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

**C.P. (I.B) No. 92/7/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 20.09.2017**

Name of the Company: Engenious Engineering Pvt. Ltd.  
V/s.  
Onex Natura Pvt. Ltd.

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

**S.NO. NAME (CAPITAL LETTERS)      DESIGNATION      REPRESENTATION      SIGNATURE**

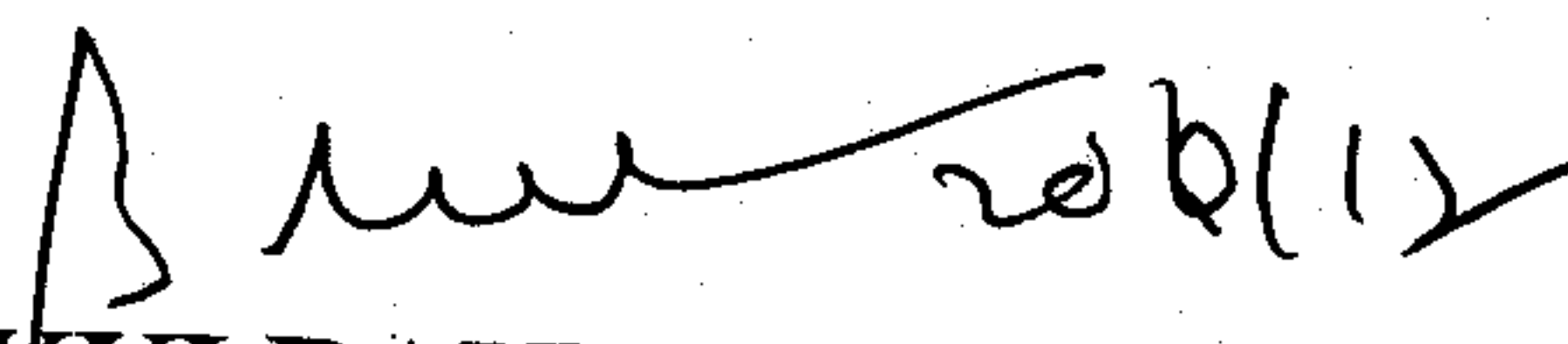
1.

2.

**ORDER**

None present for Applicant/ Financial Creditor. None present for Respondents.

Order pronounced in open court. Vide separate Sheets.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 20th day of September, 2017.

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

**C.P. No.(IB) 92/7/NCLT/AHM/2017**

**In the matter of:**

Engenious Engineering Private Limited  
Registered Office at  
Flat No.6, Aishwarya Apartments,  
K.V.L. Pai Path,  
Erandwane,  
Pune-411004

: Applicant.  
[Financial Creditor]

Versus

Onaex Natura Private Limited  
Registered Office at  
702, Aniket,  
Near Municipal Market,  
C.G. Road,  
Navrangpura,  
Ahmedabad-380009

: Respondent.  
[Corporate Debtor]

Order delivered on 20<sup>th</sup> September, 2017.

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

**Appearance:**

Mr. Ajay Antarkar, learned PCS for the Applicant.  
None appeared for Corporate Debtor.

**ORDER**

1. Engenious Engineering 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, Onaex Natura Private Limited categorising it as 'Corporate Debtor'.

2. The facts, that are necessary for disposal of this Application, are as follows;

2.1. Two of the Shareholders of Onaex Natura Private Limited, i.e., Respondent herein filed Company Petition No. 51 of 2011 before the Company Law Board, Mumbai Bench, alleging acts of oppression and mismanagement under Section 397, 398 of the Companies Act, 1956 against Onaex Natura Private Limited and its two Directors. In the said Petition, M/s. Engenious Engineering Private Limited, Applicant herein was added as 'Respondent No.4'. The said Company Petition came to be disposed of by the Hon'ble Company Law Board by order dated 14.3.2013 which is filed as 'Annexure-6' of the Petition. A perusal of the said order shows that the increase in the Authorised Share Capital from Rs. 1 Crore to Rs. 5 Crore has been set aside and Form-23 filed in that regard has been cancelled from the records of the Registrar of Companies. In the said order, the Hon'ble Company Law Board held that 5,25,000 shares allotted to Engenious Engineering Private Limited, the Applicant herein (Respondent No.4 in Company Petition No. 51 of 2011) are cancelled.

2.2. It is the case of the Applicant, as can be seen from Column No.4 of Part V, that the Applicant Company invested amounts in Respondent Company by way of Share Capital, but the allotment of shares by the Respondent Company to the Applicant Company has been cancelled by the Hon'ble Company Law Board by its order dated 14.3.2013 which has already been referred to in the earlier paragraph. That is how the Applicant is claiming an amount of Rs. 79,15,480/-.

2.3. In Column No.8 of Part V of Form-I, it is stated that Shri G. Padmanabhan, one of the Directors of Engenious Engineering



Private Limited filed an Affidavit before the Hon'ble Company Law Board on 9<sup>th</sup> April, 2014 in CP No. 51 of 2011 stating that Engenious Engineering Private Limited had no objection to sell the property of Onaex Natura Private Limited, i.e., the Respondent herein, provided that their money is paid back to them with 10 per cent interest till the date of payment. Applicant also filed Certificate of Auditor of Respondent Company stating that there is an Unsecured Loan from Engenious Engineering Private Limited as on 31.3.2016 for an amount of Rs. 78,94,887/-.

3. Basing on the above said material, Applicant is claiming to be the Financial Creditor.

4. This Application has been filed before this Tribunal on 9<sup>th</sup> August, 2017. Applicant has despatched copy of the Application to the Respondent Company on 1<sup>st</sup> August, 2017 and filed proof of despatch. When this matter was listed before this Adjudicating Authority on 23<sup>rd</sup> August, 2017, this Authority directed the Applicant to serve notice of hearing and file proof of service. Accordingly, the Applicant filed proof of service. None appeared for the Respondent through a proper Vakalatnama or Authorisation Letter. On the date of hearing on 7<sup>th</sup> September, 2017, a letter was received from Savla & Associates who did not even file Vakalatnama on behalf of the Respondent requesting this Tribunal to list this Application along with Company Petition No. 51 of 2011 on 12.9.2017. Since the said Savla & Associates have no locus standi in absence of any Vakalatnama on behalf of the Respondent, that letter was not taken into consideration by this Adjudicating Authority.

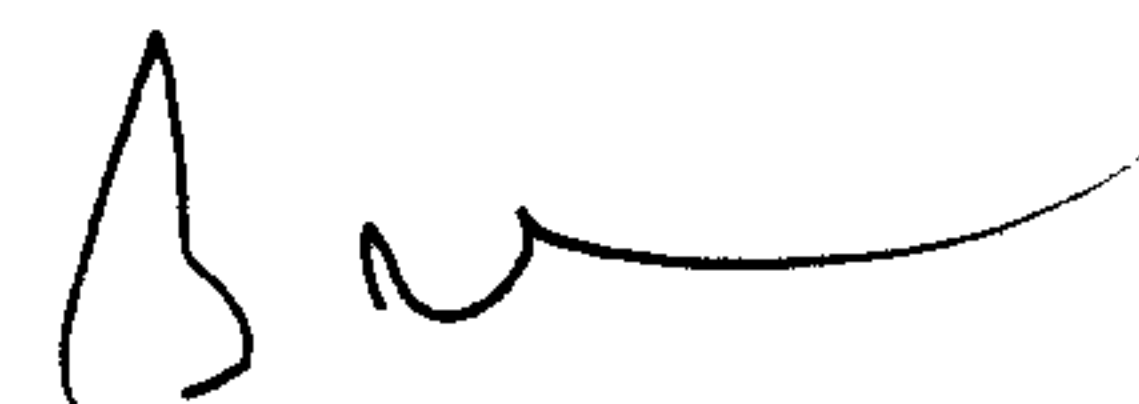
5. Again on 12.9.2017, learned Advocate Mr. Prabhat Chaurasia represented that he is having scanned copy of Vakalatnama sent by group of shareholders of the Company who were not parties to this Application. It is pertinent to mention here that the Respondent Company is Onaex Natura Private Limited. In order to contest the matter, Respondent's authorised representative

either in person or through his duly appointed Advocate can represent and file objections before this Adjudicating Authority. The shareholders of Onaex Natura Private Limited are not parties to this Application. There is no Rule that enjoins upon this Adjudicating Authority to give notice to all the shareholders of the Respondent Company. The shareholders also did not choose to file any Intervening Application in this matter. That is how the matter remain uncontested since none appeared for the Respondent Company.

6. The point involved in this case is whether the amount claimed by the Applicant from the Respondent Company is a 'financial debt' or not. 'Financial Debt' is defined in Section 5(8) of the Code.

7. The amount claimed in this case, according to the Applicant, is for allotment of shares of the Respondent Company. In fact, 5,25,000 shares of the Respondent Company were allotted to the Applicant Company but the allotment of such shares was held to be illegal and the allotment was set aside by an order of Company Law Board.

8. It appears that the only property of the Respondent Company was sold with the permission of the Applicant Company and the amount is lying in the National Company Law Tribunal. There is no order from the National Company Law Tribunal that Applicant is entitled for the amount invested by it for the shares allotted to it and that were cancelled. Therefore, it cannot be said that any amount is due to the Applicant from the 1<sup>st</sup> Respondent Company as a debt much less as a financial debt. The aspect whether the Applicant Company is entitled for a share in the sale proceeds of the property of the Respondent Company is a matter to be adjudicated in the pending Applications in Company Petition No. 51 of 2011.

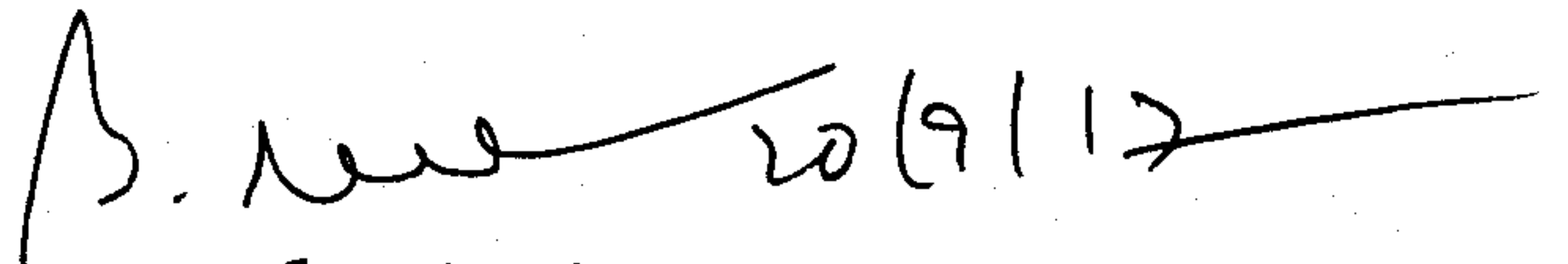




9. Another contention of the learned Counsel for the Applicant is that an Unsecured Loan of the Applicant is lying with the Respondent Company, as can be seen from the Balance Sheet of the Respondent Company and the Chartered Accountant Certificate. The Balance Sheet of the Respondent Company is not filed. Only the Certificate of the Auditor is filed. The Certificate of the Auditor shows that an amount of Rs. 78,94,887/- is due as Unsecured Loan as on 31<sup>st</sup> March, 2016 in the name of Applicant Company. But no Balance Sheet of the Respondent Company is filed. In Part IV, Column-1, the total amount of debt is shown as Rs. 79,15,480/- and in support of it Ledger Account of Applicant Company is filed, i.e., from 1.4.2008 to 31.3.2017. It is not pointed out by the learned Counsel for the Applicant that in the ledger books of the Applicant Company the account of Respondent's Unsecured Loan is shown. Therefore, there is no material on record to show that unsecured debt is due from the Respondent Company to the Applicant Company and when the amount claimed is only in respect of the shares of the Respondent Company allotted to the Applicant Company and cancelled by virtue of the order of the Hon'ble Company Law Board, it can only be said that there is no financial debt due to the Applicant Company from the Respondent Company and no default has been considered.

10. In view of the above, this Application is liable to be dismissed and accordingly it is dismissed. No order as to costs.

Signature:



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