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

C.P. (I.B) No. 115/7/NCLT/AHM/2017


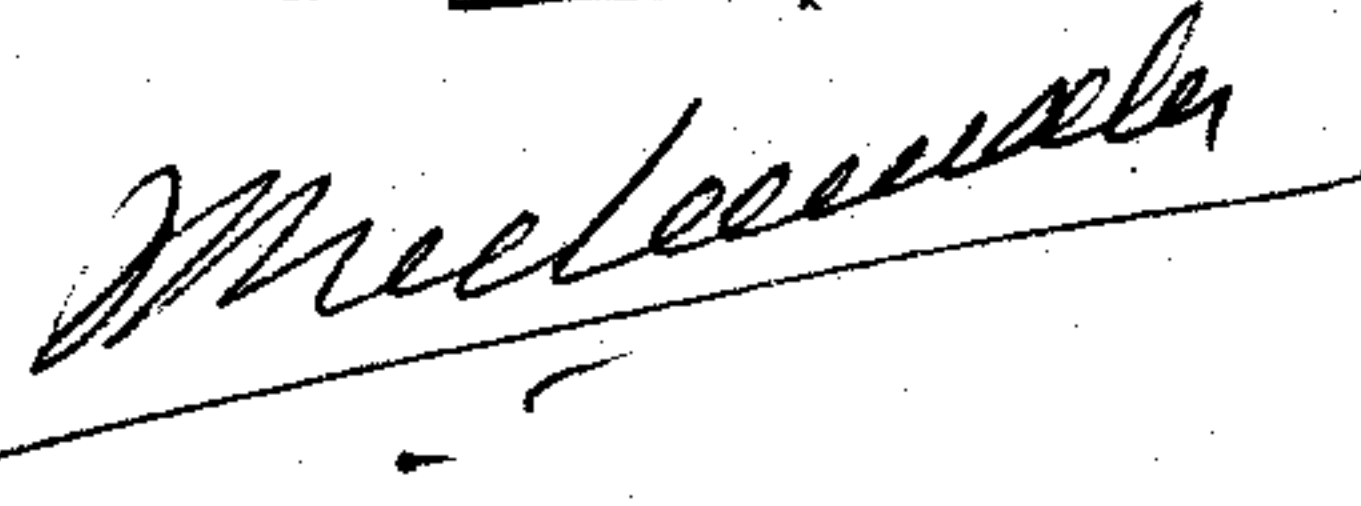
Coram:

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 19.09.2017

Name of the Company: V R Polyfab Pvt Ltd.
V/s.
Sadbhav Enterprise Pvt Ltd.

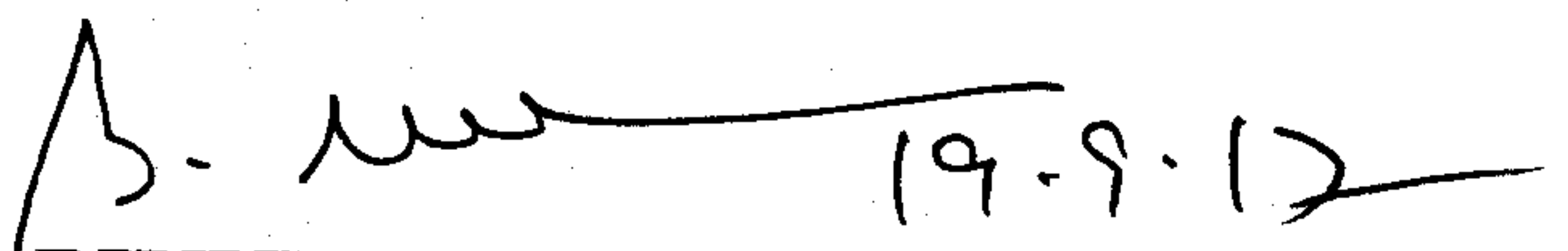
Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy
Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	ISHAN P. SHAM	Advocate	Respondent Petitioner	
2.	PAVAN S-GODIAWALA	ADVOCATE	RESPONDENT	

ORDER

None present for Financial Creditor/ Applicant. Learned Advocate Mr. Pavan Godiawala with Learned Advocate Mr. Ishan Shah present for Respondent.

Order pronounced in open Court. Vide separate sheets.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 19th day of September, 2017.

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

C.P. No.(IB) 115/7/NCLT/AHM/2017

In the matter of:

V.R. Polyfab Private Limited
Registered Office at
162, Sejpur, Gopalpur,
Pirana Road, Piplej,
Ahmedabad

: Applicant.
[Financial Creditor]

Versus

Sadbhav Enterprise Private Limited
(Formerly known as Sadbhav Commodities
Pvt. Limited,
Registered Office at
137 FF, New Cloth Market,
Outside Raipur Gate,
Raipur,
Ahmedabad-380002

: Respondent.
[Corporate Debtor]

Order delivered on 19th September, 2017.

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

Appearance:

Mr. Harmish Shah, learned Advocate for the Applicant.
Mr. Pavan Godiawala with Mr. Ishan Shah, learned Advocates for
the Respondent.

ORDER

1. V.R. Polyfab Private Limited, stying itself as 'Financial Creditor', filed this Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ["IB Code" for short] read with Rule 4 of the



Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("IB Rules" for short) with a request to initiate Corporate Insolvency Resolution Process against Sadbhav Enterprise Private Limited categorising it as 'Corporate Debtor'.

2. Applicant is a Private Limited Company. This Application is signed by Mr. Deepakkumar R. Jain, who is one of the Directors of the Applicant Company, basing on the Resolution of the applicant Company dated 5th April, 2017.

3. Respondent Company is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office in Ahmedabad. The Paid-up Share Capital of the Respondent Company is Rs. 12,67,200.

4. It is the case of the Applicant, that Respondent Company approached the Applicant in the year 2014 for the purpose of Unsecured Loan. Applicant Company has originally advanced a loan for an amount of Rs. 90,00,000 vide Cheque No. 717932 on 9.6.2014. Thereafter, Respondent had periodically received an amount of Rs. 3,03,60,000 as Unsecured Loan during the financial year 2014-15. The details of the money given by the Applicant in the financial year 2014-15 ended on 31.3.2015 are as shown in Exhibit 'C' attached to the Application. Respondent Company admitted the debt and deducted 'TDS' on the interest payable on the debt. Respondent Company deducted the TDS of Rs. 1,96,724 on the total amount of interest of Rs. 19,67,238/- as on 31.3.2015. Applicant filed copy of Form No. 26AS showing the interest amount and TDS amount as Exhibit 'D'. Applicant also filed copy of Interest Calculation upto 31.3.2015 and confirmation of the account as Exhibit 'E'.

5. Applicant, thereafter, gave an amount of Rs. 1,62,97,000/- towards Unsecured Loan to the Respondent in the year ended on 31.3.2016. Applicant received back an amount of Rs. 1,50,00,000 in the year 2015-16. Applicant Company filed Balance

Sheet as on 31.3.2016 and the details of the amount paid and received in the year 2015-16 as 'Exhibit F'. The total amount of interest receivable by the Applicant Company during the period ended on 31.3.2016 was Rs. 28,59,925/-. The Applicant filed Interest Calculation Sheet as 'Exhibit G'. Respondent deducted TDS of Rs. 2,85,993/- on the total amount of interest of Rs. 28,59,925/- receivable by the Applicant Company in the year ended on 31.3.2016. Applicant filed copy of Form 26AS showing the interest amount and TDS amount as 'Exhibit H'.

6. Applicant again gave an amount of Rs. 83,87,500/- towards Unsecured Loan in the year ended on 31.3.2017. Applicant Company received back an amount of Rs. 32,00,000/- in the year 2016-17. The details of the amount paid and received in the year 2016-17 are shown in Exhibit 'I'. The total amount advanced by the Applicant from the year 2014 till date is Rs. 5,50,44,500/-. The total amount received back by the Applicant is Rs. 1,82,00,000/-. Applicant filed the Bank Statement and Bank Certificate as 'Exhibit J'.

7. In spite of repeated reminders, Respondent Company failed to pay an amount of Rs. 4,47,85,703/- with 9% interest. Respondent never disputed the outstanding amount due and payable to the Applicant. The details of the outstanding amount as on 31.3.2017 are shown at 'Exhibit K'.

8. Applicant wrote a letter dated 24.4.2017 requesting the Respondent to clear the outstanding of Rs. 4,47,85,703/-. Respondent Company having received the said letter did not choose to give reply. The said letter is marked as 'Exhibit L'. Applicant Company got issued a notice to the Respondent Company on 12.6.2017. Respondent Company refused to receive the Notice. A copy of the Notice and postal proof are filed as 'Exhibit M'. According to the Applicant as on 31st July, 2017 the total outstanding amount was Rs. 4,57,96,141, as shown in Exhibit 'N'.

9. Further, according to the Applicant, Respondent Company is unable to pay the outstanding financial debt and therefore it has chosen to initiate the Corporate Insolvency Resolution Process. Respondent Company filed Annual Return for the financial year ended on 31.3.2016. The Registered Office of the Respondent Company is in Ahmedabad. It is stated that the Application is within time. Applicant proposed the name of Shri Umesh Ved, as 'Interim Resolution Professional' and filed his Written Communication in Form-2.

10. Applicant despatched the copy of the Application to the Respondent. This Application has been filed on 29th August, 2017 and the same was listed before this Adjudicating Authority for the first time on 31st August, 2017. This Adjudicating Authority directed the Applicant to serve notice of date of hearing and file proof of service. Applicant filed proof of service of date of hearing. Respondent appeared through a Counsel and filed Objections on 13.9.2017.

11. The following are the Objections filed by the Respondent. The Applicant Company's Director is a real brother of the Director of the Respondent Company, and there is corresponding obligations of the Applicant Company and its management to make payment to the Respondent Company and its management. It is further stated that there is one partnership firm jointly owned and run by management of both the Companies and there are transactions which are between relative parties and details of the same are narrated. It is stated that the Applicant approached this Authority with unclean hands by using this Insolvency Resolution Process as an arm twisting mechanism to collect money.

11.1. Respondent pleaded that the alleged debt does not come within the four corners of financial debt.

11.2. The management of Respondent Company belongs to promoter Director Mr. Vinay Jain and that of the Applicant belongs

to the real brother of Mr. Vinay Jain, by name Mr. Deepak Jain. Both the brothers are partners since 2010 in a family partnership firm named V.R. Fashion, Ahmedabad and there is an Admission Deed of Partnership. The Respondent further pointed out that Applicant in its letter dated 24th April, 2017 addressed to the Respondent, stated that "association of your company with our is since last more than one decade.....Company is thankful to you for your continued patronage to our Company." According to the Respondent, the said statement in the letter dated 24th April, 2017 is nothing but an acknowledgment of the Applicant about debtor and creditor relationship for more than one decade and transactions entered during 2014-15, 2015-16 and 2016-17 had its roots as debtor and creditor relationship. It is also pleaded that the plea of the Applicant that Respondent approached the Applicant some time in the year 2014 for the purpose of Unsecured Loan is falsified by the letter dated 24th April, 2017.

11.3. According to the Respondent, Applicant owed Rs.4,05,20,067/- as on 12.6.2017 towards purchase of fabrics. A statement of accounts is attached as 'Annexure B'. The Director of the Respondent Company along with his associate has leased the property consisting of land, building and plant and machinery to the Applicant since 2004 and the Applicant is in default in payment of lease rent of Rs. 51,35,446/- till date. A copy of Lease Agreement is filed as Annexure 'C'. Respondent pleaded that there is no evidence to show that Applicant lent money. Applicant did not produce copy of financial contract as required under Sr. No.5 of Part V of Form-I and copy of entries made in its Register of Loans, i.e., Form MBP-2 as required under Sr.No.7 of Part V of Form I and Sr. No.8 of Part V of Form-I. Respondent pleaded that in order to initiate Insolvency Resolution Process there must be default occurred in respect of the financial debt and in this case there is no evidence to show that default has occurred. Respondent further stated that it has no liabilities or claims from any secured creditors or Government debtors and it is discharging its contractual and statutory liabilities

in ordinary course of business, and there is no question of Respondent Company running away and unable to pay debts. Respondent pleaded that it is not the duty of the Company Court to examine whether the Respondent has genuine dispute to the claimed debt. It is contended that the Company Court has to see whether the dispute is on substantial grounds and it is a bona fide one or not.

12. Heard the learned counsel for the Applicant and the learned counsel for the Respondent. In view of the Objections raised by the Respondent, this Adjudicating Authority has to first decide whether the amount claimed from the Respondent by the Applicant is a financial debt or not. "Financial Debt", to the extent relevant for the purpose of this case, is defined in Clause (a) of sub-section (8) of Section 5 of the Code. It says, "*financial debt*" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes money borrowed against the payment of interest.

13. The details of money given by the Applicant Company to the Respondent Company during the year 2014-15 are shown in 'Exhibit C'. Exhibit C is the ledger Account of the Respondent Company maintained by the Applicant Company. It shows the amount disbursed to Respondent Company. A perusal of Exhibit 'D', which is Form No.26AS Sr. No.16 shows that an amount of Rs. 1,96,724 was deducted towards TDS on the interest amount of Rs. 19,67,238 payable to the Applicant Company.

14. The copy of the Balance Sheet as on 31.3.2016 shows that Respondent company paid Rs. 1,50,00,000 to the Applicant Company. The Interest Calculation Sheet as on 31.3.2016 shows the interest receivable by the Applicant during the period ended on 31.3.2016 as Rs.28,59,925/-. A perusal of Exhibit 'H' Form No.26AS at Serial No.11 shows that an amount of Rs. 2,85,993 was deducted towards TDS on the interest amount of Rs. 28,59,925/- payable to Applicant Company by the Respondent Company. A perusal of

Exhibit 'I' shows the details of amount paid and received in the year 2016-17. It shows that an Unsecured Loan of Rs. 83,87,500 was advanced. A perusal of 'Exhibit J' shows the total amount advanced by the Applicant to the Respondent as Rs. 5,50,44,500/- and the amount paid by the Respondent to the Applicant as Rs. 1,82,00,000/-. Applicant Company also wrote a letter dated 24.4.2017 and got issued a Legal Notice dated 12.6.2017, but no reply was given by the Respondent. From the above said documents, it is clear that Unsecured Loans were given by the Applicant to the Respondent and in respect of which on interest amounts TDS at the rate of 10% was deducted. Therefore, the amount of debt due from the Respondent to the Applicant comes within the four corners of financial debt as defined in Clause (a) of sub-section (8) of Section 5 of the Code.

15. Now, the question for consideration is whether the default has been committed by the Respondent in respect of payment of the financial debt to the Applicant.

15.1. In this context, it is necessary to refer to the decision rendered by the *Hon'ble National Company Law Appellate Tribunal*, in **Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017** in the matter of **M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr**, on 17th January, 2017, wherein it is, inter alia, held that the Adjudicating Authority has to ascertain and record satisfaction as to the occurrence of default before admitting an Application. It is further held in that Judgment, that once the Adjudicating Authority is satisfied that a default occurred and the Application is complete and that there is no disciplinary proceeding pending against the proposed Insolvency Resolution Professional, it is required to admit the case, and in case if the Application is incomplete, the Financial Creditor has to be granted 7 days' time to complete the Application. The above said Judgment of the *Hon'ble National Company Law Appellate Tribunal* was challenged in *Civil Appeal No. 8337-8338 of 2017* before the Honourable Supreme Court of India. The Hon'ble

Apex Court vide Judgment dated 31st August, 2017, dismissed the above said Appeals. In Para No. 30 the Hon'ble Supreme Court has held as follows;

“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

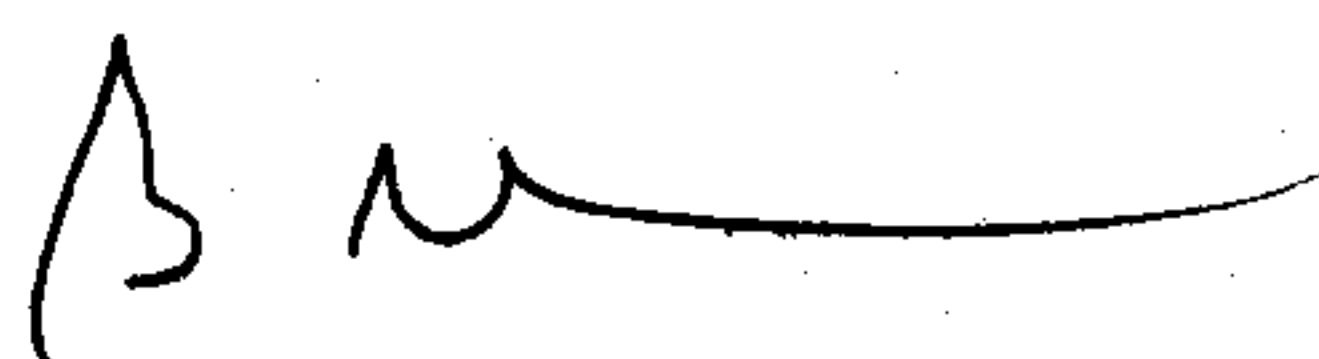
15.2. In view of the above said observations made by the Hon'ble Supreme Court, this Adjudicating Authority has to see whether the debt is due, i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is also held by the Hon'ble Supreme Court that the Adjudicating Authority has to satisfy about the default of a financial debt from the records of the information utility or other evidence produced by the Financial Creditor.

16. Learned Counsel appearing for the Respondent, relying upon the Judgment of the Hon'ble Supreme Court in a winding up proceeding under the Companies Act, 1956 in the case of **IBH Health Vs. Info-Drive Systems**, contended that, it is not the duty of the Company Court to examine whether the Company has a genuine dispute to the claimed debt and the Company Court has only to see whether a dispute is a bona fide dispute on substantial grounds and it is not a spurious, speculative, illusory or misconceived dispute. This proposition is laid down by the Hon'ble Supreme Court in a



winding up proceeding filed by the creditor on the ground of inability to pay debts by the debtor. The object of the Insolvency and Bankruptcy Code is to initiate 'Corporate Insolvency Resolution Process' with the primary aim of reviving the Company within a period of 180 days or within the extended period and if not the liquidation process commence. Therefore, in view of the Judgement of the Hon'ble Supreme Court dealing with Section 7 of the Insolvency Code referred to above, this Adjudicating Authority has to satisfy about the occurrence of default in payment of financial debt.

17. In the case on hand, the dispute raised by the Respondent is that it has supplied some goods to the Applicant Company and in that connection the Applicant has to pay certain amount. Another plea raised by the Respondent is that the Director of the Applicant Company is the brother of the Director of the Respondent Company and they have got a joint partnership business and they had transactions right from 2010. No doubt, the letter dated 24th April, 2017 produced by the Applicant shows that there is a creditor-debtor relationship between the Applicant Company and the Respondent Company right from 2010. That supports more the case of the Applicant than the case of the Respondent. Pertaining to this transaction, the Applicant stated that Respondent approached it in 2014 for Unsecured Loan. That does not even impliedly mean that there are no transactions much less credit transactions between the Applicant and the Respondent prior to 2014. The very fact that the Respondent deducted tax on interest on loan amount shows that there is an outstanding debt, which is a financial debt due from the Respondent to the Applicant. Even assuming that Respondent is entitled for certain amounts from the Applicant, it can only be treated as a set off or counter-claim and it can not be a dispute relating to the financial debt due to the Applicant from the Respondent. On the ground that there is counter-claim or set off as pleaded by the Respondent, it cannot be said that there is no default in repayment of the financial debt. Therefore, this Adjudicating Authority is of the



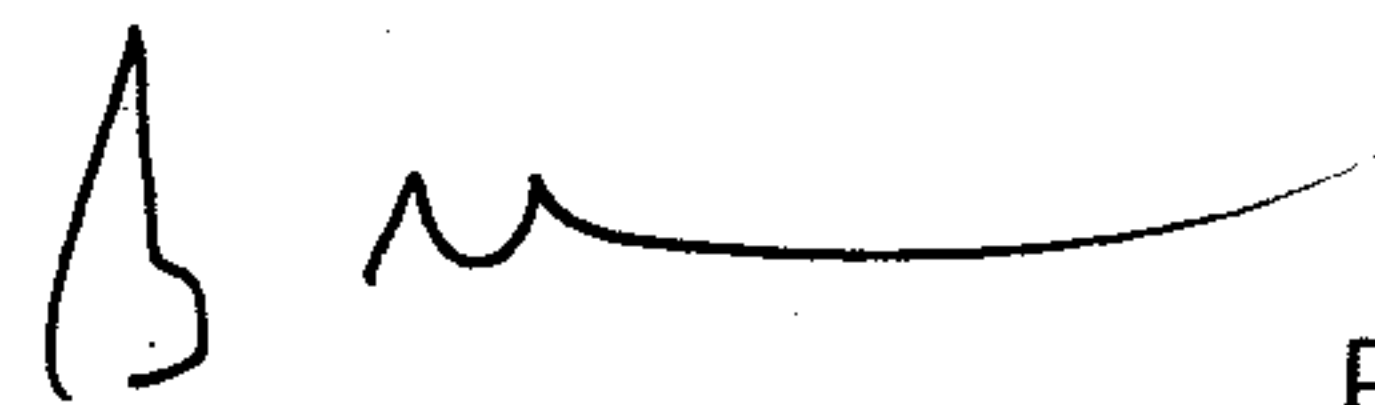
considered view that there is occurrence of default in payment of financial debt by the Respondent.

18. It is contended by the learned counsel for the Respondent that columns at Serial Nos. 5, 6, and 8 of Part V of Form-I are not provided by the Applicant. It is stated in Column 5 of Part V as "Not Applicable". Since it is a case of Unsecured Loan from Applicant Company to the Respondent Company which reflects in the Statement of Account there is no financial contract and therefore it cannot be said that Column 5 is not answered by the Applicant. Column 6 refers to record of default. It is stated that it is "Not Applicable". Therefore, it cannot be said that Column 6 is not complied with. Coming to Column 8, Applicant has attached the documents that are available to show that financial debt is payable to it. Therefore, the contention of the learned Counsel for the Respondent that the Application is incomplete in respect of Columns 5, 6 and 8 of Part V of Form-I does not merit acceptance.

19. In view of the above discussion, this Application deserves to be admitted and it is accordingly admitted under Section 7(5) of the Code.

20. This Adjudicating Authority hereby appoint Shri Umesh Ved, as 'Interim Insolvency Resolution Professional' having address at 304, Shoppers Plaza-5, Govt. Servants Co-Op Hsg.Soc., Opp. Municipal Market, C.G. Road, Navrangpura, Ahmedabad-380009, and having Registration No. IBBI/IPA-002/IP-N00136/2017-18/10376 under Section 13 (1) (c) of the Code.

21. 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.

22. 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;

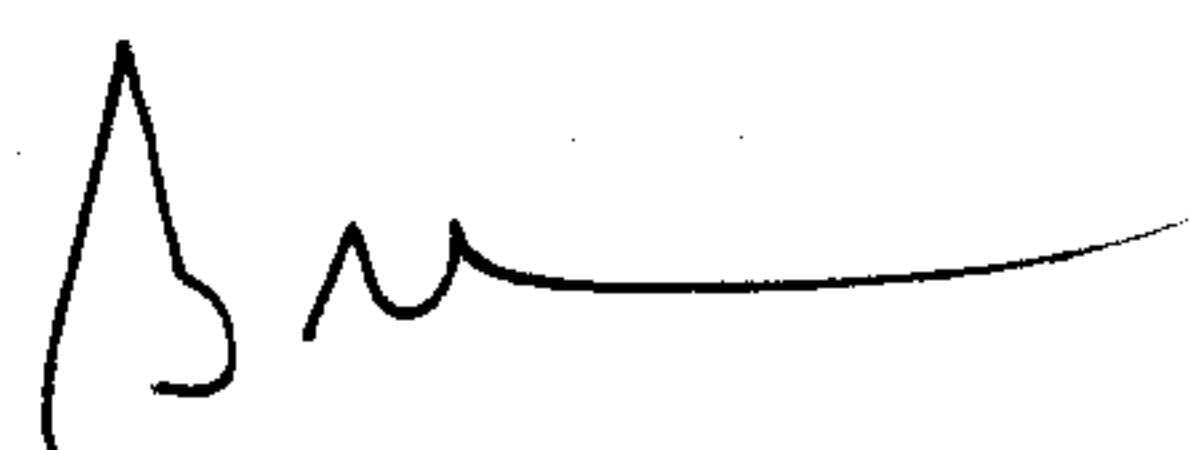
(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(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



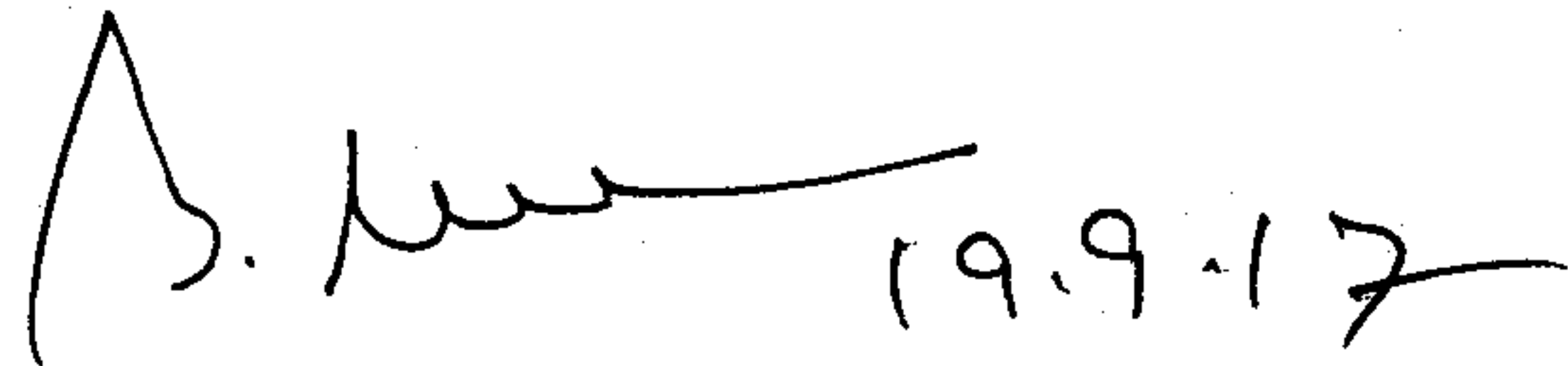
Government in consultation with any financial sector regulator.

- (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.

23. This Application stands disposed of accordingly. No order as to costs.

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

Signature:

Handwritten signature of Sri Bikki Raveendra Babu, dated 19.9.17.

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