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

C.P. (I.B) No. 73/10/NCLT/AHM/2017


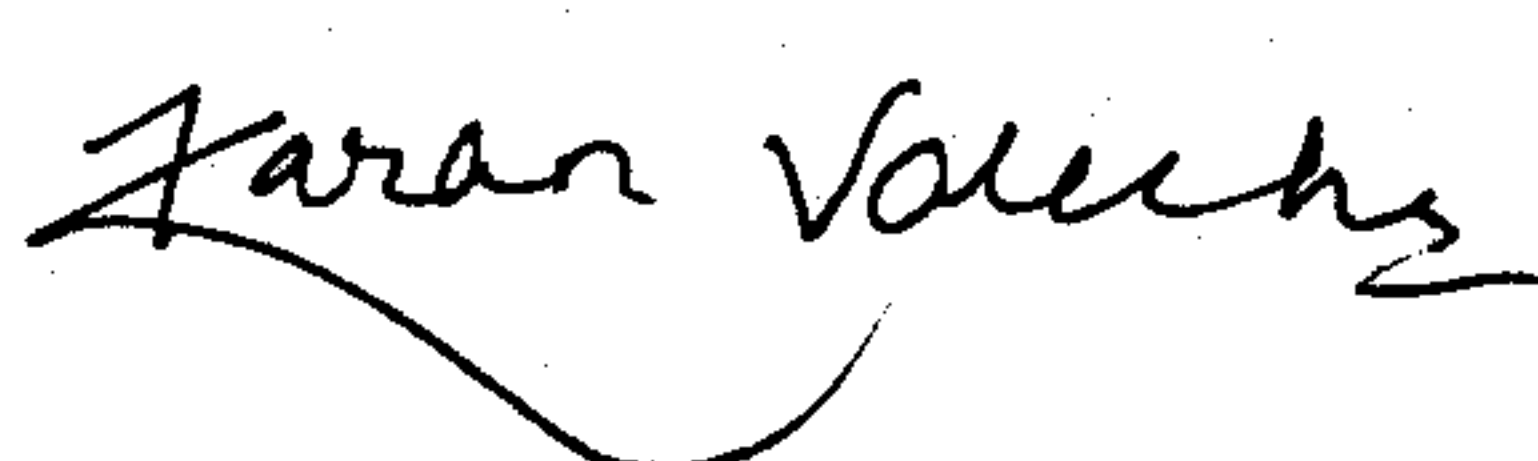
Coram:

**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 21.08.2017**

Name of the Company: Bharatbhai Vrajlalbhai Selani
(Shiv Cotgin Pvt Ltd.)
V/s.
Dena Bank & Ors.


Section of the Companies Act: Section 10 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.	ANIP A. GANDHI	ADVOCATE	RES. NO. 2 Dena Bank	
2.	KARAN VALECHA	ADVOCATE	APPLICANT	

ORDER

Learned Advocate Mr. Karan Valecha i/b A R Gupta & Associates present for Corporate Debtor/ Applicant. Learned Advocate Mr. Anip Gandhi present for Respondent (Dena Bank).

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 21st day of August, 2017.

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

C.P. No.(I.B) 73/10/NCLT/AHM/2017

In the matter of:

Shri Bharatbhai Vrajalbhai Selani
Director of
M/s. Shiv Cotgin Pvt.Ltd.,
Survey No. 54/2,
Gondal-Rajkot National Highway,
Bhojpara,
Gondal-360311
District-Rajkot (GUJ).

: Applicant
Corporate Applicant.

Versus

1. Dena Bank,
Para Bazar Branch,
Torai Building, 1st Floor,
Subhash Road,
Opp: Shastri Maidan,
Rajkot-360001(GUJ)
2. ICICI Bank Ltd.,
Jai Hind Press Annexe,
Opp: Shardabaug,
Near Dharam Cinema,
Rajkot-360001
3. M/s. Capital First Ltd.,
Technopolis Knowledge Park,
Unit No. 401-407,
4th Floor, A Wing,
Mahakali Caves Road,
Andheri (East),
Mumbai-400093
4. M/s. Religare Finvest Ltd.,
D3, P3B, District Center,
Saket,
New Delhi-110017



5. M/s. Bajaj Finance Limited
Office No. 501 to 508,
5th Floor, Tower B,
Imperial Heights,
Ring Road,
Rajkot-360005

: Respondents.
Financial Creditors.

Order delivered on 21st August, 2017.

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

Appearance:

Shri Mohit Gupta, learned Advocate on behalf of M/s. AR Gupta Associates for Corporate Applicant.

Shri Mandeep Singh Saluja, learned Advocate with Shri Dhruvik Patel, on behalf of Shri Kalpesh Patel, learned Advocate for Respondent No.5

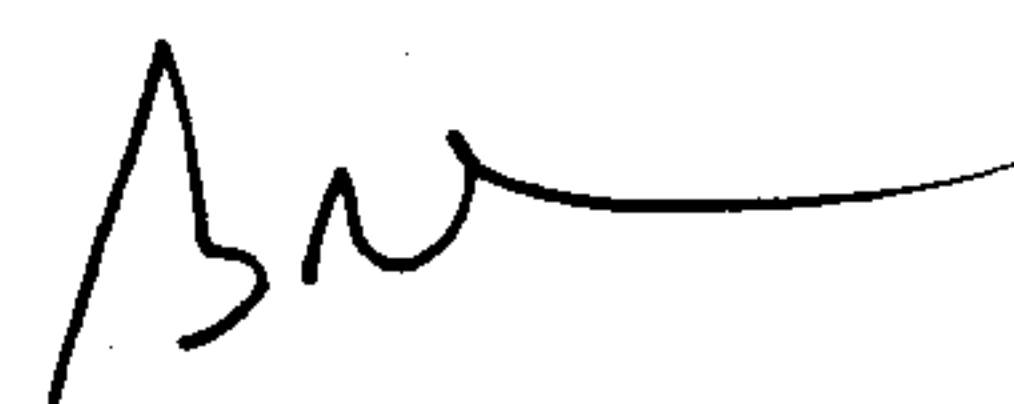
Shri Anip Gandhi, learned Advocate for Respondent No.1.

ORDER

1. M/s. Shiv Cotgin Pvt.Ltd., ("Company" for short) by its Board Resolution dated 21st April, 2017 authorised Shri Bharatbhai Vrajalbhai Selani, Director of the Company to file this Application under the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") before this Authority.

2. This Application is filed by the Director of the Company in Form-6.

3. The Registered Office of the Company is in Gondal, Rajkot District, Gujarat. The Paid-up Share Capital of the Company is Rs.



9,00,00,000, divided into 90,00,000 equity shares of Rs. 10/- each. Applicant in Part-III of Form-6 mentioned (1) Dena Bank; (2) ICICI Bank Ltd.; (3) Capital First Ltd.; (4) M/s. Religare Finvest Ltd; and (5) M/s. Bajaj Finance Limited, as 'Financial Creditors' and 9 (Nine) others as 'Operational Creditors'. It is stated by the Corporate Applicant that the Company has committed default of financial debt in respect of all the 5 Financial Creditors to the tune of Rs. 34,64,10,545.77, and in respect of 9 Operational Creditors to the tune of Rs. 2,35,98,155/- as per Annexure VI annexed to the Petition.

4. Corporate Applicant gave details of the securities held by Dena Bank. The Applicant also given details of hypothecated stocks to Dena Bank. Applicant filed statement of accounts for the current year and for the last two financial years. Applicant also filed Audited Financial Statements for the current year and last two financial years.

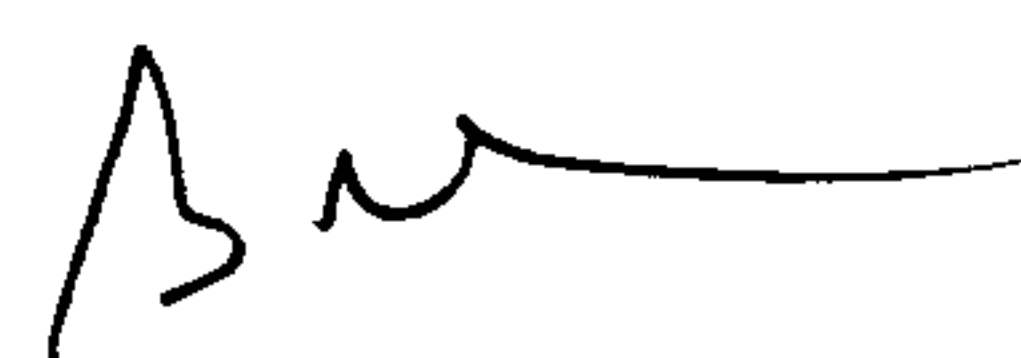
5. Dena Bank issued notice under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short] on 22.7.2016 to the Guarantors of the Company demanding repayment of Rs. 33,65,82,728.54. Dena Bank also issued another Demand Notice dated 7.10.2016 to the Advocate Firm representing the Company. Dena Bank also issued Possession Notice dated 25.1.2017. Dena Bank filed Original Application No. 97 of 2017 before the Debt Recovery Tribunal-II, Ahmedabad, for recovery of Rs. 40,00,00,000/- and also for issuance of Recovery Certificate. Applicant also stated that M/s. Capital First Ltd., formerly known as 'Future Holdings Ltd.,' initiated arbitration proceedings against the Corporate Debtor and its Directors by filing a claim for recovery of Rs.40,18,379.18. The Sole Arbitrator, Shri J.N. Jadav, District Judge (Retd.) passed Award dated 09.02.2017 against the Corporate Debtor/Company and its Directors for an amount of Rs. 32,10,267.58. M/s. Bajaj Finance Ltd., also issued a Demand Notice

dated 29.8.2016 to the Corporate Debtor Company under Section 25(1) of The Payment and Settlement Systems Act, 2007 claiming an amount of Rs. 2,85,157/-. M/s. Bajaj Finance Ltd., also initiated arbitration proceedings before the Arbitrator against the Corporate Debtor and its two Directors. The Sole Arbitrator, Ms. Kainaz Irani, passed Award dated 26th September, 2016 against the Corporate Debtor and its two Directors for an amount of Rs. 17,21,996.98 ps. with further interest at the rate of 19.25 p.a. from 15th June, 2016 till the date of payment.

6. ICICI Bank Limited also filed Original Application before Debt Recovery Tribunal-II at Ahmedabad under Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, against the Corporate Debtor/Company and its two Directors claiming an amount of Rs. 23,81,380.97 ps. Applicant also filed Statement of Accounts of each Operational Creditor; copies of relevant Books of Accounts of the Company/Corporate Debtor; Audited Financial Statements for the years 2014-15, 2015-16, and 2016-17. Applicant also filed List of Assets and Liabilities of the Company/Corporate Debtor; particulars of Claims against the Corporate Debtor in case of properties; and particulars of Guarantees given in relation to the debts of the Corporate Debtor. The Applicant also filed an Affidavit in support of the Application.

7. The Applicant proposed the name of CA Prem Laddha, as 'Interim Resolution Professional'. Applicant also filed Written Communication given by the Interim Resolution Professional.

8. Applicant filed proof of despatch of Application to all Financial Creditors and Operational Creditors. This Adjudicating Authority directed the Applicant to issue Notice of date of hearing to Financial Creditors and Operational Creditors, other than M/s. Bajaj Finance Limited, who appeared through learned Counsel and file



proof of service. Accordingly, the Applicant served notices on Financial Creditors and Operational Creditors and filed proof of service. Dena Bank appeared through learned Counsel by filing Vakalatnama. No written objections are filed by the two Financial Creditors who appeared through learned Counsel.

9. Heard the arguments of the learned Counsel appearing for the Applicant and learned Counsel for Financial Creditors. The main objection raised by the Financial Creditors is that Financial Creditors have already initiated proceedings before the Debt Recovery Tribunal and Awards have also been passed by the learned Arbitrators against the Company/Corporate Debtor, and at this stage initiation of Insolvency Resolution Process would delay the recovery proceedings, and it is with that aim only this Application is filed.

10. On the other hand, learned Counsel appearing for the Corporate Applicant contended that the Corporate Debtor/Company is unable to pay the debts and therefore it wants to have a Resolution Plan to resolve the debts and to revive the Company.

11. The initiation of proceedings under the SARFAESI Act or the pendency of proceedings before the DRT and Arbitral Awards are not grounds for not commencing the 'Insolvency Resolution Process', in view of the overriding effect given to Section 238 of the Code.

12. The pendency of other proceedings in respect of the debts due by the Corporate Debtor is not a ground not to admit this Application.

13. The object of the Code is, no doubt, to protect the genuine Corporate Debtors with a view to maximise their value of assets and find out a 'Resolution Plan' to revive the Companies. Incidentally, in

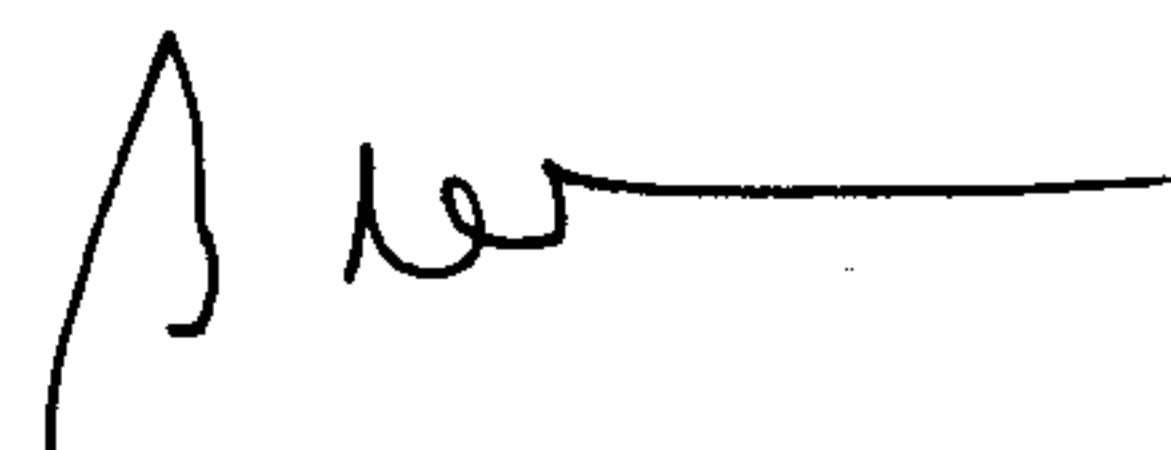
the process of evolving a Resolution Plan, there is an opportunity for the Corporate Debtor to have a moratorium and thereby delay the other recovery proceedings. But, that is only for a prescribed period of 180 days or for a further period of 90 days, if extended by the Adjudicating Authority. Therefore, to say that Corporate Debtor with a view to have the benefit of moratorium or with a view to delay the proceedings under the SARFAESI Act filed this Application do not merit acceptance.

14. The contents of Form-6 and the documents attached to Form-6 clearly indicate that the Applicant was unable to discharge the outstanding amounts due to the Financial Creditors as well as the Operational Creditors.

15. Moreover, the Applicant furnished the required information as per sub-section (3) of Section 10. Therefore, the Application is complete. The material on record established that the Corporate Debtor has committed default in payment of financial debts as well as operational debts.

16. In view of the above discussion, this Application is admitted under Section 10(4)(a) of the Code.

17. The Applicant proposed the name of CA Prem Laddha as 'Insolvency Resolution Professional'. Hence, this Adjudicating Authority hereby appoint, CA Prem Laddha having address at 304, Abhijit-3, Above Pantaloon, Mithakhali, Law Garden, with Registration No. IBBI/IPA-001/IP-P00060/2016-17/10138 as 'Interim Insolvency Resolution Professional' under Section 13(1)(c) of the Code.



18. The Interim Insolvency Resolution Professional is hereby directed to cause a public announcement of the initiation of 'Corporate Insolvency Resolution Process' and calls 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.

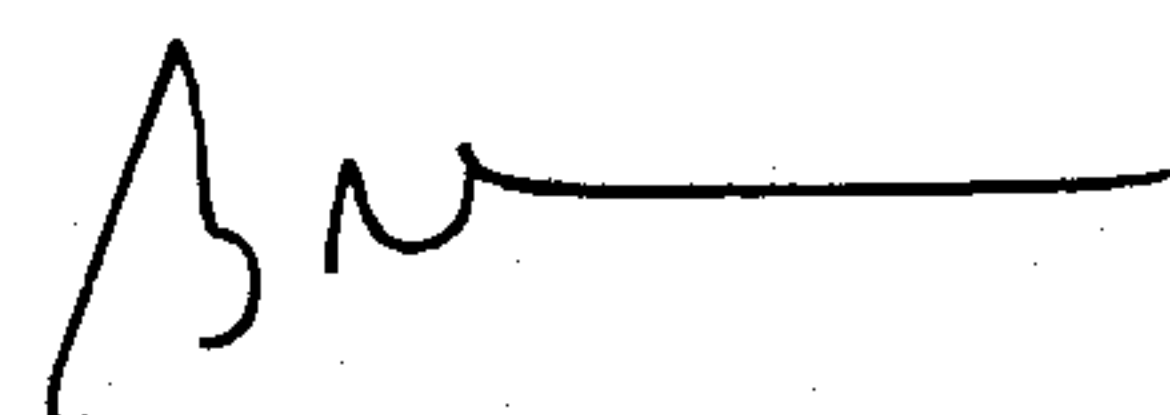
19. This Adjudicating Authority hereby order moratorium under Section 13(1)(a) of the IB Code prohibiting the following as referred to in Section 14 of the Code;

(a) the institution of suits or continuation of pending suits or proceedings against the 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 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 corporate debtor.

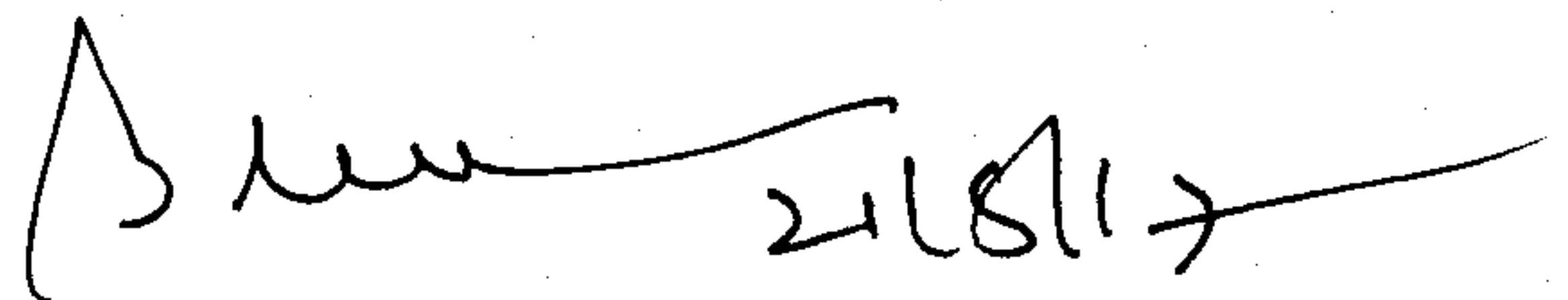


- (i) However, the order of moratorium shall not apply in respect of supply of essential goods or services to Corporate Debtor.
- (ii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.
- (iii) 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.

20. This Application is disposed of accordingly. No order as to costs.

21. Communicate a copy of this order to the Corporate Applicant, and to all the Respondent Financial Creditors, and to the Interim Insolvency Resolution Professional.

Signature:



**Sri Bikki Raveendra Babu, Member (J).
Adjudicating Authority.**