

IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"

CP(IB) No.02/Chd/CHD/2018

Under Section 7 of the
Insolvency and Bankruptcy
Code, 2016.

In the matter of:

Allahabad Bank,
having its Head Office
at 2, Netaji Subhash Road,
Kolkatta and having its Branch
at SCO 90-91-92, Sector 8-C,
Madhya Marg, Chandigarh-160008.

...Petitioner-Financial Creditor

Vs.

M/s. Vardhman Chemtech Limited,
having its registered office at SCO No.
85, Sector, 35-C, Chandigarh-160036, and
Corporate offices at :

- (i) SCO No. 350-352, 3rd Floor,
Sector 34-A, Chandigarh-160036
- (ii) SCO No. 148-149, 4th Floor
Sector 34-A, Chandigarh-160036
- (iii) 525, Industrial Area, Phase-II,
Chandigarh-160047.
- (iv) Plot No. D-5,6,7,Focal Point,
Dera Bassi-140507 (Punjab)
- (v) Village: Nimbua, Dera Bassi-140507
(Punjab)

...Respondent-Corporate Debtor

Judgement delivered on: 25.09.2018

Coram: Hon'ble Mr. Justice R.P. Nagrath, Member(Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)

For the petitioner : Mr. Nakul Sharma, Advocate.
For the respondent : Mr. Gaurav Mankotia, Advocate.

Pradeep R. Sethi
Pradeep R. Sethi

Per: Pradeep R. Sethi, Member (Technical)

JUDGEMENT

The present petition is filed in Form 1 by Allahabad Bank (hereinafter referred to as the Financial Creditor) for initiating corporate insolvency resolution process (CIRP) in the case of M/s. Vardhman Chemtech Limited (hereinafter referred to as the Corporate Debtor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short, the Rules). The petition is signed by Shri Himanshu Kansal, Assistant General Manager of the financial creditor and affidavit verifying the petition is also filed by him (page 16 to 17 of the petition). Power of Attorney of the financial creditor in favour of Shri Himanshu Kansal is at Annexure A-1 of the petition.

2. The CIN of the corporate debtor is U24117CH1996PLC018656, date of incorporation is 21.08.1996 and registered address is at SCO 85, Sector 35-C, Chandigarh-160036 as per master data at Annexure A-29 of Diary No. 1116 dated 13.04.2018. The matter, therefore, lies within the territorial jurisdiction of this bench of the Tribunal.

3. It is stated that the corporate debtor had availed loan/credit facilities/financial assistance from the financial creditor and that as per account reviewed lastly on 29.03.2014 vide letter reference No. HO/ADV/852/2013-14/4202 dated 29.03.2014 (placed at Annexure A-7 of the petition), the total amount of debt granted was as follows:-

1. Term Loan WCTL (Working Capital Term Loan) of ₹23,61,00,000/-.
2. Term Loan of ₹ 19,03,00,000/-.
3. Term Loan-FITL (Funded Interest Term Loan) of ₹ 10,60,00,000/-.

4. *Cash Credit Working Capital Limit of ₹ 7,63,00,000/-*

Letter of credit of ₹4,61,00,000/-.

₹ 60,87,00,000/- funded plus ₹ 4,61,00,000/- Non-funded total ₹ 65,48,00,000/- (Sixty five crore forty eight lakhs only)."

The sanction letter of review/restructuring under CDR dated 29.03.2014; acknowledgement of sanction dated 31.03.2014; extract of Board resolution passed by Board of Directors of the corporate debtor held on 22.03.2014; DP note of ₹ 65.84 crores dated 31.03.2014; hypothecation agreement (ADV 32) dated 31.03.2014; Term Loan Agreement (SD-4) dated 31.03.2014; letter waiving presentment of Pronote of ₹ 65.48 crores dated 31.03.2014; acknowledgement of debit ₹ 65.48 crores dated 31.03.2014 are stated to be at Annexures A-7 to A-14 of the petition. Vide Diary No. 1349 dated 01.05.2018 by which the petitioner-financial creditor filed the rejoinder, the sanction letter No. CHD/AVV/2013-14/ 2115 dated 31.03.2014 of the financial creditor has been annexed as Annexure A-38. Two loan agreements dated 31.03.2014 were enclosed as Annexures A-39 and A-40 with rejoinder and another loan agreement is at Annexure A-12 with the original petition.

4. The details of the amount claimed to be in default as given in para-2 of Part IV of Form 1 are as follows:-

S. No.	Facility details	Account Number	Amount outstanding as on 31.10.2017
1.	Cash credit working capital limit (Fund Based and Non-Fund Based)	50023737831	₹18,00,42,101.00
2.	Term Loan	50198804989	₹23,27,26,810.40
3.	Term Loan WCTL (Working Capital Term Loan)	50198789765	₹28,86,96,246.40

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4.	Term Loan (Funded interest Loan)	FITL	50198767774	₹12,96,07,310.00
	Total			₹83,10,72,467.80

Total sum of ₹83,10,72,467.80 (Eighty three crores ten lacs seventy two thousand four hundred sixty seven and eighty paise only) as on 31.10.2017 inclusive of interest and expenses of ₹ 12,00,000/-.

5. The accounts statements of the four accounts of the corporate debtor have been filed as Annexures A-34 to A-37 of Diary No. 1116 dated 13.04.2018. The accounts statements are accompanied by certificates in terms of Section 2A(b) of the Bankers Books Evidence Act. The joint summary of the accounts showing balance outstanding excluding cost and other expenses incurred of ₹ 83,10,72,467.80 is at page 130 of Diary No. 1116 dated 13.04.2018.

6. The particulars of security held are given in para-1 of Part V of Form 1. In para-2 of Part V, it is stated that original application has been registered by DRT-II, Chandigarh under No. 4494 of 2017 and date of hearing is 24.11.2017. The copy of the demand notice issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), dated 21.07.2016, copy of objections received from the corporate debtor under Section 13(3-A) of the SARFAESI Act dated 24.09.2016; copy of reply to the objections dated 24.09.2016 vide letter dated 14.10.2016; copy of demand notice dated 12.09.2017 are stated to be enclosed as Annexures A-24 to A-28 of the petition. The copy of the petition is stated to be sent to the corporate debtor by speed post on 08.12.2017.

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7. In the order dated 10.01.2018, it was observed that the learned counsel for the petitioner has handed over the tracking reports in respect of delivery of copy of the application with the entire paper book to the respondent at six different addresses including the registered office of the corporate debtor and further stated that all the postal articles were delivered as per the tracking reports.

8. Notice of the petition was issued to the respondent-corporate debtor to show cause as to why the petitioner be not admitted. The affidavit of service was filed by Diary No. 283 dated 24.01.2018. The corporate debtor submitted reply/objections by Diary No. 645 dated 05.03.2018 stating that the application is not maintainable because it has not been filed by duly authorised person as it is purportedly filed by a sub-delegatee; Form 1 Part IV is incomplete and has failed to provide the mandatory details as prescribed; financial creditor has failed to provide record of default recorded with information utility as required under Section 7 of the Code; in the monitoring committee meeting held on 30.06.2014, the corporate debtor had submitted that the enhanced NFB limits as per CDR package has not yet been released by the CDR lenders except by the financial creditor and that in the monitoring committee meeting held on 16.06.2014, the corporate debtor had *inter alia* submitted that due to non-availability of additional NFB limits, the normal operations of the corporate debtor are getting affected.

9. It was noted in the order dated 09.04.2018 that during the course of arguments, the learned counsel for the corporate debtor has pointed out certain defects in the application in Form No. 1 which are:

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- (i) that there is no certificate of registration of the charge issued by the Registrar of Companies concerned and
- (ii) that with the petition the working of the computation of amount and days of default in a tabular form as required by Col.II of Part II of Form 1 has not been filed.

Notice of these defects was given to the petitioner. The learned counsel for the petitioner accepted notice on behalf of the petitioner and the documents were to be filed/defects removed within a period of seven days with copy advance to the counsel opposite and the counter, if any, was allowed to be filed at least a week before the next date with copy advance to the counsel opposite. The matter was thereupon listed for arguments on 03.05.2018 and the question whether the bank is required to furnish the estimated value at the time of creation of the charge or at the current value was left open.

10. Vide Diary No. 1116 dated 13.04.2018, in compliance to the order dated 09.04.2018, the financial creditor placed on record certified copy of master data; certified copy of certificates of registration of charge issued by the Registrar of Companies, Punjab and Chandigarh along with certified copy of Form 8 (particulars for creation or modification of charge) as Annexure A-29 to A-33; and also the copy of working for computation of amount and days of default in tabular form as annexures A-34 to A-37 along with bankers certificates.

11. The replication /rejoinder of the financial creditor was filed by Diary No. 1349 dated 01.05.2018 denying the contentions raised in the reply by the corporate debtor and stating that as regards para-8 of the reply of the corporate debtor, no claim has been submitted by the corporate debtor, and

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it is an admitted fact that there is amount due as well as default towards the financial creditor.

12. It is *inter alia* observed in the order dated 16.05.2018 that the respondent sought adjournment to file counter for the documents filed by the petitioner in compliance with the previous order. It was observed in the order dated 29.05.2018 that counter to the documents has not been filed by the respondent.

13. During the course of hearing, the learned counsel for the financial creditor argued that Form No. 1 with required particulars is duly filed, amount is due, default has occurred and, therefore, the petition may be admitted. It was argued by the learned counsel for the corporate debtor that the certificate of registration of charge issued by the concerned Registrar of Companies is required to be up-dated every six months along with current value and since this current value was not furnished, the petition deserves to be rejected. It was further argued that in the notice under Section 13(2) read with Section 13(13) of SARFAESI Act, 2002 dated 21.07.2016, it was stated that the account was classified as Non-Performing Asset on 31.03.2014 as per RBI guidelines but the same was not reflected in para 2 of Part IV of Form 1. It was argued that no notice of default was issued after the account was restructured on 29.03.2014.

14. In response, the learned counsel for the petitioner argued that the account was restructured on 29.03.2014 (Annexure A-7 of the petition) and the date of default would relate back to this date. It was further stated that the defect pointed out at (ii) of order dated 09.04.2018 has been rectified vide Diary No. 1116 dated 13.04.2018. As regards the current valuation of the

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assets mortgaged, it was argued that such valuation is not necessary, especially since fresh valuation of assets is required to be made by the IRP after his appointment. It was further submitted that the valuation of the securities held is given in Part V of Form 1. It was also contended that after the restructuring of the accounts on 29.03.2014, a notice of demand was sent by the financial creditor to the corporate debtor on 12.09.2017.

15. We have carefully considered the submissions and arguments of learned counsel for the financial creditor and corporate debtor and also perused the records. This petition is filed under Section 7 of the Code. Section 7(5) of the code reads as follows:-

(5) Where the Adjudicating Authority is satisfied that —

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is in complete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

Therefore, three issues arise for consideration are :-

- (i) Whether a default has occurred.
- (ii) Whether the application under Section 7(2) is complete and

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- (iii) Whether any disciplinary proceedings are pending against Resolution Professional.

16. As regards the first issue i.e. the occurrence of default, we have already discussed above that consequent to review/restructuring under CDR, financial facilities in the form of loan/cash credit/letter of credit totalling to ₹ 65,48,00,000 (₹60,87,00,000 funded plus ₹ 4,61,00,000 non-funded) were granted to the corporate debtor and that the amount outstanding as on 31.10.2017 was ₹ 83,10,72,467.80 inclusive of interest and expenses of ₹ 12,00,000 (also refer Part IV of Form 1) i.e. more than the financial facilities granted. The working for computation of amount and days of default in tabular form has been submitted by the financial creditor vide Annexures A-34 to A-37 of Diary No. 1116 dated 13.04.2018 (supra). Certificate in terms of Para 2A(b) of Bankers Books Evidence Act has been furnished for the loan/cash credit accounts being maintained. Notice under Section 13(2) read with Section 13(13) of SARFAESI Act, 2002 was issued by the financial creditor on 31.07.2016 (Annexure A-25 of the petition) *inter alia* stating that the terms of sanction of the loan have been violated and the account made irregular and as a consequence, account has become Non-Performing Assets and have been classified by the Bank as such on 31.03.2014 as per RBI guidelines. The reply thereof was submitted by the corporate debtor dated 24.09.2016 (Annexure A-26 of the petition) *inter alia* stating that the subject notice must explain in detail the instances of defaults made by the corporate debtor with documentary evidence, exact date and reasons for classifying the account as a Non-Performing Asset (NPA) and complete details of outstanding amount. In response, the financial creditor sent letter dated 14.10.2016 (Annexure A-

27 of the petition) that the account was declared as NPA in accordance with law and it can be verified from the bare perusal of the statement of account and terms and conditions of the sanction of the loan show the default on the part of the borrower to maintain the financial discipline and failure to regularise the account which resulted in turning the account into NPA category. As already discussed above, during the present proceedings, the financial creditor has submitted the accounts statements at Annexures A-34 to A-37 of Diary No. 1116 dated 13.04.2018 and despite seeking short adjournment to file counter to the documents filed by the financial creditor (order dated 16.05.2018), no such counter was filed (order dated 29.05.2018). No specific arguments have also been made that there was no default.

17. The learned counsel for the corporate debtor had argued that the account was restructured on 29.03.2014 and no notice of default was thereafter issued. In reply, the learned counsel for the financial creditor had drawn attention to the notice of demand dated 12.09.2017 issued to the corporate debtor stating that as against sanctioned amount of ₹ 65,48,00,000, the outstanding as on 12.09.2017 (inclusive of interest up to 11.09.2017) was ₹81,97,40,974 and stating that the loan is already due for repayment but the corporate debtor has failed and/or neglected to repay the outstanding dues or regularise the above account. By the notice, the corporate debtor was called upon to discharge the entire liability of ₹81,97,40,974 as on date of 12.09.2017 and also future interest thereon along with cost charge and expense within 15 days from the notice failing which the financial creditor, in addition to initiating recovery process under prevailing laws, shall be constrained to exercise all or any of the rights conferred under the Code. The notice of demand is not

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required to be statutorily issued in respect of initiation of CIRP in the case of financial creditors. However, the contents of the notice clearly bring out the occurrence of default. The occurrence of default is also supported by the issue of notice under Section 13(2) read with Section 13(13) of SARFAESI Act, 2002 (supra).

18. The second issue is whether the application under Section 7(2) is complete. As noted in the order dated 09.04.2018, during the course of arguments, the learned counsel for the corporate debtor had pointed out certain defects in the application in Form 1 which are:-

- (i) that there is no certificate of registration of the charge issued by the Registrar of Companies concerned and
- (ii) that with the petition the working of the computation of amount and days of default in a tabular form as required by Col. 2 of Part 2 of Form 1 has not been filed.

The defects were removed by Diary No. 1116, dated 13.04.2018 and Annexures A-29 to A-33 were filed placing on record certified copy of master data along with certified copy of certificate of registration of charge issued by Registrar of Companies, Punjab and Chandigarh along with certified copy of Form 8 i.e. particulars for creation or modification of charge. Annexures A-34 to A-37 along with bankers' certificates were also filed giving the copy of working of computation of amount and days of default in tabular form. Vide order dated 16.05.2018, it was noted that the learned counsel for the respondent seeks short adjournment to file counter for the documents filed by the petitioner in compliance with the previous order. However, no such counter was filed and the defects have to be taken as removed.

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19. However, the issue regarding disclosure of the estimated value as per the creditor of the security held (para-1 of Part V of Form 1) has been taken up by the learned counsel for the corporate debtor and it was argued that the details of the charge are required to be up-dated with the Registrar of Companies every six months along with current valuation and, therefore, for the purposes of para-1 of Part V of Form 1, the current estimated value is to be shown. We may add here that in the Form 1, the financial creditor had given the value of securities held and such values were given as per valuation reports dated 16.12.2013/ 05.10.2012 for a number of the securities. Valuation reports dated 08.02.2016/09.02.2016/28.03.2016 for properties specified in para-4 of replication/rejoinder (Diary No. 1349 dated 01.05.2018) were also submitted. It was argued by the learned counsel for the Bank that furnishing of valuation and especially current valuation is not mandatory, since once the Interim Resolution Professional is appointed, he has to seek fresh valuation for determining the fair value and liquidation value of the properties of the corporate debtor. We find that the valuation of the securities does not have much relevance for determination of the question whether the application is to be admitted or rejected. The objection of the learned counsel for the corporate debtor is, therefore, not accepted.

20. As regards the date on which the default occurred, even though the same is not specified in para-2 of Part IV of Form1, we have already noted above that the detail of date of default is available in the Notice under Section 13(2) of the SARFAESI Act, 2002 dated 21.07.2016 enclosed as Annexure A-25 of the petition.

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21. In the reply/objections filed vide Diary No. 645 dated 05.03.2018, it is *inter alia* submitted that the financial creditor has failed to provide the record of the default with the information utility as required under Section 7 of the Code. Para-3 of Part V of Form 1 requires furnishing of details of record of default with the information utility, if any. It is stated by the financial creditor in Form 1 that the para is not applicable. Further, Section 7(4) requires the Adjudicating Authority to ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under Section 7(3) of the Code. Therefore, no record being available with the information utility, cannot result in making the application under Section 7(2) as incomplete.

22. In view of the above discussion we hold that the application filed by the financial creditor in Form 1 is complete.

23. We may point out here that in the reply/objections (Diary No. 645 dated 05.03.2018), it has been *inter alia* submitted that the application under Section 7 of the Code is not maintainable because it has not been filed by a duly authorised person and is purportedly filed by a sub-delegatee. In this regard, we have pointed out above that the petition is accompanied by the Power of Attorney in favour of Shri Himanshu Kansal, Assistant General Manager, Allahabad Bank and permission for filing petition before the Adjudicating Authority in the matter of the corporate debtor given by the competent authority at the head office of the financial creditor was also conveyed by the Deputy General Manager/ Zonal Head, Allahabad Bank by letter dated 15.11.2017 (Annexures A-1 and A-2 of the petition). Authority to


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file the petition under the Code was also conveyed by the Deputy General Manager/Zonal Head

24. It has been contended in the reply/objections (supra) that in the monitoring committee meeting held on 30.06.2014, the corporate debtor had submitted that the enhanced NFB limits as per CDR package have not yet been released by the CDR lenders except by the financial creditor in the present case (Allahabad Bank) and that in the monitoring committee meeting held on 16.07.2014, the Corporate Debtor had *inter alia* submitted that due to non-availability of additional NFB limits, the normal operations of the company are getting effected. Detailed arguments in this regards have not been made during the course of the hearing. Moreover, it appears that the grievance, if any, is with the other Banks of the consortium and not with the financial creditor in the present petition (Allahabad Bank).

25. The third issue is whether any disciplinary proceedings are pending against the proposed resolution professional. In Part-III of Form 1, the financial creditor has proposed the appointment of Shri Hemanshu Jetley, Regn. No. IBBI/IPA-001/IP-P00219/2017-18/10457 as Interim Resolution Professional. The copy of the registration certificate has been annexed as Annexure A-3 of the petition. Form II has been filed at pages 14 to 15 of the petition in which Shri Hemanshu Jetley has agreed to accept appointment as Interim Resolution Professional and has affirmed that he is eligible to be appointed as Resolution Professional in respect of the corporate debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In Form No. 2, Shri Hemanshu Jetley has also certified that there are

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no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professional of ICAI.

26. In view of the above discussion, the requirements of Section 7(5)(a) are satisfied in the present case and, therefore, the petition is admitted and the moratorium is declared in terms of sub-section (1) of Section 14 of the Code, which is as under:-

(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 or 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;

(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.

27. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

28. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or pass an order for liquidation of corporate debtor under Section 33 as the case may be.

29. Having observed that the written communication in Form 2 furnished by Hemanshu Jetley, registered Resolution Professional is in order, we appoint Mr. Hemanshu Jetley, bearing Registration No. IBBI/IPA-001/IP-P00219/2017-18/10457 as the Interim Resolution Professional with the following directions: -

- (i) The term of appointment of Mr. Hemanshu Jetley, shall be in accordance with the provisions of Section 16(5) of the Code.
- (ii) In terms of Section 17 of 'the Code', from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the 'Code', including taking control and custody of the assets over which the 'Corporate Debtor' has ownership rights recorded in the balance sheet of the 'Corporate Debtor'




etc. as provided in Section 18 (1) (f) of the 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the 'Corporate Debtor';

- (iii) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the 'Code of Conduct' governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- (iv) The Interim Resolution Professional shall endeavour to constitute the Committee of Creditors after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor, constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall hold first meeting of the committee within seven days of filing the report of constitution of the committee.
- (v) It is hereby directed that the 'Corporate Debtor', its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all co-operation in accessing books and records as well as assets of the 'Corporate Debtor';

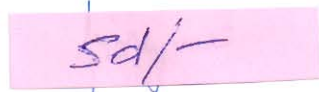

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- (vi) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the 'Code' read with Section 15 calling for the submission of claims against 'Corporate Debtor'; and
- (vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.


(Justice R.P. Nagrath)
Member (Judicial)

*Announced in
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(Pradeep R. Sethi)
Member (Technical)

September 25, 2018
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