

46.

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

C.P. (I.B) No. 114/7/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: Punjab National Bank.
V/s.
ABXL Retails (I) Pvt Ltd.

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

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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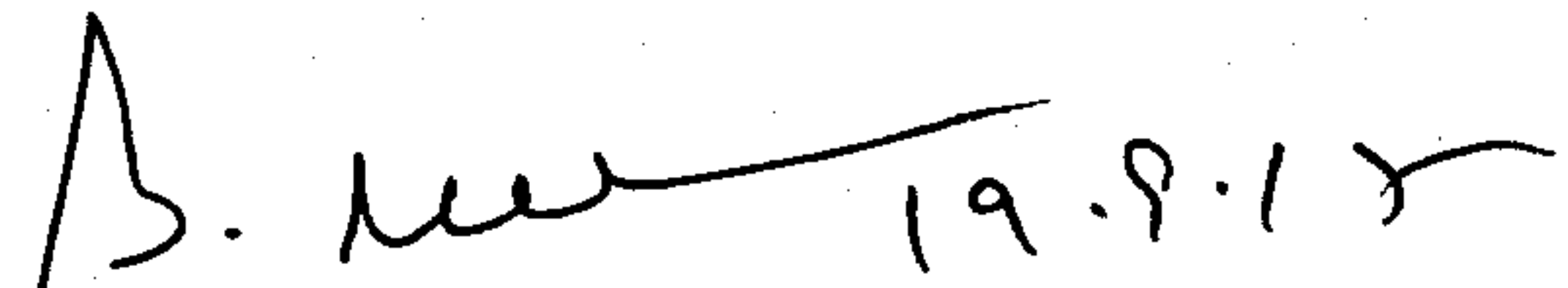
1.	ANIP A GANDHI	ADVOCATE	<u>APPLICANT</u> PNB	A ✓
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2.

ORDER

Learned Advocate Mr. Anip Gandhi present for Financial Creditor/ Applicant. None 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) 114/7/NCLT/AHM/2017

In the matter of:

Punjab National Bank
Registered Office at
7, Bhikhaiji Cama Place
Africa Avenue
NEW DELHI-110607

: Applicant
[Financial Creditor]

Versus

ABXL Retails India Pvt.Ltd.,
202, Shilp Square-B,
Near Himalaya Mall,
Opposite-Sales India,
Drive-in Road,
Ahmedabad

: Respondent
[Corporate Debtor]

Order delivered on 19th September, 2017.

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

Appearance:

Mr. Anip Gandhi with Mr. Raju Kothari, learned Advocates for the Applicant.

None present for Respondent.

ORDER

1. Punjab National Bank, styling 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 ABXL Retails (I) Private Ltd., categorising it as 'Corporate Debtor'.

2. Applicant is a Bank constituted under the provisions of Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. This Application is signed by Senior Manager-Chief Manager of Punjab National Bank, Ahmedabad Branch on the basis of authority given to him vide Power of Attorney dated 30th May, 2002 and Authority Letter dated 23.8.2017.

3. Respondent is a Company registered under the provisions of Companies Act, 1956 having its Registered Office situate in Ahmedabad.

4. Respondent Company applied for Cash Credit Limit of Rs. 7,00,00,000 to the Applicant Bank and accordingly Applicant Bank sanctioned the Cash Credit Limit to the Respondent Company on 9.7.2010. Respondent Company executed Master Undertaking on 21.7.2010 pursuant to the sanction of Cash Credit Limit of Rs. 7 Crores. Respondent also furnished necessary securities and guarantors. Respondent also hypothecated the goods to the tune of Rs. 10,00,00,000 and collateral security was charged in favour of the Bank on 21.7.2010. Respondent Company is unable to repay outstanding amount of Rs. 10,82,58,373.74 ps. including interest till 20th August, 2017. Respondent being the Principal Borrower and the Guarantors failed to honour the terms and conditions of the Credit Facility. Applicant issued Notice under Section 13(2) of the SARFAESI Act demanding outstanding amount with interest to the Respondent-Principal Borrower and Guarantors. The Authorised Officer of the Bank has taken measures under Section 13(4) of the SARFAESI Act. The Hon'ble District Magistrate passed an order under Section 14 of the SARFAESI Act and possession of the property was taken on 26.9.2011. The Applicant Bank auctioned the mortgaged property on 21.2.2012, 22.2.2012 and 29.6.2012 and

realised Rs. 5,16,52,111. Applicant Bank filed O.A. No. 151 of 2012 for the remaining claim of Rs. 6,53,38,550.37 ps. with further interest at the rate of 12 per cent until realisation. Debt Recovery Tribunal, Ahmedabad, by order dated 15.1.2014 decreed the claim of the Applicant Bank.

5. Applicant proposed the name of Interim Resolution Professional as Shri Vikas Gautamchand Jain. Applicant filed proof of service. This Application has been filed on 24th August, 2017. This matter 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 along with copy of the order and file proof of service. Applicant filed proof of despatch of notice of date of hearing on Respondent on 6.9.2017. Applicant also filed another proof of Service Affidavit stating that the covers addressed to the Respondent returned unserved. Applicant also filed Certificate under the Bankers' Books Evidence Act. Applicant in the Affidavit stated that they also sent the notice of date of hearing by E.Mail and filed copy of the E.Mail. In spite of sending copy of the Application and in spite of sending notice of date of hearing, Respondent did not choose to appear before this Authority and file any objection.

6. A perusal of the Application and its Annexures clearly show that the Application is complete in all respects. Applicant filed the copy of Master Undertaking dated 21.7.2010; copy of Statement of Account and Interest Calculation Sheet calculating interest till 20th August, 2017 and Certificate of the Bankers under the Bankers' Books Evidence Act. Applicant also filed copy of Notice dated 4.7.2011 issued under Section 13(2) of the SARFAESI Act and copy of the Notice issued under Section 13(4) of the SARFAESI Act to the Respondent. It is also stated in the Affidavit of the Applicant that Debt Recovery Tribunal passed decree in favour of the Applicant. Applicant Bank also stated that the mortgaged properties of the Respondent were sold and the Bank realised certain amounts. As

can be seen from the Statement of Account along with interest, outstanding amount payable by the Respondent is Rs. 10,82,58,373.74 Ps.

7. In spite of sending copy of the Application; in spite of sending the date of hearing notice; and in spite of the E-Mail intimation regarding the date of hearing, Respondent did not choose to appear before this Adjudicating Authority and did not choose to file Objections. In view of the documents filed by the Applicant, it is clear that Respondent committed default in repayment of outstanding loan amount which it has borrowed with certain terms and conditions including payment of interest. Therefore, the debt due to the Respondent to the Applicant Bank is a financial debt. Since the financial debt is due from the Respondent, which is a Company, it is the Corporate Debtor and the Bank is the Financial Creditor. The Financial Creditor filed the Written Communication of the Insolvency Resolution Professional. The fact that Debt Recovery Tribunal passed the decree in favour of the Bank is no impediment for the Financial Creditor to trigger Corporate Insolvency Resolution Process against the Corporate Debtor for the outstanding amount due to it, which is a financial debt.

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

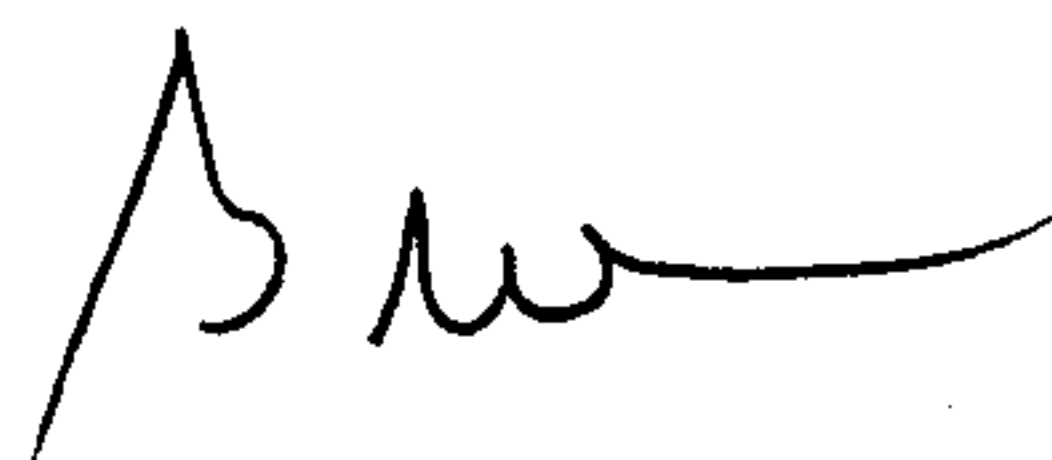
9. This Adjudicating Authority hereby appoint Shri Vikas Gautamchand Jain, as "Interim Insolvency Resolution Professional" having his Office at 204, Wall Street-1, Opposite Orient Club, Near Gujarat College, Ellisbridge, Ahmedabad-380006, and having Registration No. IBBI/IPA-001/IP-P00354/2017-18/10612 under Section 13 (1) (c) of the Code.

10. 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.

11. 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.



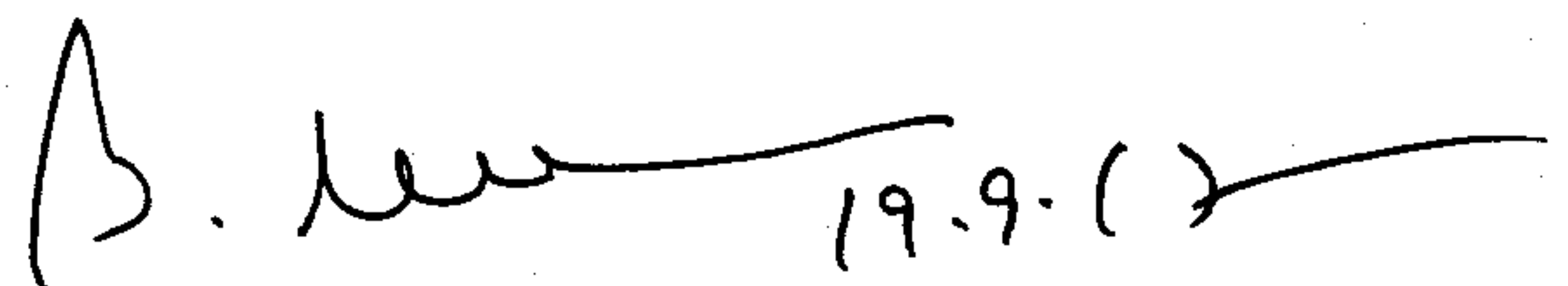
(ii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.

(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.

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

13. 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:

 19.9.17

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