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

**C.P. (I.B) No. 75/9/NCLT/AHM/2017**


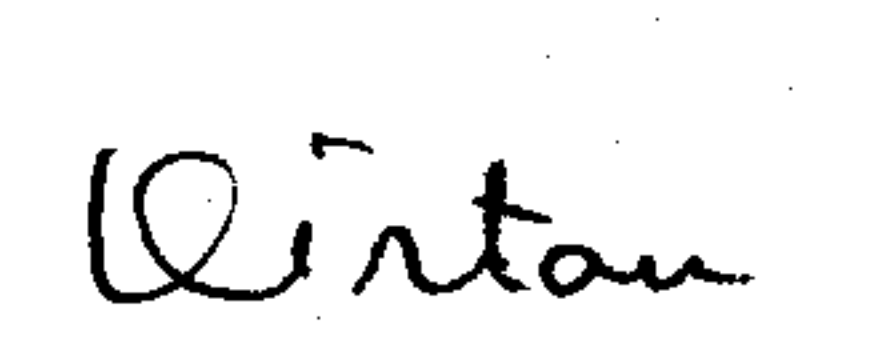
Coram:

**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 04.09.2017**

Name of the Company: Bhagwati Corporation  
V/s.  
Shrinidhi Laminates Ltd.

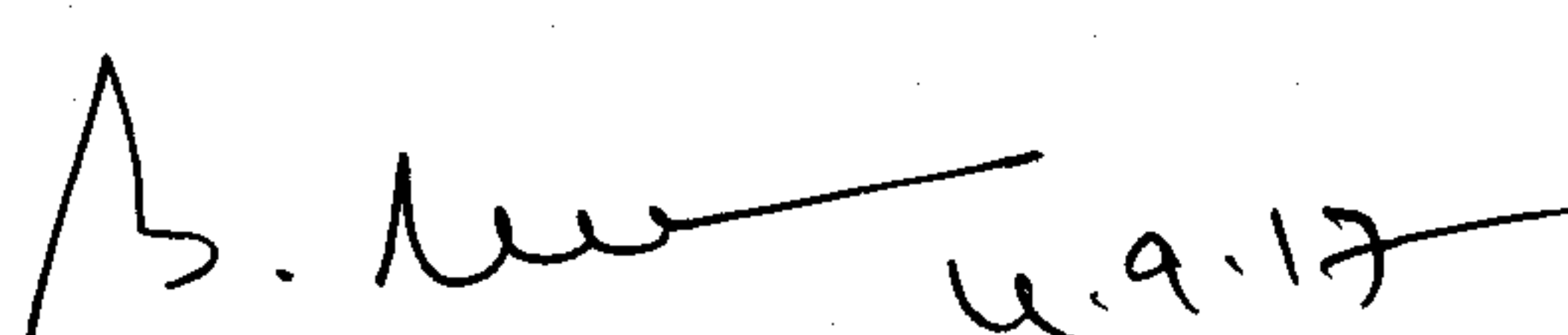
Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy  
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	ANIP A. GANDHI	ADVOCATE	<u>APPLICANT PETITIONER</u>	
2.	Chitrajeet Upadhyaya	Advocate	<u>Respondent</u>	

**ORDER**

Learned Advocate Mr. Anip Gandhi present for Operational creditor/ Applicant.  
Learned Advocate Mr. Chitrajeet Upadhyaya present for Respondent.

Order pronounced in open Court. Vide separate sheet.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 4th day of September, 2017.

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

**C.P. No.(IB) 75/9/NCLT/AHM/2017**

**In the matter of:**

Bhagwati Corporation  
Registered Office at  
Bhagwati House  
Near Fun Republic  
Behind Sarthak Complex  
S.G. Road  
Ahmedabad-380015

: Applicant.  
[Operational Creditor]

Versus

Shrinidhi Laminates Limited  
(Previously known as 'Durolam Limited')  
Plot No. 1195/3, 196/1,  
Chhatral Mehsana Highway,  
At Rajpur  
Taluka-Kadi,  
District-Mehsana  
Gujarat.

: Respondent.  
[Corporate Debtor].

Order delivered on 4<sup>th</sup> September, 2017.

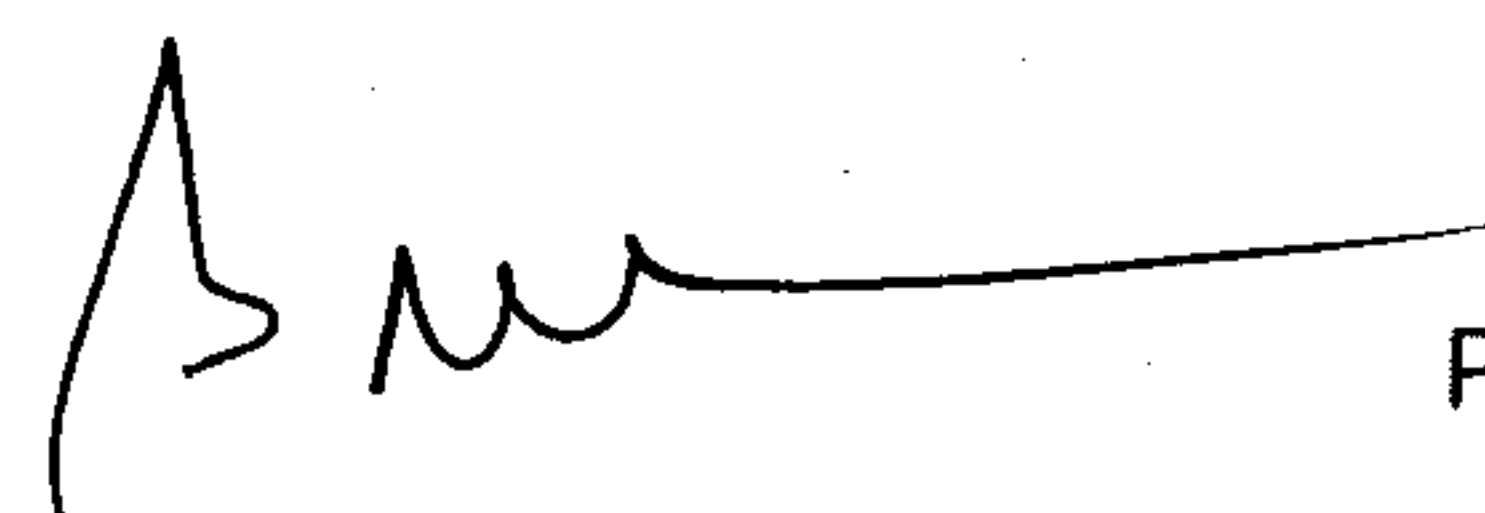
**Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).**

**Appearance:**

Shri Anip Gandhi, learned Advocate for Applicant/Operational Creditor.

Shri Chitrajeet Upadhyaya, learned Advocate for Respondent.

**ORDER**



1. Bhagwati Corporation, a Proprietorship Firm, styling as 'Operational Creditor' filed this Application against Shrinidhi Laminates Limited describing it as 'Corporate Debtor' under Section 9 of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as "IB Code"] read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ["IB Rules" for short] to trigger 'Corporate Insolvency Resolution Process'.
2. The facts in brief, that are necessary for disposal of this Application, are as follows;
  - 2.1. Respondent is a Company registered under the provisions of the Companies Act, 1956. The Registered Office of the Respondent Company is situated in Chhatral, Mehsana Highway, Rajpur, Taluka-Kadi, District-Mehsana Gujarat State.
  - 2.2. Respondent Company placed an oral order with Applicant for supply of Lignite Coal. Accordingly, Applicant supplied Lignite Coal under different debit notes since several years. Applicant is maintaining a running account towards the cost of the supplies made and the amounts credited by the Respondent Company. In the said running account, a sum of Rs. 42,42,466.49 ps. as on 31<sup>st</sup> September, 2016 was due from the Respondent towards Principal amount and an amount of Rs. 7,00,486/- towards interest at the rate of 18% per annum till 30<sup>th</sup> September, 2016 due and payable by the Respondent Company. Applicant filed Ledger Account of the Respondent as 'Annexure A'. According to the Applicant, Respondent made use of the goods supplied by the Applicant without any complaint. Respondent failed to make payment for the goods supplied inspite of several oral requests. On the other hand, Respondent issued 11 cheques for payment of the outstanding amount, but all the relevant cheques given by the Respondent were dishonoured on 18.10.2016 and for such dishonour of cheque criminal complaints have been filed against the Respondent Company under Section 138 of the Negotiable Instruments Act which



are registered as Criminal Case Nos. 51/2016, 52/2016, 53/2016 and 58/2016. Applicant issued a Notice dated 25<sup>th</sup> October, 2016 Annexure 'B' to the Application demanding payment of outstanding amount. Applicant got issued a legal notice dated 8<sup>th</sup> December, 2016 to the Respondent calling upon it to make payment of the outstanding amounts within 21 days vide Annexure 'C'. Respondent gave Reply Notice dated 3<sup>rd</sup> January, 2017 vide Annexure 'D'.

2.3. Applicant issued Demand Notice dated 26.4.2017 under Section 8(1) of the IB Code vide Annexure "I". Respondent did not give any reply to the Demand Notice.

3. Applicant filed Debit Notes dated 15.4.2015 to 31.3.2016.

4. Applicant also filed Interest Calculation Sheet. Applicant also filed account from the Banks maintaining the account of the Operational Creditor confirming that there is no payment of relevant unpaid operational debt by the Operational Debtor. Applicant named the 'Insolvency Resolution Professional' Shri Nimai Shah. Applicant also filed the Written Communication by the proposed Interim Resolution Professional as set out in Form No.2 of the IB Rules. Applicant filed copy of the Certificate from the financial institution maintaining the account of the Operational Creditor along with an Additional Affidavit.

5. Applicant filed proof of despatch of copy of Application on the Respondent. The acknowledgment of the Respondent is there on the letter dated 10<sup>th</sup> July, 2017. Hence it was delivered by hand.

6. This Application was listed before this Adjudicating Authority for the first time on 9.8.2017. On that date, this Authority, having noticed that Certificate issued by the financial institution in compliance with Section 9(c) of the IB Code had not been filed, directed the Applicant to rectify the above said defect within one week and listed the matter on 17.8.2017. Applicant filed Affidavit stating



that it complied with Section 9(c) of the Code. Applicant was again directed to file copy of Reply Notice dated 17.11.2016 issued by the Respondent. Accordingly, Applicant filed copy of Reply Notice dated 17.11.2016 issued by the Respondent to the notices dated 25.10.2016 got issued by the Applicant.

7. This Adjudicating Authority directed the Applicant to issue Notice of date of hearing and accordingly and the same was issued to the Respondent and Applicant filed proof of service. Respondent appeared through learned Counsel and filed Objections and Further Objections. In the First Objections filed, it is stated that in response to the Demand Notice by way of a communication dated 12.5.2017 Respondent requested the Applicant to have a reconciliation. In the letter dated 12.5.2017 Respondent informed that the management of the Respondent was changed some where in May 2016 and the claims that have been raised in the Demand Notice dated 26.4.2017 are prior to the taking over of the Company by the present management. It is further stated that the new management of the Company at the time of taking over paid 50% of the debts to all the Creditors. At that time, Applicant did not present and did not make any claim. In the Further Objections, it is stated that in reply to the statutory notice dated 8.12.2016 under Section 433 and 434 of the Companies Act issued by the Applicant, Respondent issued a Reply dated 3.1.2017. In the said Reply dated 3.1.2017, Respondent mentioned about the dispute which is existing between the directors of company but not about existence of debt. In the Reply to the statutory notice issued under Section 138 of the Negotiable Instruments Act Respondent has raised a dispute with regard to the authority of the person that signed the cheques, but not about debt. Another objection raised is that there is a dispute with regard to the amount claimed by the Applicant and there is no clarity as regards the date of cause of action. According to the applicant, the Applicant is entitled to claim interest only 6 months after the date of Invoice since 6 months' time was given for making payment but Applicant claimed interest from the date of Invoice.





8. Following are the points that need determination in this case;

(i) Whether any dispute has been raised by the Respondent/Corporate Debtor within the meaning of sub-section (6) of Section 5 or sub-section (2) of Section 8 of the IB Code, and if, there is any such dispute, whether it is a bona fide dispute on substantial grounds;

(ii) Whether there is sufficient compliance of Section 9 (c) of the IB Code.

9. In relation to Point No.(i), admittedly, Bhagwati Corporation/Applicant issued four Notices to Durolam Limited, Rohit Rajkumar Agrawal, Manojkumar M. Jain, Gautambhai Gopaldas Patel of Ahmedabad under Section 138 of the N.I. Act in relation to dishonour of cheques issued by one Shri Rajkumar Agrawal on behalf of Durolam Limited. Admittedly, the name of Durolam Limited was changed as 'Shrinidhi Laminates Limited' (Respondent) with effect from 16.6.2016.

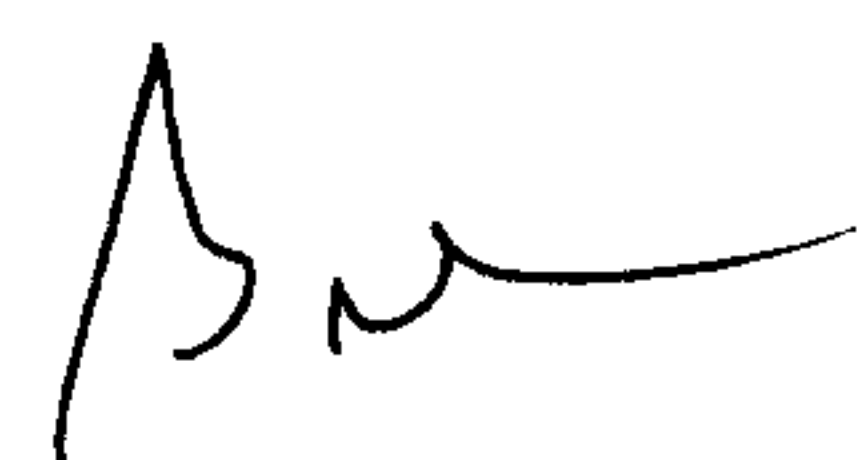
9.1. Admittedly, in reply to the statutory notice dated 25.10.2016 issued by the Applicant under Section 138 of the NI Act on 17.11.2016 on behalf of Durolam Limited and others, it is clearly stated that Rajkumar Agrawal who signed the impugned cheques is not a Director from 1<sup>st</sup> May, 2016 and the same was informed to the Applicant by E-Mail dated 10.8.2016. The main dispute raised in the Reply Notice dated 17.11.2016 is that the cheques were not issued by the Authorised Signatory of Durolam Limited and they were issued by one Rajkumar Agrawal who reported to the Company that the cheques were lost. In the said Reply Notice it is also alleged that the Applicant Company in collusion with Rajkumar Agrawal created false

documents i.e., cheques and committed offences under Section 406, 420, 465, 467 and 471 IPC.

9.2. Admittedly, on 8.12.2016, Applicant issued a statutory notice under Section 433 of the Companies Act and it was replied by Shrinidhi Laminates Ltd., previously known as Durolam Limited. In that notice, it is clearly mentioned that there was an understanding between the Respondent and the Applicant and his father, that 50 per cent to be paid first, and remaining amount should be in 20 equal monthly instalments. It is also stated that Respondent paid Rs. 14,00,000 in cash on 22.6.2016. In the said notice it is clearly mentioned that there was a dispute with the earlier Director Shri Rajkumarji and due to those disputes there was an understanding to pay the amount in 20 equal instalments. In that notice there was a reference to the Reply Notice dated 16.11.2016 for the statutory notice issued under Section 138 of the NI Act. In the reply to the Demand Notice issued, a suggestion for reconciliation was made by the Respondent.

9.3. The Hon'ble National Company Law Appellate Tribunal, in Company appeal (AT) (Insolvency) 6 of 2017 in the matter between **Kirusa Software Private Ltd., Vs. Mobilox Innovations Private Ltd.**, decided on 24<sup>th</sup> May, 2017, held in Paragraph No.31 as follows;

*"31. The dispute under I&B Code, 2016 must relate to specified nature in clause (a), (b) or (c) i.e. existence of amount of debt or quality of goods or service or breach of representation or warranty. However, it is capable of being discerned not only from in a suit or arbitration from any document related to it. For example, the 'operational creditor' has issued notice under Code of Civil Procedure Code, 1908 prior to initiation of the suit against the operational creditor which is disputed by 'corporate debtor. Similarly notice under Section 59 of the Sales and Goods Act if issued by one of the party, a labourer/employee who may claim to be operation creditor for the purpose of Section 9 of I&B Code, 2016 may have raised the dispute with the State*





*Government concerning the subject matter i.e. existence of amount of debit and pending consideration before the competent Government. Similarly, a dispute may be pending in a Labour Court about existence of amount of debt. A party can move before a High Court under writ jurisdictions against Government, corporate debtor (public sector 19 undertaking). There may be cases where one of the party has moved before the High Court under Section 433 of the Companies Act, 1956 for initiation of liquidation proceedings against the corporate debtor and dispute is pending. Similarly, with regard to quality of goods, if the 'corporate debtor' has raised a dispute, and brought to the notice of the 'operational creditor' to take appropriate step, prior to receipt of notice under sub-section (1) of Section 8 of the 'I & B Code', one can say that a dispute is pending about the debt....."*

In view of the above said finding of the Hon'ble Appellate Tribunal, the dispute raised in the Reply Notice dated 17.11.2016 and the dispute raised in the Reply Notice dated 3.1.2017 amount to dispute. Now, it has to be seen whether such a dispute is in connection with Clauses (a), (b) or (c) of sub-section (6) of Section 5 i.e. existence of amount of debt or quality of goods or service or breach of representation or warranty. In the case on hand, the dispute does not pertain to the quality of goods or service or breach of representation or warranty. Therefore, it has to be seen whether the dispute raised in reply notices dated 17.11.2016 and 03.01.2017 relate to the existence of the amount of debt.

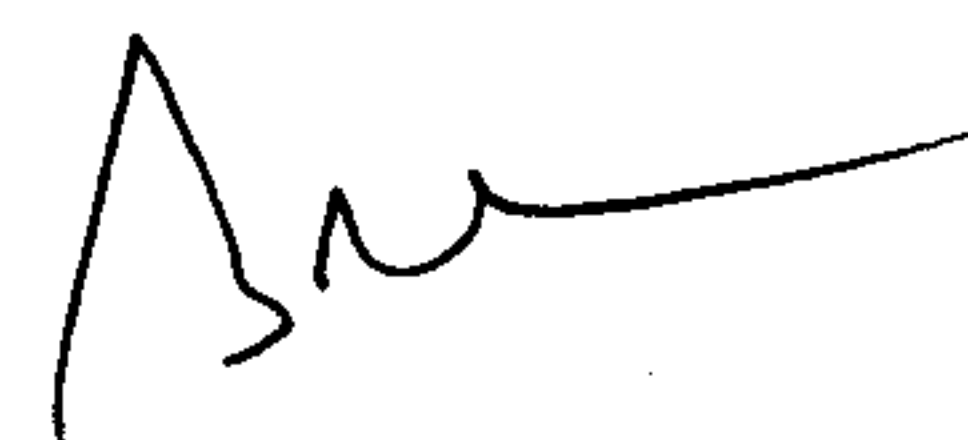
9.4. One of the basis for the claim made by the Applicant is the dishonour of the cheques apart from the Debit Notes. In the Reply issued to the statutory notice issued under Section 138 of the NI Act, the validity of the issuance of cheques by Rajkumar Agrawal, who happened to be not a Director with effect from 1<sup>st</sup> May, 2016, has been disputed. It may be said that the claim is not solely based on dishonour of cheques but it is based on debit notes which has been admitted.





9.5. In fact, learned Counsel appearing for the Applicant contended that there is no dispute about the existence of debt. He also pointed out that in the Reply Notices as well as in the Reply to the Demand Notice, they have admitted the existence of debts and sought for reconciliation. A part of the argument of the learned Counsel for the Applicant that is in respect of agreeing for reconciliation is correct. But, as can be seen from the Reply Notices dated 17.11.2016 and 3.1.2017 that were placed on record that due to the dispute amongst the Directors there was an understanding among family members of the Respondent Company and the Applicant family people to pay 50 per cent of the amounts and rest of the amount in 20 equal monthly instalments. In view of the said statement in the Reply Notices, it cannot be said that there is any dispute regarding the existence of amount of debt. It only suggests that there is an understanding between the family of the Applicant and the family of the Respondent to pay 50% at once and pay rest of the amount in instalments. Such understanding cannot be treated as a dispute regarding the existence of the amount of debt. More so, it confirms the existence of debt. The dispute raised in reply notice dated 17.11.2016 is only in respect of the authority of the person has signed the cheques but not to the existence of debt.

10. In relation to Point No.(ii), this Adjudicating Authority directed the Applicant to comply with Section 9(c). The Applicant filed Additional Affidavit along with Certificate of the Banker. In the Affidavit, it is stated by the Deponent that he is enclosing a copy of the Certificate from the Financial Institution maintaining the account of the Operational Creditor confirming that there is no payment of unpaid operational debt by Corporate Debtor. The Certificate reads as to what are the cheques received from Durolam Limited for clearing. The Applicant party also filed Statement of Account from the Bank and therefore there is sufficient compliance of Section 9(c) of the IB Code.



11. The Application is complete in all respects. There is no dispute raised by the Respondent regarding the existence of the amount of debt, or quality of goods supplied.
12. In view of the above said findings, the Application deserves admission and accordingly the Application is admitted under subsection (5) of Section 9 of the Code. This Adjudicating Authority hereby appoint Shri Nimai Shah, as 'Interim Insolvency Resolution Professional' having office at 605-606-607, Silver Oaks, Near Mahalaxmi Char Rasta, Paldi, Ahmedabad-380007 and having Registration No. IBBI/IPA-001/IP-P00154/2017-18/10323 under Section 13 (1) (c) of the Code.
13. The Interim Insolvency Resolution Professional is hereby directed to cause 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.
14. 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.

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

16. Communicate a copy of this order to the Applicant Operational Creditor, and to the Respondent Corporate Debtor and to the Interim Insolvency Resolution Professional.

Signature:



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