

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB)3584/MB/C-IV/2019**

Under section 9 of the I&B Code, 2016

In the matter of

**Avantor Performance Materials India  
Limited**

...Operational Creditor

v/s.

**Rohan Consortium Private Limited**

[U74900MH2012PTC231206]

...Corporate Debtor

Order Delivered on: 15.11.2021

*Coram:*

Mr. Rajesh Sharma

Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner

:

Mr. Nand Kishore, Advocate

For the Respondent

:

Mr. Ramesh Nair, Director in person

ORDER

*Per: Rajesh Sharma, Member (Technical)*

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Avantor Performance Materials India Limited ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Rohan Consortium Private Limited ("the Corporate Debtor"). The Operational Creditor has filed this

application through Mr. Ashvnee Kumar Bhadouria, Zonal Sales Manager of Operational Creditor, vide Board Resolution dated 27.03.2019 claiming the total outstanding as under:

Rs. 81,91,452.56/- as principal amount;

Rs. 20,25,725.83/- as interest @ 21% per annum till 30.09.2019;

Rs.1,02,17,178.39/- as total outstanding as on 15.10.2018.

2. The Operational Creditor is engaged in the business of manufacturing and marketing of laboratory chemicals and consumables, in-vitro diagnostic products and scientific laboratory products.
3. The case of the Operational Creditor is as under:
  - a. The Operational Creditor submits that the Corporate Debtor approached the Operational Creditor for supply of various instruments and reagents. Pursuant to the same, several purchase orders were issued by the Corporate Debtor for purchase of the laboratory instruments and/or chemicals/ reagents by emails. Accordingly, in terms of the various purchase orders issued by the Corporate Debtor, the Operational Creditor has supplied the instruments. The Operational Creditor raised several invoices in respect of the said goods supplied to the Corporate Debtor. The details of the invoices are as follows:

Sr. No.	Invoices No.	Amount	Due date
1	7113022972	13,62,900/-	27.03.2018
2	7113023368	13,45,200/-	25.04.2018
3	7573008309	4,06,000/-	19.05.2018
4	7113023841	4,06,000/-	19.05.2018
5	7573008388	3,60,136/-	29.05.2018

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6	7573008632	43,344/-	09.07.2018
7	7463001515	7,28,000/-	6.06.2018
8	7113024389	17,640/-	13.06.2018
9	7113025442	99,960/-	13.07.2018
10	7113024521	6,67,200/-	25.06.2018
11	7573008576	78,650.88/-	27.06.2018
12	7113024569	11,21,000/-	26.07.2018
13	7113024735	7,08,000/-	28.06.2018
14	7113024520	4,23,360/-	25.06.2018
15	7113024705	1,81,440/-	27.06.2018
16	7113024710	24,192/-	27.06.2018
17	7113024711	1,48,417.92/-	27.06.2018
18	7113024858	7,67,000/-	10.06.2018
19	7107009135	24,085.28/-	31.07.2018
20	7573008787	42,336/-	31.07.2018
21	7573008788	60,480/-	31.07.2018
22	7373008984	5,292/-	30.08.2018
23	7573008800	2,328.48/-	31.07.2018
24	7463001985	43,344/-	31.07.2018
25	7573008807	1,87,488/-	31.07.2018
26	7195000887	1,17,600/-	30.08.2018
27	7113026190	4,24,800/-	30.08.2018
28	7573008464	1,52,880/-	30.06.2018
29	7573008318	2,84,144/-	21.05.2018

- b. The Corporate Debtor had issued several cheques drawn on the State Bank of India towards the amount payable to the Operational Creditor against some of the invoices which are outstanding till date. The Operational Creditor presented the cheques received from the Corporate Debtor for encashment to the drawee bank being the State

Bank of India through its bank being the ICICI Bank Limited. However, the cheques were dishonoured and returned with the remark '*funds insufficient*'.

- c. The Operational Creditor, accordingly, addressed several correspondences to the Corporate Debtor informing them of the dishonoured cheques and requested the Corporate Debtor to pay the amount covered by the dishonoured cheques and the corresponding expenses incurred by the Operational Creditor as and by way of '*returned cheque fee*'. However, as no response was received by the Corporate Debtor, the Operational Creditor initiated proceedings u/s 138 of the Negotiable Instruments Act, 1881, in respect of the dishonoured cheques before the Chief Metropolitan Magistrate Patiala House, New Delhi. The copy of the said Complaint is annexed as Exhibit "C" of the petition.
- d. The Operational Creditor issued a demand notice dated 23<sup>rd</sup> November, 2018 u/s 8 of the Code for 32 outstanding invoices for an outstanding amount of Rs.96,51,989.56/- (Rupees ninety-six lakhs fifty-one thousand nine hundred and eighty-nine and paise fifty-six only). However, Corporate Debtor has not replied to said demand notice till date.
- e. Subsequent to issuance of the said demand notice, the Corporate Debtor have made payment certain amounts and the same can be seen in the Bank Statement maintain by the Operational Creditor. The Bank Certificate dated 26<sup>th</sup> September, 2019, certifying the total amount received by the Operational Creditor from the Corporate Debtor also includes the amount received against certain other invoices which were not outstanding at the time of issuing the Demand Notice dated 23<sup>rd</sup>

November, 2018. As on date of this petition, payment against 29 invoices is outstanding.

- f. The total Principal amount outstanding now against 29 invoices is Rs.81,91,452.56/- along with interest thereon, @ 21% per annum amounting to Rs.20,25,725.83/- from the date of default till 30.09.2019 and further interest @ 21% per annum until payment to the Operational Creditor. Therefore, the total amount dues as on 30.10.2021 is Rs.1,02,17,178.39/-.
4. The date of default as mentioned in the petition at page 14 is 15.10.2018.
  5. Mr. Ramesh Nair, Director of the Corporate Debtor appeared in person and filed affidavit in reply and submits as under:
    - a. The demand Notice 23.11.2018 issued by the Operational Creditor was sent on wrong address whereas during the association it was specifically submitted two addresses for further communications and business transaction.
    - b. There were some petty disputes between the Operational Creditor and the Corporate Debtor during the course of business and the same was intimated to the Operational Creditor time to time, but, never try to resolve the disputes. The major issue involved was non-delivery of goods, faulty products, non-attending of technical services, delayed/partial supplied, breakages & leakage.
    - c. The Corporate Debtor had achieved turnover of more than Rs.1.16 Crore during the period of business, leaving behind outstanding of Rs.74.77 Lakhs, it shows genuine business relationship with Operational Creditor. In August 2019, Operational Creditor had sent ledger for reconciliation of accounting purpose.

- d. The sales team of the Operational Creditor Mr. Aslam, Mr. Simerdeep, Mr. Ashwini and Mr. Anurag had forcefully supplied the goods just to achieve target of the Operational Creditor which never been ordered by the Corporate Debtor.
- e. Most of the goods which are delivered to the Corporate Debtor are not running item, due to excessive and dead stock, therefore, high outstanding shown by Operational Creditor are among one of the reasons.
- f. Due to dumping of excessive stock, forced to take rental premises at Borivali/Panvel, Navi Mumbai on rental basis, and it was committed by Operational Creditor for reimbursement of rent to Corporate Debtor, whereas failed to reimburse the amount of Rs.10,000/- rent per month for 18 months, total Rs.1,80,000/-. In 2018 Navi Mumbai area had flooded raining seasons and godown was flooded, resulting damage, scrap material loss due to bar practice, dumping of stock to achieve sales team target of Operational Creditor.
- g. On instructions of employee of Operational Creditor, had supplied and delivery the goods to customer instructed by employee of Operational Creditor, resulting non-payment on due date even as on today around 15 Lakh outstanding from the supply of goods was informed about said employee and Operational Creditor, resulting Operational Creditor had removed Mr. Anurag Pandey from his job.
- h. The Corporate Debtor had made payment of Rs.6,81,450/- against invoice no. 7113022972 by transfer dated 02.02.2018.
- i. With reference to Invoice no. 7113023368 dated 25.04.2018, the purchase is made on commitment of immediate order of instrument by sales of persons of Operational Creditor which never translate into sale.

Therefore, non-fulfilment of commitment, the Corporate Debtor force to procure another space (godown), in Borivali, Mumbai to store the instrument. Hence, stock line with the Corporate Debtor.

- j. With respect to Invoice No. 7573008309 dated 19.05.2018, neither product nor invoice received by the Corporate Debtor.
- k. With respect to Invoice No. 7573008388 dated 29.05.2018, the same delivered after more than 15 days and same goods near to expiry, hence could not be sold. The material is lying with the Corporate Debtor.
- l. With respect to Tax Invoice No. 7463001515 dated 06.06.2018, for Rs.7,28,000/-, ten numbers Electrolyte machine was purchased and out of 10 machines, five numbers of machines returned back due to fault in machine. The Operational Creditor felt to attend the issues. Hence machines lying with godown of the Corporate Debtor.
- m. With respect to purchase order dated 12.06.2019 placed upon the Operational Creditor for following sets of goods;
  - i. Mindray 9 Part Generic Diluent of 20 Ltrs. 100 Pakc.
  - ii. Mindray 3 Part Generic CF Lyse 500 ml, 100 Bottles.
  - iii. Mindray 3 Part Generic Rins, 20 Ltrs, 30 Pack.

The Operational Creditor only supplied 100 Bottles of Mindray was 3 Part Generic CF lyse 500 ml in Tax Invoice No. 71113024389, dated 13.06.2018 and Tax Invoice No. 71113025442 dated 31.07.2018. The purchase order dated 12.06.2019, placed for entire, due to non-availability of goods Operational Credor have failed to supply as per the purchase order. Hence, stock is lying with the Corporate Debtor.

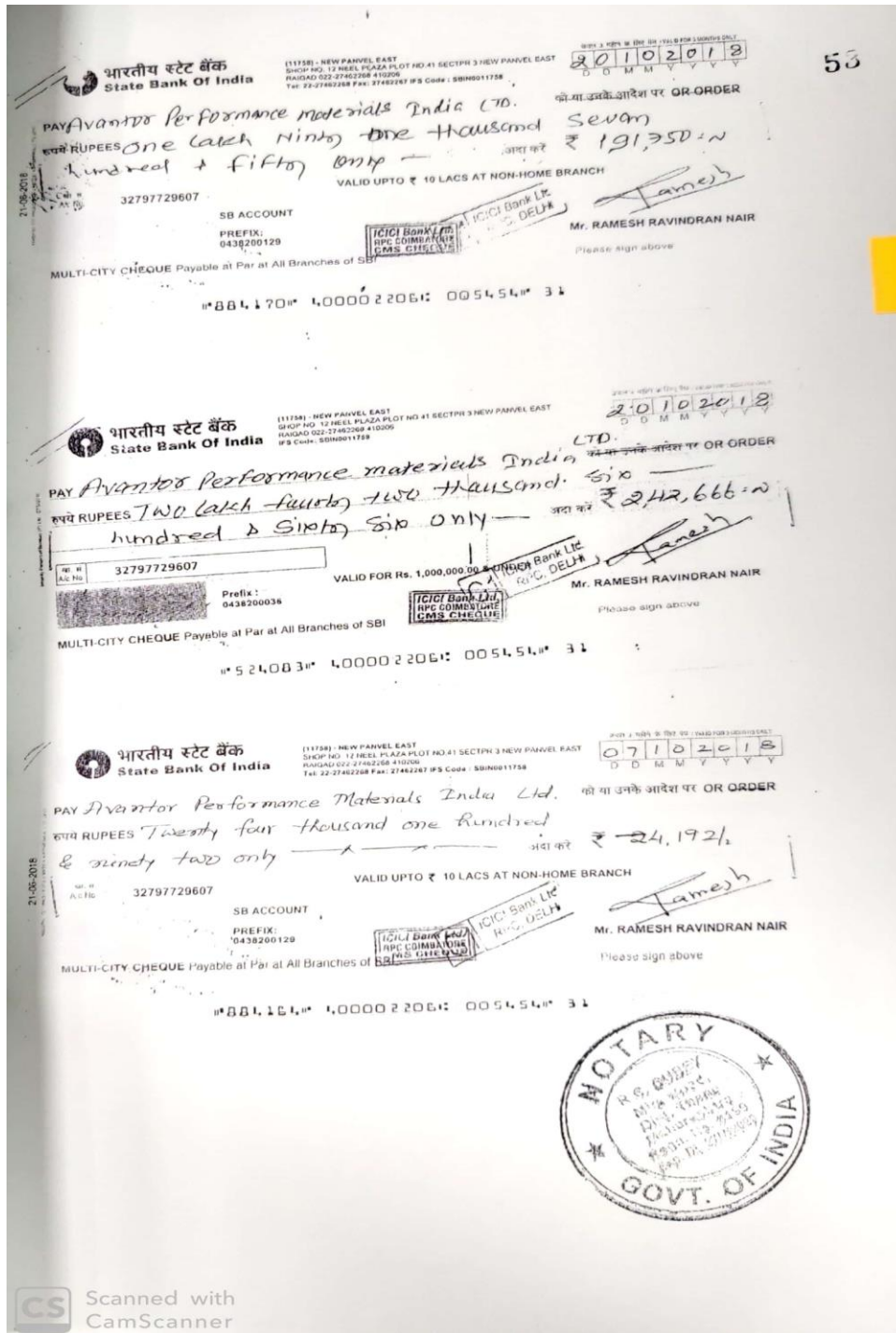
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- n. With respect to Invoice NO. 7113024521, unsold stocks line with Corporate Debtor. With respect to Tax Invoice NO. 7113024569, dated 26.06.2018, dump by sales team of Operational Creditor. Hence, stocks lying with the Corporate Debtor. With respect to Tax Invoice No. 7113024520, and Tax Invoice No. 7113024705, are unsold stocks lying with the Corporate Debtor.
- o. With respect to Tax Invoice No. 7113024858, dated 10.06.2018, payment made by NEFT, having UTR No. SBIN318258681373, for Rs.5,67,000/- dated 15.09.2018 and UTR No. SBIN718264048435 for Rs.2,00,000/- dated 21.09.2018 to Operational Creditor.
- p. With respect to Tax Invoice No. 7107009135, dated 26.07.2018, payment made to RFCL, a sister concern of Operational Creditor upon instruction from Mr. Aslam, vide NEFT, having UTR No. SBIN818205749888, dated 24.07.2018 after adjusting 10% discount of spares.
- q. With respect to Tax Invoice No. 7573008807 dated 31.07.2018 for Rs.1,87,488/- raised by Operational Creditor, after two months of purchase order dated 29.05.2018 i.e. nearing expiry of products, leakage, breakages in packing. Hence, goods lying with Corporate Debtor.
- r. With respect to Tax Invoice No. 719500887 dated 30.08.2018 for Rs.1,17,600/- raised by Operational Creditor, delivered the products of nearing expiry of product. Hence, goods lying with Corporate Debtor.
- s. With respect to Tax Invoice No. 7113026190 dated 30.08.2018 for Rs.4,24,800/- raised by Operational Creditor for non-moving goods. Hence, goods lying with Corporate Debtor.
- t. With respect to Tax Invoice No. 7573008464 dated 13.06.2018 for Rs.1,52,880/- raised by Operational Creditor, delivered the goods in

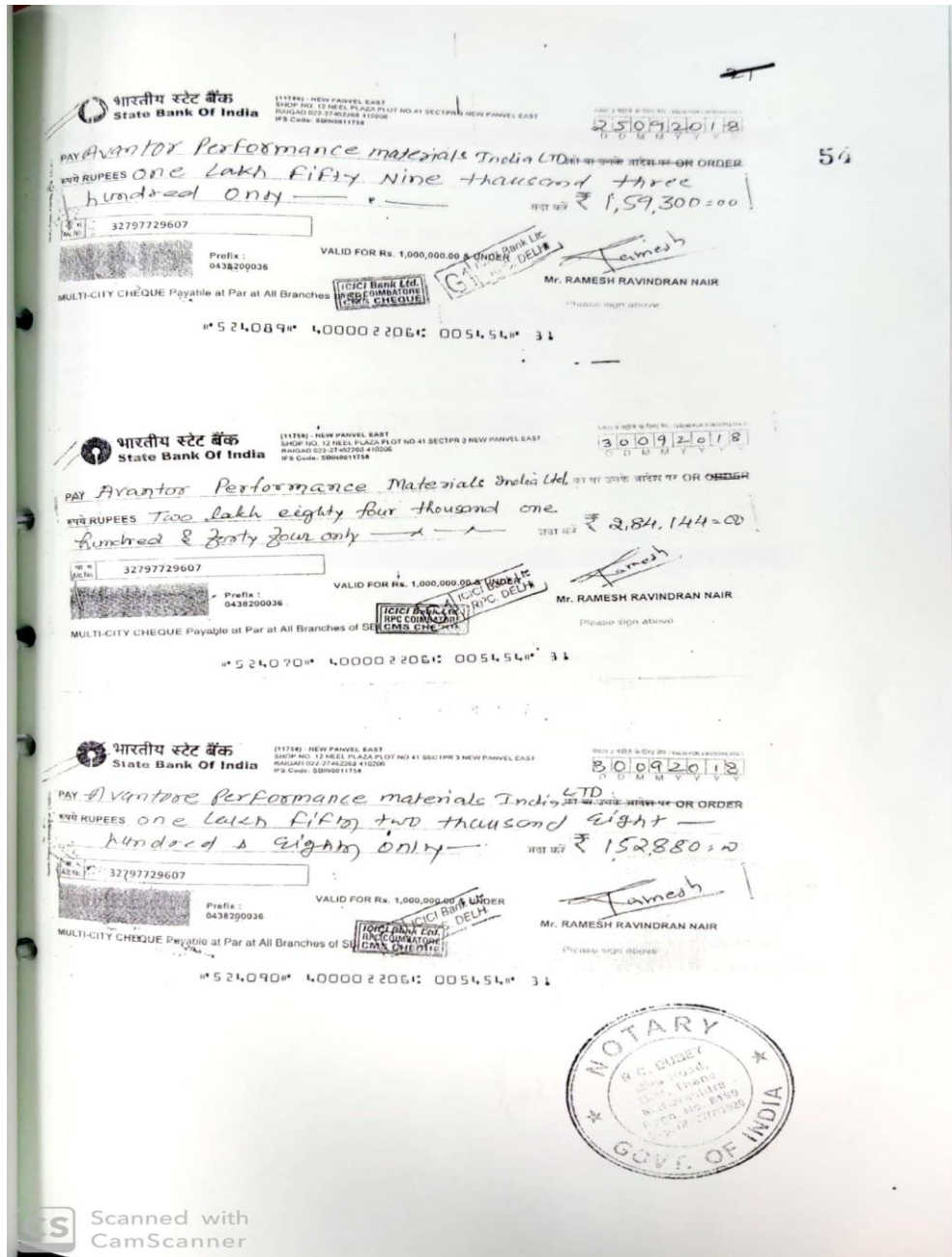
awful condition, resulting damages, leakages in corrugated boxes. Hence, it was thrown as scrap.

- u. With respect to Tax Invoice No. 7573008318 dated 21.05.2018 for Rs.2,84,144/- raised by Operational Creditor, after two months of purchase order dated 27.03.2018 i.e. nearing expiry of products, leakages, breakages in packing. Hence, goods lying with Corporate Debtor.

Findings:

6. We have heard the arguments of Learned Counsel for Operational Creditor and the Director present in the matter and perused the records.
7. The Operational Creditor has issued 29 unpaid invoices to the Corporate Debtor as per the work order for total amount of Rs.81,91,452.56 and along with the interest outstanding as on 15.10.2018 comes to Rs.1,02,17,178.39/. The invoices have been placed at pp 84-224 of the Petition. The Operational Creditor has issued different invoices for different work orders. The invoices carry provision of 21% interest for delay payment.
8. The Operational Creditor has submitted the Statement of Accounts of Corporate Debtor showing the details of the unpaid invoices. The said Statement of Accounts is placed at p241 of the Petition.
9. The Corporate Debtor issued six cheques dated 20.10.2018, 07.10.2018, 25.09.2018 and 30.09.2018, which are duly signed by the Director of the Corporate Debtor, to the Operational Creditor which were dishonored on 21.12.2018. The said cheques are attached at pp 53 & 54 of the Petition. The cheques are as follows:





10. It is also observed from the records that the Corporate Debtor has made some payments towards invoices through cheques. The Operational Creditor has submitted the Certificate of ICICI Bank which is at pp 239-240 confirming the payment of Rs.32,09,966/- from the Corporate Debtor. The details of the said payment are as under:

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**ICICI Bank**

Annexure I:  
Current Account entries

Transaction ID	Value Date	Description	Transaction Amount(INR)
S6067676	2/7/2018	RTGS-SBINR12018070200033679-Mr RAMESH RAVINDRAN N	340725
S40497771	21-07-2018	NEFT-SBIN718202356444-Mrs NEELIMA RAMESH NAIR-/AT	66375
S54374251	23-07-2018	NEFT-SBIN818204250687-Mrs NEELIMA RAMESH NAIR-/AT	66375
S59926663	24-07-2018	NEFT-SBIN818205749888-Mr RAMESH RAVINDRAN NAIR-/A	23412
S44967465	18-08-2018	NEFT-SBIN818230607049-Mrs NEELIMA RAMESH NAIR-/ATT	3990
S25252350	30-08-2018	NEFT-SBIN718242597021-Mrs NEELIMA RAMESH NAIR-/AT	60480
S78824753	5/9/2018	NEFT-SBIN318248991324-Mr RAMESH RAVINDRAN NAIR-/A	340725
S58699725	15-09-2018	NEFT-SBIN318258681373-Mr RAMESH RAVINDRAN NAIR-/A	567000
S654065	21-09-2018	NEFT-SBIN718264048435-Mr RAMESH RAVINDRAN NAIR-/A	200000
S63581910	5/12/2018	NEFT-SBIN518339331034-Mrs NEELIMA RAMESH NAIR-/AT	425000
S66439457	26-12-2018	NEFT-SBIN918360934337-Mrs NEELIMA RAMESH NAIR-/AT	471400

CMS Credits

CLG DATE	CR DATE	INST NO	DRAWER NAME	INST AMOUNT	DR N BK	INST DATE
6/14/2018	6/15/2018	524069	RAMESH	21504	SBI	6/12/2018
6/13/2018	6/14/2018	524068	RAMESH RAVINDRAN	79968	SBI	6/11/2018
5/17/2018	5/18/2018	524066	RAMESH RAVINDRAN NAIR	414792	SBI	5/10/2018
8/10/2018	8/13/2018	524085	RAMESH RAVINDRAN	21945	SBI	8/10/2018
8/13/2018	8/14/2018	159067	NEELIMA RAMESH NAI	66375	SBI	8/13/2018
8/16/2018	8/17/2018	524087	RAMESH RAVINDRAN N	39900	SBI	8/16/2018

ICICI Bank Limited  
Express Building  
9-10, Bahadur Shah Zafar Marg,  
Delhi - 110 002,  
Delhi, India.

Website www.icicibank.com  
CIN :L65190GJ1994PLC021012

Regd. Office : ICICI Bank Tower, Near Chakli Circle,  
Old Padra Road, Vadodara 390 007,  
India.  
Corp. Office : ICICI Bank Towers, Bandra-Kurla  
Complex, Mumbai 400051, India.

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11. By making the part payment, the Corporate Debtor has himself admitted its liability toward the amount due and payable to the Operational Creditor.
12. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of rupees one lakh stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating

Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

13. The Operational Creditor has not proposed the Interim Resolution Professional (IRP) in the matter. Therefore, this Bench appoints Mr. Vasudev Ganesh Nayak Udipi, registration No. IBBI/IPA-001/IP-P00019/2016-17/10043, E-mail: [uvnayak2004@yahoo.com](mailto:uvnayak2004@yahoo.com); Mobile: 9869637404; as the Interim Resolution Professional in the matter.
14. It is, accordingly, hereby ordered as follows: -
  - (a) The petition bearing CP(IB) 3584/MB-IV/2019 filed by Avantor Performance Material Private Limited, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Rohan Consortium Private Limited (“the Corporate Debtor”), [CIN: U74900MH2012PTC231206], is admitted.
  - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
    - (i) 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;
    - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
    - (iii) 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 (SARFAESI) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) 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;
  - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Vasudev Ganesh Nayak Udupi, registration No. IBBI/IPA-001/IP-P00019/2016-17/10043, as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this

regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Rajesh Sharma  
Member (Technical)

15.11.2021

Sd/-

Suchitra Kanuparthi  
Member (Judicial)