



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER**

In CP No. (IB) 101/9/JPR/2021

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

IN THE MATTER OF:

M/s Millennium Babycares Private Limited
Regd. Office at: 111-112, Industrial Plot,
Sector – II, Pithampur, Dhar,
Madhya Pradesh – 454775

... Applicant / Operational Creditor

VERSUS

Velnik India Private Limited
E-10, Krishi Mandi, Sojat City,
Sojat, Pali, Rajasthan – 306104

Also at: Khasra Nos. 516-517,
Near Dutt Cold Storage, Bijalpur,
Indore, Madhya Pradesh – 452012

... Respondent/Corporate Debtor

For the Applicant : Mr. Vijayesh Atre, Adv.
For the Respondent : Mr. Rishabh Sancheti, Adv.
Mr. Punit Singhvi, Adv.
Mr. Swapnil S. Sharma, Adv.

Order Pronounced on: 16.11.2022

ORDER

Per: Shri Prasanta Kumar Mohanty, Technical Member



1. This Application is filed by M/s Millennium Babycare Private Limited through its authorised signatory Mr Deepak Tiwari ('Operational Creditor' / 'Applicant'), seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against Velnik India Private Limited ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules').
2. The Applicant, M/s Millennium Babycare Private Limited, is engaged in the business of manufacturing and supplying diapers. Its registered office is located at: 111-112, Industrial Plot, Sector – II, Pithampur, Dhar, Madhya Pradesh – 454775. The alleged default on the part of the Respondent for the non-payment of operational dues amounting to Rs. 6,72,83,133/- (Rupees Six Crores Seventy-Two Lakhs Eight-Three Thousand One Hundred and Thirty-Three Only) along with interest payable @ 18% per annum.
3. The Corporate Debtor, M/s Velnik India Private Limited, is a private limited company incorporated under the Companies Act, 2013 on 11.08.2017, having CIN: U24100RJ2017PTC058778. The Respondent has its registered office at – E-10, Krishi Mandi, Sojat City, Sojat, Pali, Rajasthan – 306104. Further, the Respondent has its Marketing and Communication Office at – Khasra Nos. 516-517, Near Dutt Cold Storage, Bijalpur, Indore, Madhya Pradesh – 452012. The Corporate Debtor has an Authorised Share Capital of Rs. 5,00,00,000/- (Rupees Five Crores Only) and Paid-Up Share Capital of Rs.



2,10,17,900/- (Rupees Two Crores Ten Lakhs Seventeen Thousand Nine Hundred Only).

4. The details of the transactions leading to the filing of this Application are averred by the Applicant *vide* Diary No. – 2801/2021 dated 20.12.2021 are as follows:

- a. The Applicant and Respondent entered into a Manufacturing and Supply Agreement ('Agreement') dated 30.11.2019 wherein the Applicant shall manufacture, test, label, package and store the diapers ('product') in accordance with the specification as mentioned in the Agreement. A copy of the Agreement is annexed as Annexure A – 5 of the Application. As per the Agreement, the Applicant supplied around 6,70,00,000 pieces of product amounting to Rs. 37,03,00,000/- (Rupee Thirty-Seven Crores Three Lakhs Only) for which Respondent Company has been making 'on account payment' instead of 'bill-to-bill' payment.
- b. The Respondent placed its last three Purchase Orders for the purchase of 2,90,20,000 pieces of the product in February, March, and June 2021 ('Purchase Order') valuing Rs. 12,72,67,337/- (Rupees Twelve Crores Seventy-Two Lakhs Sixty-Seven Thousand Three Hundred and Thirty-Seven Only). Copy of the aforementioned Purchase Order is annexed as Annexure A – 6 to A – 8 of the Application.
- c. Against these Purchase Orders, Applicant raised various invoices. Of such raised invoices, 30 Invoice ('Invoice') amounting to Rs.



2,20,76,937.80/- (Rupees Two Crore Twenty Lakhs Seventy-Six Lakhs Nine Hundred Thirty-Seven and Eighty Paisa Only) from 23.07.2021 to 14.08.2021 remained unpaid. Copy of the Invoices is annexed as Annexure A – 9 to A – 38 of the Application. *It is seen that the Respondent failed to make a payment of Rs. 2,13,37,136.18/- (Rupees Two Crores Thirteen Lakhs Thirty-Seven Thousand One Hundred Thirty-Six and Eighteen Paisa Only) to the Applicant. The remaining part payment made by the Corporate Debtor for the Purchase Orders is being acknowledged by the Applicant.* Copy of the Ledger Account of Corporate Debtor maintained by Applicant is annexed as Annexure A – 46 of the Application.

- d. As per the terms of the Invoice, it was agreed that payment is to be made within the stipulated time from the date of the invoice issued to the Respondent failing which an interest @18% per annum would be charged. Thus, the Applicant is claiming interest on the Performa Invoice and Invoice amounting to Rs. 20,62,740/- (Rupees Twenty Lakhs Sixty-Two Thousand Seven Hundred and Forty Only).
- e. Given the nature of the Purchase Order, the Applicant purchased bulk supplies and raw materials, besides keeping the Respondent's logo-bearing finished product ready ('Performa Invoice') worth Rs. 4,38,83,257/- (Rupees Four Crores Thirty-Eight Lakhs Eighty-Three Thousand Two Hundred and Fifty-Seven Only). Copy of the Performa



Invoice is annexed as Annexure A – 47 of the Application. The Applicant made several reminders and requests to pay its operational dues, which the Respondent failed to fulfil. Copy of the email reminders and communications between the parties are annexed as Annexure A – 48 of the Application.

- f. Meanwhile, the Corporate Debtor unilaterally issued a Termination Letter dated 13.09.2021 ('Termination Letter') alleging the untimely delivery of the product along with its quality and quantity issues. The Respondent terminated the Agreement as per Clauses 18 and 19. It claimed damages that would be intimated subsequently through email/ notice. Copy of the Termination Letter is annexed as Annexure A – 39 of the Application.
- g. The Applicant's Reply to Termination Letter dated 16.09.2021 stated that they '*are supplying and dispatching the Goods (All SKUs) on the time as agreed into PO terms issued in the favour of us. Even we have all the date with us that we are providing you the Credit supports to increase your Sales Value beyond the agreed payment terms i.e., Advance Payment only.*' It emphasised that no complaint was received on the WhatsApp Group, which is meant for updating day-to-day work and resolving quality and quantity issues. Copy of the Reply to Termination Letter is annexed as Annexure A – 40 to the Application.



- h. In pursuance of the Termination Notice, the Corporate Debtor issued a Legal Notice dated 14.10.2021 ('Legal Notice') wherein it demanded damages to the tune of Rs. 10,00,00,000/- (Rupees Ten Crores Only) due to non-providing of the desired quality of goods. *It was alleged in the Legal Notice that the Corporate Debtor asked the Applicant to resolve the quality issue and gave another chance to improve the quality of the products. However, due to the Applicant's unprofessional behaviour and continuous breach of terms & conditions of the Agreement, it decided to terminate the Contract.* A copy of the Legal Notice is annexed as Annexure A – 41 of the Application.
- i. On 26.10.2021, the Applicant sent its Reply to Legal Notice stating that the Respondent was continuously placing its Purchase Order till 30.06.2021 without any complaint. Besides, as per the Agreement, the Applicant's authorised representative/executive closely monitored the quality of the product routinely. Copy of the Reply to Legal Notice is annexed as Annexure A – 42 of the Application.
- j. The Applicant, in pursuance of the above cause of action, issued a Demand Notice dated 26.10.2021 ('Demand Notice') to the Respondent through speed post on the registered office address of the company and marketing office addresses, including Directors of Respondent. The Demand Notice under Section 8 of the IBC stated unpaid Operational Debt as Rs. 6,72,83,133/- (Rupees Six Crores Seventy-Two Lakhs



Eighty-Three Thousand One Hundred and Thirty-Three Only) including interest @18% per annum. The notice called for the immediate payment of the operational due within ten days from receipt of the Demand Notice failing which proceedings to initiate CIRP against the Respondent's company were stated to start. Copy of the Demand Notice dated 26.10.2021 annexed as Annexure A – 43 of the Application. The proof of Service of Demand Notice is filed *vide* Diary No. 2279/2022 dated 29.07.2022, wherein it is stated on the Affidavit that the Demand Notice was served through email on 26.10.2021 is marked as Annexure– 1.

- k. The Respondent did not acknowledge the aforementioned Demand Notice, and the same was answered *vide* Response Letter dated 28.10.2021 and 01.11.2021. It intimated the Applicant to invoke arbitration as per Clause 26 of the Agreement. It is stated that a prior dispute exists regarding the quality and quantity of the product within a stipulated time. Copy of the same is annexed as Annexures A – 44 and 45 of the Application. Consequently, the Respondent filed an Application under Section 9 of the Arbitration and Conciliation Act, 1996 ('Arbitration Application') for ad interim relief. A copy of the Arbitration Application is annexed as Annexure A – 53 of the Application.
- l. The Applicant opposed the appointment of Sole Arbitrator suggested by the Respondent in his Response Letter dated 28.10.2021 and proposed a



name of a different arbitrator *vide* Reply to Response Letter dated 06.12.20021. Copy of the same is annexed as Annexure A – 52 of the Application. In addition, its Reply to Arbitration Application disagreed with the contents of the Application and prayed for the lifting of products lying with the Operational Creditor by the Corporate Debtor. Further, it prayed that the Corporate Debtor should be responsible for the deterioration in the quality of the product because of any delay in lifting the product. Copy of the Reply to Arbitration Proceeding is annexed as Annexure A – 54 of the Application.

m. The aforementioned details, as reflected in Part IV of the Application, are as follows:

Part IV

PARTICULARS OF OPERATIONAL DEBT

1.	Total Amount of Debt, Details of Transactions on account of which debt fell due, and the Date from which such debt fell due.	Total amount of debt: Rs. 6,72,83,133/- (Rupees Six Crores Seventy-Two Lakhs Eighty-Three Thousand One Hundred and Thirty-Three Only)
2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed to be in default: Rs. 6,72,83,133/-# Total Principal Amount: Rs.6,52,20,393/- Total Interest Due: Rs. 20,62,740/-* Date from which Debt fell Due: 23.07.2021

* Calculated the Interest Amount @ 18% p.a. from the period of 23.07.2021 to 26.10.2021.

Computation of Amount to be claimed from Corporate Debtor is annexed at Annexure A – 4 of the Application.



5. Notices were issued in the aforesaid Application, and the Respondent filed a Reply *vide* Diary No. 518/2022 dated 24.02.2022 stating that:

- a. The Applicant has not approached the Tribunal with clean hands and concealed material information to place itself as an Operational Creditor, as it has submitted an incomplete application based on *suppressio veri* and *suggestio falsi* facts for its benefit. The Operational Creditor failed to provide desired quality, quantity, and delivery of the product within the stipulated time despite several reminders through emails and telephone. The Respondent relied on the email conservations dated 08.02.2020, 02.09.2020, 08.10.2020, 02.02.2021 and 16.08.2021.
- b. Given the unprofessional behaviour of the Applicant and failed assurances, the Respondent terminated the Agreement and proceeded as per the course discussed above. It placed its reliance on establishing the pre-existence of a dispute through Termination Letter, Legal Notice and Arbitration Application. Thus, due to the inadequate filing of the Application in the prescribed manner and non-disclosure of a pre-existing dispute between the parties by the Operational Creditor, the Application under Section 9 of the Code deserves to be dismissed.
- c. Respondent has further raised grounds for Non-Maintainability of the Application because the Demand Notice received *vide* email was bare Form – 3 without any material particulars. The physical copy of the Notice was received pursuant to the issuance of the notice invoking



arbitration. Additionally, in an email dated 21.08.2021, the Applicant demanded Rs. 2.58 Crore as its operational dues; however, Part IV of the Application raises a demand of Rs 6,72,83,183/- without any proper justification.

d. For the reasons mentioned above, while submitting the Reply, the Respondent relied upon these cases:

i. *Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17.*

The Hon'ble Supreme Court held that '50. ... *Contracts with operational creditors do not have any such stipulations. Also, the forum in which dispute resolution takes place is completely different. Contracts with operational creditors can and do have arbitration clauses where dispute resolution is done privately. Operational debts also tend to be recurring in nature and the possibility of genuine disputes in case of operational debts is much higher when compared to financial debts. A simple example will suffice. Goods that are supplied may be substandard. Services that are provided may be substandard. Goods may not have been supplied at all. All these qua operational debts are matter to be proved in arbitration or in the courts of law.*'

ii. *Mobilox Innovations Private Limited v. Kirusa Software Pvt. Ltd., 2018 1 SCC 353.*

The Hon'ble Supreme Court held that regarding the pre-existence of dispute, the IBC defines 'dispute' as:

Section 5(6) – "dispute" includes a suit or arbitration proceedings relating to-

a. The existence of the amount of Debt;

b. The quality of goods and services; or

c. The breach of a representation or warranty;



- iii. *K. Kishan v. Vijay Nirman Company Pvt. Ltd., Civil Appeal No.s 21824 & 21825-2017.*

The Hon'ble Supreme Court stated that '*Operational Creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures.*'... '*We repeat that the object of the Code, at least in so far as operational creditors are concerned, is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist.*'

- iv. *Transmission Corporation of Andhra Pradesh Limited vs. Equipment Conductors and Cables Limited, Civil Appeal No. 9597 of 2018.*

In *Transmission Corporation (supra)*, the Hon'ble Supreme Court again reiterated that the existence of an undisputed debt is a *sine qua non* of initiating CIRP. It further states that *the adjudicating authority shall satisfy itself that there is a debt payable and there is operational debt, and the corporate debtor has not repaid the same.*

- v. *Kay Bouvet Engineering Ltd v. Overseas Infrastructure Alliance (India) Private Limited, Civil Appeal No. 1137 of 2019.*

In *Kay Bouvet (supra)*, while dealing with the existence of a commercial dispute, the Hon'ble Supreme Court held *whether there is a plausible contention that 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.*

6. The Corporate Debtor filed its Written Submission *vide* Diary No. 1489/2022 dated 17.05.2022, reiterating its early submissions. Further, it has annexed the Orders of the Hon'ble Madhya Pradesh High Court dated 28.03.2022,



08.04.2022 and 28.04.2022 as Annexures – 1, 2 and 3 of the Written Submission, respectively. The Hon’ble High Court, *vide* its Order dated 28.03.2022, acknowledged the change in the nominated arbitrator by the Operational Creditor on account of his inability and disposed of the petition after obtaining the consent of the concerned arbitrator so appointed. The Hon’ble High Court modified its Order dated 09.03.2022 *vide* Order dated 08.04.2022, where it appointed Justice Subhash Samvatsar (Retd.) as arbitrator in place of Shri Ashish Sharma, Advocate.

7. The Applicant filed its Written Submission *vide* Diary No. 2792/2022 dated 19.09.2022 and has reiterated that the Demand Notice, which was served on 26.10.2021 and thereafter the Corporate Debtor invoked Clause 26 of the Agreement on 28.10.2021 for Arbitration. As the Respondent had already received a valid statutory notice under Section 8 of the Code, the notice invoking the arbitration clause is of no consequence. It has relied on *Mobilox (Supra)*, wherein the Hon’ble Supreme Court held that the Arbitration proceedings if any, must have been filed before the receipt of the statutory demand notice.
8. Moreover, it emphasised the Arbitration Tribunal Order dated 02.09.2022 filed *vide* Diary No. 2696/2022 dated 08.09.2022 wherein the following observations were made:

‘14. ... However, the same, by no stretch of imagination, can be prudently assigned to classify the said Goods to be of ‘Inferior Quality’. Moreover, the controversy in these applications do not relate to the batches of said Goods which are already sold, but the



dispute is regarding the said Goods which are lying in the godowns of the Respondent, which were manufactured after by the Respondents received orders from the Claimant, now at a later stage, conveniently classified the same to be of 'Inferior Quality' and hence has refused to purchase.'

9. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, Additional Affidavits and the Documents enclosed with the Application.
10. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Pali; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of the Laws of Limitation, as the cause of action arose in 2021, and the Application was filed before this Adjudicating Authority in 2021. Hence, the period of three years after the Default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
11. It is abundantly clear from the documents produced before us that the Respondent has defaulted in making full payments against the goods provided by the Operational Creditor.
12. In the instant case, it is admitted by the Corporate Debtor that it has received the communication of Demand Notice under Form – 3 on 26.10.2021. However, it contended that a physical copy of the Demand Notice was sent on 29.10.2022 *via* speed post and a notice for invoking Arbitration Clause



was sent on 28.10.2022. An established principle is that notice of demand under Section 8 of the Code can be served through Registered Post, Speed Post, Email and Publication (*as a last resort*). Further, the Demand Notice under Form – 3 contains details such as the total amount of debt, transaction details, the date from which the debt begins accruing, the amount claimed by the Operational Creditor, *etc.* Therefore, the Corporate Debtor has complete information and knowledge of the operational debt as demanded by the Applicant and such contention of the Respondent is untenable under the law.

13. Additionally, no suit or arbitration was pending before the Demand Notice was issued under Section 8 of the Code, and no prior dispute existed between the parties. The emails relied on by the Respondent disputing the quality, quantity and delivery of the product pertaining to a period between December 2019 and October 2020, whereas the Purchase Orders placed by the Applicant are from February, March, and June 2021. The only two emails related to Purchase Order are 02.02.2021 and 16.08.2021. In pursuance of the same, it shows that

- a. those emails are related to the product's packing rather than the product's quality
- b. such complaints are inevitable occupational errors in the workplace
- c. the value of the product under those emails is trivial; even if considered, it will not affect the threshold limit as provided under the Code.



14. Besides, as per Clause 5 (Inspection) of the Agreement, the Corporate Debtor had all the rights and permissions to visit the Applicant's facilities to observe the manufacturing, testing, labelling, packing, and storing of the product. Clause 13 (Product Acceptance) provided the Corporate Debtor with the right to reject the non-confirming product which does not comply with the Statement of Work. In the present case, the Respondent has no Debit Notes or Purchase Return Notes annexed on record.
15. Moreover, Clause 7 (Order Forecast) and 15 (Warranties) of the Agreement further empowered the Respondent with the opportunity to get a third-party laboratory test of the material/ finished goods before they are dispatched, even after it is approved the material of the finished goods. According to Clause 19 (Effect of Termination) of the Agreement, the Corporate Debtor will clear all the dues of the Applicant immediately and are legally enforceable upon termination. Thus, the defence of the Corporate Debtor for the pre-existence of a dispute does not fall under Section 5(6) of the Code.
16. The Hon'ble NCLAT, in the case of *Hasan Shafiq v. CT Technologies Aps & Anr., Company Appeal (AT) (Insolvency) No. 802 of 2020*, while considering various judgments of the Hon'ble Apex Court has held that

'19. ... We, thus, conclude that Application under Section 9 of the Code was fully maintainable and could not have been thrown out on the ground that there was a clause in Agreement dated 25th March, 2012. Despite there being clause of arbitration in Agreement, Application under Section 9 was fully maintainable and could be proceeded with by Adjudicating Authority. The proceedings under Code having been given overriding effect, the



right to initiate Application under Section 9 shall not be taken away by the Operational Creditor by any Agreement of arbitration in the contract, when Operational Creditor elect to initiate proceedings under Section 9, it cannot be rejected on the aforesaid ground. We, thus, do not find any substance in the above submission of learned Counsel for the Appellant.’

17. Consequently, it is evident from the above that the Corporate Debtor has defaulted in payment of the Debt to the Operational Creditor. Further, he has raised the contention of the dispute flouts the principle of law, which states that if there is a pre-existing dispute between the parties, an Application filed under Section 9 is not maintainable.
18. The first issue for consideration is whether the Demand Notice in Form – 3 dated 26.10.2021 was served upon the Respondent. The Demand Notice was sent *via* an email on 26.10.2021 and a physical copy through speed post on 29.10.2021 to the Respondent and its Directors. The email and postal tracking slips are attached as Annexure – 1 *vide* Diary No. 2279/2022 dated 29.07.2022 and on Page No. 256 – 264 of the Application, respectively.
19. The next issue for consideration is whether the Respondent disputed the operational Debt. The Respondent / Corporate Debtor has filed a Reply and argued that they had been dissatisfied with the goods’ quality, quantity and delivery. However, they have not submitted any authentic communication to substantiate the same. Thus, as per the documents placed on record with the Adjudicating Authority, there is no dispute as to the outstanding liability of the Corporate Debtor towards the Operational Creditor.



20. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 34 is as follows: -

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

- (i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
- (iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

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

However, the defence has to be plausible, and while not examining it on merits, it must not appear as a moonshine defence. Therefore, in the present matter at hand, there is a clear debt, repayment of which has been defaulted by the Corporate Debtor, and there appears to be no pre-existing dispute between the parties. Any allusion to such a dispute does not seem to be confirmed.

17. We have gone through the contents of the Application filed in Form No. 5 and found the same to be complete. As discussed above, there is a total unpaid operational debt (in Default) of Rs. 6,72,83,133/- (Rupees Six Crores



Seventy-Two Lakhs Eighty-Three Thousand One Hundred and Thirty-Three Only), including the interest @18% per annum. It is observed that the Operational Creditor has issued various invoices (Annexure A – 9 to 38) for goods supplied to the Respondent/ Corporate Debtor. Applicant/ Operational Creditor has given Demand Notice in Form No. 3 dated 26.10.2021, duly served on the Respondent/ Corporate Debtor. This Adjudicating Authority has held above that the Operational Creditor correctly delivered the Demand Notice in Form No. 3, and no pre-existing dispute is proved.

18. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice to date. It is also observed that the conditions under Section 9 of the IBC stand satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC.
19. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP'). In the instant case, the Operational Creditor has proposed the name of Mr. Kailash T Shah, having registration no. – IBBI/IPA-001/IP-P00267/2017-18/10511. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder.



18. Consequences of initiation of CIRP shall be inter-alia as follows: -

- (i) The IRP appointed by the Adjudicating Authority, Mr. Kailash T Shah, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of the Code, including the issue of the publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor under Section 15; and collation of the same shall be done. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (ii) Further, as a sequel of admission, moratorium, as envisaged under Section 14 of the Code, is invoked in relation to the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor. The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process. 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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease



to have effect from the date of such approval or liquidation order, as the case may be.

(iii) The said IRP shall act strictly in accordance with the provisions of the Code, and with a view to defraying his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 1,00,000/- (Rupees One Lakh Only) within three days from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon formation of the Committee of Creditors. In terms of Sections 17 and 19 of the Code, all personnel of the Corporate Debtor, including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such, and the management of the affairs of the Corporate Debtor shall vest with the IRP. In case there is any violation, the IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

(iv) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall complete the CIRP in time.



(v) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

19. Accordingly, CP No. (IB)-101/9/JPR/2021 is admitted.

**DEEP
CHANDR
A JOSHI** Digitally signed
by DEEP
CHANDRA JOSHI
Date: 2022.11.16
18:07:53 +05'30'
**DEEP CHANDRA JOSHI
(JUDICIAL MEMBER)**

**PRASANT
A KUMAR
MOHANTY** Digitally signed by
PRASANTA KUMAR
MOHANTY
Date: 2022.11.16
18:34:13 +05'30'
**PRASANTA KUMAR MOHANTY
(TECHNICAL MEMBER)**