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

IA 315 of 2017 in C.P. (I.B) No. 4/10/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 10.10.2017

Name of the Company:

Santosh Dhiraj Pathak, Promoter  
(Gujarat Oleo Chem Ltd.)

V/s.

Anil Goel, RP & Ors.

Section of the Companies Act:

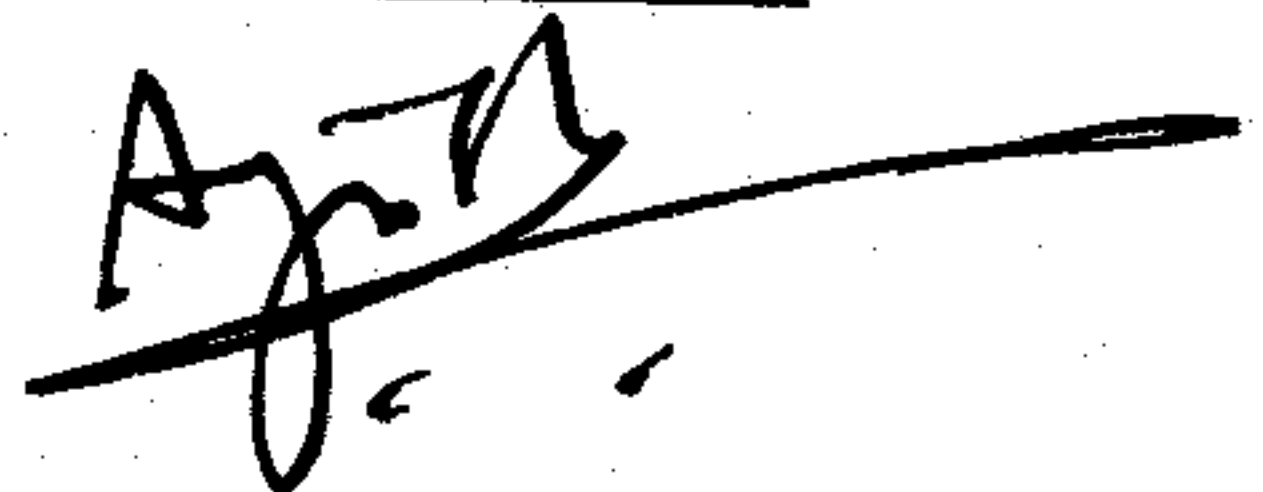
Section 60(5)(c) r/w 12 of the Insolvency and  
Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1. A. R. Sheth

Adv. & Solicit

Applicant

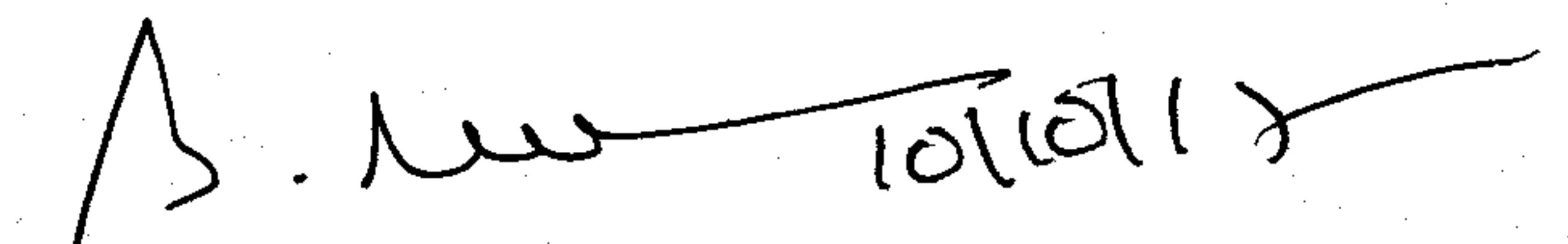


2.

**ORDER**

Learned Advocate Mr. Arjun Sheth present for Applicant. Learned Advocate Mr. I.R. Patel present for Respondent no. 6. None present for other Respondents in IA 315/2017.

Order pronounced in open Court. Vide separate sheets.



BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL

Dated this the 10th day of October, 2017.

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

**I.A. No. 315 of 2017**

**In**

**C.P. No.(IB) 04/10/NCLT/AHM/2017**

**In the matter of:**

Santosh Dhiraj Pathak  
Having Office at  
Suit No.B-817, Samarth Aishwarya  
Oshiwara, Lokhandwala,  
Andheri-W,  
Mumbai-400053

: Applicant.

Versus

1. Mr. Anil Goel  
Having office at  
AAA Insolvency Professionals LLP  
E-10A, Kailash Colony,  
New Delhi-110004
2. Stressed Asset Stabilisation Fund  
(SASF)  
5<sup>th</sup> Floor, IDBI Tower,  
WTC Complex, Cuff Parade,  
Mumbai-400005
3. Andhra Bank  
116, Saurabh, Andheri Kurla Road,  
Andheri-E,  
Mumbai-400093
4. Technology Development Board  
Department of Science and Technology,  
Ministry of Science and Technology,  
Vishwakarma Bhawan,  
Wing 'A', Ground Floor,  
Shaheed Jeet Singh Marg  
New Delhi 110016

5. Oriental Bank of Commerce  
Resolution, Recovery & Law Cluster,  
Plot No.67, 41A-45, Victoria Road,  
Mustafa Bazar, Byculla (E)  
Mumbai-400010

6. Gujarat State Finance Corporation  
Block No.10, Udyog Bhavan,  
Sector-11, GH-4,  
Gandhinagar-382017

: Respondents.

Order delivered on 10<sup>th</sup> October, 2017.

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

**Appearance:**

Mr. Arjun Sheth, learned Advocate for the Applicant.  
Mr. I.R. Patel, learned Advocate for Respondent No.6  
None present for Respondent in IA No. 315/2017.

**ORDER**

1. This Application is filed by the Promoter/Director of Gujaraj Oleo Chem Limited (Corporate Debtor) seeking extension of time for completion of the Insolvency Resolution Process under Section 60 sub-section (5) Clause (c) read with Section 12 of the Insolvency and Bankruptcy Code, 2016 ["IB Code" for short] and Rule 11 of the National Company Law Tribunal Rules.

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

2.1. Corporate Debtor filed Petition, CP (IB) No. 4/10/NCLT/AHM/2017 under Section 10 of the IB Code and the same has been admitted by this Adjudicating Authority vide order dated 13.4.2017. By the said order, this Adjudicating Authority appointed Mr. Anil Goel (1<sup>st</sup> Respondent herein) as "Interim



Resolution Professional”. Respondents No. 2 to 6 herein are the Members of the Committee of Creditors.

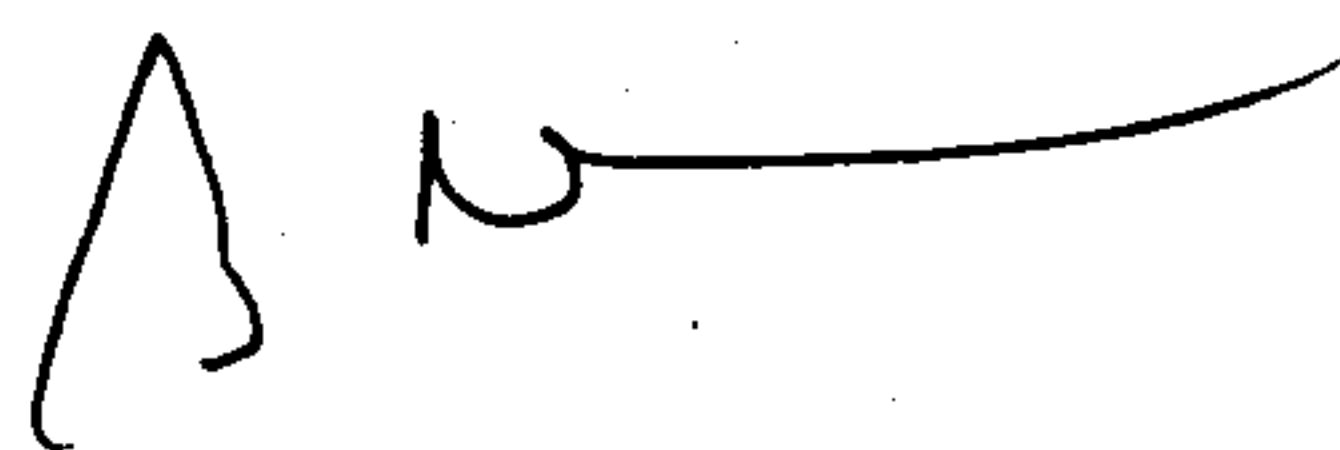
2.2. It is stated in the Application that the Committee of Creditors have agreed to give further time to the Applicant to submit a revised one-time settlement and the Resolution Process has not been carried out by the Committee of Creditors diligently so as to arrive at a Resolution Plan. It is further stated that although the Committee of Creditors agreed to give one more month's time on 19.9.2017, the Committee of Creditors did not choose to pass a resolution seeking extension of time for completion of Resolution Process under Section 12 of the Code. It is also stated that the Valuation Reports have not been obtained in respect of the assets of the Corporate Debtor and the Corporate Debtor and Respondent No.2 have not handed over possession of the assets of the Corporate Debtor to the Interim Resolution Professional.

3. Heard the arguments of the learned Counsel for the Applicant. Following are the points that emerge for determination;

(a) Whether the Applicant, being Promotor/Director of the Corporate Debtor Company is entitled to file this Application under Section 60(5)(c) read with Section 12 of the IB Code and Rule 11 of the NCLT Rules; and

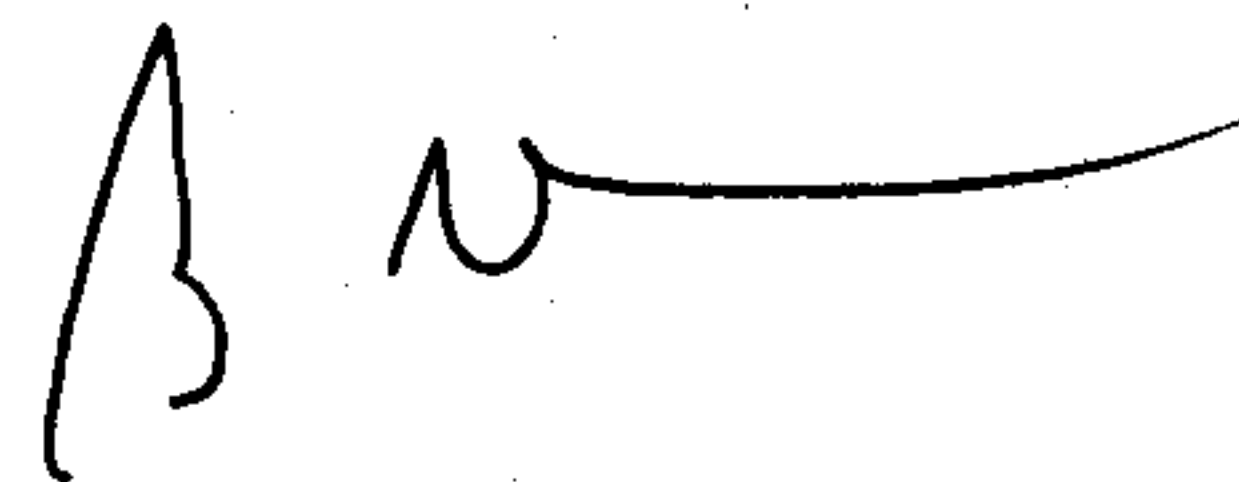
(b) Whether time can be extended for completion of the Corporate Insolvency Resolution Process.

4. Sub-section (2) of Section 12 of the Code clearly lays down that it is only the Resolution Professional who can file an Application to the Adjudicating Authority to extend the duration of Corporate Insolvency Resolution Process beyond 180 days on the basis of Resolution passed at a meeting of the Committee of Creditors by a vote of 75 per cent of the voting shares.



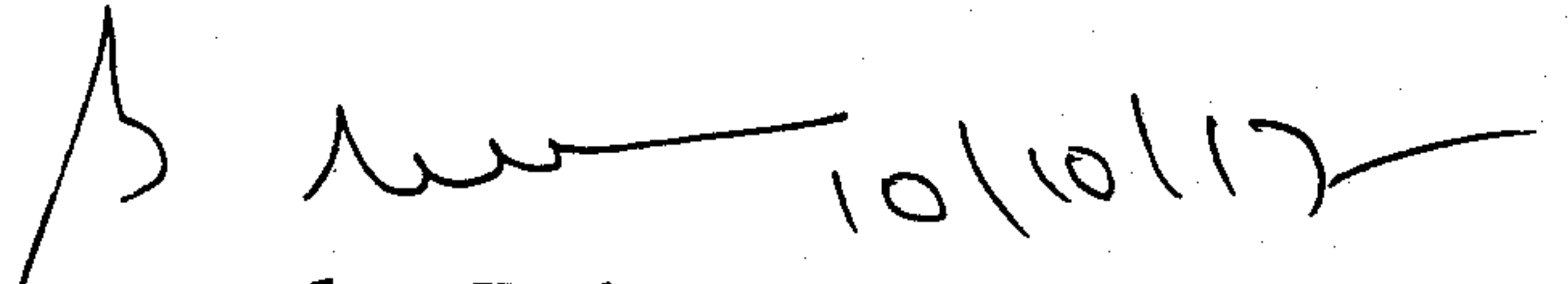
5. In this context, it is necessary to refer to the Fourth Meeting of the Committee of Creditors of Gujarat Oleo Chem Limited held on 19<sup>th</sup> day of September, 2017. In Agenda No.4 of the said Resolution, it is mentioned that the Resolution which has been proposed by the Promoter was discussed in the Meeting and resolved not to accept the Resolution Plan put forward by the Promoter/Director and asked the Promoter/Director to propose an improved Plan within 30 days. On Agenda No.3, the Committee of Creditors resolved that Mr. Anil Goel, Resolution Professional is instructed to file an Application before the National Company Law Tribunal, Ahmedabad under Section 12(2) of the IB Code for approval of extension of the duration of Corporate Insolvency Resolution Process. But, no such Application is filed by the Resolution Professional, Mr. Anil Goel so far. This Application filed by the Promoter/Director is not in accordance Section 12(2) of the Code and not in accordance with the Resolution on Agenda No.3 of the 4<sup>th</sup> Meeting of the Committee of Creditors held on 19<sup>th</sup> September, 2017.

6. Coming to Section 60(5)(c) of the Code, it gives jurisdiction to the Adjudicating Authority to decide the question of priorities, question of law or facts arising out of or in relation to the Insolvency Resolution. But, while deciding the question of priorities or question of law or facts arising out of or in relation to the Insolvency Resolution, this Adjudicating Authority has to follow the procedural aspects laid down in various Sections of the Code depending upon the issue involved. In the case on hand, the issue involved is extension of duration of Corporate Insolvency Resolution period beyond 180 days which is governed by Section 12 of the Code. When the Applicant is not qualified under Section 12 of the Code, the jurisdictional function of this Adjudicating Authority under Section 60(5)(c) of the Code cannot be invoked by the Applicant Promoter/Director.



7. In view of the above discussion, it is held that this Application, filed by the Applicant, Promoter/Director, is not maintainable and it is accordingly dismissed.

Signature:



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