

**NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH**

CP(IB) No.43/CB/2023

*{An Application under Section 7 read with Rule 4 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules,2016.}*

In the matter of:

M/s SHRESTH BUILDERS PRIVATE LIMITED

102/1, N.S. Road, Radha Krishna Enclave,
Hridaypur Kolkata,
West Bengal-700127

..... APPLICANT/FINANCIAL CREDITOR

Vs.

M/s VIRAJAA STEEL AND POWER PRIVATE LIMITED

Suniamuhanp O Mancheswar
Via- Chashapara
Cuttack-754027

.....RESPONDENT/CORPORATE DEBTOR

ORDER PRONOUNCED ON: 09.09.2025

CORAM: DEEP CHANDRA JOSHI, MEMBER JUDICIAL

BANWARI LAL MEENA, MEMBER TECHNICAL

APPEARANCE:

FOR APPLICANT: MR. SAROJ KUMAR SAHOO, CS

FOR RESPONDENT: MR. AMBIKA PRASAD MOHANTY, CA

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ORDER

PER: BANWARI LAL MEENA, MEMBER TECHNICAL

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**the Code**”) read with Rule 4 of the Application to Adjudicating Authority Rules, 2016 (hereinafter referred to as “**the Rules**”) by M/s Shresth Builders Private Limited (hereinafter referred to as “**the Applicant/Financial Creditor**”) to initiate insolvency resolution process against M/s Virajaa Steel and Power Private Limited (hereinafter referred to as “**the Respondent/Corporate Debtor**”) for a financial debt of Rs. **1,18,88,924/-**.

2. **The averments made by the Applicant in its application are as follows:**

i. The Applicant wants to initiate CIRP against the Corporate Debtor through this application purely based on a financial instrument from 13.03.2014. The Applicant wishes to submit that the Director of the Corporate Debtor approached it for assistance in terms of financial support to strengthen the Corporate Debtor's business.

ii. The Respondent had approached Applicant for a Credit facility loan with a limit of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) with interest. Thereafter, the Applicant sanctioned the loan amount vide IDBI Cheque No. 387195 and disbursed it on 13.03.2014 without any agreement or document to the Respondent. The said loan amount was to be repaid on demand.

iii. The corporate Debtor informed the Financial Creditor that every year it had made provisions for the interest and paid TDS, and further accumulated such interest amount with the Principal amount. Accordingly, both companies have maintained the total amount (principal plus interest) in their balance sheet. The Applicant further submits that the Corporate Debtor had added

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the paid TDS and interest with the Principal amount up to FY 2018-19.

iv. The Rate of Interest up to FY 2014-15 was at 12% p.a., after that, a negotiation was made between the Corporate Debtor and Financial Creditor. The Applicant had approached the Corporate debtor to waive 50% of the rate of interest due to the reduced bank rate and the fall of the market. Thereafter, the revised rate came down to 6% p.a. from 12% p.a up to FY 2016-17, after that it was again enhanced to 12% p.a.

v. The default occurred from the FY 2019-20, and after that, the Corporate Debtor had neither made the interest provisions nor made any TDS. Furthermore, the Balance sheet of the Corporate Debtor indicates that it had defaulted on the provision of interest on loan, i.e., the interest liability of Rs. 25,55,627/-, without including the interest for FY 2019-20.

vi. As the Corporate Debtor had approached Applicant to forego the interest in the year of Covid. Therefore, the Applicant had issued a notice dated 13.03.2021 by demanding the outstanding amount of Rs. 75,55,627/- from the Corporate Debtor, but it neither paid the due amount nor made any provision for interest for the subsequent FY 2020-21.

vii. The Applicant had again issued a legal notice dated 11.03.2022 by demanding the outstanding balance along with up-to-date interest due within the specified period. Upon demanding the outstanding amount of Rs. 1,18,88,924(inclusive of interest as on 31.03.2023) as mentioned in Part-IV of the application, a letter dated 02.05.2023, was sent through speed post by the Applicant to the Corporate Debtor giving 15 days to revert back, but the Corporate Debtor neither reply nor they showed any willingness to settle the matter amicably between them.

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3. The contentions raised by the Respondent in its reply are as follows:

- i.** The amount alleged by the Applicant had already been paid to it, and there is no real debt owed now by the Respondent. The loan given by the Applicant had not followed any due procedures established under the Companies Act, 2013. The Memorandum of Association of the Applicant company does not contain any object which makes the company eligible to lend money or advance credit to others.
- ii.** The Respondent submits that in the present case, the Applicant had initiated this application under Section 7 of the Code, claiming itself to be a financial creditor, but as per Section 5(7) of the Code, the petitioner is not a financial creditor. In the present case, there is no binding financial contract; the default arises from the very next date of transfer of funds.
- iii.** The Applicant in pg-12 of the application, in Form-1 of the Code, alleged that the date on which the default occurred was on 31.03.2023, which has no factual basis, as there was no fixed agreement on discharging liability. So, the due date to discharge is not determinable.
- iv.** The Respondent submits that the Applicant had concealed the fact before this Tribunal that the Director of the Applicant company, as well as the Respondent Company, had admitted before the I.T. Department that the Applicant Company is a "Jama Kharchi Company" and its object is to provide accommodation entries in the form of long-term capital gains.
- v.** The Respondent submits that in para 6 of the application, the Applicant had admitted the fact that the amount was paid without any agreement and had stated that it is payable on demand. Further, the Director of the Applicant Company, while giving statement under Section 131(1A) of the Income Tax Act, 1961, at the office of ADIT(Inv), Unit-II, Kolkata, had

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submitted that the company is engaged in “Jama Kharchi Activity”. Therefore, the Respondent submits that the cheque provided by the Applicant Company is one of such activity and there is no real debt owed to the Financial Creditor.

vi. The Respondent further submits that the balance sheets enclosed by the applicant in its application from pages 152-160 have not been confirmed by it; only the signature of the authorised signatory of the Applicant company is available. The Applicant has manufactured these documents only to justify a wrongful claim against the debtor.

vii. The Respondent submits that the Applicant in paragraph 10 of the Application stated that the default had occurred in March 2020, i.e., F.Y. 2019-20. If the default arises in March 2020, then the limitation period expires on 1st April 2023, and the application is not maintainable. The date of default mentioned in Part IV of the Application is contradictory to the statement made by the Applicant in its application at para 10.

viii. The Respondent, in response to the letter dated 02.05.2023 by the Applicant, had replied vide its letter dated 18.05.2023 by stating therein that there is no debt due to the Applicant. So, the question of amicable settlement does not arise. It is also submitted by the Respondent that the fact of lending money is not a real lending rather it is an entry in the books of account, which is the usual course of business.

4. The rebuttal made by the Applicant in its Rejoinder to the reply of the Respondent is as follows:

i. The Applicant submitted that in paragraph 4 of the reply affidavit, the Corporate Debtor has stated that the amount had already been taken. The said contention, is denied as strict proof thereof is required to it. It was further submitted that the allegation of non-compliance with the procedure prescribed

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under the Companies Act, 2013, is misconceived, as the Companies Act, 2013 came into effect only on 01.04.2014, whereas the loan was disbursed on 13.03.2014. Hence, the question of the applicability of the provisions of the 2013 Act does not arise. It was further pointed out that the Corporate Debtor is not a finance company, and therefore, the objects in its Memorandum of Association do not contain finance business activities, which in any case are not required in respect of inter-company loans and advances.

ii. With regard to paragraph 5 of the reply affidavit, it was submitted that the status of the Applicant as a Financial Creditor is clearly covered under Section 5(7) read with Section 5(8) of the Code. It was emphasised that the Balance Sheet of the Corporate Debtor itself records the amount as debt/unsecured loan, and the same is further corroborated by the deduction of TDS on interest.

iii. Adverting to paragraph 6 of the reply affidavit, it was submitted that the allegation of non-compliance with Section 7 of the Code is untenable. The Balance Sheet of the Corporate Debtor itself reflects the existence of a debt/unsecured loan in the name of the Applicant/Financial Creditor, which constitutes clear proof of debt. The contrary assertions of the Corporate Debtor were submitted to be baseless.

iv. With reference to paragraph 8 of the counter affidavit, it was submitted that the contents thereof are wholly irrelevant and manufactured. The reference therein pertains only to a personal notice issued by the Income Tax Department and an affidavit filed by Shri Vijay Kumar Dokania in his personal capacity, wherein no reference has been made on behalf of the Applicant/Financial Creditor. It was further pointed out that in point no. 3 of the said statement, the personal PAN of Shri Vijay Kumar Dokania is mentioned, and all the questions and answers therein are purely

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personal in nature and unrelated to the Applicant/Financial Creditor.

v. With regard to Annexure-3 of the counter affidavit, it was submitted that the same is a fabricated narration without basis. On the contrary, the Balance Sheet of the Corporate Debtor itself establishes the existence of debt/unsecured loan in the name of the Applicant/Financial Creditor, including interest thereon.

4. We have heard the learned Counsels for the parties and have perused the documents available on record. In the present application, the Applicant had filed this application based upon the books of account of both parties. In Part IV of the application, it is seen that the total amount of debt extended was Rs. 50,00,000/- vide IDBI Cheque No.387195, which was disbursed on 31.03.2014. The amount claimed to be in default including interest is Rs. 1,18,88,924/-, calculated till 31.03.2023 as stated by the Applicant, and the date of default as per the demand notice issued by the Applicant for payment on demand is 22.05.2023.

5. It is noted that the Applicant had also filed an application bearing IA(IB) No. 140/CB/2024 to take on record an additional document to substantiate its pleadings. This Tribunal vide order dated 27.09.2024 had allowed the said application, and accordingly, the additional documents were taken on record. It is also noted that this Tribunal vide order dated 19.03.2025 had directed Applicant to file financial statements for financial years up to the filing of this application and subsequently, the applicant had filed the balance sheet of FY 2022-23 and FY 2023-24.

6. Now, we need to see whether the Applicant qualifies as a Financial Creditor under Section 5(7) read with Section 5(8) of the Code. The Applicant in its rejoinder has pleaded that the amount outstanding qualifies as a financial debt under Section 5(7) and 5(8) of the Code. Before delving into the facts of the present case, we need to look into

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Section 5(7) and 5(8) of the Code. The definition of the relevant Sections are reproduced herein for reference:

(7) **“financial creditor”** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8) **“financial debt”** means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

²[Explanation. -For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

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(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

7. In respect to the debt, it is seen that the Applicant had made a disbursement of Rs. 50,00,000/- vide IDBI Cheque No. 387195 without any financial contract/agreement, but the said disbursed amount is also recorded in the Balance sheet of both the Applicant and the Corporate Debtor as an unsecured loan. The balance sheet provided by the Applicant from Financial Year 2013-14 to Financial Year 2023-24 of the Applicant shows the accrual of interest on the principal amount. The confirmation of the accounts from the FY 2014-15 to FY 2017-18 filed by the Applicant shows that the TDS was deducted at the rate of 10% p.a on the interest amount. Further, on perusal of the Corporate Debtor's audited balance sheet for FY 2017-18 to FY 2021-22, it is observed that the name of the Applicant has been mentioned under the head of the "list of unsecured creditors" and under the head of the "interest liability on unsecured loan", which is a clear indication thereby that the Corporate Debtor acknowledges the liability in its financial statements.

8. Thus, this Tribunal is inclined to place the Judicial precedents, which have consistently held that the absence of any contract or written agreement does not preclude the establishment of a financial debt. In **Satish Balan v. Neeta Navin Nagda, Company Appeal (AT) (Insolvency) No. 718 of 2023**, the relevant excerpt has been reiterated below:

14. This 'Appellate Tribunal' observe that the Code no where prescribes that there should be a written agreement between the parties to prove the loan and its disbursement to be treated as financial debts. It is also observed that if there are acknowledgments by the 'Corporate Debtor' and where the

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statements of accounts of the 'Corporate Debtor' are in position to proof disbursement of loan and payment of interest, the absence of formal written agreement would not bar the 'Financial Creditor' (the Respondent No. 1 herein) from initiating the CIRP.

15. We take note from the record made available that there have been clear acknowledgments which have been issued by the 'Corporate Debtor' for the money received from the Respondent No. 1 which also mentioned the quantum of interest payment to be made by the 'Corporate Debtor' to the Respondent No. 1. Similarly, we also take into account the fact that TDS was deducted regarding interest paid and the name of the Appellant as 'deductor' and the name of the Respondent No. 1 as 'deductee' is clearly evident. This does not give any scope for benefits of the 'Appellant'.

Similarly, in **Jaiprakash Agarwal v. Alka Prakash Agarwal, 2024 SCC Online NCLAT 761**, and **Agarwal Polysacks v. K.K. Agro Foods Company Appeal (AT)(Ins) No. 1126 of 2022**, the Hon'ble NCLAT upheld the maintainability of Section 7 petitions based on documentary evidence such as FORM 26 AS, TDS deductions, and acknowledgments, and it was reiterated that documents like financial statements and repayment assurances could validly establish a financial debt, even in the absence of a loan agreement.

The Hon'ble Supreme Court of India in **Global Credit Capital Ltd. V. Sach Marketing Pvt. Ltd., Civil Appeal No.1143 of 2022**, reaffirmed the position laid down by NCLAT, the relevant excerpt of the judgment has been reproduced herein for reference:

17. *To decide whether the second condition had been fulfilled, it is necessary to refer to the factual findings recorded in the impugned judgment. The NCLAT has referred Civil Appeal no.1143 of 2022 etc. Page 31 of 33 to the letter dated 26th October 2017 addressed by the corporate debtor to the first respondent. We have perused a copy of the said letter annexed to the counter. By the said letter, the corporate debtor informed the first respondent that for the year*

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2016-2017, the corporate debtor had provided the interest amounting to Rs.18,06,000/- in the books of the corporate debtor and that the sum will be credited to the account of the first respondent on the date of payment of TDS. In paragraph 21 of the impugned judgment, it is held that the financial statement of the first respondent for the Financial Year 2017-2018 shows revenue from the interest on the security deposit. It is also held that the amounts were treated as long-term loans and advances in the financial statement of the corporate debtor for the Financial Year 2015- 2016. Moreover, in the financial statement of the corporate debtor for the Financial Year 2016-17, the amounts paid by the first respondent were shown as "other long-term liabilities". Therefore, if the letter mentioned above and the financial statements of the corporate debtor are considered, it is evident that the amount raised under the said two agreements has the commercial effect of borrowing as the corporate debtor treated the said amount as borrowed from the first respondent.

9. In the present case, the Applicant had placed on record its balance sheet as well as confirmation of account with the balance sheets of the Corporate Debtor, which altogether demonstrates that the loan was disbursed but remains unpaid. As per provisions of Section 5(8) of the Code, financial debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money. It is a settled position that in the absence of a formal agreement, if consideration is disbursed against the time value of money, it constitutes 'financial debt' under Section 5(8). The Balance sheet, acknowledging the debt and deduction of TDS, substantiates the existence of a financial transaction and debt. Hence, the Applicant qualifies as a financial creditor.

10. In regard to the issue of limitation, the Respondent argues that the default arose in March 2020 and the application filed in 2023 is barred by law as it does not meet the threshold of limitation. It is noted

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that the Applicant had demanded its outstanding amount through a letter on 02.05.2023 with a condition to repay the amount outstanding within 15 days, whereas the Corporate Debtor receives the letter on 08.05.2023, which is evident from postal tracking report thereof annexed in the application, therefore, when the 15 days get over on 22.05.2023, the amount becomes due and payable. The Corporate Debtor had replied to the said letter on 18.05.2023 by admitting the fact that there was a transaction between them, but without entering into any agreement. It is also noted that the Corporate Debtor in its financial statement mentioned the debt amount owed by the Applicant as an unsecured loan with accruing interest amount. At this stage, this Tribunal is inclined to rely upon the rulings of the Hon'ble Supreme Court in ***Dena Bank Vs. C. Shivakumar Reddy, (2021) 10 SCC 330*** and ***Asset Reconstruction Co.(India) Ltd. vs. Tulip Star Hotels Ltd., 2022 SCC Online SC 944***, a valid acknowledgement of liability under section 18 of the Limitation Act extends the limitation period by three years from the date of such acknowledgement. These decisions affirm that acknowledgements made through letters, balance sheets, or account confirmations are sufficient to revise limitations. Moreover, in ***ARCIL v. Uniworth Textiles (Company Appeal (AT) (IB) 991/2020)***, the NCLAT recognised that acknowledgement of debt in the balance sheets and via the acknowledgement letter would extend limitation, and is sufficient prima facie proof of default for Section 7 admission.

11. Applying this to the present facts, the acknowledgement was made by the Corporate Debtor up to FY 2021-22, which squarely falls within three years from the cessation of interest payments (March 2019), thereby resetting the clock. The application, having been filed on 06.07.2023, is within the extended limitation period and is not time-barred.

12. In regard to the allegation raised by the Respondent towards Applicant as a "Jama Kharchi" Company. This Adjudicating Authority is of the considered view that the allegation of the Applicant being a

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“Jama Kharchi” company is extraneous to the scope of inquiry under Section 7 of the Code. The jurisdiction of this Tribunal is confined to ascertaining (i) whether a financial debt exists, and (ii) whether a default has occurred. The statutory Balance Sheets of the Corporate Debtor, which carry due evidentiary value, clearly reflect the outstanding loan in favour of the Applicant, including accrued interest. Further, the deduction of TDS on interest by the Corporate Debtor till FY 2018-19 corroborates the existence of such a financial arrangement. Once the Corporate Debtor’s own financial statements acknowledge the debt, allegations as to the nature of the Applicant’s business are of no consequence for adjudication under Section 7.

13. In light of the above facts and circumstances, we are of the considered view that the existence of debt and its default by the Corporate Debtor have been established by virtue of the material placed on record. This Adjudicating Authority admits this petition and initiates CIRP on the Corporate Debtor for a default of Rs. 1,18,88,924/- with immediate effect.

14. In view of the aforesaid observations, we hereby **ADMIT** the petition and pass the following Orders: -

i. The Petition bearing CP (IB) No. 43/CB/2023 filed by Shresth Builders Private Limited under Section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating CIRP against Viraja Steel and Power Private Limited, the Corporate Debtor, is **ADMITTED**.

ii. The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016, is declared for prohibiting all of the following in terms of section 14(1) of the Code

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;

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

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

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.

iii. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process until this 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 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

iv. As proposed by the Financial Creditor, **MR. UMESH CHANDRA SAHOO**, having Registration No. **IBBI/IPA-002/IP-N00621/2018-19/11855** and Email ID: info@nayadarshan.com residence at Plot No-4, 2nd Floor Snowdrop Apartment, Cuttack Road, Jharpada, Near Indian Oil Petrol Pump Bhubaneswar, Odisha-751006 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.

v. The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by section 13(1) (b) of the Code.

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vi. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

vii. The IRP shall perform all his functions as contemplated, inter alia, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under a legal obligation under section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or cooperate with IRP, do not assist or cooperate, the IRP is at liberty to make an appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

viii. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of the obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

ix. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

x. The Financial Creditor shall deposit a sum of Rs. 1,00,000/- within two weeks from the date of receipt of this order for the purpose of smooth conduct of the Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per the Rules.

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xi. In terms of section 7(7)(a) of the Code, the Registry is hereby directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, within seven (7) working days and upload the same on the website immediately after pronouncement of the order.

xii. The IRP shall also serve a copy of this order to the various departments, such as Income Tax, GST, State Trade Tax, and Provident Fund, etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

xiii. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

18. The Resolution Professional shall submit his periodic reports before this Adjudicating Authority as per the rules.

19. Hence, **CP(IB) No.43/CB/2023** is **ALLOWED** and accordingly Corporate Debtor is **ADMITTED** into CIRP.

20. A Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

21. The file will be consigned to records.

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BANWARI LAL MEENA
MEMBER TECHNICAL

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DEEP CHANDRA JOSHI
MEMBER JUDICIAL