



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - V**

C.P. (I.B) No.409/MB/2024

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

M/s. Genesys International Corporation Ltd.

Having its registered address at 73-A, 2nd Floor, SDF-III, SEEPZ, SEZ, Andheri (E), Mumbai – 400 096..

... Operational Creditor

Vs

M/s. Innowave IT Infrastructure Limited

Having its registered address at 504, Pentagon P-3, Magarpatta City Hadapsar Pune- 411 028, Maharashtra

Corporate Office: No. 2:A210, 2nd Floor, Dalamal Towers, Free Press Journal Road, Nariman Point, Mumbai-400 021.

... Corporate Debtor

Order Dated:24.03.2025

Coram:

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

Appearances: Physical/ VC

For the Petitioner: Adv. Nausher Kohli (PH)



For the Respondent: Adv. Atit Soni

ORDER

Per: Madhu Sinha Member (Technical)

1. This Company Petition is filed by **M/s. Genesys International Corporation Ltd** (hereinafter referred as “**the Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **M/s. Innowave IT Infrastructure Limited** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a total Operational Debt of Rs 3,00 38,052.35/- (comprising of **Rs. 2,68,19,689.60 /-** as the principal amount.

BRIEF FACTS OF THE CASE: -

2. It is submitted that the Corporate Debtor and the Petitioner (Operational Creditor, Genesys) entered into a Teaming Agreement dated August 31, 2015, along with an Addendum dated January 3, 2017, to jointly bid for a project floated by the Municipal Corporation of Greater Mumbai (MCGM). Pursuant to the collaboration, the parties executed a Consortium Agreement dated May 7, 2016, wherein the Corporate Debtor was designated as the Prime Bidder, and the Petitioner was named as the Consortium Partner.
3. Based on the said agreement, **MCGM awarded the contract to the consortium**, and a **Contract Agreement dated May 26, 2017**, was executed between **MCGM, the Corporate Debtor, and the Petitioner** for the implementation of the project titled “Implementing Integrated



Property Validation Solution (IPVS) Using 360-Degree Immersive Panoramic Data and Terrestrial LIDAR Data.

4. The Teaming Agreement Addendum specified the scope of services, pricing structure, and payment terms. In particular:
 - **Annexure 1** outlined the work responsibilities of the Petitioner.
 - **Annexure 2**, read with **Clause 2.2**, provided that **the Corporate Debtor was required to make payments to the Petitioner within three days of receiving payments from MCGM.**
5. Further, under Clause 7 of the Consortium Agreement, the Corporate Debtor was required to open a bank account for receiving invoice proceeds from MCGM and to ensure due payments to the Petitioner.
6. In accordance with the agreed terms, the Petitioner successfully provided services to MCGM and, between September 30, 2017, and December 21, 2022, raised 40 invoices totaling ₹24,36,02,787.60/-.
7. The Corporate Debtor raised invoices on MCGM, including the amounts attributable to the Petitioner's work. MCGM made full payments to the Corporate Debtor, covering both parties' services. Between January 10, 2018, and December 29, 2022, the Corporate Debtor made partial payments to the Petitioner, amounting to ₹21,22,87,980/-, after deducting TDS of ₹44,95,118/-. However, a balance amount of ₹2,68,19,689.60/- remained outstanding.
8. The Corporate Debtor, via email dated August 18, 2022, admitted that an amount of ₹2.34 crores was available in the MCGM account towards the Petitioner's dues and assured payment of ₹50 lakhs by the end of August 2022 and another ₹50 lakhs by mid-September 2022. On December 29, 2022, the Corporate Debtor made a payment of ₹75 lakhs, but the balance remained unpaid.
9. On March 23, 2023, the Petitioner's auditor, M/s. M S K A and Associates, requested the Corporate Debtor to confirm the outstanding



dues recorded in its books. In response, on the same date, the Corporate Debtor confirmed a balance of ₹2,70,06,889/- as payable to the Petitioner. Despite repeated reminders, the Corporate Debtor failed to clear the outstanding amount, prompting the Petitioner to issue a demand letter dated June 1, 2023.

10. In response, on June 5, 2023, the Corporate Debtor raised baseless objections to evade payment. The Petitioner, through an email dated August 2, 2023, informed the Corporate Debtor that its scope of work had been fully completed to MCGM's satisfaction, and MCGM had issued acceptance letters confirming the completion of services.
 11. Owing to the Corporate Debtor's persistent default, the Petitioner served a Form-3 Demand Notice on October 11, 2023, demanding payment of ₹2,68,19,689.60/-, which had been acknowledged by the Corporate Debtor. On November 17, 2023, the Petitioner sought confirmation from MCGM regarding the completion of the IPVS Project and the acceptance of services provided under the contract.
 12. MCGM, by a letter dated February 8, 2024, confirmed that it had made full payments to the Corporate Debtor, amounting to ₹42,68,34,610.07/-, thereby affirming that no dispute remained regarding the services rendered by the Petitioner. Despite receiving full payment from MCGM, the Corporate Debtor failed to remit the balance amount to the Petitioner, leaving no option but to initiate the present proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016.
5. Hence this Petition.

REPLY OF THE RESPONDENT

6. The Corporate Debtor had filed their Affidavit in Reply ("**Reply**") dated 20.04.2024 and has denied each and every statement, contention and allegation made by the Petitioner.



7. The Corporate Debtor submits that the present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") is not maintainable as there exists a bona fide and pre-existing dispute between the parties that has remained unresolved since 2019. The dispute pertains to non-compliance with contractual obligations under the agreements executed between the parties, specifically in relation to the deliverables stipulated in the Municipal Corporation of Greater Mumbai (MCGM) tender conditions.
8. The Corporate Debtor submits that the Operational Creditor, Genesys International Corporation Limited, and the Corporate Debtor, Innowave IT Infrastructure Limited, entered into a Teaming Agreement dated 31st August 2015, with the objective of jointly undertaking projects in Geographic Information System (GIS) mapping, Mobile LiDAR data processing, and 360° panoramic data technology.
9. The Corporate Debtor submits that subsequently, the parties entered into a Consortium Agreement dated 7th May 2016, wherein the Corporate Debtor was designated as the lead member responsible for the overall execution of the project awarded by MCGM.
10. The Corporate Debtor states that on 22nd January 2017, an Addendum titled "Project Implementation Agreement" was executed in response to the Request for Proposal (RFP) issued by MCGM on 12th April 2016 for the Integrated Property Validation Solution (IPVS).
11. The Corporate Debtor submits that under Clause 3.1.4 of the Teaming Agreement, the earnest money deposit, bank guarantee, and tender fee were to be shared in proportion to the work undertaken by each party. However, the entire Performance Bank Guarantee (PBG) was paid by the Corporate Debtor.
12. The Corporate Debtor states that Clause 3.4.1 of the Teaming Agreement specified that if the proposal was accepted and the Corporate Debtor entered into a contract with MCGM, an agreement would be prepared for the Operational Creditor's scope of work. The



Operational Creditor was required to comply with the agreement and remain responsible for any non-compliance.

- 13.** The Corporate Debtor submits that as per the contractual framework, the Operational Creditor was designated as the technical partner responsible for Phase 1 of the project, which included: a. Developing a web application for GIS mapping and hosting LiDAR data b. Conducting property surveys and updating MCGM's database c. Ensuring accurate tagging of property details and generating deviation reports d. Analyzing property deviations and submitting detailed compliance reports.
- 14.** The Corporate Debtor was responsible for Phase 2 of the project..
- 15.** The Corporate Debtor states that the contractual obligations of the Operational Creditor under the RFP included: a. Ensuring full compliance with project requirements and completing the assigned scope of work within the stipulated timeline b. Providing timely delivery sign-offs and acceptance certificates from MCGM upon completion of each project milestone c. Adhering to the directions issued by the Corporate Debtor and MCGM d. Rectifying defects in service performance and indemnifying the Corporate Debtor against any liabilities arising due to deficiencies in execution.
- 16.** The Corporate Debtor states that despite clear division of responsibilities, the Operational Creditor failed to comply with its obligations, leading to significant lapses in project execution. The deficiencies included: a. Failure to provide accurate and timely deviation reports as per MCGM's specifications b. Non-compliance with data integration and tagging requirements c. Repeated delays despite multiple communications from the Corporate Debtor.
- 17.** The Corporate Debtor submits that on 28th April 2017, it raised technical queries about the accuracy of LiDAR data. The Operational Creditor, under the Project Implementation Agreement, was required



to ensure data accuracy and provide necessary technical support but failed to do so, thereby breaching its contractual obligations.

- 18.** The Corporate Debtor states that on 1st May 2017, it further highlighted the insufficiency of information provided by the Operational Creditor. Instead of addressing the concerns, the Operational Creditor merely provided existing OEM documentation, leading to project delays.
- 19.** The Corporate Debtor submits that on 2nd May 2017, it noted confusion caused by the Operational Creditor's shifting of points of contact, resulting in inefficient query resolution and project mismanagement.
- 20.** The Corporate Debtor states that communications from December 2017 further substantiated the Operational Creditor's inability to provide adequate technical support, resulting in delays and inefficiencies.
- 21.** The Corporate Debtor submits that critical feedback received from MCGM identified significant deficiencies in the Operational Creditor's execution of the project, including: a. Poor data quality b. Inadequate training on software and quality control c. Lack of on-site field surveys d. The project team lacked sufficient training on the Scope of Work (SOW), leading to incorrect deliverables e. Quality control processes were found to be inadequate, resulting in substandard project components
- 22.** The Corporate Debtor states that errors identified by MCGM in the data provided by the Operational Creditor included: a. Inclusion of non-existent buildings b. Failure to capture existing structures c. Incorrect geographical placement of buildings d. Misclassification of building functions e. Inconsistent data recording methodology.
- 23.** The Corporate Debtor submits that an audit of the Building Attribute Data revealed multiple critical errors, including: a. Missing SAC



numbers and geo-tags b. Incorrect property classifications c. Lack of standard data formatting.

- 24.** The Corporate Debtor states that the Quality Assurance (QA) results from MCGM concluded that the Pilot Wards Data (R1) was not acceptable, necessitating urgent corrective measures such as improved training and stricter quality control.
- 25.** The Corporate Debtor submits that pursuant to Clause 5.4 of the Teaming Agreement, if any penalties, fines, damages, or other costs were levied due to delay or failure in providing services, the Operational Creditor would be responsible for payment or reimbursement.
- 26.** The Corporate Debtor states that as per Clause 1.3 of the Project Implementation Agreement, MCGM's non-exercise of rights under the Prime Agreement does not limit the Corporate Debtor's rights against the Operational Creditor in case of default, breach, or non-performance. Further, Clause 3.3 provides that the Operational Creditor is liable for penalties, liquidated damages, and any deductions incurred due to its default.
- 27.** The Corporate Debtor submits that the MCGM email (referenced on Page 171 of Reply), which was allegedly concealed by the Operational Creditor, indicates that the Operational Creditor's work remained incomplete.
- 28.** The Corporate Debtor states that in an email dated 18th August 2022, it informed the Operational Creditor that certain Phase I tasks were still pending, including minor software modifications and the transfer of software/data to the MCGM-hosted site. The email also mentioned a payment plan, contingent upon completion of these tasks and release of the Performance Bank Guarantee by MCGM.
- 29.** The Corporate Debtor submits that the claim of the Operational Creditor is premature as the Performance Bank Guarantee provided



by the Corporate Debtor has not been released by MCGM, indicating that the project has not been formally completed.

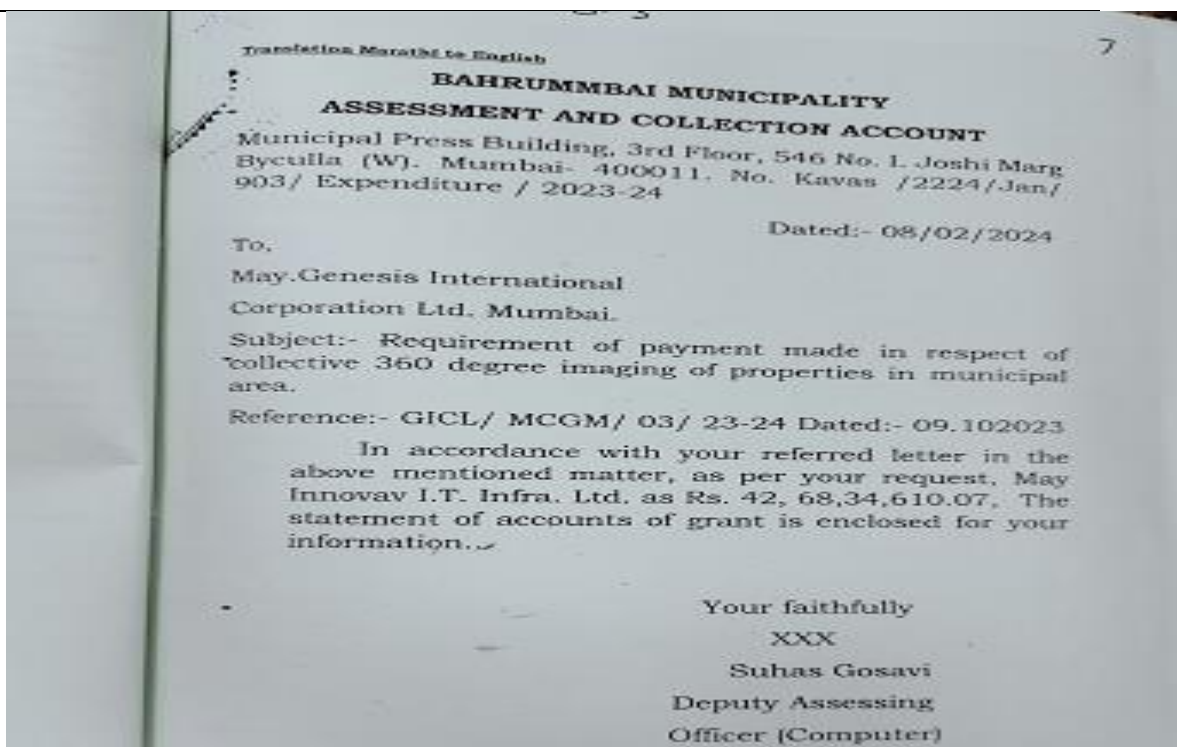
- 30.** The Corporate Debtor contends that it is justified in withholding payments until the MCGM formally accepts the project and releases the Performance Bank Guarantee, as the project remains incomplete due to the Operational Creditor's failure to fulfill its contractual obligations.
- 31.** The Corporate Debtor states that the Operational Creditor is wrongly attempting to take advantage of its own failure and the right to claim damages rests with the Corporate Debtor since the work remains incomplete despite consistent requests to the Operational Creditor to complete the pending work.
- 32.** The Corporate Debtor submits that the present Application has been filed with mala fide intent to pressurize and arm-twist the Corporate Debtor by misusing the beneficial provisions of the IBC. The Application is not meant to resolve insolvency but is being used as a debt recovery mechanism in a case where genuine disputes predate the insolvency notice.
- 33.** The Corporate Debtor relies on the Hon'ble Supreme Court's judgment in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353*, wherein it has been held that the existence of a dispute and/or the record of the pendency of a suit or arbitration proceedings filed before the receipt of the demand notice of the unpaid operational debt shall be sufficient to reject an application under Section 9 of the IBC.
- 34.** The Corporate Debtor further relies on the judgments in *Shahnawaz Siddiqui vs. Newton Engineering & Chemicals Ltd. and M+R Logistics India Pvt. Ltd. vs. AGA Publications Ltd.*, which affirm that insolvency proceedings cannot be used as a debt recovery mechanism when genuine disputes predate the insolvency notice.



35. The Corporate Debtor also places reliance on *K. Kishan v. Vijay Nirman Company Pvt. Ltd.*, (2018) 17 SCC 662, wherein the Hon'ble Supreme Court has held that operational creditors cannot use the IBC either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures.
36. In view of the above, the Corporate Debtor prays that the present Application be dismissed with exemplary costs.

FINDINGS

37. We have heard the Ld. Counsels for the parties and perused the documents available on the record with their able assistance.
38. After careful consideration of the submissions made by both parties and the documents placed on record, this Tribunal proceeds to determine '*whether the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) is maintainable*'.
39. The Operational Creditor claims an outstanding operational debt of **Rs. 2,68,19,689.60/- (plus interest)** arising from services rendered under the Teaming Agreement dated August 31, 2015, the Consortium Agreement dated May 7, 2016, and the Addendum dated January 3, 2017. Under Section 5(21) of the IBC, an "operational debt" is a claim in respect of the provision of goods or services, including employment. The services rendered by the Operational Creditor under contractual agreements fall within this definition. The Operational Creditor has also provided documentary evidence, including invoices and communications, to substantiate its claim of debt and default. Further, the letter dated February 8, 2024, from MCGM confirms that it had made full payments to the Corporate Debtor, amounting to **Rs. 42,68,34,610.07/-**, which suggests that MCGM was satisfied with the services rendered under the contract.



40. However, Section 9(5)(ii)(d) of the IBC mandates that an application under Section 9 shall be rejected if notice of dispute has been received by the operational creditor.
41. In the present case, the Corporate Debtor has raised multiple disputes regarding the quality and completion of services rendered, including:
- Deficiencies in Phase 1 execution**, such as failure to provide accurate deviation reports and delays in project implementation.
 - Critical feedback from MCGM**, which cited poor data quality, errors in building attribute data, and lack of field surveys.
 - Non-release of Performance Bank Guarantee by MCGM**, which, as per the Corporate Debtor, indicates incomplete work.
 - Contractual obligations** making the Operational Creditor liable for penalties and damages due to delayed or unsatisfactory services.

Correspondence between the parties, particularly the email dated August 18, 2022, suggests that certain tasks under Phase I remained pending, and payments were contingent upon their completion and the release of the Performance Bank Guarantee.



From: anant@innowaveit.com
Date: 18 August 2022 at 1:18:18 PM IST
To: Om Hemrajani <Om.Hemrajani@igenesys.com>
Cc: Rajesh Bidye <rajesh.bidye@innowaveit.com>
Subject: MCGM Project activity completion...

Dear Om Sir,

This is further to our recent telephonic discussion about our association to execute the MCGM project. We have checked our books and confirmed that your outstanding in the MCGM account is available with us (around 2.34 Cr) against the deliverables.

Let me clear on behalf of innowave that we sincerely want to clear all your payments and simultaneously and successfully close the ongoing GIS project with MCGM by completing all the obligations as per the RFP and project contract. I take this opportunity to gently remind you that we did not take any security deposit from Genesys, although, we paid Rs. 5.91 Cr worth BG to MCGM. The End user has pointed out some incomplete Phase I tasks, minor software modifications and the transfer of the complete software / data from Genesys to the MCGM hosted site. Our BG would be released on the completion of these stated tasks.

As per the telephonic conversation we look forward to paying you Rs 50,00,000/- within a week by end of August 2022 and followed by payment worth Rs 50,00,000/- by Sept 2022 Mid. The balance payment we look forward to clearing on receipt of our BG from MCGM. We trust that all the MCGM technical obligations would be satisfactorily closed by Genesys team by that time. It will also help both of us to get paid for the AMC period for the last 3 years.

I trust my commitments are in line with the telephonic discussion we held in this month. We request you resume your support for MCGM and help us close the IPVS project for mutual benefits.

Regards,
Anant...

42. A crucial aspect of this case is the email dated March 23, 2023, sent by MSKA & Associates, the statutory auditors of Genesys International Corporation Limited, requesting confirmation of outstanding accounts receivable from the Corporate Debtor as of February 28, 2023. The Corporate Debtor, in response, confirmed the balance due. This confirmation serves as an acknowledgment of debt under *Section 18 of the Limitation Act, 1963*, thereby extending the limitation period for recovery. This acknowledgment significantly weakens the Corporate Debtor's contention regarding a pre-existing dispute, as a debtor acknowledging a liability cannot subsequently deny it to avoid insolvency proceedings. However, the confirmation letter dated March 23, 2023, contradicts the Corporate Debtor's stance. As held in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353***, a dispute must be real and not a mere attempt to evade liability. The Corporate Debtor's confirmation of debt establishes that the dispute raised is an afterthought. In the present case, no documentary evidence has been



placed on record to demonstrate that a dispute existed before the demand notice was issued.

43. The Corporate Debtor has placed reliance on the judgments in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, (2018) 1 SCC 353, *K. Kishan v. Vijay Nirman Company Pvt. Ltd.*, (2018) 17 SCC 662, and other decisions which hold that insolvency proceedings cannot be used as a debt recovery mechanism when genuine disputes predate the insolvency notice. The Hon'ble Supreme Court in *K. Kishan v. Vijay Nirman Company Pvt. Ltd.* has clearly held that operational creditors cannot use the IBC either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures. In the light of the documents and submissions placed before this Tribunal, the acknowledgment of debt in this case negates the Corporate Debtor's claim of a pre-existing dispute. Further, in *M/s S.S. Polymers v. Kanodia Technoplast Limited (2020) SCC Online NCLAT 788*, the NCLAT held that

“if a Corporate Debtor acknowledges liability, it cannot subsequently claim a pre-existing dispute to avoid CIRP.”

Given that the Corporate Debtor has confirmed the outstanding balance post the issuance of invoices and before the filing of this petition, the requirements under **Section 9 of the IBC** are satisfied. The petition is **maintainable**.

44. The confirmation of outstanding balance by the Corporate Debtor on March 23, 2023 has the following legal implications:

a) **Estoppel against Denial of Debt:** As per Section 115 of the Indian Evidence Act, 1872, a party making a representation cannot later deny the same to its advantage. The Corporate Debtor, having acknowledged its liability, cannot now dispute it to evade insolvency proceedings.

b) **Binding Admission:** In *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal & Anr. (2021) 6 SCC 366*, the Supreme Court



held that an acknowledgment of liability in balance sheets and correspondence constitutes an admission of debt and extends the limitation period under *Section 18 of the Limitation Act, 1963*.

c) **Absence of Any Payment or Settlement:** Despite acknowledging the debt, the Corporate Debtor has neither made any payment towards the outstanding amount nor provided any settlement proposal, further demonstrating default.

- 45.** Based on the facts, evidence, and legal precedents discussed above, the following conclusions are drawn that the Petitioner has successfully established the existence of an operational debt that was due and payable, and the Corporate Debtor has committed a default in its repayment. The Corporate Debtor, in its response to the email dated March 23, 2023, has acknowledged the outstanding liability, thereby extending the limitation period under Section 18 of the Limitation Act, 1963. Consequently, the petition is well within the period of limitation and is maintainable under Section 9 of the Insolvency and Bankruptcy Code, 2016.
- 46.** This Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code.
- 47.** The Operational Creditor has proposed the Resolution Professional in Part III of the Company Petition.
- 48.** Accordingly, the above Company Petition is 409 of 2024 with the following:
- a. The above Company Petition No.409/IBC/MB/2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Innowave |IT Infrastructure Limited and Mr. Uday Sakrikar, having registration NO. [IBBI/IPA001/I1P-P01230/2018-19/11927],having email Id- ipudaysakrikar@gmail.com, having address 303, Rahul Vihar A, Lane No. 8, Dahanukar Colony, Kothrud, Pune — 411 038, is hereby appointed as



Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- b.** The Operational Creditor shall deposit an amount of Rs. **2 Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- c.** That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- d.** That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- e.** That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- f.** That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the



corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- g.** That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- h.** During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- i.** Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- j.** Accordingly, CP 409 of 2024 is **Admitted**.

Sd/-

Madhu Sinha
Member (Technical)

/priyanka/

Sd/-

Reeta Kohli
Member (Judicial)