

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

**C.P. (I.B) No. 117/10/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 21.09.2017**

Name of the Company:

Shashank Jayantilal Shah & Anr.  
(Aarohi Motors Pvt. Ltd.)

V/s.

Bank of India & Ors.

Section of the Companies Act:

Section 10 of the Insolvency and Bankruptcy  
Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MANDEEP SINGH SALUJA FOR KALPESH PATEL	ADVOCATE	Respondent No. 6, 8, 11	Mandeep Singh
2.				

**ORDER**

None present for Applicant/ Corporate Debtor. Learned Advocate Mr. Mandeep Singh Saluja i/b Learned Advocate Mr. Kalpesh Patel present for Respondents no. 6, 8 and 11. None present for other Respondents.

Order pronounced in open Court. Vide separate Sheets.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 21st day of September, 2017.

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

**C.P. No.(IB) 117/10/NCLT/AHM/2017**

**In the matter of:**

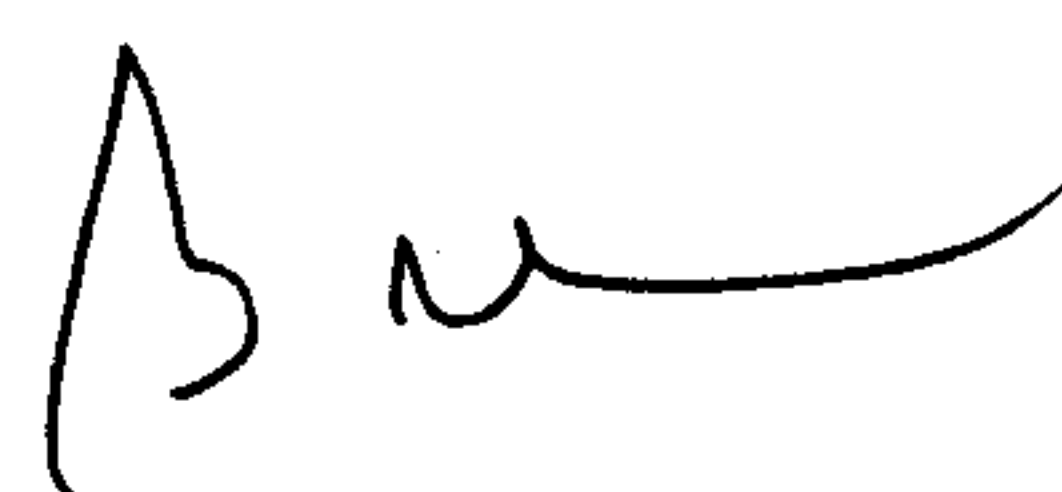
Aarohi Motors Private Limited  
having Registered Office at  
Ground Floor, Bhagirath Icon  
Narol Lambha  
National Highway No.8  
Narol  
Ahmedabad-382405

: Applicant.  
[Corporate Applicant]

Versus

1. Bank of India  
Ellis Bridge Branch  
Opp: Town Hall  
Ellis Bridge  
Ahmedabad-380006
2. HDFC Bank Ltd.,  
Senapati Bapat Marg  
Lower Parel  
Mumbai-400013
3. Kotak Mahindra Finance  
27 BKC, C-27, 'G' Block,  
Bandra Kurla Complex,  
Bandra-E,  
Mumbai-400051
4. Indusind Bank Ltd.,  
No.34, GN Shetty Road,  
T. Nagar,  
Chennai
5. Standard Chartered Bank  
Supply Chain Financing,  
Corporate Banking,

- 2<sup>nd</sup> Floor, 270, DN Road,  
Mumbai-400001
6. Cholamandalam Finance Co.Ltd.,  
M.Square, Swastik Society,  
Navrangpura,  
Ahmedabad
7. Sundaram Finance Ltd.,  
2, First Floor,  
Nilmany Chambers,  
Ashram Road,  
Ahmedabad-380009
8. HDB Financial Services Ltd.,  
2<sup>nd</sup> Process House,  
Kamala Hills,  
Senapati Bapat Marg,  
Lower Parel,  
Mumbai
9. Tata Capital Financial  
Services Ltd.,  
Shanti Arcade,  
Ketan Society,  
Nr.Sardar Patel Statute,  
Naranpura,  
Ahmedabad
10. Magma Fincorp Ltd.,  
Magma House,  
24, Park Street,  
Calcutta-700016
11. VolksWagen Financial Services  
Pvt.Ltd.,  
Silver Utopia, 3<sup>rd</sup> Floor,  
A Wing, Cardinal Gracious Road,  
Chakala, Andheri East,  
Mumbai-400099
12. Saral Management & Consultant  
2<sup>nd</sup> Floor, Abhishree Complex,  
Opp: Keshav Baug Party Plot,  
Opp: ITC Hotel,  
Judges Bungalow Road,  
Ahmedabad-380015



13. Smt. Ashaben K Shah  
294 Manekbaug, Lane No.8,  
Ambawadi,  
Ahmedabad-380015 : Respondents.  
[Financial Creditors]

Order delivered on 21<sup>st</sup> September, 2017.

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

**Appearance:**

Mr. Himanshu Desai, learned Advocate for Corporate Applicant.  
Mr. Haresh Shah, learned Advocate for Respondent No.1.  
Mr. Mandeep Singh Saluja, Mr. Dhruvik Patel and Mr. Kalpesh  
Patel, learned Advocates for Respondents No.6, 8 & 11.  
Mr. Kiran Panchal, learned Advocate for Respondent No.7.

**ORDER**

1. Aarohi Motors Private Limited, styling itself as 'Corporate Applicant', filed this Application under Section 10 of the Insolvency and Bankruptcy Code, 2016 ["IB Code" for short] read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("IB Rules" for short) with a request to trigger Corporate Insolvency Resolution Process in respect of Aarohi Motors Private Limited ("Company" for short).

2. The facts in brief, that are relevant for the purpose of disposal of this Application, are as follows;

2.1. The Board of Directors of Aarohi Motors Private Limited in its Meeting held on 3<sup>rd</sup> August, 2017 resolved to file Application under Section 10 of the IB Code before this Tribunal in Form-6. The Board of Directors also further resolved to authorise Shri Shashank Jayantilal Shah, Director of the Company to sign the necessary documents for the purpose of filing the Application before National

Company Law Tribunal. In the said Board Meeting, Mr. Himanshu Desai, Advocate was authorised to file the Application under the IB Code.

3. Pursuant to the said Resolution, the Company through its Director, Shri Shashank Jayantilal Shah, filed this Application before this Tribunal.

4. Applicant Company is a Company registered under the Companies Act, 1956. The Registered Office of the Company is situate in Ahmedabad. The Applicant Company is having two Directors, namely, Shri Shashank Jayantilal Shah and Shri Bahadursingh Virsingh Kitawat. The Paid-Up Share Capital of the Company is Rs. 2,75,00,000/-. It is stated in the Application that Bank of India is a Secured Creditor, whereas HDFC Bank Ltd., Kotak Mahindra Finance, Indusind Bank Ltd., Standard Chartered Bank, Cholamandalam Finance Co.Ltd., Sundaram Finance Ltd., HDB Financial Services Ltd., Tata Capital Financial Services Ltd., Magma Fincorp Ltd., Volkswagen Financial Services Pvt.Ltd., Saral Management & Consultant, and Smt. Ashaben K Shah are unsecured creditors. The amount in default due to the Bank of India is Rs. 17,21,69,370/-. Various amounts that are in default to the other Unsecured Creditors listed above are shown in detail in Pages No. 12 and 13 of the Application. The Applicant also filed List of Operational Creditors with required details at Page No. 131. It shows, there are 24 Operational Creditors and the total amount due to the Operational Creditors is Rs. 59,55,974.16 ps. Applicant filed Annual Accounts for the years ended 31.3.2016 and 31.3.2017 and copy of Unaudited Accounts as on 20<sup>th</sup> August, 2017. Applicant also filed details of Assets and Liabilities of the Company/Corporate Debtor. Applicant also furnished particulars of debts owed by R-2 persons connected with the Corporate Debtor. Applicant also furnished details of Guarantees in relation to debts of the Corporate Debtor. Applicant gave names and addresses of the Members of the Company-Corporate Debtor with their shareholding details. Applicant

disclosed about the pending litigation in the Application in details at Pages No. 201 to 385. In Page No.208, the List of Cases filed by the Creditors is shown in detail. Applicant also filed all the relevant documents pertaining to the litigation disclosed in Page No.201. Applicant proposed the name of Mr. Dipak Jamanbhai Rachchha, as 'Interim Resolution Professional' and filed his Written Communication.

5. This Application was filed before this Adjudicating Authority on 5<sup>th</sup> September, 2017. Applicant sent copies of the Application to the Financial Creditors and filed proof of despatch. This Adjudicating Authority directed the Applicant to serve notice of date of hearing along with copy of the order and file proof of service. Accordingly, Applicant served notice of date of hearing to the Financial Creditors. The Bank of India, HDFC Bank Ltd., VolksWagen Financial Services Pvt.Ltd., Cholamandalam Finance Co.Ltd., and Sundaram Finance Ltd., appeared through their Counsel or Company Secretaries. Sundaram Finance Ltd., and Bank of India filed their Objections.

6. Sundaram Finance Ltd., in its objections, stated that it has already obtained Arbitration Award against the Corporate Applicant/Corporate Debtor for an amount of Rs. 66,39,849/- and the said Award is under execution vide EP No. 222 of 2016 in City Civil Court, Ahmedabad.

7. Bank of India filed objections, stating that Corporate applicant did not approach the Tribunal with clean hands and the Corporate Applicant suppressed the material facts. It is stated by the Bank of India ["BOI" for short] that it is the only Secured Creditor and other Creditors referred in the Application are Unsecured Creditors. According to the BOI, it is entitled to attach all the assets such as movable and immovable properties of the Corporate Applicant and dispose of the same for recovery of its dues together with interests and costs. BOI stated that on the request of Corporate Applicant and its Directors, facilities were sanctioned from time to

time for which security documents were also executed and equitable mortgage was created by the Applicant Company and its Directors. It is the case of the BOI that Corporate Applicant and its Directors neglected to repay the dues and as such the Corporate Applicant was classified as 'NPA' on 28<sup>th</sup> March, 2015. The BOI has also taken action under SARFAESI Act and took symbolic possession of the properties on 9.9.2015 and published Possession Notice in the newspapers on 10.9.2015. The Corporate Applicant preferred Securitisation Application No. 109 of 2015 before the Debt Recovery Tribunal, Ahmedabad and obtained stay against the BOI from taking further action under the SARFAESI Act and the stay is in force. The BOI has also filed Original Application No. 78 of 2016 before the Debt Recovery Tribunal, Ahmedabad against the Corporate Applicant, its Directors and Guarantors for recovery of Rs. 19,63,86,969/- with interest and other charges. The BOI also filed Application under Section 14 of the SARFAESI Act before Chief Metropolitan Magistrate, Ahmedabad for taking physical possession of the secured assets, but in view of the stay granted in Securitisation Application No.109/2015, the said Application is pending. It is stated by the BOI that Corporate Applicant and its Directors having knowledge of the Securitisation Application No. 109 of 2015 and Original Application No. 78 of 2016 did not disclose the same in this Application filed under Section 10 read with Rule 7 of the Act and the Rules. The BOI further stated that there are several demands from Income Tax Department, VAT Department, Government of Gujarat. The dues to the Income Tax Department is Rs. 45 lacs and the dues to the Government of Gujarat, VAT Department is Rs.118 lacs and those amounts are not shown in the Balance Sheet. According to the BOI, total amount due is Rs. 23,50,19,758. According to the BOI, the said amount is secured by movable and immovable assets of the Corporate Applicant. It is further stated that the Corporate Applicant without informing the BOI obtained several unsecured loans from various private Banks and other Nationalised Banks in breach of the terms and conditions of the Sanction. The BOI has also stated that the Interim Resolution Professional proposed by the Corporate

Applicant is interested in the Company and he may not be appointed. It is stated by the BOI that if the Application is admitted then the recovery proceedings shall come to a standstill and the BOI would suffer hardship. The BOI has also stated that it is entitled to proceed against the Guarantors.

8. From the Objections filed by Sundaram Finance Ltd., and the Bank of India, it appears that their main contention is relating to pendency of execution of award obtained by Sundaram Finance Ltd against the Applicant Company and the pendency of Securitisation Application No. 109 of 2015 and Original Application No. 78 of 2016 against the Corporate Applicant Company.

9. The initiation of proceedings under the SARFAESI Act or the pendency of proceedings before the DRT and execution of Arbitral Award are no grounds for not commencing the 'Insolvency Resolution Process', in view of the overriding effect given to Section 238 of the Code.

10. The pendency of other proceedings in respect of the debts due by the Corporate Debtor is not a ground not to admit this Application. Moreover, in view of Section 14 of the IB Code, all the proceedings pending before any other forum including the Debt Recovery Tribunal and City Civil Court will be stayed, if the Application is admitted.

11. 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



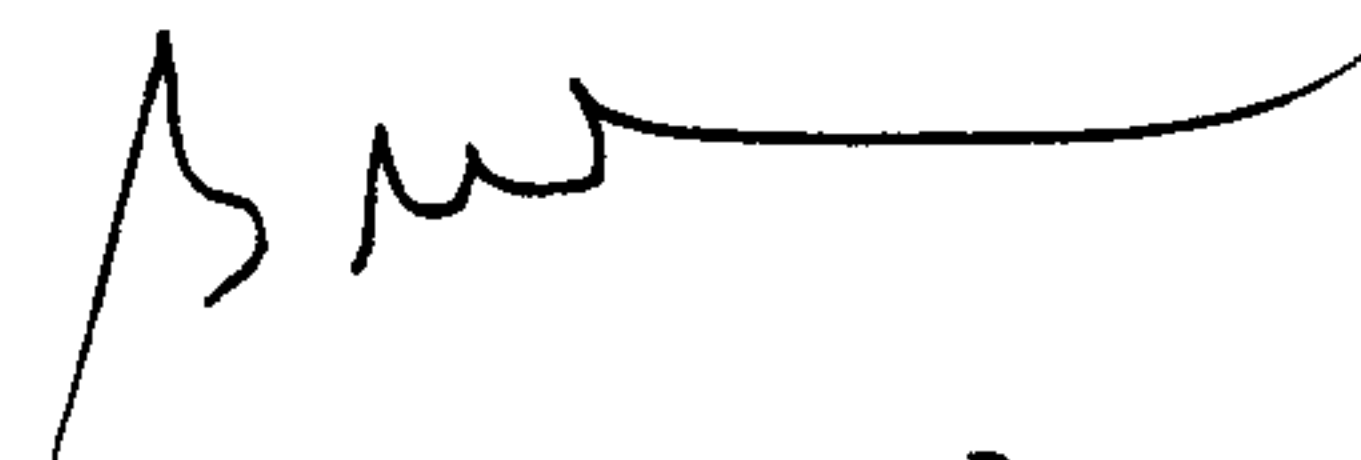
proceedings under the SARFAESI Act filed this Application do not merit acceptance.

12. Another objection raised by the BOI is that the Corporate Applicant did not disclose about the pendency of proceedings in the Debt Recovery Tribunal. But, factually it is not correct. The Applicant along with the Application gave a list of all the proceedings pending in various Courts and enclosed all the documents pertaining to the litigation filed by or against the Corporate Applicant. Therefore, it cannot be said that Corporate Applicant suppressed the material facts and approached this Tribunal with unclean hands. The Application filed by the Corporate Applicant is complete in all respects. The option to recommend the name of IRP is given only to Applicant. No material is placed on record to indicate that IRP is interested in the Applicant Company. There is a right to Financial Creditors to replace IRP in the 1<sup>st</sup> meeting of Committee of Creditors.

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

14. This Adjudicating Authority hereby appoint, Mr. Dipak Jamanbhai Rachcha, as 'Interim Insolvency Resolution Professional' having address at 401, Akshat Towers, Near Pakwan Dining Hall, Opp: Rajpath Club, SG Road, Ahmedabad-380015 with Registration No. IBBI/IPA-001/IP-P00085/2016-17/10226, under Section 13(1)(c) of the Code.

15. The Interim Insolvency Resolution Professional is hereby directed to cause a 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.



16. 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 Company/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 Company/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 Company/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 Company/corporate debtor.

(i) However, the order of moratorium shall not apply in respect of supply of essential goods or services to the Company/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.

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

18. Communicate a copy of this order to the Corporate Applicant, and to all the Respondent Financial Creditors, and to the Interim Insolvency Resolution Professional.

Signature:

 21.9.17

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