BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

CP(IB) No. 57/9/NCLT/AHM/2019 With
IA 201 of 2020
IA 123 of 2020

Coram: Hon'ble Mr. MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
Hon'ble Mr. VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.08.2020

Name of the Company: Raghuvir Buildcon Private Limited
V/s
Ketan Construction Limited

Section: 9 of Insolvency and Bankruptcy Code, 2016

ORDER

Learned Counsel Mr. Saumitra Chaturvedi appeared for the Operational Creditor.

Learned Counsel Mr. Jaimin R. Dave appeared for the Corporate Debtor.

The case is fixed for pronouncement of order.

The order is pronounced in open Court, vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 10th August, 2020

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BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1

C.P. (I.B.) No.57/9/NCLT/AHM/2019 With
IA 201 of 2020
IA 123 of 2020

In the matter of:

Raghuvir Buildcon Private Limited

Having addressed at:

201, Jalaram House, 2nd Floor,
Nr. Atma Jyoti Ashram, Ellora Park,
Vadodara-390023

.....Operational Creditor

Versus

Ketan Construction Limited

Having addressed at:
Nr. 150Ft Ring Road,
Amin Marg Junction,
Amin Marg, Rajkot-360001.

.....Corporate Debtor

Order delivered on 10th August, 2020.

Coram: Madan B. Gosavi, Member (J)
Virendra Kumar Gupta, Member (T)

Appearance ...

Learned Senior Counsel Mr. Navin Pahwa a.w. Learned Counsel Mr. Ravi Pahwa, for the Operational Creditor.

Learned Senior Counsel Saurabh N. Soparkar a.w. Learned Counsel Mr. Jaimin Dave & Ld. Counsel Priyank Dave for the Corporate Debtor.

[Per : Virendra Kumar Gupta, Member (Technical)]

1. The facts, in brief, are that the Corporate Debtor on being awarded a contract by Government of Andhra Pradesh entered into a sub-contract with the Operational Creditor for the execution of the project on back to back basis. The agreement was entered on 27.03.2015 and the total value was 187 crores approximately. The Operational Creditor remained in the project till 25.01.2017 and raised invoices to the tune of Rs. 69.19 crores approximately for the work done by the Operational

Creditor. The Operational Creditor made claims from time to time for payment of its outstanding dues which included principal sum as well as interest for the delay in payment. However, due to non-payment of its total dues, Operational Creditor filed this application u/s 9 of IBC, 2016 on 20.12.2018.

2. The learned senior counsel appearing on behalf of the Operational Creditor narrated these basic facts and drew our attention to the letter of award dated 27.03.2015 (copy of which is placed at page 13 to 16 of the petition). Thereafter, he referred to summary of bills raised and payments received as well as the balance amount due. The learned senior counsel further submitted that in all 14 running bills were raised out of which 13 bills were certified in toto. The amount payable of these 13 running bills after deduction of TDS and seignorage was 58.12 crores approximately against which payment of Rs. 55.89 crores approximately was made and a sum of Rs. 2.24 crores approximately was outstanding which was due and payable by the Corporate Debtor and for non repayment thereof this petition was admissible as this amount was much more than Rs. 1 Lakh being threshold limit for filing of an application u/s 9 of IBC, 2016. For this proposition, he relied on the following judicial decisions.

(i) (2017) 84 Taxman. Com 320(SC)

Innovative Industries Limited vs. ICICI Bank Ltd.

(ii) (2019) 104 Taxman. Com 257 (NCLAT)

Shashi Kanth Jain vs. Alloys & Metals (India)

3. Thereafter, the learned senior counsel submitted that as far as running account bill no. 14 was concerned, it was raised for a sum of Rs. 9.34 crores approximately after taking into consideration the work done as well as other sums which were payable by the Corporate Debtor till that date. Learned senior counsel contended that although this bill was not certified as such but there was, in fact, no dispute even for payment of this bill and for this contention, he placed strong reliance on the certificate dated 17.04.2017 issued by the Corporate Debtor to the Operational Creditor certifying that the Operational Creditor had executed actual work of Rs. 69.19 crores approximately which included the amount of bill no. 14 as well. It was also contended that veracity of this certificate was in no doubt at all. He further contended that certificate dated 17.04.2017 also acknowledged the fact that neither any fine was imposed on the Operational Creditor nor any work had been abandoned by the Operational Creditor. Learned senior counsel

further contended that the so called claim of pre-existing dispute was having no substance as these e-mails were simply of the nature of routine correspondence in the capacity of main contractor. To further buttress this point, the learned senior counsel submitted that payments of Rs. 4 crores, 1.99 crores and 1 crore approximately were made on 25.04.2017, 23.10.2017 and 16.01.2018 subsequently even after abandonment of the project on 25.01.2017. This fact also showed that there was no dispute at any point of time. Thereafter, the learned senior counsel claimed that a cheque of Rs. 50 Lakh was also given on 01.02.2017 which was, however, dishonoured but the fact of issuance of such cheque by itself was sufficient to establish that this amount was due and payable by the Corporate Debtor, hence, for this reason alone, the petition was liable to be admitted. For this proposition, he placed reliance on the following decision:

(i) **Manesh Arawal vs. Bank of India and Anr.**
Company Appeal (AT) (Insolvency) No. 1182 of 2019
(ii) (2018) 97 Taxman.com 667 (NCLT, Ahmedabad)
Kadillac Chemicals (p) Ltd. Vs. Shakti Bioscience Limited.

4. As regard to the objections raised by the Corporate Debtor for giving a false affidavit u/s 9(3)(b) of IBC, 2016, it was contended that the affidavit, in fact, referred to Demand Notice as it was clearly mentioned therein that no notice of dispute was given by the Corporate Debtor **within the time** as stipulated under the IBC, 2016. In this regard, he gave the chronology of events and sequence of dates relating to delivery of notice u/s 8 of IBC, 2016 and the date of receipt of reply thereto from the Corporate Debtor. It was also contended that there was no suppression of facts. In respect of his contentions, he placed reliance on the following judicial decisions.
(i) (2018) 2 SCC 674
Macquarie Bank Ltd. vs. Shilpi Cable Technologies Ltd.
(ii) Company Appeal (AT) 17 of 2020
Sangeeta Goel vs. Roidec India Chemicals Pvt Ltd.

5. Learned senior counsel for the Corporate Debtor, at the very outset, pleaded that it was a case of pre-existing dispute. In this regard, he drew our attention to e-mails written by the Corporate Debtor to the Operational Creditor during the period from 01.02.2016 to 03.04.2017. Thereafter, he took us to the findings of the Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited vs. Kirusa Software*

Private Limited in detail and based upon the findings of the Hon'ble Supreme Court given in the para 40 of the said order, he pleaded that it was a case of genuine pre-existing dispute between the parties which was neither feeble nor without evidence and, therefore, this application was liable to be dismissed. The learned senior counsel submitted that the scope of examination of pre-existing dispute by Adjudicating Authority has also been defined by the Hon'ble Supreme Court in that case and, therefore, the Adjudicating Authority is having limited jurisdiction just to see that there was a dispute or not and, at this stage, merits of the case were not to be examined. Thereafter, the learned senior counsel referred to para 25 of notice of dispute as well as page 318 and 319 of its reply to show that excess payment had been made by the Corporate Debtor and a sum of Rs. 2.07 croes approximately was recoverable from the Operational Creditor. Thereafter, he took us to the significant terms and conditions of the letter of award (sub-contract) dated 27.03.2015 to emphasize on the fact that the Corporate Debtor was liable to pay the Operational Creditor only after receipt of payment from end client. In this regard, he drew our attention to Clause 2(i) of the sub-contract. The learned senior counsel, thereafter, contended that this application was also liable to be rejected/dismissed for the reason that it was a case of suppression of facts i.e. reply to Demand Notice by the Corporate Debtor was not disclosed nor any e-mails which were exchanged between the parties were brought to the notice of this Authority. It was contended that that sub-contract, in fact, was of the value of Rs. 187 crores, however, it was presented as of the value of Rs. 69.19 crores. The learned senior counsel, in support of such claim, submitted that one must come with clean hands and merely on the ground of falsehood, this petition was liable to be dismissed. In support of this plea, he placed reliance on the decision of Hon'ble Supreme Court in the case of S.P Chengalvaraya Naidu (Dead) by L.Rs. vs. Jagannath (Dead)by L. Rs. and Ors. in Civil Appeal No. 994 of 1972 decided on 27.10.1993. The learned senior counsel also placed reliance on the decision of NCLT, Chennai Bench in the case of OPG Metals (P.) Ltd vs. Pavai Alloys & Steels (P.) Ltd. (taxman.com251, NCLT-Chennai) for the proposition that where affidavit filed u/s. 9(3) (b) of IBC, 2016 was wrong, the application filed u/s 9 was liable to be rejected for suppression of material fact. As regard to reliance placed by the Operational Creditor on the certificate dated 17.04.2017 and letter dated 23.10.2018, the learned senior counsel contended that the

Corporate Debtor and Operational Creditor were related to each other and this certificate was issued as accommodation gesture, hence, it could not be used against the Corporate Debtor. The learned senior counsel, thereafter, again pleaded that there was pre-existing dispute much prior to the issue of Demand Notice u/s 8 of IBC, 2016, hence, such application was not maintainable. For this proposition, the learned senior counsel placed reliance on the order of Hon'ble National Company Law Appellate Tribunal (NCLAT) in the case of Karpara Projects Engg. (P.) Ltd. vs. BGR Energy Systems Ltd. taxman.com502 and in the case of BR Construction vs. G.R. Infraprojects Ltd. para 27. He also placed reliance on the decision of Hon'ble NCLAT in the case of Battula Anjaneyulu vs. DBM Geotechnics & Construction (P.) Ltd. (taxman.com403) for the proposition that e-mails exchanged between the parties could form the basis of pre-existing dispute. As regard to the conduct of the Operational Creditor, it was submitted that the project was abandoned in between 25.01.2017, however, intimation thereof was given to the Corporate Debtor on 03.03.2017, hence, approach of Operational Creditor was not ethical and resulted into delay in the execution of project.

6. Thereafter, learned senior counsel submitted that the case laws as regard to the issuance of cheque being an evidence or fact of outstanding dues relied on by the Operational Creditor were distinguishable on facts as there was no pre-existing dispute in those cases as compared to the present case at hand. As regard to the reliance placed by the Operational Creditor on the decision of NCLT in the case of Sangeeta Goel (supra) vs. Riodec India Chemicals Private Limited, it was contended that this decision was not correctly interpreted by the Operational Creditor as in that case it was held that affidavit u/s 9(3)(b) was not required when the notice of dispute had been sent by the Corporate Debtor whereas in the present case the issue was submission of false affidavit u/s 9(3)(b) of IBC, 2016.

7. In the rejoinder, the learned senior counsel mainly reiterated earlier submissions made by him and also emphasised on the point that considering the total circumstances of the case, the undisputed due amount was more than Rs. 1 Lakh, hence, this petition was liable to be admitted and also the reliance on such e-mails stood nullified by the subsequent payment made by the Corporate Debtor as well as certificate issued by the Corporate Debtor as regard to actual work done by the Operational Creditor.

8. We have considered the submissions of both the parties and material on record. It is noted that the Corporate Debtor was awarded contract by CAD Department, Government of Andhra Pradesh, who in turn entered into sub-contract with the Operational Creditor on 27.03.2015. The total value/price of sub contract works is approximately 187 Crores. The payments have to be made on 'item rate' basis. Such payments are to be made within seven days from the date of receipt of payment by the Corporate Debtor from the end client (Government) on the basis of Bills raised by the Corporate Debtor. As per the sub-contract, supervision and quality check of the said work i.e. sub-contract work is within the scope of main contractor i.e. Corporate Debtor. Retention money @ 5% has to be recovered which is to be released against the submission of unconditional Bank guarantee as and when the same is released to the Corporate Debtor by the client. It is noted that the Operational Creditor raised 14 RA Bills starting from 22.08.2015 till 25.01.2017. It is also noted that payments have been released by the Corporate Debtor from time to time.

9. It is further noted that along with all running account bills schedules/annexures of work done along with bill of quantity have been attached. It is also noted that in each running bill period of work done is also mentioned. It is also noted that stipulated scheduled date of completion of project is 26.03.2018, however, the fact is that the Operational Creditor remained part of the project only up to 25.01.2017. As per the Operational Creditor work for the value of Rs. 69.19 crores approximately was done and which has been billed in 14 running account bills. Bill No. 1 to 13 has been duly certified by the corporate Debtor and 14th running bill has not been certified. The value of the work done after excluding the running account bill no. 14, T.D.S and seignorage stands at Rs. 58.12 crores. The Corporate Debtor has paid a sum of Rs. 55.87 crores approximately against the same. Outstanding balance amount against these 13 running account bills stands at Rs. 2.24 crores approximately. The amount raised in 14th running account bill stands at Rs. 9.34 crores approximately. The total outstanding amount has been claimed at Rs. 11.59 crores excluding interest for the period of delay. The corporate debtor has also made substantial payments subsequent to parting of ways. The work execution certificate has also been issued by the corporate debtor subsequently wherein satisfaction has been shown as regard to performance of the operational creditor.

10. In the background of above basic facts, we shall deal with each of contentions raised by the parties. However, the contention of the Corporate Debtor that there is a case of pre-existing dispute which is based upon e-mails written by the Corporate Debtor will be dealt in the later part of the order as it relates to the scope of examination of such claims/counter claims by the Adjudicating Authority and also of the aspect of nature of the term 'dispute' itself.

11. The Operational Creditor has firstly claimed that cheque for Rs. 50 Lacs was issued by the Corporate Debtor which was dishonoured and returned by the Bank on 17.01.2018 and this action of the Corporate Debtor was in itself sufficient to make this application admissible as value of cheque was of more than the threshold limit of Rs. 1 lakh and issuance of this cheque was an admission of its liability to pay. Learned senior counsel for the Operational Creditor has also relied on two decisions in respect of such claim whereas the learned counsel for the Corporate Debtor has distinguished such decisions by submitting that in those cases no pre-existing dispute was involved. We are afraid this plea goes against the Corporate Debtor because if after considering the disputes, a cheque is issued which is dishonoured for insufficient funds this goes to show that the Corporate Debtor, being issuer of the cheque, issued the cheque and delivered the cheque after fully analyzing the issues that this amount was, in fact, payable in spite of such disputes. Thus, in our considered view, for this reason alone, this application is liable to be admitted.

12. The next contention raised by the Operational Creditor is that unqualified work done certificate was issued by the Corporate Debtor at the request of the Operational Creditor. It is noted that certificate of work experience dated 17.04.2017 stating actual cost/value of work completed at Rs. 69.19 crores approximately has been issued by the Corporate Debtor. Subsequently, the Ircon International Limited wrote a letter dated 7th/8th October, 2018 addressed to the Corporate Debtor for verification of this work certificate issued by the Corporate Debtor on 17.04.2017. The Corporate Debtor vide its reply dated 23.10.2018 confirmed that the experience certificate was issued by the Corporate Debtor to the Operational Creditor on the said date. Learned senior counsel for the Corporate Debtor tried to show that such certificate was incorrect as total amount of work done shown in the certificate was 69.19 crores approximately but the date of completion of said work was

mentioned as 31.03.2016 which was not correct as this value was for work done up to 25.01.2017. However, considering all the correspondences/material on record, the claim of the Corporate Debtor is liable to be rejected as date of 31.03.2016 is an instance of typographical mistake only as even Corporate Debtor itself in subsequent letter of 23.10.2018 has mentioned such date as 25.01.2017. Further, it is noted that this certificate has been given after leaving of the project by the Operational Creditor and all e-mails written by Corporate Debtor up to 07.03.2017 which have been claimed as proof of pre-existing dispute. Confirmation of certificate has been given as late as on 23.10.2018 wherein again amount of **'actual work done and actual date of completion'** has been mentioned. Further, in the certificate dated 17.04.2017, it has also been certified by Corporate Debtor that the Corporate Debtor has carried out the above work satisfactorily. Thus, considering the material which has been brought on record by the Corporate Debtor itself, there remains no substance or merit in the claims of the Corporate Debtor that it is a case of pre-existing dispute, thus, for this reason also, this petition is liable to be admitted.

13. One contention which has been raised by the Corporate Debtor is that the Corporate Debtor had made an excess payment to the tune of Rs. 2.07 crores approximately. The working of the same has been placed at page 385 and 386 of their reply. From the perusal of this statement, it is apparent that the deductions for defective work in structure and lining stand at Rs. 10 lacs and 3 lacs respectively. Most of other deductions are for non-submissions of documents or some charges to be recovered by the Corporate Debtor which cannot be termed as a dispute much less than pre-existing dispute for the simple reason that no back up documents have been attached nor any other evidence such as deduction for the same by end client (Government of Andhra Pradesh) from the bills of Corporate Debtor has been brought on record. It is further noted that even contractual provisions are not mentioned under which such deductions/recoveries have been made except in case of retention money. Having said so, it may not be out of place to mention that from the perusal thereof it appears that such deductions have been worked out just to justify the non-payment as no steps for the recovery of the same have been taken. Further, additional payments have been made subsequent to the e-mail of 07.03.2017 which is the basis of such deductions/recoveries, hence, differences stand resolved. It is further

noteworthy that in this computation, the value of work done by the Operational Creditor has been accepted by the Corporate Debtor at Rs. 65.50 Crores which is more than the amount of work done and billed by the Operational Creditor in 13 running bills, hence, it is apparent that running account bill no. 14 has also been taken into consideration. It is also noted that amount of retention money of Rs. 3.27 crores approximately has been stated to be kept on hold and to be released on successful completion of diffeliability period of the project. Thus, this amount by no stretch of imagination can lose its character of money belonging to the Operational Creditor which is due and payable and the same cannot be an instance of dispute under any circumstances. Thus, if this amount is excluded from the recovery and deduction, the outstanding sum immediately payable by the Corporate Debtor to the Operational Creditor works out to Rs. 1.20 crores approximately i.e. difference between the amount of retention money and the amount excess paid amount work out by the Corporate Debtor 3.27crores-2.07crores (referred at page 385 and 386 of reply affidavit). Such amount is more than Rs. 1 Lac, hence, for this reason also the petition is liable to be admitted. Another factor which is of vital importance is that even if we accept all recoveries/deductions including retention money as such then also there would be money payable by the Corporate Debtor. This can be explained as follows:

The total work done by Operational Creditor as per working given at page no. 385 of affidavit in reply of the Corporate Debtor amount has been stated at Rs. 69.19 crores. The amount work certified by the Corporate Debtor has been stated at Rs. 65.50 crores. The variation between these two has been sated as 3.69 crores which becomes payable in view of the certificate of work experience dated 17.04.2017 given by the Corporate Debtor. If net excess paid amount of Rs. 2.07 crores is deducted from this amount then an undisputed amount payable to the Operational Creditor stands at Rs. 1.67 crores, being the difference between 3.69 crores and 2.07 carores. Thus, considering the facts as stated above, claim of amount excess paid by corporate debtor becomes null and void and such working of the Corporate Debtor itself leads to an inevitable conclusion that there is an undisputed outstanding balance which is payable by the Corporate Debtor to the Operational Creditor which is more than Rs. 1 Lac.

14. Next line of defence was taken that the Operational Creditor abandoned the project in between even without informing the Corporate Debtor on

25.01.2017 as mail written on 03.03.2017. However, we are unable to accept this fact that Corporate Debtor had no knowledge of such abandonment until it received such mail for the reason that Corporate Debtor is Principal Contractor and it is supervising, coordinating, monitoring and controlling the project. Further, Corporate Debtor after such abandonment has made substantial payments to the Operational Creditor, issued work done certificate as well and did not file any claim for damages, penalties etc. against the Operational Creditor, hence, its plea that it resulted into adverse consequences remains shallow. Further, abandonment as such has no bearing on the admissibility of this application, because what is claimed by the Operational Creditor is the amount due and payable in respect of work done by the Operational Creditor and consequences of such abandonment, if any, have to be dealt in accordance with the terms and conditions of the contract between the parties and, as stated earlier so, no material has been brought on record to show that any action has been taken by the Corporate Debtor against the Operational Creditor on this score. Thus, such plea has got no bearing on the present proceedings.

15. Another defence was taken that the payment was to be released by the Corporate Debtor to the Operational Creditor within the seven days from the receipt of payment from the Government of Andhra Pradesh. During the course of hearing, the fact of receipt of payment from Government was admitted, however, details of such payments have not been brought on record. Further, there is no bar in the contract that the Corporate Debtor cannot make payment to the Operational Creditor from its own resources. As such *modus operandi* of the payment to be released only after receipt of payment has been provided for proper cash flow management. Apart from this, it has not been disputed by the Corporate Debtor that it has not received the payments from the Government of Andhra Pradesh for the milestones of working completed and achieved by Operational Creditor which has been subject of billing and invoicing in all 14 running account bills raised by the Operational Creditor. Thus, this plea also has got no bearing on the admissibility of the application filed by the Operational Creditor.

16. As stated earlier, now we shall deal with the aspect of pre-existing dispute. It may not be out of place to state that first core aspect of admission of an application u/s 9 is *prima facie* whether there is any dispute or otherwise. If it is shown that there exists a dispute between

the Operational Creditor and Corporate Debtor prior to service of notice u/s 8 of IBC, 2016 then the Adjudicating Authority may reject the Application filed u/s 9 of Insolvency and Bankruptcy Code, 2016. The term 'dispute' is defined u/s 5(6) of IBC, 2016 as under:

*"Dispute" **includes** a suit or arbitration proceedings relating to —*
(a) the existence of the amount of debt;
(b) the quality of goods or service; or
(c) the breach of a representation or warranty;

From the perusal of above, it noted that it is an inclusive definition. It is further noted that three situations of dispute covered above may be subject matter of a suit or arbitration proceedings. Thus, dispute may have various dimensions/ aspects which may not related to above three situations only. For example, in case of Mobilox, breach of term relating to non-disclosure agreement was considered as dispute. Further, disputes relating to situations mentioned in clause (a), (b) and (c) of Section 5(6) may not be in the form of suit of arbitration only as such disputes though existing in reality might not have been referred for such process as yet. However, a reference to a suit or arbitration in Section 5 (6) certainly indicates that dispute is something more than a disagreement or difference of opinion or conflict. Even otherwise every disagreement or conflict may also not reach to the stage of dispute necessarily.

17. Before we proceed further, it is considered necessary to reproduce the findings of Hon'ble Supreme Court in the case of Mobilox in Para 40, 45 and 46 as under:

> ***40**. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.*

> ***45.*** *Going by the aforesaid test of "existence of a dispute", it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability.*
>
> ***46****. Learned counsel for the respondent, however, argued that the breach of the NDA is a claim for unliquidated damages which does not become crystallized until legal proceedings are filed, and none have been filed so far. The period of limitation for filing such proceedings has admittedly not yet elapsed.*
>
> *Further, the appellant has withheld amounts that were due to the respondent under the NDA till the matter is resolved.*
>
> *Admittedly, the matter has never been resolved. Also, the respondent itself has not commenced any legal proceedings after the e-mail dated 30th January, 2015 except for the present insolvency application, which was filed almost 2 years after the said e-mail. All these circumstances go to show that it is right to have the matter tried out in the present case before the axe falls.*

18. Thus, the parameter to ascertain as to whether there is a dispute or otherwise can be summarized as under:

i) *The dispute should have prima facie bona fide and exists naturally in a given fact;*
ii) *The grounds for alleging the existence of a dispute should not be spurious, hypothetical, illusory or misconceived;*
iii) *The existence of a dispute need not require further to be proved;*
iv) *The dispute should be natural and not a made to believe dispute.*

The extent of ascertainment/examination of such parameters defines the scope of exercise of jurisdiction by Adjudicating Authority. It has been pleaded that Adjudicating Authority has limited jurisdiction as compared to a Trial Court and Civil Court. We do not have any quarrel or dispute with this proposition. However, intensity of the examination would depend upon the facts and documentary evidences produced by each of the parties in support of their claims. Having said so, it would also be an endeavor of the Corporate Debtor to prove that there is pre-existing dispute to avoid its obligation. The Hon'ble Supreme Court has said that such defense should not be feeble legal argument or an assertion of fact unsupported by evidence. Further, such defence should not be spurious or merely bluster, frivolous or vexatious. It

should not be a made to believe story. However, merits of the case need not to be a factor to decide the matter. These observations itself define the scope that the Adjudicating Authority has to look into the material produced before it and to analyze the same to reach some conclusion. It can neither be precluded from doing so nor it is precluded by these observations, hence, the Adjudicating Authority is well within its jurisdiction when it analyzes the accounting records, correspondences, contract etc. as produced by the parties to arrive at a conclusion as regard to nature and existence of dispute. This exercise may require some deep analysis in some case or in some cases it may be a very minor examination based upon the facts of each case and material produced by the parties. In cases, in our considered view, where greater analysis is required then in that situation, such analysis would not amount to roving inquires or exercise beyond jurisdiction as it would be the demand of the situation.

19. Apart from the above legal position, the question which comes to our mind is that in what circumstances a fact situation can be categorized as dispute i.e. when does a disagreement or difference of opinion become a dispute. As observed earlier that the term 'dispute' has been defined inclusively in IBC, 2016, however, basic meaning of the term 'dispute' has not defined, hence, we would have to look for the meaning of this term as per law dictionaries/other legal forums.

19.1. **The Black's Law Dictionary defines the term 'dispute' as under:**

A conflict or controversy, esp. one that has given rise to a particular law suit.

19.2. **West's Encyclopedia of American Law, edition 2 describes the term "dispute" as under:**

A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined. A labor dispute is any disagreement between an employer and his or her employees concerning anything job-related, such as tenure, hours, wages, fringe benefits, and employment conditions.

19.3. **The term 'dispute' as per U.S Legal.com is described as under:**

"Dispute means a controversy. It refers to an allegation of fact by one person denied by another person, both acting with some show of reason."

20. Thus, at a glance itself, it can be said that a threshold or stage is to be crossed to convert a difference/disagreement into dispute. In other words, normally commercial/legal differences per se are not dispute unless such differences are ascertained into a claim on which both the parties have opposite/different views and want to settle the same through some legal process or otherwise. Thus, in our view, routine correspondence in commercial relationship cannot automatically or necessarily be considered and admitted as dispute unless such stage is reached.

21. In the above academic background, we will examine this process in the context of running contracts. In large construction projects spanning over a period of 2, 3 years where milestones are based upon the progressive performance or the completion of units, such type of correspondences generally take place. Such projects also provide significant scope for various disagreements arising between the sub-contractor and the contractor. Thus, in the course of execution of the projects/works such coordination exercise is essential one and any such communication between the parties as such cannot be termed as dispute, particularly, when bills relating to such works are cleared and whatever settlement/recovery/deduction is to be made is mutually made. Thus, in such situation, there remains no dispute by mutual process adopted by the parties. In our view, terms and conditions of the contract are also a big factor to determine when a disagreement constitutes a dispute and resolution thereof by way of specified mechanism. Thus, the mere fact of notifying a claim does not automatically and immediately gives rise to a dispute. A dispute does not arise unless and until it emerges with the claim which is not admitted. We do not hesitate to state that litigation has not generated any hard and fast universally applicable legal rules as to what is a dispute and it merely offers some guidance. We may also add that legal framework under which proceedings are being considered would also have a bearing. For example, proceedings u/s 9 of IBC, 2016 are liable to be admitted or rejected based upon the fact of pre-existing dispute, hence, aspect of dispute needs to be examined in this background. Thus, in our view, to consider every commercial correspondence pointing out some deficiency as dispute or pre-existing dispute would result into situation where Corporate

Debtor may evade its legal obligation and which would be against provisions of I & B Code, 2016 and also against the basic structure of IBC, 2016 i.e. creditor centric regime with a view to promote entrepreneurship and credit culture. Having said so, we also put a rider that Operational Creditor would have to justify its claim by adducing sufficient documentary evidence that all issues had been resolved and in spite of that payment was not made by the Corporate Debtor which led to filing of proceedings IBC, 2016.

22. Coming to the facts of the case, it is noted that in this case the Corporate Debtor is a principal contractor who has given the sub-contract or practically assigned contract on back to back basis to the Operational Creditor. The Operational Creditor would bear the liquidated damages, penalties and could face other legal actions which can be imposed on the Corporate Debtor for the failure of Operational Creditor. Thus, the risk and rewards are shared and, therefore, it may not be out of place to mention that Operational Creditor, being sub-contractor face severe consequences for non-performance. However, the corporate debtor is responsible for execution of contract which also provides for supervision, coordination, monitoring and control for efficient execution of the project by the Corporate Debtor. Therefore, the principal contractor is obliged to discharge such functions and in doing so correspondences/communications either orally or through e-mail or by meetings happen. Such communication generally indicates situations which require corrective course of action by the sub-contractor and failing which recovery/costs/penalty/damages etc. may occur. From the perusal of the e-mail exchanged as provided by the Corporate Debtor, it is noted that almost all e-mails of this nature only wherein issues have been raised, corrective course of action has been suggested. Consequences of non-compliance have also been indicated. It has also been mentioned by the Corporate Debtor in the chart of such e-mails that what action had been taken and by whom. It is particularly to be noted that these correspondences are in relation to the work done by the Operational Creditor for which running bills have been raised by the Operational Creditor and which have duly been certified and payments have also been released. Last e-mail has been written on 07.03.2017 after the Operational Creditor had already left the project. Even in this mail amounts to be withheld have

not been indicated. In earlier e-mails only three mails mentioned the amount which could be recovered from the Operational Creditor that too is meager as compared to work done. Further, response of Operational Creditor has not been provided. These Bills have raised from 22.08.2015 to 25.02.2017. These are 14(fourteen) in numbers. Strangely, no documentary evidence has been brought on record to the effect that Government of Andhra Pradesh also made recovery from Corporate Debtor, wherever applicable. It has also not been established that any payment had been withheld by the Government in respect of work done by Operational Creditor. Further, if these facts are considered with work experience certificate issued by the Corporate Debtor and subsequent payments made by the Corporate Debtor then it can be safely concluded that difference which existed earlier had already been resolved and only outstanding amount due to Operational Creditor remained pending for payment. Thus, the basis of this application is, in fact, non-payment of such amount.

23. We further find that the Operational Creditor has written number of e-mails to the Corporate Debtor demanding payments of its interest on 06.03.2017, 01.07.2017, 04.08.2017, 05.09.2017, 12.10.2017 and 08.11.2017 (copy placed in paper book at pages 191-202). These e-mails (demand notices) are subsequent to the mails written by the Corporate Debtor on 07.03.2017 except first mail which was written on 06.03.2017. These mails have not been disputed by Corporate Debtor by adducing any material on record except that in the belated reply to notice of demand served by the Operational Creditor u/s 8 of IBC, 2016 these have been disputed but no cognizance of the same can be taken as it is after the delivery of notice of demand u/s 8 of IBC, 2016 by the Operational Creditor.

24. Now, we will deal with the rests of the contentions raised by the Corporate Debtor. One such contention is that in this case, the Operational Creditor has suppressed the facts by not disclosing such e-mails or bringing fact of existence of such e-mails to the notice of this Authority. We do not find any substance in this plea as this is an obligation on the part of the corporate debtor as per the provisions of Section 8(2)(a) of IBC, 2016. As per Form 3 the

Operational Creditor required the Corporate Debtor to bring the notice of dispute or Court case, if any, or the payment has been made to the notice of the Operational Creditor. The Corporate Debtor has relied on the decision of NCLT in the case of OPG Metals (P.) Ltd. vs. Pavai Alloys & Steels (P) Ltd. We are of the humble view, that this case does not help the cause of Corporate Debtor as in that case in spite of notice of dispute being raised by the Corporate Debtor in time, fact of the same was not disclosed in affidavit filed u/s 9(3)(b) of IBC, 2016 which is not the case here. As far as contents of the affidavit filed by the Operational Creditor u/s 9(3)(b) of the IBC, 2016 are concerned, the Operational Creditor has categorically stated that he had received notice of dispute but not within stipulated time. Thus, there is no misstatement by the Operational Creditor as the Corporate Debtor has itself admitted that such notice was delivered beyond 10 days from the date of receipt of notice of demand u/s 8 of IBC, 2016.

25. This factual situation, however, leads to another dimension. In the case of operational debt, the proceedings for initiation of CIRP u/s 9 are materially different from proceedings u/s 7 of IBC, 2016 as in the case of claims of Operational Creditor delivery of notice of demand u/s 8 of IBC, 2016 to the Corporate Debtor before filing of application is a must. It is an incurable defect. Thus, an application filed u/s 9 of IBC, 2016 without delivery of notice of demand u/s 8 of IBC, 2016 on the Corporate Debtor then such application is liable to be rejected at the very outset. . The Petitioner/Applicant cannot be allowed to serve such notice after the filing of application u/s 9 under any circumstances. Correspondingly, the Corporate Debtor is under an obligation as per provisions of Section 8(2) r.w. Section 8(2)(a) of IBC, 2016 to reply to such notice of Operational Creditor within a period of 10 days from the date of receipt of such notice. It is also an incurable defect. Both the parties have to be kept at par. Thus, in our view, just an application u/s 9 is liable to be rejected without delivery of notice u/s 8 prior to filing of such application and correspondingly an application in the absence of notice of dispute/existence of dispute being brought to the notice of the operational creditor within a period of 10 days by the corporate debtor is liable to be admitted and corporate debtor cannot be allowed to raise the issue of pre-existing dispute later on because

having regard to the drastic consequences of initiation of CIRP against the Corporate Debtor, such mechanism has been provided which not only gives a window /opportunity to the Corporate Debtor to establish fact of *bona fide* dispute but also to settle the matter before an application u/s 9 is filled but also saves Corporate Debtor from stripping off with the management of the company. Law is absolutely clear in this regard and, therefore, corporate debtor on subsequent stage cannot take shelter even of Rule 11 of NCLT Rules, 2016. We are further of the view that if the requirement of reply to notice u/s 8 within the stipulated time is waived then provisions of Section 9(5)(ii)(c) r.w. Section 8(2) would become redundant. In this regard, we draw strength from the observations of the Hon'ble Supreme Court in the case of Mobilox Innovations Private Limited vs. Kirusa Software Private Limited wherein the Court has held that time lines prescribed under the Act are sacrosanct and must be adhered to. The relevant findings of the Hon'ble Supreme Court in para 24, 25, 26, 27 are reproduced hereunder:

> ***24.*** *The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)).* ***Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)).*** *What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the self-same 10 days send an attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that the operational creditor has encashed a cheque or otherwise received payment from the corporate debtor (Section 8(2)(b)).* ***It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2).*** *This application is to be filed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form 5, accompanied with documents and records that are required under the said form. Under Rule 6(2), the applicant is to dispatch by registered post or speed post, a copy of the application to the registered office of the corporate debtor. Under Section 9(3), along with the application, the statutory requirement is to furnish a copy of the invoice or demand notice, an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt and a copy of the certificate from the*

financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Apart from this information, the other information required under Form 5 is also to be given. Once this is done, the adjudicating authority may either admit the application or reject it. If the application made under sub-section (2) is incomplete, the adjudicating authority, under the proviso to sub-section 5, may give a notice to the applicant to rectify defects within 7 days of the receipt of the notice from the adjudicating authority to make the application complete. Once this is done, and the adjudicating authority finds that either there is no repayment of the unpaid operational debt after the invoice (Section 9(5)(i)(b)) or the invoice or notice of payment to the corporate debtor has been delivered by the operational creditor (Section 9(5)(i)(c)), ***or that no notice of dispute has been received by the operational creditor from the corporate debtor or*** *that there is no record of such dispute in the information utility (Section 9(5)(i)(d)), or that there is no disciplinary proceeding pending against any resolution professional proposed by the operational creditor (Section 9(5)(i)(e)), it shall admit the application within 14 days of the receipt of the application, after which the corporate insolvency resolution process gets triggered. On the other hand, the adjudicating authority shall, within 14 days of the receipt of an application by the operational creditor, reject such application if the application is incomplete and has not been completed within the period of 7 days granted by the proviso (Section 9(5)(ii)(a)). It may also reject the application where there has been repayment of the operational debt (Section 9(5)(ii)(b)),* ***or the creditor has not delivered the invoice or notice for payment to the corporate debtor (Section 9(5)(ii)(c)).*** *It may also reject the application if the notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility (Section 9(5)(ii)(d)).* ***Section 9(5)(ii)(d) refers to the notice of an existing dispute that has so been received, as it must be read with Section 8(2)(a).*** *Also, if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected (Section 9(5)(ii)(e)).*

25*. 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 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.***

26*.* ***Another thing of importance is the timelines within which the insolvency resolution process is to be triggered. The corporate debtor is given 10 days from the date of receipt of demand notice or copy of invoice to either point out that a dispute exists between the parties or that he has since repaid the unpaid operational debt. If neither exists, then an application once filed has to be disposed of by the adjudicating authority within 14 days of its receipt, either by admitting it or rejecting it.*** *An appeal can then be filed to the Appellate Tribunal under Section 61 of the Act within 30 days of the order of the Adjudicating Authority with an extension of 15 further days and no more.*

27. *Section 64 of the Code mandates that where these timelines are not adhered to, either by the Tribunal or by the Appellate Tribunal, they shall record reasons for not doing so within the period so specified and extend the period so specified for another period not exceeding 10 days. Even in appeals to the Supreme Court from the Appellate Tribunal under Section 62, 45 days time is given from the date of receipt of the order of the Appellate Tribunal in which an appeal to the Supreme Court is to be made, with a further grace period not*

> *exceeding 15 days. The strict adherence of these timelines is of essence to both the triggering process and the insolvency resolution process.* ***As we have seen, one of the principal reasons why the Code was enacted was because liquidation proceedings went on interminably, thereby damaging the interests of all stakeholders, except a recalcitrant management which would continue to hold on to the company without paying its debts. Both the Tribunal and the Appellate Tribunal will do well to keep in mind this principal objective sought to be achieved by the Code and will strictly adhere to the time frame within which they are to decide matters under the Code.***

Further, findings of Hon'ble Supreme Court in the case of Innoventive Industries Ltd. Vs. ICICI Bank and Ors held in para 29 are reproduced as under:

> ***29.*** *The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*

Thereafter, Hon'ble Supreme Court in the case of Swiss Ribbons Pvt. Ltd. and Ors. vs. Union of India and Ors held as under:

> ***24.*** *A financial creditor may trigger the Code either by itself or jointly with other financial creditors or such persons as may be notified by the Central Government when a default occurs. The Explanation to Section 7(1) also makes it clear that the Code may be triggered by such persons in respect of a default made to any other financial creditor of the corporate debtor, making it clear that once triggered, the resolution process under the Code is a collective proceeding in rem which seeks, in the first instance, to rehabilitate the corporate debtor. Under Section 7(4), the Adjudicating Authority shall, within the prescribed period, ascertain the existence of a default on the basis of evidence furnished by the financial creditor; and under Section 7(5), the Adjudicating Authority has to be satisfied that a default has occurred, when it may, by order, admit the application, or dismiss the application if such default has not occurred. On the other hand, under Sections 8 and 9, an operational creditor may, on the occurrence of a default, deliver a demand notice which* ***must then be replied to within the specified period.*** *What is important is that at this stage, if an application is filed before the Adjudicating Authority for initiating the corporate insolvency resolution process, the corporate debtor can prove that the debt is disputed. When the debt is so disputed, such application would be rejected.*

Thus, the Hon'ble Supreme Court has reiterated time and again that adherence to the time line of 10 days for reply to demand notice is a must. Thus, any reply beyond the period of 10 days will not save the Corporate Debtor from the consequences as mentioned in Section 9(5)(ii)(c) of IBC, 2016.

26. Now, we shall briefly deal with the case laws relied on by the Corporate Debtor. In the case of B.R. Construction vs. G.R. Infraprojects Ltd. the undisputed fact is that engineer chief had not certified the work done, however, in the present case no such claim has been made nor any documentary evidence has been produced to show that work done by the Operational Creditor has not been approved by the Government of Andhra Pradesh. Further, in that case, an FIR had also been lodged which was an evidence of misappropriation of funds by the Operational Creditor. Thus, facts of that case are completely different, hence, ratio of this case is not applicable to the present case. In the case of Karpara Project Engineering Pvt. Ltd vs. BGR Energy Systems Ltd., there was a specific claim for liquidated damages payable for extension of time which is not the case here. Hence, ratio of this decision is also not applicable. In the case of Battula Anjaneyulu vs. DBM Geotechnics & Construction (P.) Ltd., the Corporate Debtor had already filed a legal suit in the Mumbai High Court which is not the case here. There were several others issues of imposition of liquidated damages, termination, forfeiture of security deposits, earnest money, balance payment, invocation of bank guarantee, blacklisting etc which is not the case here. Thus, this decision also does not help the cause of Corporate Debtor.

27. The Operational Creditor has proposed the name of Interim Resolution Professional (IRP) i.e. CS Mr. Arvind Gaudana having its registered number IP Reg. No. IBBI/IPA-002/IP-N00283/2017-18/10841 who has given his consent and no disciplinary proceeding are pending against him. Hence, we can appoint such person as IRP. The application is otherwise complete and defect free and it also complies with other requirements of IBC, 2016 r.w. regulations made there under.

28. IA 102 of 2020 has been filed by the Corporate Debtor regarding service of reply to the demand notice on 11.12.2018. In the said application the plea of suppression of fact has been made. Both these facts have already been considered as contentions made by the Corporate Debtor and have mentioned in the earlier part of this order. In view of this, the present application stands disposed of as considered while disposal of main petition.

29. IA 123 of 2020 has been filed by the Corporate Debtor to produce documents i.e. letter of Ircon International Limited dated 7/8th October, 2018, are written by the Corporate Debtor on 23.10.2018 to the Ircon International Limited and certificate of work experience dated 17.04.2017. All these documents have been considered in the main arguments made by the Corporate Debtor as well as Operational Creditor. Hence, this IA stands deposed of as considered in the course of disposal of main petition.

30. We admit this application and order as under:

ORDER

i. The application filed by Operational Creditor u/s 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Ketan Construction Limited, is hereby admitted.

ii. We declare a moratorium and public announcement in accordance with Section 13 and 15 of IBC, 2016.

iii. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims u/s 15. The public announcement referred to in clause (b) of sub-section (1) of 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv. Moratorium u/s 14 of the Insolvency & Bankruptcy Code. 2016 prohibits the following:

(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;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right of 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

v. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

vi. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vii. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

viii. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

ix. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

x. **CS. Mr. Arvind Gaudana,** IP Registration No. IBBI/IPA-002/IP-N00283/2017-18/10841 e-mail id. arvindgcs@yahoo.com, having address at: 307, Ashirvad Paras, Corporate Road, Satellite, Ahmedabad-380015, is appointed as Interim Resolution Professional to conduct CIRP as per Rules.

xi. The Operational Creditor would pay a sum of **Rs. 1,00,000/-** (Rupees One Lac only) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Person) Regulation 2016 which shall be adjusted from final bill within a period of seven days from the date of receipt of this order. In case, further funds are required

during Corporate Insolvency Resolution Process and, if not provided by Committee of Creditors, then IRP/RP can approach this Tribunal for that purpose.

xii. The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016.

xiii. Registry is hereby directed u/s 9(5) of the I.B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P by Speed Post as well as through e-mail.

31. List the matter on 28.09.2020 for the filing of the progress report.

32. Certified copy of the order may be issued to al the concerned parties, if applied for, upon compliance with all requisite formalities.

14/8/2020

(Virendra Kumar Gupta)
Member (Technical)

(Madan B. Gosavi)
Member (Judicial)

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