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

C.P. (I.B) No. 128/7/NCLT/AHM/2017

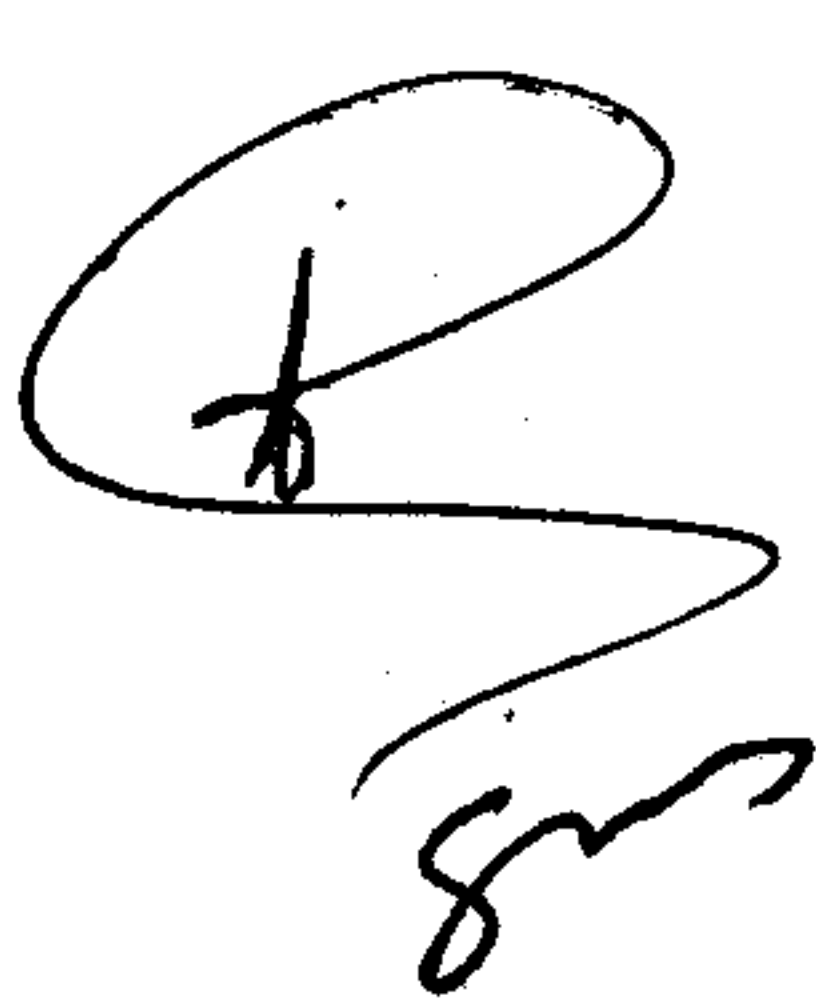
Coram:

**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 20.11.2017**

Name of the Company: Bank of Baroda
V/s.
Varia Aluminium 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>
1.	Animesh Bisht	Adv.	Financial Creditor	
2.	Abhishek Mukherjee	Adv.		
3.	Sahil Shah	Adv.		

ORDER

Learned Advocate Mr. Animesh Bisht with Learned Advocate Mr. Abhishek Mukherjee with Learned Advocate Mr. Sahil Shah present for Financial Creditor/Petitioner. None present for Respondent.

Order pronounced in open Court. Vide separate sheets.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 20th day of November, 2017.

**BEFORE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH**

C.P. No.(IB) 128/7/NCLT/AHM/2017

In the matter of:

Bank of Baroda
Head Office: Baroda House,
Mandvi, Baroda, Gujarat,
And acting through its
Corporate Financial Services Branch
1st Floor, Bank of Baroda Towers,
Opposite Law Garden,
Ellisbridge,
Ahmedabad-380006, Gujarat.

: Petitioner.
[Financial Creditor].

Versus

Varia Aluminium Private Limited
Registered Office at
21, Titanium Building,
Corporate Road,
Nr. Prahladnagar Garden,
Prahladnagar,
Ahmedabad-380015, Gujarat.

: Respondent.
[Corporate Debtor].

Order delivered on 20th November, 2017.

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

Appearance:

Mr. Animesh Bisht with Mr. Abhishek Mukherjee, with Ms. Naveena Varghese, with Mr. Sahil Shah, learned Advocates for Petitioner/Financial Creditor.

Mr. Navin Pahwa, learned Senior Advocate with Ms. Natasha Sutaria, learned Advocate for the Respondent.

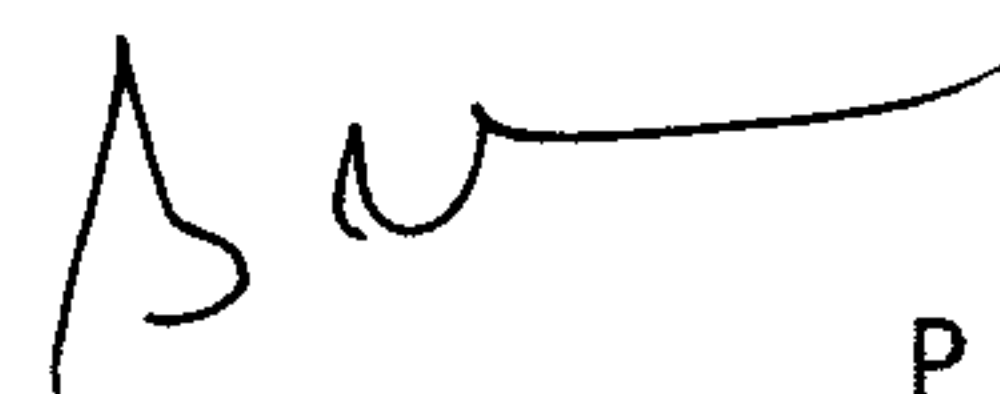
ORDER

1. Bank of Baroda, through its Chief Manager, 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) against Varia Aluminium Pvt.Ltd., with a request to initiate Corporate Insolvency Resolution Process treating it as 'Corporate Debtor'.

2. Bank of Baroda ["BOB"] gave a General Power of Attorney to Mr. Mridul Misra, Chief Manager of BOB on 21st August, 2017 authorising Mr. Mridul Misra, Chief Manager to appear and represent the Bank in Courts of Law, Suits, arbitration or other proceedings relating to the BOB and sign pleadings, applications etc. Further, BOB by its Circular Resolution dated 14th July, 2017 authorised all Chief Managers of the BOB to file Applications, proceedings before the National Company Law Tribunal and the National Company Law Appellate Tribunal and to sign the papers, petition etc.

3. BOB sanctioned the following facilities to the Corporate Debtor, vide Sanction Letters dated 2nd January, 2012 read with Sanction Letter dated 3rd July, 2013;

- (a) Rupee term loan facility to the tune of Rs.50,00,00,000 (Rupees Fifty Crores Only);and
- (b) Cash Credit facility of Rs.60,00,00,000 (Rupees Sixty Crore Only);
- (i) Rupee Term Loan of Rs. 45,21,00,000 (Rupees Forty Five Crores Twenty One Lakhs Only) ("Term Loan"), as mentioned in Schedule II of the Facility Agreement;
- (ii) Working Capital Term Loan of Rs. 22,56,00,000 (Rupees Twenty Two Crores Fifty Six Lakhs Only) ("WCTL Facility") as set out in Schedule II of the Facility Agreement;



- (iii) Funded Interest Term Loan of Rs.20,15,00,000 (Rupees Twenty Crores Fifteen lakhs Only) ("FITL Facility"), as set out in Schedule II of the Facility Agreement;
- (iv) Cash Credit Facility of Rs. 40,00,00,000 (Rupees Forty Crores), having following sub-limits;
- Letter of Credit limit of up to Rs.20,00,00,000 (Rupees Twenty Crores Only);and
 - Letter of Credit for Buyer's Credit of upto Rs. 20,00,00,000 (Rupees Twenty Crores Only);
(collectively referred to as "Cash Credit Facility").

The total debt granted to the Corporate Debtor under the Facilities is Rs. 127,92,00,000 (Rupees One Hundred Twenty Seven Crore Ninety Two Lakhs Only).

3.1. The dates of disbursements are as follows;

S. No.	Facility	Disbursed amount (in INR)	First Date of Disbursement	Comments
1	Term Loan	45,15,67,308	March 31,2015	This account was opened on March 27, 2012 and as per the initial sanction of Rs.50,00,00,000 the total disbursement was Rs.49,94,14,122, up to February 27, 2013. Between February, 2013 and March, 2015, the sanctioned amount was mostly availed. Pursuant to the restructuring on March 31,2015,the outstanding amount in this amount was to Rs.45,15,67,308
2	WCTL Facility	22,56,00,000	March 31,2015	The facility was disbursed in as a single tranche.
3.	FITL Facility	18,36,19,377	March 31,2015	The facility was disbursed in multiple

				tranches since the date of first disbursement. The interest charged on the Term Loan and the WCTL Facility accounts were being served by way of disbursement from the FITL account as per the restructuring.
4.	Cash Credit Facility	37,94,00,000	July 22, 2015	This limit was made available for drawal by the Corporate Debtor.
	Total:	124,001,86,685		

3.2. According to the Petitioner, the amounts in default and dates of default under various Facilities are as follows;

- 1) The amount in default under the Term Loan as on June 30, 2017 is Rs. 52,04,57,370.20 (Rupees Fifty Two Crores Four Lakhs Fifty Seven Thousand Three Hundred and Seventy Only).

The first date of default in respect of this facility was July 01, 2016.

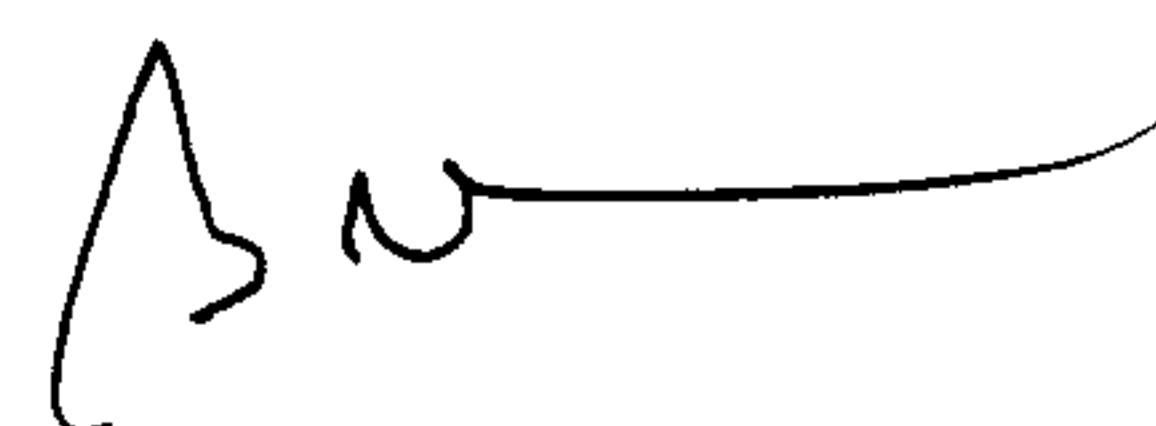
- 2) The amount in default under the WCTL Facility as on June 30, 2017 is Rs. 25,89,46,803.41 (Rupees Twenty Five Crores Eighty Nine Lakhs Forty Six Thousand Eight Hundred and Eighty Three only).

- 3) The amount in default under the FITL Facility as on June 30, 2017 is Rs. 19,62,04,067.55 (Rupees Nineteen Crore Sixty Two Lakhs Four Thousand and Sixty Seven Only).

The first date of default in respect of this facility was May 01, 2016.

- 4) The amount in default under the Cash Credit Facility as on June 30, 2017 is Rs. 46,23,49,474.06 (Rupees Forty Six Crore Twenty Three Lakhs Forty Nine Thousand Four Hundred Seventy Four Only).

The first date of default in respect of this facility was April 01, 2016.



The total amount in default as on June 30, 2017 is Rs. 143,79,57,715.22 (Rupees One Hundred Forty Three Crore Seventy Nine Lakhs Fifty Seven Thousand Seven Hundred and Fifteen Only).


The account was classified as NPA on June 30, 2016, w.e.f. March 30, 2015. Vide notice dated October 06, 2016, the Corporate Debtor was asked to pay the outstanding amount of Rs. 130.64,19,734.24 (as on October 01, 2016) within 60 days of the notice therefrom, however, the Corporate Debtor failed to make such payment.

4. The Petitioner also gave the particulars of securities held by the Banker. Petitioner also filed copies of Entries in Banker's Book in accordance with Bankers' Books Evidence Act. Petitioner filed the following documents to prove the existence of financial debt, the amount of default, and dates of default;

- 1) Annual Report of the Corporate Debtor for the year 2015-2016;
- 2) Letter of acknowledgment of debt amounting to Rs. 72,83,72,908 (Rupees Seventy Two Crore Eighty Three Lakhs Seventy Two Thousand Nine Hundred and Eight Only), dated July 23, 2013, by the Corporate Debtor;
- 3) Letter of acknowledgment of debt amounting to 109,72,54,134.35 (Rupees One Hundred and Four Crores Seventy Two lakhs Fifty Four Thousand One Hundred and Thirty Four Only) dated March 30, 2015, by the Corporate Debtor;
- 4) Notice under section 13(2) of the SARFAESI Act dated October 06, 2016, issued by the Financial Creditor to the Corporate Debtor;



- 5) Letter dated November 18, 2016, issued by the Corporate Debtor, acknowledging the debt owed to the Financial Creditor; and
 - 6) Letter dated November 25, 2016, issued by the Financial Creditor to the Corporate Debtor.
5. BOB issued a Notice under sub-section (2) of Section 13 of the SARFAESI Act on 6.10.2016 recalling the entire outstanding loan amount under various facilities. The copy of the said Notice is filed as 'Annexure 21' along with the Application.
6. Petitioner proposed the name of Mr. Sanjay Gupta as 'Interim Resolution Professional' and filed the Written Communication given by Mr. Sanjay Gupta.
7. Varia Aluminium Private Limited is a Company registered under the Companies Act. The Authorised Share Capital of the Company is Rs.70,00,00,000. The Paid-up Share Capital of the Company is Rs. 45,00,00,000.
8. It is the case of the Petitioner, inspite of restructuring sanction of credit facilities Corporate Debtor failed to pay even the amount due towards interest on various Facilities and therefore following the guidelines given by the Reserve Bank of India the account of the Corporate Debtor with the BOB was classified as 'NPA' on 30th June, 2016 with effect from 30th March, 2015 and the Corporate Debtor was informed of the same vide Notice dated 6th October, 2016.
9. According to the Petitioner BOB, there is a debt due and payable from the Corporate Debtor and the Corporate Debtor has committed default in payment of such debt.



10. Petitioner served a copy of the Application on the Corporate Debtor. Corporate Debtor appeared through their Counsel and filed Reply Affidavit. The first objection raised by the Corporate Debtor is the amounts in default and dates of default mentioned in Clause 2 of Part-IV are incorrect and contrary to the contract entered into by and between the Financial Creditor and Corporate Debtor.

11. According to the Corporate Debtor, as per the revised Sanctioned Letter dated 3.7.2013 Repayment Schedule began only from October 2013. Further, the Credit Facilities thereafter came to be restructured and a sanction letter dated 30th March, 2013 was issued by the Financial Creditor. As per the Sanction Letter dated 30th March, 2013 the debt was restricted and the revised Repayment Schedule came to be issued by the Financial Creditor to the Corporate Debtor. As per the revised Repayment Schedule, the Term Loan-I Repayment Schedule start from 30.11.2016 and end on 31.10.2024. The Working Capital Term Loan was converted into Term Loan and there was a moratorium of 18 months on it. The repayment of monthly instalments start from 30.11.2016 and end on 31.10.2024. According to the Corporate Debtor, even in respect of Funded Interest Term Loan it was restructured and the Repayment Schedule start from 30.11.2016 with a moratorium of 24 months and end on 31.10.2022. Moreover, it is the case of the Corporate Debtor that it has furnished all kinds of securities and guarantees to clear the restructured debt; the Corporate Debtor is an ongoing concern having assets of Rs. 105 Crores and Revenues of Rs. 26 Crores; and there are 120 direct employees in the Company. It is also stated by the Corporate Debtor that the Financial Creditor classified the account of the Corporate Debtor as 'NPA' on 30th June, 2016 which is against the terms and conditions mentioned in the Sanction Letter dated 30th March, 2015.

12. The Corporate Debtor pleaded that it brought an investor and tried to meet the General Manager of the Financial Creditor but he was not allowed to meet the General Manager of the Financial

Creditor on 21.9.2017. It is stated that the Corporate Debtor faced complete non-cooperation from the Financial Creditor. The Financial Creditor even did not want to discuss and meet the Investor.

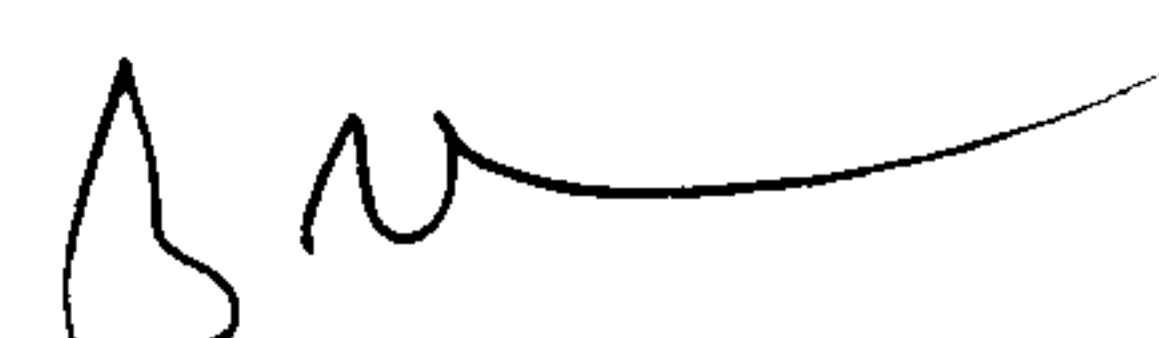
13. During the course of arguments, learned Senior Counsel for the Respondent contended that the Petition is not filed by the Authorised Person. He further contended that General Power of Attorney ["GPA"] is not a valid authorisation for the Chief Manager to file this Petition. In the case apart from the GPA dated 21st August, 2017 there is a Circular Resolution of the Board of BOB dated 14th July, 2017 which clearly authorised all Chief Managers of the Bank to sign and initiate proceedings before the National Company Law Tribunal. Therefore, in this case, it cannot be said there is no authorisation to the Chief Manager to file this Petition. The objection raised by the Financial Creditor on this count is not sustainable.

14. The main objection raised is that no debt is due and payable to the Financial Creditor in view of the restructuring of the debt and the Revised Sanction Letter dated 30th March, 2015. It is not in dispute that there is a debt between the Financial Creditor and the Corporate Debtor. There is no dispute about the fact that the debt is a 'financial debt'. The whole controversy, in this case, is whether there is any default in payment of the financial debt as contemplated in Section 3(12) of the Code.

Section 3(12) of the Code reads as follows;

*"3. In this Code, unless the context otherwise requires, _
(1) to (11).....*

*(12) "default means non-payment of debt when whole or
any part or instalment of the amount of debt has
become due and payable and is not repaid by the
debtor or the corporate debtor, as the case may be."*



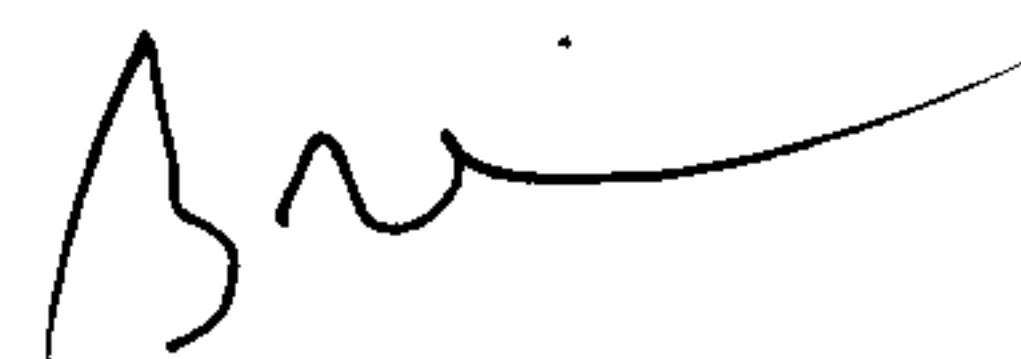
15. Therefore, in order to constitute 'default' within the meaning of Section 3(12) of the Code, the debt must be due and payable.

16. The contention of the Corporate Debtor is that in view of the restructuring of the debt and in view of the Revised Sanction Letter dated 30th March, 2015 none of the facilities granted to the Corporate Debtor by the Financial Creditor is due and payable and therefore there is no default committed by the Corporate Debtor.

17. On this aspect, learned Senior Counsel appearing for the Respondent relied upon a decision of the *Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 5 of 2017 in the matter of **M/s. Starlog Enterprises Limited Vs. ICICI Bank Limited***. In that Judgment, the Hon'ble Appellate Tribunal held, "*no notice was issued by the 'adjudicating authority' to the corporate debtor, before admitting the application filed under Section 9 of the I&B Code.*" It was a case where none appeared for the Corporate Debtor and an ex parte order was passed by the Hon'ble NCLT, Bombay Bench.

17.1. In the case on hand, the Corporate Debtor represents its case through a learned Senior Counsel and filed its objections. Therefore, the question of violation of principles of natural justice did not arise in this case.

17.2. In that case, Financial Creditor issued a notice to the Corporate Debtor on 6th February, 2017 calling upon the Corporate Debtor to pay Rs. 10,02,28,271.60 ps. In that case, Financial Creditor in the Petition filed before the Adjudicating Authority inflated the default amount as Rs. 29,81,02,395.62 ps. In that case, the amount reflected Principal Unmatured also. In that case, the Financial Creditor by its own admission not recalled the entire loan amount.



17.3. In the case on hand, no doubt, there is a restructuring of debt and a Revised Sanction Letter dated 30th March, 2016 was issued by the Financial Creditor to the Corporate Debtor.

17.4. As per the Sanction Letter dated 30th March, 2015, the Term Loan-I Repayment Schedule starts from 30.11.2016 and end on 31.10.2024;

17.5. The Working Capital Term Loan (WCTL) moratorium is 18 months; the repayment of instalments starts from 30.11.2016 and end on 31.10.2024;

17.6. The Funded Interest Term Loan moratorium is 24 months; the monthly instalments start from 30.11.2016 and end on 31.10.2022.

18. First of all in this case, the outstanding amount claimed as on 1st October, 2016 in the Petition is Rs. 130,64,19,734.24 ps. In the Notice dated 6.10.2016 also, the amount claimed is the same. In the Application, the total amount of default as on 30th June, 2017 is mentioned as Rs. 143,79,57,750.22 ps. Therefore, it cannot be said that there is any inflation of the amount from the amount claimed in the Notice and from the amount claimed in the Petition as was the case in the decision relied upon by the learned Counsel for the Corporate Debtor.

19. In the decision relied upon by the learned Counsel for the Respondent, the un-matured principal amount was included in the default amount. No doubt, in the case on hand also, there was a moratorium on repayment of Term Loan-I; Working Capital Term Loan; and Funded Interest Term Loan. But, the Funded Interest Term Loan's instalments started from 30.11.2016.

20. The materials placed on record by the Corporate Debtor show that the Corporate Debtor committed default even in payment

of interest and in respect of it the Financial Creditor paid the instalment amounts from the Funded Interest Term Loan even beyond 30.11.2016 and therefore the Corporate Debtor has committed default in terms of the Sanction Letter dated 30th March, 2015, and therefore the Financial Creditor issued notice under Section 13(2) of SARFAESI Act on 6.10.2016 recalling the entire loan amount.

21. As per the terms of the Sanction Letter, the Financial Creditor is entitled to recall the entire loan amount in case of default. In the decision relied upon by the learned Counsel for the Corporate Debtor, admittedly the Financial Creditor did not recall the loan amount. But in the case on hand, the Financial Creditor recalled the entire loan amount.

22. Coming to treating the account of the Corporate Debtor as 'NPA', no doubt, the account of the Corporate Debtor was treated as 'NPA' from 30.10.2016 but with effect from 30th March, 2015. According to the learned Counsel for the Respondent it is against the terms of the contract. Learned Counsel appearing for the Financial Creditor brought to the notice of this Adjudicating Authority the clauses in Master Circular issued by the Reserve Bank of India declaring the norms on asset classification, provision pertaining to advances of norms on income recognition. The Asset Classification Norms 17.2.2 reads as follows;

"17.2.2 The non-performing assets, upon restructuring, would continue to have the same asset classification as prior to restructuring and slip into further lower asset classification categories as per extant asset classification norms with reference to the pre-structuring repayment schedule."

23. In view of the same, in case of a default even in case of restructuring of debts, the account will be treated as 'NPA' with

reference to the Pre-structuring Repayment Schedule. Therefore, what has been done, by the Banker Financial Creditor, is in accordance with the Reserve Bank of India Circular. Therefore, there is no merit in the contention of the learned Senior Counsel appearing for the Respondent, that Financial Creditor is not right in treating the account of the Corporate Debtor as 'NPA' with effect from 31.3.2015. In view of the above discussion, it is held that the Corporate Debtor has committed default in repayment of financial debt due and payable to the Financial Creditor.

24. It is settled law that in a Petition under Section 7 of the Code, this Adjudicating Authority has to see whether there is existence of financial debt and a default has been committed in payment of financial debt. On both the aspects, there is sufficient material on record. The finding is against the Corporate Debtor.

25. Moreover, this Petition filed by the Financial Creditor is complete in all respects. Therefore, there are no grounds to reject this Petition.

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

27.. This Adjudicating Authority hereby appoint Shri Sanjay Gupta, as 'Interim Resolution Professional' having address at E-86, Second Floor, Lajpat Nagar-I, New Delhi-110024, and having Registration No. IBBI/IPA-001/IP-P00117/2017-18/10252 under Section 13 (1) (c) of the Code.

28. 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.

29. 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;

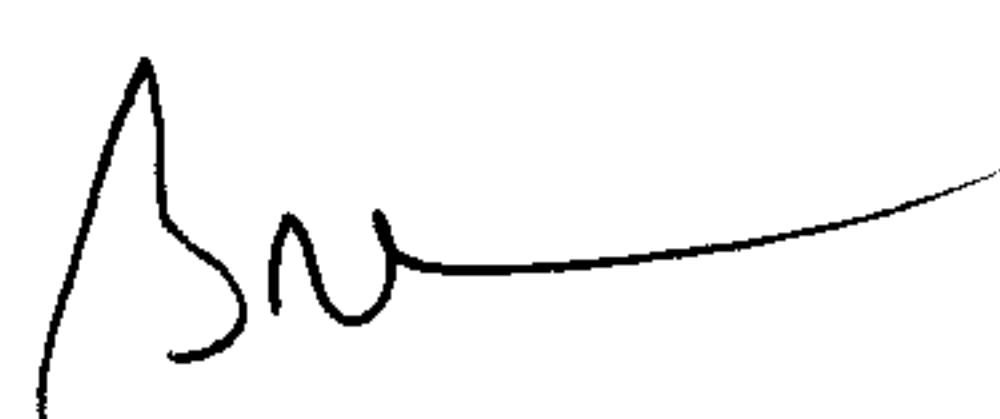
(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(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



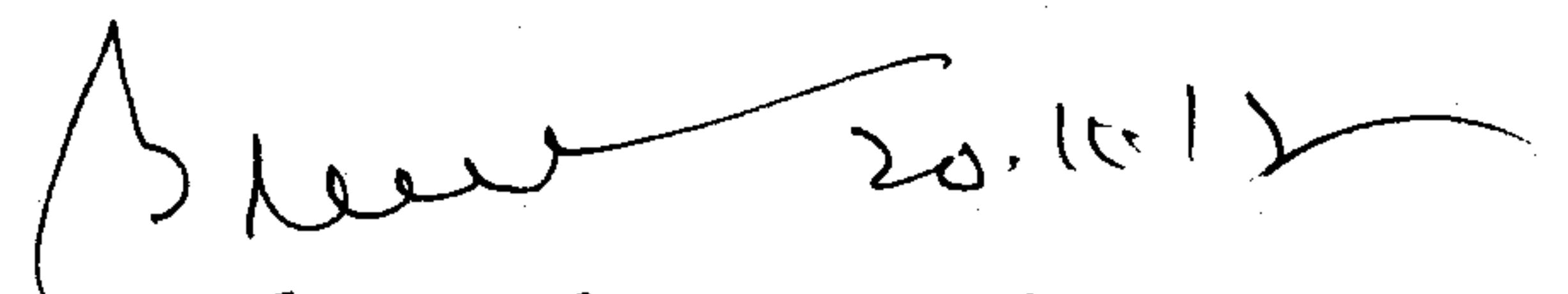
Government in consultation with any financial sector regulator.

- (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.

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

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

Signature:

A handwritten signature in black ink, appearing to read 'Bikki Raveendra Babu', followed by the date '20.10.17'.

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