

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/393/2020

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of **M/s. KPN Travels India Limited**

TVS Automobile Solutions Private Limited

Office at 1st Floor, Kochar Bliss,
Super A8 & A9
Thiru. Vi Ka Industrial Estate,
Guindy,
Chennai – 600 032

... Operational Creditor

-Vs-

M/s. KPN Travels India Limited

No.23 B, Rajaji Street, Swarnapuri,
Salem, Tamil Nadu – 636 004

...Corporate Debtor

Order Pronounced on 7th September 2021

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : Krishna Srinivasan, Senior Advocate
For M/s. S. Ramasubramaniam
& Associates*

*For Corporate Debtor : E. Om Prakash, Senior Advocate
For L. Narasimhavarman, Advocate*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under Adjudication is an Application that has been filed by
M/s. TVS Automobile Solutions Private Limited (hereinafter
referred to as 'Operational Creditor') under Section 9 of the

Insolvency & Bankruptcy Code 2016 (in short, 'IBC,21016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. KPN Travels India Limited** (hereinafter referred to as '*Corporate Debtor*'), to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Limited Company with CIN:U63040PY1995PLC001062 which was incorporated on 13.03.1995 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.23B, Rajaji Street, Swarnapuri, Salem . From Part III of the application, it is seen that the Operational Creditor has not proposed the name of the "Interim Resolution Professional" and left it to the discretion of this Tribunal to appoint the same.

3. From Part-IV of the Application, it is seen that a sum of Rs.5,27,16,818/- (Rupees Five Crore Twenty Seven Lakh Sixteen Thousand Eight Hundred and Eighteen only) is being claimed by

the Operational Creditor as the Operational debt. The date of default is mentioned as 31.01.2016, however balance confirmation letters given by the Corporate Debtor are placed on record. Part – V of the Application discloses about the details of the documents which have been filed by the Operational Creditor in order to prove the 'Operational debt', which are as follows;

- a) Memorandum of Understanding dt.06.03.2014
- b) Deed of Novation dt.17.06.2014
- c) Balance confirmation dt.16.02.2016 given to Corporate Debtor.
- d) Balance confirmation dt.23.01.2017 given to Corporate Debtor.
- e) Balance confirmation dt.06.03.2019 given to Corporate Debtor
- f) Letter dated 05.12.2019 regarding payment of outstanding dues sent to Corporate Debtor
- g) Letter dt.18.12.2019 regarding payment of outstanding dues sent to Corporate Debtor
- h) Statement of Account.

4. The Learned Senior Counsel for the Operational Creditor submitted that the Operational Creditor is engaged in the supply of automobile parts, sales and distribution and after sales services of cars, heavy commercial vehicles, light commercial vehicles and other vehicles. It was submitted that in the course of its business, the Corporate Debtor has placed several orders on the Operational Creditor for the supply of automobile spares such as filter, brakes, linings, clutch plates, gear box components, tyre and tubes, lubricants, grease, etc. Further, it was submitted that the

Corporate Debtor is maintaining a running account with the Operational Creditor and that the Operational Creditor had supplied materials to the Corporate Debtor, which were satisfactorily accepted by the Corporate Debtor and the Operational Creditor had also raised several invoices for the said supplies. Thereafter, it was submitted that the Corporate Debtor, after having received the supplies failed to make payment for the same and it is evident from the statement of accounts of the Corporate Debtors that they have an outstanding amount of Rs.3,94,26,813/- which is payable to the Operational Creditor. It was submitted that the payment which is due from the Corporate Debtor for the period from 31.08.2017 to 31.12.2019 amounts to Rs.3,94,26,813/- at an interest rate of 18% p.a. Hence, it was submitted that the total amount due and payable by the Corporate Debtor is Rs.5,27,16,818/-.

5. The Learned Senior Counsel for the Operational Creditor submitted that despite repeated request from the Operational Creditor, the aforesaid dues were not paid by the Corporate Debtor and the outstanding dues were acknowledged by the Corporate Debtor vide their confirmation of balance issued on 16.02.2016, 23.01.2017 and 06.03.2019 and thereafter, the Operational Creditor has also sent letters dated 05.12.2019 and 18.12.2019 requesting payment of the outstanding due, however the same

proved to be a futile exercise. Thereafter, it was submitted that the Operational Creditor had issued a Demand Notice as stipulated under Section 8 of IBC, 2016 to the Corporate Debtor on 24.02.2020 and the same was delivered to the Corporate Debtor and its Directors on 27.02.2020, however, it was submitted that the Corporate Debtor has not sent any reply nor paid the outstanding amount to the Operational Creditor and hence it was submitted that the Operational Creditor has moved the present Application before this Tribunal seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

6. The Corporate Debtor has filed reply and additional reply. The Learned Senior Counsel for the Corporate Debtor submitted that the Operational Creditor had not established the debt and default on the part of the Corporate Debtor and also it was submitted that there was pre-existing dispute.

7. At first, it was contended by the Learned Senior Counsel for the Corporate Debtor that there was no proper service of the Demand Notice upon the Corporate Debtor and that the Demand Notice was bereft of invoices and not even a single invoice was attached along with the Demand Notice and hence it was submitted that the mandatory requirement under Section 8 of IBC,



2016 was not complied with and hence contended that the present application is liable to be dismissed on the said count itself.

8. Secondly, it was contended by the Learned Senior Counsel for the Corporate Debtor that the supplies have been made by the Operational Creditor based upon the indents and that the indents are not made by the Corporate Debtor alone, rather various indents were made by its group concerns viz. KPN Automobiles and the supply of materials made to its group concern, viz. KPN Automobiles cannot be fastened on the Corporate Debtor. Also, it was submitted that the dues claimed by the Operational Creditor in respect of the Corporate Debtor is not correct and if the supplies made to the Corporate Debtor alone are taken into account, then the same would be less than the threshold limit of Rs.1 Crore and since this Application was filed before this Tribunal only on 17.06.2020, the present Application is liable to be dismissed.

9. Thirdly, it was contended by the Learned Senior Counsel for the Corporate Debtor that as per the account norms the confirmation of balances which are obtained only during the financial closing or during quarterly or half yearly closing, while the confirmation of balances relied by the Operational Creditor are of various arbitrary dates without any manner being substantiated by them. Also it was contended that the dues can be acknowledged

only when the same is supported by a Board resolution and that the Operational Creditor herein has discriminately obtained the signature of the Corporate Debtor, which is not valid in the eye of law.

10. Fourthly, it was contended by the Learned Senior Counsel for the Corporate Debtor that the Corporate Debtor has sent a letter to the Operational Creditor on 05.12.2019 wherein they have called for a discussion for reconciliation of the accounts, which shows that there is a pre-existing dispute between the parties. Further, it was contended that the Operational Creditor has failed in the obligation to make available all the products to the Corporate Debtor and hence there was a breach of obligation under the Memorandum of Understanding which gave rise to the Corporate Debtor to claim for compensation and damages from the Operational Creditor. Thus, it was submitted by the Learned Senior Counsel for the Corporate Debtor that the present Application as filed by the Operational Creditor is liable to be dismissed.

11. The Operational Creditor has filed rejoinder and the Learned Senior Counsel for the Operational Creditor sought to deny and rebut the contentions made by the Learned Senior Counsel for the Corporate Debtor and submitted that the Demand Notice was duly served upon the Corporate Debtor on 27.02.2020 and that the

Corporate Debtor has failed to reply to the said Demand Notice within a period of 10 days thereafter. Further, it was submitted that the Corporate Debtor has not raised any objections at any point of time when the invoices were raised by the Operational Creditor and even after receiving the materials, the Corporate Debtor had acknowledged their balance outstanding without any demur and now the Corporate Debtor is estopped from taking any stand contrary to the same. Further, it was also submitted that the stance taken by the Corporate Debtor in relation to the signature made in the acknowledgment is only an afterthought to wriggle out of its obligations to make payments. Under such circumstances, the Learned Senior Counsel for the Operational Creditor prayed for initiation of Corporate Insolvency Resolution Process as against the Corporate Debtor.

12. We have heard the submissions made by the Learned Senior Counsel for both the parties and also perused the file including the pleadings and written submissions placed on record. From the submission made by the Learned Senior Counsel for both the parties, in order to give our finding in relation to the same, it becomes necessary for this Adjudicating Authority to answer the following issues;



- (i) *Whether the Demand Notice issued in Form 3 as per Section 8 of IBC, 2016, if bereft of invoices, will be held to be non-est in the eye of law?*
- (ii) *Whether the Demand Notice was served upon the Corporate Debtor and if not whether the Demand Notice served upon the Directors of the Corporate Debtor would be held to be valid and satisfies the mandatory requirements as laid down in Section 8 and 9 of IBC, 2016?*
- (iii) *Whether there is any pre-existing dispute in relation to the claim as raised by the Operational Creditor?*
- (iv) *Whether the claim of the Operational Creditor is barred by limitation.*
- (v) *Whether the Operational Creditor has proved that there is a 'debt' and the 'default' being committed on the part of the Corporate Debtor?*
- (vi) *Whether the claim of the Operational Creditor crosses the threshold limit of Rs.1 Crore?*

ISSUE NO. (I) & (II)

13. The first issue which arises for consideration is that whether the Demand Notice under Section 8 of IBC, 2016 served by the Operational Creditor as per Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 does satisfy the mandatory requirements as required under the statutory requirements as per relevant provision of IBC, 2016 and Rules framed thereunder. In order to answer the said issue, it is necessary to refer to the relevant provisions;

8. Insolvency resolution by operational creditor. –

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor –

(a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the payment of unpaid operational debt-

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation. – For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred

14. Together with Section 8(1) of IBC, 2016, the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, speak of Demand Notices by the Operational Creditor and applications by the operational creditor in the following terms:

5. Demand notice by operational creditor.—

(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely.- (a) a demand notice in Form 3; or (b) a copy of an invoice attached with a notice in Form 4.



(2) The demand notice or the copy of the invoice demanding payment referred to in subsection (2) of section 8 of the Code, may be delivered to the corporate debtor,

(a) at the registered office by hand, registered post or speed post with acknowledgement due; or

(b) by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.

(3) A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any

15. Thus, from perusal of Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, it emerges that the Demand Notice under Section 8 of IBC, 2016 can be issued by the Operational Creditor in two formats i.e. Form – 3 and in Form 4. In the present case, the Operational Creditor has preferred to send the Demand Notice to the Corporate Debtor in Form – 3 on 24.02.2020. However it was the contention of the Learned Senior Counsel for the Corporate Debtor that the Demand Notice sent in Form 3 does not contain the copies of the Invoices which are required to be attached along with the Demand Notice and in the absence of the same, the Demand Notice is *non est* in the eye of law. The said argument made by the Learned Senior Counsel for the Corporate Debtor seems to have force at first blush, however the intent of the legislature and the judicial precedence of the Appellate Court is somewhat different. It is to be noted that it is not mandatory for the Operational Creditor while



issuing the Demand Notice in 'Form 3' to enclose the copies of the Invoices and it will be adequate if the Operational Creditor is able to prove from 'any other documents' that the 'operational debt' is due and payable by the Corporate Debtor. In this regard, it is significant to refer to the decision of the Hon'ble NCLAT in the matter of **Neeraj Jain Director of M/s Flipkart India Private Limited -Vs- Cloudwalker Streaming Technologies Private Limited & Anr. in Company Appeal (AT) (Insolvency) No. 1354 of 2019**, wherein at para 47 and 48, it has been held as follows;

47. Thus, it is clear that the choice of issuance of demand notice u/s 8(1) of the Insolvency and Bankruptcy Code 2016, either in Form 3 or Form 4, under the Insolvency and Bankruptcy Code Application to Adjudicating Authority Rules 2016, depends on the nature of Operational Debt. Section 8(1) does not provide the Operational Creditor, with the discretion to send the demand notice either Form 3 or Form 4, as per its convenience. The applicability of Form 3 or Form 4 depends on whether the invoices were generated during the course of transaction or not. It is also made clear that the copy of the invoice is not mandatory if the demand notice is issued in Form 3 of the Insolvency and Bankruptcy Code Application to Adjudicating Authority Rules 2016 provided the documents to prove the existence of operational debt and the amount in default is attached with the application.

48. It is also made clear that for filing application u/s 9 of Insolvency and Bankruptcy Code 2016, in case the demand notice is delivered in Form 3 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, then the submission of a copy of the invoice along with the application in Form 5 is not a mandatory requirement, provided the documents to prove the existence of operational debt and the amount in default is attached with the application.

16. Thus, in the present case, it is seen from the Demand Notice which is attached along with the typed set and at page 8, Sl. No.5,

the Operational Creditor has attached the following documents along with the Demand Notice.

- i. Memorandum of Understanding dt.06.03.2014.
- ii. Deed of Novation dt.17.06.2014
- iii. Balance confirmation dt.16.02.2016 given to Corporate Debtor.
- iv. Balance confirmation dt.23.01.2017 given to Corporate Debtor.
- v. Balance confirmation dt.06.03.2019 given to Corporate Debtor
- vi. Letter dated 05.12.2019 regarding payment of outstanding dues sent to Corporate Debtor
- vii. Letter dt.18.12.2019 regarding payment of outstanding dues sent to Corporate Debtor
- viii. Letter dt.17.01.2020 regarding payment of outstanding dues sent to Corporate Debtor.
- ix. Statement of Account.

17. The above documents, more particularly, the balance confirmation given by the Corporate Debtor are more than sufficient to prove the existence of the 'operational debt' and hence the contentions raised by the Learned Senior Counsel for the Corporate Debtor in this regard are not sustainable and valid in the eye of law and hence the Demand Notice as issued by the Operational Creditor does not suffer from any legal infirmities.

18. In so far as the issue No. (ii) is concerned, it is necessary to refer to Rule 5(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which speaks of the delivery of the Demand Notice. Rule 5(1) of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016 states that the Demand Notice is required to be delivered to the registered office address of the Corporate Debtor, by hand, registered post or speed post with acknowledgement due and the word 'or' is used in between Rule 5(2) wherein it states that the Demand Notice can also be served by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor. In the present case, it is not in dispute that the Demand Notice has been received by the Directors of the Corporate Debtor and the proof of acknowledgment of the same is also enclosed along with the typed set. Hence, non receipt of the Demand Notice to the registered office address of the Corporate Debtor alone would not vitiate the maintainability of the Application filed under Section 9 of IBC, 2016. Thus, in so far as the issue No. (ii) is concerned this Adjudicating Authority is of the view that the service of the notice upon the Directors of the Corporate Debtor as per Rule 5(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 would be sufficient to hold that the Demand Notice has been properly served upon the Corporate Debtor.

ISSUE NO. (III)

19. The next main contention raised by the Learned Senior Counsel for the Corporate Debtor is that there is a pre-existing



dispute which was subsisting between the parties even before the issuance of the Demand Notice and in order to buttress the said contention, the Learned Senior Counsel for the Corporate Debtor relied upon a letter dated 06.12.2019 wherein the Corporate Debtor has asked for further documents from the Operational Creditor and the said letter would amount to pre-existing dispute. However, we find it strange on the part of the Corporate Debtor to state that the said letter would amount to pre – existing dispute, since the Corporate Debtor has nowhere placed any documents to show that the materials supplied by the Operational Creditor are defective and the mere statement made by the Corporate Debtor requesting for further documents from the Operational Creditor could not under any stretch of imagination be considered as a pre – existing dispute. Further all the other contentions are raised only for the first time by the Corporate Debtor in the reply filed to the Application and apart from the above, the Corporate Debtor has miserably failed to place on record any document to show that there exists a dispute between the parties even before the issuance of the Demand Notice. Thus, the defence raised by the Learned Senior Counsel for the Corporate Debtor in this regard seems to be only a moonshine defence and an afterthought and a feeble attempt has been made by the Corporate Debtor in order to defeat the claim of the Operational Creditor.



ISSUE NO. (IV) & (V)

20. In so far as the issues No. (iv) and (v) are concerned, it is seen that the Corporate Debtor has raised a defence that the claim of the Operational Creditor is barred by limitation. However, the documents produced by the Operational Creditor and the balance confirmation given by the Corporate Debtor would *ipso fact* speaks for itself that the claim of the Operational Creditor is well within the period of limitation. In part – IV of the Application, the date of default is mentioned by the Operational Creditor as 31.01.2016 and the present Application is filed before this Tribunal on 17.06.2020. Further, the Operational Creditor has placed on record the balance confirmations given by the Corporate Debtor on 16.02.2016, 23.01.2017 and 06.03.2019. A feeble attempt was made by the Learned Senior Counsel for the Corporate Debtor that the balance confirmation was not backed by Board Resolution, however the said stance taken by the Learned Senior Counsel for the Corporate Debtor is required to be eschewed in view of the fact that a perusal of the balance confirmation dated 06.03.2019 would show that the signature as found in balance confirmation dated 06.03.2019 and also the person who has signed the counter / reply statement is one and the same. Further, issuing a balance confirmation is a matter which is done in the ordinary course of business and it is not mandatory that balance confirmation is to be



supported by a Board Resolution. Thus, the defence as raised by the Learned Senior Counsel for the Corporate Debtor in this regard is not sustainable and we are of the considered view that the claim of the Operational Creditor is not barred by limitation. Further, as a result of the above, it is made clear that the Corporate Debtor has committed 'default' in repayment of such 'operational debt' to the Operational Creditor.

ISSUE No. (VI)

21. The other defence raised by the Learned Senior Counsel for the Corporate Debtor is that supplies have been made by the Operational Creditor based upon the indents and that the indents are not made by the Corporate Debtor alone, rather various indents were made by its group concerns viz. KPN Automobiles and the supply of materials made to its group concern, viz. KPN Automobiles. In this regard, the Corporate Debtor has filed a typed set of documents to state that KPN Automobiles is a proprietorship concern and also produced certain Purchase Orders which were raised in the name of said proprietorship concern.

22. We have gone through the said typed set of documents filed by the Corporate Debtor vide Diary No.4063 dated 29.12.2020. The Corporate Debtor has attached certain sample Purchase Order which were raised by the KPN Automobile (proprietorship concern)



and also by the Corporate Debtor. Further from page No.33 to 135 of the said typed set, the Corporate Debtor has placed on the list of Purchase Order placed by KPN Automobiles (proprietorship concern) and from Page No. 136 to 168 onwards has placed the list of Purchase Orders placed by the Corporate Debtor. We have carefully gone through the list of Purchase Orders and Invoices which are tabulated along with the typed set. The list of Purchase Order and the relevant Invoices raised in the name of the Corporate Debtor as found in Page No.136 to 158 of the typed set filed by the Corporate Debtor, alone aggregates to a sum of Rs. 1,38,42,291/-. Thus, as per the documents filed by the Corporate Debtor, it emerges that the claim of the Operational Creditor crosses the minimum threshold limit of Rs.1 Crore and as such the Application filed by the Operational Creditor under Section 9 of IBC, 2016 is maintainable on the file of this Tribunal.

23. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.



24. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition, as filed by the Operational Creditor, is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between July 2021 – December 2021 appoints **RAMACHANDRAN BALACHANDRAN**, with **Reg. No. IBBI/IPA-001/IP-P00907/2017-2018/11507 (email id:- rbalaca@gmail.com)** as the “Interim Resolution Professional” subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

25. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any

other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

26. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central

Government in consultation with any financial sector regulator or any other authority;

- (b) a surety in a contract of guarantee to a corporate debtor.

27. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

28. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakh Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy

Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

29. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond