

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

C.P. (I.B) No. 67/7/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 24.01.2019**

Name of the Company: Madhya Pradesh State Industrial Development
Corporation Ltd
V/s.
Siddharth Tubes Ltd.

Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER

None present for the parties.

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


MANORAMA KUMARI
MEMBER JUDICIAL
Dated this the 24th day of January, 2019


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

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

C.P. No.(IB) 67/7/NCLT/AHM/2018

In the matter of:

**Madhya Pradesh State Industrial
Development Corporation Limited**
AVN Towers
192 Zone – I, M.P. Nagar
BHOPAL 462 011 (M.P.)

... **Petitioner**
[Financial Creditor]

Versus

M/s. Siddharth Tubes Limited
Taraganj Industrial Estate
A.B. Road, Sarangpur 465 697 (M.P.)

... **Respondent**
[Corporate Debtor]

Order delivered on 24th January, 2019.

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Ms. Manorama Kumari, Member (J).**

Appearance:

Advocate Mr. Hans Raj Mutreja is present for the
Petitioner/Financial Creditor
Advocate Ms. Soumya Sharma i/b Elequitas Letal LLP is present
for the respondent.

ORDER

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

1. Madhya Pradesh State Industrial Development Corporation Ltd. (hereinafter referred to as the 'MPSIDC'), a Government of Madhya Pradesh undertaking, incorporated on 13th September, 1965 having its registered office at "AVN" Towers, 191, Zone – I, M.P. Nagar, Bhopal 462 011 (Madhya Pradesh) having identification number

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U74140MP1965SG001008, through its authorised signatory, filed this petition under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 7(5)(a) and Section 13(1)(a)(b)(c) of the Code.

2. That, the respondent/corporate debtor is a company registered on 02nd April, 1986 under the provisions of the Companies Act, 1956 and doing the business in the name and style of M/s. Siddharth Tubes Limited (hereinafter referred to as "STL") having its registered office at Taraganj Industrial Estate, A.B. Road, Sarangpur - 465 697 (M.P.) having identification No. L27105MP1986PLC003351E. That authorised share capital of the corporate debtor is Rs. 6,00,00,000/- and paid up share capital is Rs. 4,80,00,000/-
3. That, it is submitted by the counsel for the applicant that the petitioner/financial creditor, had sanctioned financial assistance for industrial growth by way of Inter Corporate Deposit (ICD) of Rs. 1500.00 lacs to the respondent/corporate debtor for their project at Taraganj Industrial Area, Sarangpur, District Rajgarh (M.P.) and Londhiya Industrial Area, Dist. Shahjapur (M.P.) for Galvanised Steel and Cool Rolling Mills with a total capital outlay of Rs. 195.00 crores. That this ICD was released in the years 1996, 1999 and 2000 against which the

respondent company had paid only Rs. 50.00 lacs towards principal in the month of July 2000 and no payment was made thereafter. The details of the ICD amount are as follows: -

Date	Amount (In lacs)	Mode of payment
03.10.1996	100.00	By transfer to the account of corporate debtor with State Bank of India, Commercial Branch, Bombay.
15.12.1999	200.00	Vide cheque drawn on State Bank of India
07.01.2000	200.00	Vide cheque drawn on State Bank of India
12.01.2000	1000.00	Vide cheque drawn on State Bank of Indore

4. That, the respondent company executed the following documents to avail the above ICD: -

D.P. Note	03.10.1996	1,00,00,000.00
D.P. Note	15.12.1999	2,00,00,000.00
Deed of Corporate Guarantee	15.12.1999	2,00,00,000.00
Board Resolution	30.10.1999	4,00,00,000.00
D.P. Note	07.01.2000	2,00,00,000.00
Deed of Corporate Guarantee	07.01.2000	2,00,00,000.00
D.P. Note	12.01.2000	10,00,00,000.00
Deed of Corporate Guarantee	12.01.2000	10,00,00,000.00

5. That, the petitioner has submitted copy of the D.P. Notes (Demand Promissory Note) dated 03.10.1996, 15.12.1999, 07.01.2000 and 12.01.2000 and placed at Annexures – A-3, A-4, A-6, A-7 and A-8 to the application.
6. That the petitioner/MPSIDC had issued Revenue Recovery Certificate (RRC) under the provisions of Madhya Pradesh Lok Dhan Shodhya Rashion Ki Vasuli Adhinyam, 1987 against STL in the month of May, 2002. That STL had approached Hon'ble Revenue Board, Madhya Pradesh at Gwalior in the month of July, 2004 and had obtained stay the proceedings of RRC. That the Hon'ble Revenue Board had directed the Tehsildar through Collector, Indore not to

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take any action against STL and in the meantime STL was registered with BIFR vide No. 295/2004 dated 22.09.2004. Therefore, MPSIDC could not take any further legal action for recovery of its dues. It is further submitted by the counsel appearing on behalf of the applicant that BIFR proceeding were continued and various hearings were held on different dates till the proceedings before the Hon'ble BIFR were abated. That the last demand for recovery was sent to STL on 02.05.2016. That MPSIDC have also issued a letter to STL for settlement on 24.03.2017.

7. That in accordance with the Resolution of Board of Directors of MPSIDC in its meeting dated 29.07.2009, Mr. Hemant Kapoor, Dy. Manager, was appointed as Officer-in-charge to represent the MPSIDC in the matter and he is accordingly authorised to sign application/undertaking/claim/ written statement affidavit and other connected documents, to give oral evidence on oath or by way of affidavit to file and to obtain documents, to deposit and get refund of money and to do all other acts, deeds and things as may be necessary for proper conduct of the case.
8. That the total amount claimed to be in default as on 31.03.2017 is Rs. 36,00,00,910.22 (Rupees thirty-six crores nine hundred ten and twenty-two paisa only). That working for computation of amount and days of default, as summarised below, is given at **Annexure A-16** to the application and also reproduced herein below: -

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(Rs. In lacs)

Date of disbursement of ICD	ICD Amount	Interest rate	Due Date	Re-paid	ICD OD	Date of default
03.10.1996	100.00	19%	29.9.2000	0.00	100.00	30.09.00
15.12.1999	200.00	17%	25.10.2004	0.00	200.00	25.04.00
07.01.2000					200.00	
12.01.2000	1000.00*	17%	25.04.2005	50.00	950.00	25.06.00
TOTAL	1500.00			50.00	1450.00	

* Principal ICD was repayable in 20 quarterly instalments of Rs. 50.00 lacs each commencing from 25.07.2000

** Copies of ledger/computer sheets till 31.03.2017 are enclosed.

Outstanding ICD dues position as on 31.03.2017 (Rs. In lacs)

Date of ICD	ICD Amount	Interest rate	Due Date	ICD OF	Interest OD	Total dues as on 31.03.17
03.10.96	100.00	19%	29.09.00	100.00	3334.67	3434.67
15.12.99	200.00	17%	25.10.04	200.00	9375.94	9775.94
07.01.00				200.00		
12.01.00	950.00	17%	25.04.05	050.00	22749.61	23699.61
TOTAL	1450.00			1450.00	35460.22*	36910.22

* This includes penal interest

** Subject to reconciliation

9. The petitioner/financial creditor has submitted the following relied upon documents along with the petition: -

Description	Annexure No.	Page No.
Copy of authority letter dated 28.12.2017 of the applicant company in favour of authorised signatory	A-1	14
Consent of IRP on form No. 2	A-2	15
DP Note dated 03.10.1996 amounting to Rs. 100.00 lacs	A-3	16
DP Note dated 15.12.1999 amounting to Rs. 200.00 lacs	A-4	17
Deed of corporate guarantee dated 15.12.1999 amounting to Rs. 200.00 lacs	A-5	18-25
DP Note dated 07.01.2000 amounting to Rs. 200.00 lacs	A-6	26
Deed of corporate guarantee dated 07.01.2000	A-7	27-34
DP Note dated 12.01.2000 amounting to Rs 1000.00 lacs	A-8	35
Deed of corporate guarantee dated 12.01.2000 amounting to Rs. 1000.00 lacs	A-9	36-39
Letter dated 18.09.2017 of State Bank of India Panchanan Bhawan Branch, Bhopal	A-10	40
Letter dated 13.1.2017 of State Bank of India Commercial Branch, Mumbai	A-11	41
Statement of accounts of State bank of India Gate Way of India, Colaba, Mumbai in respect to the loan amount of Rs. 200.00 lacs & Rs. 200.00 lacs	A-12	42-43
Receipt dated 12.01.2000 of Debtor company amounting to Rs. 1000.00 lacs	A-13	44
Letter dated 11.12.2013 of the debtor addressed to IDBI Bank Ltd. enclosing DRS prepared by the Debtor company for submitting with BIFR in case No. 285/2004	A-14	45-47
Letter dated 24.03.2017 of the Managing Director of the applicant company to the Debtor to settle the inter corporate deposit account as per the State Government approved one time settlement policy 2007.	A-15	48-49
Statement of Accounts	A-16	50-52
Copy of power of Attorney		55

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10. On receipt of the notice the respondent appeared through its engaged lawyer and filed reply rebutting the contents of the application.
11. Learned lawyer appearing on behalf of the respondent/corporate debtor submitted that the respondent company had availed inter-corporate loans from the applicant net amounting to Rs. 1500.00 lacs (Rupees fifteen hundred lacs only) during the period of 1996-2000 and has repaid Rs. 50.00 lacs (Rupees fifty lacs only) in the year 1999-2000 and as on the date the amount outstanding is Rs. 14.50 lacs.
12. It is further submitted that for the aforesaid ICD loans no security was extended except demand promissory note and corporate guarantee by the respondent.
13. It is stated by the corporate debtor that the applicant issued Revenue Recovery Certificate under the provisions of the Madhya Pradesh Loak Dhn (Shodhya Rashiyon Ki Vasuli) Adhinyam, 1987 against the respondent and the Tehsildar, Indore sent a demand notice under the aforesaid Act for recovery of the outstanding.
14. It is submitted that the right of the applicant to enforce all the demand promissory notes and deed of corporate guarantees has become time barred long ago from the time of filing of the present application as the same is based on

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the expired agreements under which any right accrued to the applicant has become time barred.

15. It is submitted by the corporate debtor that the applicant has filed the present application almost 16 years from the date of the non-payment of the claim which is far beyond the period of limitation for enforcing any right in relation to the recovery of unsecured loan amount and all the demand promissory notes and deed of corporate guarantees were issued till the year 2000 for the respective inter corporate deposits which was meant to be repaid within the specified time. However, it is the case of the applicant that the respondent company stopped making payment in all the aforesaid inter corporate deposits accounts in the year 2002. Therefore, the present application on the basis of the demand promissory notes and deed of corporate guarantees for the inter corporate deposits is barred by limitation in every respect and the present application is liable to be summarily rejected on the ground of limitation.

16. It is also alleged by the corporate debtor that the applicant has withheld crucial facts while filing the present application and has failed to produce the order dated 21.06.2004 passed by the Revenue Board, Gwalior quashing the demand notice and proceeding against the respondent company declaring the RRC proceedings illegal.

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17. Heard both sides at length. Perused pleadings, reply and the documents submitted by both the parties.
18. On perusal of the documents made available in the application, it is evident that, during the period from 03.10.1996 to 12.01.2000, the petitioner/financial creditor had sanctioned and disbursed inter corporate deposits (ICDs) amounting to Rs. 1500.00 lacs to the respondent/corporate debtor in a phased manner against demand promissory notes. As per the terms and conditions of sanction, the principal ICD was repayable in 20 quarterly instalments of Rs. 50.00 lacs each commencing from 25.07.2000. It is an admitted fact that, the respondent paid only one instalment against the principal outstanding in the financial year 1999-2000. It is also admitted fact that no security was extended against the ICD loans except demand promissory note and corporate guarantee by the respondent.
19. It is also an admitted fact that the applicant had issued Revenue Recovery Certificate in the month of May 2002 under the provisions of the Madhya Pradesh Loak Dhn (Shodhya Rashiyon Ki Vasuli) Adhinyam, 1987 against the respondent which is well within time and the Tehsildar, Indore sent a demand notice under the aforesaid Act for recovery of the outstanding against which the respondent had approached Hon'ble Revenue Board, Madhya Pradesh at Gwalior in the month of July, 2004 and obtained stay against the proceedings of RRC. In the meantime, the respondent

Answer

got registered with BIFR and the proceedings under BIFR continued and various hearing were held on different dates till the proceedings before the BIFR were abated. That the last demand notice for recovery was sent to STL on 02.05.2016. That MPSIDC have also issued a letter to STL for settlement on 24.03.2017. That, the RRC was challenged by the respondent before Revenue Board and the said RRC was quashed by the Revenue Board vide order dated 28.06.2005.

20. Being aggrieved by the order of the Revenue Board, the applicant approached the Hon'ble High Court of Madhya Pradesh at Indore in W.P. No. 7301 of 2006 wherein the Hon'ble High Court was pleased to dispose of the W.P. vide order dated 05.02.2009 as the respondent company in the meanwhile, had registered as a sick unit in BIFR. While disposing the W.P. No. 7301 the Hon'ble High Court of Madhya Pradesh have passed the following order: -

"At this stage, learned counsel for the parties jointly state that the order Annexure P-7 passed by the Revenue Board be quashed with a liberty to the petitioner corporation to seek the requisite permission, in accordance with law, in the proceedings pending before BIFR, to continue with the recovery proceedings.

In view of the stand taken by learned counsel for the parties, the present petition is disposed of with liberty as claimed by the petitioner-corporation. However, it is clarified that if an when, at any stage, the permission is sought by the petitioner-corporation before BIFR, then the respondent company would be entitled to raise all such objections, which are available to it, in accordance with law."

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21. Thus, it is admitted position that the Respondent company registered itself as a sick unit with BIFR under the BIFR No. 295/2004. On perusal of the records, it is found that applicant had been filing various applications before different forums from time to time for the redressal of their/his grievances keeping in mind the limitation period and the same were challenged by the corporate debtor which process consumed sufficient time for no fault of the applicant. Ultimately, the respondent company got it registered with BIFR and, when the matter was pending, the respondent company, through Debt Restructuring Scheme had admitted the debt of the applicant on 11.12.2013 as per **Annexure 14** at page 45 of the application.

22. Meanwhile, IBC – Insolvency and Bankruptcy Code came into force on 01.12.2016 and as per Schedule VIII, the Respondent/Corporate Debtor should have approached the NCLT within 180 days as provided under the provisions of Section 252 of the Code. For the sake of brevity, the said Schedule VIII is reproduced hereunder:

THE EIGHTH SCHEDULE
(See section 252)
AMENDMENT TO SICK INDUSTRIAL COMPANIES
(SPECIAL PROVISIONS) REPEAL ACT, 2003
(1 OF 2004)

In section 4, for sub-clause (b), the following sub-clause shall be substituted, namely –

“(b) On such date as may be notified by the Central Government in this behalf, any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies

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(Special Provisions) Act, 1985 shall stand abated:

PROVIDED that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the national Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 within one hundred and eighty days from the commencement of the insolvency and Bankruptcy Code, 2016 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016:

PROVIDED FURTHER that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2016 by a company whose appeal or reference of inquiry stands abated under this clause."

[PROVIDED ALSO that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall be deemed to be an approved resolution plan under sub-section (1) of section 31 of the insolvency and Bankruptcy Code, 2016 and the same shall be dealt with, in accordance with the provisions of Part II of the said Code:

PROVIDED ALSO that in case, the statutory period within which an appeal was allowed under the Sick Industrial Companies (Special Provisions) Act, 1985 against an order of the Board had not expired as on the date of notification of this Act, an appeal against any such deemed approved resolution plan may be preferred by any person before National Company Law Appellate Tribunal within ninety days from the date of publication of this order.]

Thus, the Company registered with BIFR is supposed to file an application before NCLT within 180 days but the Company has miserably failed to take appropriate step. Finding no alternative, and in view of the inception of Insolvency and Bankruptcy Code, the applicant approached this Bench of NCLT by filing an application under section 7 of the IB Code which is well within the time as the same is filed on 19th January, 2018 if calculated from the 1st day of December, 2016.

23. In the matter of applicability of Limitation Act, the applicant has placed reliance on in the matter of B.K. Educational Services Pvt. Ltd. vs. Parag Gupta and Associates, decided

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by Hon'ble Supreme Court on 11th October, 2018 which reads as under: -

"It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act get attracted. The right to sue, therefore, accrues when a default occurs if the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases, where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application"

24. Further, during the course of arguments, the applicant relied upon the citations of the NCLT in the matter of Brijesh Kumar Agarwal Vs. Punjab National Bank which is reproduced hereunder: -

".....Even it is accepted that Limitation Act is applicable, in such case Article 137 of part II of the Limitation Act will be applicable whereunder three years' period from the date of right to apply accrued will be applicable. In the present case, the right to apply under Section 7 accrued to 'Punjab National Bank' on 1st December, 2016, of the I & B Code. Therefore, even if the Limitation Act is made applicable, the application being not barred by limitation, interference is not called for....."

25. It is observed that the RRC was filed on 28th May, 2002 i.e. well within the period of limitation and the claim of the applicant continued till 1st December, 2016 when proceedings under SICA has been abated and thus there is no delay in filing the claim.
26. In view of the above discussions, contention raised by the respondent that, the applicant has failed to take steps for

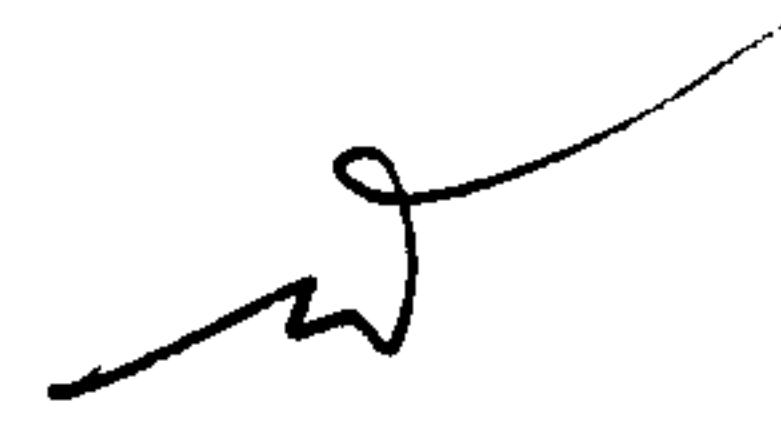
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realisation of their claim since last 16 years is not acceptable. On the contrary, the respondent has prolonged the claim by way of approaching different forums from time to time thus proving their intention was to delay the matter.

27. That, from the material placed on record, this Adjudicating Authority is satisfied that a default has been committed by the Corporate Debtor in repayment of the loan amount.
28. That, on perusal of the application filed by the Financial Creditor shows that the same is complete in all respects. Financial Creditor also filed the Written Communication given by the proposed Interim Insolvency Resolution Professional in Form No. II. Financial Creditor also filed various copies of the accounts, Certificate under the Bank's Book Evidence Act and the copies of the ledger accounts of Corporate Debtor. Therefore, the application is complete in all respects. Hence, the Application is admitted under subsection (5)(a) of Section 7 of the Code.
29. This Adjudicating Authority is also appointing Mr. Amresh Shukla, F-05, Jaideep Complex, 112, Zone – II, M.P. Nagar, Bhopal 462 001 (M.P.) as interim resolution professional under Section 13(1)(b) of the Code having Registration Number IBBI/IPA-001/IP-P00120/2017-18/10255. Copy of written communication dated 31.07.2017 received from the Interim Resolution Professional is attached to the petition marked as **Annexure "A-2"**.

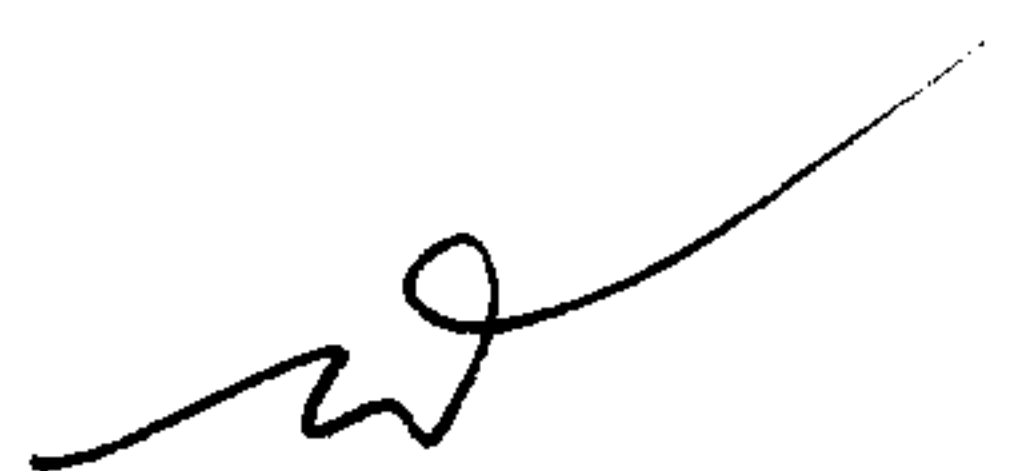
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30. That Section 13 of the Code says that after admission of the application under Section 7, the Adjudicating Authority shall pass an order declaring a moratorium for the purposes referred to in Section 14. Therefore, in view of the commencement of the Insolvency Resolution Process with the admission of this Petition and appointment of the Interim Resolution Professional, this Adjudicating Authority hereby pass the order declaring moratorium under Section 13(1)(a) prohibiting the following as laid down in 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.

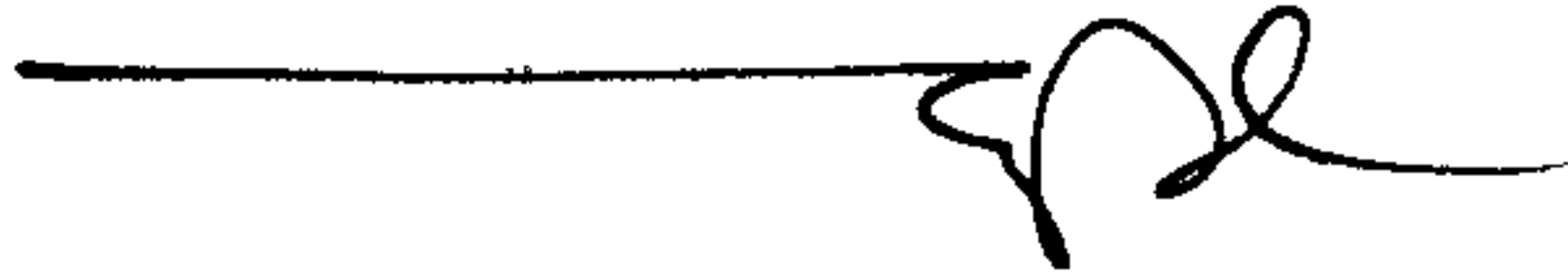
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- (a) The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.
- (b) The Applicant shall also make public announcement about initiation of Corporate Insolvency Resolution Process, as required by Section 13(1)(b) of the Code.

31. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.
32. This Petition is ordered accordingly.
33. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.


Ms. Manorama Kumari
Member (Judicial)
Adjudicating Authority


Harihar Prakash Chaturvedi
Member (Judicial)
Adjudicating Authority

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