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

C.P. (I.B) No. 200/7/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 21.02.2018**

Name of the Company: The Kotak Resources.
V/s.
Rananga Ispat Pvt Ltd.

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Rasesh H. Parikh } Kishan Dave. }	Advocate.	Petitioner-	RH Parikh Kishan Dave.
2.	NAVIN PAHWA WITH RITU SHAH FOR THAKKAR AND PAHWA	Sr. Adv Adv.	Resp.	

ORDER

Learned Advocate Mr. Rasesh Parikh present for Financial Creditor/Petitioner.
Learned Senior Advocate Mr. Navin Pahwa with Learned Advocate Ms. Ritu Shah present for Respondent.

Order pronounced in open court. Vide separate sheets.

MANORAMA KUMARI
MEMBER JUDICIAL

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 21st day of February, 2018.

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

CP NO. (IB) 200/7/NCLT/AHM/2017

In the matter of:

1. The Kotak Resources
Navsari Building, 1st Floor
240, Dr. D.N. Road, Fort
Mumbai 400 001 : Petitioner
Financial Creditor

VERSUS

M/s. Raninga Ispat Private Limited
Plot No. 12, Manichandra V-1
Opp. Avishkar Bungalows
Thaltej,
Ahmedabad 380 057 : Respondent
Corporate Debtor

Order delivered on 21st February, 2017

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

Appearance:

For the petitioner : Learned Advocate Mr. Rasesh Parikh
with Learned Advocate Mr. Kishan
Dave.

For the respondent : Learned Senior Advocate Mr. Navin
Pahwa with Learned Advocate Ms. Ritu
Shah.

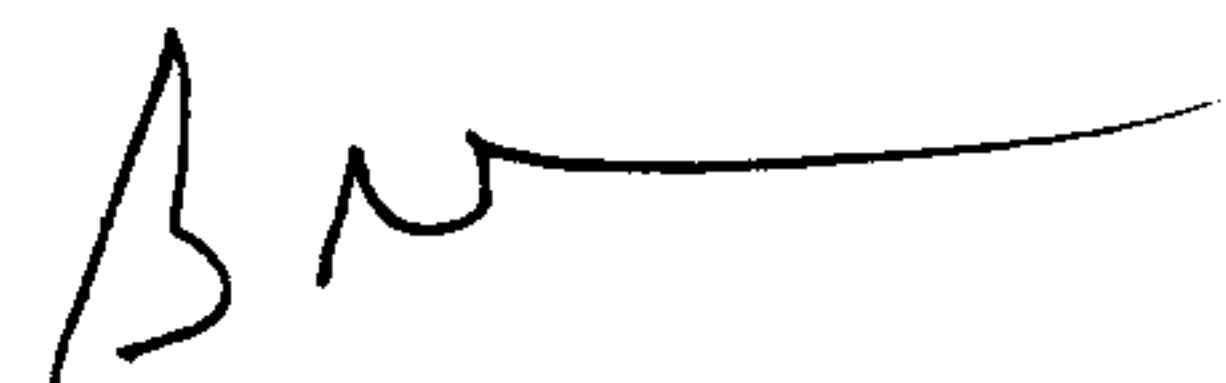
ORDER

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

1. M/s. Kotak Resources styling itself as financial creditor, filed petition under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as

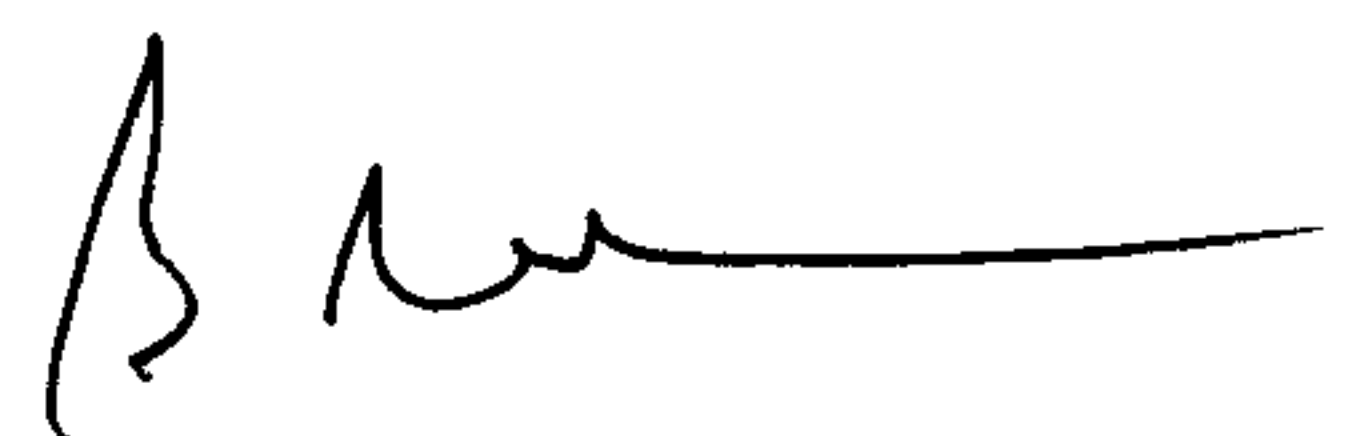
"the Rules") requesting this Authority to commence Corporate Insolvency Resolution Process in respect of M/s. Raninga Ispat Private Limited styling it as corporate debtor.

2. The petition is signed by one Anil Chunilal Varma as authorised signatory of Kotak Resources on the basis of power of attorney dated 07.11.2017 executed by the proprietor of Kotak Resources in favour of Anil Chunilal Varma authorising him to file Insolvency Proceedings against Raninga Ispat Private Limited under the provisions of Insolvency and Bankruptcy Code.
3. It is the case of the petitioner that an amount of Rs. 1.00 crore have been lent to the respondent through Navis Multitrade Private Limited. The terms of finance made by Navis Multitrade Private Limited and petitioner to the respondent are mentioned in agreement dated 05.09.2012. As per the terms of the agreement Navis Multitrade Private Limited and petitioner are entitled to commission of Rs. 0.50 per kg. of pig iron manufactured by the respondent and the payment has to be made on weekly basis. Respondent assured that there will be minimum guaranteed production of 80 tonnes per day. It is the case of the petitioner that the amount outstanding towards commission is Rs. 1,46,00,000/- per annum and for five years the said amount is aggregating to Rs. 7,30,00,000/-. The agreement envisages return of loan by respondent to Navis Multitrade Private Limited and petitioner. As security for the amount lent to respondent by Navis Multitrade Private Limited

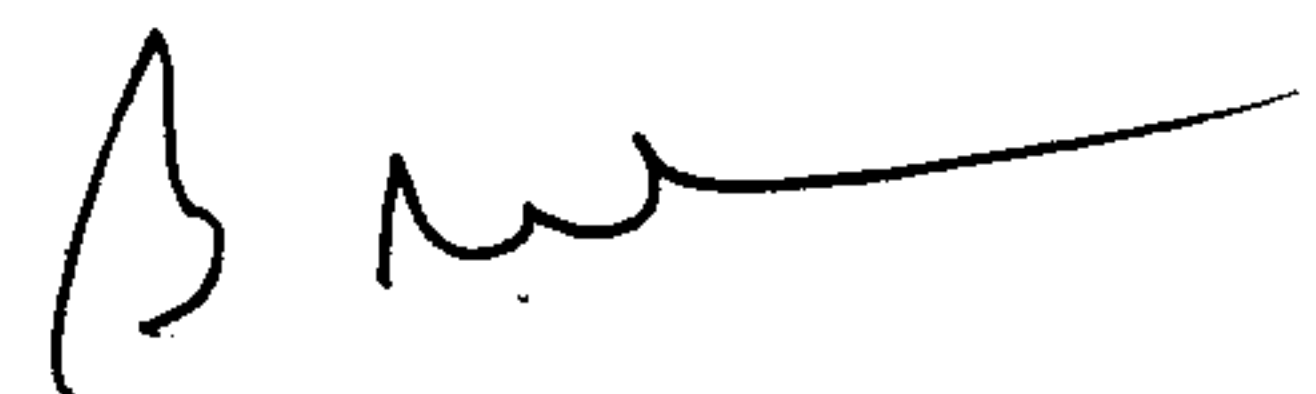


and petitioner, Mr. Pravin Raninga and all shareholders have pledged 3,10,000 fully paid up equity shares owned by all of them of the respondent company and collateral charge was created for the amount borrowed by the respondent. Respondent has defaulted in its obligation in payment of commission as well as repayment of amount borrowed. In spite of repeated reminders and personal meetings total amount outstanding for loan as well as for commission is Rs. 8,30,00,000/- along with interest @ 18% per annum from the date of disbursement of loan. Respondent issued post-dated cheques as security and it was also dishonoured for insufficient funds in the bank account of respondents. In good faith petitioner did not initiate action on the basis of dishonoured cheques. According to petitioner, respondent committed default in payment of commission amount of Rs. 7,30,00,000 and repayment of Rs. 1,00,00,000/- loan amount. Petitioner called upon the respondent to pay entire dues along with interest @ 18% per annum on annualised basis commencing from 05.09.2012 within ten days from the date of receipt.

4. Respondent filed reply stating that petitioner is not financial creditor as per the provisions of Section 5 (7) of the Code. It is also the plea of the respondent that the amount claimed is not financial debt within the meaning of Section 5 (8) of the Code. Kotak Resources is not a person within the meaning of Section 2 (23) of the IB Code and, therefore, this petition is

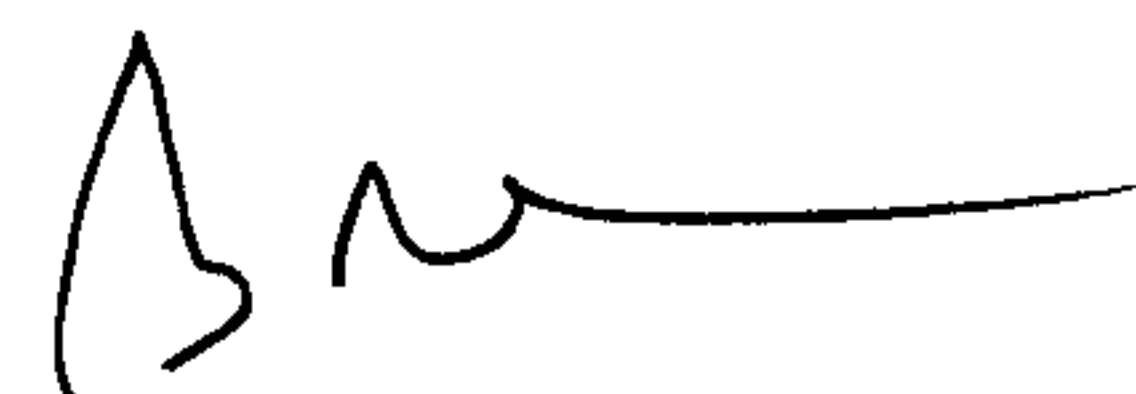


not maintainable. It is stated that petitioner has not given complete and correct facts in form No. I filed by it. It is stated by the respondent that there are serious discrepancies in Clause 1 and Clause 2 of part IV of form 1. It is stated that the petitioner claims that a total amount of debt granted and disbursed to the respondent is Rs. 1.00 crore including Rs. 33.00 lacs from Navis Multitrade Private Limited. Clause 2 refers to the amount claimed to be in default as Rs. 8.54 crores. Respondent denied the allegation that Navis Multitrade Private Limited paid Rs. 33.00 lacs to it. Respondent also stated that it did not receive any goods from Navis Multitrade Private Limited for the alleged amount of Rs. 33.00 lacs. According to the respondent, it received Rs. 67.00 lacs from Navis Multitrade Private Limited on the dates mentioned in clause I of part IV of Form I. It is also the plea of the respondent that it has settled entire dues of Navis Multitrade Private Limited and filed ledger account of Navis Multitrade Private Limited maintained by respondent for the period between 01.04.2011 to 31.03.2014. It is stated that the ledger account disclose that respondent received Rs. 67.00 lacs from Navis Multitrade Private Limited whereas respondent paid Rs.71.27 lacs and, therefore, respondent is entitled to recover Rs. 4.27 lacs from Navis Multitrade Private Limited. It is pleaded by respondent that Navis Multitrade Private Limited wrote a letter to respondent dated 03.07.2015 stating that henceforth all payments due to Navis Multitrade Private Limited be made to the petitioner. Respondent gave reply dated 11.07.2015 to Navis Multitrade Private Limited stating that entire amount of outstanding has



already been paid by respondent and there is no outstanding, enclosing a copy of ledger account. Thereafter, no communication was received from Navis Multitrade Private Limited. 2 ½ years later the present proceedings were initiated by the petitioner. It is pleaded that petitioner forged and fabricated several documents to file this petition and one of such document is Deed of Assignment produced at page 158 of the petition. Respondent is not a party to the said Deed of Assignment dated 25.10.2017 purportedly executed between Navis Multitrade Private Limited and petitioner. The said document is not signed by Navis Multitrade Private Limited. Signature of authorised person of Navis Multitrade Private Limited is also not there on the Deed of Assignment. Respondent pleaded that at the relevant time name of Navis Multitrade Private Limited is struck off from the register of Companies in November, 2016 and, therefore, purported Deed of Assignment dated 25.10.2017 is a created one.

5. Petitioner also produced letter dated 24.10.2017 addressed by Navis Multitrade Private Limited to the corporate debtor. According to the respondent it is a forged document since the letter dated 24.10.2017 refers to the Deed of Assignment dated 25.10.2017. Moreover, the letter is not signed by any person on behalf of Navis Multitrade Private Limited. This letter is not referred to in form No. I filed by the petitioner. The cheques were misused by the petitioner in connivance with Navis Multitrade Private Limited. According to the respondent,



no amount was due and payable in the year 2014. It is stated that the petitioner is not entitled for the amount claimed in the notice. There are disputes between the petitioner and Navis Multitrade Private Limited on one hand and respondent on the other hand.

6. The first objection raised by the respondent is Mr. Anil Chunilal Varma is not authorised to file this petition.
7. Petitioner is a sole proprietary concern. Sole proprietor has conferred General Power of Attorney (GPA) in favour of Mr. Anil Chunilal Varma. In the GPA it is specifically mentioned that Mr. Anil Chunilal Varma is authorised to appear on behalf of Kotak Resources and to present and accept all petitions, documents filed before NCLT, Ahmedabad relating to the proceedings initiated against Raninga Ispat Private Limited including filing of this petition. Therefore, objection of the respondent that this petition signed and filed by Mr. Anil Chunilal Varma is not authorised to file this petition is not a valid objection.
 - 7.1 The objection that proprietary concern is not a person as defined in Section 3 (23) of IB Code is not sustainable since proprietary concern is an Individual and Individual is included in Section 3 (23) of code.
8. Most important objection raised by the respondent is that the amount claimed is not financial debt within the meaning of Section 5 (8) of the Code. Financial debt is defined in Section 5 (8) which says that "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for



the time value of money. It did not stop there. It includes sub-clause (a) to (i) of clause 8 of Section 5. Sub-clause (a) of clause 8 of Section 5 includes money borrowed against payment of interest is financial debt. Section 5 (8) clause (f) is any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing is a financial debt.

9. In the instant case, a perusal of the Pledge Agreement dated 05.09.2012 show that petitioner and Navis Multitrade Private Limited are the lenders and respondent is a borrower. There are clauses in the pledge agreement dated 05.09.2012 to pay interest as well as commission on the amount borrowed. The transaction covered by the agreement dated 05.09.2012 is commercial in nature. Therefore, considering the clauses in the Pledge Agreement dated 05.09.2012, the amount lent by the petitioner through Navis Multitrade Private Limited in the capacity of lenders to the respondent as borrower is nothing but a financial debt as defined under Section 5 (8) clauses (a) and (f).
10. Next objection raised by the respondent is that no amount is due and payable by the respondent to the petitioner. In this context respondent referred to ledger account of respondent filed along with reply as annexure R-1 for the period from 01.04.2011 to 31.03.2014. Referring to the said ledger, it is contended by the learned senior counsel appearing for the respondent that the amount received by respondent from Navis Multitrade Private Limited is only Rs. 67.00 lacs whereas




respondent repaid Rs. 71.27 lacs and, therefore, there is no amount due and payable either to the petitioner or to Navis Multitrade Private Limited. This argument is countered by learned counsel appearing for the petitioner referring to the terms of the pledge agreement and entries in the ledger. Pledge Agreement disclose that respondent has admitted that it has received loan of Rs. 1.00 crore and thereby created security by way of cheques and pledge of shares. Respondent being a signatory to the Pledge Agreement cannot now deny the contents of the Pledge Agreement. Coming to the entries in the ledger which shows that on 07.07.2012, 10.09.2012 and 13.09.2012 amount of Rs. 20.00 lacs, Rs. 25.00 lacs and Rs. 22.00 lacs respectively were received by the respondent from Navis Multitrade Private Limited. Ledger account disclose that the amount paid to Navis Multitrade Private Limited is Rs. 3.27 lacs against loan of Rs. 67.00 lacs. Even as per the ledger produced by the respondent there is unpaid amount. Moreover, the ledger produced is from 26.12.2011 to 24.12.2012 but ledger account is not till 2017 to state all facts. In fact, petitioner issued notice dated 16.09.2017 and it was served on the respondent. In the said notice, there is a reference to the earlier notices issued to the respondent and no reply is given by the respondent to the said notice. Therefore, basing on the part ledger produced by the respondent, it cannot be said that, no amount is due and payable by the respondent to the petitioner.

11. Next contention is that since money is not lent by the petitioner, petitioner is not a financial creditor. As already said

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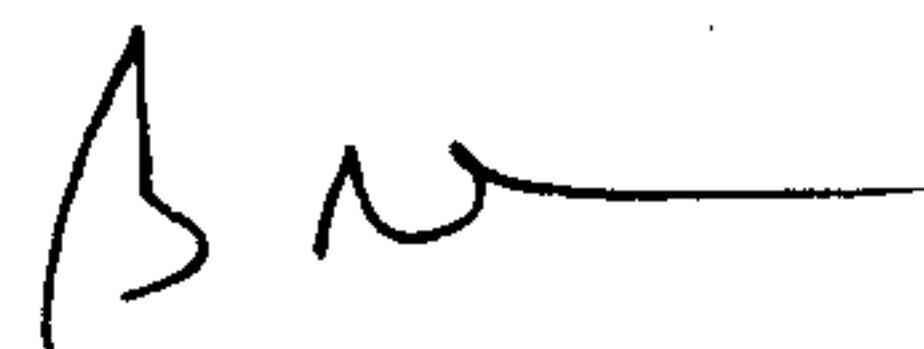
agreement refers the petitioner and Navis Multitrade Private Limited as lenders. Debt is financial debt. Therefore, petitioner is financial creditor. Apart from this there is Assignment Deed dated 25.10.2017 executed by Navis Multitrade Private Limited in favour of the petitioner. It is challenged by respondent on the ground that respondent is not a party to the said Assignment Deed. There is no provision in any law that debtor must be a party for the Assignment Deed. Therefore, on the ground respondent debtor is not a party to the Assignment Deed, it cannot be overlooked.

12. Another contention of the learned counsel for respondent is that the Assignment Deed was entered into after name of Navis Multitrade Private Limited was struck off by Registrar of Companies. Answer to this is available in Section 250 of the Companies Act, 2013.

"250. Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.



13. In view of Section 250, even after the company is struck off it can enforce payment due to it and it is under obligation to make payment of amount due to others.
14. Therefore, execution of Assignment Deed in favour of petitioner even after Navis Multitrade Private Limited is struck off cannot be held to be invalid. In view of the Assignment Deed dated 25.10.2017 also the petitioner is a financial creditor.
15. Learned Sr. counsel appearing for the respondent contended that the procedure for enforcement of pledge has not been followed. It is pertinent to mention here that this is not a petition for recovery of money based on invoking pledge of shares. The issue involved in this petition is whether Corporate Insolvency Resolution Process can be commenced or not in relation to the respondent company. By any stretch of imagination, can it be said that the issue involved in this petition is whether invocation of pledge of shares is valid or not. When the question of invocation of pledge of shares came to be decided, then only it is necessary to see whether there is compliance of relevant provisions of Transfer of Property Act.
16. Learned counsel appearing for the respondent contended that the petition is barred by limitation. In view of the judgements of NCLAT in Company Appeal (AT) (Insolvency) No. 44 of 2017 decided on 11.08.2017 and in Company Appeal (AT)

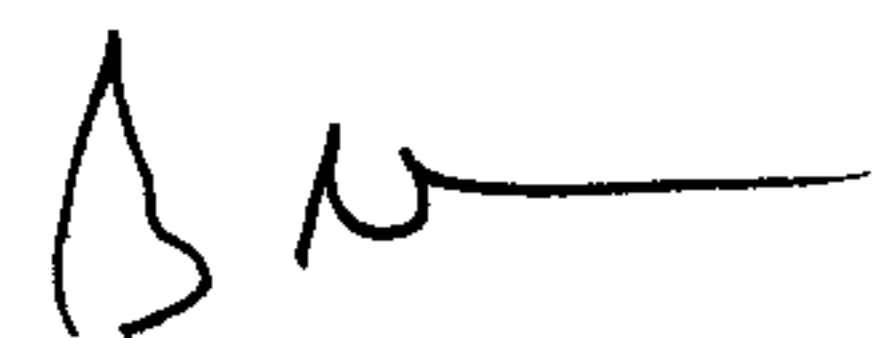


(Insolvency) No. 47 of 2017 decided on 07.11.2017 provisions of Limitation Act are not applicable to the Insolvency Proceedings.

17. In judgement of Hon'ble Supreme Court in Innoventive Industrues Ltd. vs. ICICI Bank & Anr. Reported in (2018) 1 SC cases page 439 held that pendency of other cases and disputes regarding the financial debts are not hindrance to commence Corporate Insolvency Resolution Process. Relevant para 30 of the judgement at page 439 are as follows: -

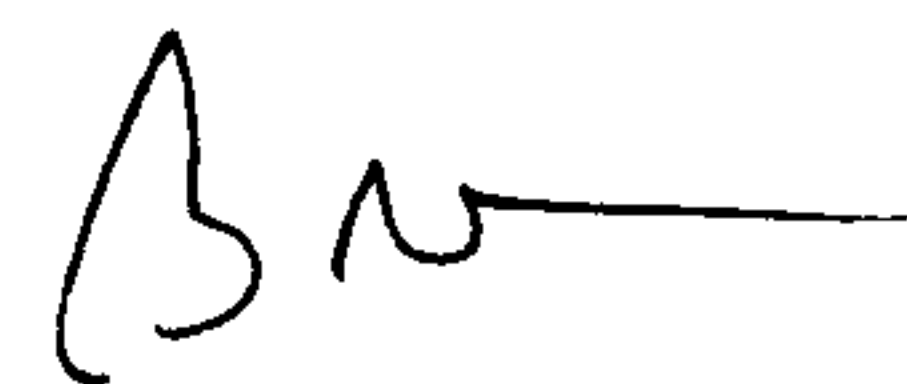
"On the other hand, as we have seen, in the case of a Corporate Debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It 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".

18. In the case on hand it is held that petitioner is financial creditor. It is also held that the amount due to the petitioner from the



respondent is financial debt. There is also occurrence of default in repayment of financial debt. The petition filed by the petitioner is complete in all respects. Hence this application is admitted.

19. In the case on hand petitioner has proposed the name of Mr. Dharmendra Dhelaria, having address at 401, Ashman, 6, Kalpana Society, Navrangpura, Ahmedabad 380 009.
20. Adjudicating Authority hereby appoint Mr. Dharmendra Dhelaria, having address at 401, Ashman, 6, Kalpana Society, Navrangpura, Ahmedabad 380 009 as Interim Insolvency Resolution Professional having Registration No. IBBI/IPA-001/IP-P00251/2017-18/10480 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.

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(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 ^{Financial}~~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

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