

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT NO. 5

**1) CP No. 1072/(IB)-MB-V/2020**

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

In the matter of

Samata Nagari Sahkari Patsantha  
Maryadit, Kopargaon

Samata Marg, Khandaknal, Main road,  
Kopargaon, Dist. Ahmednagar – 423  
601

.... Petitioner

Vs.

Yeshodeep Infrastructure Pvt. Ltd  
Plot No.55, Near Hanuman Mandir,  
Mondha Market, Pari Vajinath  
Maharashtra 431515

... Corporate Debtor/Respondent

**2) IA 317 of 2021 in  
CP 1072 of 2020**

Yeshodeep Infrastructure Pvt. Ltd

... Applicant

Vs.

Samata Nagari Sahakari Patsanstha Maryadit

... Respondent

Order Pronounced On: 16.04.2021

**Coram:**

Hon'ble Suchitra Kanuparthi, Member (J)

Hon'ble Chandra Bhan Singh, Member (T)

*Appearances (Via Video Conference):*

For the Petitioner : CA S Raghunath

For the Respondent : Adv. G Anirudh Purusothaman

*Per: Chandra Bhan Singh, Member (T)*

ORDER

1. The Petitioners/Applicant viz. 'Samata Nagari Sahkari Patsanstha Maryadit, Kopargaon' (hereinafter as Petitioner) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'Yeshodeep Infrastructure Private Limited' (hereinafter as 'Corporate Debtor').
2. In the requisite Form-1, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs. 1,50,00,000/-, and the amount claimed to be in default is Rs. 2,21,13,263.76/- including interest @17%. The date of default is stated to be 01.02.2016.

**BRIEF HISTORY OF THE CASE**

3. Samata Nagari Sahkari Patsanstha Maryadit, Kopargaon is a Cooperative Credit Society registered under the Maharashtra State Co-operative Societies Act, 1912.

4. Yeshodeep Infrastructure Private Limited is a private limited company incorporated under the Companies Act, 1956, Registration no. U45400MH20018PTC187337 dated 07.10.2008.
5. The Corporate Debtor approached the Petitioner for credit facilities i.e., Working Capital term Loan aggregating to Rs. 1,50,00,000/- for business expansion. The said facilities were sanctioned vide Sanction letter dated 15.12.2015 for a period of 3 years from the registration of the Mortgage Deed.
6. The Corporate Debtor has defaulted in the repayment of the credit facilities and interests thereon.
7. The Petitioner initiated legal action by filing a case on 07.09.2016 under Section 101 of Maharashtra Co-operative Societies Act, 1960, for the recovery of an amount of Rs. 1,48,11,360/-.
8. Subsequently, the certificate for recovery U/s 101 of the Maharashtra Co-operative Societies Act, 1960 was issued on 04.11.2016.
9. Despite of the certificate issued under Section 101 of Maharashtra Co-operative Societies Act, 1960, the Corporate Debtor has failed to deposit the said amount within the stipulated period.
10. Therefore, the Petitioner served Attachment notice on 02.01.2017 to make payment on an immediate basis otherwise Petitioner would proceed with legal action on the immovable property.
11. It was decided to get the upset price for the recovery of the arrears by the sale of the immovable property on 13.06.2017.
12. As per Rule 107(11) of the Maharashtra Coop Societies Act, 1961, the Petitioner seized the symbolic possessions of the immovable properties

vide order No. 782/18-19 dated 22.06.2018 and issue the public notice for auction in the local newspaper.

13. Hence, due to nonpayment of debts the Petitioner file this Petition u/s 7 of the IBC as a Financial Creditor for initiating the Corporate insolvency Resolution process (CIRP).

**SUBMISSIONS BY THE CORPORATE DEBTOR:**

14. The Corporate Debtor submits that the Petitioner has no authority to file this Petition in this Hon'ble Tribunal as the Petitioner is a co-operative society and disputes regarding the co-operative society are resolved as per Section 72 of the Maharashtra Cooperative Societies Act 1960.
15. As per the petition filed by the Petitioner the date of default is 01.02.2016 and the petition was filed on 09.03.2020, thus it is filed beyond the period of three years and deserves to be dismissed on this ground.
16. The Petitioner relied upon the letter dated 23.07.2019 addressed by the Corporate Debtor to the Hon'ble Commissioner, Cooperative Department of Maharashtra is the acknowledgment of the debt by the Corporate Debtor but the Corporate Debtor submits that this particular letter had only apprised the Hon'ble Commissioner regarding the availment of loan by the Corporate Debtor along with other associates and directors, this is not an acknowledgment of debt.
17. The directors of the Petitioner induced the Corporate Debtor to pay part with the monies of Rs. 98,58,000/- on the loan disbursement date. The money was transferred from the Corporate Debtor bank's account to the account of the director on the very next day. The Corporate Debtor lodge complaint to the Hon'ble Commissioner of Co-op

Department of Maharashtra with respect to misappropriation of the monies by the Petitioner but the directors of the Petitioner induced false promises to withdraw the complaint.

18. The Working Capital term loan agreement has been executed on a non-judicial stamp paper of Rs.100/- which is insufficient as per the provisions of the Maharashtra Stamp Act, 1958. As per the provisions of the Maharashtra Stamp Act, 1958 the stamp duty of 0.2% of the amount agreed in the contract has to be paid.

**REJOINDER BY THE PETITIONER:**

19. The Petitioner submits that though the date of default is 01.02. 2016. However, as reflected in the account statement maintained by the Petitioner as on the date of filing of the Petition, the last date of payment received by the Petitioner from the Corporate Debtor was of an amount of Rs.12.43 lakhs on 31.03.2017 and the Petitioner is also in possession of a pay slip dated 31.03.2017 signed by Mrs. Jaya Garad, director of the Corporate Debtor.

**FINDINGS: -**

20. The Petitioner, Samata Nagari Sahkari Patasanstha, Kopergaon (Samata), (Financial Creditor), is a Co-operative Credit Society registered under Maharashtra Co-operative Societies Act, 1960 which accepts deposits from members and provide loan to members at a given interest rate. As per the Petition filed by the Applicant, the Applicant had extended credit facilities in terms of Working Capital Term Loan of Rs.1.50 crore vide sanction of their board resolution of 15.12.2015. This loan was disbursed on 31.12.2015 with repayment over a period of 3 years from the registration of the mortgage deed. As per the Petition, the Respondent (Corporate Debtor) defaulted in the loan payment on 01.02.2016. This loan was extended at a rate of interest of 17% per annum payable in 36 installments from 31.12.2015

to 31.12.2018. The relevant loan agreement, the Bench notes, has been enclosed with the Application. As per the Petition, the outstanding amount as on 11.02.2020 is about Rs.2.1 crores. The Company Petition u/s.7 was filed on 09.03.2020.

21. The Respondent, Yeshodeep Infrastructure Private Limited has filed its reply dated 21.01.2021 where *inter alia* he has raised the issue that this Petition is barred by 'limitation'. On the aspect of 'maintainability', the Respondent has filed a separate IA No.317/2021 in the present CP. The Bench notes that the contents of the IA 317/2021 and that of the reply dated 21.01.2021 are almost similar. In fact, all the issues which it has brought in its reply are the same as given in the said IA.

22. This Bench would like to deal with the issue of '**maintainability**' first. The contention of the Corporate Debtor in this regard is that this Petition has been filed on 09.03.2020 whereas the date of default of debt being 01.02.2016. Therefore, as per the Corporate Debtor, more than three years have passed. The Corporate Debtor mentions that the reliance of the Petitioner on the letter of Respondent to the Commissioner of Co-operative Department of Maharashtra dated 23.07.2019 as an acknowledgment of the debt by Respondent cannot be construed as an acknowledgment of the debt by the Respondent. The Bench in this regard notes that Section 18 of the Limitation Act 1963 mentions the following: -

*(18.1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

Further, the explanation of this section mentions ....

***(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;***

*(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.*

*(Emphasis Supplied)*

23. Regarding the applicability of Section 18 and 19 of The Limitation Act, 1963 in an Application filed u/s 7 of the IBC, there are several Judgments passed by Hon'ble NCLAT and Hon'ble Supreme Court which clearly brings out that both Section 18 and 19 are applicable in deciding the issue of Limitation. The Bench notes that in the case of M. M. Ramachandran Vs. South India Bank Limited in the Company Appeal No.1509 of 2019 and again the Hon'ble NCLAT in the matter of, Rajendra Narottamdas Sheth & Anr. Seth V/s. Shri Chandra Prakash Jain & Anr. in the company appeal no 621 of 2020, the Hon'ble NCLAT on 18<sup>th</sup> of December, 2020 had upheld the application of section 18 of Limitation Act, 1963 to the proceedings under IBC, 2016. In this regard, this Bench finds it worthwhile to reproduce para 24 of the Judgement.

*"24. Section 18 applies to not merely suits but also applications and where before expiry of the prescribed period for an application an acknowledgment is made, the Section provides for computing fresh period of limitation from the time when acknowledgment was so signed. Perusal of Section 19 shows that where payment is made on*

*account of a debt or interest before expiration of the prescribed period by the person liable to pay, a fresh period of Limitation shall be computed from the time when the payment was made. The date of NPA will not shift. It will remain the foundational date and Period of Limitation gets triggered from that date. But when prescribed period is computed in accordance with the Limitation Act and facts of this matter, Section 18 and 19 do appear to be attracted."*

Further para 26 and 27 of the same judgement are as under:

*"26. If the Corporate Debtor made some payments, as a reasonable prudent person, Bank received the payments. Section 19 of the Limitation Act, 1963 is not subject to any qualification/exception that after Account is declared NPA, if the debtor makes payments on account of debt, the Section would not be applicable. The Adjudicating Authority found that there were not merely repayments but also Acknowledgments."*

*"27. For the above reasons, we do not find that the Adjudicating Authority erred in its observations as recorded in Paragraph 11 of the Impugned Order to hold that the Application was within Limitation. 11*

The Bench therefore, has no doubt in its mind that the limitation act in general and section 18 and 19 in particular are applicable to matter under section 7 of the IBC.

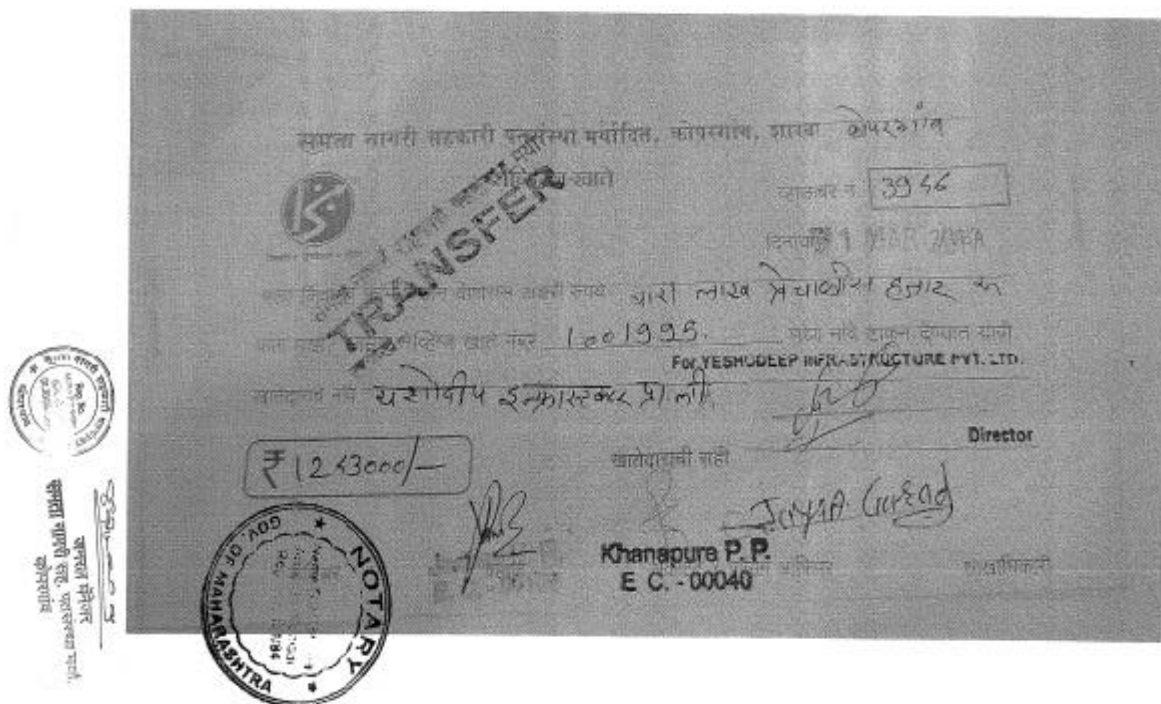
24. In this regard, the Bench would like to mention the letter written by the Yeshodeep Infrastructure Private Limited, Corporate Debtor, to the Commissioner, Co-operative Department of Maharashtra, which is as under: -

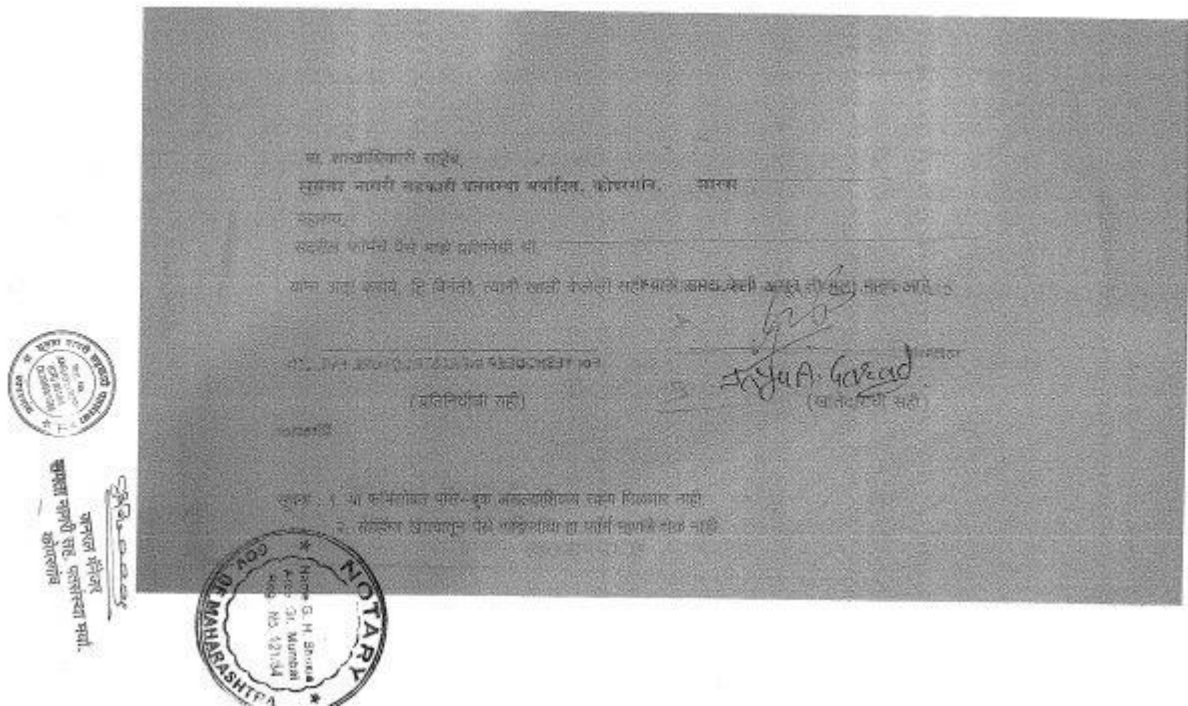




25. It is clear from the above that the Respondents admit at the very outset in the letter that the Respondents have availed a consortium loan of Rs.6 crores from Samata Nagarik Sahkari Patasanstha, Kopargaon (Samata) of which the present Petitioner's amount of Rs.1.5 crores form a part. This, the Bench observes, is the acknowledgment of the debt and even though the specifics are not mentioned, but is a sufficient acknowledgment u/s.

18 of the Limitation Act. Besides, the Bench notes that the last payment received by the Petitioner from the Corporate Debtor was an amount of Rs.12.43 lakhs on 31.03.2017. The Respondent does not deny this payment. However, it mentions that since it is not acknowledged in writing, signed by the person making payment and, therefore, as per the proviso of Section 19 of the Limitation Act, 1963 cannot be covered u/s.19. This bench observes that this contention of the Corporate Debtor is incorrect as a bank transfer of the amount has been made, a pay slip dated 31.03.2017 has been signed by Mrs. Jaya A Garad, a Director of the Corporate Debtor, and an amount of Rs.12.43 lakhs has been debited from the Corporate Debtor's account. A copy of the same is as under:





26. Therefore, in view of the above, the Bench does not have any doubt that it is well covered u/s Section 19 of the Limitation Act and a fresh period of limitation is to be computed from 31.03.2017, which will not make the Petition time-barred if it is filed before 30.03.2020. In this case, the Petition was filed on 09.03.2020. It can be seen from the above that, both in terms of Section 18 and Section 19 of the Limitation Act, 1963 read with Article 137, the Petition is not time barred when it was filed on 09.03.2020.

27. The Bench observes that in the given case the Corporate Debtor's Saving Account has been debited to the tune of 12.43 lakh to make a payment of its loan on 31.03.2017. The Bench also notes that a debit voucher which has been signed and stamped by the Director of the Respondent Jaya A Garad has signed and stamped the voucher. The Bench, therefore, is of the view that this fulfills the requirement of an acknowledgment in writing and duly signed. The provision of Section

19 of the Limitation Act 1963 requires an acknowledgment of the payment in some form of writing, either in the handwriting of the payer himself or signed by him. Therefore, this Bench is convinced that the requirement of acknowledgment by the signing of the payer has been duly met in this case.

28. Though the provision of Sec. 19 of Limitation Act, 1963 is met here, the Bench takes note of the fact that in the present age of digital payments very few payments would be accompanied by a handwritten and signed note. It is mostly accomplished by the transfer of an amount from one bank account to the other through a digital format. All the banks in this regard require a borrower to have the saving/ current account in the bank before a loan is disbursed and the transfer of funds might be repayment of the loan from saving/ current bank account to the loan account on a periodic basis as per the terms of the loan regarding disbursement. In fact, in most of the cases, one of the general conditions of granting loans/ credit facilities by the banks involves consent from the borrower authorizing the bank to debit his account. Be that it may, in any case, in the present instance the provision of Section 19 of the Limitation Act, 1963 is squarely met as an acknowledgment of payment has been signed by the Director of the Respondent Company. Therefore, from 31.03.2017 a fresh period of limitation of 3 years commences which would end on 30.03.2019. Since the present Petition was filed on 09.03.2020 it is within the period of limitation as prescribed under Section 19 of the Limitation Act. This Bench also observe that the present Petition is also well covered under Section 19 of the Limitation Act, 1963 which reads as under: -

*19. Effect of payment on account of debt or of interest on legacy.  
—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in*

*this behalf, a fresh period of limitation shall be computed from the time when the payment was made:*

**"Comment:** *to attract the provisions to the operations of this section, two conditions are essential, first the payment must be made within the prescribed period of limitation and secondly, it must be acknowledged by some form of writing, either in the handwriting of the payer himself or signed by him it is payment which really extends the period of limitation, but the payment has got to be proved in a particular way and a written or signed acknowledgment is the only proof of payment and oral testimony is excluded unless there is an acknowledgment in the required form"*

**Findings on Other points raised by Respondent: -**

29. The Respondent has mentioned that the Petition has been taken out by the Administrator of the Petitioner without express authority conferred by the general body of the Petitioner. Therefore, the Petition may be dismissed.
30. To this, the Applicant by way of Rejoinder mentioned that no Administrator has been appointed in respect of the Applicant Society and that the Petitioner is governed by the Board which has by Resolution of 03.12.2019 certified by the General Manager to file the above Petition. Petitioner mentions that reference to an Administrator in the Petition was an inadvertent error. The Bench also notes that this, in any case, cannot be an authentic ground for dismissing the Petition. This can be no ground for dismissing the Petition as what the Bench is supposed to look into is that whether there is a 'financial debt' in terms of Section 5(8) of IBC and whether there is a 'default' in terms of 3(12) of the IBC. The Respondent mentioned that they have been cheated by the Director of the Applicant Company, as the said Director had induced the Respondent to part with Rs.98,58,000/- on

the day when the loan was disbursed on 01.01.2016. The Bench notes that the Director of the NBFC and the NBFC itself are two different entities and are independent. Any transaction made between the Respondent with an individual Director, even if it is correct, cannot form the basis for Admission or Rejection of an Application under IB Code. The Petitioner denies this allegation of the Corporate Debtor. In any case, the Bench notes that the complaint filed by the Respondent against the Applicant was withdrawn by the Respondent vide a letter dated 23.07.2019 addressed to Commissioner, Co-operative Department of Maharashtra, Mumbai.

31. The Respondent mentioned that the Loan Agreement has been executed on a non-judicial stamp paper of Rs.100/- which is insufficient as per the provision of the Maharashtra Stamp Act, 1958 and therefore may be impounded and the said loan agreement cannot be admitted as an evidence.

In this regard, the Bench notes that the Section 4 of Maharashtra Stamp Act, 1958 reads as under: -

- 1) Where, in the case of any development agreement sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule-I for the conveyance, development agreement mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one hundred rupees instead of the duty (if any) prescribed for it in that Schedule.*
  - 2) ....*
  - 3) ....*
- Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be*

*chargeable in respect of any of the said instruments employed.*

*[Emphasis Supplies]*

32. The Bench notes that in terms of Section 4 of the Maharashtra Stamp Act, 1958 the principal document in the transaction is the mortgage deed which has been fully stamped by paying a stamp duty of Rs.75,000/-. Therefore, the said loan agreement is chargeable with a duty of only Rs.100/- and there is no deficiency in payment of stamp duty as alleged.
33. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.
34. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
35. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Vinit Gangwal, having registration No. IBBI/IPA-002/IP-N00091/2017-2018/10235, Email id: [vinitgangwal@sudharman.in](mailto:vinitgangwal@sudharman.in), is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
36. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order and shall be applicable by prohibiting

institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during the Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

37. That as prescribed under Section 13 of the Code on the declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

38. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 and Section 15 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

39. In view of the above, the Bench "**Dismisses**" **IA 317/2021** challenging the maintainability of CP No.1072 of 2020 filed by the Respondent/Corporate Debtor. The Bench in terms of the above, "**Allows**" the Company Petition No. **1072/(IB)-MB-V/2020** u/s.7 initiating CIRP against the Corporate Debtor Yeshodeep Infrastructure Private Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

40. Ordered Accordingly.

Sd/-  
Chandra Bhan Singh  
Member (Technical)

Sd/-  
Suchitra Kanuparthi  
Member (Judicial)