

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-1082/ND/2020

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

CANARA BANK (ERSTWHILE SYNDICATE BANK)

Registered office at:

C 34, 2nd floor, DDA office, near Moolchand Hospital,
New Delhi-110024

...Financial Creditor

Versus

M/s. N S P ASSOCIATES (INDIA) PVT. LTD.

Registered office at:

L-356, 2nd floor, Mahipalpur,
New Delhi 110037

Corporate Office at:

712, 7th Floor, ILD Trade Centre, Sector-47,
Sohna Road Gurgaon, Haryana- 122018

...Corporate Debtor

IB-1082/ND/2020

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Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)
SHRI RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Applicant : Adv. PBA Srinivasan
Counsel for Respondent : UKCA & Partners LLP

ORDER

Per-P.S.N PRASAD, MEMBER (JUDICIAL) & RAHUL BHATNAGAR,
MEMBER (TECHNICAL)

Date: 31.08.2022

1. The present application is filed by Canara Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') against M/s. N S P Associates (India) Pvt. Ltd. for the alleged default on the part of the Respondent in settling an amount of Rs 59,34,96,998.55 (Fifty

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Nine Crores Thirty Four Lakhs Ninety Six Thousand Nine Hundred Ninety Eight Rupees) inclusive of interest as on 31.08.2019. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the Corporate Debtor is engaged in the business of construction of hotels and other structures.
- ii. That the Applicant, Canara Bank (erstwhile Syndicate Bank), on the basis of amalgamation scheme dated 04 March 2020, is a body corporate under Bank Companies (Acquisition and Transfer of Undertakings) Act, 1970.
- iii. That the Applicant vide sanction letter dated 24.07.2014 sanctioned a loan to the Corporate Debtor of INR 50 crores to part finance the construction of a new four-star hotel named 'Courtyard by Marriot' in Neemrana, Rajasthan.
- iv. That the Applicant vide a composite hypothecation agreement dated 26.11.2015 entered into between Canara Bank (erstwhile Syndicate Bank) and the Corporate Debtor for a credit facility/loan aggregating to INR 35 crores for development of a commercial project.

- v. That the Corporate Debtor has not made any payments towards any of the above mentioned loans. Further, the account of the Corporate Debtor was declared as a non-performing asset ("NPA") by the Applicant on 28.09.2017.
- vi. That the Applicant on 06.10.2017 sent a recall notice to the Corporate Debtor recalling an outstanding amount of Rs 41,60,23,452.47.
- vii. That on 27.01.2020 the Corporate Debtor sent a letter to the Applicant proposing a full and final settlement towards the dues of the Applicant. That as per the said letter an amount of INR 50 crores was agreed to be paid to the Applicant as per the full and final settlement towards the above mentioned loans.
- viii. That on 31.01.2020, this offer was sanctioned by the Applicant vide its letter bearing No. 038/SAMB/NSPI/OTS/2020 and the same was also acknowledged by the Corporate Debtor on the same day.
- ix. That despite of various reminders from the Applicant, the Corporate Debtor failed to pay the amounts as per the one time settlement sanction letter dated 31.01.2020 and vide

letter dated 22.05.2020, the one time settlement sanctioned by the Applicant was withdrawn by the Applicant.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions are made:

- i. That the Respondent owned a plot of Agricultural Land measuring 48,495 sq. mts approximately.
- ii. That on 04.12.2012, the Corporate Debtor received a sanctioned drawing of Tourism Unit and Resort at the above said land by relevant Authorities. Thereafter on 17.10.2013 the project was amended and plans for tourism Unit and Hotel Project were approved by Urban Improvement Trust, Bhiwadi.
- iii. That in March, 2014 the Respondent visited the branch of Applicant Bank for day to day work and during the said visit met the DGM of the Applicant Bank. During the discussion, the said official requested Corporate Debtor director to apply for the loan with the Applicant Bank rather

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than from State Bank of Bikaner and Jaipur (SBBJ), who had already sanctioned the same.

- iv. That on 08.04.2014, the Applicant Bank cleared the proposal of the Corporate Debtor and on 12.04.2014, the Respondent filled the requisite documents for the loan Application for 50 crores.
- v. That on 24.07.2014, the Applicant Bank sanctioned Rs. 50 crores towards part finance construction of the Tourism Unit and Hotel Project on the Property at Margin of 55.42 % of the total project cost i.e., Rs. 112.16 Crore. In order to secure the said loan, the Applicant agreed to create charge over 65% of the total property in favour of the Applicant Bank.
- vi. That on 28.07.2014, the revised drawing of the Y block of Tourism Unit and Hotel Project consisting of Mall & Serviced Suits Block at the property was approved by Urban Improvement Trust, Bhiwadi. As per the revised plan, the Applicant were allowed to construct Mall with an Office Floor and 57 Serviced Suits.

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- vii. That on 03.01.2015, the Applicant bank issued No Objection Certificate to un-mortgage the land relating to Y Block of Tourism Unit and hotel Project consisting of Mall and Serviced Suits Block in the Property. In May, 2015, the Architects and Structural Team re-designed the building consisting of four floors of the Mall along with 116 Serviced Suits, after revised Sanction were approved on 29.03.2016 by the relevant Authorities, the cost of building the Mall and serviced Suits Y Block in the Property was increased dramatically.
- viii. That in June 2015, the Corporate Debtor applied for a new loan for the aforesaid project with SBBJ for a sum of Rs. 35.00 Crores for financing Y Block of Tourism Unit and Hotel Project consisting of Mall and serviced suits Block in the abovesaid Property.
- ix. That the Applicant Bank during the initial sanctioning of the loan wrongly recorded the mortgaged land. Due to said mistake of the Applicant Bank, the calculation of Un-mortgage land varied. Thereafter, the Respondent approached the Applicant Bank on 29.06.2015 for

correction in no objection certificate for the un mortgaged land. Hence, the Applicant Bank requested the Respondent to apply for an additional loan of Rs.35.00 Crores from Applicant Bank instead of SBBJ as the aforesaid mistake cannot be corrected.

- x. That on 26.08.2015, the Respondent applied for a fresh loan of Rs. 35.00 crores for Y Block of Tourism Unit and Hotel Project consisting of Mall and serviced Suits Block in the Property from the Applicant Bank. On 23.11.2015, the Applicant Bank Sanctioned Rs.35 Crores for development of Y Block of Tourism and Hotel Project consisting of Mall and Serviced Suits Block in the property.
- xi. That on 07.04.2016, the Respondent had already launched its project at an event organized in Kathmandu, Nepal. However, upon implementation of RERA around the same time the Respondent was advised to halt the sale of the project i.e Y Block of tourism unit and Hotel project consisting of Mall and serviced Suits Block in the property. The Respondent halted the sales and returned 25 cheques of the prospective buyers in the project. During the said

period the State Tourism Policy, Government of Rajasthan came into force, which provided no clarity about the individual units sale in tourism projects. The Department of tourism also recommended the Respondent to follow up for the solution with National Tourism Policy.

- xii. That the Respondent kept requesting the Applicant bank for disbursement in order to continue the project and wrote various letters dated 11.05.2016 & 19.05.2016 to the Applicant Bank. The Respondent vide its letter dated 30.05.2016 also requested the M.D & C.E.O of the Applicant Bank to fix an appointment for finding out the solutions. However, the Applicant Bank agreed to conducted a meeting with Respondent on 13,06.2016 but did not cooperate with Respondent.
- xiii. That it came to the notice of Respondent that the terms of sanctioned letter are contradictory and vague as the project of the Respondent Company is a tourism project and the Applicant Bank has sanctioned loan for different sectors i.e. loan of Rs. 50 Crores was sanctioned in infrastructural

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sector and loan of Rs. 35 Crores was sanctioned in commercial real estate.

- xiv. That on 25.07.2016, the Respondent Company vide its letter requested the Applicant Bank to release a sum of Rs. 5.00 crores as the proposal for enhancement was already pending with the Applicant Bank. In order to wrongfully delay the disbursement, the Applicant Bank instructed the Respondent to submit a C.A. Certificate for further disbursement. As requested on 05.08.2016, the Respondent submitted the C.A Certificate. Thereafter on 24.08.2016, the Respondent Company again requested to the Applicant Bank to release a sum of Rs. 5 Crores.
- xv. That on 17.12.2016, the Respondent also attended a meeting with the Applicant Bank and its management, wherein the Applicant Bank for the first time informed the Respondent of its inability to fund the project. The Respondent therein once again showed its willingness to infuse fresh investment into the project by other alternate sources such as funding from NBFC, TFC1 etc. and also its plans of overseas visit for meeting with the proposed

investors. The entire minutes were also sent by Respondent to Applicant Bank.

xvi. That the Respondent Company vide its letter dated 18.01.2017 requested the Applicant Bank for extension of repayment schedule due to non-disbursement of loans.

xvii. That the mere fact that the debt is due and payable is not enough to initiate the Corporate Insolvency Resolution Process against the Respondent. The onus lies on the financial creditor/ applicant to demonstrate that the default occurs on the part of the Corporate Debtor failure to discharge its liability. In the instant matter, it is not the failure of the Corporate Debtor as the Financial Creditor did not properly disburse the debt and therefore, there is no default because of the failure of the Respondent. Applicant Bank with an intension to sell the property of the Corporate Debtor declare him as NPA and not restricted the loan just because the value of the property is more than 170 Crores.

xviii. That despite the facts that the re scheduled proposal was pending with the Applicant Bank on 30.09.2017, the Applicant Bank without following the guidelines of the

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Reserve Bank of India declared the account of Respondent Company as Non-Performing Asset.

- xix. That the last payment was made by the Respondent in June, 2017 the same is explicit from the statement of accounts attached with the application filed by the Applicant, however instead of declaring the account as NPA in September, 2017 the Applicant maliciously delayed the classification of account of NPA till 28.09.2017.
- xx. That on 05.03.2018, the Respondent submitted another proposal for one-time settlement of Rs.32 Crores over and above the 7.38 Crore approx., (already paid by the Respondent as crystallized Interest) to the Applicant Bank. However, despite the same, the Applicant Bank issued a notice under Insolvency and Bankruptcy Code, 2016 (herein after referred as I & B Code) to the Respondent.
- xxi. The notice under I & B Code was duly replied vide reply dated 15.03.2018 by the Respondent Company in which the Respondent Company again raised grievances against the illegal acts of the Applicant Bank and once again requested for disposal of the said grievances. However, the Applicant

Bank failed to do so till date, just with an intention to liquidate the property of the Respondent which is more than double the value of the outstanding amount of the Applicant bank.

xxii. That on 08.10.2018, the Respondent submitted a fresh letter of Intent from an Investor based in USA, who was willing to invest a sum of \$6,000,000 in the project and to clear the complete loan amount of the Applicant Bank. Further, the Respondent had also submitted the required documents for opening of a fresh escrow account for receipt of money. No Positive Response was received from the Applicant Bank to above mentioned offer.

xxiii. That in January, 2020 a USA based investor showed interest in the Respondent Company and offered to invest an amount of INR 50 Crores in the Respondent Company. Based on the offer received from the American Investor, the Respondent vide its letter dated 27.01.2020 submitted an OTS of 1NR 50 Crores with the Applicant and requested to submit a sanction letter for the same. However, due to the onset of the COVID-19 Pandemic, the American Investor

was not able to make the investment as offered and eventually, the Respondent was not able to fulfill the OTS proposal dated 27.01.2020. The Applicant instead of taking a lenient view owing to the economic hardship of the COVID-19 pandemic decided to withdraw the OTS sanction letter vide its letter dated 22.05.2020.

3. The counsels for both the parties have advanced oral arguments and also filed written submissions based on the arguments.

4. The counsel for Financial Creditor has filed written submissions stating the following:

- i. That the Applicant, vide sanction letter dated 24.07.2014, sanctioned a loan of Rs. 50 crores to part finance the construction of a new four-star hotel named "Courtyard by Marriot" in Neemrana, Rajasthan. Various financial documents were executed by Corporate Debtor in favour of the Applicant.
- ii. That the Corporate Debtor miserably failed to adhere to the financial discipline as promised in various documents

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executed in favour of the Applicant. Further, the account of the Corporate Debtor was declared as a non performing asset (NPA) by the Applicant on 28.09.2017. The Corporate Debtor approached the Applicant vide letter dated 27.01.2020 for One Time Settlement (OTS) offer for Rs. 49 crores. The Applicant sanctioned OTS for Rs. 50 crores plus Rs.5 lakhs legal expenses. As the Corporate Debtor failed to honour the OTS, the Applicant was constrained to recall the OTS and informed Corporate Debtor that Bank shall take recovery step as per existing guidelines of the bank.

- iii. That the Corporate Debtor in its reply to the Application under Section 7 of IBC filed by the Financial Creditor in reply on merits had not denied the particulars of Form-I Part-I which shows the particulars of Financial Creditor.
- iv. That the Corporate Debtor in its reply has not denied the particulars of Part- 1V & Part V of Form-I in reference to the financial debt, NPA and financial document. The date of default was also not denied by the Corporate Debtor in their reply except a vague allegation that the date of

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default 28.09.2017 should have been in first week of September, 2017. Therefore, there is crystal clear admission of default by the Corporate Debtor.

- v. That the Corporate Debtor had only taken defense that on 27.01.2020 the Corporate Debtor had sent full and final settlement proposal to the Financial Creditor. On 31.01.2020 this offer was sanctioned by the Applicant Bank vide its letter bearing no. 038/SAMB/NSPI/OTS/2929 and the same was also acknowledged by the Corporate Debtor on the same day. However, various reminders were sent by the Financial Creditor to the Corporate Debtor but the Corporate Debtor failed to pay the amount as per the OTS sanction letter dated 31.01.2020 and vide letter dated 22.05.2020, the OTS sanctioned by the Applicant was withdrawn by the Applicant. Hence, the admission of default by the Corporate Debtor is clearly established.
- vi. That the Corporate Debtor is a Construction company and according to the sanction letter dated 23.11.2015 the loan amount granted shall be released in stages depending

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upon the progress of construction and after satisfaction with respect to the end use of the fund and progress of project vis a vis implementation schedule supported by CA certificate and lender's engineer's certificate.

vii. That the National Company Law Appellate Tribunal in its judgement dated 08.11.2021 in *Drip Capital Inc. vs. Concord Creation (India) Pvt. Ltd., Company Appeal (AT) (Ins) No.167 of 2021* has thrown light on the Circumstances for Admission of Application. It was held that the Adjudicating Authority need not look into any other factors to admit an application under section 7 of IBC. Adjudicating Authority must only subjectively satisfy itself that:

- the application is complete and;
- that no disciplinary proceedings are pending against the proposed Resolution Professional.

5. The Respondent has filed written submissions reiterating the following:

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- i. That the power of attorney basis which the present Application has been filed is not supported by a board resolution authorising the said person to issue the power of attorney on behalf of Syndicate Bank. This is a fundamental flaw as the same renders the Application as incomplete and defective.
- ii. That there is no default on the part of the Respondent of any financial debt as the applicant bank has defaulted in disbursement as per the terms of the agreement/ sanction letter. As per the 2 sanction letters, Bank was supposed to disburse INR 50 Cr and INR 35 Cr respectively to the Respondent as per the timelines set out therein. Instead, the Bank has admittedly disbursed only an amount of INR 23.50 Cr and 15.81 Cr respectively and the Bank has maintained stoic silence as to why its has committed such blatant default and non-disbursal without even disclosing any reason till date.
- iii. That such default on the part of the Bank has grossly affected the business prospects of the Respondent and its promoters who have invested significant amounts into the

project from their own pockets. The net effect of this default on the part of the Applicant Bank is that in the absence of "disbursal" as per the agreed terms, the alleged debt being claimed by the Applicant is not a financial debt, as the most basic ingredient of the term "financial debt" as per Section 5(8) is "disbursal".

- iv. That the term "disbursal" is not defined in the IB Code and hence, it must be understood as "disbursal" as agreed between the parties under the agreement. In the present case, there admittedly has been no disbursal by the Applicant as agreed under the sanction letters and hence, the Applicant is not a "financial creditor" under Section 5(7) as the alleged debt being claimed by it is not a "financial debt" as defined under Section 5(8) of the IB Code.
- v. That the Bank acted in a fraudulent manner by wrongly classifying the Respondent as NPA on 25.09.2017 without any explanation or justification and has not even produced the NPA notice or 13(2) SARFAESI Notice fearing that its

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own default in disbursal of the sanctioned amount will come to light.

vi. That there is clearly a deficiency in service by the Bank caused by unexplained non-disbursal of funds agreed under signed terms. Without prejudice to the submissions as above, in a situation where the Bank has failed to even disburse the amount agreed to be disbursed, thereby violating the terms of the sanction letter, it goes out of the purview of the terms "financial creditor" and "financial debt", the primary ingredients of which are amount(s) "disbursed" against consideration for time value of money. The word 'disbursement' must be understood as a disbursement within Section 5(8) as agreed between the Bank and its customer. The effect of such deficiency in rendering financial services, availed by the Respondent will make Canara Bank an operational creditor who first has to get his entitlement decreed and crystallised under the appropriate law after trial, and cannot claimed to be a Financial Creditor under Section 5(7) of the IB Code.

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6. We have carefully gone through the pleadings & documents filed by both the parties and heard the oral arguments advanced by the counsels and considered the written submissions filed by the counsels. The applicant has claimed the default on part of the Respondent for the Loan amount of Rs 59,34,96,998.55 (Fifty Nine Crores Thirty Four Lakhs Ninety Six Thousand Nine Hundred Ninety Eight Rupees) inclusive of interest as on 31.08.2019.
7. The Counsel for the Corporate Debtor has raised a contention that the Power of Attorney(PoA) basis which the present Application has been filed was executed in 2005 by erstwhile Syndicate Bank and hence it is invalid. The Counsel for the Financial Creditor has submitted that Syndicate Bank was merged into Canara Bank (the Applicant) on 01.04.2020 and a gazette notification was issued and the said notification at sub-clause 8 of clause 4 of the Scheme of Amalgamation between Syndicate Bank and Canara Bank provides that:

(8) Unless otherwise expressly provided in this Scheme, all contracts, deeds, bonds, agreements, powers of attorney,

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grants of legal representation and other instruments of whatever nature subsisting or having effect, immediately before the commencement of this Scheme and to which Transferor Bank is a party or which are in favour of the Transferor Bank, shall be of full force and effect against or in favour of the Transferee Bank, and may be enforced or acted upon as fully and effectively as if in the place of the Transferor Bank, the Transferee Bank had been a party thereto or as if they had been issued in favour of the Transferee Bank thereto and it shall not be necessary to obtain the consent of any third party or other person who is a party to any of the aforesaid instruments or arrangements to give effect to the provision of this subparagraph.

Therefore, it is clear that the power of attorney executed by erstwhile Syndicate Bank is valid authority for filing the present Application by the Applicant i.e. Canara Bank (erstwhile Syndicate Bank). The Applicant has filed the duly signed and stamped power of attorney in favour of its officer

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who is now on the payroll of the merged bank. On a conjoint reading of various clauses of the scheme, it clearly provides that there is no requirement of any act, deed, consent or instrument of transfer as the scheme of amalgamation between Syndicate Bank and Canara Bank was done by the Central Government in exercise of its power conferred by Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Therefore, Section 201 of the Contracts Act, 1872 is not attracted in this matter. Further, the merger of the two government owned banks had the approval of the sectoral regulator, i.e, Reserve Bank of India (RBI).

8. The Corporate Debtor has also raised a contention that since the entire amount that was sanctioned was not disbursed, there is no default on the part of the Respondent of any financial debt as the applicant bank has defaulted in disbursement as per the terms of the agreement/ sanction letter. The term 'debt' and 'default' have been defined under Section 3(11) and Section 3 (12) of the IBC Code , 2016 as -

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(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;

It is clear from the definition of the term "default" under the Code that default occurs even any part or instalment of debt becomes due. In the present case, even if the contention of the Corporate Debtor is true that the disbursement of loan was not complete, default has still occurred in terms of Section 3(12) of the IBC Code, 2016.

Further, The Hon'ble National Company Law Appellate Tribunal in its judgement dated 08.11.2021 in *Drip Capital Inc. vs. Concord Creation (India) Pvt. Ltd., Company Appeal (AT) (Ins) No.167 of 2021* has thrown light on the Circumstances for Admission of Application. It was held that:

"the 'Adjudicating Authority' is not a 'Court of Law' and that 'CIRP' is not a litigation. As a matter of fact, if the

‘Adjudicating Authority’ is subjectively satisfied as to the existence of default and arrive at a conclusion that the application is a complete one and further that no disciplinary proceedings are pending against the proposed ‘Resolution Professional’ it is incumbent upon it to admit the application. In reality, no other ‘yardstick’ is required to look into any other requirement for admission of the application.”

9. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The Corporate Debtor has nowhere denied the existence of debt in its reply to the present Section 7 Application. On 27.01.2020 the Corporate Debtor had sent full and final settlement proposal to the Applicant. On 31.01.2020 this offer was sanctioned by the Applicant Bank vide its letter bearing no. 038/SAMB/NSPI/OTS/2929 and the same was also acknowledged by the Corporate Debtor on the same day.

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However, despite various reminders sent by the Applicant to the Corporate Debtor, they failed to pay the amount as per the OTS sanction letter dated 31.01.2020. Therefore, vide letter dated 22.05.2020, the OTS sanctioned by the Applicant was withdrawn by the Applicant. Hence, the debt and default is clearly established by the conduct of the Corporate Debtor.

10. In the light of the aforesaid facts, we find that the documents placed before us by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.
11. In light of the above discussion, after giving careful consideration to the entire matter, hearing the oral arguments and written submissions of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP against the Corporate Debtor with immediate effect.

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12. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Sunder Khatri for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IPN00437/2017-2018/11191. Mr. Sunder Khatri has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 07.12.2021. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

13. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

14. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor

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shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Sunder Khatri has submitted the declaration in Form 2 dated 25.09.2020.

15. It is pertinent to mention here that the Code requires the Adjudicating Authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.

16. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.
17. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.
18. Mr. Sunder Khatri having registration number IBBI/IPA-002/IPN00437/2017-2018/11191 is appointed as an Interim Resolution Professional.
19. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
20. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows

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from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code.
Thus, the following prohibitions are imposed:

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

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

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

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

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21. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

22. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and

cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (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.

23. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor'

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and specific mention regarding admission of this petition must be notified to the public at large.

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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(P.S.N. PRASAD)
MEMBER (JUDICIAL)