

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-1095(ND)2020

IN THE MATTER OF:

Pearson India Education Services Private Limited

Registered office at :
The HIVE, 3rd Floor,
No.44, Pilliyar Koil Street,
Jawaharlal Nehru Road,
Anna Nagar,
Chennai 600040

...Applicant/Operational Creditor

VERSUS

M/s. U.B.S. Publishers Distributors Private Limited

Registered office at :
4348/4a, Fourth Floor,
Ansari Road, Darya Ganj,
New Delhi - 110002

...Respondent/Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on : 21.10.2022

CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Sumant Nayak, Adv. Mohit Chadha,
Adv. Nilesh Sharma

For the Respondent : Adv. Shravan Niranjana

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

M/s Pearson India Education Services Pvt. Ltd. (hereinafter, **the ‘Applicant/Operational Creditor’**) has filed the present Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**the ‘IBC’, 2016’**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. U.B.S. Publishers Distributors Pvt. Ltd. (hereinafter, the **‘Respondent’**).

2. The Respondent namely, M/s. U.B.S. Publishers Distributors Pvt. Ltd. is a Company incorporated on 17.05.1969 with CIN U74899DL1969PTC005042 under the provisions of the erstwhile Companies Act, 1956, having its registered Office at 4384/4A, Fourth Floor, Ansari Road, Darya Ganj, New Delhi-110002, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs.10,00,000/- and Paid-up Share Capital is Rs. 9,50,300/- as per the Master Data of the Respondent.

3. It is submitted that the Applicant is engaged in the activity of providing “Education Support Services” including academic and non-academic services to schools along with support services pertaining to the operation of schools. The Respondent raised various purchase orders upon the applicant for delivery of books and accordingly, the applicant

raised invoices against the said delivery of books. On 06.04.2018, the Applicant and the Respondent executed two agreements, namely, the sale and purchase Agreement for Offline purchases, and sale and Purchase Agreement for online purchases (hereinafter, '**Sale and Purchase Agreements**').

4. The detailed particulars of the Operational Debt claimed by the applicant in Part IV of its application are reproduced below:

PARTICULARS OF OPERATIONAL DEBT		
1.	TOTAL AMOUNT OF DEBT	The total debt due and payable in default by non-payment by the Corporate Debtor is to the tune of Rs. 16,54,52,216/- (Rupees Sixteen Crores Fifty-Four Lakhs Fifty-Two Thousand Two Hundred and Sixteen Only) as on 15.07.2020 [<i>exclusive of interest</i>]. The first invoice fell due and payable from 31.10.2017.
	DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	The interest calculated till 15.07.2020 is to the tune of Rs. 2,12,58,005/- (Rupees Two Crore Twelve Lakh Fifty-Eight Thousand and Five Only) . The Operational Creditor and the Corporate Debtor had a long-standing relationship, wherein, the Operational Creditor has supplied books to the Corporate Debtor whenever a purchase order was issued by the Corporate Debtor.

2.	AMOUNT CLAIMED TO BE IN DEFAULT	The first debt fell due on 31.10.2017.
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Page 54 of 65

	<p>AND THE DATE ON WHICH DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF THE DEFAULT IN TABULATED FORM)</p>	<p>Total amount of claim as on 15.07.2020: Rs. 18,67,10,221/- (Rupees Eighteen Crore Sixty-Seven Lakh Ten Thousand Two Hundred and Twenty-One Only) . comprising of:</p> <p style="padding-left: 40px;">a. Rs. 16,54,52,216/- (Rupees Sixteen Crores Fifty-Four Lakhs Fifty-Two Thousand Two Hundred and Sixteen Only) [exclusive of the interest amount]; and</p> <p style="padding-left: 40px;">b. Rs. 2,12,58,005/- (Rupees Two Crore Twelve Lakh Fifty-Eight Thousand and Five Only), as the interest as calculated up to 15.07.2020.</p> <p>Copy of a working sheet which exhibits ageing of the invoices and dues receivable form the Corporate Debtor with the copies of purchase orders and the invoices along with their proof of delivery is provided and is annexed as Annexure II y.</p>
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5. From the part IV of the Application, it is seen that the Applicant has claimed the principal amount of Rs.16,54,52,216/- and interest amount of Rs.2,12,58,005/- as the operational debt due and payable by the Respondent.

6. It is stated by the Applicant that it had issued a Demand Notice under Section 8 of the I&B Code, 2016 to the Respondent on 22 July 2020 by way of post and email, which was received via post by the Respondent on 27 July 2020. Despite receipt of the Demand Notice, the Respondent neither paid the outstanding dues nor raised any dispute within 10 days and the invoices remain unpaid. Hence, this Application. However, after lapse of more than 10 days, the Respondent through its counsel issued a response wherein, the Respondent tried to weave a story as an afterthought with a motive to raise a dispute, which never existed and was never raised upon receipt of the Demand Notice.

7. On issuance of notice, the Respondent has filed the reply on 27.10.2021 and submitted that -

7.1. There is no crystallized 'Operational Debt' due and payable by the Respondent in view of the statutory bar under Section 10A of IBC on any claimed default arising after 25.03.2020. For this reason, the Petitioner is deliberately silent on the date of default in the Petition, which is therefore, defective and liable to be rejected.

7.2. The Petitioner itself has stated that "Due to some concerns with respect to decrease in business between the parties, return of stock and non-payment of over dues by the Corporate Debtor", the Operational Creditor had conducted a meeting with the Corporate Debtor on 30.07.2019. Further, in response to the Petitioner's letter dated 15.01.2020, the Respondent vide email dated 23.01.2020 again raised

dispute as regards to the alleged amounts claimed as they did not take into account the adjustments towards returns and part payments and thus, did not match the accounts maintained by Respondent. This clearly establishes that there was no crystallized debt even as on 23.01.2020 owing to disputes between the parties.

7.3. The Respondent is still holding unsold stock which was to be returned to the Petitioner. However, the Petitioner, after having agreed to accept the same, refused to accept the same as apparent from its email dated 5 August 2020. Thus, the alleged amount, if any, is to be adjusted against return of unsold stock and the accounts to be reconciled.

7.4. In terms the Sale-Purchase Agreements dated 6 April 2018 between the parties, all pending disputes (as regards unsold stock, return of stock and reconciliation of accounts) or claims are to be resolved by mutual discussion, failing which the same shall be referred to arbitration. Since the Petitioner and Respondent have agreed to arbitration as the mode of resolution of disputes and claims, the present Petition is contrary to the agreed terms of the agreements.

7.5. There were several prevailing disputes in relation to reconciliation and settlement of accounts between the parties as evident by way of emails dated 13.03.2019, 14.03.2019 and 24.02.2020 by the Respondent, which are acknowledged vide emails dated 03.01.2020, 19.02. 2020 and 24.02.2020 by the Petitioner's representative Mr Suresh Gupta and Mr. Harish Chander's email dated 17.02. 2020.

8. The Applicant has also filed its Written Submissions and provided the details of the transactions in a tabular form, as follows:

Area of supply	Unique code for area of supply	Summary of invoices annexed to the petition	Proof of debt due and payable as exhibited in the petition as per each TS	Period of default
Delhi	200601	291(vol 2) to 311 (vol 2)	312 (Vol 2) to 2857 (Vol 15)	Period of invoices raised between 14.12.2018 to 31.10.2019
Bangalore	200602	2858 (Vol 15) to 2859 (Vol 15)	2860 (Vol 15) To 3105 (Vol 16)	Period of invoices raised between

				04.05.2019 to 31.10.2019
Mumbai	200603	3106 (Vol 17) to 3121 (Vol 17)	3122 (Vol 17) to 5354 (Vol 28)	29.06.2017 to 3.12.2019
Chennai	200604	5355 (Vol 28) to 5360 (Vol 28)	5361 (Vol 28) to 6616 (Vol 35)	31.3.2019 to 30.11.2019
Kolkata	200605	6617 (Vol 35) to 6619 (Vol 35)	6620 (Vol 35) to 7060 (Vol 37)	12.12.2018 to 30.11.2019
Patna	200606	7061 (Vol 37) to 7064 (Vol 37)	7065 (vol 37) to 7970 (Vol 42)	30.03.2019 to 30.11.2019
Bhopal	200607	7971 (Vol 42) to 7972 (Vol 42)	7973 (Vol 42) to 8176 (Vol 43)	31.05.2019 to 30.11.2019
Ernakulam	200608	8177 (Vol 43), 9611 to 9614 (Vol 51)	8176 (Vol 43) to 9610 (Vol 51)	31.01.2019 to 30.11.2019
Lucknow	200609	9616 (Vol 51) to 9619 (Vol 51)	9620 (Vol 51) to 10159 (Vol 54)	28.02.2019 to 30.11.2019
Pune	200610	10160 (Vol 54) to 10163 (Vol 54)	10164 (Vol 54) to 10843 (Vol 57)	15.12.2018 to 30.10.2019
Hyderabad	200611	10844 (Vol 57) to 10845 (Vol 57)	10846 (Vol 57) to 11010 (Vol 58)	10.11.2018 to 30.09.2019
Bhubaneswar	201015	11011 (Vol 58) to 11012 (Vol 58)	11013 (Vol 58) to 11351 (Vol 60)	23.12.2017 to 26.03.2018
Ahmedabad	201174	11352 (Vol 60)	11353 (Vol 60) to 11401 (Vol 60)	24.12.2017 to 07.05.2019
Guwahati	201184	11402 (Vol 60) to 11403 (Vol 60)	11404 (Vol 60) to 11679 (Vol 62)	15.03.2019 to 30.11.2019
Online (Delhi)	203126	11958 (Vol 63) to 11961 (Vol 63)	11962 (Vol 63) to 13559 (Vol 71)	11.09.2018 to 28.12.2018

9. The matter came up for final hearing on 03.10.2022, during the course of which Mr. Shravan Niranjana, Ld. Counsel appearing for the Respondent admitted the debt, though he added that the exact amount of debt has not been crystallized.

10. We have heard the Ld. Counsels for both the parties and perused the documents and written submissions placed on record. The Respondent has contended that the Application is barred by Section 10A of IBC, 2016, therefore, **we would like to examine whether the present Application is barred by Section 10A of IBC, 2016 ?**

11. On perusal of the application, it is observed that the Applicant and Respondent had entered into two agreements dated 06.04.2018 namely, the sale and purchase Agreement for offline purchases & sales and Purchase Agreement for online purchases. Accordingly, the Applicant has submitted that it supplied books and raised the invoices between June, 2017 and December, 2019 as depicted in the table reproduced in the paragraph 8 above.

12. At this stage, first we would like to visit the terms and conditions of the Purchase Agreement for online purchases (for brevity, the '**Online Agreement**'), in order to examine whether the due dates of payments are falling within the period of suspension stipulated under Section 10A ? The relevant clause relating to payments in the 'Online Agreement' is reproduced below:

6. **PAYMENT**

- (a) The Customer shall pay the Company at Delhi for the books purchased and delivered in adherence of payment terms as specified in Annexure-I to this Agreement.
- (b) The Company shall send a monthly statement to the Customer specifying the overall credit limit available to the Customer after taking into account all outstanding invoices. The Credit limit of Customer shall be finalized by Company based on their sole discretion in line with the information provided by Customer in the "Credit Application Form" which is attached and specified as Annexure-II to this Agreement.
- (c) The Customer shall pay the Company as per the agreed Credit Period specified in Annexure I of the Agreement, against invoice(s) raised by the Company.
- (d) In case the Customer agrees to pay the Company through post dated cheques as per the agreed Credit Period specified in Annexure I of the Agreement then the Customer shall send post dated cheques for a particular billing within 15th of the succeeding month.

For Pearson India Education Services Private Limited



Authorized Signatory

TRUE COPY

A. Arunima



- (e) It is agreed by the parties to this Agreement that time delay from the side of Customer in releasing the payment to the Company shall attract interest on delayed payment at the rate of eighteen percent (18%) per annum payable by Customer to Company, in addition to opportunity cost of capital and other losses as incurred by Company. However, the relaxation on terms of interest as mentioned in clause 6(c) may be provided by Company basis the business continuity plans agreed by both parties. *The current provision will prevail.*

ANNEXURE-I

I. CREDIT TERMS

The Customer shall pay the Company at Delhi for the books purchased and delivered in terms of clause 4 of this Agreement within 120 days from the date of each invoice issued by Company to Customer.

13. Thus, it is seen from the condition at serial 6(a) of the Online Agreement read with Credit Terms given in the Annexure-I thereto (reproduced above), the Respondent was liable to pay the Applicant Company at Delhi within 120 days from the date of each invoice. Hence, at this stage, we refer to the Work Sheet (containing summary details of invoices raised) for the online purchases (i.e., Code No. 203126 of the Respondent) as provided by the Applicant in annexure II-z of the application and which are reproduced overleaf :

CUSTOMER CODE	DOCUMENT DATE	DOCUMENT (INV) NUMBER	CUSTOMER REFERENCE (PO reference)	Q/S Amount	DUE DATE	POD No	Overdue Month as of 15 Jul 2020	Interest Rate	Interest Amount	Outstanding & Interest
203126	11-09-2018	11074896	U/S4787/PO119981	16,898.45	30-01-2019	62847078 15-SEP	17.5	18%	4,436	21,334.29
203126	12-09-2018	11075043	U/R3391/PO119656	1,55,151.15	30-01-2019	62847079 15-SEP	17.5	18%	40,727	1,95,878.33
203126	13-09-2018	11075197	U/R3036/PO119666	38,632.00	30-01-2019	63807647 26-OCT	17.5	18%	10,141	48,773.90
203126	13-09-2018	11075205	U/R3035/PO119670	18,108.75	30-01-2019	63808403 27-OCT	17.5	18%	4,754	22,863.30
203126	13-09-2018	11075353	U/R3390/PO119658	17,556.00	30-01-2019	63807620 25-OCT	17.5	18%	4,608	22,164.45
203126	13-09-2018	11075363	U/R3388/PO-PO119655	70,224.00	30-01-2019	63807647 26-OCT	17.5	18%	18,434	88,657.80
203126	13-09-2018	11075365	U/R3390/PO119659	32,917.50	30-01-2019	63808403 27-OCT	17.5	18%	8,641	41,558.34
203126	13-09-2018	11075367	U/R3389/PO119657	43,890.00	30-01-2019	63807650 26-OCT	17.5	18%	11,521	55,411.13
203126	13-09-2018	11075372	U/R3391/PO119656	54,862.50	30-01-2019	64898326 25-OCT	17.5	18%	14,401	69,263.91
203126	14-09-2018	11075442	U/D2980/PO119667	30,181.25	30-01-2019	64898326 25-OCT	17.5	18%	7,923	38,103.83
203126	14-09-2018	11075443	U/D2978/PO119669	9,658.00	30-01-2019	63808408 27-OCT	17.5	18%	2,535	12,193.23
203126	14-09-2018	11075445	U/D2979/PO119668	24,145.00	30-01-2019	63807649 26-OCT	17.5	18%	6,338	30,483.06
203126	19-09-2018	11076145	U/D3008/PO120028	35,178.00	30-01-2019	62847412 24-SEP	17.5	18%	9,234	44,412.23
203126	19-09-2018	11076159	U/D3008/PO120027	29,021.85	30-01-2019	63847414 24-SEP	17.5	18%	7,618	36,640.09
203126	19-09-2018	11076160	U/D3008/PO120028	23,745.15	30-01-2019	63847413 24-SEP	17.5	18%	6,233	29,978.25
203126	19-09-2018	11076252	U/D3017/PO119994	1,645.60	30-01-2019	62847421 25-SEP	17.5	18%	432	2,077.57
203126	19-09-2018	11076253	U/R3089/PO119995	3,016.75	30-01-2019	62847422 25-SEP	17.5	18%	792	3,808.65
203126	19-09-2018	11076254	U/D3017/PO119992	5,211.25	30-01-2019	62847414 24-SEP	17.5	18%	1,368	6,579.20
203126	19-09-2018	11076255	U/D3017/PO119993	4,114.00	30-01-2019	62847413 24-SEP	17.5	18%	1,080	5,193.93
203126	19-09-2018	11076271	U/R3088/PO119991	6,582.40	30-01-2019	62847412 24-SEP	17.5	18%	1,728	8,310.28
203126	22-09-2018	11076860	U/R3129/PO119705	7,95,179.44	30-01-2019	63807645 26-OCT	17.5	18%	2,08,735	10,03,914.04
203126	24-09-2018	11076898	U/D3067/PO119792	5,77,751.13	30-01-2019	62847460 27-SEP	17.5	18%	1,51,660	7,29,410.80
203126	24-09-2018	11076909	U/R3130/PO119879	5,18,656.59	30-01-2019	62847449 27-SEP	17.5	18%	1,36,147	6,54,803.94
203126	24-09-2018	11076910	U/D3067/119750	6,23,576.45	30-01-2019	62847461 27-SEP	17.5	18%	1,63,689	7,87,265.27
203126	25-09-2018	11077082	U/R3035/PO119670	13,183.50	30-01-2019	62847810 28-SEP	17.5	18%	3,461	16,644.17
203126	25-09-2018	11077083	U/D2979/PO119668	17,578.00	30-01-2019	62847476 28-SEP	17.5	18%	4,614	22,192.23
203126	25-09-2018	11077086	U/D2978/PO119669	7,031.20	30-01-2019	62847479 28-SEP	17.5	18%	1,846	8,876.89
203126	25-09-2018	11077089	U/D2980/PO119667	21,972.50	30-01-2019	62847808 28-SEP	17.5	18%	5,768	27,740.28
203126	25-09-2018	11077122	U/D3067/PO119836	2,36,174.50	30-01-2019	62847479 28-SEP	17.5	18%	61,996	2,98,170.31
203126	25-09-2018	11077165	U/R3036/PO119666	28,124.80	30-01-2019	62847480 28-SEP	17.5	18%	7,383	35,507.56
203126	26-09-2018	11077395	U/D3017/PO119994	2,310.00	30-01-2019	62847513 01-OCT	17.5	18%	606	2,916.38
203126	26-09-2018	11077400	U/D3017/PO119993	5,775.00	30-01-2019	62847515 01-OCT	17.5	18%	1,516	7,290.94
203126	26-09-2018	11077401	U/D3017/PO119992	7,218.75	30-01-2019	62847516 01-OCT	17.5	18%	1,895	9,113.67
203126	26-09-2018	11077405	U/R3089/PO119995	4,331.25	30-01-2019	62847838 29-SEP	17.5	18%	1,137	5,468.20
203126	26-09-2018	11077414	U/R3088/PO119991	9,240.00	30-01-2019	62847514 01-OCT	17.5	18%	2,426	11,665.50
203126	28-09-2018	11078032	U/D3112/PO120410	4,950.00	30-01-2019	62847520 01-OCT	17.5	18%	1,299	6,249.38
203126	28-09-2018	11078033	U/D3112/PO120409	12,375.00	30-01-2019	62847522 04-OCT	17.5	18%	3,248	15,623.44
203126	28-09-2018	11078044	U/R3236/PO120407	25,567.30	30-01-2019	62847518 01-OCT	17.5	18%	6,711	32,278.72
203126	28-09-2018	11078045	U/D3112/PO120408	15,468.75	30-01-2019	62847521 04-OCT	17.5	18%	4,061	19,529.30
203126	28-09-2018	11078046	U/R3235/PO120411	20,815.85	30-01-2019	62847519 01-OCT	17.5	18%	5,464	26,280.01
203126	28-09-2018	11078058	U/D3112/PO120410	6,291.60	30-01-2019	62847520 01-OCT	17.5	18%	1,652	7,943.15
203126	28-09-2018	11078059	U/R3236/PO120407	19,399.10	30-01-2019	62847518 01-OCT	17.5	18%	5,092	24,491.36
203126	28-09-2018	11078073	U/D3112/PO120408	19,923.40	30-01-2019	62847521 04-OCT	17.5	18%	5,230	25,153.29
203126	28-09-2018	11078082	U/D3112/PO120409	15,729.00	30-01-2019	62847522 04-OCT	17.5	18%	4,129	19,857.86
203126	28-09-2018	11078282	U/R3388/PO-PO119655	2,10,672.00	30-01-2019	62847518 01-OCT	17.5	18%	55,301	2,65,973.40

201126	28-09-2018	11078394	U/K3191/PO119656	9,436.35	30-01-2019	62847521 04-OCT	17.5	18%	2,472	11,911.39
201126	28-09-2018	11078395	U/K3190/PO119658	52,668.00	30-01-2019	62847520 01-OCT	17.5	18%	13,825	66,493.35
201126	04-10-2018	11079050	U/K3189/PO119657	1,11,670.00	28-01-2019	63807622 25-OCT	16.5	18%	32,588	1,44,258.33
201126	04-10-2018	11079080	U/K3196/PO119659	98,751.50	28-01-2019	63807623 25-OCT	16.5	18%	24,441	1,23,193.74
201126	05-10-2018	11079386	U/K3128/PO120055	52,486.79	28-01-2019	6380797 10-OCT	16.5	18%	12,900	65,387.27
201126	05-10-2018	11079387	U/K3129/PO120117	32,466.94	28-01-2019	63807814 10-NOV	16.5	18%	5,561	38,027.51
201126	05-10-2018	11079393	U/O3177/120179	25,449.28	28-01-2019	47123606 01-17-OCT	16.5	18%	6,293	31,742.98
201126	05-10-2018	11079414	U/O3177/120208	34,441.88	28-01-2019	61820790 10-OCT	16.5	18%	8,525	42,967.24
201126	05-10-2018	11079415	U/O3177/120140	44,012.54	28-01-2019	61821156 11-OCT	16.5	18%	10,891	54,905.64
201126	10-10-2018	11079854	U/K3445/PO120358	99,701.65	28-01-2019	61821169 11-OCT	16.5	18%	24,677	1,24,380.30
201126	10-10-2018	11079855	U/K3446/PO120368	97,255.90	28-01-2019	61821170 11-OCT	16.5	18%	24,071	1,21,326.74
201126	10-10-2018	11079961	U/K3447/PO120619	96,406.30	28-01-2019	61821171 11-OCT	16.5	18%	23,873	1,20,280.71
201126	11-10-2018	11080010	U/O3220/PO120935	8,741.00	28-01-2019	63807605 24-OCT	16.5	18%	2,164	10,905.39
201126	11-10-2018	11080022	U/O3220/PO120934	21,867.50	28-01-2019	63807601 25-OCT	16.5	18%	5,411	27,278.47
201126	11-10-2018	11080023	U/O3220/PO120932	14,280.00	28-01-2019	63808051 24-OCT	16.5	18%	3,658	17,938.55
201126	11-10-2018	11080024	U/O3220/PO120933	27,109.50	28-01-2019	64898126 25-OCT	16.5	18%	6,710	33,819.10
201126	11-10-2018	11080025	U/O3221/PO120937	1,81,686.71	28-01-2019	63808052 24-OCT	16.5	18%	44,967	2,26,654.17
201126	11-10-2018	11080026	U/O3221/PO120938/QWAO	2,43,904.40	28-01-2019	64898126 25-OCT	16.5	18%	55,816	2,99,720.74
201126	11-10-2018	11080031	U/O3221/PO120939/QSHS	1,12,552.96	28-01-2019	63807601 25-OCT	16.5	18%	27,857	1,40,409.82
201126	11-10-2018	11080035	U/O3221/PO120940	44,754.43	28-01-2019	63807605 24-OCT	16.5	18%	11,078	55,832.14
201126	11-10-2018	11080171	U/K3438/PO120948	13,551.20	28-01-2019	63808052 24-OCT	16.5	18%	3,305	16,856.11
201126	12-10-2018	11080176	U/O3223/PO120957	26,213.00	28-01-2019	64898126 25-OCT	16.5	18%	6,488	32,701.21
201126	12-10-2018	11080177	U/O3223/PO120966	20,072.00	28-01-2019	63807601 25-OCT	16.5	18%	5,191	25,263.57
201126	12-10-2018	11080178	U/K3439/PO120964	15,729.00	28-01-2019	63807605 24-OCT	16.5	18%	3,923	19,652.91
201126	12-10-2018	11080185	U/O3223/PO120975	8,388.80	28-01-2019	63807605 24-OCT	16.5	18%	2,076	10,465.03
201126	12-10-2018	11080222	U/O3224/PO120996	16,615.50	28-01-2019	63807605 24-OCT	16.5	18%	4,112	20,727.84
201126	12-10-2018	11080223	U/K3444/PO120941	83,527.03	28-01-2019	63807605 24-OCT	16.5	18%	20,873	1,04,400.97
201126	13-10-2018	11080259	U/K3436/PLPARK	5,021.30	28-01-2019	BY HANO 16-OCT	16.5	18%	1,241	6,262.57
201126	15-10-2018	11080294	U/O3250/PO120830	1,10,625.90	28-01-2019	63807720 22-OCT	16.5	18%	27,130	1,37,755.81
201126	15-10-2018	11080608	U/O3250/PO120728	6,18,126.49	28-01-2019	63807720 21-OCT	16.5	18%	1,55,461	7,73,587.80
201126	15-10-2018	11080625	U/O3250/PO120779/QSHS	4,49,580.19	28-01-2019	63807720 21-OCT	16.5	18%	1,11,271	5,60,851.29
201126	16-10-2018	11080666	U/K3526/PO120676	8,17,790.75	28-01-2019	63807720 21-OCT	16.5	18%	2,02,403	10,20,194.96
201126	16-10-2018	11080777	U/K3525/PO120881	1,48,889.50	28-01-2019	63807720 21-OCT	16.5	18%	36,150	1,85,039.65
201126	24-10-2018	11081561	R1372/PO121086	330.00	28-01-2019	63808419 29-OCT	16.5	18%	82	411.88
201126	24-10-2018	11081568	U/R3620/PO121191	18,381.11	28-01-2019	63808420 29-OCT	16.5	18%	4,550	22,932.93
201126	24-10-2018	11081587	U/R3620/PO121121	50,086.70	28-01-2019	63808419 29-OCT	16.5	18%	12,881	62,968.16
201126	25-10-2018	11081692	U/O3201/121290	8,847.90	28-01-2019	63808151 30-OCT	16.5	18%	2,190	11,037.76
201126	25-10-2018	11081701	U/O3201/121166	49,214.68	28-01-2019	63808430 30-OCT	16.5	18%	12,181	61,395.51
201126	25-10-2018	11081703	U/O3201/121270	31,073.25	28-01-2019	63808411 30-OCT	16.5	18%	7,813	38,886.61
201126	10-11-2018	11081829	U/R3880/PO121558	12,617.60	30-01-2019	63807727 14-NOV	15.5	18%	2,928	15,545.84
201126	10-11-2018	11081830	U/O3155/PO121600	8,238.75	30-01-2019	63807729 14-NOV	15.5	18%	1,916	10,154.26
201126	10-11-2018	11081831	U/R3861/PO121641	11,427.41	30-01-2019	63807749 15-NOV	15.5	18%	2,857	14,284.28
201126	10-11-2018	11081832	U/O3155/PO121580	2,728.50	30-01-2019	64898126 25-OCT	15.5	18%	634	3,362.41
201126	10-11-2018	11081833	U/O3155/PO121621	9,485.11	30-01-2019	63807729 14-NOV	15.5	18%	2,305	11,790.40
201126	13-11-2018	11084071	U/R3879/PO121725	7,684.60	30-01-2019	63807729 20-NOV	15.5	18%	1,787	9,471.27
201126	13-11-2018	11084072	U/R3880/PO121733	10,978.00	30-01-2019	63807748 20-NOV	15.5	18%	2,552	13,530.19
201126	13-11-2018	11084074	U/O1399/PO121734	8,782.40	30-01-2019	63807749 20-NOV	15.5	18%	2,042	10,824.11
201126	17-11-2018	11084565	U/O3454/PO122028	17,602.18	30-01-2019	63941945 8-OCT	15.5	18%	4,342	21,944.63
201126	17-11-2018	11084567	U/O3154/122092	14,754.95	30-01-2019	63941877 5-OCT	15.5	18%	3,431	18,185.48
201126	17-11-2018	11084576	U/O3454/QWAO/PO121960	49,984.18	30-01-2019	63807749 20-NOV	15.5	18%	11,621	61,605.35
201126	17-11-2018	11084579	U/R3916/PO121885	74,680.00	30-01-2019	63807746 20-NOV	15.5	18%	17,163	91,843.10
201126	17-11-2018	11084620	U/R3919/PO122157	27,551.93	30-01-2019	63807835 19-NOV	15.5	18%	6,406	33,958.22
201126	20-11-2018	11084771	U/O3116/PO121151	5,219.50	30-01-2019	63807618 24-NOV	15.5	18%	1,334	6,553.01
201126	20-11-2018	11084772	U/O3116/PO121150	6,785.35	30-01-2019	63807618 27-NOV	15.5	18%	1,578	8,363.94
201126	20-11-2018	11084774	U/O3116/PO121152	2,081.80	30-01-2019	63807617 24-NOV	15.5	18%	485	2,567.11

201126	20-11-2018	11084775	U/R3781/PO121531	3,551.65	30-01-2019	61320616 24-NOV	15.5	18%	840	4,501.12
201126	20-11-2018	11084800	U/R3782/PO121528	8,151.20	30-01-2019	61820615 24-NOV	15.5	18%	1,942	10,292.45
201126	11-12-2018	11087303	K3848/PO122277	25,161.80	30-04-2019	63941443 13-DEC	14.5	18%	5,517	30,880.43
201126	15-12-2018	11088091	U/R4242/PO122289	3,47,165.64	30-04-2019	63942033 18-DEC	14.5	18%	75,509	4,22,674.17
201126	16-12-2018	11088095	U/R4243/PO122285	4,64,319.77	30-04-2019	63942041 18-DEC	14.5	18%	1,00,990	5,65,109.12
201126	18-12-2018	11088121	U/R4242/PO122292	3,86,051.72	30-04-2019	BY HAND 20-DEC	14.5	18%	81,966	4,70,017.97
201126	18-12-2018	11088353	U-D3683/122287	4,80,413.32	30-04-2019	64898223 21-DEC	14.5	18%	1,04,490	5,84,903.22
201126	18-12-2018	11088378	U/R4240/PO122293	3,57,449.76	30-04-2019	BY HAND 20-DEC	14.5	18%	77,745	4,35,195.08
201126	19-12-2018	11088568	U/R4290/PO122288	2,27,453.55	30-04-2019	64898930 21-DEC	14.5	18%	49,471	2,76,924.70
201126	21-12-2018	11089078	U/R4261/PO122291	4,17,055.35	30-04-2019	BY HAND 26-DEC	14.5	18%	90,720	5,07,764.89
201126	23-12-2018	11089414	U/R4371/PO122296	1,99,942.82	30-04-2019	BY HAND 26-DEC	14.5	18%	41,888	2,43,430.38
201126	23-12-2018	11089444	U/R4370/PO122295	2,79,559.18	30-04-2019	BY HAND 26-DEC	14.5	18%	60,804	3,40,161.30
201126	24-12-2018	11089487	U/R4372/PO122294	2,99,537.05	30-04-2019	BY HAND 26-DEC	14.5	18%	65,149	3,64,686.16
201126	27-12-2018	11090164	U/R4262/PO122292	61,284.83	30-04-2019	BY HAND 27-DEC	14.5	18%	13,329	74,614.28
201126	27-12-2018	11090173	U/R4261/PO122291	61,284.83	30-04-2019	BY HAND 27-DEC	14.5	18%	13,329	74,614.28
201126	27-12-2018	11090174	U/R4260/PO122291	60,917.85	30-04-2019	BY HAND 27-DEC	14.5	18%	13,250	74,167.48
201126	28-12-2018	11090495	U/R4419/PO122298	2,69,081.38	30-04-2019	BY HAND 31-DEC	14.5	18%	58,525	3,27,606.58
201126	28-12-2018	11090502	U/R4417/PO122290	1,95,644.53	30-04-2019	BY HAND 31-DEC	14.5	18%	42,551	2,38,197.22
201126	28-12-2018	11090505	U/R4418/PO122299	2,51,796.95	30-04-2019	BY HAND 31-DEC	14.5	18%	54,657	3,05,954.04
				16,54,52,216					2,12,58,005	18,67,10,221

30,64,911
2,12,58,005

Branch Wise Summary				
Delhi	200601	3,15,35,727		
Bangalore	200602	90,10,542		
Mumbai	200603	2,34,86,132		
Chennai	200604	1,01,20,908		
Kolkata	200605	36,05,801		
Patna	200606	1,12,14,980		
Bhopal	200607	13,29,792		
Ernakulam	200608	1,65,57,836		
Lucknow	200609	96,39,121		
Pune	200610	1,67,34,546		
Hyderabad	200611	97,33,404		
Bhubaneswar	201015	16,29,418		
Ahmedabad	201174	2,50,212		
Guwahati	201184	40,28,587		
Nagpur	201220	(1,21,770)		
Online (Delhi)	201126	1,26,96,778		
		16,54,52,216		
Interest		2,12,58,005		
		18,67,10,221		

Particulars	Principal	Interest	Total
April 2017 to March 2018	46,97,111	19,52,141	66,49,254
April 2018 onwards	14,80,58,125	1,62,40,834	16,42,98,959
Total OFFLINE	15,27,55,438	1,81,93,075	17,09,48,512
Total ONLINE	1,26,96,778	30,64,911	1,57,61,709
Net Outstanding	16,54,52,216	2,12,58,005	18,67,10,221

14. From the aforesaid Worksheet, it is noticed that the invoices for the online purchases were raised from 11.09.2018 to 28.12.2018, for which the due dates for payment were falling between 30.01.2019 and 30.04.2019, which are clearly prior to the commencement of the suspension period (as stipulated under Section 10A of IBC, 2016) on 25.03.2020. Further, since the total amount of default by the Respondent against these invoices raised for the online purchases as per

the branch-wise summary given above comes to Rs.1,26,96,778/-, which is more than the minimum threshold amount prescribed under Section 4 of IBC, 2016, we do not consider it necessary to visit the offline invoices.

15. It is pertinent to mention here that the proceedings before this Adjudicating Authority being of summary in nature, it is not possible to go into the details of each and every invoice and calculate the exact quantum of debt. The only things that this Adjudicating Authority has to examine is to whether the Respondent has committed the default in payment of the operational debt and the said Operational Debt is more than the minimum threshold amount. Here, the Applicant has been able to demonstrate the debt of more than Rs. one crore outstanding against the Corporate Debtor. Moreover, during the course of final hearing dated 03.10.2022, Ld. counsel appearing on behalf of the Respondent has clearly admitted the default, hence, this Adjudicating Authority is inclined to initiate the Corporate Insolvency Resolution Process against the Respondent.

16. In the given facts and circumstances, the Operational Creditor having established the default of the Corporate Debtor in payment of operational debt of the amount being above the minimum threshold and the Petition filed under Section 9 being complete and fulfilling all the requirements of law, **the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d),

the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

17. Since, there is no IRP proposed by the Operational Creditor, this Bench appoints **Mr. Ajay Gupta (Email id: ajaygupta1969@gmail.com) having IBBI Registration No. IBBI/IPA-001/IP-P00140/2017-18/10304, Mobile No.9871277445** from the panel of IPs recommended by the IBBI. This Adjudicating Authority further orders that -

“Mr. Ajay Gupta, IRP is directed to take charge of the CIRP of the Respondent with immediate effect. He is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”

18. The Operational Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

19. A copy of this Order shall immediately be communicated to the Operational Creditor, the Respondent and the IRP mentioned above by the Court Officer/Registry of this Tribunal.

20. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their records.



(L. N. GUPTA)
MEMBER (T)



(BACHU VENKAT BALARAM DAS)
MEMBER (J)