

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-2628/(ND)/2019

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

Punjab National Bank

Registered office at: Bank Road,
Gorakhpur, UP

...Financial Creditor

Versus

M/s. Saraya Industries Limited

Registered office at: 309, D-2, Southern Park,
District Centre, Saket Place,
New Delhi- 110017

...Corporate Debtor

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)
SHRI RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Applicant : Mr. Yash Tandon

Counsel for Respondent : Mr. Mukund Rawat

ORDER

Per SHRI. P.S.N. PRASAD, MEMBER (JUDICIAL)

Date:17.05.2022

1. The present application is filed by Punjab National Bank 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 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') against M/s Saraya Industries Ltd. for the alleged default on the part of the Respondent in settling an amount of Rs. 44,78,29,165.18/- (Rs Forty four crores seventy eight lacs twenty nine thousand

one hundred sixty five and eighteen paisa) as on 15.01.2019. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the Corporate Debtor was granted various loan facilities by the Applicant from time to time basis and the total outstanding including interest and other charges as per bank books as on 30.08.2019 was Rs. 44,78,29,165.18/- (Rs Forty four crores seventy eight lacs twenty nine thousand one hundred sixty five and Eighteen paisa only).
- ii. That the Corporate Debtor/Respondent acknowledged the outstanding dues of Rs. 53.17 Crores against them by signing and executing document dated 27.09.2017.
- iii. That on 31.12.2018 the account of the Corporate Debtor was marked as a NPA (Non-Performing Assets) due to continuous default in repayment of the bank loan as per the agreements executed between the Corporate Debtor/Respondent and the Applicant on different dates.





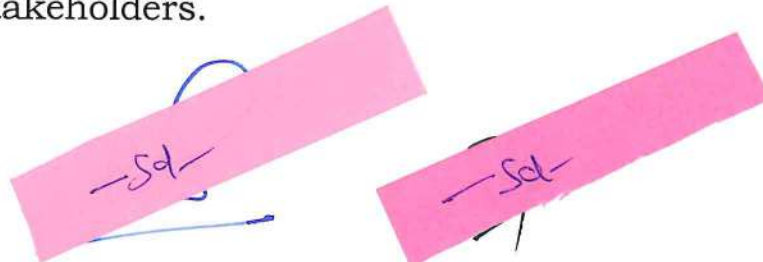
- iv. That after failure of all possible attempts to realise the payment, the Financial Creditors filed a petition u/s 7 of the IB Code, 2016 to initiate Corporate Insolvency Resolution Process against Corporate Debtor.
 - v. That the Applicant is not barred from filing the present application as provided under Section 11 of the Insolvency and Bankruptcy Code, 2016 and that no liquidation Order has ever been passed against the Corporate Debtor.
2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions were made:
- i. That the Form 1 filed by the Applicant is not in accordance with Section 7 and Section 215 of the IBC.
 - ii. That in terms of Section 215 of IBC, it is mandatory upon the Financial Creditor to furnish the record of default recorded with the Information Utility. The record of default as available with the Information Utility is required to be annexed at Part V of Form 1 which Financial Creditor has failed to provide. That in absence of the same and due to

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non compliance of Section 215 of IBC and notification dated 19.12.2017 issued by Reserve Bank of India, the instant Petition fails and is accordingly liable to be dismissed by this Tribunal.

- iii. That the Reserve Bank of India for the purpose of resolution of stressed assets had issued directions in its Circular No. RBI/2018-19/203 dated 07.06.2019 which was applicable to Scheduled Commercial Banks in terms of Clause 3 of the said circular. The Applicant being a Scheduled Commercial Bank was required to abide by the directions issued by Reserved Bank of India.
- iv. That the Applicant Bank has failed to file the consent/written communication in terms of Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.
- v. That the Corporate Debtor is an operating company employing approximately 400 people. In view of the same, initiation of insolvency proceedings is not in the interest of any of the stakeholders.



vi. That the instant petition has been filed for the purpose of recovery as against resolution. The legal position is well settled that proceedings under IBC are resolution oriented and not for the purposes of recovery.

3. Pursuant to the Respondent's reply, the applicant has filed its Rejoinder in which the following contentions were made:

- i. That the Corporate Debtor, has, nowhere denied the existence of 'debt' and 'default' as claimed by the Financial Creditor in company petition under Section 7 of the Insolvency & Bankruptcy Code, 2016. The Corporate Debtor has raised certain frivolous technical objections but has not contested the existence of debt and default.
- ii. That a bare reading of S. 7(3) (b) of the Code reveals that an application u/s 7 can be filed with record or evidence of default and as such is maintainable. The Hon'ble Supreme Court has categorically held the same in *Innoventive Industries Ltd. v. ICICI Bank and Anr.* (2018)1 SCC 407.
- iii. That the Corporate Debtor's reliance on RBI Guidelines/Directive dated 07.06.2019 to contend that the





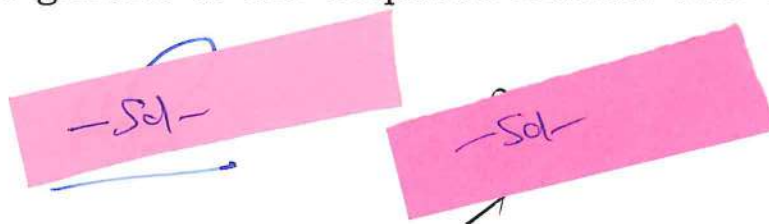
present application u/s 7 is premature is wrong, misconceived and erroneous. The said directive does not by any stretch of imagination bar scheduled bank from preferring an Application u/ s 7 of the Code. Without prejudice to the aforesaid RBI Directive dated 07.06.2019 being applicable in facts and circumstances of the case, it provides that a lender/Scheduled Bank can initiate insolvency proceedings after default.

- iv. That the Financial Creditor had filed an affidavit dated 13.01.2020 stating reasons therein as to how a different Form 2 came to be annexed with the Application u/s 7 and with the said affidavit filed Written Consent/ Communication sent by the proposed Interim Resolution Professional to the Financial Creditor. As on date the Written Communication by the IRP is complete in all respects and contains all material particulars as required by the statute and as such there is no non-compliance of S. 7 (3) (b) r/w R 9 Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.

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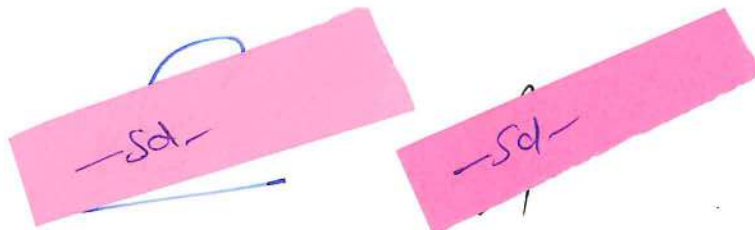
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- v. That the Corporate Debtor is in default of the debt owed to the Financial Creditor and as such as per statute the Application is liable to be admitted.
4. The Financial Creditor has filed written submissions stating the following:
- i. That the Corporate Debtor, has, nowhere denied the existence of 'debt' and 'default' as claimed by the Financial Creditor in company petition under Section 7 of the Insolvency & Bankruptcy Code, 2016.
 - ii. That the Corporate Debtor had been availing loan facilities from the Applicant since a long time. That in the Term Loan Agreement dated 31-12-2012 it can be seen that the Corporate Debtor accepted and acknowledged the dues upto Rs 18 Crores and also accepted irregularity in its accounts. The said loan agreement also contained a schedule of repayment as per which the Term Loan was to be repaid in 28 quarterly installments. Thereafter there were further loan agreements by which various other facilities were granted to the Corporate Debtor. Vide the

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Agreement Dated 27-9-2017 the documents were consolidated and mentioned in one single document for convenience.

- iii. That the Account of the Corporate Debtor was declared NPA on 31-12-2018, i.e., the date of default due to continuous defaults.
- iv. That it is shown beyond doubt that the loan facility was availed by the Corporate Debtor and the Corporate Debtor failed in making repayments.
- v. That since the account of the Corporate Debtor was declared NPA on 31-12-2018 and the Corporate Debtor also failed to repay the loan despite notice dated 15-1-2019 the present petition is within limitation as it was filed in 2019.
- vi. That the present petition has been filed through an officer of the Applicant duly authorized by a Power of Attorney.
- vii. That Section 7(3)(b) of the Code provides as under:
“(3) The financial creditor shall, along with the application furnish— (a) record of the default recorded with the



information utility or such other record or evidence of default as may be specified;

A bare reading of Section 7(3) (b) of the Code reveals that the an application u/s 7 can be filed with record or evidence of default and as such is maintainable. The Hon'ble Supreme Court has categorically held in Innoventive Industries Ltd Vs ICICI Bank and Anr. (2018)1 SCC 407 as under:-

“On the other hand, as we have seen in the case of a corporate debtor who commits default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred.”

That it is further submitted that even as per the Circular by the Hon'ble NCLT dated 7-9- 2020 the filing of record of information utility is not mandatory. That the same has also been upheld by the Hon'ble Delhi High Court in W.P.(C) 3322/2020 & CM APPLN. 11673/2020 (OM


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RATAN GOEL vs UNION OF INDIA) that the filing of record of information utility is not mandatory.

viii. That the objection w.r.t Non- Compliance of Reserve Bank of India (Prudential Framework for Resolution of Stressed assets) Direction 2019- instant petition is premature is also misplaced and does not hold ground. That the said directive does not by any stretch of imagination bar scheduled bank from preferring an Application u/s 7 of the Code. Without prejudice to the aforesaid RBI Directive dated 07.06.2019 not being applicable in facts and circumstances of the case, it provides that a lender/Scheduled Bank can initiate insolvency proceedings after default. Para/Directive 9 provides as under:-

“9. All lenders must put in place Board-approved policies for resolution of stressed assets, including the timelines for resolution. Since default with any lender is a lagging indicator of financial stress faced by the borrower, it is expected that the lenders initiate the process of implementing a resolution plan (RP) even before a default.





In any case, once a borrower is reported to be in default by any of the lenders mentioned at 3(a), 3(b) and 3(c), lenders shall undertake a prima facie review of the borrower account within thirty days from such default ("Review Period"). During this Review Period of thirty days, lenders may decide on the resolution strategy, including the nature of the RP, the approach for implementation of the RP, etc. The lenders may also choose to initiate legal proceedings for insolvency or recovery."

- ix. That as on date the Written Communication by the IRP is complete in all respects and contains all material particulars as required by the statute.
- x. That the Corporate Debtor is in default of the debt owed to the Financial Creditor and as such as per statute the Application is liable to be admitted. It is respectfully submitted that despite the accounts of the Corporate Debtor having turned NPA on 31.12.2018 it has not made good the default till date and it raising frivolous and non-maintainable technical objections so as to delay/avoid





initiation of Corporate Insolvency Resolution Process speaks volumes about its conduct.

5. The Respondent has filed written submissions reiterating the following:

- i. That as per the format prescribed in FORM-1, the “Part-II” of the FORM requires the Financial Creditor to provide “Details of the Corporate Debtor as per the Notification under Section 55(2) of the Code” and if the said clause is not applicable, “not applicable” should be mentioned against such row. The Financial Creditor has unilaterally modified the form and altered the prescribed format for filing such Petition, which is legally impermissible. The instant application thus being defective is liable to be dismissed at the threshold.
- ii. Non-compliance of Reserve Bank of India (Prudential Framework for Resolution of stressed assets) direction 2019 by the Applicant. Hence, the instant petition is premature.
- iii. The petition filed under Section 7 of the IBC is without proper authorization and defective.

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- iv. The Financial Creditor has failed to annex the relevant documents as required for adjudication of the present application.
6. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The Financial Creditor has claimed the default on part of the Corporate Debtor for the Loan amount of Rs. 44,78,29,165.18/- (Rs Forty four crores seventy eight lacs twenty nine thousand one hundred sixty five and eighteen paisa) as on 15.01.2019.
7. The Corporate Debtor has raised an objection that the Form I filed by the Financial Creditor is not in accordance with section 7 and section 215 of the IBC and that in terms of Section 215 of IBC, it is mandatory upon the Financial Creditor to furnish the record of default recorded with the Information Utility. Section 7(3) (a) of the Code provides that the financial creditor shall, along with the application furnish record of the default recorded with the information utility or such other record or evidence of default as may be specified. The use of the word 'or' clearly establishes that it is not mandatory to furnish record of default

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with the Information Utility; any other evidence can also be produced by the financial creditor to satisfy that a default has occurred. Further, the Hon'ble Supreme Court has categorically held in *Innoventive Industries Ltd Vs ICICI Bank and Anr.* (2018)1 SCC 407 as under:-

“On the other hand, as we have seen in the case of a Corporate Debtor who commits default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred.”

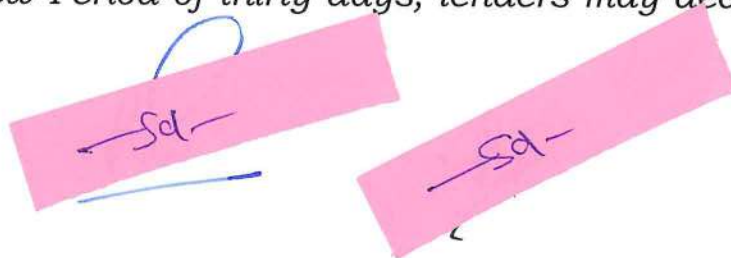
8. The Corporate Debtor has also raised an objection w.r.t Non-compliance of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 by the Applicant. These directions are in the nature of prudential norms and were issued with a view to provide a framework for early recognition, reporting and time bound resolution of stressed assets. Also, these directions were issued without prejudice to issuance of specific directions, from time to time, by the Reserve Bank to banks, in terms of the provisions of

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Section 35AA of the Banking Regulation Act, 1949, for initiation of insolvency proceedings against specific borrowers/specific defaults under the Insolvency and Bankruptcy Code, 2016. The fact that the directions were issued without prejudice to issuance of specific directions by the Reserve Bank to banks, in terms of the provisions of Section 35AA of the Banking Regulation Act, 1949, makes it clear that the circular was not intended to bar insolvency proceedings. Clause 9 of the Circular under the head “Implementation of Resolution Plan” of the circular provides that :

*“9. All lenders must put in place Board-approved policies for resolution of stressed assets, including the timelines for resolution. Since default with any lender is a lagging indicator of financial stress faced by the borrower, it is expected that the lenders initiate the process of implementing a resolution plan (RP) even before a default. In any case, once a borrower is reported to be in default by any of the lenders mentioned at 3(a), 3(b) and 3(c), lenders shall undertake a prima facie review of the borrower account within thirty days from such default (“**Review Period**”). During this Review Period of thirty days, lenders may decide on*



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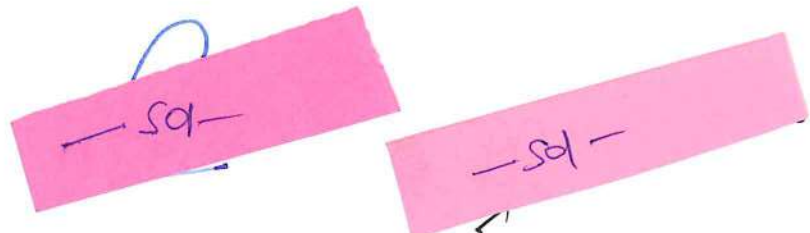
*the resolution strategy, including the nature of the RP, the approach for implementation of the RP, etc. **The lenders may also choose to initiate legal proceedings for insolvency or recovery.***”

Since the circular itself provides that the lenders can go for legal proceedings for insolvency, the circular cannot be a barrier for initiation of insolvency proceedings rather, it quite clearly indicates that the choice rests with the lender (creditor) to go for insolvency proceedings notwithstanding the Prudential Framework prescribed in the circular. Further, in view of Section 238 of the IB Code, 2016 which provides an overriding effect to the provisions of IB Code, 2016, over other laws, the Code will override the RBI circulars issued under the Banking Regulation Act. Thus, the said contention of the Corporate Debtor is untenable.

9. The Corporate Debtor had also raised an objection that the Applicant has failed to file consent of the proposed IRP in terms of Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. The Financial Creditor has filed an affidavit dated 13.01.2020

stating reasons therein as to how a different Form 2 came to be annexed with the Application u/s 7 and with the said affidavit filed Written Consent/ Communication sent by the proposed Interim Resolution Professional to the Financial Creditor.

10. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt.
11. In view of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.
12. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.



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13. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of CS Shравan Kumar Vishnoi for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N-00040/2016-2017/10079. CS Shравan Kumar Vishnoi has agreed to accept the appointment as the Interim Resolution Professional (IRP) and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 28.08.2019. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

14. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred and the present application filed under Section 7 is complete.

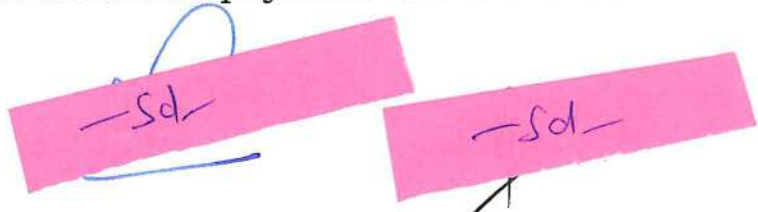
15. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the

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Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional CS Shравan Kumar Vishnoi has submitted the declaration in Form 2 dated 28.08.2019.

16. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.
17. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.



18. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.
19. CS Shravan Kumar Vishnoi having registration number IBBI/IPA-002/IP-N-00040/2016-2017/10079 is appointed as an Interim Resolution Professional.
20. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
21. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.

22. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified. They are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the

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surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

23. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, under Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property


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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.

24. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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**(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)**

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**(P.S.N. PRASAD)
MEMBER (JUDICIAL)**