

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 107/9/JPR/2024

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S KARNI MARBLE AND GRANITES

...Petitioner/Operational Creditor

Versus

M/S KHUSHBOO MARBLES PVT. LTD.

...Respondent/Corporate Debtor

MEMO OF PARTIES

M/S KARNI MARBLE AND GRANITES

Through its authorized partner

R/o at Araj No. 306/58, Mohan
 Nagar, Village Pandulai, P.O. Mohi,
 Tehsil & District Rajsamand,
 Rajasthan-313324

...Petitioner/Operational Creditor

VERSUS

M/S KHUSHBOO MARBLES PVT. LTD.

R/o at Industrial Khasra No. 40, NH-8,
 Bhadarda Rajsamand, Rajasthan-313324

...Respondent/ Corporate Debtor

Sd

CP No. (IB)-107/9/JPR/2024

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For Petitioner : Akshat Khandelwal, Adv.
Heena Sharma, Adv.
For Respondent : Akshita Koolwal, Adv.
Chetan Verma, Adv.
Utkarsh Lohra, Adv.

Order Pronounced On: 02.07.2025

ORDER

1. The present Petition has been filed by *M/s Karni Marble and Granites* ('Operational Creditor'/ 'Petitioner') seeking initiation of Corporate Insolvency Resolution Process ('CIRP') against *M/s Khushboo Marbles Pvt. Ltd.* ('Corporate Debtor'/ 'Respondent') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') on account of default in repayment of the Operational Debt of Rs. 1,24,56,119/- (Rupees One Crore Twenty-Four Lakhs Fifty-Six Thousand One Hundred and Nineteen Only).
2. The Respondent is a Private Limited Company incorporated on 18.04.1996 and is duly registered with the Registrar of Companies, Jaipur having Identification no. *U14101RJ1996PTC011915*. The registered address of the Respondent is situated at *54, Textile Market, Bhilwara, Rajasthan*. The Authorized Share Capital and the Paid-up Share Capital of the Respondent is Rs. 35,00,000/-

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CP No. (IB)-107/9/JPR/2024

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(Rupees Thirty-Five Lakh Only). The aforementioned details have been verified from the online database maintained by the Ministry of Corporate Affairs.

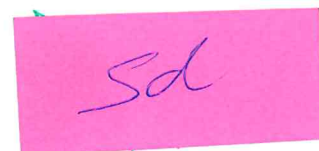
3. The details of the transactions leading to the filing of the Company Petition bearing *CP No. (IB)- 107/9/JPR/2024* as averred by the Petitioner are as follows: -

3.1. The Operational Creditor is engaged in the business of cutting and polishing of granites, marbles and stones and is a partnership firm registered under the Indian Partnership Act, 1932. The Operational Creditor and the Corporate Debtor have business relations for past 5 years. Consequently, the Operational Creditor in continuance of the verbal purchase orders placed by the Corporate Debtor has duly supplied the goods to the Corporate Debtor.

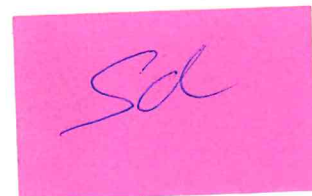
3.2. It is stated that initially the business between the parties was going smoothly, however, from 08.02.2024, the dues of the Corporate Debtor started mounting up aggregating to a total sum of Rs. 1,24,56,119/- (Rupees One Crore Twenty-Four Lakhs Fifty-Six Thousand One Hundred and Nineteen Only). Hence, the Corporate Debtor has failed to make the payment since 08.02.2024 and the default is continuing till date.



CP No. (IB)-107/9/JPR/2024



- 3.3. Consequently, the Operational Creditor issued a Demand Notice dated 07.10.2024 to the Corporate Debtor under the provisions of the Code thereby demanding the outstanding payment of Rs. 1,24,56,119/- (Rupees One Crore Twenty-Four Lakhs Fifty-Six Thousand One Hundred and Nineteen Only) within a period of 10 days from the date of receipt of the notice. The Corporate Debtor has not replied to the Demand Notice dated 07.10.2024.
- 3.4. The Operational Creditor has repeatedly requested the Corporate Debtor to make the payment of the outstanding amount, but the Corporate Debtor had not paid any heed to the same and had failed to clear the outstanding principal amount of 1,24,56,119/- (Rupees One Crore Twenty-Four Lakhs Fifty-Six Thousand One Hundred and Nineteen Only) and the interest of 7% p.a. for the losses incurred by the Petitioner.
- 3.5. Hence, the instant Petition has been filed seeking initiation of the CIRP of the Corporate Debtor. Further, the Operational Creditor has complied with all the mandatory requirements of Section 9 (3) of the Code.
- 3.6. The relevant details as reflected in Part IV of the Application are reproduced hereunder:



PART IV
PARTICULARS OF OPERATIONAL DEBT

1.	<i>Total Amount of Debt, Details, details of Transactions on account of which debt fell due.</i>	<i>Total amount of Operational Debt INR. 1,24,56,119/- (One Crore Twenty-Four Lakhs Fifty-Six Thousand One Hundred Nineteen Only).</i>		
		<i>Sr. No.</i>	<i>Particulars of Debt</i>	<i>Amount (INR)</i>
		1.	<i>Uncleared Invoice</i>	<i>1,24,56,119/-</i>
		2.	<i>Interest for late payment @ 12% p.a. for delayed payment</i>	<i>11,21,050.71/-</i>
		3.	<i>Total Debt Payable</i>	<i>1,24,56,119/-</i>
2.	<i>Amount claimed to be in default and the date on which the default occurred (Attach the working for computation of default in tabular form)</i>	<i>INR Rs. 1,24,56,119/- Date of Default – 08.02.2024 onwards. Details of computation are as per Annexure-B.</i>		

4. The Respondent filed its Reply *vide* Diary No. 779/2025 dated 21.04.2025

wherein it made the following submissions: -

4.1. It was submitted that the instant Petition has been instituted in bad faith by the Petitioner for arm-twisting the Respondent despite the long-drawn and pre-existing dispute between the parties. Hence, the instant Petition is an abuse of the insolvency framework.

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CP No. (IB)-107/9/JPR/2024

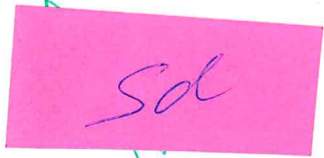
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- 4.2. It was stated that the Operational Creditor lacks any legitimate cause of action or justification for issuing the purported Demand Notice dated 07.10.2024, or for filing this Petition solely as a coercive tactic to extract an exorbitant and alleged sum of Rs. 1,24,56,119/- /- (One Crore Twenty-Four Lakhs Fifty-Six Thousand One Hundred Nineteen Only), while being fully aware of the underlying dispute.
- 4.3. The Respondent has been engaged in trading of granites for several years and has, over time, built a strong and credible reputation and goodwill in the market. Further, the Respondent has always been diligent in making payment against the supplies made by the Operational Creditor. However, in 2024, the Respondent started receiving numerous complaints from its customers concerning the inferior and sub-standard quality of granite slabs supplied by the Operational Creditor. The Respondent promptly reported these complaints to the Operational Creditor and was assured by the Operational Creditor that it would address the concerns raised expeditiously. Based on the assurance, the Respondent refrained from taking any coercive steps or initiating any legal proceedings at that stage.
- 4.4. Despite repeated assurances and representations, the Operational Creditor miserably failed to act upon the same as the issues relating to



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CP No. (IB)-107/9/JPR/2024



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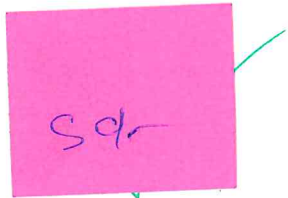
the inferior and sub-standard quality of the granite slabs continued to persist unabated. In lieu of the Sub-standard quality of the products supplied by the Operational Creditor, the customers of the Respondent started escalating their grievances, raising further complaints regarding the unsatisfactory quality of the granite, and even demanding refunds and compensation.

4.5. Consequently, the sales of the Respondent took a major hit as the customers lost confidence in the quality of its offerings. The substandard quality granites supplied by the Operational creditor to the Respondent resulted in loss of goodwill and damage to its business reputation. Further, the Respondent incurred huge financial losses attributable solely to the Operational Creditor's failure to uphold the quality standards of the supplied granites slabs.

4.6. The Respondent had, time and again, raised many verbal disputes regarding the inferior quality of granites slabs supplied by the Operational Creditor, however, no heed was paid to the same by the Operational Creditor. Thereafter, the Operational Creditor, in a blatant disregard of the prolonged pre-existing disputes and without disclosing the true state of affairs, has filed this frivolous petition under Section 9 of the IBC, 2016 with the sole intent of exerting undue pressure and

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CP No. (IB)-107/9/JPR/2024

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coercing the Respondent into making payments that are highly disputed and unsubstantiated.

- 4.7. The present Petition under Section 9 of the IBC, 2016, has been initiated by the Operational Creditor not with the intent to resolve any genuine insolvency or financial distress of the Respondent, but purely as a mechanism of debt recovery, which is outside the scope and object of IBC, 2016. The Operational Creditor, despite being fully aware of the longstanding and pre-existing disputes regarding the sub-standard quality of goods supplied, has deliberately suppressed material facts and has approached this Hon'ble Tribunal with unclean hands.
- 4.8. In the instant case, the Operational Creditor has failed to comply with the mandatory requirement of Section 8(1) of the Code which mandates the issuance of a valid Demand Notice to the Corporate Debtor, prior to the initiation of proceedings under Section 9 of the IBC, 2016. It was stated that no such Demand Notice was ever served upon or received by the Respondent. The Operational Creditor has merely attached an email dated 07.10.2024 for substantiating the service of the Demand Notice, however, the email address to which the said notice was allegedly sent has not been accessed or operated by the Respondent for a considerable period. Thus, the demand notice was never delivered to the Corporate

Sd/-

CP No. (IB)-107/9/JPR/2024

Sd

Debtor and in the absence of valid service, the Respondent was deprived of its right to respond and object to the same within the time stipulated under Section 8(2) of the IBC, 2016.

4.9. Further, as per the mandatory requirement stipulated under Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, read with Section 9(3) (d) of the IBC, 2016 a Petition filed by an Operational Creditor under Section 9 must be accompanied by a record of default issued by an Information Utility. However, in the instant case, the Operational Creditor has not attached / furnished any record of default issued by any registered information utility. This omission is not a mere procedural irregularity but a substantive failure to establish the foundational requirement for initiating proceedings under Section 9 of the Code. It further reinforces that the present application has been filed in bad faith, with the sole objective of pressurizing the Respondent into settling a disputed claim. Hence, the instant Petition deserves to be dismissed.

5. We have heard the Ld. Counsels for the parties and perused the averments made in the Petition, Reply, and the documents enclosed therein.
6. Before delving into the merits of the case, it is incumbent to deal with the issue of delivery of the Demand Notice as the same is a precondition for filing a

Petition under Section 9 of the Code. In its Reply, the Respondent has questioned the validity of service of the Demand Notice dated 07.10.2024 issued by the Operational Creditor to the Respondent under Rule 5 (1)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 upon the email address of the Respondent. Further, the Respondent has stated that the email address to which the said notice was sent has not been accessed or operated by it for a considerable period and therefore, denied the service of the Demand Notice dated 07.10.2024.

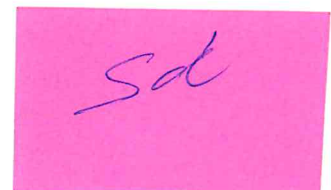
7. Thus, the moot issue for adjudication in the instant matter is whether the service of the Demand Notice under Section 8 of the Code upon the email address of the Corporate Debtor will constitute a valid service of the Demand Notice for the purposes of the Code.
8. To adjudicate upon the aforementioned issue, it is germane to refer to Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which deals with Demand Notice by Operational Creditor as prescribed under Section 8 of the Code. For ease of reference, Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is reproduced hereunder:

5. Demand notice by operational creditor.—

(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely—



CP No. (IB)-107/9/JPR/2024



(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 sub-section (2) of Section 8 of the Code, may be delivered to the corporate debtor,

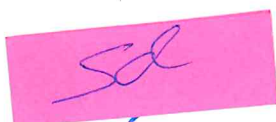
(a) at the registered office by hand, registered post or speed post with acknowledgement due; or

(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.

9. A perusal of Rule 5(2) makes it clear that a Demand Notice under Section 8 of the Corporate Debtor can be served either at the registered office of the Corporate Debtor by hand, registered post, or speed post or by electronic mail. At this point, it is pertinent to refer to the judgment of the Hon'ble NCLAT in the case of *Vinita Pramod Devakar v/s Shri Kailash Shah and Anr.* (2025) ibclaw.in 348 NCLAT wherein it was observed that: -

“10. It is pertinent to notice that reliance has been placed by the Respondent No.2 on the judgment of this Tribunal in *Rajnish Gupta v. Union Bank of India & Anr in CA (AT) (Ins) No. 351 of 2021* wherein it was held that the service by email on the registered email ID of the Appellant is sufficient in the eyes of law. When we look at the facts of the present case, we find that the demand notice had been served on the registered email ID of the Corporate Debtor as appearing on the Company Master Data. Attention has been adverted by the Respondent No.2 to the judgment of this Tribunal in *Naresh Kumar Aggarwal v. CFM Asset Reconstruction Pvt. Ltd. & Anr.*




in CA(AT)(Ins) No. 736 of 2022 wherein it was held that service of notice by way of email on the email address registered with the MCA would suffice the purpose of notice having been properly served. Doubts on the authenticity of the email ID used by the Operational Creditor in serving the demand notice on the Corporate Debtor cannot be entertained since the email ID happened to be the registered email ID of the Corporate Debtor as reflected in multifarious documents issued by them. Hence, to contend that the demand notice was not served on an operational email ID was simply a ruse raised to overcome the admission of Section 9 application admitted against them. Since the Demand Notice had been delivered at the registered email address of the Corporate Debtor which was on the public domain, the contention of the Corporate Debtor that the demand notice had not been served upon them does not appeal to reason. We are of the considered view that there was no cogent basis for the Appellant to claim that Section 8 demand notice had not been validly served on them."

10. A combined reading of Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and the Judgment of the Hon'ble NCLAT makes it conspicuous that the service of a Demand Notice under Section 8 of the Code upon the registered email address of the Corporate Debtor will constitute a valid service for the purposes of filing of a Petition under Section 9 of the Code.
11. In the instant case, the Demand Notice dated 07.10.2024 was sent by the Operational Creditor to the Respondent upon the email address i.e., 'khushboomarblespvtltd@hotmail.com'. Further, the service of the Demand Notice upon the Corporate Debtor via email has also been reiterated in the Affidavit given by the Operational Creditor under Section 9(3)(B) of the Code.

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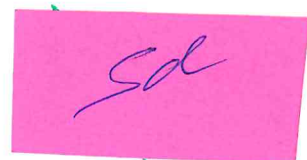
CP No. (IB)-107/9/JPR/2024

Sd/-

12. It is pertinent to note that the registered email address of the Respondent as per the Master Data maintained by the Ministry of Corporate Affairs is '*khushboomarblespvtltd@hotmail.com*' which is same as the email address upon which the Demand Notice was sent by the Operational Creditor. Thus, considering the Judgment of the Hon'ble NCLAT, the service of the Demand Notice dated 07.10.2024 upon the registered email address of the Respondent shall constitute a valid service of the Demand Notice.
13. In so far as the argument of the Respondent pertaining to the non-filing of the record of an Information Utility ('IU') as per Section 9(3)(d) is concerned, we are of the opinion that the use of the word "*confirming*" in Section 9(3)(d) indicates that the record of default from the Information Utility is merely evidentiary in nature. It serves to confirm the non-payment of the operational debt. The record of default from the IU is a supporting piece of evidence and not a strict requirement for initiating insolvency proceedings under Section 9 of the IBC. The Operational Creditor can rely on other forms of evidence to establish the existence of an unpaid operational debt, and the Adjudicating Authority is to consider the overall facts and circumstances of the case. Further, in the instant case, the Petitioner has filed an Affidavit under Section 9(3)(c) of the Code wherein it was stated that the last payment for a sum of Rs. 4,51,000/- (Rupees Four Lakh Fifty-One Thousand Only) was received from the



CP No. (IB)-107/9/JPR/2024

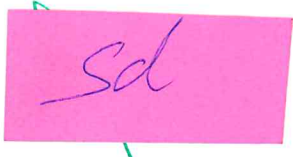


Corporate Debtor on 01.02.2024 and besides that no other payment has been received from the Corporate Debtor and thus, the Operational Debt remains outstanding. Moreover, the bank statement of the account of the Operational Creditor pertaining to the period ranging from 12.09.2023-11.09.2024 is also on record. Thus, we are of the opinion that the non-filing of the record of IU under Section 9(3)(d) of the Code is not fatal to the case of the Petitioner.

14. At this juncture, it becomes relevant to refer to the statutory framework regarding the Petition under Section 9 of the Code. A Petition under Section 9 of the Code can only be filed after the delivery of a demand notice as provided under Section 8 of the Code. Section 8 of the Code requires the Operational Creditor, upon the occurrence of default, to deliver a Demand Notice for unpaid Operational Debt. Furthermore, Section 8(2) specifies that the Corporate Debtor must, within 10 days of receiving the Demand Notice, inform the Operational Creditor of any existing dispute.
15. Under Section 9(1), if Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Sub-section (2) of Section 8, may file an Application under Section 9(1) of the Code.
16. In the present case, the Operational Creditor is engaged in the business of cutting and polishing of granites, marbles, and stones. The Operational Creditor used to supply polished granite slabs to the Corporate Debtor due their long-

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CP No. (IB)-107/9/JPR/2024

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standing business relations. However, the Respondent had not made any payment after 01.02.2024 when the last payment of Rs. 4,51,000/- (Rupees Four Lakhs Fifty-One Thousand Only) was made to the Operational Creditor. The invoices issued from 08.02.2024-07.03.2024 aggregating to a sum of Rs. 1,24,56,119/- (Rupees One Crore Twenty-Four Lakhs Fifty-Six Thousand One Hundred and Nineteen Only) have remained outstanding.

17. In support of its contentions, the Operational Creditor has annexed the invoices drawn upon the Corporate Debtor which has not been paid till date. Further, on perusal of the statement of bank account annexed by the Operational Creditor, it transpires that the last payment was made by the Corporate Debtor to the Operational Creditor on 01.02.2024 and subsequent to that the Corporate Debtor has not made any payment towards the outstanding invoices. Thereafter, due to subsisting non-payment of the outstanding invoices, the Operational Creditor issued a Demand Notice dated 07.10.2024 for a sum of Rs 1,24,56,119/- (Rupees One Crore Twenty-Four Lakhs Fifty-Six Thousand One Hundred and Nineteen Only). The Corporate Debtor had not replied to the Demand Notice. Moreover, in the Reply to the Petition, the Corporate Debtor has also nowhere contended that it has paid the outstanding invoices to the Operational Creditor instead the Corporate Debtor has raised allegations concerning pre-existing dispute between the parties relating to the quality of



CP No. (IB)-107/9/JPR/2024



the goods. Further, as noted above, the service of the Demand Notice dated 07.10.2024 was made upon the Corporate Debtor via its registered email address.

18. At this juncture, it is germane to refer the Judgement of the Hon'ble Apex Court in *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited* wherein in para 34 the Hon'ble Supreme Court laid down the guidelines for adjudicating Section 9 Application. Para 34 is as follows: -

"34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

*(i) Whether there is an "operational debt" as defined exceeding Rs 1 lakh?
(See Section 4 of the Act)*

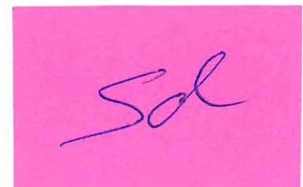
*(ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid?
and*

(iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."

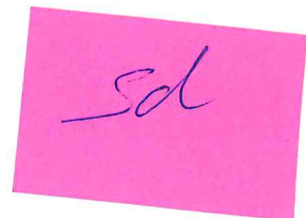
CP No. (IB)-107/9/JPR/2024

19. Further, it is no more res-integra that for non-admission of a Section 9 Application, the existence of a dispute must be plausible, and it must not appear as a moonshine defence.
20. In the instant case, the Corporate Debtor in its Reply to the Petition has raised the contention that there exists a dispute concerning the quality of the goods supplied by the Operational Creditor. On perusal of the record, it transpires that no such objection was ever raised by the Corporate Debtor prior to filing of this Petition. Further, the Corporate Debtor has not produced any document to prove that such concerns were ever raised by it with the Operational Creditor. Moreover, the Corporate Debtor has contended that it received several complaints from its customers concerning the quality of granite, however, the Corporate Debtor has not placed a single document on record to substantiate its allegations concerning the quality of the goods supplied by the Operational Creditor.
21. In view of the observations made above, we are of the opinion that there is no pre-existing dispute between the parties. Further, in the present Petition, the notice under Section 8 of the Code was duly served upon the Corporate Debtor and the elements of **debt** and **default** stand established. Thus, we are of the view that in the present matter, all the ingredients laid out under Section 9 are



fulfilled. Therefore, we are inclined to initiate CIRP of the Corporate Debtor i.e., *M/s Khushboo Marbles Private Limited*.

22. Further, we hereby appoint *Mr. UMANG JAIN* having registration no. *IBBI/IPA-001/IP-P-01959/2020-2021/13105* as Interim Resolution Professional of the Corporate Debtor from the available list of panel of Resolution Professionals as maintained by IBBI to conduct the Insolvency Resolution Process as mentioned under the Insolvency and Bankruptcy Code, 2016. The email address of the IRP is 'caumangjain@gmail.com'.
23. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder. It is directed to the Interim Resolution Professional /Resolution Professional to check the genuineness of the claim while admitting the operational dues of the Applicant.
24. Consequences of initiation of CIRP shall be inter-alia as follows:
- 24.1. The IRP appointed by the Adjudicating Authority is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under the provisions of

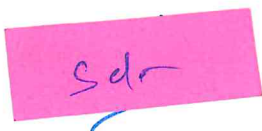


the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same.

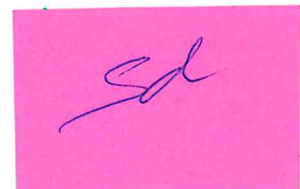
24.2. Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.

24.3. The said IRP shall act strictly in accordance with the provisions of the Code. This Bench also directs for an advance payment of Rs. 1,00,000/- (Rupees One Lakh only) to be paid by the Petitioner to the Interim Resolution Professional immediately to initiate the process which shall be adjusted towards the expenses payable towards CIRP Cost. In terms of Section 17 and 19 of the Code all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

24.4. The Registry is directed that this order shall be communicated within three days from the date of passing of the Order to the Petitioner, the Corporate Debtor as well as the IRP appointed by this Adjudicating



CP No. (IB)-107/9/JPR/2024

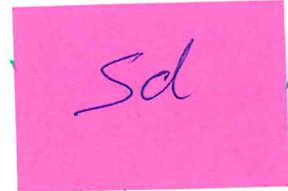


Authority to carry out the CIRP. A copy of this order shall also be communicated to IBBI for its records.

25. Accordingly, *CP No. (IB)-107/9/JPR/2024* is admitted.
26. The Registry is directed immediately to send a soft copy of this order to the parties along with the IRP appointed herein.



KAVITA BHATNAGAR
TECHNICAL MEMBER



REETA KOHLI
JUDICIAL MEMBER

VSG/LRA