

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

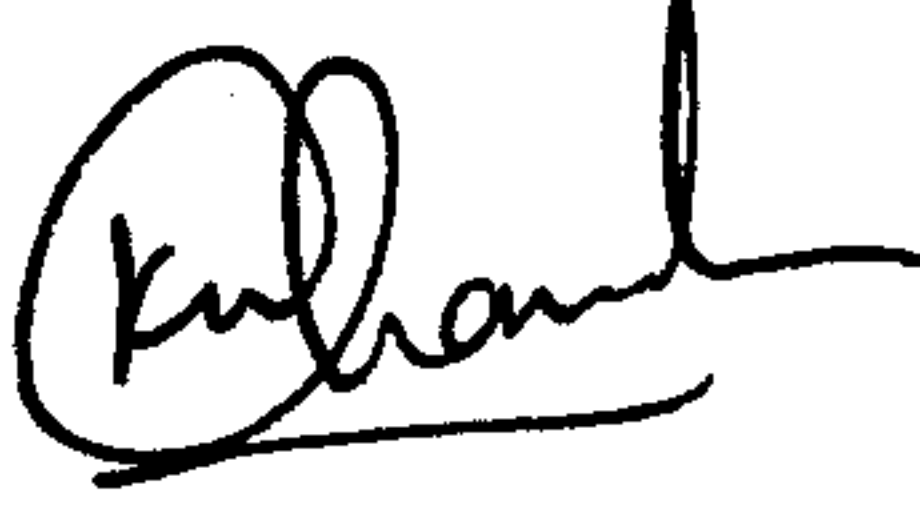
**C.P.(I.B) No. 572/NCLT/AHM/2019**

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.12.2019**

Name of the Company: Inver France SAS  
V/s.  
CLS Enterprise Pvt. Ltd.

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Khyati Puri A.R. Gupta & Associates	Adv.	Respondent	
2.	MONAAL J. DAYAWALA	Advocate	Petitioner	<u>Monaal</u>

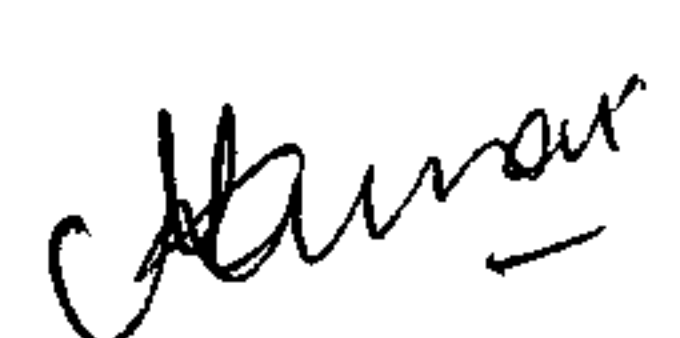
**ORDER**

The parties are represented through learned counsels.

The Order is pronounced in the open court vide separate sheet.

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 16th day of December, 2019

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

**BEFORE ADJUDICATING AUTHORITY (NCLT)  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. No. (IB) 572/9/NCLT/AHM/2019**

**In the matter of:**

**Inver France SAS**  
2 Rue Jean Devaux  
B.P. 80088  
79102  
Thouars Cedex  
FRANCE

:

**Petitioner**  
Operational Creditor

**Versus**

**CLS Enterprise Private Limited**  
1<sup>st</sup> Floor, Rishabh Corner  
Office No. 120, Plot No. 93  
Sector - 8  
Gandhidham - 370 201  
Gujarat State

:

**Respondent**  
Corporate Debtor

**Order delivered on 16<sup>th</sup> December, 2019.**

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)**  
**Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

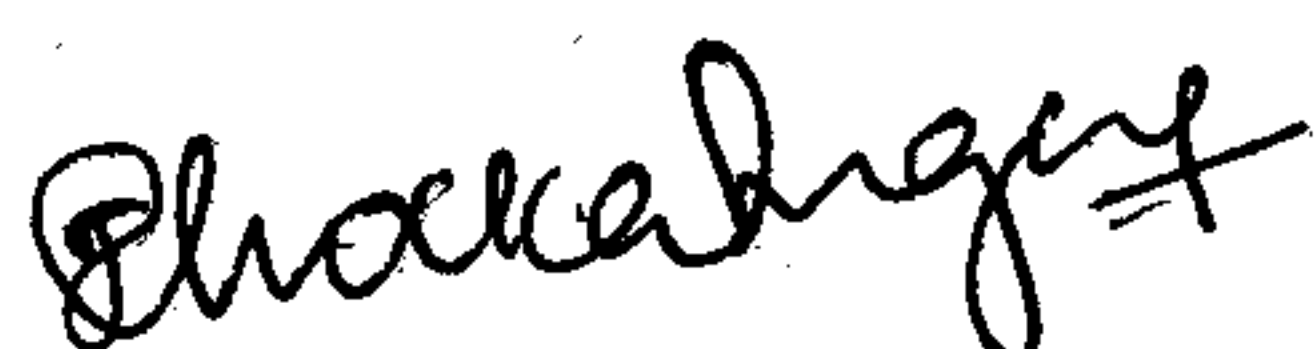
**Appearance:**

Advocate Mr. Yuvraj Thakore for petitioner.  
Advocate Mr. Mohit Gupta for respondent.

**ORDER**

**[Per: Ms. Manorama Kumari, Member (Judicial)]**

1. Mr. Vikas Malik, being authorised signatory, on behalf of the operational creditor M/s. **Inver France SAS** filed this Petition on 26<sup>th</sup> June, 2019 under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,





2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

2. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 25.11.2005 having identification No. U63020GJ2005PTC047148 and having registered office at Gandhidham, Gujarat State. Authorised share capital of the respondent company is Rs. 2,66,00,000/- and paid up share capital is Rs. 2,66,00,000/-.
  
3. The applicant/Petitioner has submitted that pursuant to purchase order No. SLSSENT/PO/EPOXY/16-17/001 dated 20<sup>th</sup> January, 2017, **(page No. 28 of the application)** the operational creditor had delivered total 720G020L pipeclad 2000 Long Gel of approximately 39,761 kgs. by way of two shipments. That, on 3<sup>rd</sup> March, 2017, the operational creditor shipped on board approximately 19,361 kgs. **(Page No.33 of the application)** under the bill of lading No. LHV1570167 and on 29<sup>th</sup> March, 2017 the operational creditor shipped on board goods of approximately 20,400 kgs. under bill of lading No. LHV1579298 **(Page No. 34 of the application)**. That, against the aforesaid two shipments, the operational creditor had raised two invoices upon the corporate debtor dated 24<sup>th</sup> February, 2017 for an amount of USD 45,600 **(page No. 38 of the application)** and invoice dated 22<sup>nd</sup> March, 2017 for USD 48,000 **(Page No. 37 of the application)** respectively.

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4. The operational creditor has further submitted that consequent to further discussion for discount in rates, it was agreed between the parties that the operational creditor will give discount of USD 2500 against each invoice raised upon the corporate debtor **(Page 39 of the application)**. Accordingly, the operational creditor issued credit note dated 14<sup>th</sup> March 2017 for USD 2500 and credit note dated 30<sup>th</sup> March, 2017 for USD 2500 against the aforesaid two invoices. That, the delivery of both the shipments were to be made on the basis of "document against acceptance". That, pursuant to the instructions of the operational creditor, their banker handed over shipping and title documents of the goods to the corporate debtor on the condition that the corporate debtor would accept the accompanying bills of exchange. However, the corporate debtor without accepting the bills of exchange obtained the original bills of lading and other shipping documents from the bankers of the operational creditor. Accordingly, the corporate debtor has become liable to make the following payments under the two separate bills of exchange dated 14<sup>th</sup> March, 2017 and 3<sup>rd</sup> April, 2017:

Sr. No.	Bill of exchange Amount (USD)	Due date
01	43,100	01.07.2017
02	45,500	01.08.2017
<b>Total outstanding</b>	<b>88,600</b>	

5. The operational creditor has further submitted that the goods shipped by the operational creditor under the bill of lading and the bill of lading were duly received by the

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corporate debtor on 31<sup>st</sup> March 2017 and 27<sup>th</sup> April 2017 respectively. That, the corporate debtor duly received the said goods under perfect condition and good order and in accordance with the specifications and requirements of the corporate debtor. That, till date the corporate debtor has not raised any dispute regarding the quality and/or quantity of the goods and as such, it has accepted the said goods. That, the payment due and payable under the bill of exchange dated 14<sup>th</sup> March, 2017 and bill of exchange dated 3<sup>rd</sup> April, 2017 were not made on the respective maturity dates, which was immediately brought to the notice of the corporate debtor but of no avail.

6. It is further stated that the operational creditor in good faith and in terms of the agreement, provided satisfactory services to the corporate debtor with due regard to the business relationship. Despite the satisfactory performance of the operational creditor's duties, responsibilities and obligations, the corporate debtor with an intent to defeat the just and a legal claim for the amounts due and payable to the operational creditor, has avoided, neglected and failed to make any payment. That, it is apparent that the corporate debtor is commercially insolvent and is not in a position to pay the commercial debts as and when the same becomes due and payable. That, there can be no other reason for the corporate debtor whilst accepting the said goods and to maintain a studied silence over the operational creditor's demands for its discharge of debts and/or liability.

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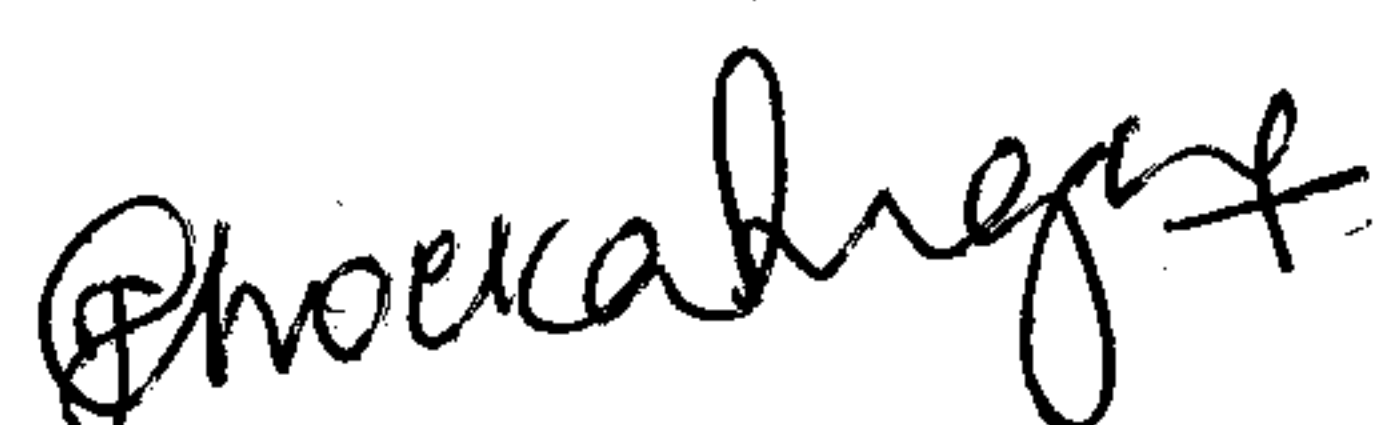
7. The operational creditor has further submitted that at no point of time the corporate debtor has disputed the aforesaid outstanding payments raised by the operational creditor and has thus unconditionally accepted the services of the operational creditor without any demur and/or protest.
8. In the demand notice dated 23<sup>rd</sup> October, 2018 issued under section 8 of the IB Code, the operational creditor has claimed the amount in default as per the details given in the following table: -

Sr. No.	Bill of exchange date	Bill of exchange amount (USD)	Balance outstanding amount (USD)
01	01.07.2017	43,100	
02	01.08.2017	45,500	
			<b>88,600</b>
	Interest @ 6.5% p.a. from the due date of B/E till 23.10.2018 (USD)		<b>7.306</b>
	<b>Total Outstanding</b>		<b>95,906</b>

Further interest at the rate of 6.5% per annum on the balance outstanding amount till payment and/or realisation.

As on the date of filing the petition, the operational creditor has claimed a total amount of **USD 99,560.21 (USD ninety-nine thousand five hundred sixty and twenty-one cents only).**

9. In support of its claim, the petitioner has submitted copy of the following documents: -




Sr. No.	Particulars	Page No.
1	Affidavit of Mr. Vikas Malik in support of the application for initiation of CIRP	16-17
2	Affidavit of Mr. Vikas Malik to the effect that no notice has been given by the corporate debtor relating to a dispute of the unpaid operational debt	18-19
3	Board resolution dated 4 <sup>th</sup> January, 2019	20-21
4	Power of attorney dated 4 <sup>th</sup> April, 2019 in favour of Mr. Vikas Malik	22-25
5	Vakalatnama in favour of advocate Ms. Paurami Sheth for the applicant	26-27
6	Purchase order dated 20.01.2017	28-30
7	Bill of lading dated 3 <sup>rd</sup> March, 2017	31-33
8	Bill of lading dated 29 <sup>th</sup> March, 2017	34-36
9	Invoice dated 22 <sup>nd</sup> March, 2017	37
10	Invoice dated 24 <sup>th</sup> February, 2017	38
11	Credit note dated 30 <sup>th</sup> March, 2017	39
12	Credit note dated 14 <sup>th</sup> March, 2017	40
13	Bill of exchange dated 14 <sup>th</sup> March 2017	41
14	Bill of exchange dated 3 <sup>rd</sup> April, 2017	42
15	Demand notice dated 23 <sup>rd</sup> October, 2018	43-65

### Findings

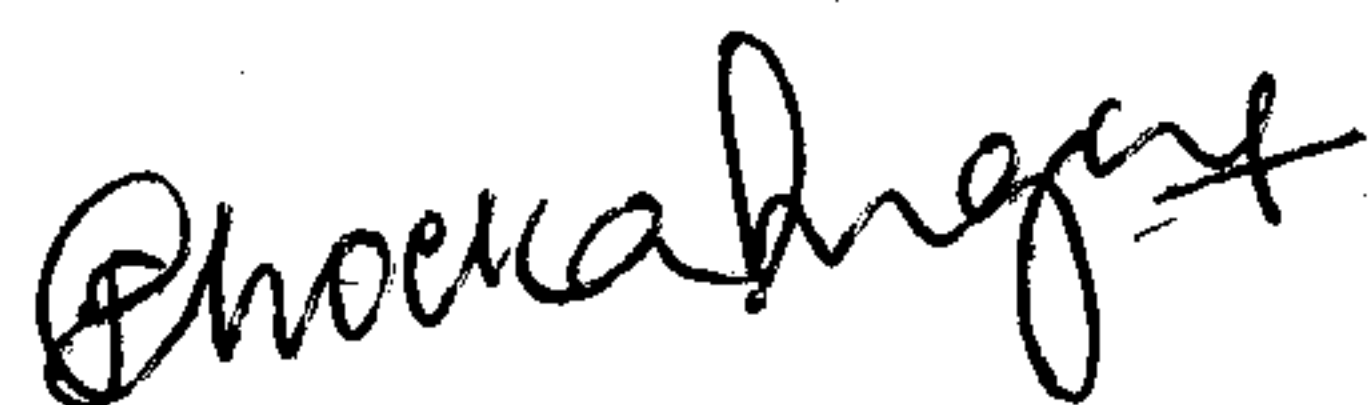
10. Heard learned lawyer appearing for both the sides, also seen the documents annexed to the application. On perusal of the records it is found that despite giving number of opportunities, the respondent has not filed any reply. Ultimately, on 18.10.2019, the respondent was allowed further one week's time as a last chance to file reply with a cost of Rs. 5,000/- fixing 26.11.2019. But, on 26.11.2019 the respondent has not filed any reply. Therefore, the matter was heard without any reply from the side of the respondent. However, the respondent was allowed to advance his arguments.
11. On perusal of the records it is found that when the respondent failed to make payment of the outstanding amount, the applicant was compelled to issue demand notice under section 8 of I & B Code on dated 23.10.2018.

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Record also shows that the respondent has not raised any reply/dispute against the demand notice so issued by the applicant.

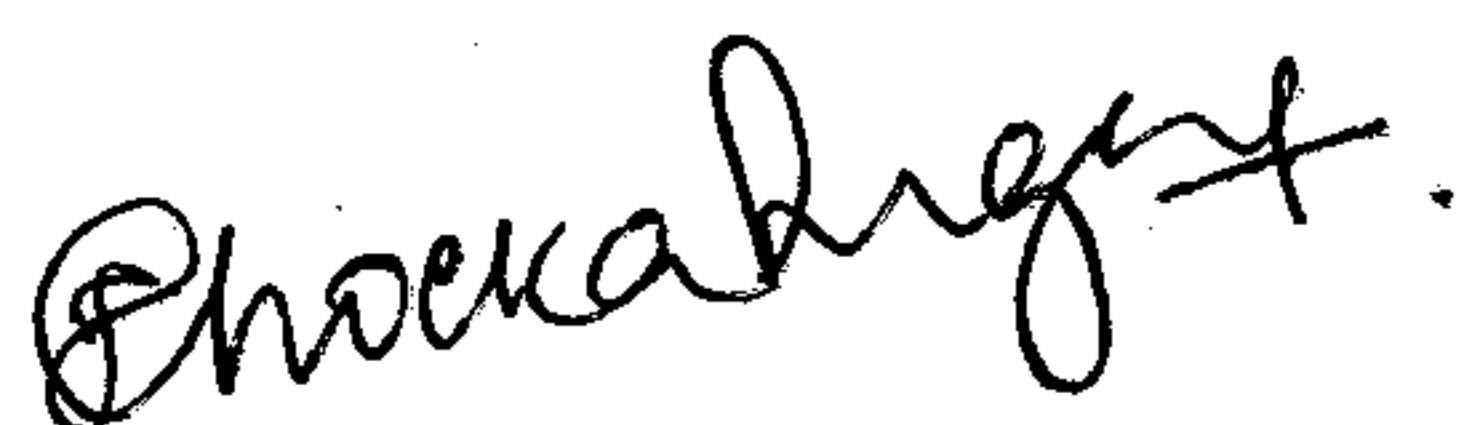
12. On perusal of the record it is found that the applicant is duly authorised vide Board Resolution dated 04.01.2019 to initiate and file legal proceedings etc. before the NCLT. Notice under Section 8 of the Code has also been duly issued but the corporate debtor did not raise any dispute.
13. On perusal of the record it is found that amount is due and payable to the operational creditor and the operational creditor has proved the same by placing on record overwhelming evidences viz. invoice, delivery challan, demand notice etc. Though ample opportunity was granted, the corporate debtor failed to file reply.
14. On perusal of the record it is found that the service is complete and the petition is complete in all respect.
15. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ(JP) 2 SC*** that while examining an application under Section 9 of the Act, will have to determine the following: -



- (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (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 of the aforesaid conditions is lacking, the application would have to be rejected.

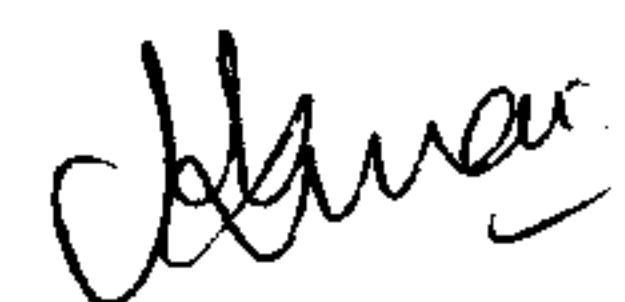
16. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of IB Code. That, service is complete and no dispute has been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.



17. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
18. From the above stated discussion and on the basis of material available on record it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
19. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
- (i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;



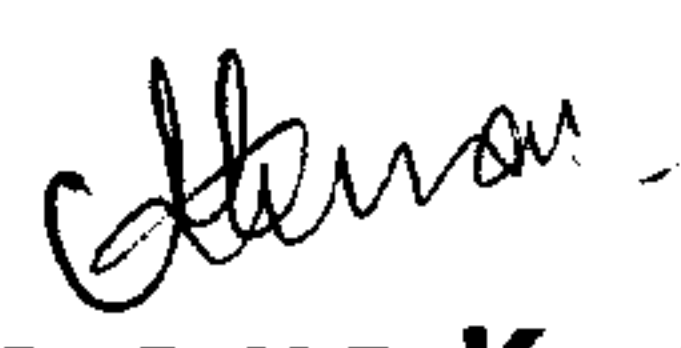
- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
  - (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
20. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
21. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.



22. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint CS Mr. Keyur J. Shah, 408, Chitrarath Complex, Off. C.G. Road, Navrangpura, Ahmedabad 380 009, Gujarat (cs keyurshah@gmail.com) (9909702182) having registration No. IBBI/IPA-002/IP-N00244/2017-18/10729 to act as an interim resolution professional under Section 13(1)(c) of the Code.
23. This Petition is accordingly admitted.
24. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
25. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation and sale of assets to realise the amount for all the stakeholders.

  
**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**

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**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**