

32

**BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B) No. 179/7/NCLT/AHM/2017

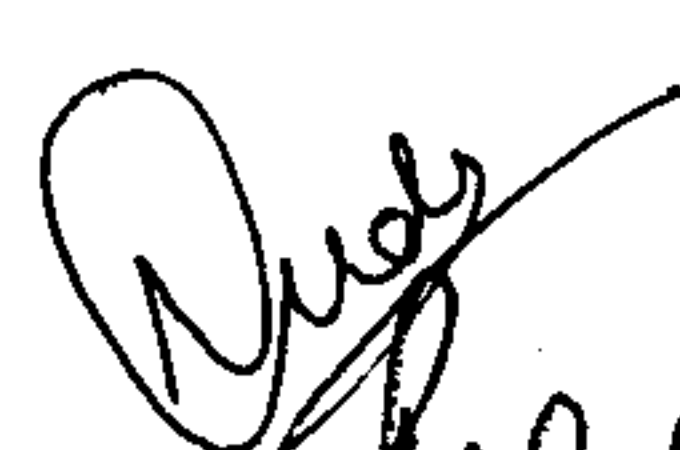
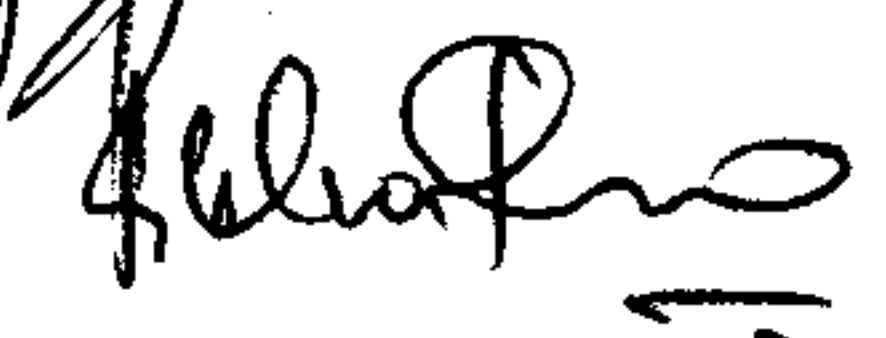
Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.02.2018**

Name of the Company: Dena Bank
V/s.
Peace Infrastructure Pvt Ltd.

Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
--------------	-------------------------------	--------------------	-----------------------	------------------

1.	Nilesh Uderani	Advocate	Respondent	
2.	Raju Kothari	Advocate	Applicant	

ORDER

Learned Advocate Mr. Raju Kothari present for Financial Creditor/Petitioner.
Learned Advocate Mr. Nilesh Uderani present for Respondent.

Order pronounced in open court. Vide separate sheets.


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 13th day of February, 2018.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AMEDABAD BENCH
AHMEDABAD**

C.P. (IB)No. 179/7/NCLT/AHM/2017

In the matter of:

Dena Bank
Registered Address:
Dena Corporate Centre,
C-10, G Block,
Bandra Kurla Complex, Bandra (East)
Mumbai- 400051.

Branch: Infocity Area Branch,
Shop no. 1-5, Swagat Rain Forest 1,
Koba Road, Kудasan,
Gandhinagar-382421.

Applicant
Financial Creditor

VERSUS

Peace Infrastructure Private Limited.
B-2, Vasa vila, Taktawala Park,
Naranpura Char Rasta,
Naranpura Ahemdabad- 380013

Respondent
Corporate Debtor

Order delivered on 13th February, 2018

**CORAM: Hon'ble Mr. Bikki Raveendra Babu, Member Judicial
Hon'ble Ms. Manorama Kumari, Member Judicial**

Appearance:

1. Mr. Anip Gandhi, learned advocate for the petitioner
2. Mr. Nilesch Uderani, learned advocate with Mr. Parth Shah
Learned advocate for respondent.

ORDER

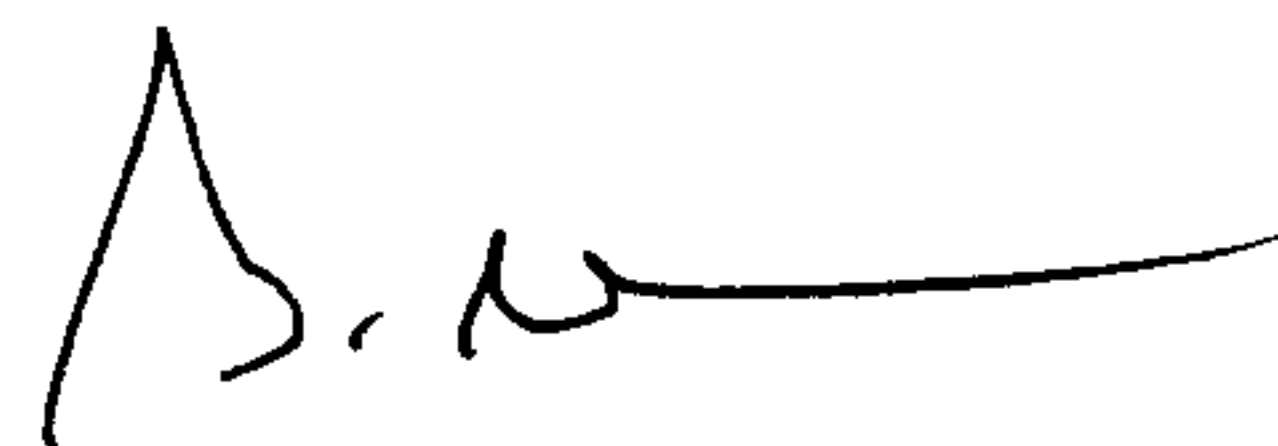

(Per : Hon'ble Mr. Bikki Raveendra Babu, Member Judicial)

1. Dena Bank styling itself as financial creditor filed this application under section 7 of I.B Code r/w Regulation 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") requesting this authority to



commence Corporate Insolvency Resolution Process in respect of Peace Infrastructure Pvt. Ltd. styling it as Corporate Debtor.

2. Petitioner is a Bank constituted under the provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 having its registered office at Dena Corporate Centre, Bandra, Mumbai.
3. Respondent is a company incorporated under the Companies Act, 1956 having its registered office in Naranpura, Ahmedabad. Respondent company is principal borrower and is in the business of construction. Petitioner bank sanctioned a term loan of 5.00 crores vide sanction letter dated 04.06.2013 to the respondent company for development of two projects in the name of "Shantinagar and Shanti Upavan". Out of total 201 units (147 of Shantinagar and 54 of Shanti Upavan) 157 units have been considered as prime security and they were proposed to be mortgaged with the petitioner on a condition that NOC will be issued after payment of Rs. 3.50 lacs per unit. Respondent company executed loan agreement, deed of hypothecation, deed of guarantee and general undertaking in favour of the petitioner bank on 03.08.2013. It is stated by the petitioner that respondent company is principal borrower and its guarantors failed to honour the terms and conditions of the credit facility granted by the petitioner and hence the petitioner Bank classified the account of the respondent company as Non-Performing Assets (NPA) on



30.06.2015. After declaring it as NPA, respondent company paid Rs. 43.91 lacs from 05.10.2015 to 14.09.2017. Petitioner bank issued notice under Section 13 (2) of the SARFAESI Act on 02.07.2015 demanding the amount outstanding with interest Rs. 3,32,73,258/- as on 10.06.2015. Petitioner Bank took symbolic possession of the mortgaged properties under section 13 (4) of the SARFAESI Act on 18.09.2015. Learned CMM, Ahmedabad in Criminal Miscellaneous Application No. 351 of 2015 passed order under section 14 of the SARFAESI Act on 20.08.2016 to obtain physical possession of the properties situated in Gandhinagar. The guarantor/co-mortgagor R.L. Joshi filed S.A. No. 109 of 2016 before the Hon'ble DRT-1, Ahmedabad and challenged symbolic possession taken by the Bank and Learned DRT vide order dated 29.07.2016 ordered to maintain status-quo. S.A. 109 of 2016 is pending for final hearing. Petitioner Bank filed criminal complaint No. 4898 of 2015 under Section 138 of Negotiable Instrument Act on 26.08.2015 for dishonoured cheque of Rs. 165.00 lacs. Petitioner declared the respondent company and its Directors as wilful defaulters.

4. This petition is signed by Chief Manager of Dena Bank as authorised person on behalf of the bank. Petitioner filed copy of Power of Attorney dated 08.08.2012.
5. Petitioner also filed following documents: -
 - (1) Copy of sanction letter dated 04.06.2013

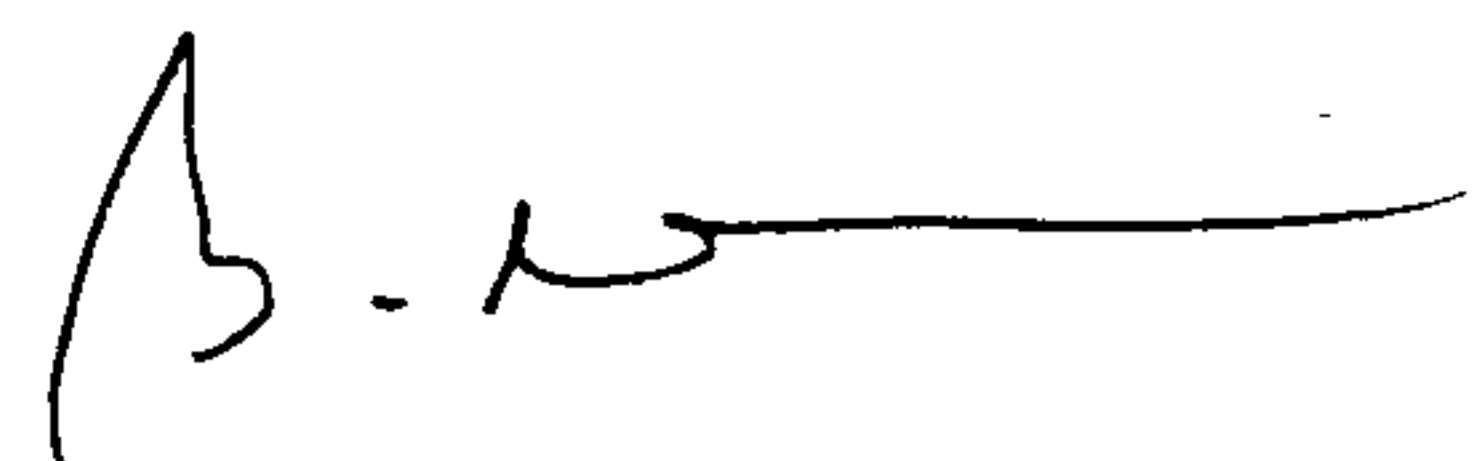



- (2) Copy of loan agreement dated 03.08.2013
- (3) Copy of certificate of charge issued by Registrar of Companies
- (4) Copy of CIBIL report
- (5) Copy of affidavit in support of Insolvency Application

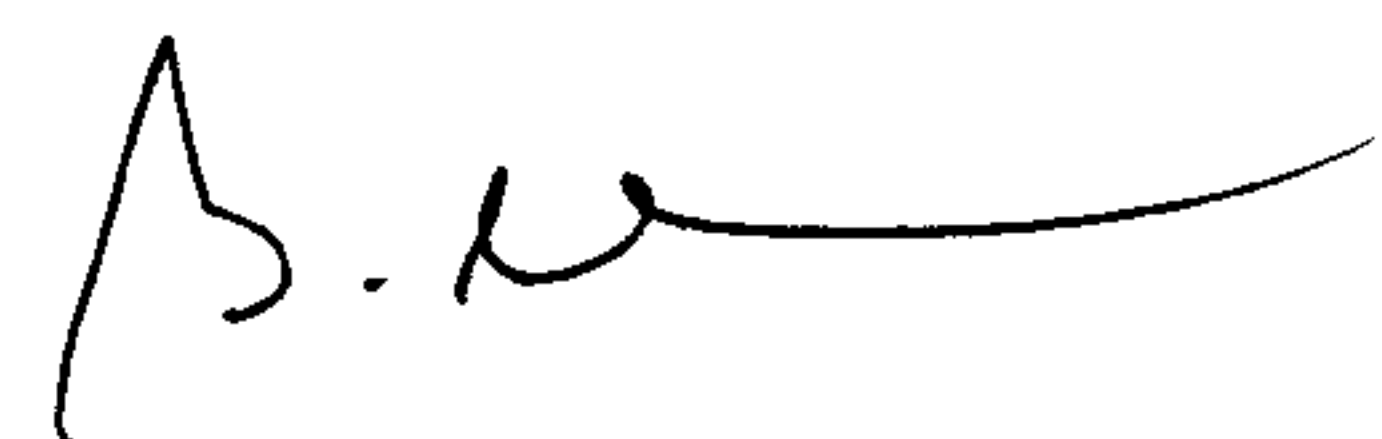
6. Respondent filed the following objections: -

- (1) Petitioner stated different amounts are shown in different documents as due to it, from the respondent and it is not permissible under the eyes of law.
- (2) Petitioner declared the respondent company as NPA in contravention of Loan Agreement.
- (3) Petitioner has no *locus standi* to file this application.
- (4) Pendency of other proceedings initiated by petitioner is a bar for filing this petition.

7. Respondent also stated that 178 units were considered to be mortgaged as per loan agreement. Respondent paid for release of 62 units mortgaged to the Bank and to issue NOC for 59 units.



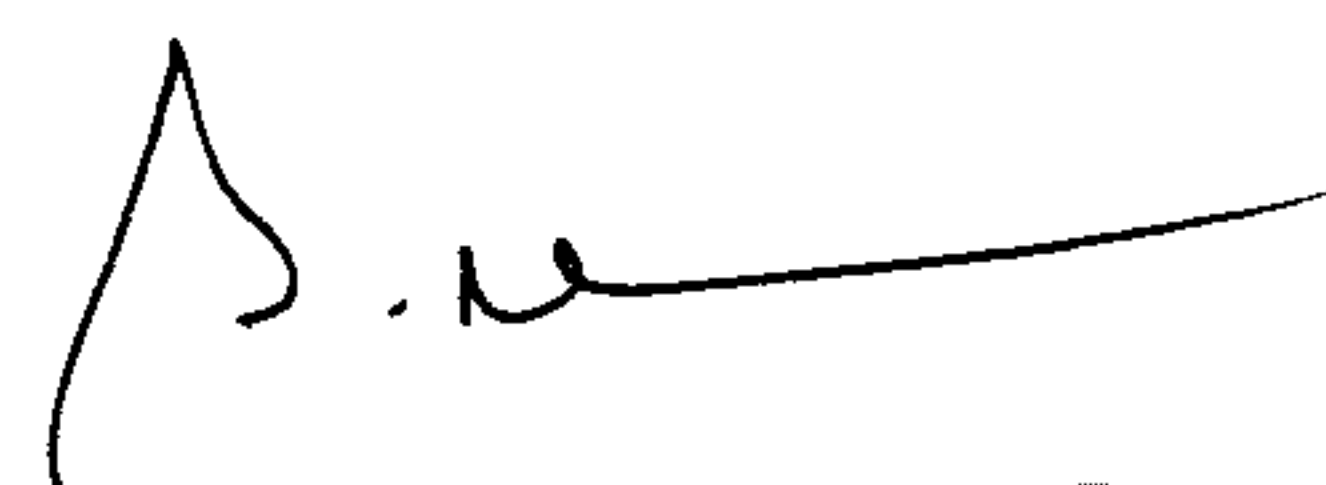
8. It is stated that difference in the amount shown in the notice under Section 14 (1) in Original Application No. 513 of 2016 before Debts Recovery Tribunal, Ahmedabad and the amounts stated in this petition are different because of calculation of interest from time to time and deduction of payment made by the respondent. Therefore, variation in the amounts stated by the petitioner is not a ground to reject this application, more so when the respondent is admitting the loan transaction and the financial documents.
9. Respondent company was declared as NPA on 30.06.2015 on the ground that respondent company and its guarantors failed to honour the terms and conditions of credit facility. The loan account of the respondent company clearly shows that respondent company and its guarantors failed to honour the terms and conditions of the credit facility. The loan account of the respondent company clearly shows that respondent company and its guarantors have not honoured the terms and conditions of the credit facility. It is not even the case of the respondent that declaring the respondent company as NPA is against RBI guidelines. Therefore, this objection of the respondent is not sustainable.
10. Petition is signed by Chief Manager of Dena Bank. Power of attorney dated 08.08.2012 is enclosed along with petition. Power of attorney is executed by Mr. Suresh Kumar Sharma, General Manager, Dena Bank stating that power is conferred on him by way



of Power of Attorney dated 24.05.2012 to substitute and appoint one or more Attorney or Attorneys to exercise powers on behalf of the bank. He has nominated Mr. Naresh Wanjari as Power of Attorney holder on behalf of the bank. The Power to Mr. Naresh Wanjari is given to act as Attorney of the bank jointly with Managing Director and with Director or General Manager, Dy. General Manager, Chief Manager etc.

11. However, the letter dated 05.10.2017 issued by Zonal Manager to Chief Manager of Dena Bank clearly shows that he was authorised to file this petition under the Insolvency and Bankruptcy Code.
12. In view of the aforesaid documents, it is clear that the Chief Manager who signed on the petition is authorised to file this petition on behalf of the bank.
13. Further, Hon'ble National Company Law Appellate Tribunal, New Delhi in the judgement in Company Appeal (AT) (Insol.) No. 30 of 2017 in the matter of Palogix Infrastructure Pvt. Ltd. vs. ICICI Bank in para 38 held as follows: -

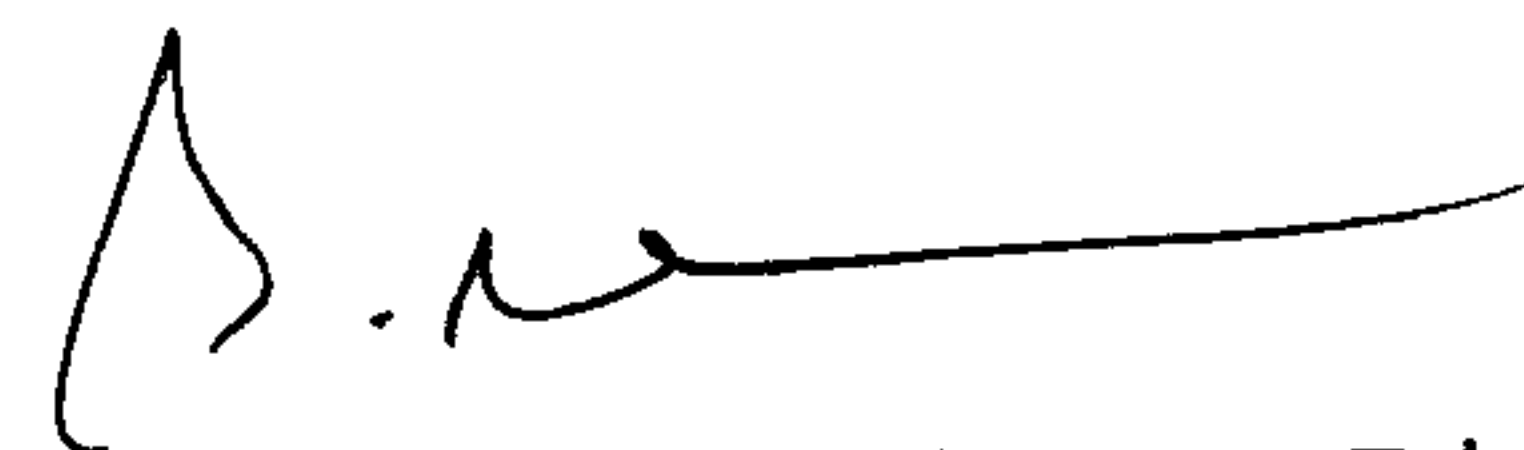
"38. This apart, in an officer, such as Senior Manager of a Bank has been authorised to grant loan, for recovery of loan or to initiate a proceeding for Corporate Insolvency Resolution Process against the person who

have taken loan, in such case the Corporate Debtor cannot plead that the officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate Corporate Insolvency Resolution Process in spite of default of debt".

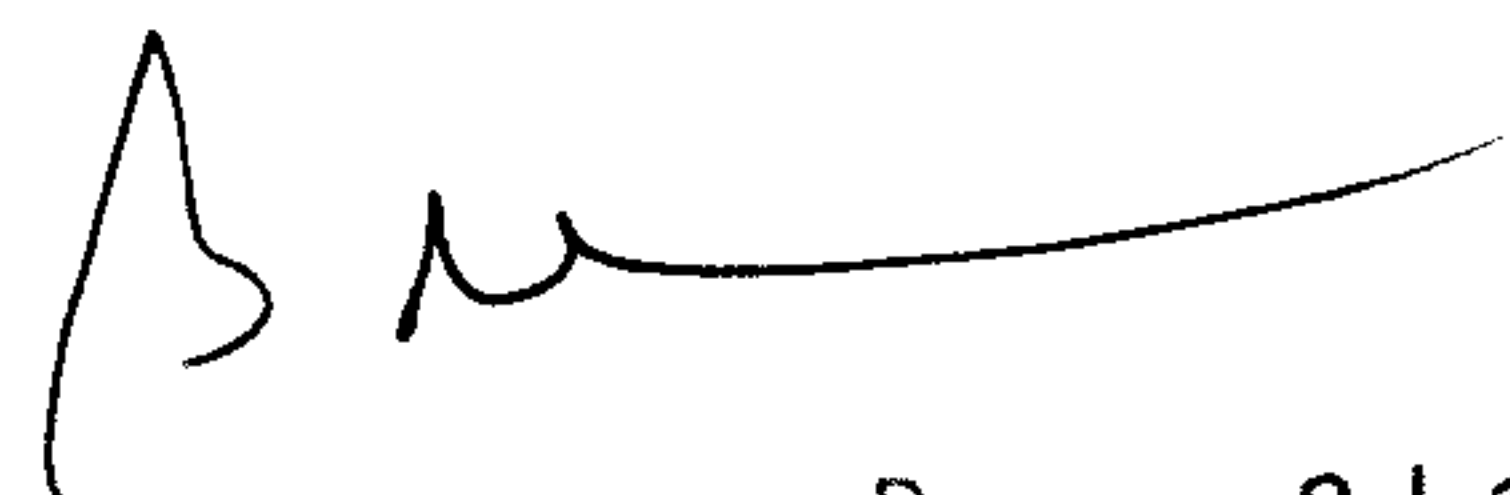
14. In view of the above discussion it cannot be said that the Chief Manager who filed this petition on behalf of Dena Bank is not authorised to file this petition.
15. Net worth of the Company or ongoing nature of the company are not the matters for consideration either to trigger or not to trigger Corporate Insolvency Process. In judgement of Hon'ble Supreme Court in Innoventive Industrues Ltd. vs. ICICI Bank & Anr. in Civil Appeal Nos. 8337-8338 of 2017 in para 30 it is held as follows: -

"On the other hand, as we have seen, in the case of a Corporate Debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating

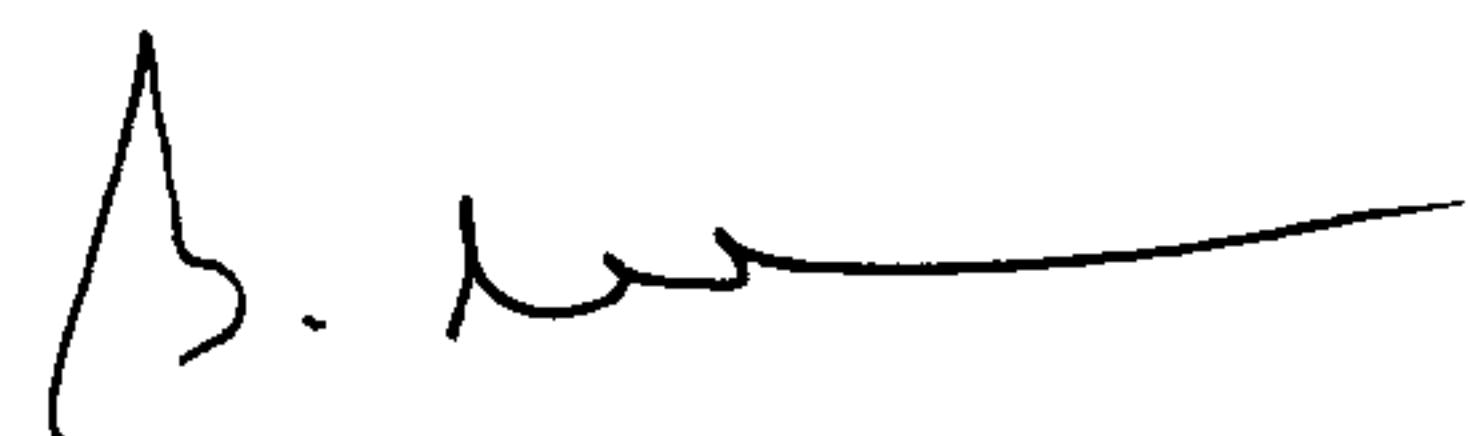


authority that the adjudicating authority may reject an application and not otherwise".

16. In view of the above decision objection raised by the respondent is not sustainable.
17. Next objection raised by the respondent is pendency of other proceedings initiated by petitioner is a bar for filing this petition. In the judgement in Innoventive Industries Ltd., Hon'ble Supreme Court clearly held that even in case of dispute in respect of financial debt the Insolvency Resolution Process can be commenced. Moreover, Section 238 of IB Code gives overriding effect over other proceedings. Therefore, this objection does not merit acceptance.
18. From the material available on record it is clear that financial debt is due and payable to the petitioner Bank by the respondent company and respondent company has committed default in payment of financial debt. Petition is complete in all respects as required by provisions of Code and Rules. Hence, the petition is admitted.
19. In the case on hand petitioner has proposed the name of Mr. Santanu T. Ray having address at (i) E10A, Kailash Colony, Greater Kailash 1, New Delhi – 110 048 and (ii) 302, Sunrise Arcade, Plot No. 110, Sector 16, Koparkhairane, Navi Mumbai – 400 709.



20. Adjudicating Authority hereby appoint Mr. Santanu T. Ray having address at (i) E10A, Kailash Colony, Greater Kailash 1, New Delhi – 110 048 and (ii) 302, Sunrise Arcade, Plot No. 100, Sector 16, Koparkhairane, Navi Mumbai – 400 709 as Interim Insolvency Resolution Professional having Registration No. IBBI/IPA-002/IP-N00360/2017-18/11055 u/s 13 (1)(c) of the Code.
21. The interim Insolvency Resolution Professional is hereby directed to cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submission of claims under Section 13 (1)(b) read with Section 15 of the Code and Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.
22. This adjudicating Authority hereby order moratorium under Section 13 (1) (a) of the IB Code prohibiting the following as referred to in Section 14 of the Code;
- (a) the institution of suits or continuation of pending suits or proceedings against the company/ corporate debtor including execution of any judgement, decree or order in any court of law, Tribunal, arbitration panel or other authority;



- (b) transferring, encumbering, alienating or disposing of by the company/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 company/ 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 company/corporate debtor.
 - (i) There shall not be any interruption, suspension or termination of supply of essential goods or services to the corporate debtor during the moratorium period.
 - (ii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.





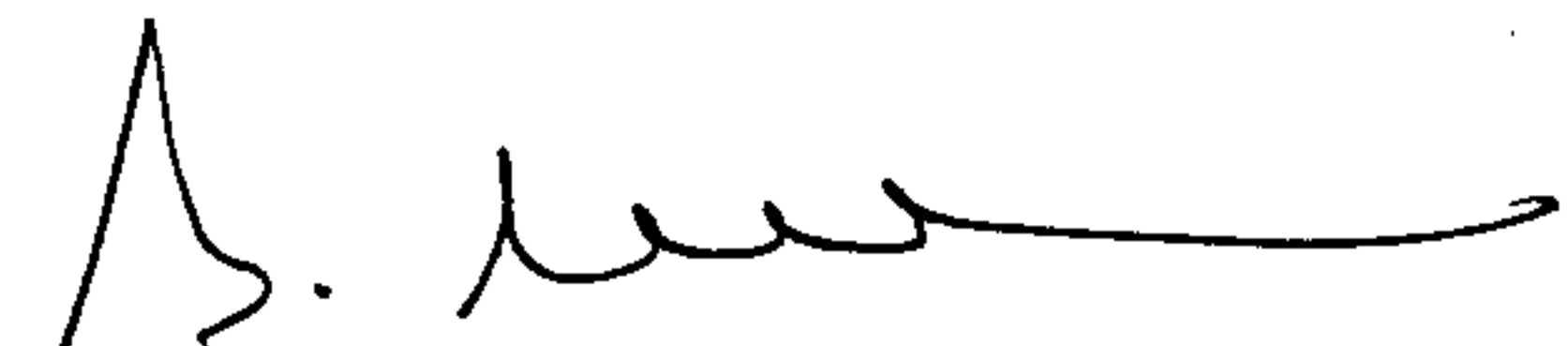
- (iii) The order of moratorium comes into force from the date of the order till the completion of Corporate Insolvency Resolution Process subject to the proviso under sub-section (4) of Section 14.

23. This application is disposed of accordingly. No order as to costs.

24. Communicate a copy of this order to the petitioner operational creditor and to the respondent corporate debtor and to the Interim Insolvency Resolution Professional.



**Ms. Manorama Kumari,
Member Judicial
Adjudicating Authority**



**Bikki Raveendra Babu
Member Judicial
Adjudicating Authority**

nair