NATIONAL COMPANY LAW TRIBUNAL,
CHANDIGARH BENCH, CHANDIGARH.

CP (IB) No.15/Chd/CHD/2017.
Date of Order: 27.04.2017.

Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL).
HON'BLE MS. DEEPA KRISHAN, MEMBER (TECHNICAL).

In the matter of:

PUNJAB NATIONAL BANK, a body corporate, constituted under Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970, having its H.O. at 7, Bikhaji Cama Place New Delhi-110607

And

Branch Office at ARMB, Sector 17-B, Chandigarh through its Attorney and Principal Officer, Shri Shambunath Gupta, Assistant General Manager Branch Office, ARMB, Sector 17-B, Chandigarh

. Petitioner/Financial Creditor

And in the matter of:

M/s James Hotels Ltd., a company registered under Companies Act, 1956, having its registered office at Block No 10, Sector 17-A, Chandigarh.

. .Corporate Debtor

Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate corporate insolvency resolution process in the matter of M/s James Hotels Ltd

Present: Mr.R.S Bhatia, Advocate with Mr.Tarun Bhutani, Manager (Law), Punjab National Bank
Mr.Anand Chhibbar, Senior Advocate with Mr. Nitish K Vasudeva, Advocate for Corporate Debtor.

ORDER.

This application is filed by Punjab National Bank, a body corporate, constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970, the Financial Creditor under Section 7 of Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as 'the Code') read with rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (for brevity 'the Rules') against the Corporate Debtor for having defaulted in making payment of the financial debt. The application has been filed through Shri Shambunath Gupta, Assistant General Manager, Branch Office ARMB, Sector 17, Chandigarh, who is authorised to file this application vide power of attorney dated 15.02 1995, copy of which is at Annexure 1. The competent authority has also permitted the filing of the application vide letter dated 30.03.2017 Annexure 2.

2. The application has been filed in Form No.1 of the Rules as required by Rule 4(1) of the Rules. The instant application has been filed exactly in terms of format in Form No.1, which is in five parts providing the necessary information. Under sub-rule (3) of rule 4 of the Rules, the petitioner is required to despatch copy of Application filed to Adjudicating Authority through the registered post or speed post to the registered office of

the Corporate Debtor. The petitioner attached the postal receipt dated 05 04.2017 of despatch of the application.

3. The matter was listed for the first time before us on 07 04.2017 and on the said date, appearance was made by Mr Anand Chhibbar, learned Senior Advocate with Mr. Gaurav Mankotia, Advocate for the Corporate Debtor'. On 07.04.2017 the petitioner/Financial Creditor was directed to file an affidavit of despatch of the notice to the registered office of 'Corporate Debtor' and also furnish fresh synopsis of dates and events, as the date of CP number was left blank. This compliance was to be made by 13.04.2017 The said compliances were made by the petitioner-financial creditor. Copy of these documents were supplied to the learned counsel opposite.

4 The matter was, however, adjourned from 07.04 12017 to 19.04.2017 due to spell of holidays from 08.04.2017 to 16.04.2017. 22.04.2017 and 23.04.2017 were the weekly holidays These observations are being made in order to calculate the period of 14 days within which, the application filed by the Financial Creditor' is to be decided. Taking the actual working days into account, the application is being disposed of within a period of 10 days from the date when it was listed before the Bench for the first time.

5. It is admitted fact that the 'Corporate Debtor' was incorporated on 25.08.1980 in the name of Mehfil Restaurants & Hotels Limited The name of the company was changed to James Hotels Limited in 1992 with fresh certificate of incorporation obtained on 20.03.1992. The certificate of incorporation of the Corporate Debtor' with changed name is at Annexure 3,

with which the Memorandum and Articles of Association have been annexed. The CIN number of the Corporate Debtor is L55101CH1980PLC004249 The 'Corporate Debtor has the authorised share capital of ₹14,00,00 000/- and its paid up capital is ₹8.00,05,000/-.

6. In Part III of Form No.1. the 'Financial Creditor' has proposed the Interim Resolution Professional as Mr.Vivek Goyal, House No.5756, Duplex Complex, MHC Manimajra and there is also the written communication in Form 2 annexed as Annexure 4. When the matter was listed on 19.04.2017 statement of the proposed IRP. Mr.Vivek Goyal was recorded. He stated that he has since been appointed as Insolvency Resolution Professional on 12.04.2017 i e after filing of this petition by the Hon'ble Principal Bench of National Company Law Tribunal New Delhi, in Insolvency Petition No.26 (ND) of 2017 titled as Prideco Commercial Projects Pvt Ltd. Vs M/s Era Infra Engineering Ltd. He further stated that he is eligible to be appointed as Resolution Professional in respect of Corporate Debtor in terms of Regulation 3 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short the Regulations) and that he is not a related party to the parties to this petition. He is neither employee nor promoter or partner etc. of the respondent company or connected with the petitioner Bank. He undertook to abide by the Code of Conduct set out by the Board under the Regulations.

7. We have heard learned counsel for the applicant-petitioner and the learned senior counsel for the 'Corporate Debtor' and perused the record with their able assistance.

8. The crucial issue before the Adjudicating Authority would be to ascertain the existence of default from the records of an information utility or on the basis of other evidence furnished by the financial creditor as per sub-section (3) of Section 7 of the Code The other contentions raised by the learned counsel for the parties would be discussed in the later part of this order

9. As per sub-section (3) of Section 7 of the 'Code', the 'financial creditor' has to furnish along with the application-

(a) record of the default recorded with the information utility or such other record or evidence of default as may be **specified**;

(b) the name of the resolution professional proposed to act as an interim resolution professional and

(c) any other information as may be **specified** by the Board.

The information utility has not so far been formed. Therefore, the existence of default has to be ascertained from the other record of evidence of default, which is attached with the instant petition.

10. The term '**specified**' is defined in Section 3 (32) of the Code as meaning specified by regulations made by the Board under this Code and the term 'specify shall be construed accordingly. Under regulation 8 (2) of the Regulations, the existence of debt due to the financial creditor may be proved on the basis of

(a) the records available with the information utility, if any;

(b) other relevant documents, including-

(i) a financial contract supported by financial statements as evidence of the debt;

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under the facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been repaid, or

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

11 In part IV of the application in Form 1 against the relevant columns, the applicant-financial creditor has mentioned the date of sanction of the term loan of ₹28 00 crores as per sanction letter dated 09.01.2010 and further amount of ₹3.40 crores sanctioned on 29 11.2012 The total amount in default is shown as ₹52 57,19,407/- along with interest upto 31 03.2017 for which the calculation sheets in respect of all the three different loans are at Annexure 5 to 7.

12. As per the information given in part V of Form No 1, the original term loan of ₹28 00 crores, was sanctioned to the 'Corporate Debtor' vide sanction order dated 28.01 2010. Annexure P-12 is the sanction order in favour of Corporate Debtor The terms and conditions of the term loan are annexed with this Annexure Annexure P-14 is the agreement dated 18.03.2010 in respect of hypothecation of assets to secure the loan executed by corporate debtor. Annexure P-15 dated 18.03.2010 is agreement of Hypothecation of movable assets forming part of Fixed/Block assets and agreement of hypothecation of current assets of the even date is at Annexure P-16.

13. It is further stated that the loan was rescheduled and second term loan was sanctioned on 29.11.2012 It is revealod that now the irregular

portion of the initial loan was transferred to FITL Account. The sanction order dated 29.11.2012 is Annexure P-13. As per this letter, the fresh loan consisted of term loan of ₹27.29 crores. additional term loan of ₹3.40 crores and funded interest term loan (FITL) of ₹3.38 crores were sanctioned. Alongwith this sanction letter, the terms and conditions are annexed.

14 Learned counsel for the petitioner referred to the repayment schedule in respect of term loan of ₹3 40 crores as fixed in the sanction letter to be 48 monthly instalments of ₹1 lac each commencing w.e.f April, 2015; 36 monthly instalment of ₹6 lacs each w.e.f. April, 2019 and 8 monthly instalment of ₹10 lac each with effect from April, 2022 The other condition was that the interest during the implementation period and thereafter to be serviced/recovered as and when levied was also to be paid. Similarly, the instalments were also fixed in respect of the repayment of the FITL and the rescheduled term loan of ₹27 29 crores with the clause of interest to be deposited as and when levied. The supplementary agreement dated 30.11.2012 on the basis of the aforesaid sanction in respect of ₹27.29 crores is Annexure P-17; for fresh term loan of ₹3.40 crores Annexure P-18. These agreements executed by the corporate-debtor also contain the repayment schedule as per the sanction letter. The fresh hypothecation agreement in respect of all the three loans are at Annexure P-19 and P-20 both dated 30.11.2012.

15. The petitioner Bank has also disclosed that in order to secure the loan, the corporate debtor mortgaged the Hotel constructed on the land situated on commercial plot measuring 9602 square yards in Block No 1 Sector 17-A Chandigarh, in which the Corporate Debtor has lease hold right. In the list of events, it is also pointed out that State Bank of India and United

Bank of India also sanctioned the term loans to the Corporate Debtor. SBI has granted the term loan of ₹45 crores and United Bank of India gave term loan of ₹9 5 crores. The SBI has assigned the loan to ARCIL. The Financial Institutions have pari passu charge on the aforesaid property along with the ARCIL and United Bank of India. The Certificates of Registration of charges with the ROC are Annexure-8 and issued by ROC on 20.04.2010 and Annexure-9 in respect of the charge created on 30.11.2012 Annexure-9 was issued on 22.01.2013.

16. The question basically that falls for consideration is whether the Corporate Debtor has defaulted in making the payment. For that also, there was no dispute in the written objections filed by the Corporate Debtor, but the argument vehemently raised by learned Senior counsel was that the Corporate Debtor has seriously challenged the manner of calculation of the outstanding amount and therefore, the amount of default cannot be possibly determined, particularly when various litigations are pending about the amount of default as claimed by the petitioner Bank It would be pertinent to refer to the definition of term 'default' given in Section 3 (12) of the Code. The 'default means non-payment of debt, when whole or **any part or instalment** of the amount of debt has become due and payable amount is not repaid by the debtor or the corporate debtor, as the case may be. So the term used is very wide and thus calculations of the exact amount of default is not required to be determined by the Tribunal before admitting the application. This aspect has been properly taken care of by the Statutory Regulations. Regulation 10 of the Regulations says that the interim resolution professional or the resolution professional, as the case may be,

may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim Under Regulation 11, the creditor has to bear the cost of proving the debt due to such creditor.

17 It would also be relevant to refer to regulation 14 of the Regulations, which reads as under

> "14. (1) Where the amount claimed by a creditor is not precise due to any contingency or other reason the interim resolution professional or the resolution professional as the case may be, shall make the best estimate of the amount of the claim based on the information available with them.
>
> (2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision "

So. the above provisions would take care of contentions raised with vehemence by the learned senior counsel for respondent.

18. The primary documents for determining the default would be the copies of the statements of account certified under the Banker's Book's Evidence Act Learned counsel for the petitioner would refer to the statement of account Annexure 22 relating to the term loan of ₹28 crores: Annexure 23 in respect of fresh term loan of ₹3 4 crores and Annexure 24 in respect of FITL loan of ₹3.38 crores. These statements would fortify the contention of learned counsel for the applicant that no instalment was deposited after the account was declared NPA in the year 2014.

19. The applicant-financial creditor has also made the calculation chart of outstanding amount upto 31.03.2017 Annexure 5 to 7 and as per default statements the total amount comes to be ₹52 57 19,407, though this calculation may not be accepted, as the exact amount of default to be ultimately determined, in case the IRP is appointed. But the fact remains that there is default committed by the Corporate Debtor in making the payments to the financial creditor.

20. In the statutory Form I at Sr.No 6 of Part-V the applicant-'corporate debtor' is to inform, if there is any record of default available with any credit information company. The applicant has relied upon Annexure 21, the report of Credit Information Bureau (India) Limited to be also evidencing the default committed by the corporate debtor.

21. The corporate debtor has stated in the objection petition that the Applicant/ Financial Creditor intends to thwart the working of the company which even after turbulent times managed to sustain itself and has also approached the Bank for restructuring the loan and to make one-time settlement. The Bank, however, wants to grab the possession of the property and sell to the land mafia for peanuts. It was further alleged that Corporate Debtor was always ready to do one-time settlement and request was also made to the Bank for OTS, but same was not accepted by the Bank. It was stated that many debtors have been privileged with the offer of restructuring of their loans throughout the country. The above are not the relevant question on the basis of which the application can be rejected It is rather not the version of the corporate debtor in the objection petition that any instalment was paid by it after the account was declared NPA in the year 2014. The

above facts amount to admission of the default by the corporate debtor The apprehension projected by the 'corporate debtor' can be taken care of by the IRP who has to take charge of the company as a going concern. He may even make efforts to settle the debts with the applicant.

22. The learned senior counsel for the Corporate Debtor however, laid emphasis on the language of sub-section 5 of Section 5 of the Code and vehemently contended that the Adjudicating Authority is to first satisfy itself that the application is complete and to then determine that the Corporate Debtor has committed default. Learned counsel submits that the application cannot be considered as complete as the information in respect of various litigations has not been provided. The other contention is that even no notice of this petition to the other financial creditors to whom the corporate debtor owes about 60% of total loan, namely: the SBI now ARCIL as well as United Bank of India. The learned senior counsel further submitted that there are about 38,80.05,000 shareholders of the company and shareholding of the public is to the extent of about 47.62%. It is vehemently contended that in case the application is admitted, the interest of large number of people who are not aware of these proceedings would be jeopardised. The learned counsel would further contend that the interest of other shareholders cannot be possibly protected without any publication of notice of the instant petition

23. Learned senior counsel further submitted that the petitioner Bank has in fact concealed material facts by simply attaching copy of notice under Section 13(2) of SARFAESI Act 2002, dated 09.08.2014, though the subsequent notice under Section 13 (4) dated 11.01.2016 was also issued, annexed with the objection petition at page 225 of the objections, in which

the financial creditor i.e. PNB claimed to be the Consortium Lenders Leader. with the other financial creditors as United Bank of India and ARCIL. It was further contended that a petition before the Debt Recovery Tribunal can be filed only after obtaining consent of 60% of the creditors by virtue of Section 13 (9) of the SARFAESI Act, 2002 and such a principle should have been followed.

24. Having given our thoughtful consideration to the above contentions, we are of the view that on plain reading of sub-section (1) of Section 7 of the Code, the consent of other 'financial creditors to the extent of any percentage was never intended nor such an interpretation can be implied Section 7 (1) of the Code says that the financial creditor either by itself or jointly with the other financial creditors may file an application for initiating corporate insolvency resolution process against the corporate debtor before the Adjudicating Authority when a default has occurred As per explanation to this sub-section, a default includes a default in respect of financial debt not only to the petitioner financial creditor, but to any other financial creditor of the corporate debtor. The above provision is inclusive and has wide implication and the eligibility of moving application by one of the financial creditors cannot be curtailed. The requirement of sub Section (2) of Section 7 is filing of an application by the financial creditor in such form and manner as may be prescribed Form has statutory backing and no additional information other than what is intended in different parts of form, can be imported. Part 1 of the Form requires the particulars of the financial creditor making the application and there is no indication to provide the information relating to the other financial creditors Requirement of service

of notice to the shareholders by publication or impleading the other financial creditors as parties, is neither required under the provisions of the Code nor under the Rules framed thereunder.

25. The learned counsel for applicant-Bank seems to be quite correct in contending that the consent of 60% of the creditors as required by Section 9 of SARFAESI Act, 2002 cannot be applied to the proceedings under the Code. It is apparent from the amendment made in Section 13 (9) of SARFAESI Act, 2002 by virtue of Section 251 of the Code and its schedule VI. Now the requirement of the consent under Section 13 (9) of SARFAESI Act, has been made subject to the provisions of Insolvency and Bankruptcy Code, 2016 and the 'Code' enables the creditor either by itself or jointly to trigger the insolvency resolution process.

26. With regard to the contention raised by the learned senior counsel for the corporate debtor, as to how to protect the interest of other financial creditors i.e. ARCIL and United Bank of India. We find that it is for the IRP to take care of these questions on account of multifarious duties assigned to him under the Code itself. The IRP is to constitute a committee of the creditors, which has to comprise of all the financial creditors of the corporate debtor, as provided in Section 21 of the Code. The issue of pari-passu charge in respect of the same property by the three financial creditors is for the IRP to take care because he would not be representing the applicant, but all the creditors, financial creditors and others, while taking over the charge of corporate debtor as a going concern. There are various other safeguards with onerous duties cast upon the IRP as laid down in

Section 21 of the Code with regard to the claim of creditors of the corporate debtor.

27. Otherwise the contention of learned counsel for the petitioner/financial creditor that the corporate debtor has no right to be heard or that it cannot file the objections being not provided in the Code or rules framed thereunder cannot be sustained because the principles of natural justice to the extent permissible within the time line prescribed under the Act should be complied. This principle can be implied from the provisions of Rule 4 of the Rules. Sub-section (3) of Section 4 says that the applicant shall despatch forthwith a copy of the application filed with the Adjudicating Authority by registered post or speed post to the registered office of the Corporate Debtor The objective of the aforesaid rule is to alert the corporate debtor so as to enable it to deposit the amount of default or to raise objections though of course within the possible time frame as may be fixed by the Adjudicating Authority so as to comply with the statutory time line of disposal of the application. In view of rule 4(3) of the Rules as discussed above, which requires notice to be sent to the corporate debtor only, it emerges that the legislature never intended the public notice to the shareholders or for that matter any other person

28. Coming to the other contention, in the synopsis dated 11.04 2017, the applicant/Financial Creditor has given the list of 19 cases relating to this corporate debtor, but 10 cases out of those have been disposed of as mentioned in the said table. The following cases, however, are still pending:

CASES PENDING IN PUNJAB AND HARYANA HIGH COURT.			
CASE NO	TITLE	NEXT DATE	STATUS
CWP/24392/2016	PNB Vs. UT Magistrate and others.	01 05 2017	Pending
CP/48/2016	UBI Vs. James Hotel.	17 07.2017	Pending
CASES PENDING IN BOMBAY HIGH COURT.			
WP-2341-2016	H.S. Arora Vs. BOD, PNB	20.03.2017	Pending
CASES PENDING IN DEBT RECOVERY APPELLATE TRIBUNAL			
Mis.Appeal 379-2016	PNB Vs. James Hotels & Ors.	05.05 2017	Pending
CASES PENDING BEFORE DRT, CHANDIGARH.			
SARR/2028/2016 Now SA/225/2016	James Hotel Vs SBI & Ors.	26 04 2017	Pending
SARR/1976/2016	A.S. Bhullar Vs SBI & Ors.	27.10.2016	Pending
OA/1270/2016	PNB Vs. James Hotel	17.05.2017	Pending
OA/215/2016	ARCIL Vs James Hotel	31.05.2017	Pending
OA/1110/2016	UBI Vs. James Hotel	31.05 2017	Pending

It is also informed in the synopsis that besides the above information, the other litigation between the company and other co-shareholders is also pending. These cases include Civil Writ petitions filed in the High Court at the instance of the corporate debtor and its directors/promoters, apart from the litigation filed at the instance of ARCIL and also the petitioner/financial creditor. The learned senior counsel for corporate debtor vehemently contended that copies of those cases have not been filed to know the nature of controversy involved in different forums. It was further submitted that the Adjudicating Authority would not be able to know the nature of the dispute in these cases in the absence whereof the petition cannot be considered as complete nor the

Adjudicating Authority would be able to satisfy itself about the default for the purpose of admitting the application.

29. As discussed already, we have found that there is default committed by the corporate debtor and the rest of the issues can be conveniently dealt with under various provisions of the Code. The only bar for a person, who is not eligible to make application is contained in Section 11 of the Code, which reads as under:

> "The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter namely
>
> (a) a corporate debtor having completed corporate insolvency resolution process, or
>
> (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
>
> (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter or
>
> (d) a corporate debtor in respect of whom a liquidation order has been passed.

The applicant does not fall under any of the above clauses to debar it from filing the instant petition. It is none of the case of the parties that any liquidation order has been passed against the corporate debtor.

30. Pendency of various litigations in different forums as revealed by the applicant or any other case(s) would have no bearing in the instant

petition unless there is any adjudication in respect of the claim made by the applicant or the default of the corporate debtor. Taking a contrary view would make the provisions of the Code as redundant As per the particulars given in Form 1, the petitioner has given reference to the OA No 1270 of 2015 before DRT-II, Chandigarh where the matter is still pending adjudication Even the other financial creditors having not come before the Adjudicating Authority so far.

31 Learned counsel for Applicant referred to **M/s Transcore Vs Union of India and Anr - AIR 2007 Supreme Court 712(1)** in support of his contention. One of the question before the Hon ble Supreme Court was whether the Bank or Financial Institutions, having elected to seek remedy in terms of DRT Act, 1993 can still take recourse to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (NPA Act for short) It was held by the Hon'ble Supreme Court that NPA Act was an additional remedy under the DRT Act. Together they constitute one remedy and therefore, the doctrine of election does not apply Even according to SNELL's Equity (31st Edition page 119) the doctrine of remedies is available only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. It was further held that there is no repugnancy or inconsistency between the two remedies and therefore the doctrine of election has no application. In the instant case rather the provisions of the 'Code' have overriding effect and takes care of the suits or proceedings against the Corporate Debtor already pending.

32. There is a clear difference in the intention of the legislature, in cases of application filed by 'Operational Creditors' and 'Financial Creditors'. An application for Corporate Insolvency Resolution Process by Operational Creditor can be filed under section 9 of the 'Code'. One of the conditions for admitting the application is that no notice of the dispute has been received by the Operational Creditor or there is no record of dispute in the information utility. There is no such condition while taking up the application under section 7 of the Act about the existence of the dispute in relation to the default committed by the Corporate Debtor.

33. In any case, the legislature has taken complete care with regard to the pending cases. Sub-section (1) of Section 14 of the Code says that subject to the provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

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

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

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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

So, even the 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, would stand stayed. There is no indication in any provision of the Code or the Rules framed thereunder that mere pendency of the suit or any litigation by or against the corporate debtor has any bearing upon the proceeding of the application under the Code. This intention of the legislature is manifest from the import of Section 238 of the Code, which reads as under:

> "The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

34. The Code is the later legislation and has the overriding effect over the other laws relating to the issues in question. If the corporate debtor or the directors etc have filed any suit or proceedings, it may be contended that those proceedings are not against the corporate debtor for applicability of Section 14 of the Code, but such a proposition may not arise at this stage.

35. The petitioner Bank had already issued a notice dated 20.08.2015 (Annexure R-1) attached with the objections, for initiating the proceedings for declaring the corporate debtor as wilful defaulter. For that matter the applicant Bank has already filed OA before the DRT. Learned senior counsel for the corporate debtor contended that the present petition to declare the respondent/corporate debtor as insolvent would be setting up

an inconsistent case. We have already discussed above that the provisions of the Code have overriding effect over other laws and being the latest law on the subject, the proceedings before the DRT will not debar the right of the financial creditor to file application under Section 7 of the Code.

36. The next contention was that by taking over of custody of the premises of the corporate debtor, it will seriously prejudice the respondent/corporate debtor in pursuing the criminal case already pending on a private complaint against the Bank official and others as they could tamper with the evidence We find that the insolvency professional has an onerous duty not to act an agent of the applicant, but he has to abide by the Code of Conduct and follow the norms framed by the Board. He has to maintain the high ethical standards While taking in custody the premises and the articles lying therein. we can direct the IRP to prepare an inventory of all the articles, which are lying there and to keep them in safe custody. wherever necessary and while preparing the inventory of articles, one of the authorised representative of the corporate debtor, can be permitted to associate himself in the said process. but such a person would be duty bound to attest the inventory as a witness.

37. It was also submitted for the corporate debtor that the proposed IRP is already appointed in another case, by the Hon'ble Principal Bench after the filing of this petition, but this aspect can be taken care of, as we are of the view that the nature of involvement in the business of the corporate debtor. IRP may not be able to manage the affairs of the corporate debtor. Learned counsel for the petitioner in fact had even suggested that the Bank would be proposing the name of other IRP by filing the fresh

communication in form No.2 so that this objection is removed. The fresh written communication in Form II has been filed in the registry by the applicant proposing the name of Navneet Gupta having registration No.IBBI/IPA-01/IP-00453/-2016-17/2006 as Interim Resolution Professional in place of Mr.Vivek Goyal. The Form is complete in all respect.

38. It was also contented on behalf of the Corporate Debtor that there is no prayer made by the Applicant in the instant case Perusal of Form No.1 in which the Financial Creditor has to apply does not contain any such clause. though there is such a requirement under the Recovery of debts and Bankruptcy Act, 1993. The application before the DRT is to be filed in Form No.II of The Debt Recovery Tribunal (Procedure) Rules, 1993 at Sr No.VI for the relief prayed for or any other relief, but there is no such requirement in Form No.1 of the Rules. obviously because the consequences of admission are provided under provisions of the Code itself and the Rules framed thereunder.

39. The petition. therefore. is admitted declaring the moratorium with the following directions:

i) That the Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein, 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

ii) That the supply of essential goods or services to the 'Corporate Debtor', if continuing, shall not be terminated or suspended or interrupted during moratorium period

iii) That the provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

iv) That the order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 as the case may be

40 As per the sub-section (1) of Section 16, the Adjudicating Authority is to appoint Insolvency Resolution Professional within 14 days of the insolvency commencement date As per sub-section (6) of section 7, the Corporate Insolvency Resolution Process shall commence from the date of the admission of the application under sub-section (5).

The matter is adjourned for further directions and passing formal order for appointment of Insolvency Resolution Professional on 08.5 2017 The order be communicated to the applicant/Financial Creditor and the Corporate Debtor forthwith.

Sd/-
(Deepa Krishan)
Member (Technical)

Sd/-
(Justice R.P Nagrath)
Member (Judicial)

Pronounced
April 27, 2017
Anwar