IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. No. (IB)-938(PB)/2018

IN THE MATTER OF:
INDIAN OVERSEAS BANK

.....FINANCIAL CREDITOR/PETITIONER

V.
M/S. RATHI TMT SARIA PVT. LTD.

.....CORPORATE DEBTOR

SECTION :
UNDER SECTION 7 of the Insolvency and Bankruptcy Code, 2016

Judgment delivered on 16.04.2019

CORAM:
CHIEF JUSTICE (RTD.) M.M. KUMAR
HON'BLE PRESIDENT

DR. DEEPTI MUKESH
HON'BLE MEMBER (J)

PRESENT:

For the petitioner:	Mr. Kunal Tandon, Ms. Richa Sindaliya, Mr. Girdhar Singh & Ms. Niti Jain, Advocates
For the Respondent:	Mr. Ankit Virmani, Mr. Chandra Sekhar M, Ms. Rinkel Singh, Mr. Tanmaya Mehta, Ms. Nimisha Nat Narayan, Advocates

JUDGMENT

M.M.KUMAR, PRESIDENT

Indian Overseas Bank has filed the instant application 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 brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution

Process in respect of respondent Company M/s Rathi TMT Saria Pvt. Ltd. referred to as the corporate debtor.

2. The Respondent Company-M/s Rathi TMT Saria Pvt. Ltd. (CIN No. U27109DL2003PTC118794) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 04.02.2003 having its registered office at C-220, 2nd Floor, Savitri Nagar, New Delhi - 110017. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is appropriate to mention that the applicant Indian Overseas Bank (hereinafter referred as IOB), is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Registered Office at 763, Anna Salai, Chennai 600002, India.

4. Mr. M. Ravindran Menon authorized representative and working as Assistant General Manager of the applicant, has preferred the present application on behalf of the applicant for

initiation of corporate insolvency resolution process against the respondent corporate debtor in terms of the provisions of the Code.

5. The applicant has proposed the name of Mr. Ajit Kumar, for appointment as Interim Resolution Professional having registration number IBBI/IPA-003/IP-N00062/2017-18/10548 resident of 1A, Sanskriti Apartments, GH-22, Sector 56, Gurgaon-122011 with email - id cmaajitjha@gmail.com. Mr. Ajit Kumar has agreed to accept appointment as the interim resolution professional and has signed a communication dated 16.07.2018 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Ajit Kumar as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

6. Facts which are material to the controversy raised may first be noticed. The pleaded case of the Financial Creditor is that it sanctioned various financial facilities to the Corporate Debtor on various occasions since 2005 which were in the form of Cash Credit

Limit amounting to Rs. 40.00 crores, WCTL Rs. 3.91 crores, Term Loan I Rs. 4.63 crores, Term Loan II Rs. 5.00 crores, FITL I Rs. 0.62 crores, FITL II Rs. 1.37 crores, Letter of Guarantee Rs. 0.12 crore, Standby Letter of Credit (Inland) Rs. 3.93 crores. The said financial facilities were further increased in the year 2010-12 from Rs. 2 Crores to Rs. 20 Crores and subsequently reduced vide sanction letter dated 03.05.2016 from Rs. 59.58 crores to Rs.52.76 crores however, same was not acted upon. It is submitted that the total facilities granted by the Financial Creditor are to the tune of Rs. 59.46 crores.

7. The Corporate debtor executed several documents towards availing the aforesaid financial facilities. It is highlighted that Mr. Shrivats Rathi and Mr. Arun Kumar Rathi furnished their personal guarantees. Both of them have guaranteed the obligations of the Corporate Debtor under the aforesaid financial facilities. It is also highlighted that in the aforesaid financial facilities, M/s Allot Portfolio Services Pvt. Ltd. & M/s. Alert Portfolio Services Pvt. Ltd. acted as Corporate guarantors.

8. As per the averments of the 'Financial Creditor', the account of the Corporate Debtor was declared as Non-Performing Asset (NPA) w.e.f. 01.12.2015 in its books. In view of the repeated

defaults on the part of the Corporate Debtor to comply with the repayment of the principal and interest dues, the Financial Creditor was constrained to issue a notice dated 24.04.2017 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the Corporate Debtor & its guarantors both personal guarantors and corporate guarantors but inspite of the notice they failed to clear the unpaid debt/liability.

9. The Financial Creditor has also placed on record certificates of charge creation/modification from Registrar of Companies in favour of the Financial Creditor for the aforesaid financial facilities availed by the Corporate Debtor.

10. The Financial Creditor also placed on record a list of all the financial facilities granted by the Financial Creditor to the Corporate Debtor along with the copies of the said Financial Contracts.

11. In Part V of the petition the Financial Creditor has mentioned the particulars of the documents and records that substantiate the factum of the various facilities/loans disbursed and the amount claimed to be in default.

12. The precise case of the Petitioner is that the total amount in default due to the financial creditor by the corporate debtor as on 18.07.2018 is Rs. 75,52,68,314.29/- along with future interest and as well as penal interest per annum.

13. Learned counsel for the Corporate Debtor has opposed the admission of the petition and has advanced the following arguments:-

1. The present proceedings have not been instituted by a duly authorized person. It is submitted that there is no proof that the persons signing the POA were directors at any point of time or even at the relevant time. Further there is no board resolution or any other documents produced on record giving such directors authority to issue POA on behalf of the bank. In any event, the POA does not authorise the POA holder to initiate the present legal proceedings under the Code. It is also submitted that the affidavit has been verified by Mr. Menon, POA holder on 25.07.2018 though the date of notarization is 27.07.2018. Thus, it is patent that the deponent has not signed in front of the notary and such notarization is of no-consequence and is bogus.

2. The application filed by the Financial Creditor lacks in material particulars and is contrary to the provisions of the Code and its Rules made thereunder which mandates that the application be supported by particular and workings of amount claimed to be due.

3. The account of the Respondent is no longer classified as NPA, the Financial Creditor is guilty of gross suppression of facts.

4. The dispute qua the debt amount and its legality is pending adjudication before the Ld. Debt Recovery Tribunal, New Delhi.

5. The Financial Creditor is trying to take advantage of its own wrongs and that no debt whatsoever, is due and payable in favour of the Bank.

6. The demand raised by the Financial Creditor seeking the personal guarantee of Ms. Uma Rathi was wholly arbitrary. The consequent acts of the Bank in refusing the release of sanctioned funds in the year 2014 on the sole account of the personal guarantee of Ms. Uma Rathi was wholly arbitrary.

7. The Corporate Guarantee given by M/s Sesun Marketing Pvt. Ltd. (a large shareholder of Rathi TMT) was released unauthorizedly and arbitrarily.

8. The Financial Creditor arbitrarily refused to release sanctioned funds to the Respondent.

9. The account of the Respondent was wrongfully declared as NPA. Further, the Financial Creditor was responsible for the arbitrary delays and eventual refusal to renew the sanction amount timely, which eventually laid to the wrongful declaration of the account of the Respondent as NPA.

10. Wrongful levy of interest by the Financial Creditor done solely to penalize the Respondent. The rate of interest charged was gross and penal in nature.

11. The initiation of proceedings under the SARFAESI Act as done by the Financial Creditor before the Ld. Debt Recovery Tribunal-II, New Delhi was malafide and in collusion with Mr. Kshitij Gangwal.

12. The Financial Creditor failed to effectively consider the one time settlement (OTS) proposals as given by the Respondent. The Bank has further illegally and

arbitrarily threatened the Respondent to declare it as a wilful defaulter.

13. The Respondent has suffered various losses due to the illegal actions committed by the Financial Creditor.

14. No debt amount or any dues are payable in favour of the Financial Creditor and against the Respondent since no default has been committed on the part of the Respondent.

15. The petition filed by the Financial Creditor is not maintainable since the present factual matrix would require adjudication by the Civil Court of all the claims and counter claims. The Financial Creditor cannot seek advantage of its own wrong.

16. Initiation of insolvency proceedings as against the Respondent Company would be unjust, unfair, unreasonable and contrary to the entire intent and object of the Code.

14. A rejoinder to the reply has been filed by the Financial Creditor reiterating the submissions made in the petition and controverting the assertions in the reply.

15. During pendency of present proceedings, an application being C.A. No. 1185(PB)/2018 has been filed by the Corporate Debtor

along with the copies of the RBI Circular dated 12.02.2018 (Annexure-A), a Writ Petition (C) bearing No. 10861/2018 and an order dated 10.10.2018 passed in the said Writ Petition by the Hon'ble High Court of Delhi. It is highlighted in the application that as per aforesaid circular the RBI has contemplated a graded and segmented approach of timelines to initiate insolvency actions, starting with the largest exposure, and then proceeding top-down. Placing reliance on the aforesaid circular, it was contended that the act of the Financial Creditor is discriminatory against the Respondent wherein it has adopted a pick and choose approach though larger exposures of the Financial Creditor are there which are in default and the default of the Respondent is comparatively much smaller compared to other debtors. A reference has also been invited to Writ Petition (C) bearing No. 10861/2018which is awaiting disposal before Hon'ble High Court of Delhi and a request was made that till the disposal of the said Writ Petition order be kept in abeyance.

16. Reply to this application has been filed by the Financial Creditor and it is prayed that same be dismissed with exemplary costs, as the same is devoid of merit and it is an abuse of the process of law.

17. Another application being C.A. No. 158(PB)/2018 has also been filed by the Corporate Debtor. In the said application it is stated that the Financial Creditor has annexed a certificate purporting to be under the Banker's Books Evidence Act, 1891 but same does not comply with the requirements of Section 2 and 2A of the Banker's Books Evidence Act, 1891. It is further asserted that same also suffers from lack of other compliances of the Act, 1891.

18. Having heard learned counsel for the parties we are of the considered view that the Financial Creditor-Bank has succeeded to establish a case for triggering the Corporate Insolvency Resolution Process.

19. There is a vital document placed on record namely Power of Attorney (at pgs. 24-26of the application) signed and executed by two Directors of the Bank namely Mr. Budur A. Venugopal and Dr. S. Vijayalakshmi and further countersigned by the General Manager of the Bank establishing authority in favour of Mr. Ravindran Menon, Assistant General Manager to file the present application. Clause 12 thereof clearly authorized the power of attorney to act on behalf of the Bank in all matters incidental to or arising out of the bankruptcy or insolvency or any composition or

arrangement with the creditors. In pursuance thereof, he has signed power of attorney, pleadings and other papers. Even otherwise the Power of Attorney is a widely worded document and it has various clauses empowering the attorney to file any proceedings before Courts or any other fora. Therefore, it is established that the petition has been filed by a person authorized in accordance with law. The affidavit and the vakalatnama have also been signed by the aforesaid officer. In view thereof, we do not find any substance in the objection raised on behalf of respondent.

20. The Corporate Debtor has alleged that excess interest has been charged by the Financial Creditor and the amount claimed by it is incorrect. In this regard the Financial Creditor has placed various documents in relation to the disbursement of different kinds of loan to the Respondent Company. The materials on record and the loan documents clearly depicts that the loan was sanctioned, disbursed and the loan agreements were properly executed. Respondent company utilized and enjoyed the loan facilities. The Financial Creditor has placed on record several balance and security confirmation letters duly signed by the respondent in acknowledgment of the debt. Additionally, the Financial Creditor has placed on record demand promissory notes executed by the Respondent Company. Apart the Financial

Creditor has relied upon the letters of respondent company confirming creation of mortgage by deposit of title deeds in order to secure the loan.

21. In addition, the Financial Creditor has filed the relevant statement of accounts duly certified in accordance with Banker's Books Evidence Act, 1891 as per the requirement of Form 1 Part V Column 7 of the application. True copy of statement of accounts submitted by the Financial Creditor pertaining to various loan facilities, kept during the course of banking business, basing on which the claim has been raised, can be termed as sufficient evidence of the financial debt.

22. Section 4 of the Bankers' Books Evidence Act, 1891 provide for mode of proof of entries in bankers' books and the same read as under:-

> **"Section 4. Mode of proof of entries in bankers' books.**- Subject to the provisions of this Act, a certified copy of any entry in a banker's books shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same

extent as, the original entry itself is now by law admissible, but not further or otherwise."

23. A perusal of the aforesaid provision would show that a certified copy of entry in a banker's books is to be regarded as *prima facie* evidence in all legal proceedings with regard to the existence of such entry. It must be admitted as evidence of the matters, transactions and accounts therein recorded in every case. It has come on record that a certificate of entries in a banker's books in accordance with the Banker's Books Evidence Act, 1891 has been placed before us (at pg. 568) certifying that the statements of accounts filed along with the application are maintained by it in their ordinary course of business. Besides the Financial Creditor has also filed the balance sheet of the Respondent Company for the year ending 31.03.2017, in which the Respondent Company has clearly acknowledged its default and its indebtedness towards the financial creditor. In any case no serious dispute with regard to the amount payable has been raised before us.

24. It is thus seen that the Financial Creditor has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default.

25. 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 loan facilities which were duly disbursed and it has committed default in repayment of the outstanding loan amount.

26. As regards allegation of excessive charging of interest, the Financial Creditor has stated in its rejoinder that the interest has been charged in accordance with the terms of sanction letter from time to time. It is stated that the Corporate Debtor till the date of declaration of the account as a Non Performing Asset Account w.e.f. 01.01.2016, continuously violated the terms of the sanction letter in relation to maintaining the account within the drawing limit/sanctioned limit and by non-submission of stock statement. It is submitted that the amount claimed in Part-IV of the application is based on the statement of Accounts maintained by the Bank in its ordinary and usual course of business and in accordance with the banking systems.

27. Needless to say, that an application under Section 7 of the Code is acceptable so long as the debt is proved to be due &

payable; and there has been occurrence or existence of default. What is material is that the default is for at least Rs. 1 Lakh. In view of Section 4 of the Code, the moment default is of Rupees one Lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. The Corporate Debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.

28. It has also been alleged that the application is defective. In this connection it is appropriate to mention that the present application has been filed in **'Form-I'** under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The form has been duly filled in along with required details and evidence of default. Similarly, Section 7 application can be allowed for occurrence of default in respect of a financial debt owed not only to the applicant but to any other financial creditor of the Corporate Debtor. There appears to be no infirmity in the application form, being complete in all respect.

29. It is also the case of the respondent that the account of the Corporate Debtor has been wrongly declared as NPA. While dealing with application under Section 7 of the Code, it is immaterial to see

as to when the account was declared as NPA. In Section 7 application, it is only to be considered as to whether there is a debt due in law and facts and whether there has been a default in paying the financial debt.

30. Hon'ble National Company Law Appellate Tribunal in the case of *Ranjit Kapoor v. Asset Reconstruction Company (India) Limited, in Company Appeal (AT) (Insolvency) No. 410 of 2018* has held that *"the provision of NPA relates to SARFAESI Act, 2002 and has nothing to do with Code".* Therefore, the objection of the Respondent that the Financial Creditor has wrongly declared the account as NPA, cannot be a ground to reject the application preferred by Financial Creditor under Section 7 of the Code, there being default in payment of financial debt.

31. In connection with the objection regarding pendency of proceedings, it is well settled that the pendency of DRT proceedings and initiation of action under SARFAESI Act cannot be an impediment or a bar to initiate the Corporate Insolvency Resolution Process under Section 7 of the Code.

32. Learned counsel for the Corporate Debtor has then drawn our attention to the RBI Circular dated 12.02.2018 [Annexure-A, pgs. 7-26 attached with C.A. No. 1185(PB)/2018]. It has been submitted

that the act of the Financial Creditor is discriminated against the Respondent wherein it has adopted a pick and choose approach though larger exposures of the Financial Creditor are there which are in default and the default of the Respondent is comparatively much smaller compared to other debtors.

33. Learned counsel for the petitioner has referred to the footnote 8 in the RBI circular and argued that the Financial Creditor is free to file insolvency petition under the Code against the borrower even before the expiry of timelines, or even without attempting a resolution plan outside the Code. According to the learned counsel the RBI circular has carved out an operational route for the lenders to follow which cannot be considered as abdication of a Parliamentary statue like Insolvency and Bankruptcy Code. He has maintained that the RBI circular has been issued as a piece of policy guidelines under Section 35AA of the Banking Regulations Act, 1949 and is necessarily a piece of subordinate legislation which cannot override the remedy provided by the Code.

34. Having bestowed our thoughtful consideration on the submissions made by learned counsel for the parties, we find that RBI Circular dated 12.02.2018 has now been declared illegal and ultra vires of Section 35AA of the Banking Regulations Act, 1949.

35. It is pertinent to mention here that aforesaid circular of the RBI dated 12.02.2018 was challenged before Hon'ble the Supreme Court in batch of petitions. Hon'ble the Supreme Court vide its judgment rendered in the case of ***Dharani Sugars and Chemicals Ltd. v. Union of India & Ors.*** has declared the aforesaid circular as ultra vires and Section 35AA of the Banking Regulations Act, 1949. The operative part of the said judgment reads as under:-

> "84. There is nothing to show that the provisions of Section 45L (3) have been satisfied in issuing the impugned circular. The impugned circular nowhere says that the RBI has had due regard to the conditions in which and the objects for which such institutions have been established, their statutory responsibilities, and the effect the business of such financial institutions is likely to have on trends in the money and capital markets. Further, it is clear that the impugned circular applies to banking and non-banking institutions alike, as banking and non-banking institutions are often in a joint lenders' forum which jointly lend sums of money to debtors. Such non-banking financial institutions are, therefore, inseparable from banking institutions insofar as the application of the impugned circular is concerned. It is very difficult to segregate the non-banking financial institutions from banks so as to make the circular applicable to them even if it is *ultra vires* insofar as banks are concerned. For these reasons also, the impugned circular will have to be declared as *ultra vires* as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said circular, including actions by which the Insolvency Code has been triggered must fall along with the said circular. As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non-est."

36. A perusal of the aforesaid para shows that all the cases in which debtors have been proceeded against by the financial creditors under Section 7 of the Code, 2016, *only because of the operation of the impugned circular that the proceedings would be declared to be non-est.* A glance on the aforesaid circular makes it patent that the circular dated 12.02.2018 would not be applicable at all because in para 8 of the circular under the caption 'D' 'Timelines for large accounts referred under IBC' a pecuniary limit has been fixed and only the accounts with aggregate exposure of the lenders at Rs. 20 billion and above as on or after 01.03.2018 were to be referred for final proceedings under Section 7 of IBC. In light of above the Respondent cannot take advantage of the aforesaid circular and it cannot be concluded that these proceedings were initiated only because of the RBI circular. In the present case the defaulted amount is far less than 2000 crores (20 billions). It is only Rs. 75,52,68,314.29/- (just over 75 crores).

37. It is thus patent that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, the application is complete as per the requirements of Section 7 (2) of the Code and other conditions prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

There is overwhelming evidence to prove default and name of the resolution professional has also been clearly specified.

38. The provisions of Section 7 (2) and Section 7 (5) of IBC stand satisfied but the same may be read as under:-

"Initiation of corporate insolvency resolution process by financial creditor.

7 (1) .....

7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3) .....

7 (4) .....

7 (5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there isno disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) ....."

39. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default amounting to crores of rupees has occurred within the meaning of Section 4 of the Code and the application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional. Thus, the application warrant admission as it is complete in all respects.

40. As a sequel to the above discussion, this petition is admitted and Mr. Ajit Kumar,1A, Sanskriti Apartments, GH-22, Sector 56, Gurgaon-122011, Registration number IBBI/IPA-003/IP-N00062/2017-18/10548, email - id cmaajitjha@gmail.com is appointed as an Interim Resolution Professional.

41. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression

'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

42. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

> "(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 Securitisation 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."

43. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other services or supplies as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

44. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors. The

amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

45. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *interalia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, 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 affairs of the Corporate Debtor. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else the Interim Resolution Professional/Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a duty to protect and preserve the value of the property of the 'Corporate

Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

46. 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, NCR, New Delhi at the earliest 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.

Sd/-
16.04.2019

(M.M.KUMAR)
PRESIDENT

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (J)

VINEET
16.04.2019