IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) NO. 39/ALD/2023

IN THE MATTER OF:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

Avargreen Organic Foods Private Limited

Having its Registered Office at:
210-A, First Floor Westend Road,
Meerut, U.P.- 250001

.....Applicant/Financial Creditor

Versus

Raghupati Construction Private Limited

Having its Registered Office at:
76/16, Ahatha Ambaganj, Kesarganj, Mandi
Meerut, U.P- 250001

.....Respondent/Corporate Debtor

Order pronounced on: 19th October, 2023

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Shubham Singh, Sh. Prabhav Srivastava, Advs. : For the Financial Creditor

Sh. Akash Srivastava, Advs. : For the Corporate Debtor

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ORDER

1. The Present Application has been filed on 13.06.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "**I & B Code, 2016**") by the Applicant/Financial Creditor namely, **M/s Avargreen Organic Foods Private Limited** seeking initiation of the **Corporate Insolvency Process** (hereinafter referred as "CIRP") against the Respondent/Corporate Debtor i.e. **Raghupati Construction Private Limited** read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form.

2. Raghupati Construction Private Limited, (hereinafter referred as the "**Respondent/Corporate Debtor**") was incorporated on 25.01.2005 (CIN. U45201UP2005PTC029445) under the provisions of the Companies Act, 1956, with the objective of running a business in construction and development of housing and commercial projects. The Corporate Debtor's registered office is at 179/16, Ahatha Ambaganj, Kesarganj, Mandi Meerut, U.P. -250001.

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3. The Applicant, M/s Avargreen Organic Foods Private Limited (hereinafter referred as the "**Applicant/Financial Creditor**"), is Private Limited Company incorporated on 05.10.2020 under Companies Act, 2013 (ID no. U52599UP2020PTC135659) having its registered office at 210- A, first Floor Westend Road, Meerut, U.P.- 250001. The Applicant is a well-known manufacturer and wholesaler dealing in retail business of jaggery, rewari, gud powder, sugarcane molasses, pure sugar and organic jaggery.

4. The Applicant submits that they it had granted an unsecured loan of Rs. 1 Crore bearing interest rate of 1.5% per month for a short period of 90 days. Pursuant to that, the Applicant and Corporate Debtor executed an Inter Corporate Deposit Agreement (ICD) for receiving unsecured loan facility for an amount not exceeding Rs. 1 crore with an interest of 1.5% per month. The copy of ICD is annexed as **Annexure- 3 (Colly)** with the application.

5. The Applicant further submits that unsecured loan of Rs. 1 crore was disbursed to the Corporate Debtor through the medium of NEFT/ RTGS on 20.09.2022. The total amount along with

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interest was agreed upon to be paid on or before 18.12.2022. The copy of the cheques issued to the bank indicating the disbursement of loan to Corporate Debtor is annexed as **Annexure- 4** with the application.

6. The Applicant sent a letter dated 03.12.2022 to the Corporate Debtor, intimating about the maturity of the loan facility, repayable on or before 18.12.2022 amounting to Rs. 1,04,50,000/- *(Rupees One Crore Four Lakhs Fifty Thousand Only)*. Further, another letter dated 26.12.2022 was sent by the Financial Creditor to the Corporate Debtor for repayment of entire outstanding loan amounting to Rs. 1,04,50,00/- on or before 31.12.2022. But despite that the Corporate Debtor failed to pay the amount on the due date i.e. 18.12.2022 and further extended period upto 31.12.2022. The copy of the said letters dated 03.12.2022 and 26.12.2022 are annexed as **Annexure- 5 & 6 respectively** with the application.

7. The Applicant further submits that the Corporate debtor *vide* letter dated 03.01.2023 admitted the default of non-payment of outstanding loan amount, which was due and payable on 18.12.2022 and sought 15 days' time from the date of the said letter i.e. till 18.01.2023 to repay the entire outstanding amount

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of Rs. 1,04,50,000/-. However, the Corporate Debtor failed to repay the amount again on extended date i.e. 18.01.2023. The copy of the letter dated 03.01.2023 is annexed as **Annexure- 7** with the application.

8. As further stated in the application, in response to letter dated 20.01.2023 of the Applicant/Financial Creditor, a meeting of the Applicant and the Corporate Debtor was held on 23.01.2023 in the office of the Corporate Debtor to resolve the repayment of above mentioned outstanding loan. Pursuant to this meeting, three postdated cheques dated 10.02.2023 were issued, two cheques of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) each and third cheque of Rs. 4,50,000/- (Four Lakhs Fifty Thousand Only) bearing cheque nos. 0309809, 0309807 & 0309808 respectively drawn on State Bank of India, Railway Road, Meerut, towards the repayment of the outstanding principal amount and payment against the total interest amount of Rs.4,50,000/- (calculated till 19.11.2022). The copy of letter dated 25.01.2023 and postdated cheques are annexed as **Annexure 9(Colly)** with the application.

9. The Applicant further states that on presenting all the above mentioned three postdated cheques on 03.03.2023 before the

bank, two cheques amounting to Rs. 50 Lakhs each were dishonored due to insufficient funds. However, third cheque of Rs. 4,50,000/- was cleared. The copy of the said email and dishonored cheques are annexed as **Annexure- 10(Colly)** with the application. The same has been informed by the Financial Creditor to the Corporate Debtor *vide* its email dated 13.03.2023 informing for taking appropriated legal action against the Corporate Debtor.

10. In view of the default occurred in respect of payment of above mentioned debt, the Applicant has filed the instant application u/s 7 of the I&B Code computing the default amount of Rs. 1,0,75,000/- as on 31.03.2023 (*Rupees One Crore Six Lakhs Seventy Five Thousand Only*) comprising of principal amount of Rs. 1,00,00,000 along-with interest amount of Rs. 6,75,000/- till 31.03.2023 and further interest to be computed @ 18% per annum from 01.04.2023 till the actual realization of the debt from the Corporate Debtor. The amount computation and default date is annexed as **Annexure- 12** with the application**.**

11. The Respondent/Corporate Debtor has submitted its reply on 24.08.2023 stating that the contents of the petition are misconceived and the documents attached are misleading and

unclear to the extent of them being contrary to the averments made by the Applicant.

12. The Corporate Debtor submits that the Applicant agreed to provide financial assistance up to Rs. 5 crores out of which Rs. 1 crore was to be paid immediately and balance of Rs. 4 crores after 30 days from the date of disbursement of Rs. 1 crore.

13. The Corporate Debtor further states that the Applicant agreed to provide financial assistance through "Inter Corporate Deposit" (ICD) of Rs. 1 crore for short period of 90 days on an agreed interest of 1.5% per month by executing an Inter Corporate Deposit Agreement on 17.09.2022 and the same was disbursed through NEFT/RTGS on 20.09.2022 but the balance amount of Rs. 4 crores was not paid as agreed previously.

14. The amount of Rs. 1 crore was to be repaid within 90 days i.e. on or before 18.12.2022 but as stated in the reply that due to inconsistencies in the Cash Flow on account of non-disbursal of Rs. 4 crore by the Financial Creditor, the Corporate Debtor was unable to repay the said loan amount. It is further explained by the Corporate Debtor that its financial condition has become bad as it could not complete the development of the project because

of non-disbursal of funds by the Financial Creditor. However, it is ready and willing to pay the same as early as possible.

15. It is also submitted by the Corporate Debtor that it has made its best efforts to pay off the loan amount to the Financial Creditor and had also issued cheques for the same to show its *bona fide* and even paid the interest amount of Rs. 4,50,000/- towards the outstanding loan. It is further stated that the Respondent/Corporate Debtor needs some time to clear the outstanding loan amount but due to financial crunch and slowdown in the business, it is not able to repay the outstanding amount. It is further stated that the Corporate Debtor is working out constantly to repay the same at the earliest and any initiation of CIRP shall result in unnecessary burden on Corporate Debtor and further undue delay in the said payment.

16. The Corporate Debtor denies the content of the letter dated 03.01.2023 sent by Applicant and states that the Corporate Debtor had clear intention to repay the loan amount back to Financial Creditor and that it was Applicant who failed to honour the agreement terms.

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17. The Corporate Debtor claims that they are completely inclined towards making payment of the outstanding amount and were even considering selling off assets to repay the same but have been restrained from doing so vide order dated 04.08.2023 of this Tribunal. However, it is prayed by the Corporate Debtor to grant some time to the Corporate Debtor for repayment of the outstanding financial debt.

18. No rejoinder by the Financial Creditor to the reply of the Corporate Debtor, has been filed. However, Record of Default (ROD) in Form D issued by the Information Utility, National E-Governance Services Limited (NeSL) has been filed on 19.07.2023 in which, authentication is shown to have been completed on 03.07.2023 with "Deemed Authentication", showing total default amount as Rs. 1,06,75,000/- with date of default being 18.12.2022 and thus, it has been contended by the Ld. Counsel of the Applicant/Financial Creditor as the debt and default in repayment of such debt being in the range of Rs. 1 crore and more having been established as per this ROD and hence, CIRP to be initiated in respect of the Corporate Debtor. However, the Ld. Counsel for the Corporate Debtor opposes taking the plea that the Corporate Debtor intends to pay the debt for which some

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time is needed and hence, no CIRP to be initiated against the Corporate Debtor.

19. We have heard the Ld. Counsel of parties and perused the material available on record. We find that in this case, there is no dispute on the existence of debt and there being default on its repayment when it became due i.e. 18.12.2022. The Corporate Debtor has also admitted about his liability to pay such debt though he tried to explain the reason for such default as its financial condition not being in good condition for which he held the Financial Creditor also responsible as the full amount of funds as agreed upon was not released and hence, it could not complete the development of its project in time. However, accepting its liability to pay the debt, he is requesting some time to be given to pay the outstanding debt.

20. The Hon'ble Supreme Court in the case of ***Innoventive Industries Limited vs ICICI Bank Ltd (2018) 1 SCC 407***, observed the scope and extent of the powers conferred with the Adjudicating Authority under Section 7. The court held that in an application under section 7 of the IBC, the Adjudicating Authority has to merely satisfy whether a default has occurred or not. Section 7(5) empowers Adjudicating Authority either to accept the

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application in lieu of section 7(5)(a) or to reject under section 7(5)(b). Therefore, no other order can be passed by the adjudicating authority in a petition under section 7.

21. In another case of ***Pratap Technocrats Ltd and Ors. v. Monitoring Committee of Reliance Infratel Limited and Anr. (Civil Appeal No 676 of 2021)dated 10.08.2021 ,*** also , the Hon'ble Supreme Court ruled out that once Adjudicating Authority identify a default by the corporate debtor, then it is bounded by the statute (as per IBC) to admit the CIRP application under section 7. The Adjudicating Authority cannot pass any other order at this instance.

22. In a subsequent judgment in case of ***E.S.Krishnamurthy vs Bharath Hi Tech Builders Pvt. Ltd. (Civil Appeal No. 3325 of 2020) dated 14.12.2020,*** it is held that NCLT has no power u/s 7(5) of IBC to compel parties before it to settle a dispute. In this case, the Hon'ble Supreme Court observed that the Adjudicating Authority is empowered only to verify whether a default has occurred or default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in

accordance with Section 7(5) but the Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute. Undoubtedly, settlements have to be encouraged because the ultimate purpose of the IBC is to facilitate the continuance and rehabilitation of a corporate debtor, as distinct from allowing it to go into liquidation. The main part of this decision is reproduced as under:

> *"20 The central question in this appeal then is whether the NCLT and the NCLAT were correct in their approach of rejecting the appellants' petition under Section 7 of the IBC at the 'pre-admission stage', and directing them to settle with the respondent within 3 months. Section 7 of the IBC provides for the initiation of CIRP by a financial creditor or a class of financial creditors. Section 7, as it stood prior to its amendments in 201917, is reproduced below:*
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> *"7. Initiation of corporate insolvency resolution process by financial creditor.—(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred: Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor. (2) The financial creditor shall make an application under subsection (1) in such form and manner and accompanied with such fee as may be prescribed. (3) The financial creditor shall, along with the application furnish— (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified; (b) the name of the*

resolution professional proposed to act as an interim resolution professional; and (c) any other information as may be specified by the Board. (4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information 17 Through Act 26 of 2019 and Act 1 of 2020 WWW.LIVELAW.IN LL 2021 SC 738 20 utility or on the basis of other evidence furnished by the financial creditor under sub-section (3): (5) Where the Adjudicating Authority is satisfied that— (a) a default has occurred and the application under subsection (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or (b) default has not occurred or the application under subsection (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application: Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority. (6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5). (7) The Adjudicating Authority shall communicate— (a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor; (b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be."

21 Sub-Section (1) of Section 7 enables the financial creditor to file an application for initiation of CIRP against the corporate debtor before the Adjudicating Authority "when a default has occurred". The expression "default" is defined in Section 3(12) of the IBC in the following terms:

> *"(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;"*

The definition of default adverts to the non-payment of a debt, when it has become due and payable in whole or in part, by the debtor or the corporate debtor. Since the definition of "default" incorporates the expression "debt", it is necessary to advert to the definition of the latter expression under Section 3(11) of the IBC: "(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;" Thus, a "debt" is defined to be a liability or an obligation in respect of a claim due from any person. This includes a financial debt and an operational debt.

22 If the above criteria are met, the financial creditor can make an application under sub-Section (2) of Section 7, in the manner prescribed, along with the necessary fees. Sub-Section (3) requires the financial creditor, inter alia, to furnish a record of the default with the information utility or such other record or evidence of default as may be specified along with the application. Under sub-Section (4), the Adjudicating Authority must, within 14 days of the receipt of the application under sub-Section (2), ascertain the existence of a default from the record of an information utility or on the basis of other information furnished by the financial creditor under sub-Section (3).

23 Sub-Section (5) of Section 7 is comprised in two parts: Clause (a), which is the first part, empowers the Adjudicating Authority to admit the application where it is satisfied that: (i) a default has occurred; (ii) the application under sub-Section (2) is complete; and (iii) no disciplinary proceeding is pending against the proposed resolution professional; Clause (b), which is the second part, empowers the Adjudicating Authority to reject the application where it is satisfied that: (i) default has not occurred; or (ii) the application under sub-Section (2) is incomplete; or (iii) a disciplinary proceeding is pending against the proposed resolution professional. Under sub-Section (7), the Adjudicating Authority has to communicate its order of acceptance or rejection to the financial creditor and the corporate debtor or the financial creditor, as the case may be. In accordance with sub-Section (6), the CIRP process commences from the date of the admission of the application under subsection (5). Thus, a time limit for the

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completion of the CIRP within a period of 180 days (under sub-Section (1) of Section 12, subject to a further extension under subsection (3)) commences from the date of the admission of the application to initiate the process.

24 On a bare reading of the provision, it is clear that both, Clauses (a) and (b) of sub-Section (5) of Section 7, use the expression "it may, by order" while referring to the power of the Adjudicating Authority. In Clause (a) of sub-Section (5), the Adjudicating Authority may, by order, admit the application or in Clause (b) it may, by order, reject such an application. Thus, two courses of action are available to the Adjudicating Authority in a petition under Section 7. The Adjudicating Authority must either admit the application under Clause (a) of sub-Section (5) or it must reject the application under Clause (b) of sub-Section (5). The statute does not provide for the Adjudicating Authority to undertake any other action, but for the two choices available.

26. In ***Innoventive Industries (supra)****, a two-judge Bench of this Court has explained the ambit of Section 7 of the IBC, and held that the Adjudicating Authority only has to determine whether a "default" has occurred, i.e., whether the "debt" (which may still be disputed) was due and remained unpaid. If the Adjudicating Authority is of the opinion that a "default" has occurred, it has to admit the application unless it is incomplete. Speaking through Justice Rohinton F Nariman, the Court has observed:*

> *"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*

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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 (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.

[…]

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility

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*or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise." (**Emphasis supplied)***

26 In the present case, the Adjudicating Authority noted that it had listed the petition for admission on diverse dates and had adjourned it, inter alia, to allow the parties to explore the possibility of a settlement. Evidently, no settlement was arrived at by all the original petitioners who had instituted the proceedings. The Adjudicating Authority noticed that joint consent terms dated 12 February 2020 had been filed before it. But it is common ground that these consent terms did not cover all the original petitioners who were before the Adjudicating Authority. The Adjudicating Authority was apprised of the fact that the claims of 140 investors had been fully settled by the respondent. The respondent also noted that of the claims of the original petitioners who have moved the Adjudicating Authority, only 13 have been settled while, according to it "40 are in the process of settlement and 39 are pending settlements". Eventually, the Adjudicating Authority did not entertain the petition on the ground that the procedure under the IBC is summary, and it cannot manage or decide upon each and every claim of the individual home buyers. The Adjudicating Authority also held that since the process of settlement was progressing "in all seriousness", instead of examining all the individual claims, it would dispose of the petition by directing the respondent to settle all the remaining claims "seriously" within a definite time frame. The petition was accordingly disposed of by directing the respondent to settle the remaining claims no later than within three months, and that if any of the remaining original petitioners were aggrieved by the settlement process, they would be at

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liberty to approach the Adjudicating Authority again in accordance with law. The Adjudicating Authority's decision was also upheld by the Appellate Authority, who supported its conclusions.

27 ***The Adjudicating Authority has clearly acted outside the terms of its jurisdiction under Section 7(5) of the IBC. The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute.***

28 Undoubtedly, settlements have to be encouraged because the ultimate purpose of the IBC is to facilitate the continuance and rehabilitation of a corporate debtor, as distinct from allowing it to go into liquidation. ***As the Statement of Objects and Reasons accompanying the introduction of the Bill indicates, the objective of the IBC is to facilitate insolvency resolution "in a time bound manner" for maximisation of the value of assets, promotion of entrepreneurship, ensuring the availability of credit and balancing the interest of all stakeholders. What the Adjudicating Authority and Appellate Authority, however, have proceeded to do in the present case is to abdicate their jurisdiction to decide a petition under Section 7 by directing the respondent to settle the remaining claims within three months and leaving it open to the original petitioners, who are aggrieved by the settlement process, to move fresh proceedings in accordance with law. Such a course of action is not contemplated by the IBC.***"

[Emphasis Supplied]

23. In view of our findings and judicial pronouncements as discussed above, we clearly find that there is an outstanding debt

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and default has occurred in payment of the said debt which is above threshold limit of one crore. Many opportunities have already been given by the Financial Creditor to repay this debt but the Corporate Debtor is not able to pay the debt due to not being solvent and hence, in our opinion it is a fit case to start CIRP for the Corporate Debtor company keeping in mind the object of the I&B Code to rehabilitate the company to prevent it from going into liquidation. At this juncture in view of the decision of the Hon'ble Supreme Court in case of ***E. S. Krishnamurthy (supra)***, we cannot force the Financial Creditor to settle with the Corporate Debtor for receiving its outstanding dues and hence, we are not inclined to accept the plea of the Corporate Debtor of allowing any time further to repay the outstanding debt as sufficient time is already provided to it after the debt has become due.

24. We are further satisfied that the petition has been filed well within the period of limitation and a resolution professional is also proposed as per section 7(3)(b). In Part III of Form 1, the Financial Creditor has proposed the name of **Mr. Kunwarpreet Singh** as Interim Resolution Professional whose authorization is valid upto 17.07.2024 as per the fresh Authorization for

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assignment in form B issued by ICSI Institute of Insolvency Professional filed on 21.09.2023. His Registration Number is IBBI/IPA-002/IP-N01150/2021-2022/13788, R/o 77, Ground Floor, Sant Nagar. East of Kailash, New Delhi, 110065, Email: singhkunwar2012@gmail.com. He has duly given the consent in Form No. 2 20.01.2022 annexed as **Annexure 13(Colly)** with the Application. The Law Research Associate of this Tribunal, Mr. Sarim Husain, has checked the credentials of Mr. Kunwarpreet Singh, and found that there are no disciplinary proceedings pending against the proposed Resolution Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 17.07.2024. **After considering these details, we appoint Mr. Kunwarpreet Singh as Interim Resolution Professional (IRP).**

25. In the given facts and circumstances of the case as per our above findings, the present application u/s 7 being complete in all respect and having established the default in payment of the Financial Debt for the default amount being above the threshold limit and an IRP also having been appointed as per above para 24, the application is admitted in terms of Section 7(5)(a) of the I & B Code, 2016 against the Corporate Debtor, **Raghupati**

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Construction Private Limited and accordingly, moratorium is declared in terms of Section 14 of the Code.

26. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.

27. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors (hereinafter referred as "**CoC**") and shall file a report certifying the constitution of the CoC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the CoC within seven days of filing the report of Constitution of the CoC. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every month.

28. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

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"(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

(e) 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.

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(f) 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.

(g) 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 passes an order for liquidation of the corporate debtor under Section 33 as the case may be."

29. We direct the Financial Creditor to deposit a sum of Rs.1,00,000/-with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

30. A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional

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forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

31. List the matter on 30.11.2023 for filing of the progress report/further proceeding.

32. Ordered Accordingly

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Date: 19.10.2023

Sarim Husain
(LRA)