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

C.P. (I.B) No. 53/7/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 01.08.2017

Name of the Company: ICICI Bank Ltd.
V/s.
ABG shipyard Ltd.

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Sahil M. Shah Abhishek Mukherjee	Advocate	Petitioner	
2.	Parth Contractor	Advocate	Resp.	

ORDER

Learned Advocate Mr. Sahil Shah with Learned Advocate Mr. Abhishek Mukherjee i/b Cyril Amarchand Mangaldas present for Financial Creditor/ Applicant. Learned Advocate Mr. Parth Contractor present for Respondent.

Order pronounced in open Court. Vide separate sheet.

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 1st day of August, 2017.

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

CP NO. (IB) 53/7/NCLT/AHM/2017

In the matter of:

1. ICICI Bank Ltd.
having its registered office
at Nr. Chakli Circle,
Old Padra Road
VADODARA 390 007
Gujarat

: Applicant
: Financial Creditor

VERSUS

1. M/s. ABG Shipyard Limited.
having its Registered Office at
Magdalla Village, Opp. Dumas Road
Surat 395 007
Gujarat

: Respondent
: Corporate Debtor

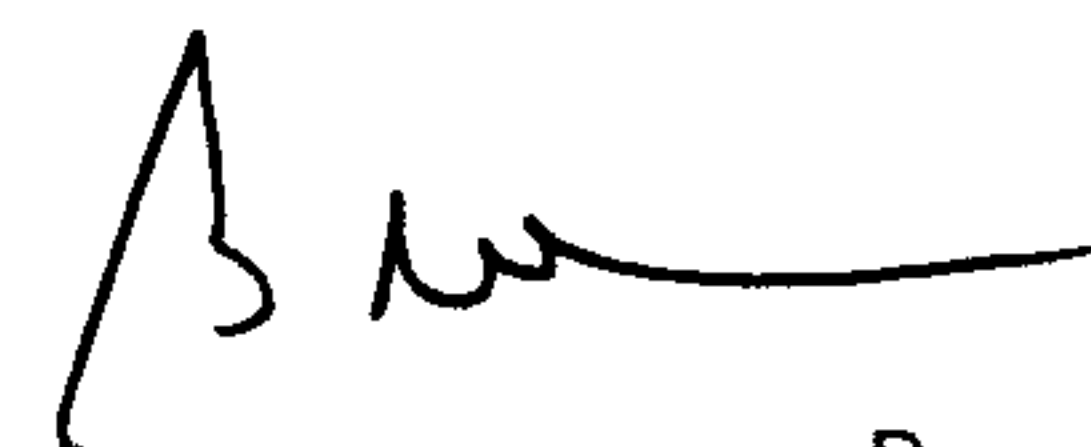
Order delivered on 1st August, 2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Appearance:

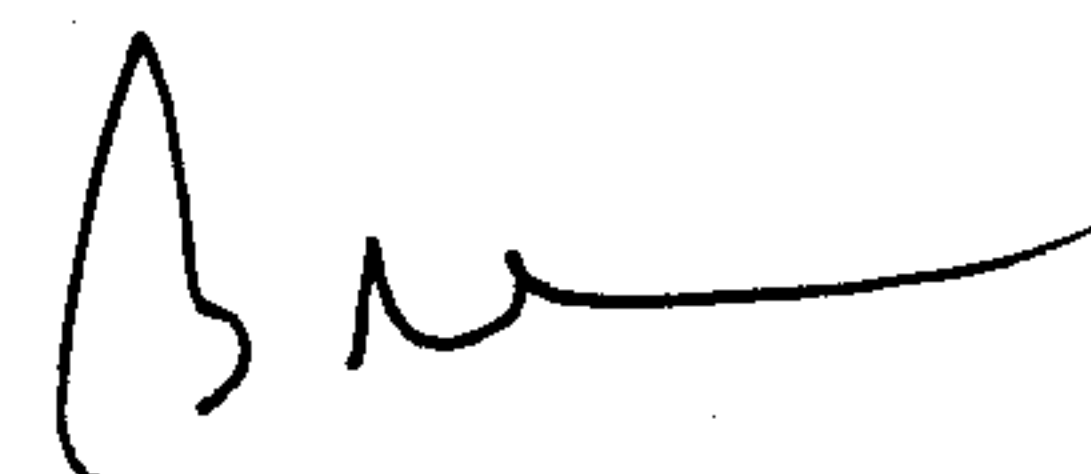
For the Applicant : Learned Senior Advocate Mr. Saurabh Soparkar with Learned advocate Mr. Gautam Sundaresh with learned advocate Mr. Abhishek Mukherjee.

For the respondent : Learned advocate Mr. Parth Contractor.



ORDER

1. ICICI Bank Ltd. (hereinafter called as applicant/ financial creditor) having its registered office at Vadodara, Gujarat through its General Power of Attorney holder Bhairavi Deshpande has filed this application to initiate Corporate Insolvency Resolution Process in respect of ABG Shipyard Ltd. (hereinafter referred as respondent/ corporate debtor) under Section 9 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 and 9 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules").
2. M/s. ABG Shipyard Limited. is a company incorporated under the Companies Act having its Registered Office at Magdalla Village, Opp. Dumas Road, Dist. Surat. Authorised share capital of M/s. ABG Shipyard Limited. is Rs. 170,00,00,000/-. Paid up share capital of the company is Rs. 201,50,46,640/-.
3. Financial creditors granted several loan facilities to the corporate debtors under Master Restructuring Agreement (MRA) dated 28.03.2014, the first amendment agreement to MRA dated 30.07.2014, and 2nd amendment agreement dated 09.09.2014.



4. Corporate debtor executed the following guarantee deeds in favour of the financial creditor

- (1) Guarantee deed dated 27.06.2012
- (2) Guarantee deed dated 28.06.2012
- (3) Guarantee deed dated 13.04.2012

5. All the above guarantees are in respect of capital facilities granted to PFS Shipping (India) Ltd. in respect of working capital facilities made available to Western India Shipyard Limited and Varada Ventures Pte Limited respectively.

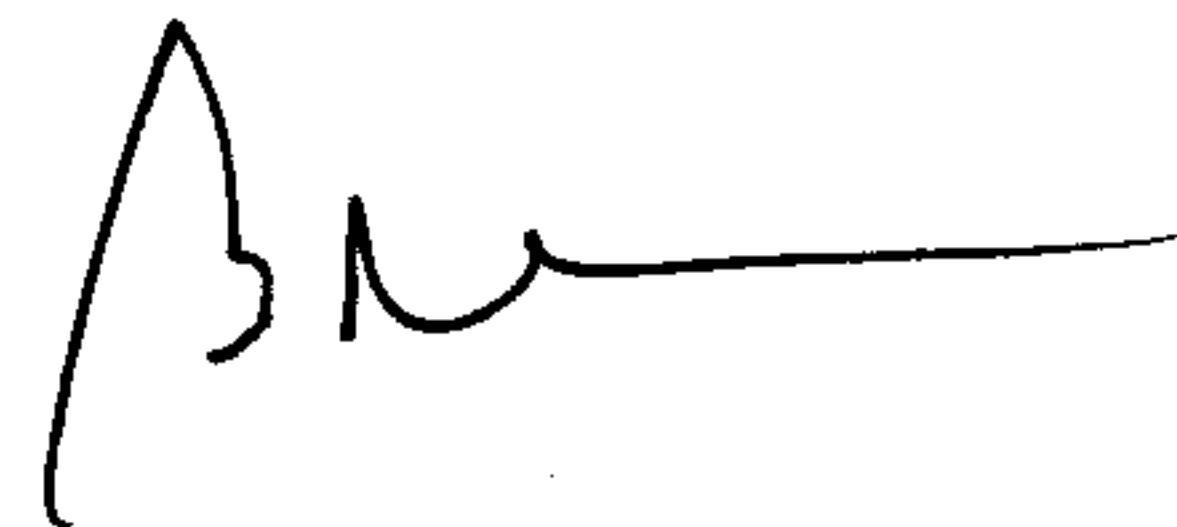
6. Corporate debtor executed following letters of comfort in favour of following units.

- (1) Letter of comfort dated 18.04.2011 in respect of facilities to Global Bulk Carriers Pte Ltd.
- (2) Letter of comfort dated 31.08.2010 in respect of facilities to Varada Marine Pte. Ltd.

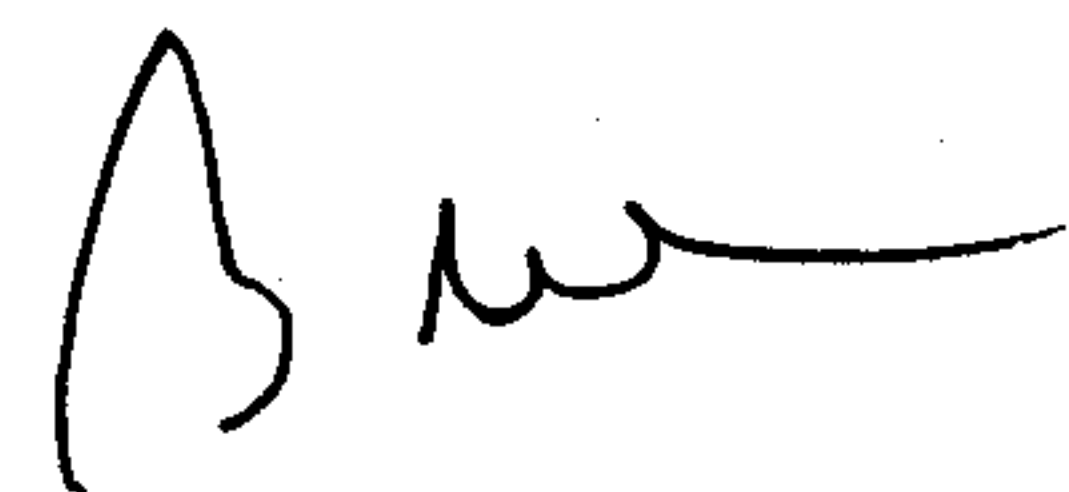
7. However, financial creditors have not invoked ABG guarantees and ABG letters of comfort.

8. Following are the amount of default and details of default under the restructured facilities committed by corporate debtors: -

- (1) The amount in default under the term loan-1 facility as on June 21, 2017 is Rs. 210.65 crores.

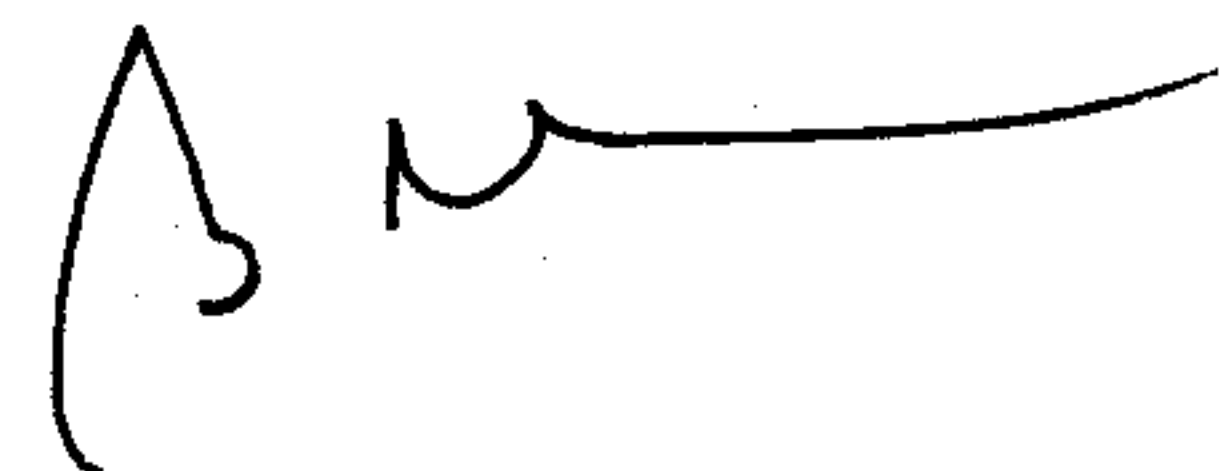


- (2) The amount in default under the Term Loan – 2 facility as on June, 21, 2017 is Rs. 37.74 crores.
- (3) The amount in default under the priority loans as on June 21, 2017 is Rs. 167.96 crores. The amounts outstanding are only under and with respect to the priority loan II facility as no disbursements were made under the priority loan I and priority loan III facilities.
- (4) The amount in default under the term debt upon invocation of CG facility as on June, 21, 2017 is Rs. 290.32 crores.
- (5) The amount in default under the FITL facility – I facility as on June 21, 2017 is Rs. 22.28 crores.
- (6) The amount in default under the FITL facility – II facility as on June 21, 2017 is Rs. 89.65 crores.
- (7) The amount in default under the FITL facility – III facility as on June 21, 2017 is Rs. 6.82 crores.
- (8) There are no amounts outstanding in respect of the FITL facility – V as this facility was to be constituted of interest accrued but not paid in respect of outstanding under priority loan I (which was never disbursed)



- (9) The amount in default under the FITL facility – VI facility as on June 21, 2017 is Rs. 4.93 crores.
- (10) There are no amounts outstanding in respect of the FITL facility – VII as this facility was to be constituted of interest accrued but not paid in respect of outstanding under Priority Loan III (which was never disbursed)
- (11) The amount in default under the FITL facility – VIII facility as on June 21, 2017 is Rs. 1.47 crores.
- (12) The amount in default under the FITL facility – IX facility as on June 21, 2017 is Rs. 5.73 crores
- (13) The amount in default under the restructured working capital facilities (fund based) facility as on June 21, 2017 is Rs. 1298.17 crores.
- (14) The amount in default under the restructured working capital facilities (fund based) facility as on June 21, 2017 is Rs. 1972.31 crores.
- (15) The amount in default under the WCTL facility as on June 21, 2017 is Rs. 180.23 crores.
- (16) The amount in default under the bank guarantee commission facility as on June 21, 2017 is Rs. 3.64 crores.

Note: The date of default for all the above mentioned facilities is October 20, 2016



The Total amount claimed as on June 21, 2017 is Rs. 4291.90 crores.

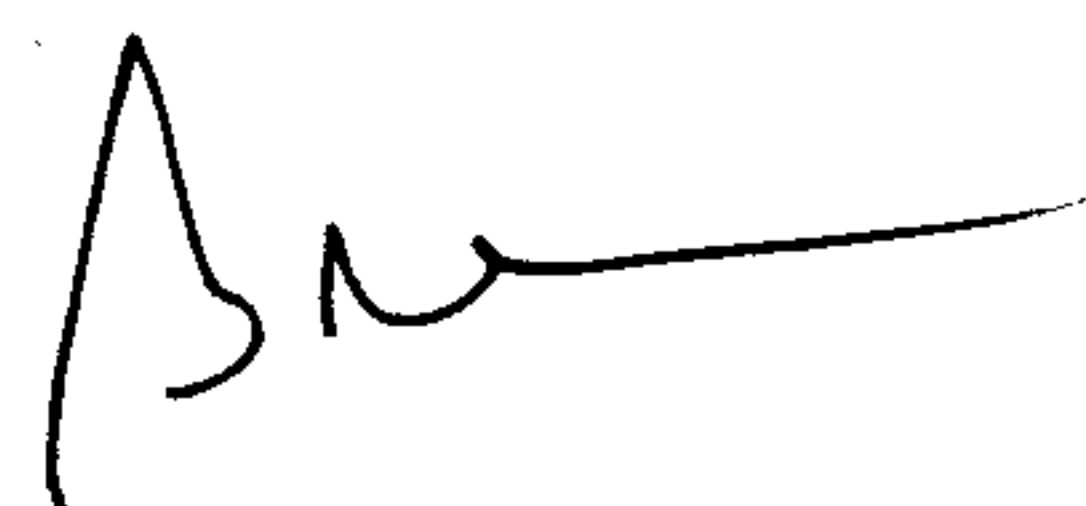
The table containing the details of the computation of the amount of default on the part of the Corporate debtor, the dates of default and the number of days of default under the restructured facilities is annexed to application as Exhibit "5"

9. Financial creditors further stated that the corporate debtors executed several security documents mortgaging the immovable properties for the facilities enjoyed by it. That are summarised here below: -

1) Rupees term loan facility to the tune of Rs. 170,00,00,000 (Rupees One Hundred and Seventy Crores Only) (**"Term Loan - 1"**) (this facility also involves certain FCNR(B) facilitates), as has been set out in Schedule IV of the MRA.

2) Rupees term loan facility in FCNR (B) to the tune of Rs. 49,60,00,000 (Rupees Forty-Nine Crores Sixty Lakhs Only) (**"Term Loan-2"**), as has been set out in Schedule IV of the MRA.

3) Rupees term loan facility to the tune of Rs. 33,15,00,000 (Rupees Thirty-Three Crores Fifteen Lakhs Only) (**"Priority Loan I"**), as has been set out in Schedule V of the MRA.



4) Rupee term loan facility to the tune of Rs. 294,91,00,000 (Rupees Two Hundred and Ninety-Four Crores Ninety-One Lakhs Only) ("**Priority Loan II**"), as has been set out in Schedule V of the MRA.

5) Rupee term loan facility to the tune of Rs. 62,93,00,000 (Rupees Sixty-Two Crores Ninety-Three Lakhs Only) ("**Priority Loan III**"), as has been set out in Schedule V of the MRA.

(Priority Loan I, Priority Loan II and Priority Loan III are collectively referred to as the "**Priority Loans**")

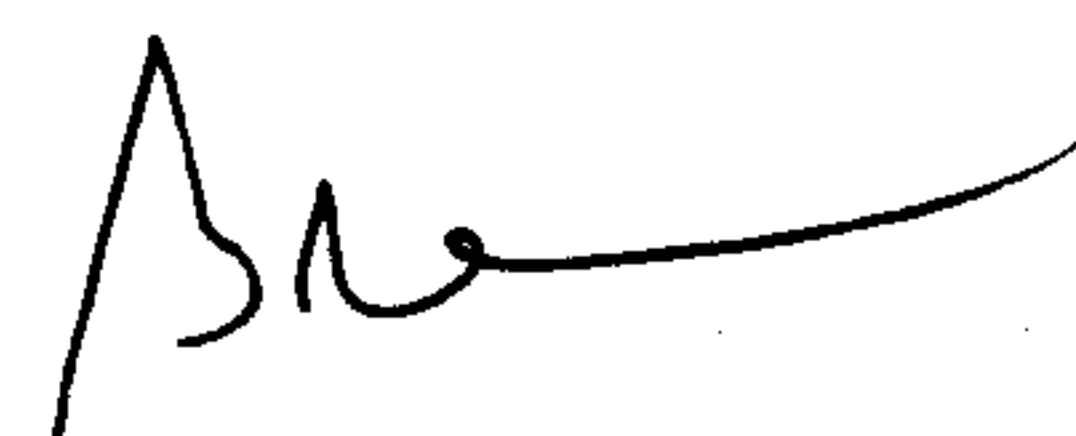
6) Rupee term loan facility made available upon invocation of the corporate guarantees provided by the Corporate Debtor to its group companies (as set out in Schedule XIV of the MRA) of Rs. 539,39,84,000 (Rupees Five Hundred and Thirty Nine Crores Thirty Nine Lakhs and Eighty Four Thousand Only) (constituting a limit of Rs. 58,60,00,000 (Rupees Fifty Eight Crores and Sixty Lakhs Only) and USD 80 Million (USD Eighty Million Only), equivalent to Rs. 480,79,84,000 calculated as per the prevailing exchange rate of Rs. 60.0998 as on March 28, 2014 (as per the Reserve Bank of India website) ("**Term Debt upon Invocation of CG**"). The details of the Term Debt upon



Invocation of CG have been set out in Schedule XIV of the MRA read with Schedule XIV of the Second Amendment to MRA.

7) Various funded interest term loan facilities, as set out below:

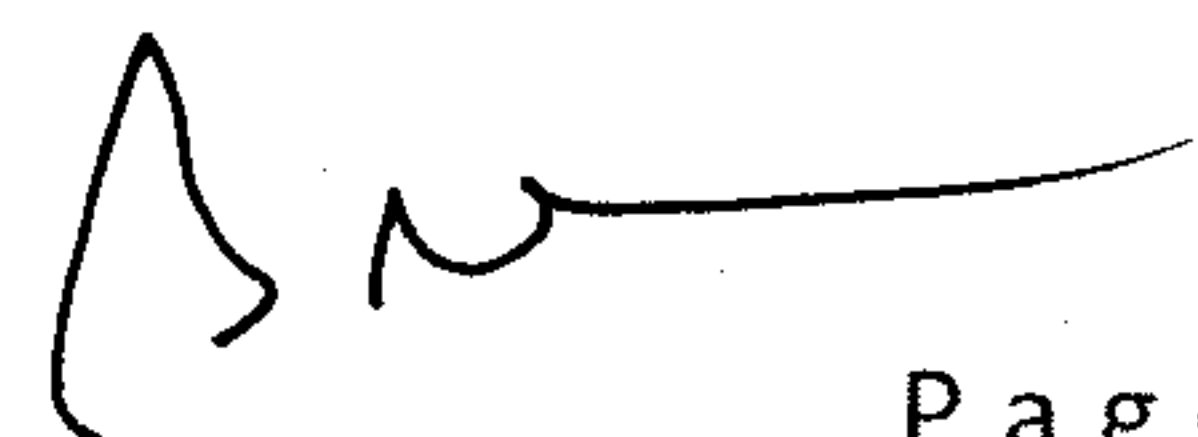
- (i) Restructured funded interest term loan facility of Rs. 39,00,00,000 (Rupees Thirty Nine Crores Only) (**"FITL Facility-I"**), as set out in Schedule XVI to the MRA;
- (ii) Restructured funded interest term loan facility of Rs. 148,80,00,000 (Rupees One Hundred and Forty Eight Crores and Eighty Lakhs Only) (**"FITL Facility-II"**), as set out in Schedule XVI to the MRA;
- (iii) Restructured funded interest term loan facility of Rs. 105,30,00,000 (Rupees One Hundred and Five Crores and Thirty Lakhs Only) (**"FITL Facility-III"**), as set out in Schedule XVI to the MRA;
- (iv) Restructured funded interest term loan facility of Rs. 4,00,00,000 (Rupees Four Crores Only) (**"FITL Facility-V"**), as set out in Schedule XVI to the MRA;



- (v) Restructured funded interest term loan facility of Rs. 36,90,00,000 (Rupees Thirty Six Crores and Ninety Lakhs Only) (**"FITL Facility-VI"**), as set out in Schedule XVI to the MRA;
- (vi) Restructured funded interest term loan facility of Rs. 9,70,00,000 (Rupees Nine Crores and Seventy Lakhs Only) (**"FITL Facility-VII"**), as set out in Schedule XVI to the MRA;
- (vii) Restructured funded interest term loan facility of Rs. 3,10,00,000 (Rupees Three Crores and Ten Lakhs Only) (**"FITL Facility-VIII"**), as set out in Schedule XVI to the MRA; and
- (viii) Restructured funded interest term loan facility of Rs. 8,80,00,000 (Rupees Eight Crores and Eighty Lakhs Only) (**"FITL Facility-IX"**), as set out in Schedule XVI to the MRA;

(The above mentioned funded interest term loan facilities are collectively referred to as the "FITL Facilities")

- 8) Restructured fund based working capital facilities to the tune of Rs. 865,00,00,000 (Rupees Eight Hundred and Sixty

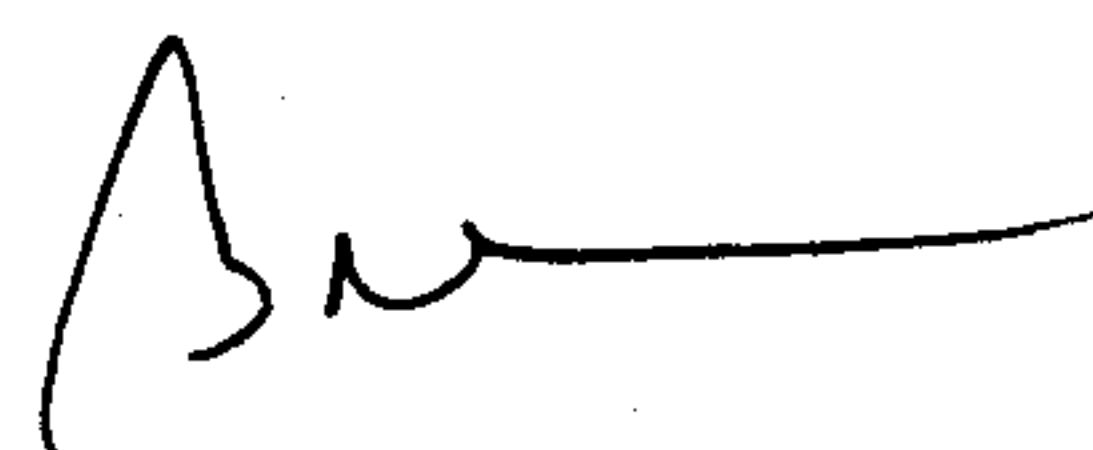


Five Crores Only) (**"Restructured Working Capital Facilities (fund based)"**). The details of the Restructured working Capital Facilities (fund based) have been set out in Schedule IV of the MRA.

- 9) Restructured non-fund based working capital facilities to the tune of Rs. 2035,00,00,000 (Rupees Two Thousand and Thirty Five Crores) (being an aggregate of Rs. 1885,00,00,000 (Rupees One Thousand Eight Hundred and Eighty Five Crores Only) under the MRA in addition to Rs. 150,00,00,000 (Rupees One Hundred and Fifty Crores Only) under the First Amendment to MRA) (**"Restructured Working Capital Facilities (non-fund based)"**). The details of the Restructured Working Capital Facilities (non-fund based) have been set out in Schedule IV of the MRA read with Clause 2.2.7 of the First Amendment to MRA).

Further, a portion of the irregular/ outstanding/ devolved portion under all the letter(s) of credit and/ or bank guarantees issued under the Restructured Working Capital Facilities (non-fund based) were converted and reconstituted as a separate working capital term loan facility (**"WCTL"**), as set out in Schedule IV of the MRA.

Further, commission has been charged towards bank guarantees issued by the Financial Creditor on behalf of the Corporate debtor, which have since been devolved (**"Bank Guarantee Commission"**).



The above-mentioned facilities are hereinafter collectively referred to as the "**Restructured Facilities**".

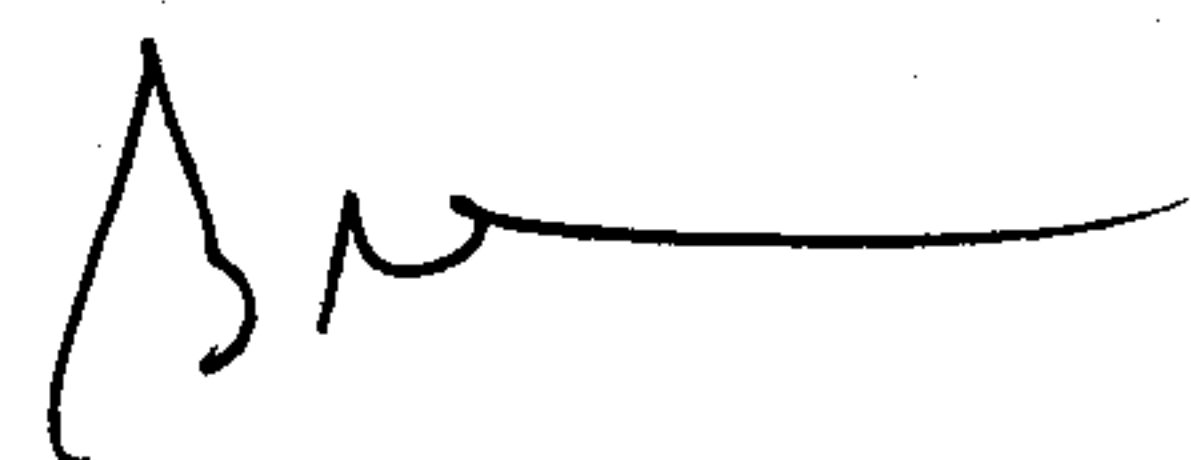
The total debt granted under the Restructured Facilities is Rs. 4405,58,84,000 (Rupees Four Thousand Four Hundred and Five Crores Fifty-Eight Lakhs and Eighty-Four Thousand Only).

Note: The restructuring package pertaining to the facilities under the MRA has not been revoked. The Financial Creditor reserved the right to do so in accordance with Clause 7.4 of the MRA.

In addition to the Restructured Facilities mentioned above, the Corporate Debtor issued several corporate guarantees and letters of comfort in favour of the Financial Creditor in respect of facilities granted by the Financial Creditor to the Corporate Debtor's group companies.

The various corporate guarantees by the Corporate Debtor in favour of the Financial Creditor have been issued:

- (i) Vide Deed of Guarantee dated June 27, 2012 in respect of certain working capital



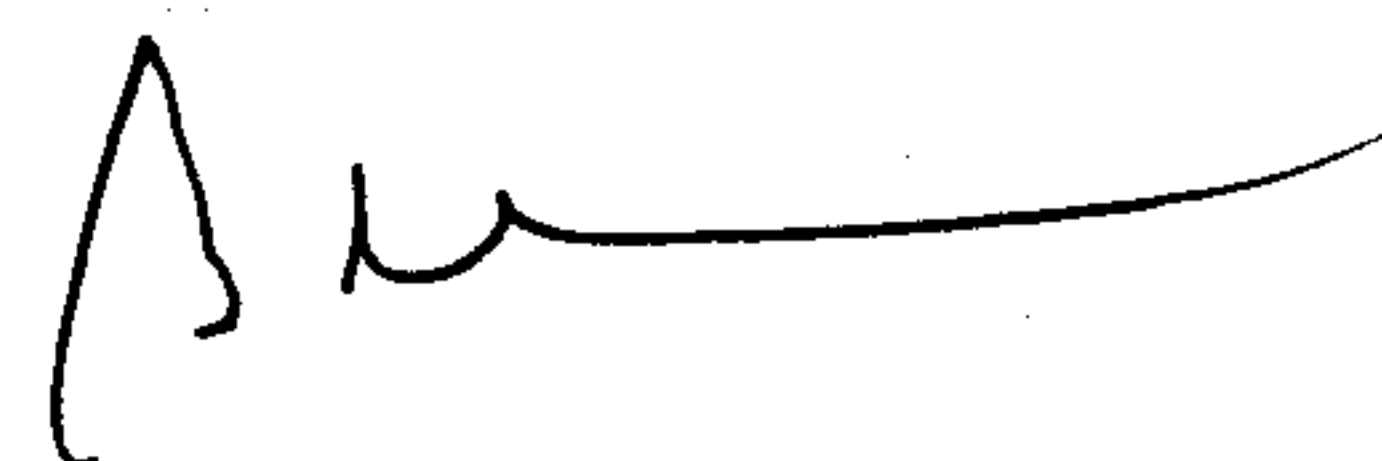
facilities granted to PFS Shipping (India) Limited over all limits upto Rs. 25,00,00,000 (Rupees Twenty Five Crores Only) under Facility Agreement dated June 27, 2012.

(ii) Vide Deed of Guarantee dated June 28, 2011 in respect of certain working capital facilities made available to Western India Shipyard Limited overall limits upto Rs. 33,60,00,000 (Rupees Thirty Three Crores and Sixty Lakhs Only) under Facility Agreement dated June 28, 2011.

(iii) Vide Deed of Guarantee dated April 13, 2012 in respect of certain facilities made available to Varada Ventures Pte. Limited upto overall limits of USD Rs. 70,000,000 (USD Seventy Million) under Facility Agreement dated February 07, 2012.

(the above mentioned deeds of guarantees are hereinafter referred to as **"ABG Guarantees"**)

The various letters of comfort issued by the Corporate Debtor in favour of the Financial Debtor are as follows:



(i) Letter of Comfort dated April 18, 2011 in respect of facilities amounting to USD 70.7 Million (USD Seventy Million and Seven Hundred Thousand Only) to Global Bulk Carriers Pte Ltd. under Facility Agreement dated March 31, 2011.

(ii) Letter of Comfort dated August 31, 2010 in respect of facilities amounting to USD 82.2 Million (USD Eighty Two Million Only) to Varada Marine Pte. Ltd. under the facility Agreement dated August 31, 2010.

(the above mentioned letters of comfort are hereinafter referred to as the **"ABG Letters of Comfort"**)

The ABG Guarantees and the ABG Letters of Comfort have not been invoked as of yet. The Financial Creditor has the right to invoke the ABG Guarantees and the ABG



Letters of comfort as per the terms thereof.

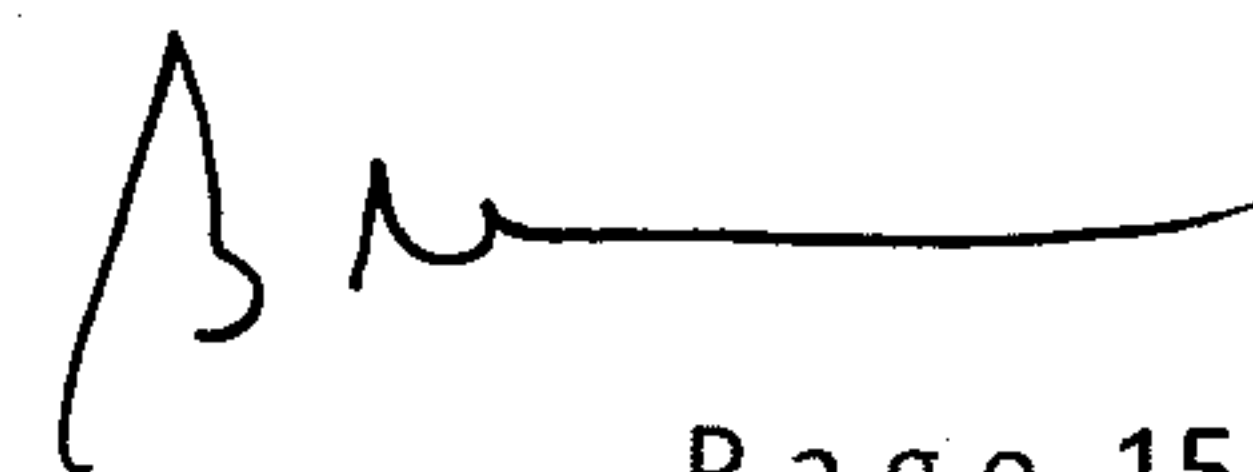
The table containing details of the total amount of debt disbursed and the dates of disbursements of the various Restructured Facilities has been annexed herewith at **Exhibit – “4”**.

Note: For purpose of this application, the total amount of debt granted is restricted to the debt under the Restructured Facilities.

10. The financial creditors stated that ITD Cementation India Ltd. has filed Company Petition No. 375 of 2016 against the corporate debtors on 19.06.2017 and it was admitted against the corporate debtors.
11. Financial creditors also filed copies of entries in a banker's book in accordance with the Bankers' Books Evidence Act, 1891.
12. Financial creditor's annual report of the corporate debtor for the financial year 2015-16 as certified by the independent auditor.



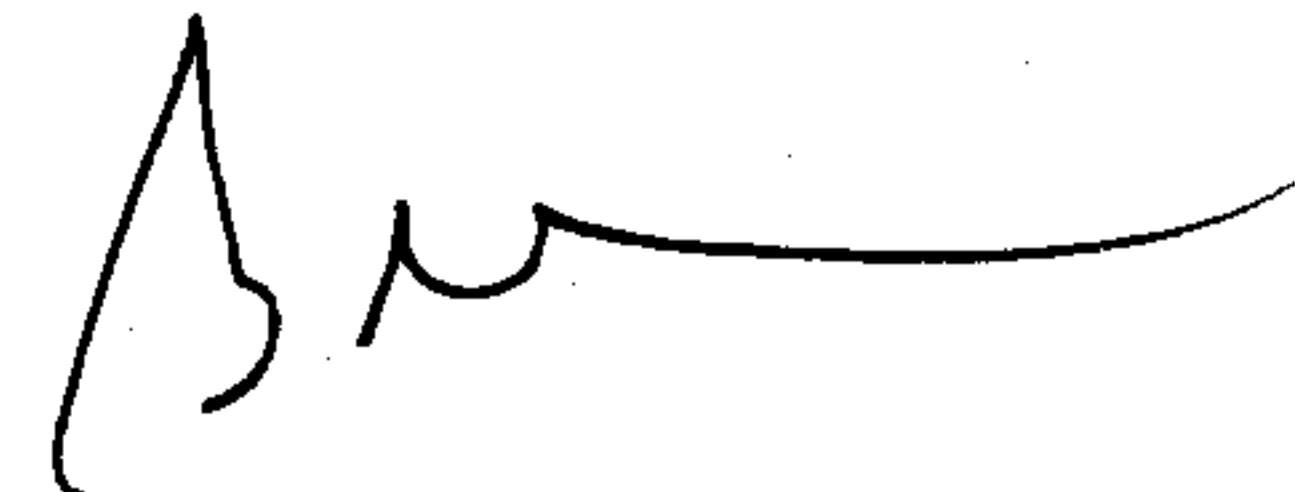
13. The letter issued by the Reserve Bank of India dated 15.06.2017 appealing the financial creditor to initiate Insolvency Resolution Process singly or jointly with other lenders under the provisions of the Insolvency and Bankruptcy Code, 2016 in respect of the default committed by the Corporate Debtor.
14. Applicant proposed Mr. Sundaresh Bhatt as interim resolution professional and filed his written communication in form No. 2.
15. Financial creditors filed copies of financial debt and documents and evidence of default in Part V of the application.
16. Financial creditor filed this application before this Tribunal on 03.07.2017. This application, for the first time was listed before adjudicating authority on 20.07.2017. Corporate debtors appeared through advocate. As can be seen from form No. 1 filed by the financial creditors, winding up petition No. 375 of 2016 filed against the corporate debtor is pending before the Hon'ble High Court of Gujarat and after its admission by order dated 19.06.2017. This Adjudicating authority listed the matter on 27.07.2017 with direction to file reply within one week for hearing before admission.
17. On 27.07.2017 this adjudicating authority heard arguments of both the sides counsel. Advocate for applicant filed purshis stating that winding up petition filed against corporate debtor



stands adjourned to 16.08.2017. It is also stated in the purshis that no winding up order or order appointing liquidator has been passed in Company Petition 375 of 2016 and in the said purshis it is also mentioned that, ICICI bank apprised the Hon'ble High court regarding the pendency of Insolvency Proceedings before this authority and requested the Hon'ble High Court of Gujarat to adjourn the matter for a longer date. The Hon'ble High Court of Gujarat after hearing the submission of the advocate for ICICI Bank, adjourned the matter to 16.08.2017.

18. Respondent corporate debtor filed reply dated 27.07.2017. In the reply, corporate debtor stated that the total debt outstanding under the facilities granted by the financial creditor under restructuring agreement as on 21.06.2017 stands at Rs. 4291.90 crores. Corporate debtor further stated that non-payment is on account of unavoidable reasons including inter alia global downfall in the shipping industry. It is also stated that certain ship building contracts for some vessels were cancelled resulted in paucity of working capital. It is stated by the corporate debtor that Corporate Insolvency Process would help both the company, its employees and possibility of reviving the company's business.

19. Financial creditors filed this application under Section 7 of the Code for initiating Corporate Insolvency Resolution Process. Hon'ble National Company Law Appellate Tribunal in company appeal No. (AT)(Insolvency) No. 1 & 2 of 2017 in the matter of



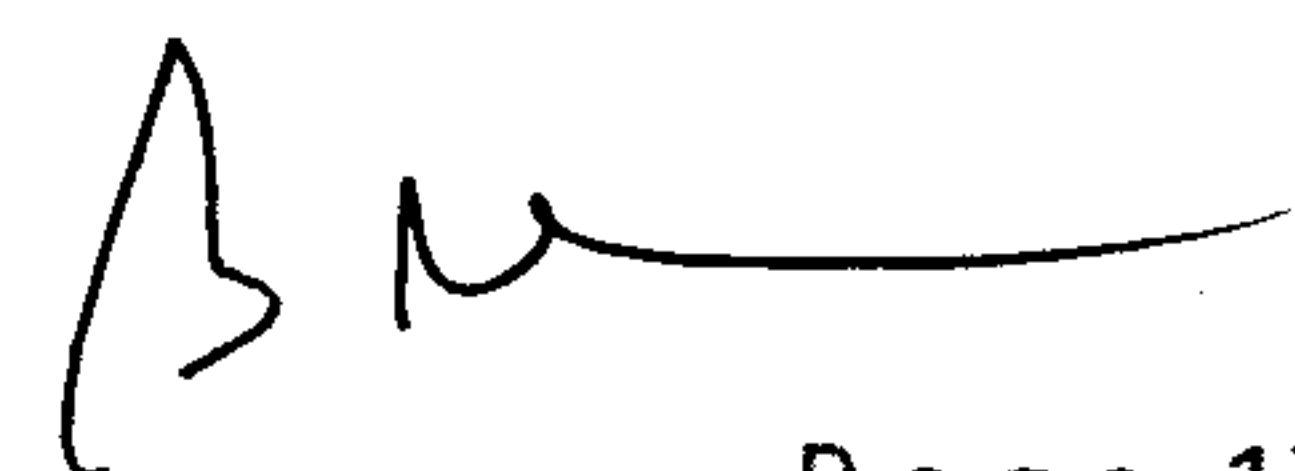
M/s. Innoventive Industries Ltd. vs ICICI Bank & Anr. held as follows: -

"As discussed in the previous paragraphs, for initiation of corporate resolution process by financial creditor under sub-section (4) of Section 7 of the code, 2016, the 'adjudicating authority' on receipt of application under sub-section (2) is required to ascertain existence of default from the records of Information Utility or on the basis of other evidence furnished by the financial creditor under sub-section (3). Under Section 5 of Section 7, the 'adjudicating authority' is required to satisfy-

- (a) Whether a default has occurred;*
- (b) Whether an application is complete and*
- (c) Whether any disciplinary proceeding is against the proposed Insolvency Resolution Professional.*

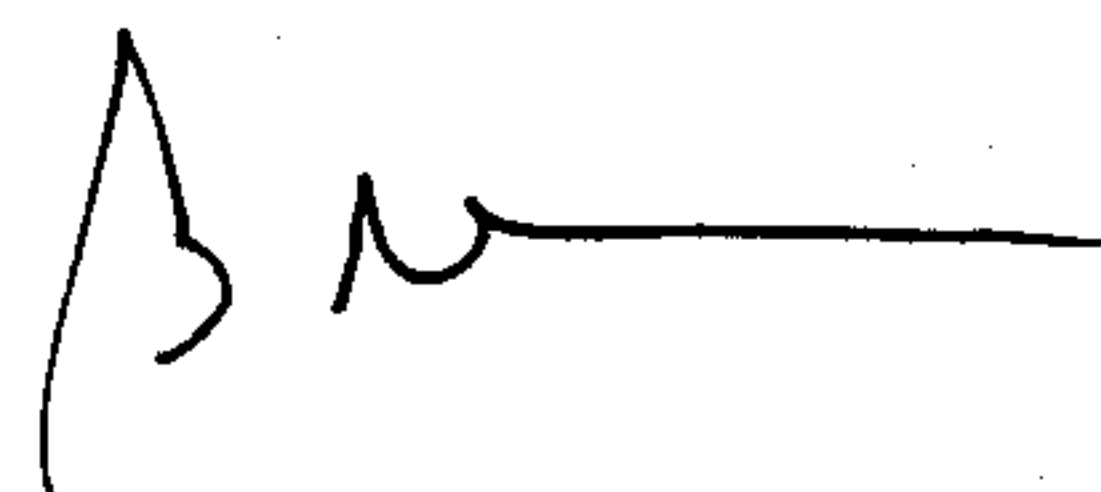
Once it is satisfied it is required to admit the case but in case the application is incomplete application, the financial creditor is to be granted seven days' time to complete the application. However, in a case where there is no default or defects cannot be rectified, or the record enclosed is misleading, the application has to be rejected.

Beyond the aforesaid practice, the 'adjudicating authority' is not required to look into any other factor, including the question whether permission or consent has been obtained from one or other

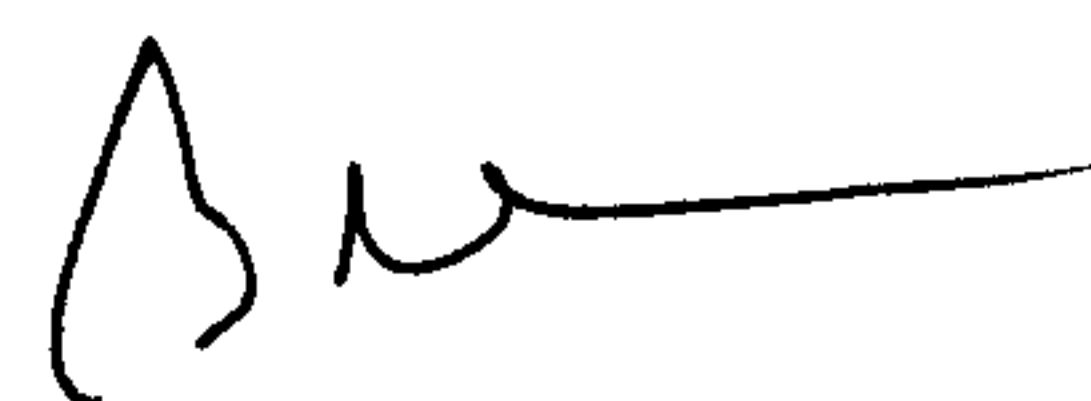


authority, including the JLF. Therefore, the contention of the petition that the Respondent has not obtained permission or consent of JLF to the present proceeding which will be adversely affect loan of other members cannot be accepted and fir to be rejected."

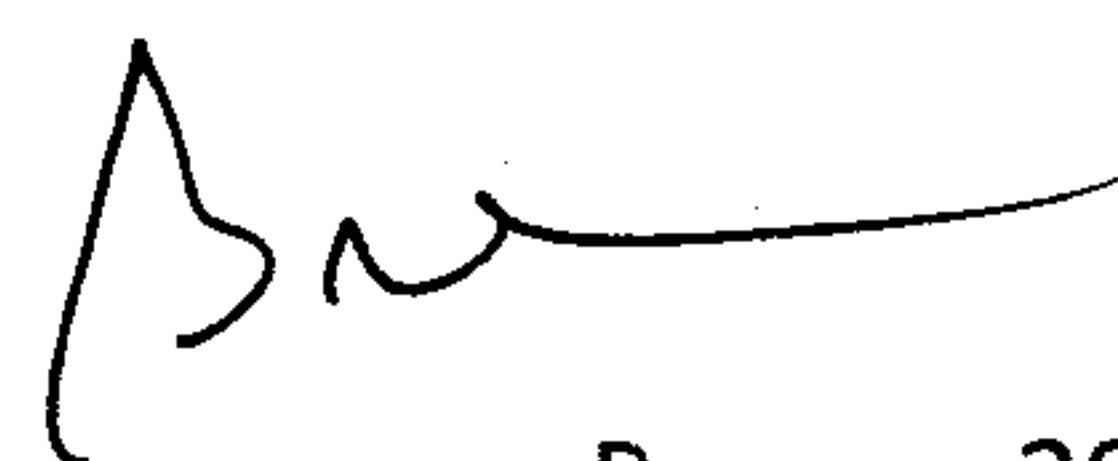
20. In the case on hand there is material on record to substantiate that default has occurred. Application filed by corporate debtor is complete in all respects. It is evident from the written communication filed for appointment of Insolvency Resolution Professional that no disciplinary proceedings are pending against him. In view of the aforesaid decision, this adjudicating authority need not look into any other factor.
21. In this case the only possible argument is winding up petition No. 375 of 2017 is pending before the Hon'ble High Court of Gujarat. The said petition was admitted by the Hon'ble High Court of Gujarat on 19.06.2017. Hon'ble High Court after admitting the winding up petition deferred the order of advertisement till 18.07.2017. Financial Creditors filed purshis before this authority stating that even on 18.07.2017 no winding up order was passed and no provisional liquidator was appointed and on the representation of the financial creditors, Hon'ble High Court adjourned the matter to 16.08.2017.



22. In these circumstances it is clear that although Hon'ble High Court of Gujarat admitted winding up petition, no winding up order has been passed and no provisional liquidator has been appointed.
23. Now the controversy is that, in view of the pendency of winding up petition CP no. 375 of 2016 whether this Tribunal can entertain and pass order in this petition. In view of the fact that, no winding up order has been passed and no provisional liquidator has been appointed in company petition 375 of 2016 by Hon'ble High Court of Gujarat, section 446 of the Companies Act, 1956 is not applicable. In view of clause (a) of sub section (i) of section 14 of the Code of proceedings against corporate debtor shall stand stayed on the commencement of insolvency resolution process. In view of section 238 of the code the provisions of insolvency code shall have overriding effect over any other law which is inconsistent with the provisions of this code. This adjudicating authority in CP (IB) 48 of 2017 in case of Alok Industries Ltd. also took the same view.
24. The financial debtor is a company. The material placed on record by the applicant clearly show that money was lent to the respondent on interest. Therefore, the amount due from the respondent to the applicant is a financial debt. The applicant is a financial creditor. Respondent is a corporate debtor.



25. In view of the above discussions, this application is admitted under section 7 (5) (a) of the insolvency code.
26. This adjudicating authority is appointing Mr. Sundaresh Bhat, B-905, National Seaqueen Excellency, Sector 44A, Seawood, Nerul West, Navi Mumbai 400 076 as interim resolution professional. The applicant is directed to make public announcement about initiation of Corporate Insolvency Resolution process as required by Section 13 (1) (b) of the Code.
27. Adjudicating authority hereby pass 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 judgement, 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.
- (v) (a) The moratorium order in respect of (i), (ii), (iii) and (iv) shall not apply to the transactions notified by the Central Government.

28. 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.

29. This application is disposed of accordingly.

30. Communicate a copy of this order to the applicant/ financial creditor, respondent/ corporate debtor and to the Interim Insolvency Resolution Professional.


BIKKI RAVEENDRA BABU
ADJUDICATING AUTHORITY
MEMBER JUDICIAL

Pronounced by me in open court on the 1st day of August, 2017.