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

C.P. (I.B) No. 63/10/NCLT/AHM/2017

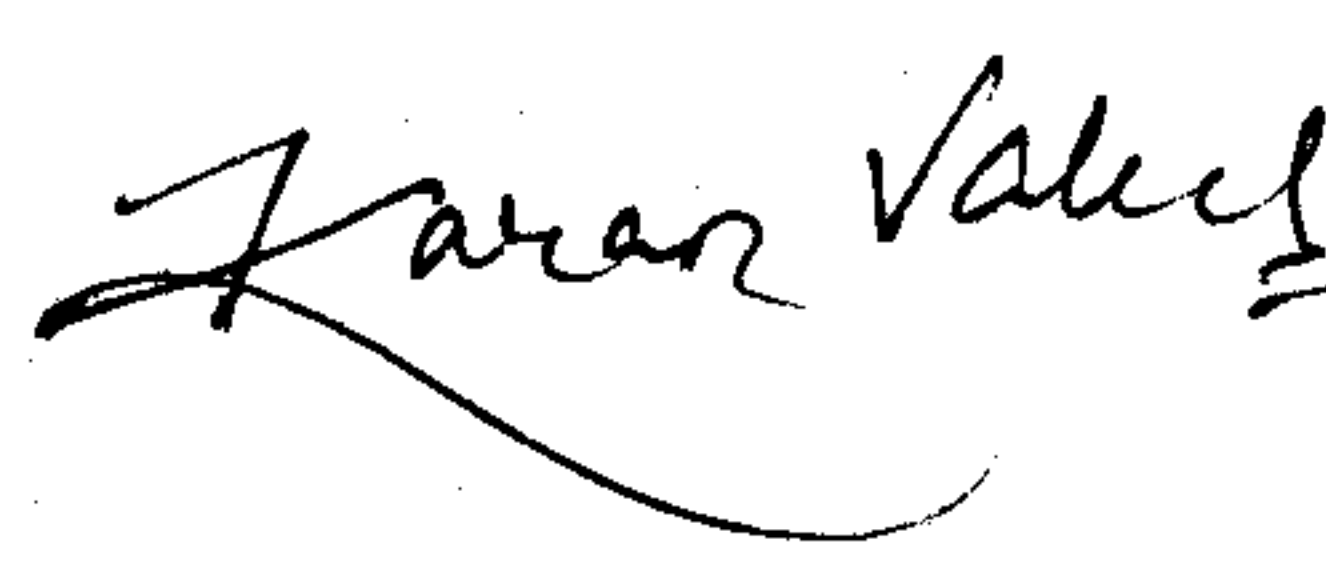
Coram:

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
(Dev Cotex Pvt Ltd.)
V/s.
State Bank of India

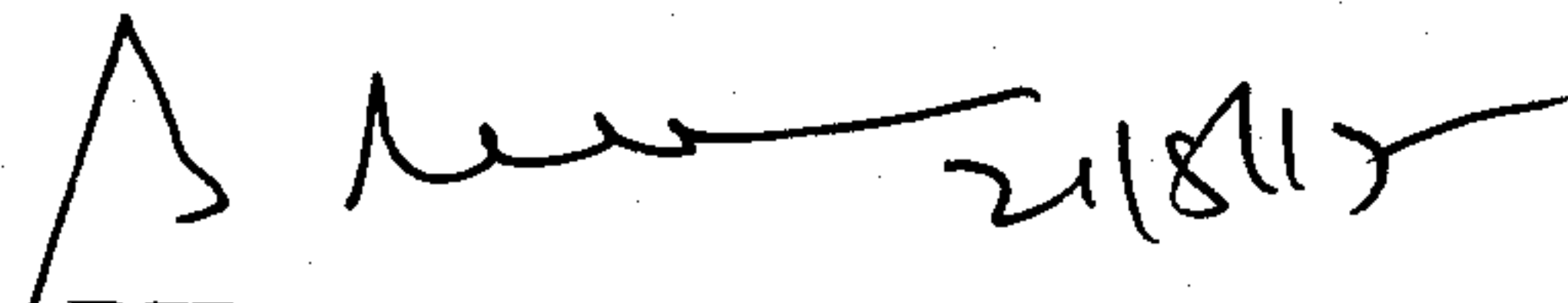
Section of the Companies Act: Section 10 of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	KARAN VALECHA	ADV	PETITIONER	
2.				

ORDER

Learned Advocate Mr. Karan Valecha i/b A R Gupta & Associates present for
Corporate Debtor/ Applicant. None present for Respondent.

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) 63/10/NCLT/AHM/2017

In the matter of:

Shri Bharatbhai Vrajalbhai Selani
Director of
M/s. Dev Cotex Pvt.Ltd.,
A/17, APMC Marketing Yard
N.H. No.8B
Gondal-360311
District-Rajkot

: Applicant
Corporate Applicant.

Versus

State Bank of India
SME Branch,
M.G. Road, Kadiya Lane,
Gondal-360311
District-Rajkot

: Respondent.
Financial Creditor.

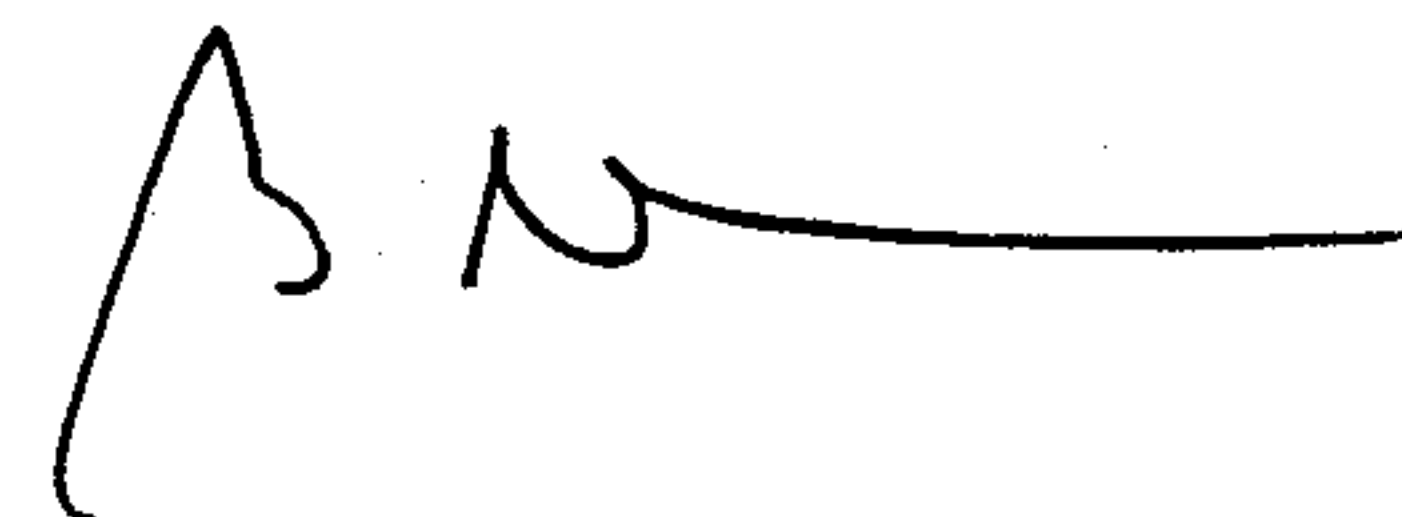
Order delivered on 21st August, 2017.

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

Appearance:

Shri Mohit Gupta, learned Advocate on behalf of M/s. A.R. Gupta & Associates.

Shri Biju Nair, learned Advocate for Respondent/Financial Creditor.



ORDER

1. M/s. Dev Cotex 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. 3,00,00,000, divided into 30,00,000 equity shares of Rs. 10/- each. Applicant in Part-III of Form-6 mentioned State Bank of India as 'Financial Creditor' and 4 (four) others as 'Operational Creditors'. It is stated by the Corporate Applicant that the Company has committed default of financial debt in respect of State Bank of India to the tune of Rs. 10,02,49,309.00 and in respect of Operational Creditors to the tune of Rs. 2,54,69,506/- as per Annexure VI annexed to the Petition.
4. Corporate Applicant gave details of the securities held by State Bank of India. The Applicant also given details of hypothecated stocks and Receivables to State Bank of India. Applicant filed statement of accounts for the current year and for the last two financial years. Applicant also filed Audited Financial Statements for the last two financial years.
5. State Bank of India ("SBI" for short) 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 22.8.2016 to the Company demanding repayment of Rs. 10,94,81,521.29. SBI also issued another Notice dated 29.8.2016 to the Company/Corporate Debtor stating that the account has been classified as 'NPA' on 31.3.2016 in terms of guidelines issued by RBI. SBI also issued Possession Notice dated 06.3.2017. SBI filed Original Application No. 495 of 2016 before the Debt Recovery Tribunal-II, Ahmedabad, to direct the Company/Corporate Debtor to pay Rs. 10,69,37,529.55 with interest at 12.80% p.a. with monthly rests from the date of application till realisation in the Working Capital Account together with further interest thereon at the rate of 1% per annum with monthly rests from the date of application till realization from the hypothecated and mortgaged property, and for issuance of Recovery Certificate under Section 19 of The Recovery of Debts Due to the Banks & Financial Institutions Act, 1993 ("RDDBFI Act")

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

7. Applicant filed proof of despatch of copy of the Application to Financial Creditor and Operational Creditors. This Adjudicating Authority directed the Applicant to serve Notice of date of hearing along with copy of the order on all Creditors and file proof of service. Accordingly, Applicant served notices on the Financial Creditor and Operational Creditors and filed proof of service. SBI appeared through learned Counsel and requested time to file objections.

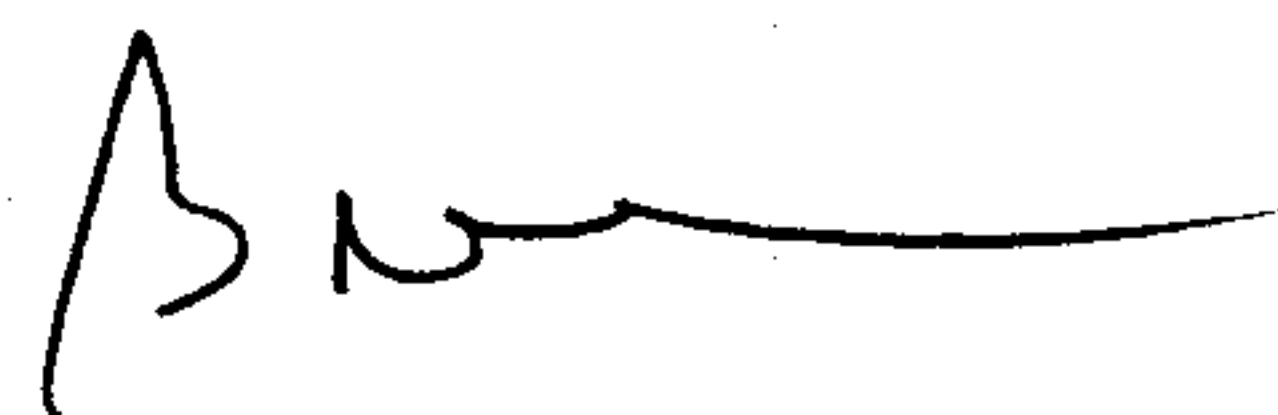
8. The first objection raised is that the Company/Corporate Debtor not produced the Audited Financial Statements for the current year and last two financial years but it has produced only financial statements for the years 2014-2015 and 2013-2014. It is stated that the Audited Financial Statement for the year 2015-2016

has not been produced by the Corporate Debtor Company. It is further stated in the objections that Corporate Debtor made default in filing the annual return and balance sheet for the year 2015-2016 and during that year the Corporate Debtor had not undertaken any business transaction. It is further stated that the profit and loss account of the Company for the year 2016-2017 reveals that sales of the Company during that period is 'Zero' and therefore it is not known how the Company would resolve its dues. The Corporate Debtor has not routed the sales transaction for the year 2016-2017 through the Financial Creditor and it shows that the Corporate Debtor was siphoning off the funds unlawfully. The Corporate Debtor did not submit any stock/receivable statement to the Financial Creditor. Corporate Debtor with an intention to keep the Financial Creditor in darkness about the siphoning of funds by the Company did not upload the audited financial statements for the years 2015-2016 and 2016-2017 in the website of Ministry of Corporate Affairs. It is stated that the financial statements for the year 2016-2017 produced by the Corporate Debtor shows that the amounts of Sundry Debtors (Unsecured) are paid but not even a single pie has been paid to the Financial Creditor. It is stated that Corporate Debtor opened an account with Corporation Bank without the knowledge of the State Bank of India. Even after the account became Non Performing Asset, Financial Creditor followed up with the Corporate Debtor for resolution and recovery but Corporate Debtor did not pay single pie. Financial Creditor initiated action under the provisions of SARFAESI Act. Financial Creditor also filed OA No. 495/2016 before the DRT-II, Ahmedabad. It is further stated that the present Application has been filed by the Corporate Debtor immediately after the order under Section 14 has been passed by the learned District Magistrate, Rajkot on 20.7.2017 as a counterblast to defeat the SARFAESI Act, 2002 and the measures taken by the Financial Creditor. It is stated that the sole intention of the Corporate Debtor is to delay the recovery measures taken by the Financial Creditor under SARFAESI Act, 2002 and RDDBFI Act, 1993. It is further stated that the object of Insolvency and Bankruptcy Code, 2016 is to maximise the value of

assets of Corporate Debtors to promote entrepreneurship, availability of credit and balance of interest of all the stakeholders. The Resolution Process is aimed at genuine Corporate Debtors but not for the Corporate Debtors like the present one. The Corporate Debtor has no intention to resolve its debts.

9. The first objection raised by the Financial Creditor is that the financial statements for the years 2016-2017 and 2015-2016 must be filed, but Corporate Debtor did not produce the financial statements for the years 2015-2016 and 2016-2017. A perusal of Annexure V shows the Balance Sheet as at 31st March, 2017 is filed at Page No.69; Certificate by the Chartered Accountant in respect of Profit and Loss Account for the year ended 31st March, 2017 is filed at Page No.70; Pages No. 71 and 72 relate to Notes Forming Part of the Financial Statement for the year ended 31.3.2016 and 31.3.2017. Page No. 75 contains the Audited Financial Report for the financial year 2014-2015 and Assessment Year 2015-2016; At Page No.90, Balance Sheet as at 31st March, 2015 is filed; At Page No. 91, Profit and Loss Account for the year ended 31st March, 2015 is filed; at Pages No. 92 and 93, Notes Forming Part of the Financial Statement are filed; and at Page No. 97, Audited Balance Sheet for the Financial Year 2013-2014, Assessment Year 2014-15 is filed. Therefore, the objections raised by the Financial Creditor, that the required Annual Financial Statements not filed, do not merit acceptance.

10. The next grievance of the Financial Creditor is that the Corporate Debtor routed its sale transactions during the year 2016-2017 through the Corporation bank without knowledge of the SBI and against the Loan Sanction Terms. Even if it is true and correct, it may not be a ground not to commence 'Insolvency Resolution Process'.



11. The next objection of the Financial Creditor is that although there is recovery of Rs. 20.59 Crores from M/s. Raghuvir Cotex Pvt.Ltd., and M/s. Shree Ramrajya Cotex Pvt.Ltd., Sundry Creditors ^{and} it was utilized to repay ^{Sundry credits}, not even a single pie is paid to the Financial Creditor. This aspect itself shows that Corporate Debtor has committed an act of default.

12. The contention of the Financial Creditor is that after the initiation of proceedings under SARFAESI Act and after the filing of the Original Application for the Recovery Certificate this proceedings are initiated only to delay to the recovery proceedings under the SARFAESI Act, but not with an intention to resolve the debt and with an intention to revive the Company.

13. The initiation of proceedings under the SARFAESI Act or the pendency of proceedings before the DRT is not a ground for not commencing the 'Insolvency Resolution Process', in view of the overriding effect given to Section 238 of the Code.

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

15. 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.

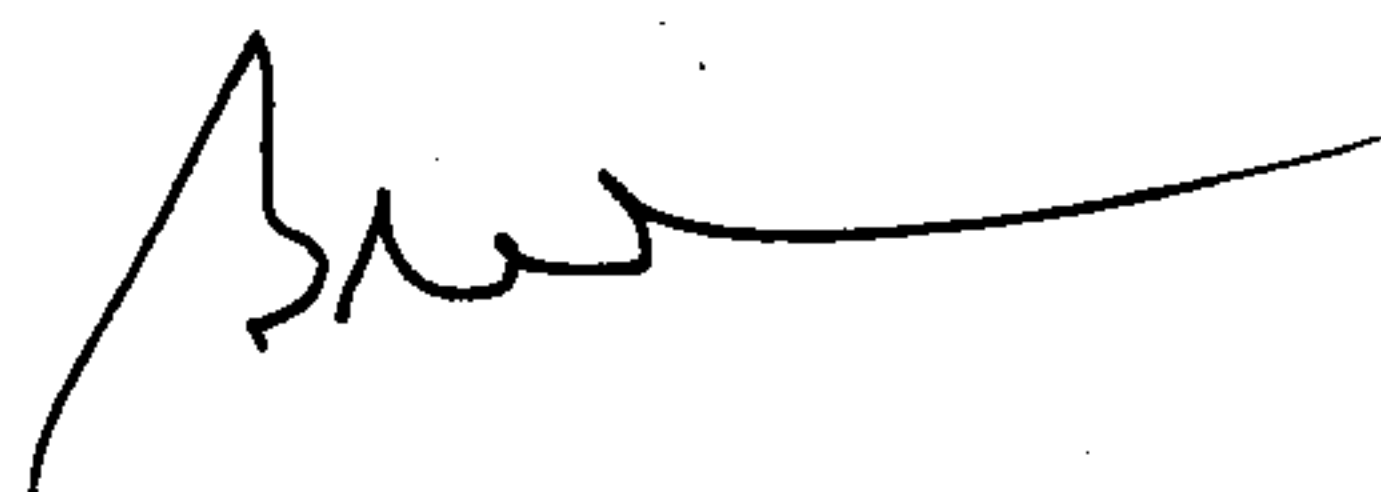
16. The contents of Form-6 and the documents attached to Form-6 clearly indicate that the Applicant was unable to discharge the outstanding amounts due to the Financial Creditor as well as the Operational Creditors.

17. 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 debt as well as operational debts.

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

19. 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.

20. 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.

21. 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;

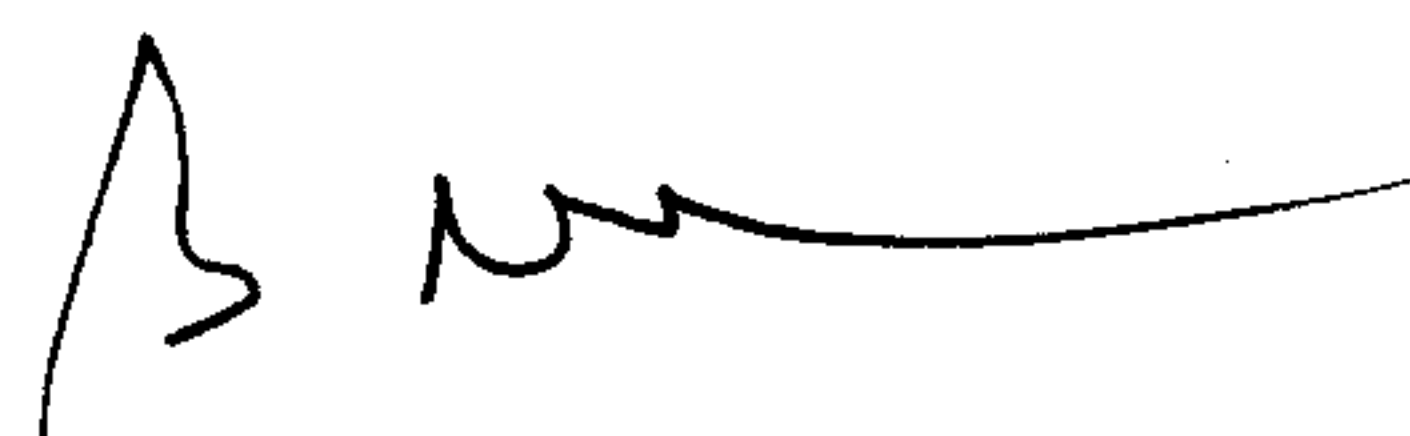
(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(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.

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

23. Communicate a copy of this order to the Corporate Applicant, and to the Respondent Financial Creditor, and to the Interim Insolvency Resolution Professional.

Signature:

 21/8/17
**Sri Bikki Raveendra Babu, Member (J).
Adjudicating Authority.**