

36

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

C.P. (I.B) No. 164/7/NCLT/AHM/2017

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 30.11.2017**

Name of the Company: Allahabad Bank.
V/s.
Sai Infosystem (India) 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.

2.

ORDER

None present for Financial Creditor/Petitioner. None present for Respondent.

Order pronounced in open court. Vide separate Sheets.


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 30th day of November, 2017.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

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

C.P. No.(IB) 164/7/NCLT/AHM/2017

In the matter of:

Allahabad Bank
Branch Office at
S.P. Nagar Branch
"Acme Centre"
Shrimali Society,
Nr. Navrangpura Railway
Crossing, Navrangpura,
Ahmedabad-380009

: Petitioner.
[Financial Creditor]

Versus

Sai Infosystem (India) Limited
Registered Office at
Super Plaza,
Sandesh Press Road,
P.O. Bodakdev,
Vastrapur,
Ahmedabad-380054
Gujarat.

: Respondent.
[Corporate Debtor]

Order delivered on 30th November, 2017.

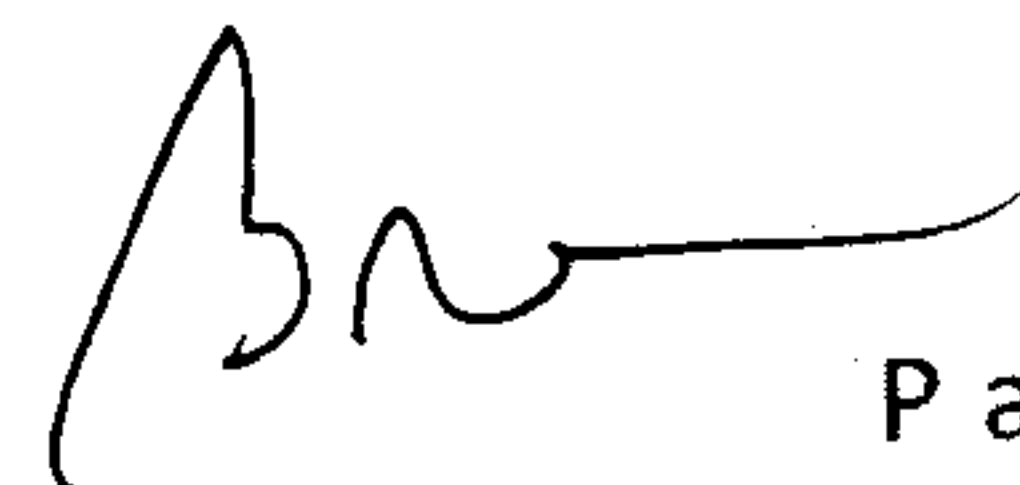
**Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J) – And
Hon'ble Ms. Manorama Kumari, Member (J).**

Appearance:

Ms. Kshama Sheth, with Mr. Sunil Bhavsar, learned Advocates for
the Petitioner.

None present for Respondent.





ORDER**[Per: Hon'ble Ms. Manorama Kumari, Member (J)].**

1. Allahabad Bank, through Shri Laxmichand Batra, Assistant General 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 M/s. Sai Infosystem (India) Limited, with a request to initiate Corporate Insolvency Resolution Process treating it as 'Corporate Debtor'.

1.1. The Chief Manager of the Applicant Bank has by letter dated 25.8.2017 authorised the Assistant General Manager, SP Nagar Branch to refer the case to NCLT under IBC on immediate basis.

2. Respondent Corporate Debtor is a Public Limited Company having its Registered Office at Ahmedabad. The Authorised Capital of the Respondent Company is Rs. 32,00,00,000/-. The Paid-up Share Capital of the Respondent Company is Rs. 9,42,93,580/-. The main object and other objects for which the Respondent Company was incorporated are as set out in the Memorandum and Articles of Association filed with the Registrar of Companies, Gujarat.

3. It is the case of the Applicant that the Respondent was sanctioned a Fresh Term Loan of Rs. 50.00 Crores (out of Total TL requirement of Rs. 160.00 Crores) vide sanction letter dated 18/19.4.2011 to part finance the Internet Data Centre (IDC) project in association with BSNL for four locations, namely, Bangalore, Hyderabad, Ranchi and Ernakulam at a total project cost of Rs. 240.00 under the consortium lead by State Bank of India. The Applicant Bank also issued a Sanction Letter dated 18.9.2012 in favour of the Respondent at Annexure A/8 with terms and conditions. The Applicant also issued a Sanction Letter dated 20.4.2013 vide Annexure A/10 to the Respondent with terms and

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conditions. The Respondent executed various documents in favour of the Applicant Bank. The Applicant granted fund-based facilities and non-fund based facilities as per Annexure A5 (collectively) which were accepted by the Respondent vide its letter dated 20.5.2011. The Respondent Company had executed a Demand Promissory Note dated 24.5.2011 for Rs. 60.00 Crores and General Letter of Hypothecation dated 24.5.2011 for Rs. 60 Crores in favour of the Applicant Bank. Thereafter the Respondent approached the Applicant Bank in the year 2012 and proposed to review the account and requested for renewal of the Credit Facilities, i.e. Cash Credit at Rs. 25 Crores and Term Loan at Rs. 31.76 Crore on the existing terms and conditions. The Applicant renewed the same and executed various security documents. The Respondent again approached the Applicant in the year 2013 and review and renewal of the credit facilities, i.e. Cash Credit limit at existing level at Rs. 25 Crores and Term Loan outstanding of Rs. 26.89 crores under the consortium lead by State Bank of India, sanction of Cash Credit (ad-hoc limit) of Rs. 2.50 Crores (10% of existing Cash Credit Limit) for a period of 90 days @ BR plus 3.50% p.a. for meeting the working capital gap of the Company under the Consortium led by the State Bank of India; Sanction of fresh One Time Performance Bank Guarantee Limit of Rs. 69.89 Crores for a period of 6 years for executing the order issued by the Home Department, Govt. of Maharashtra for execution of certain projects. The Respondent Company had accepted all the terms and conditions of the sanction letter No. AB/SPN/ADV/SIS/2013-14/081 dated 20.4.2013.

3.1. The Respondent Company had executed Demand Promissory Notes dated 12.6.2013 for Rs. 124.28 Crores, Undertaking ADV-24 dated 12.6.2013 for Stocks and Book Debts in Cash Credit Facility account; General Letter of Hypothecation dated 12.6.2013 for Rs.. 124.63 Crores. Disbursements on account of various Facilities granted by the Applicant to the Respondent Corporate Debtor were made through Funds Transfer under RTGS to the account of the Respondent Corporate Debtor. The copy of the

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Certificate as per Banker's Book of Evidence Act, 1891 dated 24.10.2017 shows the total outstanding amount due and payable as Rs. 84,41,49,406.00.

3.2. It is the case of the Applicant that the Respondent Company defaulted in repayment of term loans/financial facilities and the total irregularities in the account amounted to Rs. 51.63 Crores and as the Chief Promoter/Director of the Respondent Company fled away from the country the Applicant had filed First Information Report against the Respondent Company.

3.3. The Applicant also filed Original Application, bearing OA No. 408 of 2014 before the Hon'ble Debts Recovery Tribunal and the same is pending.

3.4. According to the Applicant various financial assistances aggregating to Rs. 132.39 crores were given to the Respondent, out of which a sum of Rs. 60.00 crores was secured by the Guarantee of the Respondent Company.

3.5. In spite of repeated reminders, the Respondent Company did not make any payment to the Applicant Bank. The Applicant Bank has declared the account of the Respondent Company as 'NPA' on 21.10.2013. The Applicant issued a Demand Notice under the SARFAESI Act, 2002 dated 12.11.2013 calling upon the Respondent Company to pay an amount of Rs. 52,52,00,074.24 together with further interest thereon with effect from 13.11.2013. However the Respondent failed and neglected to make payment. Thereafter, the Applicant Bank issued notice dated 8.9.2017 claiming outstanding amount of Rs. 83,28,73,387.00 inclusive of interest. But the said notice was returned with remarks "Left". The Applicant Bank has also issued a letter bearing Ref. No. HO/Rec/WD/1309 dated 1.10.2016 under which the Respondent Company was declared as a Wilful Defaulter, which was acknowledged by Mr. Sunil S. Kakkad, one of the Directors of the Respondent Company. It is thus the case

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of the Applicant that the Respondent Company is liable to pay to the Applicant an unpaid debt of Rs. 84,41,49,406.00 together with further interest thereon till date of realisation.

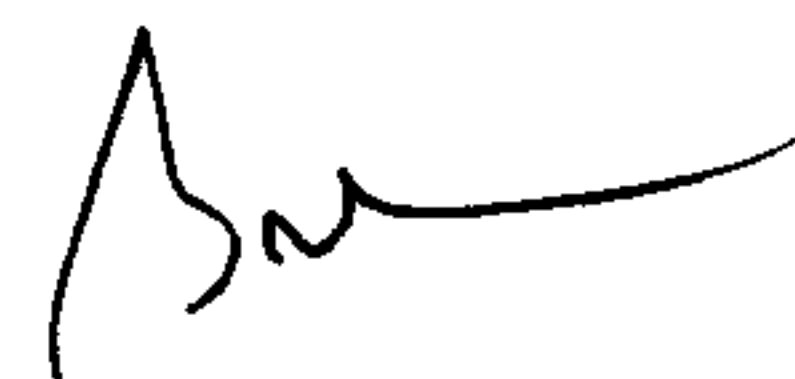
3.6. The Applicant has filed Total Due Certificate under the Bankers' Books Evidence Act; copy of the Search Report dated 24.10.2017; Particulars of Security held; copy of ROC record confirming the charges of Financial Creditor; Audited Balance sheet for the financial years 2010-11, 2011-12 and 2012-13; and Ledger accounts of all loans and liabilities.

4. Petitioner proposed the name of Shri Parag Sheth, as 'Interim Resolution Professional' and filed his Written Communication.

5. This Application was listed before this Adjudicating Authority for the first time on 15.11.2017. Petitioner filed an Affidavit stating that copy of Application sent to the Corporate Debtor was returned unserved as "left". This Adjudicating Authority directed the Petitioner to serve notice of date of hearing on Respondent along with copy of application and order and also to inform the date of hearing by mail. On the next date of hearing on 22.11.2017 the Petitioner filed the Track Report issued by Postal Department which disclosed "addressee left". Petitioner also served the notice by email. Hence the service of notice by email is treated as sufficient notice on the Respondent. This Authority directed the Registry to issue notice to Respondent and accordingly Registry issued notice to Respondent.

6. Heard arguments of learned Counsel for the Petitioner. None appeared on behalf of the Respondent.

7. A perusal of the Application and its Annexures clearly show that the Application is complete in all respects. A perusal of the the documents executed between the Applicant Bank and the Respondent Company clinchingly establish that Respondent



committed default in repayment Financial Debt i.e., various Facilities granted to the Respondent by the Bank. Therefore, the Applicant is a Financial Creditor and the amount due to the Applicant is a financial debt. The materials on record clearly establish that the Respondent Company committed default in repayment of financial debt.

8. The Hon'ble National Company Law Appellate Tribunal, on 17th January, 2017, in **Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017** in the matter of **M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr, held** that in an application filed by the Financial Creditor under Section 7 for initiation Corporation Insolvency Resolution Process, the Adjudicating Authority is required to satisfy-

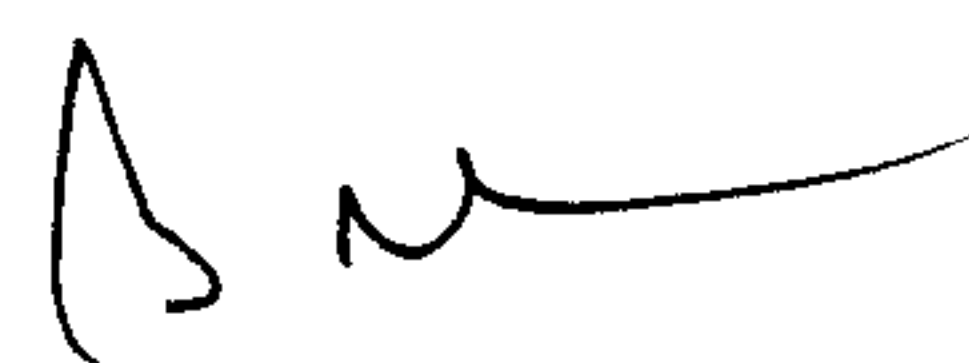
- (a) Whether a default has occurred;
- (b) Whether an application is complete; and
- (c) Whether any disciplinary proceeding is against the Proposed Insolvency Resolution Professional.

In the case on hand, Respondent Company committed a default in repayment of the outstanding amount. The Application is complete in all respects. The material on record show that no disciplinary proceeding is pending against the proposed Interim Resolution Professional.

9. In view of the above discussion, this Application deserves to be admitted and it is accordingly admitted under Section 7 (5)(a) of the Code. This Adjudicating Authority hereby appoint Mr. Parag Sheth as 'Interim Insolvency Resolution Professional' having Office at 404, Sachet-2, Opp: GLS University, Maradia Plaza, C.G. Road, Ahmedabad-380006 and having Registration No. IBBI/IPA-002/IP-N00142/2017-18/10381 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, there shall not be any termination, suspension or interruption 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.

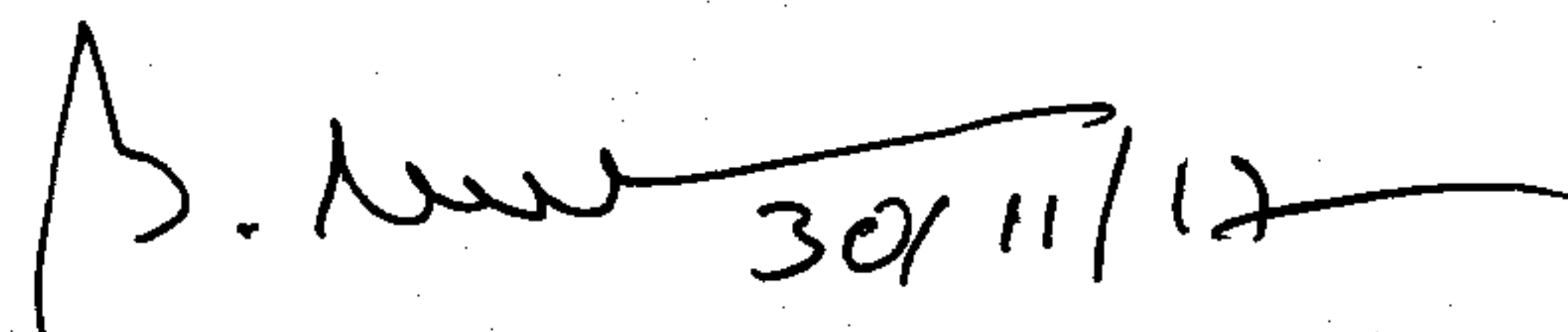
12. This Application is disposed of accordingly. No order as to costs.

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:


**Ms. Manorama Kumari,
Member (J),
Adjudicating Authority.**

Signature:


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