

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**CP No. 1664/IBC/NCLT/MB/MAH/2017**

**Under Section 9** of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

**Indiabulls Real Estate Company Private  
Limited**

....Operational Creditor/Petitioner

v.

**Crest Steel & Power Private Limited**

....Corporate Debtor/Respondent

Heard on : 20.02.2019

Order delivered on : 11.03.2019

**Coram :**

Hon'ble M. K. Shrawat, Member (J)

**For the Petitioner :**

Advocate Manish Gala.

**For the Respondent :**

Advocate Ankit Lohia.

*Per: M.K. Shrawat, Member (Judicial)*

**ORDER**

1. This is a Petition filed **U/s 9 of Insolvency & Bankruptcy Code**, 2016 (hereinafter as **Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) on 28.11.2017 by the Petitioner 'Indiabulls Real Estate Company Private Limited' in the capacity of "**Operational Creditor**", against Crest Steel & Power Private Limited (hereinafter as '**Corporate debtor**') having registered address at Joratrai Village, P.O. Mangatta, Dist. Rajnandgaon, Chattisgarh.

2. The Petitioner has submitted Form-5 as prescribed under the rules. In the requisite Form, under the Head “Particulars of Operational Debt” the total amount in default is stated as **₹1,88,64,345/-**, as on 01.06.2017 (exclusive of interest @ 18% p.a. till the date of realisation). The **date of default** is stated to be **10.12.2016**.

**A) Background of the Case :**

3. The Corporate Debtor entered into a **Leave and License Agreement dated 14.11.2013** with the Operational creditor to take on Lease the premises admeasuring 13944.36 sq. ft. of chargeable area being Unit No. 1601 in Tower-3 of the Indiabulls Finance Centre together with exclusive right to use 15 car parking spaces. The said agreement provided as under:
  - i. The term of the license was for 60 months commencing from 01.12.2012 to 30.11.2017.
  - ii. The entire license period of 60 months was ‘lock-in’ for both the parties during which neither party can terminate the agreement except on case of default by the other party.
  - iii. Charges for car parking spaces, license fees and maintenance charges were also levied in the agreement. The Corporate Debtor has paid an interest free security deposit of ₹1,01,91,496/- to the Operational Creditor.
4. The **Corporate Debtor had sent a notice dated 30.11.2016 for termination of the agreement** under clause 15.4 (a) of the agreement ( Upon happening of any Force Majeure Event) contending that it had received huge notices of demand from the Income Tax Department, hence as a consequence shall vacate the premises by 31.12.2016.
5. The **Operational Creditor’s claim** is that in case of termination of the agreement by the Corporate Debtor before the expiry of lock in period, the Corporate Debtor shall be liable to pay the **license fees for the unexpired period from 01.01.2017 to 30.11.2017** amounting to ₹2,23,14,113/- apart from other charges. Further, the amount of security deposit of ₹1,01,91,496/- would be adjusted against the outstanding amounts payable by the Corporate Debtor to the Operational Creditor.

**B) Submissions by the Operational Creditor :**

6. The Operational Creditor vide its letter dated 06.12.2016 in reply to the letter sent by the Corporate Debtor dated 30.11.2016 intimated the Corporate Debtor that receipt of notices from the Income Tax Department does not amount to occurrence of ‘Force Majeure’ Event and that it shall comply with the obligations under clause 6.1 of the agreement. Clause 6.1 of the agreement states as follows:

*“The entire License period i.e. **60 (sixty) months** from the License Commencement Date shall be a **Lock in Period** during which period neither party shall be entitled to terminate the agreement. Notwithstanding what is stated herein, in the event of any default by the Licensee or the Licensor as stated in this Agreement the other party shall have a right to terminate the agreement in accordance with the terms of the agreement.”*

7. The Operational Creditor submits that the car parking spaces were surrendered by the Corporate Debtor vide emails dated 20.10.2016, 19.12.2016 and 25.01.2017. There were email communications between the parties where in the **Corporate Debtor** has given the **reason** for termination of the agreement as ‘**financial crisis**’ and Operational Creditor contending that the termination of the agreement during subsistence of lock in period was ‘wrongful’. The Corporate Debtor **abandoned the leased premises** without any notice or intimation, however, did not remove its furniture and fixtures from the Licensed Premises, as per the pleadings. It is informed that in terms of Lease Agreement ( 14.11.2013 *supra*) the lock in period was to end on 30/11/2017 , and therefore the furniture was not removed until October-November, 2017.
8. The Operational Creditor further submits that the Corporate Debtor stopped the business operations in the licensed premises somewhere in February, 2017 and around the month of **May-June 2017, the Corporate Debtor vacated the premises** without any prior notice and without paying any outstanding License Fees and other charges for the unexpired lock in period.
9. The Operational Creditor issued a Demand Notice U/s 8 of the code on 15.06.2017, to which the Corporate Debtor replied vide letter dated 30.06.2017 raising certain ‘disputes’ and allegations against the Operational Creditor.
10. The Operational Creditor has drawn the attention of this Bench towards the certain provisions of the Agreement which are relevant in deciding the present case in hand:
  - i. Clause 5.5 of the Agreement deals with the provision of SECURITY DEPOSIT. It says:

*“the licensee on or before execution hereof, have deposited with the licensor as and by way of interest free refundable security deposit an amount of INR 92,03,278/- equivalent to 6 Months license fee (security deposit) for the due fulfilment and observance by the licensee’s of the terms, conditions and covenants in this agreement, receipt whereof the licensor hereby admits and acknowledges. The said security deposit shall remain deposited with the licensor throughout the subsistence and shall, in accordance with clause 10.10 herein below be refunded back to the licensee against the licensee handing over vacant possession of the licensed premises in the same conditions as was taken subject to normal wear and tear upon expiry or sooner determination of this agreement and*

*subject to deductions, if any, under this agreement. Any deductions by the licensor shall be supported by proof/evidence however, it is clarified that the **interest free security deposit shall not be refunded in the event of termination during the lock in period** due to default on the part of the licensee as provided herein, rather the same will be adjusted against the license fee payable towards the unexpired lock in period and the balance if any shall be refunded by the licensor to the licensee. In case, the license fee and other charges payable towards the unexpired lock in period exceeds the security deposit, the balance to such license fee shall be paid by the licensee to licensor on the date of closure. ( highlighted in the order)*

- ii. Clause 14 of the Agreement deals with TERMINATION clause. It says:  
*“If the licensee desires to terminate this agreement before the expiry of the lock in period or the licensor is compelled to terminate this agreement before the expiry of the lock in period for defaults of the licensee not cured within a period of one month as provided in clause 13, then the licensee shall be required and liable to pay to the licensor the license fee for the entire unexpired lock in period.....”*
  
- iii. *FORCE MAJEURE EVENT* clause is dealt in clause 15.4 of the Agreement, which says:  
*“ Neither party shall be liable for its failure to perform or fulfil any of its obligations to the extent that its performance is delays or prevented, before or after the commencement of the license, in whole or in part, due to acts of god, floods, cyclones, earthquakes, fires, wars, riots, strikes (unless caused by the acts or omissions of the parties, or their failure to act in a good faith to resolve the same), **orders of governmental or other statutory authorities**, national emergency or any other similar causes beyond the reasonable control of the party effected (“Force Majeure”).*  
( high lighted in the order )

11. It is thus argued that , on a conjoint reading of the above provisions, it can be inferred that the Agreement entered into binds the Corporate Debtor to stay in the leased premises for a period of 5 years, and in case the Corporate Debtor choses to vacate the said premises before the expiry of lock in period, the Security Deposit of the Corporate Debtor shall be forfeited by the Operational Creditor and the Corporate Debtor is under an obligation to pay the **License fee for the unexpired lock in period** after adjusting the amount of security deposit forfeited.

12. It is finally argued that since the Debtor is not making the payment and all the procedural formalities have been complied with, this Petition/Application may be Admitted for the initiation of the CIRP.

**C) Contentions of the Corporate Debtor:**

13. The Corporate Debtor has not filed an affidavit in Reply to this petition, instead, the Written submissions of the Corporate Debtor are on record. Certain objections have been raised by the Corporate Debtor, first being the maintainability of this petition before this Tribunal. It is contended that this is a matter which falls in the exclusive jurisdiction of the Small Causes Court U/s 41 of the Presidency Small Causes Courts Act, 1882. It says:

***“ 41. Suits or Proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except to those to which other Acts apply to lie in Small Cause Court.***

*(1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent therefore, irrespective of the value of the subject matter of such suits or proceedings.”*

14. Further relying upon the judgement of Hon’ble Supreme Court in the matter of **Mansukhlal Dhanraj Jain V. Eknath Vithal Ogale [1995 (2) SCC 665]**, the Corporate Debtor says the Presidency Small Causes Court would have exclusive jurisdiction to try a suit of the nature reflected in Section 41 of the Act.

15. The Corporate Debtor further argues that the debt in hand is **not an ‘operational debt’** within the scope of **Section 5(21) of the Code**, which says *“a claim in respect of the provisions of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”*. In the present case, what is sought to be recovered is the alleged license fees and the car parking charges under the agreement. The ‘Operational Debt’ has neither arisen out of the provision of goods or services nor out of the employment of dues which are payable under the statute to the State/Central Government or local body.

16. The Corporate Debtor also contends that the Bank Certificate U/s 9(3)(c) has not been filed with the petition which is a mandatory requirement of the Code. Also, **an affidavit U/s 9(3)(b) for no notice of dispute** by the Corporate Debtor has also not been filed.

17. The Corporate Debtor further goes on to raise a dispute in the said matter by saying that the Operational creditor has suppressed certain material facts and documents from this Tribunal. One being when the Corporate Debtor tried to handover a peaceful and vacant possession of the licensed premises to the Operational Creditor, the Operational Creditor refused to take the same. Moreover, the Petitioner had disconnected the air conditioning units from December, 2016 onwards. Power supply was disconnected in the said premises. The premises were vacated, however, the personnel of the Operational Creditor in the said premises did not allow the Corporate Debtor to withdraw their movables/belongings on 14.09.2017.
18. It is argued that due to disconnection of electricity, the Corporate Debtor had to suffer business losses as many of its group companies were operating from the licensed premises. Therefore, the **Corporate Debtor is entitled to damages** as a counter claim to the said claim of license fee and other charges.

**D) Rejoinder by the Operational Creditor:**

19. The Operational Creditor in its rejoinder submits that this petition perfectly stands the test of maintainability due to the fact that the two clear requirements of Section 41 of Presidency Small Causes Courts Act, 1882 are , one, that the **action has to be suit** and second, the **action has to be for recovery of license fee**. Both these ingredients are not fulfilled in the present case.
20. The Operational Creditor states that this claim successfully stands the definition of 'operational debt' as regards **section 5(21)** IBC is concerned due to the fact that the provision says that the debt has to be in respect of provision of goods/ or services. The goods or services in the present case is the Rental Office which are in the nature of stock-in-trade for the Petitioner which have been given to the Respondent for utilisation in consideration of payment. Hence, this objection ought to be rejected.
21. As regards the dispute raised by the Corporate Debtor regarding disconnection of power supply on 08.01.2017 ( December 2016 as per Respondent ), the Operational Creditor submits that police complaint or grievance for wrongful disconnection of electricity was never brought up by the Corporate Debtor before the receipt of Demand Notice under the code. It is only in reply to the Demand Notice on 30.06.2017, the Corporate Debtor for the first time alleged that they were forced to vacate the premises due to alleged disconnection of electricity. However, due to movables lying inside the said subject premises and in the absence of formal and valid notice of termination, the Operational Creditor were made to believe that the Corporate Debtor has continued to occupy the subject premises and therefore invoices for license fee were continued to be raised. Therefore, it is submitted that there is no clear cut dispute regarding the license fee claimed.

22. Regarding the contention of counter claim raised by the Corporate Debtor, it is submitted that the purported counter claim for losses is not available as bona fide defence on facts of the present case as well as on law. Reliance has been placed on the decision of the Hon'ble Bombay High Court in the matter of *Prime Broking Company (India) Ltd. V. National Securities Clearing Corporation Ltd*, [(2017) 2 Bom CR 665] wherein the submission on a counter claim is rejected being a defence in a winding up proceeding. It was held that:

*14] At the outset, we must say that we are doubtful whether the institution of a suit for damages by the company when in fact, the debt claimed by the petitioning creditor is not at all disputed by the such company, can at all constitute a valid defence to a petition seeking winding up of the company. Normally, in a petition seeking winding up on the ground of inability to pay debts, the dispute is with regard to the very liability for the payment of such debt. The question which normally arises is whether such dispute, to the very existence of the debt or the liability to pay the debt, is bona fide and one of substance. In this case, as we have noted earlier, there is no dispute whatsoever with regard to the debt of Rs.90.90 crores which is due and payable by the company to the petitioning creditor. However, even if we were to proceed on the basis that the institution of a suit for damages against the petitioning creditor, in a given case, constitutes valid defence, it is necessary for the company to further establish that such defence is bona fide, one of substance, likely to succeed in point of law and finally backed by prima facie proof of the facts upon which such defence depends. In the present case, we agree with the learned Company Judge that none of these matters have been established by the company and therefore, there is really no warrant to interfere with the impugned order.*

*15] In Portman (supra), the majority opinion does not lay down, as a broad or absolute proposition that a petition for winding up of a company has to be dismissed, no sooner a cross claim is presented by such company irrespective of whether such cross claim is with substance or not. All that the majority opinion holds, is that the case set out by the company which was sought to be wound up, was not so vague and the likelihood of success so slight, so as to hold that there was no substance whatsoever in the cross claim..... Therefore, Portman (supra) is not an authority for proposition that no sooner some cross claim is raised by the company against the petitioning creditor, the petition for winding up of the company has to be necessarily dismissed without even prima facie examining whether the cross claim is genuine and one of substance.”*

Therefore, it is contended that this objection should be rejected outrightly.

**(E) Findings:**

23. I have prudently gone through the pleadings on record and perused the submissions made by learned counsels for both the sides. On careful perusal of the documents it is noticed the foremost objection of the Corporate Debtor regarding 'Maintainability' of this petition is rejected in view of the non-obstante provision given under the Code i.e. Section 238 of the Code, which has an over-riding effect over other legislations. Therefore, in my view if the legislature has provided more than one remedy, the aggrieved person is free to avail any of such remedies.
24. Secondly, the Operational Creditor has given its premises on lease under an agreement. Therefore, receiving any consideration by way of lease rent from time to time or license fee for letting out the premises falls under the purview of providing services and the consideration that is receivable becomes 'Operational Debt'. 'Arrears of rent' are in the nature of 'operational debt' within the meaning of definition of operational debt defined under **Section 5(21) of the I&B Code**. An action as regards recovery of arrears of rent is maintainable under Section 9 of the I&B Code, 2016. Reliance can be placed on *Sarla Tantia V/s Nadia Health Care (P) Ltd.* NCLT (Kolkata Bench), CP(IB) No. 108/KB/2018 and CA(IB) No. 119/KB/2018, Date of Decision: 05.10.2018 and *Jindal Steel & Power Ltd. V. DCM International Limited* by NCLAT [Company Appeal (AT) (Insolvency) No. 288 of 2017]. Furthermore, a similar view was taken by the legislature while framing this Code as given in the Report of the Bankruptcy Law Reforms Committee:

*“...the Code differentiates between financial creditors and operational creditors... Financial creditors are those whose relationship with the entity is pure financial contract, such as a loan or a debt security. Operational creditors are those whose liability from the entity comes from transaction on operations. Thus, the wholesale vendor of spare parts whose spark plugs are kept in inventory by the car mechanic and who gets paid only after the spark plugs are sold is an operational creditor. Similarly, the lessor that the entity rents out space from is an operational creditor to whom the entity owes monthly rent on a three-year lease. The Code also provides for cases where a creditor has both a solely financial transaction as well as an operational transaction with the entity. In such a case, the creditor can be considered a financial creditor to the extent of the financial debt and an operational creditor to the extent of the operational debt...”*

25. Therefore, not an iota of doubt can be raised whether the present proceedings are maintainable U/s 9 of the Code or not. Such claim is very much within the definition of 'Operational Debt', thus come in the purview of Sec. 9 of the Code.
26. Further the Corporate Debtor, during the course of oral arguments pressed that the termination of the agreement was due to Force Majeure Event given in clause 15.4 of the Agreement. However, the same is not dealt in written submissions tendered by the Corporate Debtor. The Corporate Debtor is relying on the "orders of governmental or other statutory authorities" contained in the clause to be a Force Majeure Event. To deal with the same, it is better to mention that Force Majeure Event has to be something which is beyond the control of the parties to the agreement. Merely if one does not pay income tax dues and the dues get accumulated and a huge demand is raised by the authorities, the same cannot be covered under the Force Majeure Event. "Orders of governmental or other statutory authorities" may include some change in law or may be some notification which makes it impossible for the parties to perform their obligations. This is not the case of the Corporate Debtor. Hence, this contention is hereby rejected.
27. As regards the dispute raised by the Corporate Debtor regarding disconnection of electricity and the act of not taking peaceful possession on the part of the Financial Creditor appears to be an afterthought as the Corporate Debtor did not raise an objection at the time of cutting of power supply. It appears from the email communications that the Corporate Debtor was to vacate the premises in the month of January, 2017. However, the furniture & fixtures of the Corporate Debtor were still lying inside the premises, due to which the invoices were accrued. *Prima Facie*, the dispute appears to be a feeble legal argument and does not hold any water in my view. The job of the Adjudicating authority, as assigned by the Hon'ble Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited, Civil Appeal No.9405 of 2017 dated 21.09.2017* is to separate the grain from the chaff. It says:

*"It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the*

*Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application”.*

In the present case, though the Corporate Debtor raised a dispute at the time when the demand notice was sent. But there was no ‘pre-existing dispute’ and the same never arose when the electricity was cut or when the premises were vacated. The Corporate Debtor’s contention of a criminal complaint regarding the same is not supported by enough evidences. Otherwise also, this contention is bereft of any convincing wisdom.

28. **Section 5(6) of the IBC** defines ‘dispute’ which reads as follows:

- (6) "**dispute**" includes a suit or arbitration proceedings relating to—
- (a) the existence of the amount of debt;
  - (b) the quality of goods or service; or
  - (c) the breach of a representation or warranty;

In the present case, no such criteria as mentioned above has been fulfilled. The Corporate Debtor is not disputing the claim amount after adjusting the security deposit, the Corporate Debtor is not disputing the quality of service provided. The objection regarding disconnection of electricity is not tenable as the same cannot determine whether the services provided to the Corporate Debtor prior to termination of the agreement were satisfactory or not. The Corporate Debtor is also not alleging the breach of a representation or warranty. Instead, he himself has terminated the Agreement and is in breach of the contract. Moreover, there is no clear date when the premises was vacated. Rather contention is that the premises was abandoned without proper information. Therefore it is pleaded by the Operational Creditor that once the Corporate Debtor had abandoned the premises, whenever it was, why the bills would not accrue if the leased premise was not legally vacated.

29. The contention of the Corporate Debtor regarding counter claim and damages has been dealt with in view of *M/s Kailash Nath Associates V. Delhi Development Authority & Anr. [SLP Civil No. 32039 of 2012]*, wherein on similar lines held that a claim for unliquidated damages for loss suffered cannot be said to be a valid defence to this petition.

30. Bank Certificate U/s 9(3)(c) is merely a corroborative piece of evidence and not a substantive piece of evidence. Hence, the requirement of the same can be dispensed with if other evidences supporting the claim of the Petitioner are on record. The petition is duly supported with the invoices raised, the Agreement and the email communications between the parties. Therefore, in view of *Macquarie Bank Limited V. Shilpi Cable Technologies Limited [CIVIL APPEAL NO.15135 OF 2017]*, wherein it was observed that :-

*“19. It is true that the expression “initiation” contained in the marginal note to Section 9 does indicate the drift of the provision, but from such drift, to build an argument that the expression “initiation” would lead to the conclusion that Section 9(3) contains mandatory conditions precedent before which the Code can be triggered is a long shot. Equally, the expression “shall” in Section 9(3) does not take us much further when it is clear that Section 9(3)(c) becomes impossible of compliance in cases like the present. It would amount to a situation wherein serious general inconvenience would be caused to innocent persons, such as the appellant, without very much furthering the object of the Act, as has been held in the State of Haryana v. Raghubir Dayal (1995) 1 SCC 133 at paragraph 5 and obviously, therefore, Section 9(3)(c) would have to be construed as being directory in nature.*

*20. Even otherwise, the important condition precedent is an occurrence of a default, which can be proved, as has been stated hereinabove, by means of other documentary evidence. Take for example the case of an earlier letter written by the corporate debtor to the operational creditor confirming that a particular operational debt is due and payable. This piece of evidence would be sufficient to demonstrate that such debt is due and that default has taken place, as may have been admitted by the corporate debtor. If Dr. Singhvi’s submissions were to be accepted, despite the availability of such documentary evidence contained in the Section 9 application as other information as may be specified, such application filed under Section 9 would yet have to be rejected because there is no copy of the requisite certificate under Section 9(3)(c). Obviously, such an absurd result militates against such a provision being construed as mandatory.”*

In view of above, this argument of the Corporate Debtor is hereby rejected. Moreover, affidavit U/s 9(3)(b) is to be filed only if there is no notice of dispute raised by the Corporate Debtor in reply to the Demand Notice sent U/s 8 of the Code within 10 days. However, the same is not the case of the present Corporate Debtor, hence, this contention is also rejected.

31. Furthermore, in view of the order of the Hon’ble Bombay High Court in *Indiabulls Properties Pvt. Ltd. V. Treasure World Developers Pvt. Ltd*, [CP No. 496 of 2013] wherein it was held that:

*“59. I am unable to see how Claim 3, for license fees for the remainder of the lock-in period, couched in the manner it is in the contract, can be said to be one for damages of any kind. Treasure World’s liability arises not from Clause*

*3.2, which makes no mention of any payment at all, but only says that there is a lock-in period of 36 months during which Treasure World may not terminate. It arises under clause 13.2: should Treasure World, despite the interdiction of clause 3.2, terminate after that lock-in period commences but before it ends, it incurs an immediate liability to pay for the remainder of the 36-month term. This is a debt. It is payable eo instanti; debitum in praesenti and solvendum in praesenti.*

*A party solemnly binds itself to a three-year license term for premises. The licensor agrees, in exchange, not to increase the license fee for that duration. The agreement is, clearly, that the licensee will pay the licensor the agreed monthly license fee for three years. To allow the licensee not only the option of a premature exit, but also to allow it to slither out of its financial liability, and, correspondingly, to drive the licensor to a protracted civil proceeding in which it needs prove nothing is clearly unjust. A defence that attempts this is not one that is bona fide or substantial. Defences of this stripe evidence commercial and corporate perfidy; they can never be allowed to constitute a bona fide or substantial defence.”*

32. In view of above, this petition deserves ‘Admission’. The Operational Creditor has not received the outstanding Debt from the Debtor keeping in view the agreement and the relevant clauses therein. It is clear that there was a lock in period, which had to be complied with by the Corporate Debtor, failure to which would lead to the Corporate Debtor to pay outstanding license fee after adjusting the security deposit. The formalities as prescribed under the Code have been completed by the Operational Creditor. In my conscientious view this Petition deserves ‘**Admission**’ specially when the Debtor is accepting its default.
33. The Operational Creditor has proposed the name of Interim Resolution Professional. Consequentially, this Bench hereby appoints **Mr. Ashish Singh**, having registration no. as IBBI/IPA-002/IP-N00416/2017-18/11230, having address at as Interim Resolution Professional for initiation of CIRP.
34. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

35. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
36. The appointed IRP shall also comply the other provisions of the Code including **Section 15** and **Section 18** of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
37. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

**Date: 11.03.2019**

JS

**SD/-**

**M. K. SHRAWAT**

**MEMBER (JUDICIAL)**