

K. PRASANTH RAJU

Insolvency Professional

By email and Hand-Delivery

To,
MCDOWELL HOLDINGS LIMITED,
UB TOWER, LEVEL 12, UB CITY 24 VITTAL MALLY A
ROAD BANGALORE, KARNATAKA 560001 INDIA.
CIN: L05190KA2004PLC033485
Email:- sreeni@corpni.in

April 12, 2022.

Respected Sirs,

Sub:- Commencement of Corporate Insolvency Resolution against
MCDOWELL HOLDINGS LIMITED.

This is to inform you that the Hon'ble National Company Law Tribunal, Bengaluru Bench (NCLT) has ordered the commencement of an Insolvency Resolution against MCDOWELL HOLDINGS LIMITED (Corporate Debtor / Company) under the provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") and the regulations made thereunder. A copy of the order of the NCLT dated April 08, 2022 (copy received on April 11, 2022) is enclosed herewith for your reference as **ANNEXURE 1.**

As may be observed from the above order, the undersigned has been appointed as the Interim Resolution Professional (IRP) to carryout functions described under the IBC, 2016.

Your attention is invited to Section 17(1) of the Insolvency and Bankruptcy Code, 2016, which reads as follows:

Section 17-Management of affairs of corporate debtor by interim resolution professional.

(1) From the date of appointment of the interim resolution professional, -

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

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(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

Your attention is further invited to the provisions of Section 19(1) of the IBC, 2016 which reads as follows:

Section 19-Personnel to extend cooperation to interim resolution professional

*(1) The personnel of the corporate debtor, **its promoters or any other person associated with the management of the corporate debtor** shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.*

[emphasis added]

In view of this, you are hereby directed to cooperate with the undersigned by providing necessary access to documents and records pertaining to the Company as and when requisitioned by me in order to enable smooth conduct of the Corporate Insolvency Resolution Process. You may also note that non-compliance will subject you to necessary consequences under the IBC, 2016.

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You are also required to take note that the undersigned intends to visit the registered office of the Corporate Debtor/Company on Tuesday, April 12th, 2022 around 11:30 AM, and therefore, it is requested that the Director or any other responsible officer of the Company be present at the Company's registered office to assist the undersigned and provide all the necessary information.

You are hereby directed to keep and provide all the Financials, Banking Accounts, Business Transactions, Expenses and all the transactions on as is where is basis and provide all the vouchers and factual information of the same immediately.

In view of the above facts and circumstances the IRP has to perform all the rules, regulations, compliances under the law. Kindly do the needful and acknowledge the same.

Please do not hesitate to get in touch with the undersigned in case you have any questions.

Kindly acknowledge receipt of this letter

Thanking You

K. Prasanth Raju



KONDURU PRASANTH RAJU
(IBBI/PA-002/IP-N00708/2018-2019/12200)
Interim Resolution Professional for
MCDOWELL HOLDINGS LIMITED.

Copy to: All Directors, Registered with MCA, viz.,

- | |
|----------------------------------|
| 1. SRIRAMAREDDY THEERTHESH, |
| 2.. MURTHY VENKATA RAMANA GORLE. |

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

CP (IB) No.11/BB/2022
U/s. 7 of the IBC, 2016
R/w Rule 4 of the IBC (AAA) Rules, 2016 &
I.A No. 86 of 2022
U/s. 60(5) R/w Section 65 of IBC, 2016 &
I.A No. 87 of 2022
U/s. 60(5) of the IBC, 2016,
R/w Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF:

M/s. Sunstar Hotels and Estates Private Limited
R/O: F2, "Sayee", No.31, Rajamaar Street
Off G.N Chetty Road, T Nagar,
Chennai – 600 017

... Applicant/Financial Creditor

VERSUS

M/s. McDowell Holdings Limited
UB Towers, Levels 12, UB City,
24, Vittal Mallaya Road,
Bangalore 560 001

... Respondent/Corporate Debtor

IN THE MATTER OF:

I.A No. 86 of 2022

1. Mr. Nirej Vadakkedathu Paul & 8 Ors,
Aged 47 years, Vadakkedathu House,
Ooramma P.O. Ramamangalam,
Memmury, Ernakulam,
Kerala – 686 663.

... Intervening Applicants

IN THE MATTER OF:

I.A No. 87 of 2022

1. Mr. Kushal Senugupta & 8 Ors,
'Regent Manor', Flat No. 401,
74, Regent Estate,
Kolkata – 700 092

... Applicants

AND**M/s. Sunstar Hotels & Estates Private Limited & Anr.**

F2, "Sayee" No.31, Rajamaar Street,

Off. G.N. Chetty Road, T.Nagar,

Chennai – 600 017

... Respondents

Order delivered on: 08th April, 2022**Coram:**

Hon'ble Shri. Ajay Kumar Vatsavayi, Member (Judicial)

Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner

: Shri Rahul Balaji

For the Respondent

: Shri A S Vishwajith

For the Applicants in I.A no. 86 of 2022

: Shri Srinivasa Raghavan, Senior Counsel

For the Applicants in I.A No. 87 of 2022

: Shri Joy Saha, Senior Counsel

a/w Ms. Urmila Chakraborty

ORDER**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

1. The present Petition is filed, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC/Code') by M/s. Sunstar Hotels and Estates Private Limited (hereinafter referred to as 'Applicant/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against M/s. McDowell Holdings Limited (hereinafter referred to as 'Respondent/Corporate Debtor').
2. The Corporate Debtor namely M/s. McDowell Holdings Limited is a Company incorporated on 01.03.2004 under the provisions of the Companies Act, 1956 with CIN:L05190KA2004PLC033485 having its registered office at UB Towers, Levels 12, UB City, 24, Vittal Mallaya Road, Bangalore 560 001, which falls within the territorial jurisdiction of this Adjudicating Authority. The Nominal Capital of the Respondent/Corporate Debtor is Rs.15,00,00,000/- and the Paid-Up Share Capital is Rs.13,99,22,580/- as per the Company Master Data attached at Annexure-1 (1) of this application.

CP (IB) No. 11/BB/2022

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3. The present application has been filed by the Financial Creditor against the Corporate Debtor in respect of the default amount of Rs.16,80,66,348/- (Rupees Sixteen Crore Eighty Lakhs Sixty Six Thousand and Three Hundred and Forty Eight only) as on 30.11.2021.
4. It is submitted that the Corporate Debtor had availed Inter-Corporate Deposit (ICD) from an entity named Zuari Fertilisers and Chemicals Limited ("ZFCL") which thereafter merged with Zuari Agro Chemicals Limited ("ZACL"). In order to facilitate a timely repayment of the outstanding sum of ICD, the corporate debtor entered into a Settlement Agreement dated 17.06.2019 with ZACL and Mangalore Chemicals and Fertilizers Limited ("MCFL"). As per the arrangement contemplated in the said settlement agreement, a sum of Rs.10,60,56,810/- along with the interest, being the outstanding ICD, was to be repaid in two tranches: (i) By way of sale and transfer to ZACL, 11,85,151 shares of MHL in MCFL; and (ii) by procuring release of shares of United Breweries Limited and amounts realized from the sale of shares of United Breweries Limited.
5. It is further submitted that the interest outstanding as on the date of the agreement was Rs.8,36,59,986/-. The repayment of borrowings, was to be completed, within a period of 18 months, which expired on 16.12.2020. However, the Corporate Debtor was unable to comply with the terms of the said agreement, and thus, sought for an extension of the agreement dated 17.06.2019, by a further period of one year, *vide* communication dated 15.12.2020.
6. It is stated that pursuant to the request of the corporate debtor, ZACL extended the time period of the agreement dated 17.06.2019, such that the term for repayment of the remaining outstanding ICD was modified as 24 months and obligations therein were to be complied with, by 16.09.2021. As per the modified terms of the agreement, the corporate debtor, was required to make payment towards (i) the remaining sum due consisted of Rs.5,68,13,785.95/-, (ii) interest of Rs.7,38,11,381.19/- and (iii) interest accrued on the sum outstanding from completion of payment of tranche 1. However, despite the extended timelines, the corporate debtor was unable to meet the repayment obligations towards ZACL and requests for such further extension of time by the Corporate Debtor, were rejected by ZACL.

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7. It is further stated that the financial creditor had entered into discussions with ZACL and the corporate debtor, to restructure the repayment obligations and to take over the rights of ZACL. As per the arrangement the financial creditor was to discharge the entire liability of the corporate debtor and step into the shoes of ZACL and claim repayment from the corporate debtor. The terms of the said arrangement were crystallised into a formal agreement dated 19.11.2021. As per the said agreement, the financial creditor was required to remit the outstanding sum within 7 calendar days from 19.11.2021 and upon receipt of the said sum, ZACL had agreed to discharge corporate debtor of its obligations under the earlier agreement dated 17.06.2019. However, upon clearing the sums owed by the corporate debtor, the applicant herein, would be subrogated to all of the rights of ZACL for recovery of the dues from the corporate debtor.
8. It is further submitted that as per the said arrangement, the financial creditor had remitted all the sums outstanding, to the account of the corporate debtor on 20.11.2021, which has also been acknowledged by ZACL, *vide* communication dated 26.11.2021. Therefore, by virtue of clearing the outstanding sums, the financial creditor, has automatically stepped into the shoes of ZACL and has acquired the rights to enforce recovery of the borrowings of the corporate debtor and it had agreed to repay the sums due, by 30.11.2021.
9. Further, in addition to the outstanding ICD granted by the Zuari group, the financial creditor had also advanced a sum of Rs.1,50,00,000/- (Rupees One Crore and Fifty Lakhs Only) as an Inter -Corporate Deposit, *vide* Agreement dated 20.10.2021, at an interest rate of 18% p.a., with repayment of 4 weeks. However, the Corporate Debtor, not only failed to repay the sums due to the Financial Creditor pursuant to the Agreement dated 19.11.2021 but also defaulted in repayment of the Inter -Corporate Deposit made *vide* Agreement dated 20.10.2021.
10. The financial creditor issued a demand notice dated 10.12.2021, through its counsel, demanding the repayment of sums at the earliest. In response thereto, the corporate debtor addressed a reply dated 15.12.2021 to the Financial Creditor, seeking further time to remit the sums due, citing the reasons of operational difficulty and the pandemic related restrictions. Pertinently, there is

no dispute on the sums claimed to be due in as much as the corporate debtor has admitted to the outstanding obligations towards the financial creditor in its communication dated 15.12.2021.

11. On 17.02.2022, after hearing the learned Counsel appearing for the Petitioner, notices were directed to be issued to the Respondent/Corporate Debtor. The learned Counsel who appeared for the Respondent/Corporate Debtor, on receipt of the advance notice, accepts notice in the C.P. On the same day, since the Respondent/Corporate Debtor admitted the debt and default thereon, in order to examine the financial position of the Corporate Debtor and its obligations towards any other Creditors, it was directed to file a short affidavit with regard to the various litigations pending including the claims from the cases, if any, filed by any Secured and Unsecured Creditors against the Corporate Debtor. The Respondent/Corporate Debtor was also directed to file its latest financials and also the copy of the order of NCLT in CP (IB) No. 57/BB/2019.

12. Accordingly, the Respondent/Corporate Debtor filed the compliance affidavit vide Diary No. 771 dated 25.02.2022. The relevant paragraphs of the said affidavit reads as under:

"a) Pending action against the Corporate Debtor from secured and/or unsecured creditors.

4. The Corporate Debtor has two other creditors apart from the Applicant to this petition – Pixie Enterprises Private Limited and UB Infrastructure Projects Limited. Both Creditors were unsecured creditors. While the former is owned INR 99.49 Lakhs as on 17th February 2022, the latter is owed INR 19.54 Lakhs as on 17th February 2022. That said none of these creditors have initiated any action against the Corporate Debtor.

b) Status of proceedings initiated by the Enforcement Directorate against the Corporate Debtor.

5. Proceedings before the Enforcement Directorate is below:

A. Case No. F.No ECIR/03/MZO/2016 in the matter of Kingfisher Airlines Limited and Vijay Mallya.

i. In the aforesaid case, the Enforcement Directorate ('ED') issued letters/orders dated 12 May 2016 to United Breweries Limited. (UBL) and United Breweries (Holdings) Limited ("UBHL") directing them not to allow the Corporate Debtor to sell/alienate/create third party mortgage rights in any manner on the shares of such investee companies. I state that the Corporate Debtor is an unconnected and independent company, and it is the Corporate

Debtor's stand that the ED has no case against the Corporate Debtor. The ED has also issued letter dated 12 September 2016 to Yes Bank Limited with similar directions. I understand that ECL Finance Limited has also received similar instructions from the ED. As a result, by virtue of these proceedings, 63, 45, 011 shares of UBL held by the Respondent have been attached by the ED in the following manner:

- a) 45,51,000 shares of UBL, lying in the Respondent's Demat account, were pledged in favour of erstwhile lenders being Yes Bank Limited and ECL Finance Limited. Based on the Respondent's records, currently no dues are outstanding to these lenders. However, the lenders have not released the pledge on these shares pursuant to the directions of the ED, despite Respondent's follow up.
- b) Further 1,22,667 shares of UBL pledged to the above lenders are still lying in the demat accounts of the said lenders. The Respondent understands from these lenders that pursuant to the directions of ED, these shares will not be released by the lenders.
- c) Additionally, the ED unilaterally transferred 16,71,344 shares to its own demat account from the demat account of the Respondent in May 2018. To the best of the Respondent's knowledge, these shares were later transferred to the Hon'ble Debt Recovery Tribunal by the ED pursuant to the order of the PMLA court dated 31 December 2019 (mentioned as 04 January 2020 in the ED's letter dated 2 September 2021 to the Respondent) in Cri. Misc. Appl 58/2019 involving the lending banks of Kingfisher Airlines and Dr. Vijay Mallya.

B. Cri. Misc. Appl. 854/2018

- i. The Respondent had received a Show Cause Notice dated 3 July 2018 under the Fugitive Economic Offenders Act 2018 (FEOA) as an interest person (and not as an Accused) to show cause as to why the Respondent's investments in UBL and UBHL should not be confiscated under the FEOA. The Respondent has filed its objections in the designated court for FEOA, Mumbai stating that the Respondent is in no way connected to Dr. Vijay Mallya – the Accused under the FEOA proceedings. The Respondent specifically contended that Accused is neither a majority shareholders (given that he holds 2 shares only) nor a director or key Managerial Personnel of the Respondent. The matter is still pending.

C. Cri. Misc. Appl 19/2016 in Cri Misc. 8/2016 in ECIR NO. ECIR/03/MBZO/2016

- i. In a separate proceeding before the court of Special Judge for Prevention of Money Laundering Act, 2002 (PMLA) an individual promoter (Dr. Vijay Mallya) of the Respondent has been declared as a proclaimed offender. Pursuant to this declaration, the Respondent's investments in UBL and UBHL have attached under the PMLA by the order dated 10 November 2016.

- c) Latest financial statements.

6. As directed by this Hon'ble Tribunal, the unaudited financial results of the Respondents for the quarter ended 30 September 2021 and the Limited Review Report of the Statutory Auditors for the quarter ended 30 September 2021 as filed with Bombay Stock exchange Limited and the National Stock Exchange of India Limited on 27 January 2022 under Regulation 33 of the SEBI (Listing Obligations and Disclosure Requirements) Regulation 2015 are annexed as Annexure A.
- d) Order of this Hon'ble Tribunal in CP (IB) No. 57/BB/2019
7. The Order dated 23 July 2019 passed by this Hon'ble Tribunal in CP (IB) No. 57 of 2019 (M/s. Zuari Agro Chemicals Limited v. M/s. McDowell Holdings Limited) whereby this Hon'ble Tribunal disposed of the petition by recording the settlement agreement dated 17th June 2019 is annexed as Annexure B.
- e) Any other information.
8. The Respondent's demat account maintained with Stock Holding Corporation of India was suspended for debit on the instructions of the ED since 29 July 2019. The Respondent has filed submissions with the ED seeking removal of this attachment. The ED issued summons thereafter, and, pursuant to the summons, the Respondent made submissions. The matter is pending. That apart, with effect from 18 February 2022, the trading in securities of the Respondent has been suspended by the National Stock Exchange of India for non-compliance with SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015. A copy of the circular dated 18 January 2022 issued by the National Stock Exchange of India is annexed as Annexure C.
9. Due to the attachment of the assets of the Respondent by the ED, the Respondent is unable to meet its expenses and generate funds. The investments of the respondent are yet to be unfrozen by the Ed with no clear timelines in the horizon. The financial substratum of the Respondent, as a result, is not sufficient to pay off all its debts. The Respondent is not able to function with its complete capacity and it is not able to mobilize funds to pay off its liabilities.
10. The following are the details of the assets and liabilities as at 30 September 2021.

S. No.	Particulars	Amount
LIABILITIES		
1.	Long Term Borrowings	-
2.	Short-Term Borrowings	1484.15
3.	Other Current Liabilities	106.67
4.	Long Term Provisions	-
5.	Short- Term Provisions	1.04
6.	Trade Payables	92.70
	TOTAL	1684.53
ASSETS		
1.	Tangible Assets	0.06
2.	Intangible Asset	-
3.	Investment (free from attachment)	0.00
4.	Cash and Bank Balance	3.31
5.	Short term loans and advances	4.14
6.	Trade Receivables	-

7.	Other Non-Current Assets	189.30
8.	Other Current Assts	-
	TOTAL	196.81

Note: Attached investment Market Value is Rs. 100629.28 Lakhs (as on 30 September 2021)

11. To reiterate, the assets of the Respondent which would have generated revenue/income have been attached by statutory authorities. The Respondent is undergoing severe financial constraints due such attachments. Further, the Respondent has also been incurring losses.
 12. As a result, the Respondent does not have the required liquidity to meet the dues of the Applicant for the foreseeable future and repay the amount. The Respondent has many non-statutory liabilities in existence, which the Respondent is not in position to pay. Further, there are no liquid assets to pay off the debts of the company. Due to the absence of the liquid assets, the Respondent will not be able to honour any payments with respect to the existing debts in the near future. In these circumstances, I am constrained to state that the Respondent cannot repay the sums owed to the Applicant.
 13. Consequently, as the Company has been facing many difficulties due to financial stress it is under, this Hon'ble Tribunal may pass appropriate orders in the application filed by the Applicant."
13. At this stage Shri Nirej Vadakkedathu Paul and 8 Ors. filed I.A No. 86 of 2022 seeking to intervene in CP (IB) No. 11 of 2022 and to declare the C.P. amounts to fraudulent and malicious initiation of proceedings under the IBC. Similarly, Mr. Kushal Sengupta and 8 Ors. filed I.A No. 87 of 2022 also seeking for intervention and dismissal of the C.P (IB) No. 11 of 2022.
14. Heard Shri Srinivasa Raghavan, learned Senior Counsel for the Applicants in I.A No. 86 of 2022 and Shri Joy Saha, learned Senior Counsel along with Ms. Urmila Chakraborty, learned Counsel for the Applicants in I.A No.87 of 2022 and Shri Rahul Balaji, learned Counsel for the Petitioner in the C.P. and Shri A S Vishwajith, learned Counsel for the Respondent in the C.P.
15. The Applicants in the I.A No. 86 of 2022 and also the Applicants in I.A No. 87 of 2022 claiming to be the shareholders of the Respondent/Corporate Debtor Company raised the following grounds in support of the Interlocutory Applications:
1. The Deponent of the affidavit filed on behalf of the Corporate Debtor Company has no authority to file the same.
 2. The person authorised the learned Counsel who appeared for the Corporate Debtor, has no power or authority to authorise him as such.

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3. The Corporate Debtor is not an insolvent Company and it has sufficient means to repay the debt of the Petitioner.
 4. The C.P. has been filed due to fraud and collusion between the Petitioner and the Respondent/Corporate Debtor.
16. On the other hand, the Petitioner/Financial Creditor opposed the I.As, on the ground that they are not maintainable.
17. The compliance affidavit filed by the Corporate Debtor vide Diary No. 771 dated 25.02.2022 was accompanied with the affidavit dated 24.02.2022 of one Shri G Sreenivas claiming to be the Deputy General Manager of the Respondent/Corporate Debtor. The said Deponent filed the certified extract of the resolution passed by the Board of Directors of the Respondent/Corporate Debtor at their meeting held on 27.01.2022, where under it was resolved to authorise the said Shri G Sreenivas, Deputy General Manager of the Respondent Company to execute/sign/file pleadings, petitions, affidavits before all Courts and Tribunals in the Country any action brought against the Company, including before the National Company Law Tribunal. The said compliance affidavit was also enclosed with the authorisation in favour of Shri A S Vishwajith, learned Counsel appearing for the Respondent/Corporate Debtor, duly signed by Shri G Sreenivas who was authorised to do so by the Board of the Respondent/Corporate Debtor, under the seal of the Respondent Company. The Applicants in these I.As, except contending that the Deponent of the affidavit filed on behalf of the Respondent/Corporate Debtor and the learned Counsel appearing for the Respondent/Corporate Debtor have no valid authorisation to act as such, failed to show any other valid document in support of their submissions. In the absence of the same, the certified extract of the Resolution of the Board of Directors of the Corporate Debtor dated 27.01.2022 in favour of Shri G Sreenivas i.e. Deponent of the affidavit filed on behalf of the Respondent/Corporate Debtor and the authorisation given by the said Shri G Sreenivas in favour of Shri A S Vishwajith, learned Counsel appearing for the Respondent/Corporate Debtor shall have to be treated as valid and sufficient documents to enable them to represent the Corporate Debtor. Accordingly, the ground nos. 1 and 2 raised by the Intervening Applicants are rejected.

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18. The Hon'ble Supreme Court of India in *M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr.* in Civil Appeal Nos. 8337-8338 of 2017 observed as under:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section

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(7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

19. In view of the above enunciation of law, it is sufficient for this Adjudicating Authority in order to accept or reject the Application filed U/s. 7 of the IBC, 2016, if the debt and default are proved. In the instant case, when the learned Counsel appearing for the Respondent/Corporate Debtor, on the first instance itself, admitted the debt and default and not opposed the admission of the C.P. and initiation of CIRP proceedings against it, to find out the bonafides of the Respondent/Corporate Debtor in stating so and also to find out whether the Petitioner and the Respondent/Corporate Debtor colluded in any manner, to avoid the legitimate dues to any other Secured or Unsecured Creditors, this Adjudicating Authority directed the Respondent/Corporate Debtor to file an affidavit with regard to the various litigations pending including the claims from the cases filed by any Secured and Unsecured Creditors against the Corporate Debtor. For the same purpose, the Corporate Debtor was also directed to file its latest financials and a copy of the order of the NCLT in CP (IB) No. 57/BB/2019. In response thereto, the Corporate Debtor filed an affidavit and the contents of the same were already extracted as above. A careful examination of the same reveals that there was no reason to disbelieve the contents of the same. Admittedly, no Secured or Unsecured Creditor initiated any proceedings against the Corporate Debtor for recovery of its debts. The pendency of the proceedings initiated by the Enforcement Directorate against certain other Companies, or any order passed thereon, doesn't preclude the Financial Creditor from genuinely seeking initiation of CIRP against the Corporate Debtor, if its debt was under default by the Corporate Debtor. The intervenors have not disputed the debt and default in any manner. It is also not in dispute that all the properties of the Corporate Debtor are under orders of attachment. Even otherwise, it is the settled principle of law that once the debt and default are proved, the solvency of the Corporate Debtor, will not come in the way of the admission of an Application under Section 7 of the I&B Code, 2016. In view of the same, we reject the ground nos. 3 & 4 of the Intervening Applicants.

20. It is the case of the Intervening Applicants that they are holding certain shares in the Respondent/Corporate Debtor Company and if the C.P. is admitted and the Insolvency Resolution Process is initiated against the Corporate Debtor, their right as shareholders will be severely affected and their interest will be prejudiced. It is the settled principle of law that in an Application U/s. 7 of the Code, there is no place for any third party other than the Financial Creditor and the Corporate Debtor. The Shareholders of the Financial Creditor or of the Corporate Debtor in their capacity as a shareholder have no *locus standi* to get themselves impleaded in the C.P. filed U/s.7 of the IBC, 2016. If any Shareholder of the Financial Creditor or the Corporate Debtor have any grievances with regard to the representation of the Company in the C.P., they can agitate their rights as Shareholders under the applicable provisions of the Companies Act, 2013 but cannot be allowed to be impleaded or intervened in the C.P. This Adjudicating Authority, while exercising summary jurisdiction such as Section 7 of the IBC, 2016, cannot adjudicate the disputes, if any, inter se, between the Shareholders or Directors of the Corporate Debtor. Accordingly, both the Interlocutory Applications are dismissed.

21. However, we are conscious of the settled principle of law that fraud vitiates everything. That is why we have heard the submissions made on behalf of the Applicants in the I.As to examine whether there was any element of fraud, either in filing the C.P or in admitting the debt and default by the Respondent. Similarly, for the same purpose, though the Respondent/Corporate Debtor admitted the debt and default, we have directed it to file the affidavit indicating various litigations including the claims from the cases filed by any Secured and Unsecured Creditors of the Corporate Debtor. Again for the same purpose, we have directed the Corporate Debtor to file the latest financials and also the copy of the order of the NCLT in CP (IB) No. 02/BB/2017 dated 09.08.2019. Nothing is coming out of the same or from any document filed by any of the intervenors, which can be termed as fraud or collusion in either filing the C.P. or in admitting the debt or default by the Corporate Debtor.

22. Section 7(5)(a) of the Code is 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."

23. In the present case, the occurrence of default is evidenced by the details furnished by the Petitioner including the record of financial information (Form - C) issued by NESL in respect of the debt of the Corporate Debtor. (enclosed at Page 175 of this Petition).

24. The other issue for consideration is whether present application is filed within limitation. The date of default of the debt is well within the 3 years period from the date of filing of the C.P. Therefore, the Petition has been filed within the period of limitation.

25. The respondent corporate debtor in his reply filed in the C.P, admitted the debt and its inability to pay the same to the applicant.

26. The application filed in the prescribed Form No.1 is found to be complete.

27. In the given facts and circumstances, the present petition being complete and having established that the default in payment of the Financial Debt for the default amount of above Rs.1,00,00,000/-, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, 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
- (b) any court of law, tribunal, arbitration panel or other authority;
- (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (d) 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;

- (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- (f) 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 the moratorium period;
- (g) 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;
- (h) 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 passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

28. In Part-III of Form No.1, Mr. Konduru Prasanth Raju bearing Registration No. IBBI/IPA-002/IP-N00708/2018-2019/12200 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 01.02.2022 has been filed along with the C.P are found at Page Nos.166-169A of the Petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Konduru Prasanth Raju and there is nothing adverse against him. In view of the above, we appoint Mr. Konduru Prasanth Raju bearing Registration No. IBBI/IPA-002/IP-N00708/2018-2019/12200, having registered address at B-804, Shriram Suhaana Apartments, Harohalli, Nagenahalli Gate, Yelahanka, Bangalore 560064, email- ipkpraju@gmail.com and Contact No. 9980591019, as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

29. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report,

— sd —

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certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

30.A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

— Sd —

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

— Sd —

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

Brunda/Mythreye LRA