

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

C.P. (I.B) No. 407/7/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**  
**Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 25.07.2019**

Name of the Company: Edelweiss Asset Reconstruction Co. Ltd.

V/s.

K.K. Kadri Paper Mills Pvt. Ltd.

Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy Code

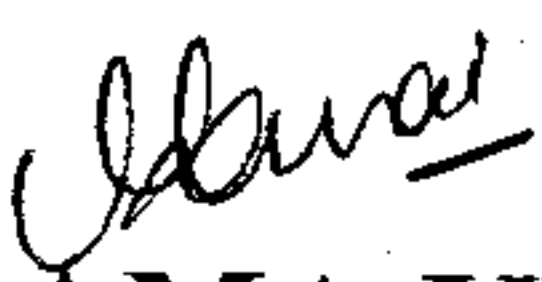
S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Baiju Bhagat	Advocate	Financial Creditor	
2.				

**ORDER**

The Petitioner is represented through their respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

  
**MANORAMA KUMARI**  
**MEMBER (JUDICIAL)**

  
**HARIHAR PRAKASH CHATURVEDI**  
**MEMBER (JUDICIAL)**

Dated this the 25th day of July, 2019.

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

**C.P. (I.B.) No. 407/7/NCLT/AHM/2018**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)  
Hon'ble Ms. Manorama Kumari, Member (Judicial)**

**In the matter of:**

M/s. Edelweiss Asset Reconstruction Co. Ltd.  
Having its registered office at:  
Edelweiss House,  
Off. CST Road,  
Kalina, Santacruz (East),  
Mumbai – 400 098,  
Maharashtra.

**Petitioner/Financial Creditor**

**Versus**

M/s. K. K. Kadri Paper Mills Pvt. Ltd.  
Plot No. 412/2,  
Opp. Chanod Bus Stop,  
G.I.D.C.,  
Vapi – 396 195,  
Gujarat.

**Respondent/ Corporate Debtor**

**Appearance:**

Mr. Baiju Bhagat, Advocate for the Petitioner/Operational-Creditor.  
None for the Respondent/ Corporate-Debtor.

**Order delivered on 25<sup>th</sup> July, 2019.**

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**ORDER**

**[Per: Shri Harihar Prakash Chaturvedi, Member (Judicial)]**

1. The present I.B. Petition is preferred by the Financial-Creditor M/s. Edelweiss Asset Reconstruction Co. Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate-Debtor-Company namely, M/s. K. K. Kadri Paper Mills Pvt. Ltd. The Financial-Creditor is acting in its capacity as trustee of, EARC Trust, SC 31 and is a registered company, incorporated on 05.10.2007 under the provisions of Companies Act, 1956, with Company Identification Number ("CIN") – U67100MH2007PLC174759 and its registered office is situated at Edelweiss House, Off C.S.T. Road, Kalina, Mumbai, Maharashtra – 400098, India.
2. It is submitted that the Petitioner/Financial-Creditor-Company, i.e. M/s. Edelweiss Asset Reconstruction Co. Ltd. is engaged in the business of Securitisation and Reconstruction of Financial Assets and enforcement of Security Interest Act 2002 as a Trustee of EARC Trust – SC 31.
3. It is stated that the Respondent/Corporate-Debtor-Company namely, M/s. K. K. Kadri Paper Mills Pvt. Ltd.

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was incorporated on 08.06.2005 with the CIN: U21010GJ2005PTC46207. The authorised share capital of the company is Rs.5,00,00,000/- (Rupees Five Crores only) and the paid-up share capital is Rs. 4,61,08,950/- (Rupees Four Crores Sixty-One Lakhs Eight Thousand Nine Hundred Fifty only). The main object to which the Respondent Company was incorporated to carry out the manufacturing of craft paper. The registered office of the Corporate Debtor Company is situated at: Plot No. 412/2, Opp. Central Bus Stop, G.I.D.C., Vapi, Gujarat – 396 195, India.

4. It is stated that the Respondent/Corporate-Debtor approached the Bank of Baroda in 2011 for its business purpose. The said credit facilities were renewed/enhanced from time to time in 2012. As submitted by the Applicant/Financial-Creditor, the said bank had sanctioned Cash Credit, Letter of Credit and various Term Loan Facilities amounting to Rs.14.80 Crores (Rupees Fourteen Crore and Eighty lakhs) to the Respondent vide Sanction Letter dated 06.01.2011.
5. The Applicant/Financial-Creditor, has further submitted that the Respondent also executed Hypothecation Agreements, Guarantee Agreements, Instrument of extension related to deposit of Title Deed, in favour of the

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said Bank on various dates last being in 2012. On 30.04.2012, the said Bank sanctioned/renewed/enhanced the following facilities to the Respondent:

Sr.	Amount	Detail
1.	Cash Credit – Rs.11.50 Crores	Renewal; original limit was of Rs.9.50 Crores
2.	Term Loan- I, Rs.0.40 Crores	Renewal; original limit was of Rs.1.07 Crores
3.	Term Loan- II, Rs.0.08 Crores	Renewal; original limit was of Rs.0.14 Crores
4.	Term Loan-III, Rs.1.03 Crores	Renewal; original limit was of Rs.1.09 Crores.
5.	Term Loan-IV, Rs.0.90 Crores	Renewal
6.	Letter of Credit – Rs.3.00 Crores.	Renewal; original limit was of Rs.3.00 Crores.

6. In order to secure the above stated loan advance and in support of the loan agreements, the Respondent created:
- (a) Mortgage/Charge in favour of the Assignor, in form satisfactory to the Applicant, of the Respondent's immovable properties.
  - (b) The Respondent created a charge by way of a Hypothecation in favour of the Assignor of Respondent's company movable including movable machinery, machinery spats, tools and accessories, present and future and such other movable as may be agreed to by the Applicant for securing the borrowing of the said financial facility in the ordinary

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course of business. The applicant has annexed copies of Agreements of Hypothecation; Instruments relating to Deposit of title deed are annexed with the present application.

7. It is contended that, despite repeated reminders being sent to the Respondent's company, it has made no payments to the Applicant/Financial-Creditor nor any stage the Corporate-Debtor disputed the due amount payable to the Applicant/Financial-Creditor.
8. The Petitioner/Financial-Creditor further would submit that the Board of Director of the company passed various Resolutions on different dates, i.e. on 09.01.2011 and 04.05.2012 resolving such the Respondent Company is the Borrower in respect of working capital and term loan facilities availed to M/s. K. K. Kadri Paper Mills Pvt. Ltd. amounting to Rs.14.80 Crores and Rs.16.71 Crores. The Respondent Company for the purpose of Section 18 of the Limitation Act, 1963 executed various letters of continuing security/Revival Letters dated 18.01.2011 and 11.05.2012 and also letters acknowledging its liability to the Applicant on 09.05.2012 and 11.05.2012. The Petitioner/Financial-Creditor has duly annexed with the present I.B. Petition the relevant copies of the Board Resolution of the company of

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the above mentioned dates and letters of continuing security / revival letter.

9. In view of the failure and negligence on the part of the Respondent Company to make payment of the admitted and undisputed debts and liability of the outstanding principal amount and interest and liquidated damages, expenses to the tune of **Rs.22,93,84,430/-**, the Assignor issued a demand notice on 01.10.2012 by Bank of Baroda and further notice was issued by EARC on 09.07.2015 calling upon the Respondent Company to pay to the Applicant the aforementioned amount within a period of sixty (60) days. The notice was duly served to the Respondent Company. The Petitioner/Financial Creditor has annexed a copy of the same along with the present Petition.
  
10. It is reported by the Petitioner that there is no payment of the unpaid debt nor is any notice given by the Respondent Company relating to the dispute of the unpaid debt. As a matter of fact there is Acknowledgement of Debt by the Respondent Company. Copy of the Total Due Certificate under the Bankers Book Evidence Act and Acknowledgement of Debt are annexed with the present Application.

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11. The Assignor, vide Assignment Agreement dated 26.03.2014 assigned the debts of the Respondent company along with all rights, title and interests to the Applicant herein. The Respondent Company is liable to pay to the Applicant an unpaid debt of **Rs.44,51,74,964/-** (Rupees Forty-Four Crores Fifty-One Lakhs Seventy-Four Thousand Nine Hundred Sixty-Four only) as on 31<sup>st</sup> July, 2018, as principal borrower with further interest till date of realisation. Even otherwise, the respondent company has lost its substratum and is not in a stable position to clear its outstanding liabilities to the Applicant.
  
12. It is also informed that on the basis of records available on the website of Ministry of Corporate Affairs as on June 2018, that the Respondent, Corporate-Debtor-Company had filed its annual return for the Financial Year ended on March 31, 2013.
  
13. The Petitioner/Financial-Creditor contends that the Respondent Company is unable to pay its outstanding financial debts arising in the usual and ordinary course of its business and thus it has become commercially insolvent. Therefore, it seeks to initiate Corporate Insolvency Resolution Process in respect of the Respondent/ Corporate-Debtor-Company.

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14. In response to the present I.B. petition, the Corporate-Debtor-Company has filed its reply on 20<sup>th</sup> March, 2019, whereby, although, it opposed the prayers being sought for by the Petitioner/Financial-Creditor for the initiation of the C.I.R.P. However, it did not denied expressly it loan liability, and availing of loan facility from the Financial Creditor.
15. A perusal of the reply of the Corporate-Debtor goes to show that at one point of time, a settlement was arrived with the Banks and itself, wherein, the Corporate-Debtor had agreed for the settlement amount of Rs.9,75,00,000/- (Rupees Nine Crores Seventy-Five Lakhs) as on 31.03.2016. Pursuant thereto the Corporate-Debtor made certain payment to the bank to the extent of **Rs.1,47,50,000/-**. However, the remaining amount of **Rs.8,27,50,000/-** is still due and payable. Thereafter, the Bank had pointed out and cautioned to the Corporate-Debtor if remaining amount due under settlement is not paid till 31.03.2016, it will carry interest @10% P.A. with quarterly rates and the settlement can be revoked by the bank. However, the Corporate-Debtor-Company made effort to explain its circumstances that due to closure of unit and paucity of fund it is having dues as on 31.03.2018 to the extent of Rs.7,72,70,487/- which could not be collected from its sundry debtors by the management of the Corporate-

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Debtor. Hence, the Corporate Debtor is not in a position to re-pay its debt(s).

16. For the sake of convenience, the relevant Para of written objection on behalf of the Corporate-Debtor may be reproduced herein below:

*"That, before submitting the objection against the application the Corporate Debtor herein invite the attention of some short facts and circumstances of the Corporate Debtor herein below; 3.1 The Corporate Debtor Submits that, the object and business of the company is manufacturing of Papers. The Company is situated at the address at the GIDC Vapi, i.e. the Asia's largest Industrial Estate. The Unit of corporate Debtor company commissioned a 60 tons per day capacity paper Plant for the manufacture of High BF Kraft paper.*

*3.2 That, the company was financed by the Bank of Baroda for extent of Rs. 17.00 Crore. The Corporate Debtor Submits that, because of some financial crisis and low production the company was not able to regularize the payment of loan. As there was also accidentally a fire was came out and the company was facing loss of more than 3 Crore. The Unit was in inactive condition.*

*3.3 At that time the Bank of Baroda had also proceed before the DRT and taken action under the SARFAESI Act. The action taken by the Bank was challenged before the DRT and the Hon'ble court have fevered the corporate debtor.*

*3.4 The Corporate debtor approached at to the Financial Creditors for the Settlement. At that time due and payable amount was Rs.19,81,79,000/- The Corporate debtor made*

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a best effort to settle the matter. But As it will take more time to sold out the unit. The OTS decided by the parties were not able to carry out.

3.5 The Corporate debtor submits that the Financial creditor have filed a Petition against the borrower in DRT Vide OA No. 140/2013 The Corporate debtor have also approached before the DRT, to stop auction and as the order was passed to handed over the possession to the corporate debtor. The Bank Was also filed an appeal in DRAT The corporate debtor is not aware about the status RY of this appeal.

3.6 The Edelweiss Asset Reconstruction Co. Ltd is the only secured financial creditor and as per books and MCA record the only charge which is existing is of Rs. 16,71,00,000/ Thereafter, due to severe financial problems due to wrong action initiated by the erstwhile Lender viz;- Bank of Baroda. The Corporate applicant challenged the Action before the DRT and DRT proclaimed the judgment in favour of the Corporate Debtor. There was also a fire in the Company and the insurance claim of the Corporate Debtor is pending before the Commercial Court. The claim amount inclusive of interest is more than Nine crores. There is great potential and considering the nature of business and having potential in the present nature of business the Corporate Applicant is required to be rehabilitated in the overall interest of the Company, creditors, statutory creditors. supplier creditors and exchequer and public at large. The market value of the assets of the Corporate Debtor are worth more than the debt due and payable to the Financial Creditor. Further the Bank erroneously declared the account of the Corporate Applicant as Non Performing on 30/9/2012 The Respondent bank took the possession of the unit and released advertisement for sale of the unit on 1/6/2013 to conduct the action on

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15/7/2013. The Corporate Debtor challenged the Action of the Respondent Bank before the Hon'ble Debt Recovery Tribunal Ahmedabad and the Hon'ble Debt Recovery Tribunal has decided the case in favour of the Corporate Debtor on 01/10/2013 and the Respondent Bank was forced to give the possession back to the Corporate Debtor. Because of the erroneous actions under SARFAESI, 2002, the production of the Corporate Debtor was closed for five months There was a fire in the Company and the Corporate Debtor incurred loss of more than 5 core. The insurance claim of the Corporate Debtor is pending in the court. And expect a compensation of Rs.9.00 crore i.e. compensation plus interest thereon. The Respondent Bank fe. now Edelweiss Reconstruction Company Limited got the loan assignment basis from Bank of Baroda. Edelweiss Assets Reconstruction Co. Ltd., issued notice under section 13(2) of SARFAESI on July 9, 2015, demanding an amount of Rs. 22,93,84,430.00 as on October 31,2013 Thereafter, The Financial Creditor on December 2, 2015, entered into an One Time Settlement with the Corporate Debtor wherein the total dues crystalized is Rs.19,81.79,000/- as on February 26, 2014 The Financial creditor agreed to accept Rs.9.75 crore if the payment is made as under: OTS Amount Rs. 9.75 on crore.47.50 approval.Balance 9.725 crore before March 31,3.2016.The Corporate Debtor there after paid Rs.1,47,50,000/ and thus the balance payable is Rs.8,27,50,000/-.

3.7 The Financial Creditor indicated in the said letter that the settlement amount outstanding after March 31, 2016 will carry an interest of 10%p.a with quarterly Rests upto November 30, 2016. And thereafter the Financial Creditor reserves the right to revoke the settlement and reinstate the dues. The Corporate Debtor so far not received any revocation letter from the Financial creditor.

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3.1 Due to closure of the unit for paucity of funds, the Sundry Debtors as on 31.3.2018, amounting to Rs.7,72,70,487/- could not be collected In Spite Of strenuous efforts put in by the Corporate Debtor.

4. The Corporate debtor submits that, the averments and dues described in the Petition is not a legal dues. The corporate debtor submits that, there is property which are mortgage to the financial creditors have more value.

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6. The Company is facing severe financial problems and Rehabilitation has become incumbent. There is no other motive and further by declaring the moratorium the assets are not going to be frittered away and Further the said present proceedings is in the interest of even for the Financial Creditor.. The Corporate Applicant is highly optimistic that, the Company if given sufficient time by way of moratorium shall be revived and it shall be for the benefit of the equity shareholders, creditors and exchequer and public at large. The Corporate Applicant can either pay the dues or the new resolution applicant can be invited or if the Company is not restructured during Corporate Insolvency Resolution Process than the Company can be liquidated

7. The corporate debtor is ready to settle the matter out of the court also, but the financial creditor is not ready to cooperate in good manner. The Corporate debtor has also tried to sold out the valuable unit. But as the whole economic market goes down it would not make any fruitful.

8. As of now, the corporate debtor submits that, the dues which are described is not an actual dues. The Property of corporate debtor is more valuable. The Financial creditor is

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*fully secured. There is not default as alleged by the Financial Creditors.*

9. *Further, the financial creditor has not provided authenticated bank statements of Bank of Baroda. which described the actual dues payable by the Corporate Debtor. The Computation of Dues are calculated by the EARC. It is only the calculation sheet. The Financial Debtor has also deposited some of the amount but that was not attached herewith.*

10. *The Corporate debtor have strong objection against the appointment of proposed interim resolution professional viz. Mr. Shyam Sundar Rathi, suggested by the Financial Creditors. The Corporate debtor have requested the Hon'ble court to appoint any of the IRP situated at Ahmedabad only.*

11. *The Corporate debtor by media of this Hon'ble court, requested the financial creditor to settle the matter out of the court. The intention of the corporate debtor is not to cheat. The Corporate debtor is ready and willing to pay the dues of the financial creditors. Even otherwise, the financial creditors have also the secure property which are more valuable..."*

17. In the light of above stated averment, the Corporate Debtor submitted that it is ready to settle the matter out of the Court but the Financial-Creditor is not ready to cooperate with it in a good manner and despite the **Corporate-Debtor has offered to sell out its valuables lying in the unit but it will not make any fruitful result because the market was going down.** Hence, the Corporate-Debtor has objected the prayer of Financial-Creditor to initiate C.I.R.P. against it

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and prayed for dismissal of the Present petition with such alternative prayer that in case, the prayer for dismissing the present I.B. Petition is not granted. Then, at least **this Adjudicating Authority should reject the appointment of an Interim Resolution Professional proposed by the Petition and permit to appoint any third person as an I.R.P. to whom this Court, in the larger interest of justice may think proper.**

18. We duly considered the above said objection of the Corporate-Debtor in the broader sense. Since, it is an undisputed position in the present matter that the Corporate-Debtor has not expressly denied its loan liability. In fact, it already admitted its loan liability to the extent of Rs.9,75,00,000/- payable to the Bank under one time settlement. Such settlement amount has further been defaulted by the Corporate-Debtor as it could be able to pay for **Rs.8,27,50,000/-**. Such default of debts is more than rupees one lakh and sufficient to trigger the C.I.R.P. against the Corporate-Debtor-Company.


19. It is a matter of record that the present application has been filed by the Financial-Creditor under Section 7 of the I.B. Code wherein, it is obligatory on the part of the petitioner to propose a name of an I.R.P. as well as to produce his willingness to act as an I.R.P., in case the I. B. Petition is admitted, otherwise such application may not be

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found complete and can be a valid ground for rejection of the I.B. Petition. Therefore, in our view, the objection of Corporate-Debtor to replace the proposed I.R.P. at admission stage is not a legally sustainable because proposed I.R.P. is appointed by this Adjudicating Authority for a purpose of constitution of the CoC within a stipulated period of thirty days. Thereafter, it is left to wisdom and consensuses for CoC to keep continue with the same I.R.P. as R.P. or to make substitute for him by proposing the name of some other Insolvency Professional. Therefore, such prayer at this stage cannot be treated as just and proper because the Corporate-Debtor is having no vested right to oppose appointment of the R.P. until and unless there is some serious allegation against the proposed I.R.P. to show that the I.R.P. would be biased or he is not eligible to act independently in respect of C.I.R.P. of the Corporate-Debtor-Company.

20. During the course of arguments, our attention was also drawn to a decision of Hon. Principal Bench, NCLAT dated 25.10.2018 in the matter of *Edelweiss Asset Reconstruction Company Limited Vs. Angad Infrastructure Pvt. Ltd.* wherein, their lordship has held that the case is an advancing of loan and default stands admitted and if all other requirements of Section 7 of the I.B. Code for initiation of CIRP stands fulfilled and the application is found complete,



then, the petition requires to be admitted/ hence, the petition needs to be admitted. It also pleased to held that if the name of an IRP has been proposed and there are no disciplinary proceedings pending against the I.R.P., then the I.R.P. to be appointed.

21. Thus, it is evident that the Corporate-Debtor did not deny its loan liability which amount to more than of rupees one lakh i.e. **Rs.44,51,74,964/-**. The debt-dues are admitted and the default is duly established. It is also found that the present I.B. Petition is filed by the duly authorised signatory well within limitation and hence, such filing is found to be in order.

22. On the basis of the above given facts of the present case, the present IB petition filed under Section 7 of the code is found complete for a purpose of initiation of Corporate-Interim- Resolution-Process in respect of Corporate-Debtor-Company i.e. M/s. K. K. Kadri Paper Mills Pvt. Ltd.

23. Therefore, the present IB petition is admitted with following observations/ Orders /Directions:

24. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this

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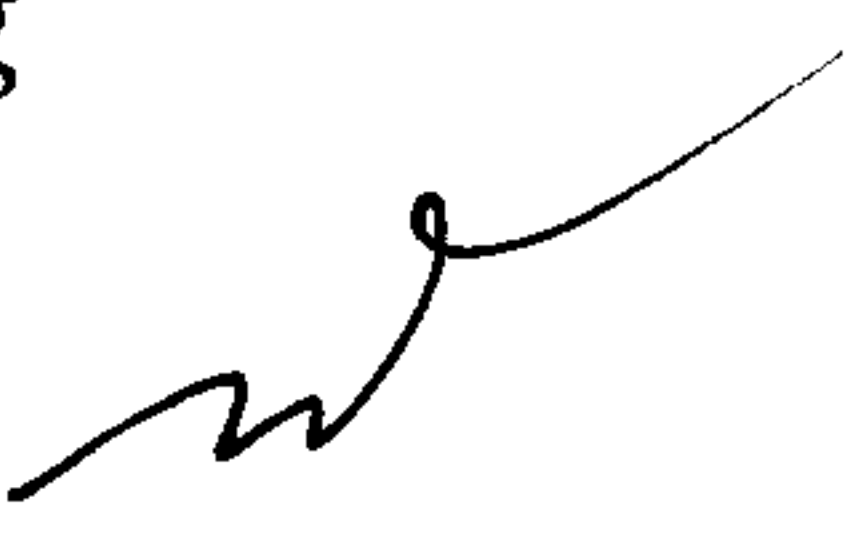
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adjudicating authority declares moratorium for prohibiting all of the following, namely: -

- (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 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 such order till the completion of the corporate insolvency resolution process.*


25. As Applicant/Financial-Creditor has proposed a name of an Interim Resolution Professional, who might be appointed in accordance with Section 16 of the Insolvency and Bankruptcy Code, 2016. Therefore, this Adjudicating


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Authority hereby appoints **Mr. Shyam Sundar Rathi, resi. address: C/o. DBS Corporate Park, Kanakia Wall Street, Andheri-Kurla Road, Mumbai -400059 and having Insolvency Professional Registration. No. IBBI/IPA-001/IP-P00038/2016-17/10099, Email ID: shyamrathi30@gmail.com; as an Interim-Resolution-Professional.** 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.

26. An authentic copy of this order to be communicated by the Petitioner as well as by this Registry to the Corporate-Debtor-Company, as well as to the Interim-Resolution-Professional and the Registrar of Companies at the earliest.
27. Accordingly, the present IB-Petition stands admitted.

  
**Ms. Manorama Kumari,**  
**Adjudicating Authority**  
**Member (Judicial)**

  
**Mr. Harihar Prakash Chaturvedi,**  
**Adjudicating Authority**  
**Member (Judicial)**