

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH -I**

CP (IB) No.6 /MB/2023

Under section 7 of the Insolvency and Bankruptcy Code,
2016

In the matter of

**Hewlett Packard Financial Services (India) Private
Limited.**

Registered at – 24, Salarpuria Arena, Hosur Main Road,
Aduodi, Bangalore-560030

... Financial Creditor /Petitioner

Versus

Nufuture Digital (India) Limited

Registered at- Knowledge House, Shyam Nagar, Off
Jogeshwari- Vikhroli Link Road, Jogeshwari (E), Mumbai-
400060

...Corporate Debtor / Respondent

Order Delivered on :03.10.2024

Coram:

Hon'ble Member (Judicial) : Justice V.G. Bisht, (Retd.)

Hon'ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Financial Creditor : PCS Barsha Dikshit, Adv. Shavi
Bhamaria, Vinod Kothari and Company

For the Corporate Debtor : Harsh, Krishna Barwal, Advocates

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 7 ("the Petition") of the Insolvency and Bankruptcy Code, 2016 (IBC) filed by **Hewlett Packard Financial Services (India) Private Limited** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Nufuture Digital (India) Limited** ("the Corporate Debtor").

Submissions advanced by the Petitioner

2. It is submitted that the present Petition arises out of non-payment of dues towards unsecured loan and lease granted to the Corporate Debtor. The Petitioner is an RBI Registered NBFC and is engaged inter-alia in the business of providing lease and loans for IT equipment's. The Corporate Debtor is a group company of Future

Group and is a supplier of IT support services to Future Retail Limited, which is currently undergoing CIRP process.

3. On June 28, 2016, both the parties entered into a Master Rental and Financing Agreement ('MFRA') whereby the Financial Creditor agreed to lease and finance by way of lease or loans to the Corporate Debtor for IT Equipments. Pursuant to the MFRA, both the Parties executed 8 lease contracts and 83 loan contracts for a total exposure amounting to Rs. 241 crores. The obligation was also guaranteed by one of the promoters of the Corporate Debtor, Mr. Kishore Biyani.
4. In terms of the arrangement between the Parties and MRFA:
 - i. The Applicant would fund/finance the Equipment selected by the Corporate Debtor. The Applicant would purchase the Equipment for leasing the same to the Corporate Debtor or finance the Equipment basis the Lease/Loan Schedules executed and Acceptance Certificates received from the Corporate Debtor. [Clause 2 of MFRA]
 - ii. In case the Corporate Debtor failed to take delivery of the Equipment, the Corporate Debtor shall have to make payment of the advance and/or other payments made by the Applicant to the Supplier of such Equipment, and also costs, charges and expenses paid/incurred by the Applicant together with an interest @ 18% p.a. [Clause 2 of MFRA].
 - iii. The Corporate Debtor is obligated to pay instalments (nomenclature as 'rent) against the Financial Facilities as stated under the respective Loan/Lease Schedules. Besides, there are provisions for additional charges

in case amounts due are not paid within 7 days of the due date. [Clause 5 of MFRA].

- iv. Payment obligations of the Corporate Debtor were absolute, irrespective of whether or not the Equipment is damaged, does not operate, or is otherwise unsatisfactory or is not in the Corporate Debtor's possession, etc. [Clause 6 of MFRA]
- v. Corporate Debtor shall continue to be liable to pay the instalments and be bound by all obligations and provisions of the agreement notwithstanding any defect, breakdown or destruction of any Equipment or any force majeure event. [Clause 9 of MFRA]
- vi. Corporate Debtor shall be responsible for the selection, installation, operation and maintenance of the Equipment [Clause 9], as well as insurance [Clause 12 of MFRA]
- vii. 'Renter default' conditions are mentioned in Clause 18, which inter alia, include failure to pay the amount payable to the Applicant under a Fundamental Agreement within 7 days of the due date or, if the amount is payable on demand, the date of demand.
- viii. On a Renter Default happening, the Corporate Debtor shall be deemed to have repudiated MRFA, any lease or any financing agreement, and the Applicant may thereafter exercise one or more of the remedies provided in the MRFA after giving 10 days' notice to the Corporate Debtor [Clause 19]. The remedies, inter alia, include right to terminate the agreement or any lease or financing, declare all amounts due under any lease or financing to

be immediately due payable, declare the present value of all rents or any leases or financings to be due and payable as liquidated damages for loss of bargain and not as penalty and power to exercise any right or remedy available to the Applicant by law or in equity.

5. During the FY 2020-21, on the request of the Corporate Debtor, the MFRA underwent restructuring for 2 times: (a) January 28, 2021 and (b) July 14, 2021. It is submitted that post restructuring the Corporate Debtor made payments upto December 2021. However, for the month of January 2022, payment was made only towards interest and no payment was done towards principal outstanding. Thereafter no payments were made by the Corporate Debtor.
6. Since, no payments were forthcoming from the Corporate Debtor, several reminders were sent to the Corporate Debtor requesting them to release the payment, however, since no response received, the Financial Creditors exercised rights under MFRA and terminated the MFRA vide Termination Notice dated 25.07.2022.
7. The total amount of debt claimed to be default by the Financial Creditor is Rs.168,72,67,805/- (Rupees One Hundred Sixty Eight Crores Seventy Two Lakh Sixty Seven Thousand Eight Hundred and Five only). The date of default stated to be in Part-IV of the Petition is 31.01.2022.
8. It is pertinent to note that the Corporate Debtor/Respondent, instead of submitting Reply affidavit, has filed IA 877 of 2023 dated February 27, 2023 thereby taking defence under section 10A of the IBC. It is pertinent to note that nowhere in the

- IA the Corporate Debtor has denied the existence of debt, but they have taken shelter of section 10A of the Code to escape their liability.
9. The Petitioner on the issue of whether the debt in question amounts to financial debt submits that as per Ind AS 116, a financial lease is a lease where substantial risks and rewards associated with the asset is transferred to the lessee. Para 63 of Ind AS 116 provides for five conditions, on fulfilment of any of which, a lease has to be treated as financial lease. Point d of para 63 of Ind AS states that if at the inception of the lease, if the present value of minimum lease payments covers substantially all of the fair value of the asset - the lease will be treated as a 'financial lease'. While what constitutes substantially all of the fair value is not mentioned in the standard, however, as per Generally Accepted Accounting Principles, if present value of Minimum Lease Payment is 90% or more of the asset cost, the transaction is a financial lease. In the present case, as per the terms of lease agreement, the terms show that the present value of the lease rentals cover the entire cost of the leased assets. The statutory auditors of the Financial Company have also confirmed the same. Apart from the above, in terms of directions of the Hon'ble Bench, the Applicant has also sought certificate from an Independent Chartered Accountant, GARV Associates [Firm Registration No 301094E], who have also confirmed that the lease granted to Nufuture is 'Financial lease'.
 10. It is submitted that in terms of section 4 of the IBC, 2016, minimum amount of default for initiation of corporate insolvency resolution process of a corporate person is Rs. 1 Crores. In the present case, the total amount claimed by the

Petitioner is approximately Rs. 168 crores, which is far more than the minimum default amount.

11. The Respondent herein has taken the defence of Section 10A of the Code. In this regard, this Bench has directed the Applicant herein to provide bifurcation of the outstanding amount pertaining to claims during 10A period and the claim that falls beyond the 10A period. Evidently, the amount that falls beyond the period u/s 10A is Rs. 1,154,505,742/-, which is far more than the minimum default amount. Hence, the present application is liable to get admitted.
12. Further, it is stated that as is evident from the Reply Affidavit of the Respondent, they have not denied the existence of debt, however have taken shelter of section 10A of the Code.
13. In the present case, the MFRA got rescheduled on the request of the Corporate Debtor January 28, 2021. Even after rescheduling the Agreement, the Corporate Debtor failed to pay the rentals, as were agreed between the Parties. In fact, the Corporate Debtor itself has admitted that it has paid only interest for the month of January, 2022 and failed to pay the Principal. Rescheduling of loan itself indicate that debt and default is not disputed. Thus, it is evidently clear that even after rescheduling the Agreement, the default occurred on January 31, 2022, which triggered the provisions of the Master Agreement, and therefore, the same cannot be said to be fall under section 10A of the Code.

Submissions advanced by the Respondent:

14. At the outset, the Corporate Debtor submits that the present Petition is barred by Section 10A of the Code. The Petitioner has filed the captioned Company Petition

claiming alleged debt due and payable as Rs.240,95,66,571.13/- basis a Master Rental and Financing Agreement dated 28.06.2019 and the first date of default being 31.01.2022. It is the Respondent's contention that the date of default as alleged by the Petitioner was contrary to the Restructuring Agreements dated 28.01.2021 and 14.07.2021 ('RA's') executed between the parties, basis which the date of default was crystallized as 31.12.2020, which falls within the statutory moratorium period stipulated under Section 10A of IBC. Hence, the Respondent filed an Interim Application No. 877 of 2023 dated 27.02.2023 seeking dismissal of the captioned Petition on the ground of bar under Section 10A (being a jurisdictional/maintainability issue).

15. As regards continuous default, the Respondent submits that continuous default has not occurred. As per the recitals of the 1st Restructuring Agreement dated 28.01.2021('RA1') dated and 2nd Restructuring Agreement dated 14.07.2021 ('RA2'), particularly Recital C, it was recorded that a Renter Default as defined under Clause 18 of MRFA arose on 31.12.2020 and the amounts were to be rescheduled as per Annexure B thereto. Hence, the Recital C crystallized the date of default as 31.12.2020, which admittedly falls within the statutory moratorium period envisaged under Section 10A of the Code.

16. Further it is submitted that Clause 3 of RA1 stipulated that if there is any default under the revised schedules then the RA 1 and/or RA2 shall ceased to be effective (as if the same had never come into existence and/or was never effectuated) and any amounts paid under RA's will be deemed to have been made in accordance

with Original Schedules, as non-payment event would be Rental Default under MRFA.

17. The second limb of defence taken by the Corporate Debtor is that the alleged Debt is not Financial Debt and hence the Petitioner is not a Financial Creditor. The alleged claims in the Petition are basis MRFA whereby certain equipments were leased to the Respondent subject to payment of rent installments.
18. It is submitted that lease of equipments cannot be classified as a financial lease since (a) substantial risks and rewards incidental to ownership were not transferred in favour of the Respondent, (b) the Respondent did not have an option to purchase the leased equipments, (c) MRFA stipulated return of equipment to the Petitioner, (d) ownership explicitly vested with the Petitioner at all times, (e) Respondent was contractually restrained from claiming any benefit of deductions under the Income-tax Act, 1961, (f) on a rental's default, the remedy available to the Petitioner was to seek possession of the leased equipments and (g) upon equipment return, the Petitioner was entitled to lease, sell or dispose of the equipment and was to credit the difference between the excess amount and its stipulated loss value, in favour of the Respondent. The aforesaid terms/conditions demonstrate ingredients of an operational lease.
19. The Respondent relies on the termination letter dated 25.07.2022 sent by the Petitioner to the Respondent wherein, inter alia, the Petitioner has sought return of leased equipments and stated steps it would take about sale of the surrendered equipments. Pertinently, the Petitioner has categorically admitted that it is the legal owner of the leased equipment and that the Respondent can in no manner deal

- with the same. Further, in the said notice, the Petitioner has alleged discounted balance future payments and late payment charges to the tune of Rs. 135 Cr. It is submitted that had the lease been financial lease, the question of returning equipments would not arise, and the claims to the tune of Rs. 135 Cr. are damages and not debt.
20. The Respondent has relied on the Ind As 116, for the purpose of classification of leases. As per paragraph 61 of Ind AS 116 Leases, a Lessor is required to classify each of its leases as either an operating lease or a financial lease. As per para 62, a lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership of an underlying asset and as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset.
21. It is submitted that as per the terms of the MRFA and Ind AS, it is established that substantial risks and rewards incidental to ownership were not transferred under the MRFA to the Respondent, and at the expiry of the lease term, the said equipments had to be returned to the alleged Petitioner without the Respondent having any option to purchase the underlying asset.
22. Reliance is placed by the Respondent on the Order passed by NCLT Chandigarh Bench in *Orix Leasing and Financial Services India Ltd. v. Mr. Rajendra Kumar Jain, Resolution Professional*, read with para 5 of *Orix Leasing and Financial Services India Ltd. v. Mr. Rajendra Kumar Jain, Resolution Professional, 2023 SCC OnLine NCLAT 1013 and Civil Appeal No. 4226 of 2023 (SCI)*, wherein it was held that since risks and rewards associated with the goods had not been transferred coupled with the

- fact that depreciation over the goods had been claimed in the books of account for Income-tax purposes, the lease was an operational lease and not financial lease.
23. Reliance is also placed on of *Noida v. Anand Sonbhadra, 2023 (1) SCC 724*. (paras 77 to 104, 109, 135 to 144, 163, 213). It is submitted that the Petitioner has not been able to satisfy the requirements of debt, disbursement and default as envisaged under Section 7 of the Code.
24. Pertinently, the Petitioner has placed on record a CA certificate dated 19.07.2024 wherein the concerned Chartered Accountant has basis its understanding and upon representations made by the Petitioner observed that the lease under MRFA is a financial lease, and without any explanation / reasoning stated in para 5(i) that the lease transfers ownership of the underlying asset to the lessee by the end of the lease term as the same is in the nature of renting and financing the same. The said observation is in variance and contrary to the contractual terms under the MRFA, which explicitly retained ownership of the equipment with the Petitioner, and upon default entitles the Petitioner to possession of the equipment, which the Petitioner sought to exercise by its termination letter dated 25.07.2022. The conclusions in the said report are made in ignorance of the MRFA terms and correspondence between the parties, thereby demonstrating that the said report is completely self-serving in nature and not an independent assessment of the lease in question.

Findings:

25. Heard learned Counsel for the Financial Creditors and Learned Counsel for the Corporate Debtor. Perused the record.

26. The defense raised by the Corporate Debtor is two-fold. It is contended that the debt falls within the period of Section 10A of the Code. Secondly, it is argued that the debt in question is not a financial debt. As regards, the debt being under the period of Section 10A, it is stated that the default (renters default) occurred on 31.12.2020 in terms of the MRFA. The date of default stated in the Part IV of the Petition is 31.01.2022 which is computed from the defaults arising out of the Restructuring Agreements. The Respondent argues that the default in the present matter is not a continuing default and pursuant to default in payments made in terms of the restructuring agreements, the date of default reinstates back of the original date of default under the main MRFA.
27. It is pertinent to note that the Corporate Debtor itself has paid only interest for the month of January, 2022. This indicates part payment thereby acknowledging the debt. The Corporate Debtor has not disputed that they have defaulted in making repayments in terms of the MFRA. Accordingly, the twin parameters of debt and default stand established. The contention of the Corporate Debtor that the default is not continuing default cannot be considered, as the MRFA was restructured at the request of the Corporate Debtor and resulting in extension of payment schedule of the Corporate Debtor.
28. Even if we consider the claim of the Petitioner that falls beyond the 10A period, the amount that falls beyond the period u/s 10A is Rs.1,154,505,742/-, which is far more than the minimum default amount of Rs.1 Crore.

29. Now coming to the second defence raised by the Corporate debtor whether the debt is financial debt and lease in question is financial lease under Section 5(8)(d) of the Code. Section 5(8)(d) is reproduced hereinbelow for reference:

“Section 5(8)(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;”

30. The relevant provisions of the Indian Accounting Standards relating to lease are also reproduced hereinbelow for ready reference:

“Classification of leases (paragraphs B53–B58)

61. A lessor shall classify each of its leases as either an operating lease or a finance lease.

62. A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership of an underlying asset. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset.

63. Whether a lease is a finance lease or an operating lease depends on the substance of the transaction rather than the form of the contract. Examples of situations that individually or in combination would normally lead to a lease being classified as a finance lease are:

(a) the lease transfers ownership of the underlying asset to the lessee by the end of the lease term;

(b) the lessee has the option to purchase the underlying asset at a price that is expected to be sufficiently lower than the fair value at the date the option becomes exercisable for it to be reasonably certain, at the inception date, that the option will be exercised;

(c) the lease term is for the major part of the economic life of the underlying asset even if title is not transferred;

(d) at the inception date, the present value of the lease payments amounts to at least substantially all of the fair value of the underlying asset; and

(e) the underlying asset is of such a specialised nature that only the lessee can use it without major modifications.

64. Indicators of situations that individually or in combination could also lead to a lease being classified as a finance lease are:

(a) if the lessee can cancel the lease, the lessor's losses associated with the cancellation are borne by the lessee;

(b) gains or losses from the fluctuation in the fair value of the residual accrue to the lessee (for example, in the form of a rent rebate equaling most of the sales proceeds at the end of the lease); and

(c) the lessee has the ability to continue the lease for a secondary period at a rent that is substantially lower than market rent.

65. The examples and indicators in paragraphs 63–64 are not always conclusive. If it is clear from other features that the lease does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset, the lease is classified as an operating lease. For example, this may be the case if ownership of the underlying asset transfers at the end of the lease for a variable payment equal to its then fair value, or if there are variable lease payments, as a result of which the lessor does not transfer substantially all such risks and rewards.

66. Lease classification is made at the inception date and is reassessed only if there is a lease modification. Changes in estimates (for example, changes in estimates of the economic life or of the residual value of the underlying asset), or changes in circumstances (for example, default by the lessee), do not give rise to a new classification of a lease for accounting purposes.”

31. The Petitioner submits that if the present value of minimum lease payments covers substantially all of the fair value of the asset - the lease will be treated as a 'financial lease'. While what constitutes substantially all of the fair value is not mentioned in the standard, however, as per Generally Accepted Accounting Principles, if present value of Minimum Lease Payment is 90% or more of the asset cost, the transaction is a financial lease. In the present case, as per the terms of lease agreement, the terms show that the present value of the lease rentals cover the entire cost of the leased assets. The statutory auditors of the Financial Company have also confirmed the same. MFRA also contemplates that the Corporate Debtor shall be liable to pay the present value of all rents or any leases or financings to be due and payable as liquidated damages for loss of bargain and not as penalty, which also leads to a conclusion that the Corporate Debtor was obligated to pay total value of lease rentals as provided in the lease rentals and the portion of time value comprised in the future rentals was to be taken away by taking its present value on the date of default.

32. Per contra, the Respondents submit that as per the terms of the MRFA and Ind AS, it is established that substantial risks and rewards incidental to ownership were not transferred under the MRFA to the Respondent, and at the expiry of the lease

term, the said equipment's had to be returned to the alleged Petitioner without the Respondent having any option to purchase the underlying asset.

33. This bench to further clarify whether the transaction is a financial lease directed the Petitioner to place on record certificate of the Chartered Accountant clarifying the same The Petitioner has placed on record Certificate of Chartered Accountant certifying that the lease granted to Corporate Debtor is a financial lease. The relevant part is reproduced hereinbelow:

"...3. We conducted our examination of the Statement in accordance with the Guidance Note on Reports or Certificates for Special Purposes issued by the Institute of Chartered Accountants of India. The Guidance Note requires that we comply with the ethical requirements of the Code of Ethics issued by the Institute of Chartered Accountants of India.

4. We have complied with the relevant applicable requirements of the Standard on Quality Control (SQC) 1, Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

5. Based on our examination and details/ documents received by us and explanation furnished to us (as above) and in accordance with the Ind AS-116 "Leases", we are of the opinion that:

i) The lease transfers ownership of the underlying asset of the lessee by the end of the lease term as the same is in nature of renting and financing the same. ii) At the inception date, the present value of the lease payment is amounting to the fair value of the underlying asset as per information and explanation given to us. iii) Assets

subject to operating lease are generally included in Plant, Property and Equipment's, however, Hewlett is not having any Property, Plant & Equipment since FY 2016-17 till FY 2022-23, as per the audited financial statements produced before us for our verification and relied upon by us. iv) Based on the audited financials and information and explanation given to us, the amount due to Nufuture is included in the gross investment value as per the Note of Accounts 25 of Audited financials of 31.03.2022 Rs. 3,29,96,046.63....”

Hence based on the above criteria we are of the opinion that the lease granted to Nufuture is a "financial lease" as also mentioned by the statutory auditors of Hewlett in the financial statements produced before us for our verification.....”

34. It is clear from the above certificate that the lease payment is amounting to the fair value of the underlying asset. As per Ind AS 116 para 63(d) makes it clear that if at the inception date, the present value of the lease payments amounts to at least substantially all the fair value of the underlying asset then the lease is financial lease. Moreover, it is not the pleaded case of the Respondents that the lease was recorded as an operational lease in the books of accounts of the Financial Creditor.
35. Clause 9 of MFRA also mandates that the Corporate Debtor shall continue to be liable to pay the instalments and be bound by all obligations and provisions of the agreement notwithstanding any defect, breakdown or destruction of any Equipment or any force majeure event. Further, clause 12 of MFRA makes Corporate Debtor responsible for the selection, installation, operation and maintenance of the Equipment [Clause 9], as well as insurance. These clauses in

- itself make it clear that the risks and rewards in the equipments were transferred to the Corporate Debtor. [Clause 12 of MFRA].
36. The mere absence of an option to purchase the leased equipments vested in the Corporate Debtor can not make it operational lease as it is one of the criterion, in alternate, for recognition of a transaction as financial lease. Even the loan agreements stipulate taking over possession of financed assets in case of default, hence, stipulation in MFRA for return of equipment to the Petitioner does not make it operating lease. The stipulation that, upon equipment return, the Petitioner was entitled to lease, sell or dispose of the equipment and was to credit the difference between the excess amount and its stipulated loss value, in favour of the Respondent, further suggests that any accretion in value or residual vests in the Respondent and not the petitioner.
37. Therefore, we have no hesitation to hold that the lease is a financial lease thereby constituting financial debt under Section 5(8) of the Code. Accordingly, the Petition deserves to be admitted. IA 877 of 2023 is dismissed.
38. The Financial Creditor has proposed the name of Mr. Ritesh Agarwal, Registration No. IBBI/IPA-001/IP-P-02296/2021-2022/13557, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
39. It is, accordingly, hereby ordered as follows: -
- (a) The Petition bearing CP (IB) No. 6/2023 filed by **Hewlett Packard Financial Services (India) Private Limited**, the Financial Creditors, under Section 7 of

the Code read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Nufuture Digital (India) Limited** [CIN: U72900MH2007PLC174787], the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under Section 14 of the Code, in regard to the following:

- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:-

- (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii) That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any Sectoral Regulator;

(d) The moratorium shall have effect from the date of this Order till the completion of the CIRP or until this Tribunal approves the Resolution Plan under Sub-Section (1) of Section 31 of the Code or passes an order for Liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) Mr. Ritesh Agarwal, Registration No. IBBI/IPA-001/IP-P-02296/2021-2022/13557, having address Jindal Tower, Block C, Flat No. 301 ,1A Kundan Bye Lane, Near Silver Jubilee Hospital, Haora, West Bengal ,711204 is hereby appointed as Interim Resolution Professional (“**IRP**”) of the Corporate Debtor to carry out the functions as per the Code. The fee payable

to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (“**IBBI**”). The IRP shall carry out his functions as contemplated by Sections 15, 17, 18, 19, 20 and 21 of the Code.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) The IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in

this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR

Member (Technical)

03.10.2024

Priyal

Sd/-

JUSTICE V.G. BISHT

Member (Judicial)