NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY– MEMBER JUDICIAL

PRESENT: HON'BLE SHRI BINOD KUMAR SINHA –MEMBER TECHNICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 07.11.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) NO. 184/7/HDB/2019
NAME OF THE COMPANY	Meenakshi Energy Ltd
NAME OF THE PETITIONER(S)	State Bank Of India
NAME OF THE RESPONDENT(S)	Meenakshi Energy Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Raghunandan Rao	Senior Counsel.		
D. Narendar Naik	Adv.	9849387366	
Vikram. C. puttapaga	Adv.	9160876359	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Divya Datla	Adv	9440192334	

ORDER

Order pronounced in open court. CP admitted vide separate order.

MEMBER TECHNICAL **MEMBER JUDICIAL**

AS

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERBAD

In CP (IB) No.184/7/HDB/2019
Application u/s. 7 of the IB Code, 2016.
Read with Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of :-
MEENAKSHI ENERGY LIMITED

Between:

State Bank of India,
State Bank Bhavan, Madam Cama Road,
Mumbai – 400021. ... Financial Creditor

AND

Meenakshi Energy Limited,
Having its Registered Office at:
405, Saptagiri Towers,
1-10-75/1/1 to 6, Begumpet,
Secunderabad, Hyderabad,
Telangana – 500016. ...Corporate Debtor

Date of Order:07.11.2019

Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.

Parties/Counsel Present:

For the Financial Creditor:

Mr. Raghunandan Rao, Senior Counsel along with Mr. surabhi Khattak, Narender Naik and Mr. M. Vikram, counsels

For the Corporate Debtor:

Mr. S. Ravi, Senior Counsel along with Mr. Dishit Bhattacharjee, Counsel.

07/11

Per: K. Anantha Padmanabha Swamy, Member Judicial

ORDER

1. Under consideration is a Company Petition, filed by State Bank Of India (hereinafter referred to as 'Financial Creditor') under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. Meenakshi Energy Limited (hereinafter referred to as 'Corporate Debtor').
2. Brief facts of the present case inter-alia are as under:
   a) That the Corporate Debtor had availed term loan and working capital facilities from time to time from a consortium of lenders including State Bank of India, State Bank of Hyderabad, State Bank of Bikaner and Jaipur, State Bank of Mysore and State Bank of Travancore ("SBI and Associate Banks" in short) in two different phases to set up a 300 MW coal based power project (Phase-I) and a 700 MW coal based thermal power project (Phase-II) respectively, in terms of Common Loan Agreements dated 10.07.2009 and 01.10.2010 respectively, at Thamminapatnam village near Krishnapatnam in the Nellore District of Andhra Pradesh.
   b) That in the phase II Project, there was a cost over-run by the Corporate Debtor and, therefore, to meet the increase in cost for Phase II project, the consortium of lenders sanctioned additional facilities in terms of Common Loan Agreement dated 20.03.2015 as amended by Amendment Agreement dated 23.09.2016, but not actually disbursed to the Corporate Debtor.
   c) That the Corporate Debtor has availed working capital facilities (both fund based and non-fund based) in accordance with the terms of Working Capital Consortium Agreement dated 18.09.2012 and the latest working capital facility sanctioned by Financial Creditor is captured under the Renewal cum Enhancement Sanction Letter dated 17.11.2015.

d) That the instant application is filed by the SBI on behalf of SBI and the Associate Banks on account of the respective separate Gazette Notifications each dated 22.02.2017, pursuant to which the Associate Banks have merged into SBI with effect from 01.04.2017.

e) That the Corporate Debtor has defaulted in timely servicing of the principal repayments and interest payments for the facilities in relation to the Phase I Project from 31.07.2017 and due to such irregularities, the accounts of the Corporate Debtor was classified as Non-performing Asset since 28.10.2017 in accordance with guidelines/regulations of Reserve Bank of India.

f) That SBI vide its notice dated 07.08.2018 demanded the repayment for the outstanding as on 31.07.2018 and on account of failure in making such payments by the Corporate Debtor, SBI has accelerated/recalled the facilities availed by the Corporate Debtor and the entire exposure of SBI in Phase I project and Phase II project is due and payable by the Corporate Debtor.

g) That the total amount claimed to be in default is as under:

- Phase I Facility :
  - Principal - Rs. 350,54,21,828.61/-
  - Interest - Rs. 86,01,62,898.55/-
  - Default Interest – 10,52,65,286.49/-
- Phase II Facility :
  - Principal - Rs. 1018,74,68,307.81/-
  - Interest - Rs. 58,64,80,646.26/-
  - Default Interest – 6,70,90,682.52/-
- Working Capital Facilities (Fund base):
  - Principal - 51,54,45,583.07/-
  - Interest - 12,40,70,422.41/-
  - Default Interest – 2,30,60,712.52/-

h) The learned Counsel for the petitioner/Financial Creditor while reiterating the above submitted that the Respondent/Corporate Debtor is unable to pay its debts and therefore it has no other option except approaching this Adjudicating Authority under I & B Code

seeking an order for commencing the Corporate Insolvency Resolution Process and prayed for appointment of an IRP to take over the affairs of the Respondent/Corporate Debtor.

i) List of documents filed in support of the petition are enclosed as under:

i. Copies of the Associate Bank Gazette Notifications.
ii. Copy of the Authorization and Gazette Notification.
iii. Authorization Letter to Advocates.
iv. Details of Date of Disbursements under the Facilities.
v. Computation of defaulted amount and date of default relation to each Facility.
vi. Copies of Certificates of Registration Modification of Charge.
vii. Copies of the Financial Contracts.
viii. Copies of CIBIL Report and CRILC Report.
ix. Copies of entries in the bankers book in accordance with the Bankers' Books Evidence Act, 1891.
x. Revival Letter dated February 16, 2018 issued by the Corporate Debtor addressed to the Financial Creditor in relation to the Working Capital Facilities.
xi. Recall Notice bearing No. SAMB/HYD/MEL/PMR/2018/706 dated August 7, 2018 issued by the Financial Creditor in its capacity as Lenders' Agent on behalf of the lenders to the Corporate Debtor.
xii. Audited balance sheet of the Corporate Debtor for the Financial Year 2016-17.
xiii. Overdue Recall Notice dated December 19, 2017 bearing Ref. PFSBU/TEAM-07/MEL/2231 issued by the Financial Creditor in its capacity as Lenders' Agent to the Corporate Debtor.
xiv. Interest calculation after the account of the Corporate Debtor was classified as NPA.
xv. Copies of Form-2 of the proposed IRP along with the certificate accompanying Form-2, his affidavit and certificate of registration.

3. Respondent filed counter inter-alia stating as under:

i. That the application filed by the FC is mala fide and motivated and that the Financial Creditor is not entitled to invoke the provisions of Insolvency and Bankruptcy Code, 2016 ("Code" for short) since the FC does not meet prerequisite and/or criteria as laid down under Section 5(7) of the Code.

ii. That the Financial Creditor has suppressed gross material facts including but not limited to the fact that the shares of the Corporate

Debtor have already been invoked and transferred by the FC to the demat account of SBICAP Trustee

iii. That the Financial Creditor and other lenders are the majority shareholders of the Corporate Debtor and the instant application under Section of 7 of the Code is not maintainable.

iv. That the Financial Creditor being the majority shareholder of the Corporate Debtor is canvassing a dual role of a creditor and a shareholder and has deliberately suppressed this fact from the Adjudicating Authority.

v. That the Financial Creditor has also misled the Adjudicating Authority by failing to disclose the pending legal proceedings, before various forums, being a party to the pending legal proceedings

vi. That the Financial Creditor has filed the instant application simply as an afterthought and as a counterblast to the legitimate and genuine proceedings initiated by the Corporate Debtor and India Power Corporation Limited ("IPCL" for short) against the lenders including the FC in various forums.

vii. That the sole intention of the Financial Creditor is to arm-twist and paralyze the Corporate Debtor in order to meet certain arbitrary and unjust demands portraying itself as lender when in reality the FC is the majority shareholder and holds the ownership of the CD.

viii. That in spite of being aware of the restricted and regulated market in the power sector, the FC along with other lenders has in a synchronized manner pushing the CD to forced sale which will cause big sacrifice of public money without any benefit to the economy.

ix. That instead of adopting sector agnostic approach for stress resolution, the FC being the owner and majority shareholder should look at sector friendly measures as the power sector should be protected since it is going through a transition phase from a low-demand-low-supply situation to a moderately high-demand situation.

x. That the instant Application is filed by Mr. Attaluri Srinivas who does not hold a specific authorization to file the application which is not

in line with the dictum of the Hon'ble NCLAT laid down in ICICI Bank *Vs.* Palogix Infrastructure Limited and on that ground alone the instant application is to be dismissed.

xi. That it could be seen from a bare perusal of the date of default mentioned by the FC in Form 1 that the application is ex-facie barred by limitation and the application is liable to be dismissed on the ground of limitation laws.

xii. That it is an admitted position that there does not exists any debt as on date and thus there is no question of any event of default taking place in respect of the FC and the FC does not have any cause of action or *locus standi* to institute the instant application under Section 7 of the Code.

xiii. That the CD was originally held by Meenakshi Energy and Infrastructure Holding Private Limited which subsequently reduced its shareholding and Engie Global purchased the shares and was inducted as the promoter of the Corporate Debtor. Engie Global with a focus on renewable energy took a decision to decrease the weight of thermal generation in its fuel mix and bid out the project to IPCL being the successful bidder. Pursuant to share purchase agreement dated 25.2.2016 and share sale agreement dated 29.08.2016, IPCL acquired 95.07% shares of the CD.

xiv. That IPCL being the holding company of the CD executed a Deed of Guarantee dated 23.09.2016 as the Guarantor of the loans availed by the CD in favour of SBICAP Trustee Company Limited as Phase I Security Trustee.

xv. That pursuant to the requests made by the CD, the FC has issued two letters dated 20.04.2017 that it is sanctioning a Letter of Credit for INR 25 crores and approved certain payments to be made from TRA considering the urgent payments for running the Phase-I project. However, such sanction of LC for INR 25 crores as against the request for INR 50 crorres and sanction of only few payments to be made to 3rd parties were not sufficient for the purpose of operations of Phase-I of the project.

xvi. That the CD was shocked, surprised and dismayed to receive a letter from FC on 19.12.2017 (Over Due Recall Notice) calling upon to repay Overdue amount of INR 93.57 crores.

xvii. That simultaneous to the Overdue Recall Notice dated 19.12.2017, SBICAP Trustee Co. Ltd. vide two of its letters dated 20.12.2017 first one being the letter of invocation of the pledged shares of the CD with respect to Phase-I facility agreement and the second one was a letter of demand under the Guarantee Deed dated 23.09.2016.

xviii. That upon the request of the IPCL, being the holding company of the CD, the Depository Participant made over the transaction statement that showed that the pledged shares stood transferred and the Beneficiary Position Statement reaffirmed showing that the SBI Cap Trustee as the shareholder holding number of shares that were pledged.

xix. That the FC has deliberately and willfully with a mala fide intention to mislead the Adjudicating Authority has suppressed the fact that the FC through SBI Cap Trustee Co. Ltd. has invoked the pledge of shares and has converted their entire debt into equity by invocation of the pledge on and by subsequently transfer of shares to the DEMAT account of SBI Cap Trustee Co. Ltd. on 02.05.2018.

xx. That with the act of invocation of the pledge and transfer of shares to the demat account of SBI Cap Trustee, the Security Trustee and Security agent of Phase-I and Phase-II lenders including the FC as well as Phase-I and Phase-II lenders have become 95.2% shareholders of the CD and the entire debt of the CD stood discharged by the transfer of shares in the name of SBI Cap Trustee who has now become the owner of 95.2% of shares of CD whose enterprise value would be around INR 6727 crores and INR 7260 crores as valued by Deloitte Touche Tohmatsu India Private Ltd. ("Deloitte" for short) and by LSI Engineering and Consultants Ltd. ("LSI" for short) respectively.

xxi. That IPCL is now a minority shareholder of the CD, on the invocation of shares that were pledged, which filed a Writ petition (WP No.

26977 of 2018) against the FC as well as SBI Cap Trustee Co. Ltd. and the other erstwhile lenders of the CD before Hon'ble Telengana High Court at Hyderabad praying, *inter-alia*, to declare the invocation and transfer of share by SBI Cap Trustee as arbitrary, illegal and to carry out valuation of pledged shares, to provide no dues certificate to the CD and to direct SBI Cap Trustee Co Ltd. to return the shares to IPCL being the balance proportionate shares after meeting the value of the lawful outstanding dues.

xxii. That the CD has also filed a writ petition (WP 30048 of 2018) before Hon'ble High Court of Judicature, Hyderabad against the FC and others, *inter-alia*, praying for declaring the actions of respondent lenders of accessing or utilizing the funds in the TRA post the invocation of shares and transfer of shares arbitrary, illegal and unconstitutional and to direct the respondent lenders to refund all the amount debited by the respondent lenders from TRA and to allow the CD to access, utilize the funds in TRA for carrying out its operations of the projects and to issue a no due certificate recording the satisfaction of debt/amount outstanding or payable by the CD.

xxiii. That the FC and other lenders had an obligation and/or mandate under the RBI circular dated 12.02.2018 to come up with a resolution in respect of the CD within the stipulated time frame before initiating any action against the CD under the Code. From various communications and correspondences, it is clear and established that the instant proceedings were initiated in consonance with the impugned RBI circular as the FC has failed to obtain any relief due to its coercive actions being challenged in all the forums. The RBI circular dated 12.02.2018 having been struck down, the FC has no cause of action to institute the instant proceeding.

xxiv. Reiterating above, the counsel for the Corporate Debtor prayed to dismiss the Petition.

4. Petitioner filed Rejoinder inter-alia stating as under:

a. That in terms of Section 7(5) of the Code, the Adjudicating Authority is merely required to be satisfied that a "default" has occurred and

relied on the decision rendered by Hon'ble Apex Court in re: Innoventive Industries Ltd. *Vs.* ICICI Bank (2018) 1 SCC 407

b. That all the issues raised by the CD in its counter affidavit have already been raised before the Hon'ble High Court of Telengana by way of WP 30048 of 2018 and was considered vide its order dated 23.01.2019. Further, the appeal (No. 203 of 2019) preferred over the order dated 23.01.2019 before the Division Bench of the Hon'ble High Court of Telengana was dismissed vide orders dated 17.04.2019. Thus these issues have attained finality and, therefore, require no further consideration.

c. That invocation of pledge in itself does not amount to transfer of shares and discharge of debt and placed reliance on the following verdicts of: (i) Hon'ble Supreme Court in Balakrishan Gupta V. Swadeshi Polytex Ltd. (1985) 2 SCC 167 (ii) Hon'ble High Court of Bombay in United Breweries (Holdings) Ltd. & ors. V. State Bank of India & ors. (order dated 2.4.2013 in Notice of Motion (L) No. 718 of 2013 in Suit(L) No. 263 of 2013) and (iii) Hon'ble National Company Law Appellate Adjudicating Authority in MAIF Investments India P Ltd v Ind-Barath Energy (Utkal) Ltd, Company Appeal (AT) Insolvency No. 597/2018.

d. That the decision of Hon'ble NCLAT holding that invocation of Pledge amounts to discharge of debt in the case of PTC India Financial Services Ltd. Vs. Mr. Venkateswara Kari & ors. in Company Appeal (AT) (Insolvency) No. 450 of 2018 has been stayed by Hon'ble Apex Court vide order dated 19.07.2019.

e. That valuation of shares is irrelevant to Section 7 of the Code. As per RBI guidelines in case of NPA account, credit can only be given on the basis of actual realization of money and not on the basis of valuation. Admittedly, Phase-I lenders have not received any amounts pursuant to invocation of pledge of shares.

f. That the contention of the CD that the debt has been discharged on account of transfer of shares to SBI CAP Trustee Co. Ltd. upon invocation of pledge is baseless and is devoid of any merit.

g. That the CD itself sent letters dated 25.05.2018, 11.06.2018 to Phase-I lenders wherein it had submitted Resolution Plans for Phase-I and Phase-II projects clearly showing that the CD itself admits and understands that the debt due has not been discharged.

h. That it is denied that the FC and Phase I and Phase II lenders are holding more than 95% shareholding rights of the CD. The CD passed resolution on 26.12.2017 whereby 10,02,34,046 equity shares each having a nominal value of Rs.10 were allotted at par to IPCL upon conversion of loan (additional shares) and the voting rights were 1000 on every one additional share. However, the shares that were earlier issued by the CD (that were pledged to lenders) were having only one vote for each share resulting in substantial reduction of voting rights of the initially pledged shares from 97.58% to 3.75% available now and relied on the finding of the Hon'ble High Court of Telengana in its order dated 23.01.2019 in WP 30048 of 2019.

i. That the CD failed to disclose the fact that aggrieved by the actions of the CD allotting additional shares, REC on 02.04.2017 filed a petition under Section 213 and Section 221 of the Companies Act, 2013 before the Adjudicating Authority being CP No. 277/213/HDB/2108 seeking investigation into the affairs of the CD and for cancellation of additional shares allotted by the CD.

j. That the Applicant/Phase-I lenders cannot utilize the amounts available in the TRA for repaying their own overdue debt contrary to the provisions of TRA Agreement dated 23.02.2016 and, therefore, the CD cannot allege that the Applicant/phase-I lenders can make good their outstanding amounts from the TRA which had been created pursuant to Phase-II TRA.

k. That some of the lenders for the Phase-I and Phase-II are overlapping but the consortium of lenders under both the phases are not the same and, therefore, Applicant/Phase-I lenders cannot be said to have a recourse in law to recover their dues from securities created under Facility for Phase-II.

l. That the present application under Section 7 of the Code is filed independent of the RBI circular dated 12.02.2018 and the RBI circulars cannot be interpreted to restrict the FC from exercising its right under the Code to the application seeking initiation of CIRP against the CD. Even the Overdue Recall Notice dated 19.12.2017 issued makes no reference to the RBI Circular.

m. That the instant application has been filed by a duly competent authority as authorized vide Letter of Authorization dated January, 2019 which is annexed at Page 59 of the Section 7 of the company application.

5. The Petitioner filed written submissions reiterating the averments made in the Petition and Rejoinder and further prayed to allow the Application.

6. The Corporate Debtor filed written submission reiterating the averments made in counter and has further stated as under:

i. That SBI is no longer a creditor of the CD since the entire debt of the CD stood discharged pursuant to the transfer of shares and thus the application filed under Section 7 of the Code is not maintainable.

ii. That the commissioning of the project i.e. 2 x 350 MW Power plant in Nellore, Andhra Pradesh was carried out in two Phases – Phase I and Phase II that was funded by a consortium of lenders lead by the FC and REC respectively. REC in its capacity as the Phase-II Security Agent has vide its letter dated 23.09.2016 requested the Phase-I Security Trustee to act as its agent for the purpose of acquiring pledge and holding the shares pledged pursuant to this Agreement on its behalf for the benefit of Phase-II lenders and the Hedge provider.

iii. That the share pledge agreement dated 23.09.2016 was signed by the SBI Cap Trustee Co. Ltd. as a security Trustee for Phase I lenders and as an agent of Phase II Security Agent who is acting in trust and for the benefit of the Phase-I and Phase-II lenders including SBI, the FC. And, thus the FC cannot make any contention that 381,15,06,509 shares (95% of shares) of the CD which have been transferred in the

name of SBI Cap Trustee Co. Ltd. has been done only for the benefit of Phase-I lenders and not the Phase-II lenders.

iv. That it is important to note that the valuation of the shares of the Debtor Company is significantly higher than the purported outstanding debt of INR 2900 crores and thus the entire debt of the CD stands discharged and there is no default that can be said to be in existence as on date. Reliance has been placed on the order passed by the Adjudicating Authority in Srei Infrastructure Finance Ltd. *Vs.* Amrit Jal Ventures Private Ltd. in CP(IB)/21/7/HDB/2018 and on the order passed by Hon'ble NCLAT in PTC India Financial Services Ltd. *Vs.* Mr. Venkateswarlu Kari and Mandava Holdings P. Ltd.

v. That the FC in Form 1 in Part V at Page 25 of the application has themselves admitted that the value of the fixed assets of the CD is Rs. 5475.01 crores which itself show that the value of the 95% shares held by the FC is in excess of Rs.5000 crores.

vi. That the Hon'ble High Court of Delhi in Tendril Financial Services P. Ltd. & ors. *Vs.* Namedi Leasing and Finance Ltd. & ors reported in MANU/DE/1275/2018 as well as in SPCI Finance Ltd. *Vs.* Cedar Infonet Pvt. Ltd. & ors has held that under the Depository Regulation, the moment the shares are transferred to the account of the beneficiary after invocation of the pledged shares, such transfer automatically amounts to sale and the transferee in whose name the shares are transferred becomes the beneficial owner of the shares. Thus, as per law, SBI Cap Trustee Co. Ltd. and all the erstwhile lenders of the CD on whose behalf SBI Cap is holding 95% shares of the CD has become beneficial owner of 95% of shares of CD and they no longer remain financial creditors of the CD.

vii. That the Writ Petition (WP No. 26977 of 2018) filed by IPCL against the erstwhile lenders including the petitioner is pending before the Hon'ble High Court at Andhra Pradesh. After being prima facie satisfied with the case made out by the IPCL, the Hon'ble High Court was pleased to pass an interim order protecting the valuable interest of IPCL and such interim order has been extended from time to time.

viii. That publication of expression of interest to sell the shares of the CD jointly by REC and SBI proves that both SBI and REC has become the shareholder of the CD. In the light of the expression of interest for selling the shares, the petitioner cannot contend that REC being Phase-II lender has not become a shareholder of the CD.

ix. That the FC themselves admitted (page 192, 216 and 217 of the typed set of the counter) that the FC is required to initiate this instant proceeding under Section 7 of the Code. Hon'ble Apex Court in Dharani Sugars and Chemicals Ltd. *Vs.* Union of India & ors. has held that in all cases in which debtors have been proceeded against by the FC under Section 7 of the Code under and / or as a result of RBI circular dated 12.02.2018 will be proceeding which being faulted at the very inception are to be declared to be non-est. Reliance was placed on the order passed by the Adjudicating Authority in CP(IB)/298/7/HDB/2018.

7. The instant Application U/s 7 of the IB Code, 2016 was filed in the registry on 23.01.2019, and after scrutiny, the same was listed for the first time on 26.03.2019. During the hearing held on 26.03.2019, the Petitioner was directed to issue notice to the respondent for appearance and for making submission and the matter was adjourned to 14.05.2019.

8. During the hearing held on 14.05.2019 the, counsel for the Respondent appeared and prayed time for filing counter. Subsequently the matters was adjourned on various dates *viz.,* 23.04.2019, 13.06.2019,24.06.2019, 10.07.2019 and 08.08.2019, for filing of counter and rejoinder and the matter was heard at length during the hearings held on 27.08.2019 09.09.2019 & 16.09.2019. Further, time was enlarged for filing written submissions on 26.09.2019 and the matter was reserved for orders.

9. Heard both the sides and perused the records.

10. It is the case of the Financial Creditor that it has provided various working capital facilities (both Fund based and Non-fund based) under working capital, Phase-I and Phase-II facilities for which the Corporate Debtor was liable to repay and has defaulted in repayment of the same.

The Corporate Debtor in its counter has stated various reasons for rejection of instant Application. The main contentions raised by the Corporate Debtor for rejection of the instant Application are as under:

i. That the person through whom the present application is filed is not duly authorized to file the present application on behalf of the FC.

ii. That the present application is filed based on the RBI Circular dated 12.02.2018 is to be dismissed in view of the decision of Hon'ble Supreme Court striking whereby the impugned RBI circular has been struck down.

iii. That by invocation of the pledged shares, the Financial Creditor and other lenders became 95% of shareholders of the Corporate Debtor and thus the entire dues of the CD stood discharged and that there was no liability on part of the Corporate Debtor.

11. With regard to the contention of the Corporate Debtor that the instant Application has been filed through a person who is not duly authorized to file the Present Application, it is observed that the signatory to the instant application namely, Mr. Attaluri Srinivas, Assistant General Manager, State Bank of India has been duly authorized vide letter of authority placed at Page 56 of the present Petition, which was issued in accordance with the Gazette Notification No. ORG/171045 dated 27.03.1987 read with Gazette Notification No. BPR/SB/2935 dated 31.08.2005 duly approved by the Central Board of the SBI placed at Page 54 & 55 of the Application. Vide the said letter of authority the signatory to the application is duly conferred upon with signing powers on behalf of State Bank of India to sign and execute all necessary documents in relation to proceedings under the Code against the Corporate Debtor and his signature has also been duly attested. Therefore, this Adjudicating Authority does not find any infirmity and such ground is not a valid ground for rejection of the instant Application.

12. With regard to the contention of the Corporate Debtor that the instant Application is filed in accordance with RBI circular dated 12.02.2018, and, therefore, in view of the judgement rendered by Hon'ble Supreme Court in the matter of *Dharani Sugars and chemicals ltd Vs Union of India*

& Ors., the present application is to be dismissed as non-est; it appears from the perusal of the documents placed on record that if the Financial Creditor herein had intended to follow the RBI Circular dated 12.02.2018, it ought to have attempted to implement a Resolution Plan within 180 days from the reference date i.e. 01.03.2018, since the account of the Corporate Debtor was already classified as Non-performing Asset on 28.10.2017. The Corporate Debtor has nothing on record to show that any such exercise was ever attempted by the Financial Creditors/lenders. Even if it is assumed that any such exercise was adopted by the Financial Creditors/lenders in consonance with the RBI circular dated 12.02.2018, then upon failure to implement a Resolution Plan, the Financial Creditors would have filed a Petition for initiation of CIRP on or before 12.09.2018 i.e. within 15 days from expiry of 180 days time period from the reference date i.e., 01.03.2018. However, the present petition was filed on 23.01.2019, which is much later from the cutoff date of 12.09.2018 as provided in the RBI Circular dated 12.02.2018. Thus, this Adjudicating Authority is of the view that the present petition is not filed in accordance with the RBI Circular dated 12.02.2018 and the same does not form any ground for rejection of the instant Application.

13. With regard to the contention of the Corporate Debtor regarding invocation of pledge shares by the lenders resulting in complete discharge of the liability of the Corporate Debtor, the pertinent question which arise before this Adjudicating Authority is:

"Whether the liability of the Corporate Debtor is deemed to have been discharged in view of the invocation of the pledge of shares by the Financial Creditor?"

14. From perusal of the record it is observed that the Financial Creditor issued overdue recall notice on 19.12.2017 and having had no response from the Corporate Debtor regarding the payment of outstanding debt which became due over such recall, the share pledge agreement was invoked on 02.05.2018 and 391,24,02,331 demat shares of the Corporate Debtor were transferred in the name of SBI Cap Trustee

Company Limited as Security Trustee of Phase-I Lenders. However, it is observed that subsequent to the issue of Overdue Recall Notice dated 19.12.2017, but before invocation of the pledged shares, i.e. on 26.12.2017 additional shares of 10,02,34,109 were issued by the Corporate Debtor to IPCL with differential voting rights of 1000 votes per share, which resulted in reduction of voting rights of the Financial Creditors/lenders in the Corporate Debtor company from above 95% to 3.75%. Such drastic reduction in voting right from above 95% to 3.75% actually nullified the terms of the share pledge agreement itself. The same is seen from the order of the Single Bench of Hon'ble High Court of Telangana in its order dated 23.01.2019 in IA Nos. 1 and 2 of 2018 in WP No. 30048 of 2018 filed by the Corporate Debtor itself. The relevant portions of the said order is reproduced as under:

"....

60. Prima facie the action of the petitioners in issuing 10,02,34,109 additional shares on 26.12.2017 after the 1st respondent invoked pledge of 3,91,24,02,331 shares on 20.12.2017 with differential voting rights of 1000 votes per share which resulted in reduction of voting rights of respondents lenders in petitioner No. 1 Company from 97.58% to 3.75% does not appear to be bona fide particularly when the Board meeting of Board of Directors of the petitioner no. 1 of 26.12.2017 was admittedly held on the same day at 12 noon by giving a notice of such Board meeting at 11.38 a.m. on the same day i.e. a mere 22 minutes notice. Thus the petitioners and I.P.C.L. had sought to defeat the very purpose of the Share Pledge Agreement dt. 23.09.2016 to protect the interests of the lenders in the event of default in payment of dues by prima facie contravening Rule 4(1)(e) of the Companies (Share Capital and Debenture) Rules, 2014 which states:

"No Company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:-

(g) The company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government."

61. Mere transfer to pledged shares to 1st respondent would not be of any use to respondent no.1 since its voting rights, after transfer, are diminished to 3.75% on account of issuance of additional shares with differential voting rights of 1000 votes to 1 share, and it would not be in a position to control the management and affairs of the 1st petitioner in any way.

62. Also, I.P.C.L., which had executed Sponsor Support Agreement dt.23.09.2016 stating that it would infuse $ 40 million with Phase-II Trust and Retention Account Banker, has not done so and had committed breach of its obligations under the Phase-II Common Loan Agreement and had retained the money thus meant for Phase-II project. The petitioners deliberately have not impleaded the I.P.C.L. as a party to the Writ Petition, though it is in my opinion, a necessary party in the light of its above conduct.

63. Though the Loan Account of petitioner No. 1 has been classified as NPA in the Books of Phase-I lenders on 28.10.2017 itself, till date no payments had been made by petitioner No.1 to Phase-I lenders. The learned Senior Counsel for the petitioners, in response to a question put by the Court, stated that petitioners are not in position to make any payments to the respondent Nos. 1 to 14.

64. In fact, the stand of the petitioners in the Writ Petition appears to be that the 1st petitioner Company should continue to be funded by respondent Nos.1 to 13 notwithstanding its above stance. If this is allowed, Prime Facie there would be serious prejudice to public interest

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since the funds advanced to petitioner No.1 are public monies/tax payer monies.

65. In the ***United Bank of India v. Satyawati Tondon****, the Supreme Court had held:*

> *"46..... In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters."*

66. In ***State Bank Of Travancore v. Mathew K.C.****, the Supreme Court reiterated the above principle and also cautioned:*

> *"15. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by Financial institutions are granted from public money generated at the taxpayer's expense. Such loan does not become the property of the person taking the loan but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same."*

67. It is pointed by the learned counsel for respondents that the interim order obtained by the petitioners from this Court is being used to stall proceedings initiated/proposed to be initiated in NCLT by the respondents-lenders causing serious prejudice to public interest.

68. It appears that the petitioner, having failed to obtain any interim order in the Commercial Court in C.O.S. No.266 of 2017, have filed this Writ Petition and this conduct prima facie amounts to forum hunting by them.

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69. In my considered opinion, public interest would be gravely prejudiced if the respondent Nos.1 to 14 are prevented from taking steps to recover dues of more than Rs.2000 crores payable by 1st petitioner to them either by preventing them from transferring Management to a third party pursuant to the Expression of Interest issued on 28.07.2018 by them or by other means available to them in law."

15. The order dated 23.01.2019 of the Single Bench of the Hon'ble High Court of Telangana was challenged before the Division Bench of the Hon'ble High Court of Telangana vide Writ Appeal No. 203 of 2019 and the same was dismissed on 17.04.2019 and, accordingly, the finding given by the Single Bench of the Hon'ble High Court of Telangana at Hyderabad vide its order dated 23.01.2019 has become final.

16. The question whether invocation of the pledge of shares automatically converts debt into equity and results in repayment of the debt was dealt with by the Hon'ble Supreme Court, Hon'ble Bombay High Court and Hon'ble NCLAT which are to be noted here:

17. Hon'ble Supreme Court in the matter of Balakrishna Gupta Vs Swadeshi Poltytex has held as under:

Section 172 of 178-A of the Indian Contract Act, 1872 deal with the contract of pledge. A pawn is not exactly a mortgage. As observed by this Court in Lallan Prasad v. Rahmat Ali the two ingredients of a pawn are:

(1) That it is essential to the contract of pawn that the property pledged should be actually or constructively delivered to the pawnee and (2) a pawnee has only a special property in the pledge but the general property therein remains in the pawnor and wholly reverts to him on discharge of the debt. A pawn therefore is a security, where, by contract a deposit of goods is made as security for a debt. The right to property vests in the pledgee only so far as is necessary to secure the debt.... The pawnor however has a right to redeem the property pledged until the sale.

In Bank of Bihar v. State of Bihar also this Court has reiterated the above legal position and held that the pawnee had a special property which was not of ordinary nature on the goods pledged and so long as his claim was not satisfied no other creditor of the pawnor had any

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right to take away the goods or its price. Beyond this no other right was recognized in a pawnee in the above decision. Under Section 176 of the Indian Contract Act, 1872 if the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security, or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale. In the case of a pledge, however, the legal title to the goods pledged would not vest in the pawnee. The pawnor has only a special property. A pawnee has no right of foreclosure since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically granted by law. In this sense a pledge differs from a mortgage. In view of the foregoing the pawnee in the instant case i.e. the Government of Uttar Pradesh could not be treated as the holder of the shares pledged in its favour. The Cotton Mills Company continued to be the member of the Polytex Company in respect of the said shares and could exercise its rights under Section 169 of the Act. [Emphasis supplied]

18. While Hon'ble Supreme Court's decision came before dematerialization of shares, Hon'ble Bombay High Court dealt with the issue more recently in *United Breweries & Ors. Vs SBI & others*, (Suit No. 263 of 2013) following the Ratio laid down by the Hon'ble Supreme Court in Balakrishna Gupta *supra.*

19. In the case before Hon'ble Bombay High Court, it was the contention of the Petitioner (United Breweries who was the Pledger of the shares) that the Respondent (SBI who was the Pledgee of shares) had invoked the Pledge and by virtue of such invocation had become the beneficial owner of the Pledged shares, in terms of SEBI Regulation read with Bye-Laws of the Central Depository Services Limited (CDSL), thus divesting the Pledgor of all their rights in Pledged shares. Hon'ble Bombay High Court examined the issue with reference to the provisions of Section 176 of the Indian Contract Act, 1872, and following ratio decidendi of Balakrishna Gupta, *supra,* held that invocation of pledge and transfer of pledged shares to the pledgee's demat account held with CDSL did not violate provisions of Section 176 of the Indian Contract Act, 1872 and did not result in the Pledgor being divested of their rights in the Pledged shares. According to the Hon'ble High Court, the Pledgee held those shares only

as a pledgee as per the Bye-Laws of the CDSL. The relevant portion of this Judgement is extracted hereunder:

"Under the Depositories Act, 1996 and more particularly Sections 12 and 26 thereof, the depositories are required to frame bye-laws inter alia in respect of the pledge/hypothecation of shares. Accordingly, both CDSL and National Securities Depository Limited ("NSDL") have framed bye-laws with the approval of the SEBI. These bye-laws are part of the delegated legislation and have statutory force. Bye-law 14.6 of the CDSL, Bye-laws provides as under:

"Subject to the provisions of the pledge/hypothecation documents, the pledgee/hypothecate may invoke the pledge or hypothecation, as the case may be through his participant and on such invocation, CDSL shall register the pledgee/hypothecate as Beneficial Owner of such securities and shall amend its records accordingly. Thereafter, CDSL shall immediately inform the participants of the pledger and the pledgee of the change and who in turn shall make necessary changes in their records and inform the pledger and pledgee respectively".

Under Section 176 of the Contract Act, 1872 the pledgee is entitled to sell the pledged shares. Enforcement of the pledge involves the transfer of the pledged shares from the DP account of the pledgor to the DP account of the pledgee for sale in accordance with the prescribed procedure under the relevant bye-laws of CDSL. It is true that in the case of Balkrishna Gupta (supra) the Hon'ble Supreme Court has held that the shares continued to be the property of the Pledgor until sale. However, in the present case, the pledgee has never claimed title to the said shares otherwise than as having a special interest therein as a pledgee. In the present case, since the invocation of the pledge and sale of the pledged securities has been carried out in accordance with the Bye-laws of CDSL, without the pledgers being divested of their rights to the said shares, the action on the part of the Defendant No. 18 in no way

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violates Section 176 of the Contract Act. The Plaintiffs' contention that the transfer of the pledged shares to the depository account of Defendant No. 18 (the Security Trustee) divested the pledgers of their rights to the said shares is therefore rejected."

20. The Hon'ble NCLAT in the matter of MAIF Investments India Pte. Ltd. Vs M/s. Ind-Barath Energy (Utkal) Limited *supra* dealt with a similar question and has held as under:

"The next question is whether the debt amount payable by 'M/s. Ind-Barath Energy (Utkal) Limited'- ('Corporate Debtor') is deemed to have been repaid in view of invocation of pledge shares and the conversion of 'CCDs' into equity shares?

Admittedly, by Subscription Agreement dated 23rd December, 2016, the Appellant provided a bridge loan for a sum of Rs. 102 Crores by subscribing to 10,200,000 'Optionally Convertible Debentures' ("OCD" for short) of the 'Corporate Debtor' at Rs.100/- per 'OCD' (in February 2017). The interest payments on the 10,200,000 'OCDs' held by the Appellant were required to be made by the 'Corporate Debtor' in terms of Clause 10.1 of the Subscription Agreement of 2016. The Appellant's agent 'SBI-SG Global Securities Pvt. Ltd.' demanded interest payments on the 'OCDs' falling due on 21st May, 2017, 21st August, 2017 and thereafter on 21st November, 2017, 21st February, 2018, 21st May, 2018 and 16th August, 2018. However, such interest payments on the 'OCDs' as were due have not been paid by the 'Corporate Debtor'.

Admittedly, the Appellant and 'MAIF-II' also addressed a letter on 15th April, 2018 to the 'Corporate Debtor', 'IBPIL', 'IBTPL', the Promoters and 'Arkay Energy Rameswaram Limited' inter alia calling upon them to redeem the 'OCDs' in terms of Clause 3.3 read with Clause 9.4 of the Subscription Agreement of 2016. However, no payments were made by the 'Corporate Debtor' despite the amounts becoming due and payable.

According to the Promoters, on failure to redeem, on 31st August, 2017, the Appellant and 'MAIF-2' invoked pledge of 49% equity shares of the 'Corporate Debtor' and 51% equity of holding company. However, it has not been made clear as to why such plea was not taken when the Appellant and 'MAIF-2' addressed a letter on 15th April, 2018 to the 'Corporate Debtor', 'IBPIL', 'IBTPL', the Promoters and 'Arkay Energy Rameswaram Limited', wherein they inter alia called upon them to

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redeem the 'OCDs' in terms of Clause 3.3 read with Clause 9.4 of the Subscription Agreement of 2016.
The redemption of the 'NCD' and the 'CCD' are different than the conversion within the 'OCD'. What has been stated to have been redeemed is relating to 'NCD' and the 'CCD' and not the 'OCD'. On 12th September, 2017, the Appellant and 'MAIF-2' through their trustee issued notice under Section 100(2) of the Companies Act, 2013 to holding company to hold EoGM to convert 'CCD' as distinguished from the 'OCDs' for which Rs. 102 Crores were disbursed by the 'Corporate Debtor'. At the instance of the holding Company, the matter which was pending before the National Company Law Tribunal was stayed which was reason for withdrawal of the Company Petition. Subsequently, the petition under Section 59 of the Companies Act, 2013 was filed by the Appellant, which was dismissed on 20th December, 2018.

The aforesaid fact shows that the dispute relating to redemption of 'NCD' and 'CCD' were alleged to have been converted into equity shareholder of the 'Corporate Debtor' with 49% and 51% of holding company. Apart from the fact that it does not relate to the 'OCD', the dismissal of the application under Section 59 of the Companies Act, 2013 shows that it has not been accepted by the National Company Law Tribunal that the debenture stands converted as share in favour of the Appellant.

Such a finding given on a petition under Section 59 of the Companies Act, 2013 by the National Company Law Tribunal, the same National Company Law Tribunal being the Adjudicating Authority in the application under Section 7 filed by the Appellant was wrong to hold that by invocation of pledge of shares and conversion of 'CCD' into equity shares the debt amount stands paid. Under the law, there is no presumption of payment of debt merely on the invocation of the pledge till conversion of the debenture into share is accepted under the law. Further, the 'OCD' being the subject matter for disbursement of amount of Rs.102 Crores, it cannot be linked with 'NCD' and 'CCD', which were subscribed pursuant to an agreement which is independent to Subscription Agreement dated 23rd December, 2016.

The Promoters confused the Adjudicating Authority by co-relating the two independent agreements i.e. one Subscription Agreement dated 23rd December, 2016 and the separate agreement which the Appellant and its sister entity, 'MAIF-II' has entered into for subscription to certain 'NCD' and 'CCD' in the holding company of the 'Corporate Debtor' which are unrelated to the agreement dated 23rd December,

2016. The Adjudicating Authority failed to consider the same and thereby, wrongly held that the debt has been paid and there was no default on conversion of the 'CCD'. It also failed to consider that the interest to which the Appellant was entitled for different debt for which notice was given and, as discussed above, had not been paid by the 'Corporate Debtor' and there was a default of more than Rs.1 Lakh on the part of the 'Corporate Debtor'.

For the reasons aforesaid, we hold that the Appellant- 'MAIF Investments India Pte. Ltd.' is a 'Financial Creditor' of 'M/s. Ind-Barath Energy (Utkal) Limited'- ('Corporate Debtor'). Further, we hold that by the invocation of the pledge of shares pursuant to the Subscription Agreement, no presumption can be drawn that the disbursement of Rs.102 Crores so made was towards the 'OCD' and stands paid."

21. When the facts of the instant case are seen in the light of the guidance available in the aforesaid judicial pronouncements, it is clear that the question framed by us in Para 11 above has to be answered in the negative for the following reasons:

    a. Admittedly, in the instant case the pledge has been invoked by SBI Cap Trustee, the security trustee of Financial Creditor as a Pledgee of the Pledged shares and those shares have still not been sold by the Financial Creditor.

    b. Further, even after invocation of the pledged shares, the Financial Creditor/lenders have no controlling voting rights in the Corporate Debtor, their voting rights having been reduced by issuance of additional shares to its holding company, IPCL, with differential voting rights of 1,000 per share by the Corporate Debtor. In other words the terms of share pledge agreement dated 23.09.2016, have been made unenforceable by the act of Corporate Debtor. This is also held by the Hon'ble High Court of Telangana in IA No. 1 & 2 of 2018 in WP No. 30048 of 2018.

    c. Even if it is assumed that the share pledge agreement is still workable, the Financial Creditor being a pledgee or pawnee has only got a special property to the pledged shares as laid down by Hon'ble Supreme Court in Balkrishnan Gupta *supra,* and the

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Pledgor's rights have not been divested just because the demat shares are transferred to the SBI Cap Trustee's demat account with the depository, as clearly laid down by the Hon'ble Bombay High Court in United Breweries *supra.*

d. In view of the Hon'ble Supreme Court's judgment in Balkrishna Gupta *supra,* the Financial Creditor/Lenders only hold a special right in the pledged shares as collateral security and the Corporate Debtor still holds the general property therein which will wholly revert to them on discharge of the debt, and therefore, mere invocation of pledge cannot result in discharge of the debt due to the Financial Creditor.

e. Hon'ble NCLAT in MAIF Investment vs. Ind Barath Energy Utkal supra specifically dealing with the question whether the debt is deemed to have been repaid in view of the invocation of the pledge, categorically held that the invocation of pledge does not amount to repayment of debt.

f. The decision of Hon'ble NCLAT in the case of *PTC India Financial Services Ltd. Vs. Mr. Venkateswara Kari & ors. in Company Appeal (AT) (Insolvency) No. 450 of 2018,* as relied upon by the Corporate Debtor has been stayed by the Hon'ble Supreme Court.

22. Since in the light of guidance available in the aforediscussed judgments of Hon'ble Supreme Court, Hon'ble Bombay High Court and Hon'ble NCLAT, this Adjudicating Authority has arrived at the conclusion that mere invocation of pledge of shares will not result in automatic conversion of debt into equity and repayment of debt, we hold that the Petitioner i.e., State Bank of India is a 'Financial Creditor' of the Corporate Debtor. Further in view of our conclusion in Para 21(a) to (f) above, we do not deem it fit to discuss the issue regarding the valuation of pledged shares as it would have no relevance to our decision.

23. Having dealt with the contentions of the Corporate Debtor as above, it is necessary to see whether all the conditions for invoking the provisions of Section 7 of the Code have been fulfilled by the Petitioner/Financial Creditor.

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24. In view of the factual and legal position discussed above, further, on perusal of the pleadings, it is seen from the correspondence between the Corporate Debtor and Financial Creditor as enclosed with the counter affidavit, that the Corporate Debtor has been making proposals for resolving the outstanding debt to the Financial Creditor even during the year 2018, which is clear indication of both existence of debt as well as default committed by the Corporate Debtor. Particular attention is drawn to the two such proposals dated 25.05.2018 and 11.06.2018 (Pg. No. 528 & 615 of counter affidavit respectively) which clearly indicates acknowledgement of debt in terms of Sec.18 of Limitation Act, 1963 therefore the issue of limitation does not arise in this case. It also establishes that there exist a debt of more than Rs. 1 Lakh and there is a default on the part of the Corporate Debtor as on the date of filing of the instant Application. Further, the Corporate Debtor have also accepted before Hon'ble High Court of Telangana (in W.P No. 30048 of 2018) that though loan account of the Corporate Debtor has been classified as NPA in the books of Phase – I lenders on 28.10.2017 itself, they are not in a position to make any payments to the Phase – I lenders including the Petitioner herein. This fact has been categorically recorded by Hon'ble High Court in paragraph 63 of their order dated 23.01.2019 (extracted in paragraph 14 above)

25. Hon'ble Supreme Court in the matter of *M/s. Innoventive Industries Limited Vs ICICI Bank & ANR* have held as under:

> *".... 28. .....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....."*

26. In these circumstances, this Adjudicating Authority having satisfied with the submissions put forth by the Financial Creditor that there exist a default on the part of the Corporate Debtor for which the Corporate Debtor was liable to pay, is inclined to admit the instant Application. Further, the Financial Creditor has fulfilled all the requirements as

contemplated under section 7 of the IB Code, in the present Company Application and has also proposed the name of IRP after obtaining the written consent in Form-2.

27. The instant petition bearing CP (IB) No. 184/7/HDB/2019 is hereby admitted and this Adjudicating Authority Orders the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed as per the time line stipulated in section 12 of the IB Code, 2016, reckoning from the day this order is passed.

28. This Adjudicating Authority hereby appoint Mr. Ravi Sankar Devarakonda as IRP since his name is proposed by the Financial Creditor and his name is reflected in IBBI website. He has also filed his written consent in Form - 2. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date of this order, and call for submissions of claim in the manner as prescribed.

29. This Adjudicating Authority hereby declares the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following, namely:

    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 (54 of 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.

30. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
31. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
32. The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
33. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
34. The address details of the IRP are as follows:-

    Ravi Sankar Devarakonda
    Regd. No. IBBI/IPA-001/IP-P00095/2017-2018/10195
    #D-602, Prestige St. Johnswood Apartments,
    No.80, Tavarakere Main Road,
    Bangalore – 560 029, Karnataka.
    Email: ravicacscma@icai.org

33. The present Petition is hereby admitted.

07.11.19

Dr. Binod Kumar Sinha
Member Technical

K. Anantha Padmanabha Swamy
Member Judicial

SKRathi