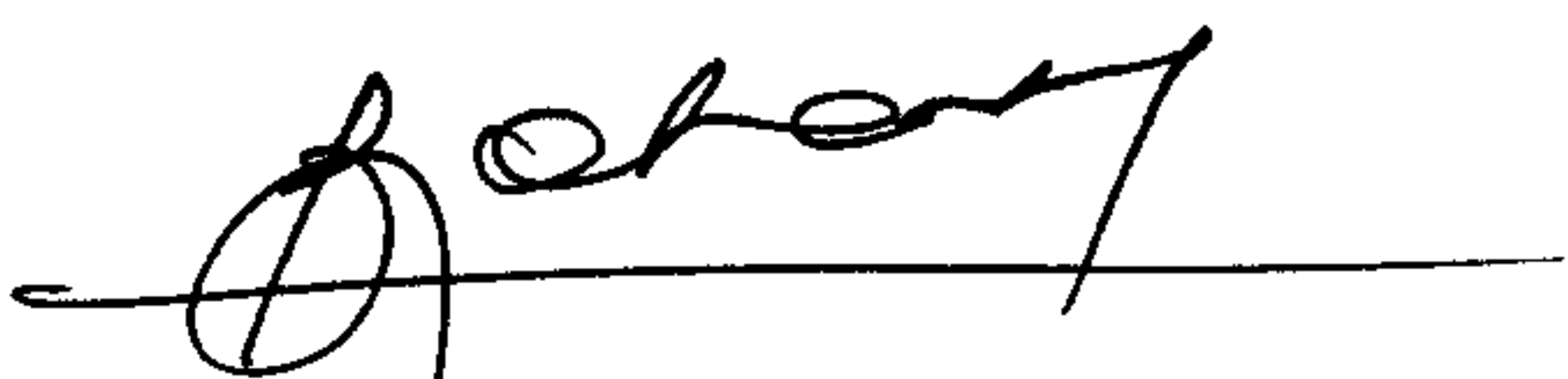
The IRP is advised to file declaration disclosure statement within two days with this Registry.

The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, in 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 personnels connected with the Corporate Debtor, its promoters or any other persons 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, 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.

24. An authentic copy of this order to be communicated by this Registry to the Operational Creditor, Corporate Debtor, as well as to the Interim Resolution Professional and the Registrar of Companies by Speed Post/Registered Post at the earliest.

Hence, this CP (IB) No.92/9/NCLT/AHM/2018 is admitted on 17.02.2020 with the **above Observations and Directions.**


(Prasanta Kumar Mohanty),
Adjudicating Authority
Member (T)


(Harihar Prakash Chaturvedi),
Adjudicating Authority
Member (J)