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

C.P. (I.B) No. 28/10/NCLT/AHM/2017




Coram:

Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.06.2017

Name of the Company: Diamond Power Transformers Ltd.
V/s.
Indian Overseas Bank & Ors.


Section of the Companies Act: Section 10 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Jay Kansara	Advocate	Financial creditor (SICOM)	
2.	Rahul Dev	Advocate	Pl	
3.	Ishan Shah	Advocate	Corporate debtor	

ORDER

Learned Advocate Mr. Ishan Shah present for Corporate Debtor/ Petitioner. Learned Advocate Mr. Jay Kansara with Learned Advocate Mr. Rahul Dev present for Financial Creditor/ Respondent no. 3.

Order pronounced in open Court. Vide separate sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 6th day of June, 2017.

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

CP NO. (IB) 28/10/NCLT/AHM/2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

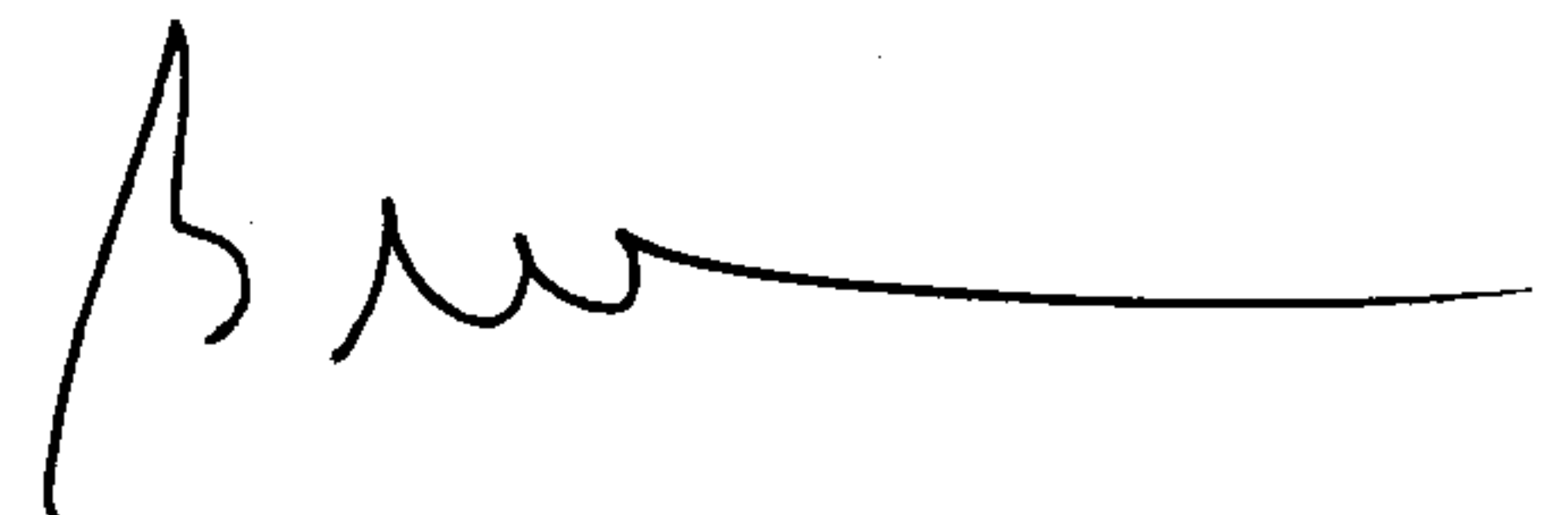
Date: 6th day of June, 2017

In the matter of:

1. Jayramrao Chandravadan Marathe
Director
Diamond Power Transformers Limited.
B-12, Hariba Park Society
Diwalipura,
Vadodara 390015
: Petitioner
: Corporate Applicant

VERSUS

1. Indian Overseas Bank
Mid Corporation Branch,
Baroda- 390001
2. Uco Bank
14/17 Earth Complex
Akshar Chowk, Old Padra Road
Baroda 390080
3. SICOM Ltd.
Solitare Corporate Park
Building No.4
Andheri (East)
Mumbai 400 093
: Financial Creditors
: Respondents

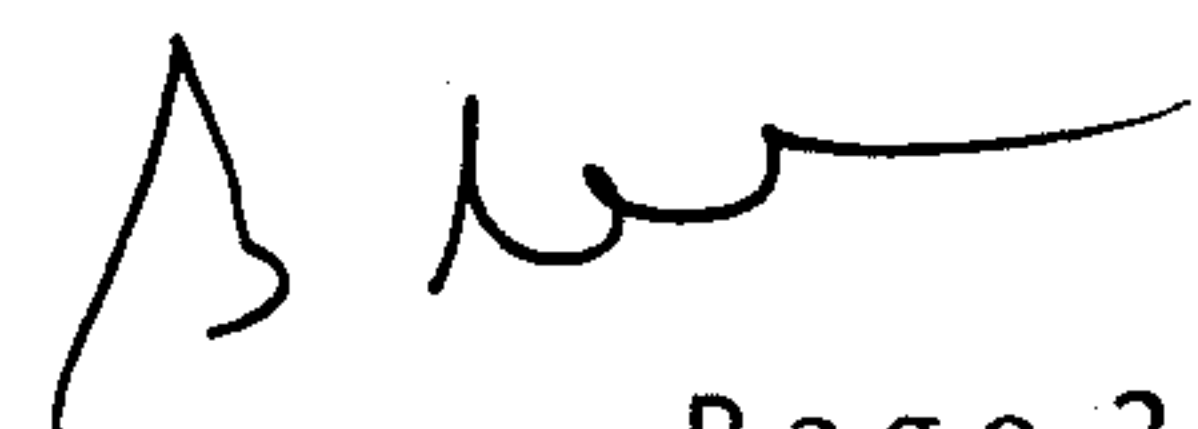


Appearance:

1. Learned PCS Mr. Pinakin Shah with learned advocate Mr. Ishan Shah present for Corporate Debtor/petitioner.
2. Learned advocate Mr. Jay Kansara with learned advocate Mr Rahul Dev present for respondent No. 3
3. None present for other respondents.

FINAL ORDER
Dated: 06-06-2017

1. This application is filed by Director of Diamond Power Transformers Ltd. under Section 10 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 7 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 10 of the Code.
2. Diamond Power Transformers Ltd. is a company registered under the Companies Act, 1956. Registered office of the company is at 101/B/7, GIDC Estate, Ranoli, Vadodara, Gujarat State. Authorised share capital of Diamond Power Transformers Ltd. is Rs. 22.00 crores divided into 2,20,00,000 equity shares of Rs. 10/- each. Paid up share capital of the company is Rs. 21,97,70,540/- Diamond Power Transformers Ltd. passed a Board Resolution on 05.05.2017 authorising Mr. Jayramrao Chandravadan Marathe, Director of the company to file application under sub-section (1) Section 10 of the Insolvency and Bankruptcy Code, 2016 in form 6 to initiate Corporate Insolvency Resolution Process before this Tribunal.

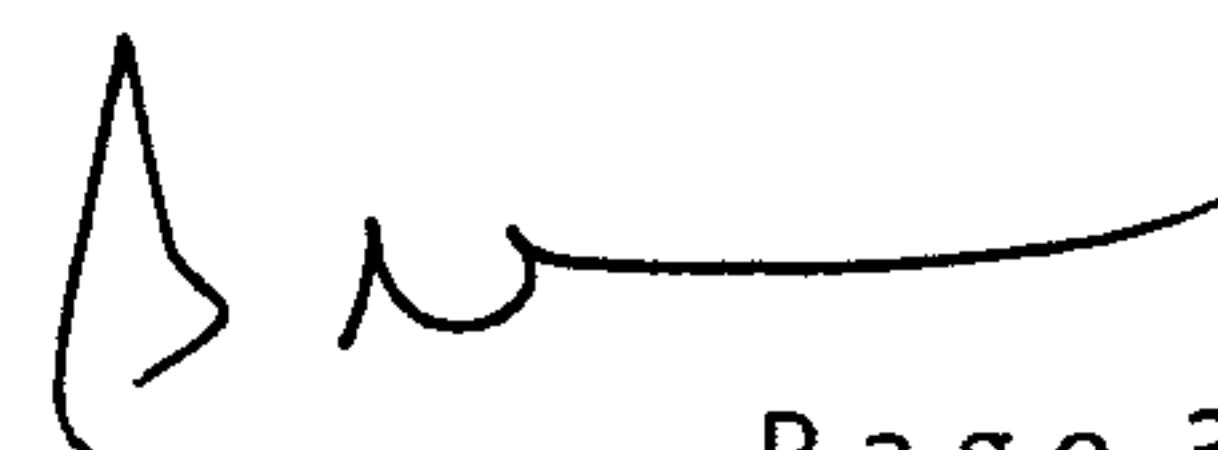


In fact, along with the petition, at page 274 and 275 copy of Board Resolution dated 5th May, 2017 was enclosed. In the said resolution it is mentioned that Mr. Amit Bhatnagar, Managing Director and Sumit Bhatnagar, Director are authorised to file petition under section 10 of the Insolvency and Bankruptcy Code, 2016 before this Tribunal. But, along with addendum, petitioner has filed the Board Resolution dated 05.05.2017 wherein Jayramrao Chandravadan Marathe was authorised to file this petition. According to the petitioner, due to clerical mistake, the name of Amit Bhatnagar was typed in the resolution instead of Jayramrao Chandravadan Marathe, Director. Petitioner also served the addendum along with which correct resolution to the respondents and filed proof of service.

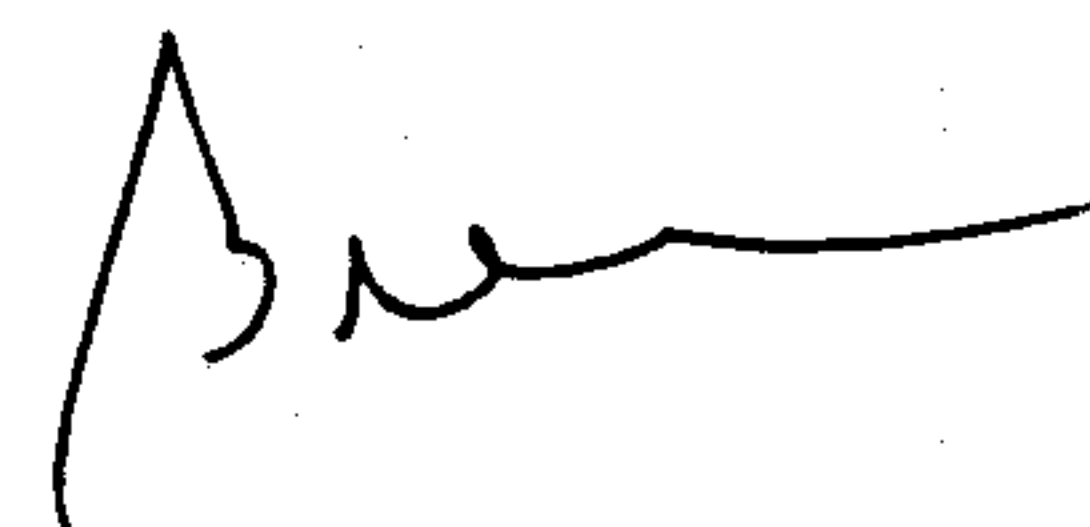
3. According to the petitioner corporate applicant, the debt due to the financial creditors are as follows: -

Indian Overseas Bank	:	Rs. 46.98 crores
UCO Bank	:	Rs. 35.86 crores
SICOM	:	Rs. 31.00 crores

4. Petitioner stated that charge was created on the assets of the company in favour of the financial creditors and filed copies with Register of Charges. Petitioner along with the addendum application enclosed the history of dispute of SICOM. SICOM sanctioned medium term loan of Rs. 20.00 crores and another

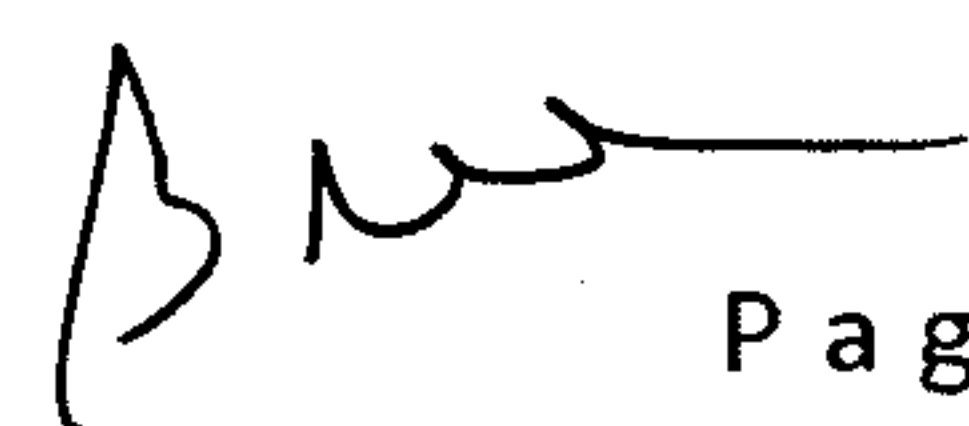


Rs. 11.00 crores. Petitioner mortgaged properties in favour of SICOM and executed mortgage documents. According to the petitioner, SICOM has not disbursed the loan till date. Petitioner stated that SICOM issued securitisation notice on 25.08.2016 under section 13 (2) of the SARFAESI Act, 2002. Petitioner has filed application in DRT against take over notice under section 13 (4) of the Securitisation Act on 23.1.17. DRT, Ahmedabad stayed all further action initiated under section 13 (4) of the SARFAESI Act, 2002 on 31.01.2017. SICOM Ltd. filed appeal before DRT Appellate Tribunal on 14.03.2017 and rejoinder on 02.05.2017 for vacation of the stay. DRT Appellate Tribunal, Mumbai granted stay against order dated 31.01.2017 in SA No. 18 of 2017 on the file Debts Recovery Tribunal II, Ahmedabad. Petitioner filed writ petition before Hon'ble High Court of Mumbai on 11.05.2017 and Hon'ble High Court of Mumbai granted interim stay stating that the stay granted on 31.01.2017 by DRT II, Ahmedabad will continue till 12.06.2017. The company issued blank cheque in favour of SICOM Ltd. as security for the principal amount. SICOM issued legal notice to the petitioner under section 138 of the Negotiable Instrument Act, 1881 for bouncing of the said cheque for an amount of Rs. 20.00 crore. The guarantor of the company i.e. Diamond Power Transformers Ltd. had issued blank cheque as security for principal amount in favour of SICOM Ltd. and it was bounced. Legal notice under section 138 of the Negotiable Instrument Act, 1988 was issued by SICOM Ltd. In fact, the company issued stop payment



instruction letters to the bankers viz. Bank of Baroda and ICICI Bank Ltd. for other post-dated cheques issued to SICOM Ltd.

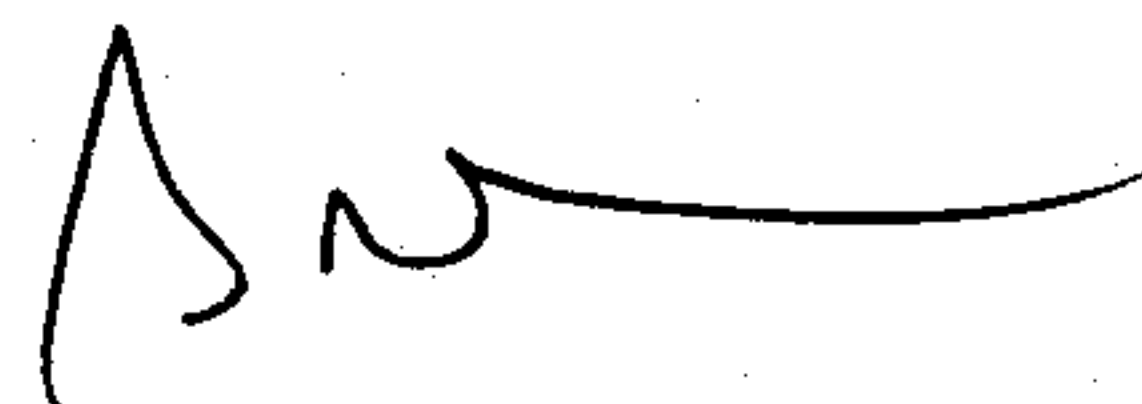
5. This petition is filed before this Tribunal on 22.05.2017. This matter is listed before the bench for the first time on 25.05.2017.
6. On 25.5.2017 this Tribunal directed the petitioner to file material papers relating to the proceedings that are pending before DRT-II, Ahmedabad. This Tribunal directed the petitioner to issue notice of date of hearing to respondents No. 1, 2 & 3 and file proof of service. It appears that petitioner served copy of the petition on respondent 1, 2 and 3 before filing this petition.
7. On behalf of SICOM Ltd. (respondent 3) learned advocate Mr. Rahul Dev filed Vakalatnama. None remained present for other respondents on the date 30.05.2017. Petitioner filed papers relating to DRT proceedings and proof of service of notice of hearing on respondents. Petitioner also filed addendum before the registry on 29.05.2017 serving copy on respondents 1, 2 and 3.
8. It is the contention of learned counsel for the petitioner that the petitioner committed default in payment to three secured creditors viz. UCO Bank, Indian Overseas Bank and SICOM Ltd.



Learned counsel for the petitioner stated that when SICOM Ltd. initiated action under section 13 (2) of the SARFAESI Act, 2002, petitioner initiated proceedings under the provisions of DRT. Details of the same are already narrated in the earlier paras of this order.

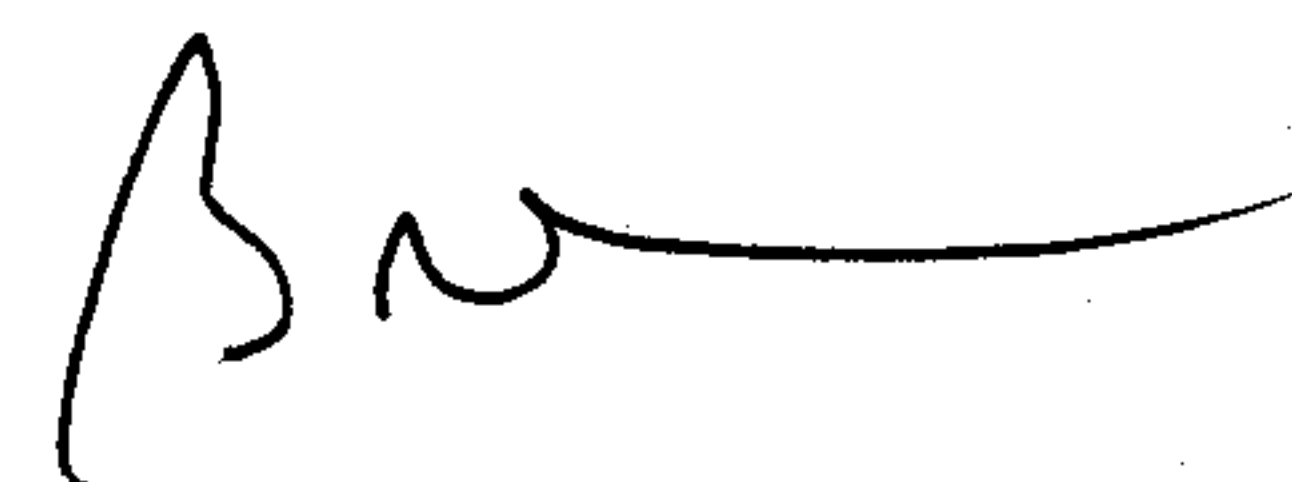
9. Petitioner also filed a copy of notice issued by one of the operational creditors viz. AMBA Shipping & Logistics P. Ltd. for a claim of Rs. 13,22,051/- towards supply of goods to the petitioner company threatening action under Section 9 of the Insolvency and Bankruptcy Code, 2016. Petitioner also filed audited financial statements for the last two financial years and provisional financial statement for the financial year 2016-17 and for the current financial year up to 05.05.2017. Petitioner has also filed statement of affairs made up to 05.05.2017. Petitioner has also filed details of guarantors and their net worth. Petitioner has also filed list of shareholders of Diamond Power Transformers Limited. Petitioner also stated Arbitration proceedings are pending with Shri Ashok J. Raval, Retired Additional District Judge in a claim between Diamond Power Transformers Ltd. versus Uttar Gujarat Vij Company Ltd. Learned counsel appearing for the petitioner stated that petitioner company is ready for the Interim Resolution Process and it has bona fide reason to approach this Tribunal.

Learned counsel appearing for SICOM Ltd. objected initiation of the Resolution Process mainly on the ground that petitioner took a stand in the proceedings initiated by him before DRT,



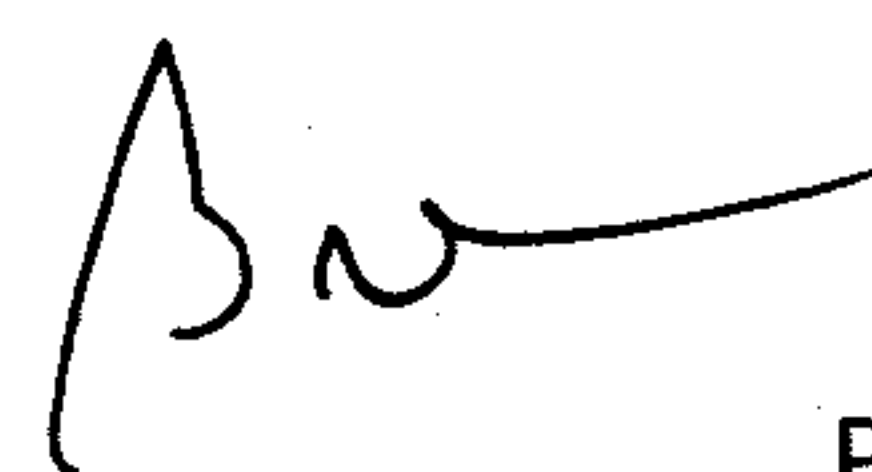
Ahmedabad that he has not committed any default and now in order to trigger insolvency process he is taking a plea that he has committed default. The facts narrated in para 4 of this order clearly indicate that SICOM Ltd. issued notice u/s 13 (2) of the SARFAESI Act to Diamond Power Transformers Ltd. and there upon Diamond Power Transformers Ltd. initiated proceedings before DRT and obtained stay order which is ultimately remained in force till 12.06.2017. It is the contention of the learned counsel for respondent that petitioner is trying to make use of section 10 only to stall the proceedings in Securitization Act initiated by SICOM Ltd. at least for a period of six months and petitioner has no intention to pay debt due to any of the secured creditors including SICOM Ltd.

10. Learned counsel for the respondents made a statement that SICOM Ltd. took a plea in the DRT proceedings and DRAT proceeding that the Diamond Power Transformers Ltd. has ~~committed~~ committed default in repayment of secured loan.
11. In a petition filed under section 10 (6) the Adjudicating Authority has to see whether corporate debtors had committed default. Perhaps for the purpose of stalling the proceedings under the Securitisation Act initiated by SICOM Ltd., petitioner took a plea of no default. But now the petitioner is taking the plea of default which is also the plea of SICOM Ltd. in DRT proceeding. Therefore, the fact remain that Diamond Power



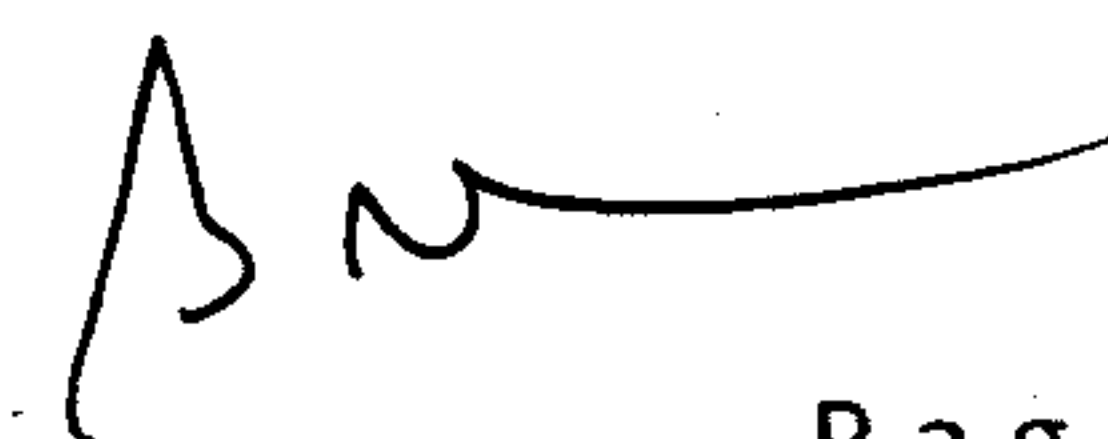
Transformers Ltd. committed default in making payment of debt legally due to SICOM Ltd.

12. It is pertinent to mention here that in this petition corporate debtor has shown three financial creditors among them two are Bankers. The amounts due to the Banks are more in volume than the amount due to SICOM Ltd. Amount due to Indian Overseas Bank is Rs. 46.98 crores, UCO Bank is Rs. 35.86 crores and SICOM Ltd. is Rs. 31.00 crores. Material on record also show that AMBA Shipping & Logistics P. Ltd. as operational creditors has issued a notice to Diamond Power Transformers Ltd. on 12.01.2017 claiming Rs. 13,22,051/- and has threatened action under section 9 of Insolvency and Bankruptcy Code, 2016. In these facts and circumstances, SICOM Ltd. being a financial creditor may not come forward to initiate Insolvency resolution process under section 7 of the I & B Code against Diamond Power Transformers Ltd. corporate debtor filed the application through one of the directors who is authorised by the Board to file this petition. The only ground on which the learned counsel for SICOM Ltd., is asking this Tribunal to reject the application ^{is that} since the petitioner has taken different pleas before different Forums to suit to his convenience and to obtain orders. This action is initiated on the advice of Board of Directors of the corporate debtors after initiation of proceedings before DRT against initiation of Securitization Act by SICOM Ltd. Therefore, the plea of no default taken by corporate debtor in DRT proceedings need not

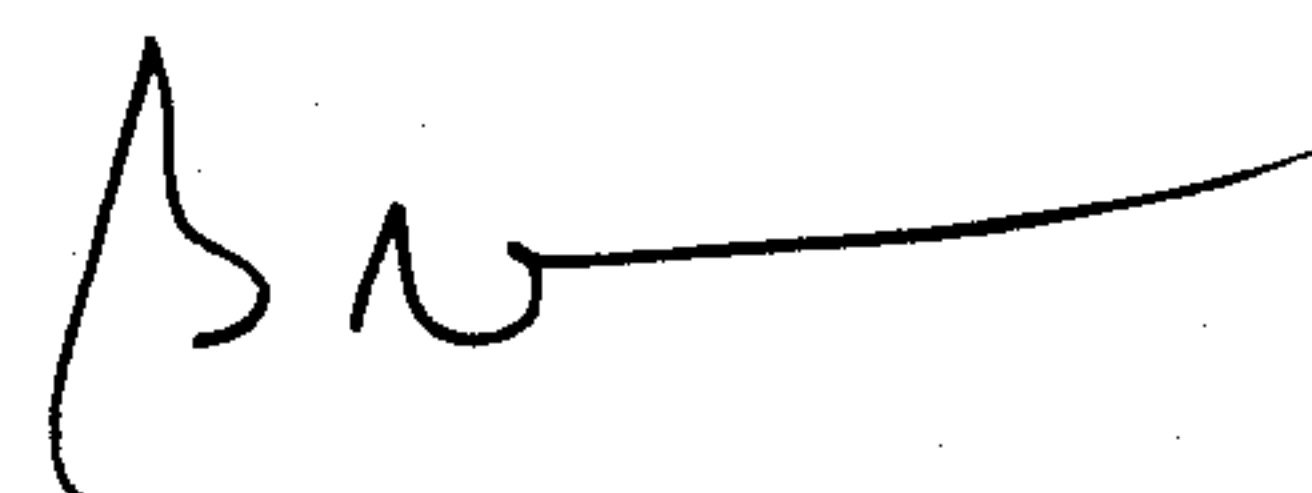


be given importance in view of the plea of default taken in the proceeding.

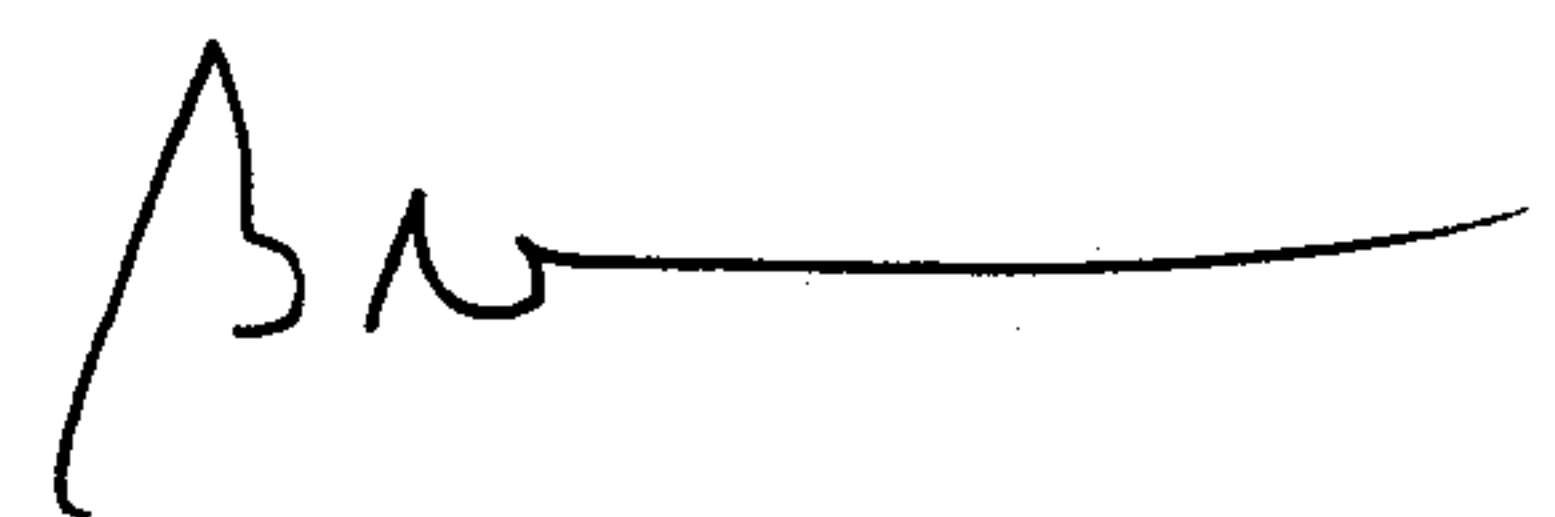
13. In this context, learned counsel appearing for respondent 3 relied upon decision rendered by the National Company Law Tribunal, Principal Bench, New Delhi in company petition No. IB-39(PB)/2017 in the matter of Unigreen Global Private Limited. A perusal of judgement rendered by the Principal Bench, New Delhi clearly goes to show that in that case the applicant company suppressed the properties in the proceedings initiated against them to prevent recovery of the amount and personal properties of the guarantors are also in the legal web in which it has been entangled deliberately by the directors of the applicant company in that case.
14. Principal Bench of NCLT depending on the facts of that case came to the conclusion that the applicant company made an attempt to abuse the process of law under the Insolvency Code and further came to the conclusion that the applicant did not approach the court without clean hands. The facts in the case before me are different. There are three financial creditors to whom huge sums of money are due by the corporate debtor. The sum that was due and committed default in respect of the two banks viz. Indian Overseas Bank and Uco Bank is more than the amount due to SICOM Ltd. There also the operational creditor who issued notices to the corporate applicant threatening action under the Insolvency Code. It is not a case



where the petitioner has suppressed any material facts which is having bearing on the decision in this case. Petitioner ~~either~~ in the petition and in the addendum to the petition placed all the material facts before this Tribunal. In case if this petition is not admitted, there is no chance of having a resolution plan to revive the company. In such a case the company would lose the benefit of the provisions of Insolvency Code. In case if resolution process fails, then winding up process starts and thereby creditors including SICOM Ltd. would have a right to share the assets of the company along with other creditors. Therefore, the above said decision relied upon by the counsel for respondent is not applicable to the facts of this case. Here Diamond Power Transformers Ltd. and SICOM Ltd. are contending that there is legally valid debt due from the corporate debtors to SICOM Ltd. i.e. financial creditors and there is a default. Merely on the ground that in the proceedings before DRT the corporate debtor took a plea that there was no default these proceedings under the Code need not be rejected. This petition is complete in all respects. Name of insolvency professional is given. Written communication from the insolvency professional also filed. Petitioner also filed copies of audited financial statements and provisional financial statements. Petitioner has given all the details of financial creditors and operational creditors including the details of guarantors. Therefore, this application deserves to be admitted and, accordingly, the application is admitted.

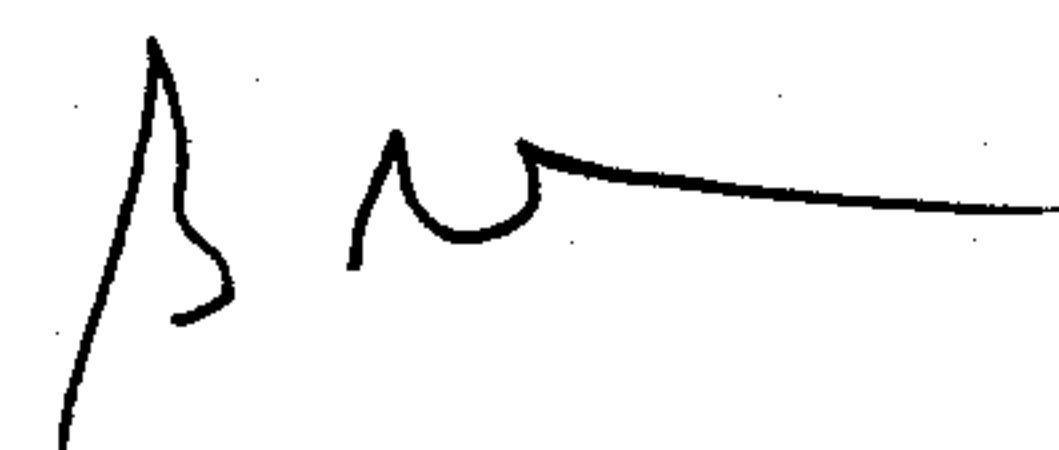


15. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional.
16. Hence, Mr. Arvind Gaudana, 307, Ashirwad Paras, Nr. Prahladnagar Garden, Satellite, Ahmedabad having IP Registration No. IBBI/IPA-002/IP-00154/2016-17/1439 is appointed as "Interim Insolvency Resolution Professional" who filed Form-2 and Certificate of Registration issued by the Insolvency and Bankruptcy Board of India. This Adjudicating Authority also directs the Corporate Applicant to make a public announcement in terms of Clause (b) of sub-section (1) of Section 13 of the Code.
17. In view of the commencement of the Insolvency Resolution Process with the admission of this Petition and appointment of the Interim Resolution Professional, this Adjudicating Authority hereby passes the order declaring moratorium under Section 13(1)(a) prohibiting the following as laid down in Section 14 of the Code;




- (i) 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;
- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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);
- (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(a) However, the supply of goods and essential services to the corporate debtor shall not be terminated or suspended or interrupted during moratorium period. The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.



18. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.
19. This Petition is ordered accordingly.
20. Communicate a copy of this order to the Corporate Applicant, financial creditors and to the Interim Insolvency Resolution Professional.


BIKKI RAVEENDRA BABU
ADJUDICATING AUTHORITY
MEMBER JUDICIAL

*Pronounced by me in open court on
the 6th day of June, 2017.*

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