

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I
KOLKATA**

C.P. (IB) No. 265/KB/2023

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

IN THE MATTER OF:

BANK OF BARODA, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head office at- Baroda House, Mandvi, Baroda-390001, Gujarat and also a branch office at- Stressed Asset Management Branch, 1st floor, 59A, Chowringhee Heights, Kolkata-70020.

... Financial Creditor/Petitioner

AND

IN THE MATTER OF:

M C INDUSTRIES PRIVATE LIMITED, having its registered office at NH-6, South Chamrail, Bombay Road, Near Lokenath Seva Pratisthan, P.O- Liluah, Howrah, West Bengal, India-711114

...Corporate Debtor/Respondent

Date of Pronouncement: 12.06.2026

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

CMDE SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Financial Creditor:

Mr. Shaunak Mitra, Adv.

Mr. Avishek Guha, Adv.

Ms. Sweta Majumdar, Adv.

Ms. Anusha Nayek, Adv.

For the Corporate Debtor:

Mr. Arik Banerjee, Adv.

Ms. Urmila Chakraborty, Adv.

Mr. Arkodeb Sinha, Adv.

Ms. Meenakshi Manot, Adv.

Ms. Simran More, Adv.

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ORDER

Per: Smt. Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. The learned counsels for both the parties were heard in extenso.
3. **Facts:**
 - 3.1 The present Company Petition has been filed by the Financial Creditor 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, seeking initiation of the Corporate Insolvency Resolution Process against M C Industries Private Limited (hereinafter referred to as the Corporate Debtor), who executed a deed of Guarantee in favour of Supreme & Company Limited (hereinafter referred to as the Principal Borrower).
 - 3.2 The Principal Borrower enjoyed various working capital facilities, both fund based and non fund based, with Axis Bank, ICICI Bank and the Financial Creditor herein, formerly known as Vijaya Bank, under their respective individual security documents.
 - 3.3 Subsequently, at the request of the principal borrower, the said banks in consent with each other granted the borrower working capital requirement, both fund based and non-fund based, under a consortium arrangement wherein the Financial Creditor was designated as the lead bank.
 - 3.4 The Principal Borrower was lastly sanctioned credit facilities of limit of Rs. 117.40 Crores in accordance with the sanction letter dated 02.03.2022.

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- 3.5** A Deed of Corporate Guarantee dated 24.06.2022 was executed by the Corporate Debtor in favour of the Applicant Bank for Rs. 117,40,00,000/- (Rupees One Hundred Seventeen Crores and Forty Lakhs Only), furnishing an unconditional, absolute and irrevocable guarantee in favour of the financial creditor.
- 3.6** The principal borrower committed default in repayment of the loan and failed to regularize the loan account, following which account of the Corporate Debtor was classified as a NPA on 25.07.2022.
- 3.7** The Financial Creditor issued a demand notice upon the Corporate Debtor on 04.11.2022, demanding payment of the outstanding dues to the tune of Rs. 101 crore plus interest. Due to clerical error in the said notice, it was recalled on 22.03.2023.
- 3.8** Thereafter, on 18.04.2023, the Corporate Guarantee given by the Corporate Debtor was invoked demanding Rs. 94.62 crores.
- 3.9** Further, the Principal Borrower has been admitted into CIRP vide order dated 05.06.2024 in C.P. (IB). No. 70/KB/2023.
- 3.10** In spite of the Notice, the Corporate Debtor has defaulted to pay the dues to the bank. Hence, the financial creditor intends to initiate CIRP against the Corporate Debtor under Section 7 of the IBC, 2016.

4. Submissions on Behalf of the Financial Creditor:

- 4.1** It is submitted that the Principal Borrower availed of Credit facilities under a consortium arrangement of Axis Bank, ICICI Bank and the Financial Creditor and was lastly sanctioned an overall creditor facility of Rs. 117,40,00,000/-.

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- 4.2** It is submitted that a Deed of Corporate Guarantee was executed by the Corporate Debtor in favour of the Applicant Bank dated 24.06.2022 for Rs. 117,40,00,000/- (Rupees One Hundred Seventeen Crores and Forty Lakhs Only) thereby furnishing an unconditional, absolute and irrevocable guarantee in favour of the financial creditor. Thus, the present Corporate Debtor stands as the Corporate Guarantor for the loan sanctioned in favour of the Principal Borrower.
- 4.3** It is submitted that a general form of Guarantee has also been executed by the directors of the Corporate Debtors namely Mr. Omkar Agarwal, Mr. Rajesh Kumar Agarwal, Mr. Ramesh Rani Agarwal, Mr. Harish Kumar Agarwal in favour of the Financial Creditor.
- 4.4** It is stated that subsequent to classification of the Corporate Debtor's account as NPA on 25.07.2022, the financial creditor issued a demand notice under Section 13(2) of the SARFAESI Act, 2002 to the Principal Borrower and the present Corporate Debtor. However, the said notice was recalled vide letter dated 04.11.2022.
- 4.5** The financial creditor reissued the demand notice under Section 13(2) SARFAESI Act, 2002 dated 18.04.2023 demanding Rs. 94.62 crores plus unapplied interest payable to the applicant Financial Creditor within 60 days from the date of such notice but the principal borrower failed to repay their debts.
- 4.6** It is submitted that the Corporate guarantee given by the Corporate Debtor herein has also been invoked demanding Rs. 94.62 crores and the principal borrower company and the Corporate Debtor have both failed and neglected to pay the entire outstanding dues payable to the Financial Creditor.

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- 4.7** Lastly the financial Creditor further sent a notice of demand dated 12.05.2023 calling the principal borrower and the Corporate Debtor and guarantor to pay the outstanding sum of Rs. 94.23 Crores along with unpaid interest within 7 days from the date of issuance of the said recall notice but the Corporate Debtor failed to pay the outstanding dues yet again.
- 4.8** It is submitted that the principal borrower continues to be in default of a sum of Rs. 105,57,00,092.11 (Rupees One Hundred Five Crore Fifty Seven Lacs Ninety Two And Paise Eleven only) as on 31.07.2023.
- 4.9** It is submitted that the date of default is 25.07.2022 which is the date of NPA classification of the account.

5. Submissions of Behalf of the Corporate Debtor:

- 5.1** It is submitted that no authorization has been produced and/or disclosed in the petition. In the absence of authorization, no petition could have been filed by the petitioner.
- 5.2** It is contended that the date of NPA cannot be the date of default. The Annexure R of the Petition which computes the date of default pertains to Supreme & Co. Pvt. Ltd. and not in respect of the Respondents herein.
- 5.3** It is contended that the Petitioner had filed an insolvency petition against the principal borrower before this Tribunal being C.P. (IB) No. 35/KB/2023 which was dismissed as withdrawn subject to just exceptions.
- 5.4** It is contended that the purported notice dated 04.11.2022 under Section 13(2) of the SARFAESI Act, 2002 the petitioner contended default in payment of interest to be on 28.07.2022 and NPA to be on

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26.10.2022 whereas in the present petition the petitioner claims the date of alleged NPA to be 25.07.2022. Further, in the purported demand notice dated 12.05.2023, the Petitioner contends NPA date to be 25.07.2022.

5.5 It is further contended that the second Demand Notice under Section 13(2) of the SARFAESI Act, 2002 was issued without withdrawing/recalling its first Section 13(2) notice. The purported recall letter dated 22.03.2023 has not been received by the Corporate Debtor or the Principal Borrower. Therefore, the recall letter dated 22.03.2023 is fabricated and cannot be relied upon.

5.6 It is contended that invocation of guarantee is a prerequisite to initiate recovery or insolvency proceedings against the Guarantor. Since there is no demand notice, therefore the present petition is not maintainable.

6. We have heard the Learned Counsels for parties and perused records and noted the rival contentions.

7. Issues for consideration:

The primary issues for consideration before this Tribunal is threefold:

- i. Whether the deed of guarantee has been validly invoked?
- ii. Whether Mr. Prakash Agarwal, the Chief Manager of the Financial Creditor is duly authorized to file the instant Application?
- iii. Whether classification of NPA is proper and the same will have any impact on the present proceedings?

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8. On the issue of Authorization:

- 8.1** The Corporate Debtor contends that Mr. Prakash Agarwal is not authorized to institute the present proceedings as the loan was sanctioned in 2022 and the authorization was bestowed before IBC, 2016 was enacted. Further, the authorizations relied upon by the Financial Creditor is a generic one and does not specifically entitle Mr. Prakash Agarwal to institute proceedings under IBC, 2016.
- 8.2** The petitioner has relied upon the amalgamation of Vijaya Bank, Dena Bank and Bank of Baroda as notified in the Official Gazette on 02.01.2019 and a Board Resolution dated 14.11.2017 to support the authorization of Mr. Prakash Agarwal to file the instant Petition.
- 8.3** As per the Board Resolution dated 14.11.2017, executives not below the rank of Chief Manager were empowered to make appearance, representation, filing and signing, executing petitions, applications, affidavits and other documents and to discharge all the functions incidental to the insolvency resolution process.
- 8.4** The scheme of amalgamation ensures that all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect, immediately before the commencement of this Scheme and to which Vijaya Bank or Dena Bank is a party to, may be enforced or acted upon by Bank of Baroda instead as if Bank of Baroda had originally been a party to it or had issued such documents.
- 8.5** Further, in **Tek Travels Private Limited v Altius Travels Private Limited, Company Appeal (AT) (Insolvency) No. 172 of 2020**, the Hon'ble Apex Court has held that:

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“14. In the case of Ramesh Murji Patel (supra) and Rajendra Narottamdas Sheth (supra), this Appellate Tribunal has already taken the view that if Authorisation is prior to the enactment of the Code, then it can not be treated as a defect in the Application and authorisation letter, even if, issued prior to the enactment if I&B Code can be looked into for the purpose of entertaining an Application under Section 7 or 9 of the Code.”

8.6 A conjoint reading of the scheme of amalgamation, board resolution dated 14.11.2017 and the ratio laid down in **Tek Travels Private Limited (Supra)** demonstrates that Mr. Prakash Agarwal being the Chief Manager of Bank of Baroda was authorized to undertake all acts necessary for initiating and pursuing proceedings under IBC, 2016. Such authority remained operative even after the amalgamation of Vijaya Bank and Dena Bank with Bank of Baroda came into effect. Thus, Mr. Prakash Agarwal is authorized to file the present petition.

9. On Validity of Invocation:

9.1 It is an admitted position that Supreme & Company Limited is the Principal Borrower who availed of credit facilities with an overall limit of Rs. 117.04 Crores under a consortium arrangement led by the Financial Creditor. Further, vide order dated 05.06.2024 in C.P. (IB) No. 70/KB/2023 it has been admitted into CIRP.

9.2 The present Corporate Debtor as a Corporate Guarantor to the said credit facilities executed a Deed of Guarantee dated 24.06.2022, wherein it has been clearly stated that upon any event of default, and upon demand, the Corporate Debtor was duty bound to pay the Financial Creditor all the amounts payable by the Principal Borrower under the Loan

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Agreement. The deed further stipulates that the guarantee is a continuing one and shall remain in full force and effect till the Borrower repays the total amount loaned along with accruing interest.

- 9.3** Accordingly, the Financial Creditor had invoked guarantee and called upon the Corporate Debtor to pay the amount due within 60 days from the date of the notice. Since the first demand notice erroneously mentioned 28.07.2022 as the date of NPA, the aforementioned letter was recalled vide letter dated 22.03.2023 and a fresh Section 13(2) Demand Notice was issued on 18.04.2023 wherein the date of NPA was mentioned as 25.07.2022.
- 9.4** In this regard, the Corporate Debtor submits that it did not receive the recall notice dated 22.03.2023. Since the service of recall notice is a prerequisite for valid invocation of guarantee through the second Section 13(2) demand notice, therefore, the guarantee could not have been validly invoked in absence of proper recall of first demand notice. On the other hand, the Financial Creditor submits that the said notice was sent by post and was duly received by the Corporate Debtor. Thus, the issue which arises for consideration is when is the recall notice deemed to be delivered. However, there is no dispute about service and receipt of the first demand notice dated 28.07.2022.
- 9.5** In the case of **Rajandan Kumar, RP of Anindita Mukherjee, (2026) ibclaw.in 59 NCLT**, a coordinate bench of the NCLT has observed as under:

“Further the aforesaid demand notice was returned undelivered from the post office with remarks as “addressee absent” from the post office. It is well settled by a catena of judgments of the Hon’ble Supreme Court that where a notice is dispatched by registered post to the correct and last known address of the

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addressee and is returned with endorsements such as “refused,” “not available in house,” “house locked,” “shop closed,” “addressee not in station,” or “unclaimed,” the same constitutes deemed service. Reliance is placed upon judgment of Hon’ble Supreme Court of India in Jagish Singh Vs Natthu Singh and Shalini Singh Vs Avanish Kumar Singh and followed by the Hon’ble High Court at Calcutta in matter of RPNN Ltd Vs Tangail Construction.”

9.6 It is evident that the recall notice dated 22.03.2023 was dispatched to the last known address of the Corporate Debtor. It is further noted that the earlier demand notices dated 04.11.2022 and 18.04.2023 were duly served upon and acknowledged by the Corporate Debtor at the very same address. In such circumstances, the contention of the Corporate Debtor that the recall notice was not received cannot be accepted and is devoid of merit.

9.7 Further, Clause (20) of the Guarantee deed executed between the Corporate Debtor and Financial Creditor stipulates the manner in which a demand for payment is to be served and the circumstances under which such demand would deemed to be given. The said clause is reproduced herein below:

“any demand for payment or notice under this guarantee shall be sufficiently given if sent by post to or left at the last known address of the Guarantors or their successors or assigns, as the case may be. Such demand or notice shall be assumed to have reached the addressee when it would be delivered in due course of post, if given by post, and no period of limitation shall commence or run against BOB or in favour of the Guarantors until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post

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it shall be sufficient to prove that the envelope containing the notice when sent by post it shall be sufficient to prove that the envelope containing the said notice was posted and a certificate by any of the responsible officers of BOB that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against Guarantors, even though it was returned unserved on account of refusal of the Guarantors or otherwise.”

9.8 It can be inferred from the deed that the notice is deemed to be given when it would ordinarily be delivered in the due course of post. The actual receipt of the notice by the Corporate Debtor is not required. The notice would be presumed to be delivered on the date when the letter demanding the payment reaches the address in the normal course of transit.

9.9 As per the despatch register maintained by the Financial Creditor and the copy of the tracking receipt, it is evident that the letter dated 18.04.2023 was delivered on 24.04.2023. Accordingly with the demand for payment being served upon the Corporate Debtor the guarantee stood invoked. There is no gain saying that the Corporate Guarantee was not invoked and therefore the Company Petition is not maintainable.

10. On Classification of NPA:

10.1 The Corporate Debtor on several grounds contends that the classification of the Corporate Debtor as NPA is invalid. However, it is a settled law that the occurrence of default is not determined by classification of the Corporate Debtor's account as NPA. As long as a debt and default exist, proceedings under the Insolvency and Bankruptcy Code, 2016 can be initiated. Once default is established, insolvency proceedings can be initiated against the Corporate Debtor. Further, the liability of the

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guarantor is co-extensive with that of the Principal Borrower under Section 128 of the Indian Contract Act, 1872. Thus, the Financial Creditor is empowered to proceed against the Corporate Guarantor when the Principal Borrower commits default in repayment of dues.

10.2At this juncture, it would be apt to quote **Laxmi Pat Surana v Union of India, (2021) 8 SCC 481: MANU/SC/0221/2021** where it has been categorically held that:

“37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the Corporate Debtor commits “default”. Section 7 consciously uses the expression “default”- not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean 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. In cases where the corporate person has offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt.”

(emphasis added)

10.3It is also well settled that, in the case of a guarantee payable on demand, the period of limitation commences from the date of invocation of the guarantee and not from the date of execution thereof.

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10.4The Hon'ble NCLAT in the case of **Archana Deepak Vs Indian Bank 2023 SCC online NCLAT 192** had held that:

“31.It is clear that although the Guarantor immediately become liable on any default committed by the Principal Borrower but for initiating any action against the Guarantor, demand is to be made. Without there being any demand, it cannot be accepted that period of limitation against the guarantor shall commence”.

10.5In the present case, it is evident that the Financial Creditor first invoked the guarantee by issuing a demand notice dated 04.11.2022. Owing to an error in the earlier notice, a fresh demand notice dated 18.04.2023 was subsequently issued, proposing to invoke the guarantee once again. Since the present Application has been filed in 2023, the same is clearly within the prescribed period of limitation of three years computed from the date of invocation of the guarantee.

Conclusion

11. In the light of the enumerations supra, we have no hesitation to **admit** this petition filed under Section 7 of the I&B Code, 2016. Accordingly, we order the initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor by the following Orders:

- i.** The Application filed by **Bank of Baroda** (Financial Creditor) under Section 7 of the IBC, 2016, is hereby, **ADMITTED** for initiating the Corporate Insolvency Resolution Process in respect of **M C Industries**.
- ii.** The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. Moratorium under

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Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following:

- a.** The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment decree or order in any court of law, Tribunal, arbitration panel or other authority;
 - b.** Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its asset 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 (54 of 2002);
 - d.** The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- iii.** The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of CD under section 33 of the IBC, as the case may be.
- iv.** 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.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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- vi.** The Applicant has proposed the name of **Mr. Sanjai Kumar Gupta**, having Registration No. **IBBI/IPA-001/IP-P00592/2017-2018/11045** (Email ID: casanjaigupta@gmail.com) as the Interim Resolution Professional (“**IRP**”). We have perused that there is a written communication and consent of IRP in Form- 2 with Declaration, annexed at pages 41-43 to the petition, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. In addition, further necessary disclosures have been made by “**Mr. Sanjai Kumar Gupta**” as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint “**Mr. Sanjai Kumar Gupta**” as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions 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 I&B Code.
- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and call for the submission of claims under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the IBC, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC, 2016. 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 one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000** /-(Rupees Three Lakhs only) as payment to meet the cost of CIRP arising out of issuing public notice and inviting claims etc., as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the

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Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), Kolkata to whom the company is registered with, by all available means for updating the Master Data of the Corporate Debtor.
 - xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
 - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 12.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

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- 13.** Post the Company Petition on **20.07.2026** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

Cmde. Siddharth Mishra
Member (Technical)

Smt. Bidisha Banerjee
Member (Judicial)

Order signed on 12th June 2026.

Anubhuti S. (LRA)