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

**C.P. (I.B) No. 149/7/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 21.12.2017**

Name of the Company:

Bank of Baroda

V/s.

Varia Engineering Work 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>
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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.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 21st day of December, 2017.

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

**CP NO. (IB) 149/7/NCLT/AHM/2017**

**In the matter of:**

1. Bank of Baroda  
Corporate Financial Branch  
Opp. Law Garden  
Ellisbridge  
Ahmedabad 380 006

: Petitioner  
: Financial Creditor

**VERSUS**

1. M/s. Varia Engineering Works Pvt. Ltd.  
2005, Phase IV, GIDC  
Vatva  
Ahmedabad 382 442

: Respondent  
: Corporate Debtor

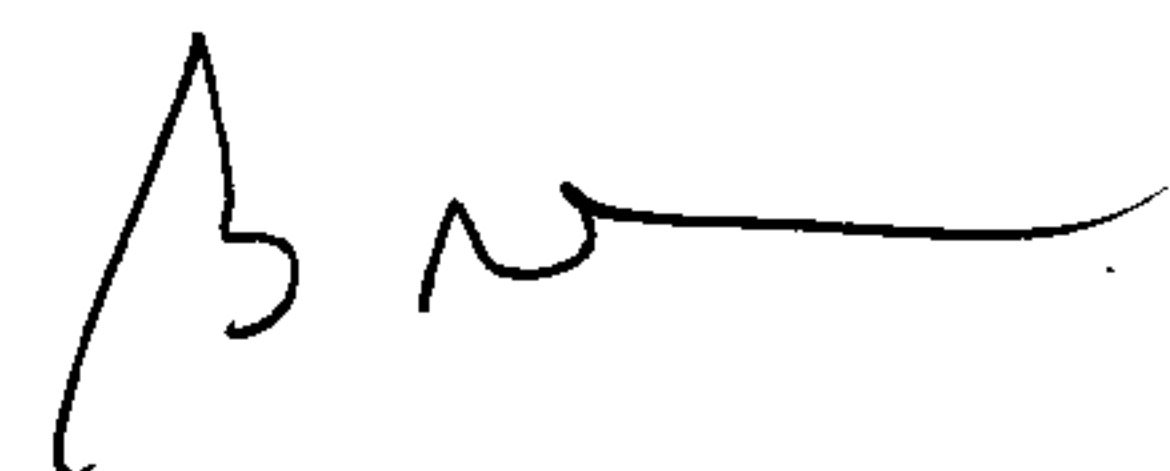
**Order delivered on 21<sup>st</sup> December, 2017**

**CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**

**Appearance:**

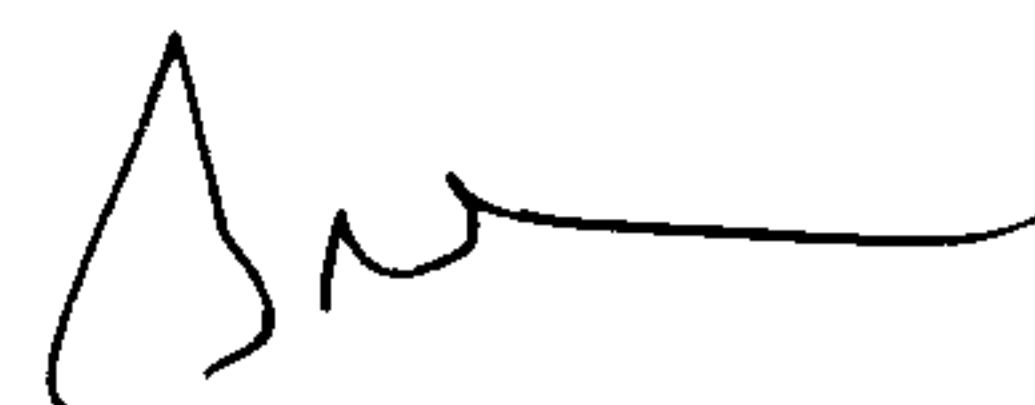
For the petitioner : Learned Advocate Ms. Saloni  
Kapadia with learned advocate Mr.  
Abhishek Mukherjee i/b Learned  
Advocate Mr. Sahil Shah

For the respondent : Learned Advocate Learned FCA Mr.  
Hiten Parikh



**ORDER**

1. Bank of Baroda through its Chief Manager, Mr. Mridul Misra filed this application under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") with a prayer to trigger Corporate Insolvency Resolution process in respect of M/s. Varia Engineering Works Private Limited.
2. Bank of Baroda by power of attorney as well as Board Resolution No. 62 authorised the Chief Manager to appear and represent the bank in courts of law, suits, arbitration or other proceedings relating to Bank of Baroda and sign pleadings, applications etc. In view of the said authorisation, Chief Manager is authorised to file this petition.
3. Bank of Baroda sanctioned the following facilities to the Corporate Debtor as restructured in the Master Restructuring Agreement dated 31.03.2015: -
  - (1) Rupee term loan facility to the tune of Rs. 7,00,00,000 (Rupees seven crores only) (Term Loan – I) as set out in





schedule IVA of the MRA, read with Schedule III of the MRA.

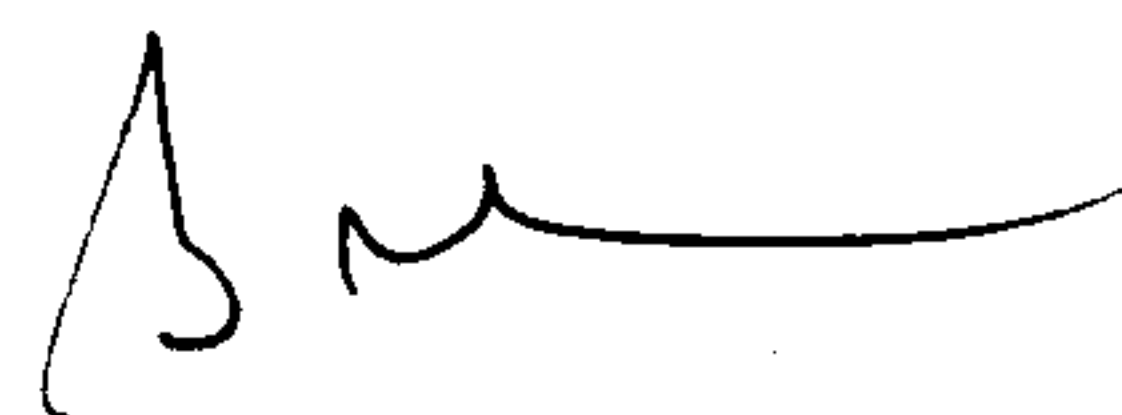
(2) Rupee term loan facility to the tune of Rs. 7,84,00,000 (Rupees seven crore eighty four lacs only) (Term loan – II) as set out in schedule IVA of the MRA, read with schedule III of the MRA.

(3) Various working capital term loan facilities as set out below: -

(i) Working capital term loan-I (WCTL-I) of Rs. 20,14,00,000 (Rupees twenty crores fourteen lacs only) as set out in Schedule IVB of the MRA, read with Schedule III of the MRA; and

(ii) Working capital term loan – II (WCTL-II) of Rs. 14,97,00,000 (Rupees fourteen crores ninety seven lacs only), as set out in schedule IVB of the MRA, read with schedule III of the MRA

(4) Restructured funded interest term loan facility of Rs. 9,74,00,000 (Rupees nine crores seventy four lacs only) FITL facility) as set out in schedule IVC of the MRA read with schedule III to the MRA.



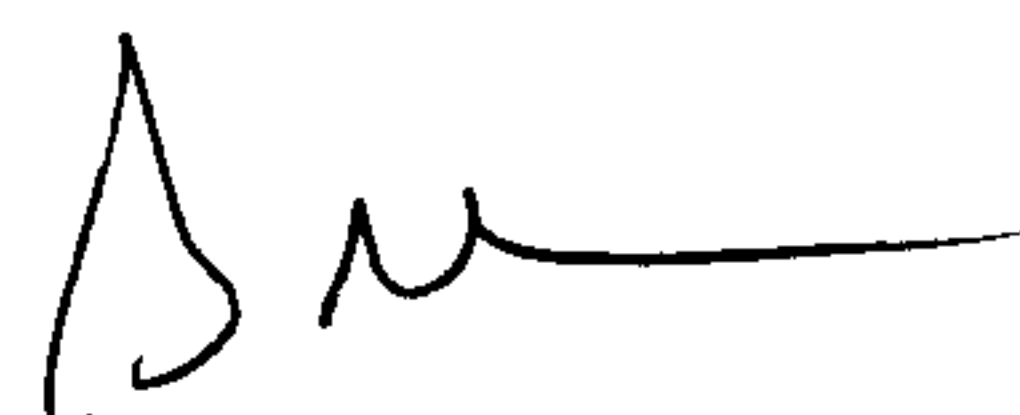
- (5) Restructured Fund Based Working capital facility of Rs. 12,86,00,000 (Rupees twelve crore eighty six lakhs only) (Fund Based WC facility), as set out in schedule III to the MRA.

The Following additional facilities were also sanctioned under the MRA, however, no disbursements were made under these facilities: -

- (6) Additional fund based working capital facility of Rs. 4,17,00,000 (Rupees four crores seventeen lacs only) (additional fund based WC facility) as set out in schedule III to the MRA.
- (7) Additional letter of credit facility of Rs. 2,00,00,000 (Rupees two crores only) (LC facility) as set out in schedule III to the MRA.

4. According to the Financial Creditor the following amounts are in default under various facilities: -

- (1) The amount in default under the term loan - I as on June, 30, 2017 is Rs. 8,35,27,454.92 (rupees eight crores thirty five lacs twenty seven thousand four hundred and fifty four only)



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

- (2) The amount in default under the term loan – II as on June, 30, 2017 is Rs. 9,38,99,532.80 (Rupees nine crores thirty eight lacs ninety nine thousand five hundred and thirty two only)

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

- (3) The amount in default under the WCTL – I as on June 30, 2017 is Rs. 24,12,16,401.86 (Rupees twenty four crores twelve lacs sixteen thousand four hundred and one only)

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

- (4) The amount in default under the WCTL – II as on June 30, 2017 is Rs. 17,92,05,576.78 (Rupees seventeen crores ninety two lacs five thousand five hundred and seventy six only)





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

- (5) The amount in default under the FITL facility as on June 30, 2017 is Rs. 11,66,55,797.13 (Rupees eleven crore sixty six lacs fifty five thousand seven hundred ninety seven only)

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

- (6) The amount in default under the fund based WC facility as on June 30, 2017 is Rs. 15,12,22,883.65 (Rupees fifteen crores twelve lacs twenty two thousand eight hundred eighty three only)

The first date of default in respect of this facility was February 29, 2016.

The total amount in default as on June 30, 2017 is Rs. 86,57,27,647.15 (Rupees eighty six crores fifty seven lacs twenty seven thousand six hundred and forty seven only)

Vide a notice dated December 31, 2016 issued under Section 13 (2) of the Securitisation and Reconstruction of Financial



Assets and Enforcement of Security Interest Act, 2002, the Financial Creditor has requested the Corporate debtor to repay an amount of Rs. 81,28,43,076 (Rupees eighty one crore twenty eight lacs forty three thousand and seventy six only) within 60 days therefrom, however, the Corporate Debtor has failed to make the said payment.

Further, vide a notice dated February 16, 2017 the Corporate debtor was asked to pay inter-alia the outstanding amount of Rs. 82,55,88,560 (Rupees eighty two crore fifty five lacs eighty eight thousand five hundred sixty only) as on February 14, 2017 within 15 days therefrom. However, the said amounts were not paid by the corporate debtor.

The table containing the details of the computation of the amount of default on the part of the corporate debtor, the dates of default and the number of days of default under the facilities is annexed herewith as annexure – II.

5. The Financial Creditor has also furnished particulars of securities held and its estimated value which are given below:-

(1) **Hypothecation**

- (a) Under the joint deed of hypothecation dated December 23, 2009 (Deed of Hypothecation – I)



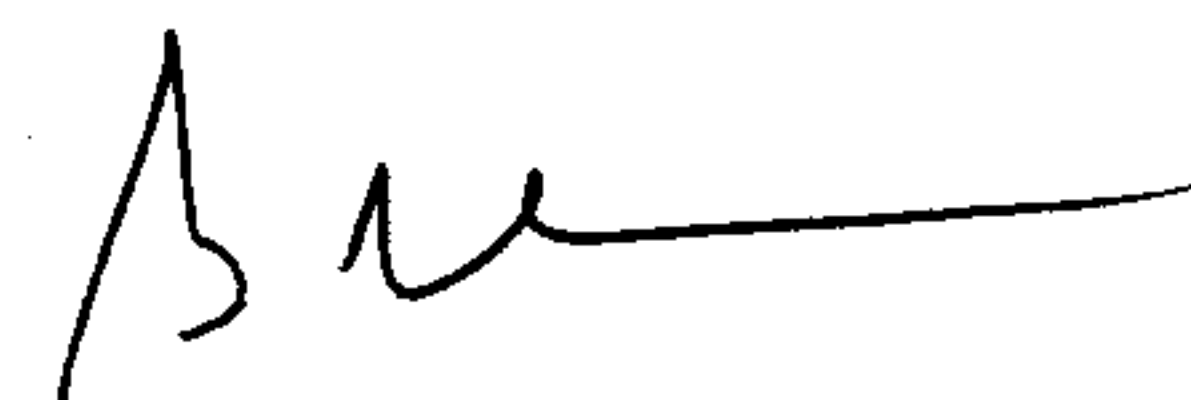


between the Corporate debtor and inter-alia the financial creditor, the corporate debtor has created a first charge on pari passu basis on all the fixed assets (as more elaborately described under part A of second schedule of the deed) and a second charge on pari passu basis on all current assets (as more elaborately described under part B of second schedule of the deed) to secure the term loans. Further, the corporate debtor has created a first charge on pari passu basis on all the current assets as more elaborately described under Part B of second schedule of the deed and a second charge on pari passu basis on all fixed assets, as more elaborately described under part B of second schedule of the deed, to secure the working capital credit facilities.

- (b) Subsequently, vide the supplemental joint deed of hypothecation dated January 31, 2011 (deed of hypothecation – II) the hypothecation on current assets (as more elaborately described under the second schedule of the deed) was extended to secure the modified limits of the facilities (the description of which is provided in the third and fourth schedule to the deed).



- (c) Further, vide the second supplemental joint deed of hypothecation dated August 11, 2012 (deed of hypothecation – III) the hypothecation on current assets (as more elaborately under the first schedule of the deed) and fixed assets (as more elaborately described under the second schedule of the deed) was extended to secure the modified limits of the facilities (the description of which is provided in parts A and B of the third schedule to the deed).
- (d) Further, under the composite hypothecation agreement dated September 04, 2013 (deed of hypothecation – IV) executed by the corporate debtor for securing the facility amount with a limit of Rs. 68,23,00,000 (Rupees sixty eight crores twenty three lacs only) a hypothecation charge on the corporate debtor's raw materials, stock in process, finished goods and book debts, movable plant and machinery/vehicles/crafts, consumable stores and spares, both present and future (as more elaborately described in schedule II to the deed) was created.
- (e) Further, vide the third supplemental joint deed of hypothecation dated October 23, 2013 (deed of



hypothecation – V) the hypothecation on current assets (as more elaborately described under part A of the third schedule of the deed ) and fixed assets (as more elaborately described under part B of the third schedule of the deed) was extended to secure the modified limits of the facilities (the description of which is laid down in parts A and B of the second schedule to the deed).

(2) **Mortgage**

As per the memorandum of deposit of title deeds executed on October 29, 2013 (Mortgage Deed) by the mortgagors, namely Varia Engineering Works Private Limited (Mortgage No. 1) Shri Himanshu Prafulchandra Varia (Mortgagor No. 2) and Smt. Sejal Himanshu Varia (Mortgagor No. 3) in favour of PNB Investment Services Ltd. (Security Trustee):

- (a) Mortgagor No. 1 deposited the title deeds, documents and papers as described in parts A, B, C and F of the first schedule of the Mortgage Deed pertaining to the immovable properties, more elaborately described in parts A, B, C and F of the second schedule of the Mortgage Deed with the authorised officer of the Security Trustee, on





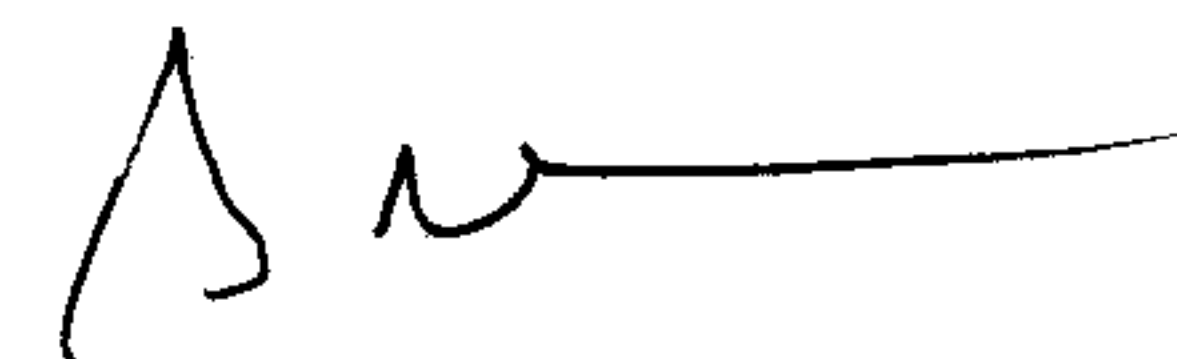
October 29, 2013 in order to secure the facilities in the following manner:

For term loans, first charge on pari-passu basis over shed/building, along with land of Survey No. 246 at Kerala Industrial Area, GIDC, Taluka Bavla, Dist. Ahmedabad, particularly described in part C of the second schedule.

For working capital facilities, second charge on pari-passu basis over shed/building, along with land of survey No. 246 at Kerala Industrial Area, GIDC, Taluka Bavla, Dist. Ahmedabad, particularly described in part C of the second schedule and first charge on pari-passu basis over office building and guest house constructed over land bearing survey No. 246 at Kerala Industrial Area, GIDC, Taluka Bavla, Dist. Ahmedabad.

For both term loans and working capital facilities, first charge on pari-passu basis over immovable properties described in parts A, B and F of the second schedule.

- (b) Mortgage No. 2 deposited the title deeds, documents and papers as described in parts D & E

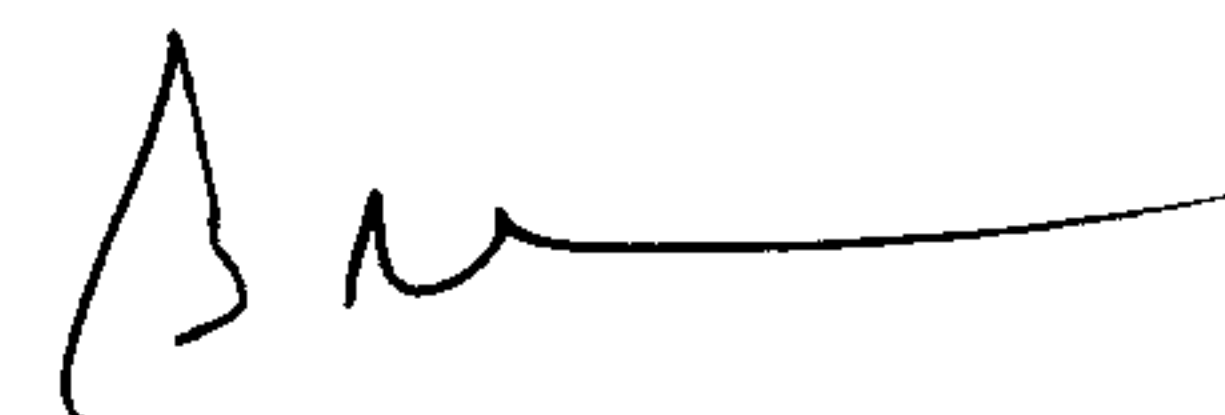


of the first schedule of the mortgage deed, pertaining to the immovable properties, more elaborately described in para D & E of the second schedule of the mortgage deed with the authorised officer of the Security Trustee, on October 29, 2013, in order to secure the facilities by first charge on pari-passu basis.

- (c) Mortgagor No. 3 deposited the title deeds, documents and papers as described in part G of the first schedule of the Mortgage Deed, pertaining to the immovable properties, more elaborately described in part G of the second schedule of the mortgage deed with the authorised officer of the security trustee, on October 29, 2013 in order to secure the facilities by first charge on pari-passu basis.

(3) **Guarantee**

Two deeds of guarantee, dated October 23, 2013 were executed by Prafulchandra P. Varia, Himanshu P. Varia and Sejal Himanshu Varia, in favour of inter-alia, the financial creditor vide deed of guarantee (guarantee deed - 1) for the due repayment of the facilities.



Two deeds of guarantee, dated October 23, 2013 was executed by Krish Tech-Con P. Ltd. in favour of inter alia the financial creditor vide deed of guarantee (guarantee deed – 2) for the due repayment of the facilities.

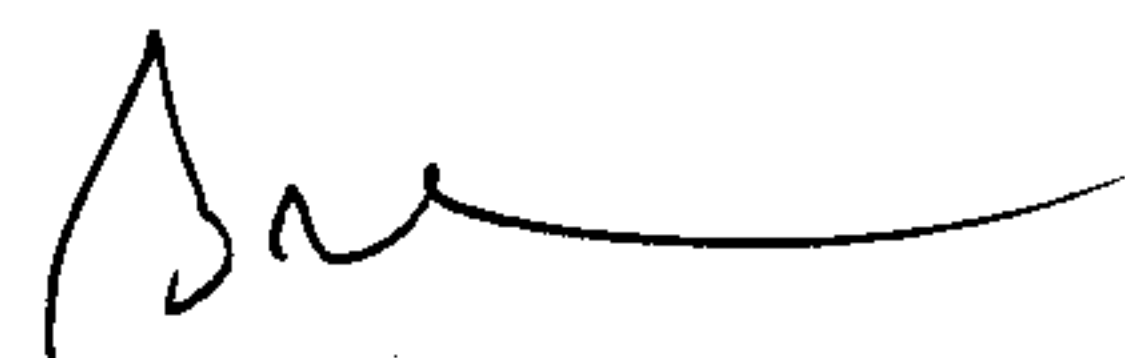
A copy of the guarantee deed – 1 is annexed as annexure – 14 and a copy of the guarantee deed – 2 annexed as annexure 15

Copies of the certificates of registration charges with respect to the aforementioned securities created for the benefit of the financial creditor have been annexed at annexure 16.

**Estimated value of the aforementioned security**

As per the financial creditor, the estimated value of the aforementioned securities (as created for the benefit of the financial creditor pursuant to the terms of the MRA and the security documents) is Rs. 33,03,80,348 (Rupees thirty three crore three lacs eighty thousand three hundred and forty eight only).

6. It is stated by the financial creditor that the Presiding Officer of Debt Recovery Tribunal – I, Ahmedabad by its order dated 11.05.2017 stated that further action by the consortium banks lead by State Bank of India on the representation of the





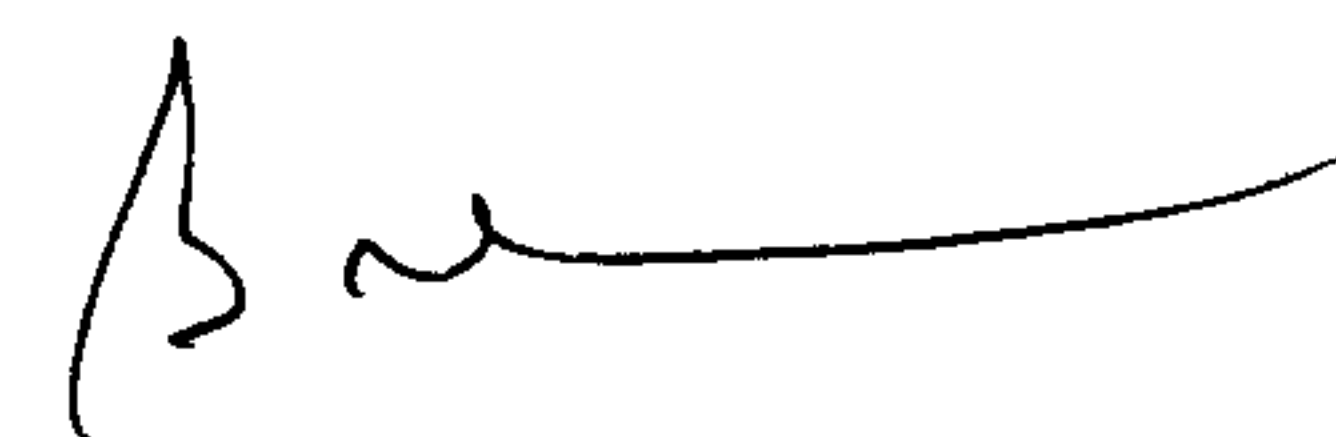
Corporate Debtor that it is ready to pay Rs. 1.00 crore per month till the entire dues are repaid. The Financial Creditor further stated that Hon'ble Debt Recovery Appellate Tribunal, Mumbai set aside the said order and remanded the matter to Presiding Officer, Debt Recovery Tribunal – 1, Ahmedabad to decide the matter after giving opportunity to the bank to file their reply.

7. Financial Creditor filed the report of TransUnion CIBIL dated 02.08.2017 and report of the Central Repository of Information on large Credits dated 09.08.2017.

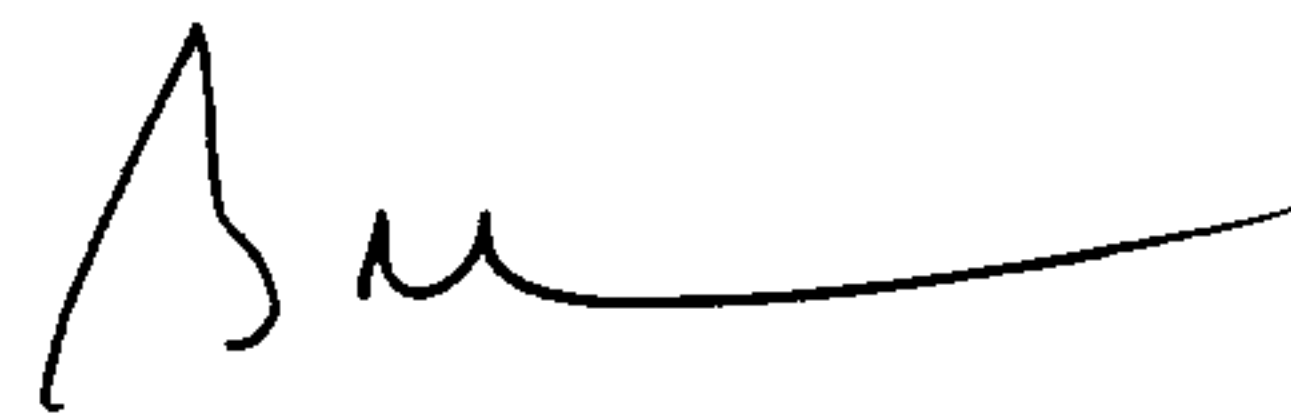
8. The Financial Creditor filed the following documents along with petition: -

(1) Letter under section 18 of the Limitation Act, 1963, from the corporate debtor, issued to the SBI consortium, of which the financial creditor is a member bank dated March 31, 2015 acknowledging debit balance owed to the consortium to the tune of Rs. 418,89,00,000 (Rupees four hundred eighteen crore and eighty nine lacs only);

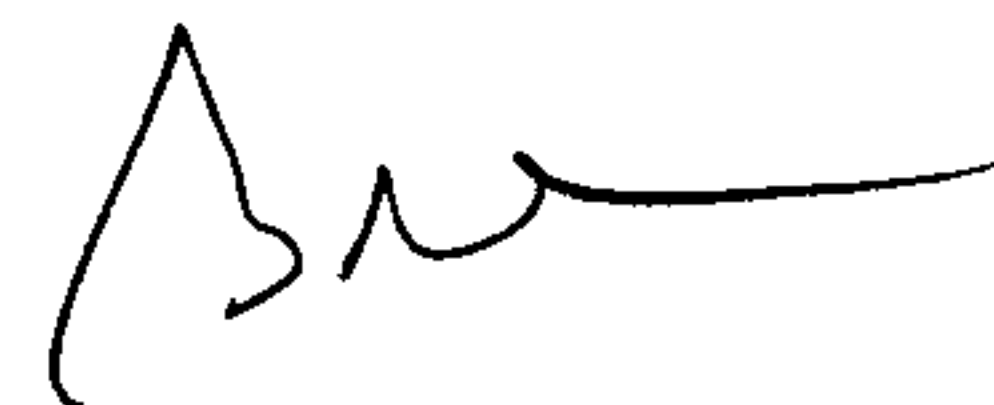
(2) The annual report of the Corporate debtor for the financial year 2014-2015;



- (4) Notice dated December 31, 2016 issued under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, by the financial creditor to the corporate debtor;
  - (5) Minutes of the meetings of the joint lenders forum held on September 23, 2015, January 30, 2016, February 29, 2016, March 29, 2016, April 27, 2016 and May 27, 2016; and
  - (6) Letter from the corporate debtor to the financial creditor dated July 07, 2016 discussing the revival scheme.
9. Financial Creditor filed copies of entries in the banker's book in accordance with the Bankers Books Evidence Act, 1891. Financial Creditor also filed copy of the annual report of the corporate debtor for the financial year 2014-15. Financial Creditor issued notice under section 13 (2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on 31.12.2016 recalling the amounts due in all the facilities. Financial creditor filed proof of service of the Company Petition on the corporate debtor.

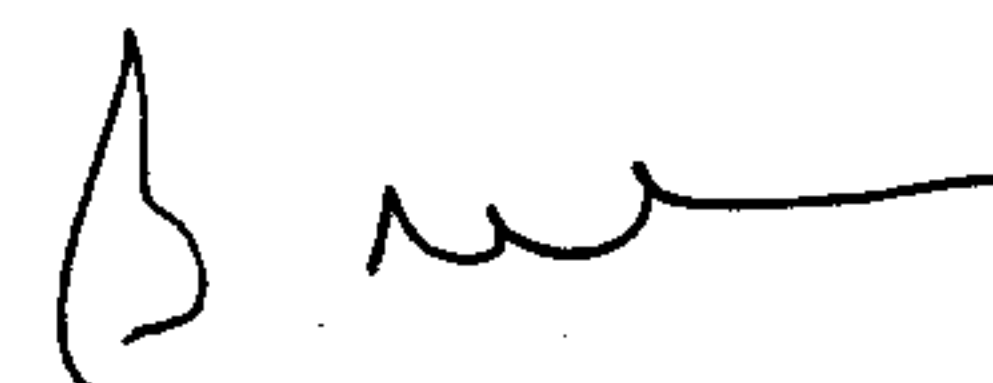


10. Financial creditor proposed the name of Mr. Ramubhai Shankerlal Patel as Interim Resolution Professional and filed his written communication in form No. 2.
11. Corporate debtor appeared through counsel and filed objections. Corporate debtor in his objections stated that the petition is incomplete and without enclosing proper documents and without giving details of guarantee and, therefore, it is liable to be dismissed. It is stated by the corporate debtor that he has filed application under Section 19 (8) of the Recovery of Debt (due to Banks and financial Institutions) Act, 1993 for an amount of Rs. 934.12 crores against all the banks and it is pending.
12. According to the corporate debtor the main reason for the sickness of the company is non-cooperation by the banks, particularly State Bank of India during the course of considering the company's application for enhancement of loan. Requirement of the company is Rs. 120.00 crores but State Bank of India decided to grant only Rs. 37.00 crores on behalf of the consortium members and that too with an additional condition of "Matching Collateral". The company is unable to offer "Matching Collateral" and it resulted in sickness of the company. It is also stated that the present application is not in accordance with IB Code.





13. A perusal of the petition show that it is complete in all respects. The documents show that financial debt is due from the Corporate Debtor and there is occurrence of default. In fact, even in the reply filed by the corporate debtor it has not denied the liability or the occurrence of default. Moreover, Financial Creditor issued notice under section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, recalling the entire loan facilities. There is no tenable objection filed by the Corporate Debtor in the reply. Pendency of proceedings before the Debt Recovery Tribunal, Ahmedabad is not a ground for not commencing Insolvency Resolution Process in view of the fact that provisions of the Code is having overriding effect over any other Law.
14. In view of the above discussion this petition deserves to be admitted and it is accordingly admitted under section 7 (5) of the Code.
15. Adjudicating Authority hereby appoint Mr. Ramubhai Shankerlal Patel having address at M/s. R.S. Patel & Co., 801 Popular House, Ashram Road, Ahmedabad 380 009 (Gujarat) and having Registration No. IBBI/IPA-001/IP-P00081/2017-18/10177 as Interim Resolution Professional under section 13 (1) (c) of the Code.



16. 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 the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016.

17. 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;

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





(iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(a) However, there shall not be termination, suspension or interruption of supply of goods and essential services to the corporate debtor.

(b) 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.

(c) 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.

18. This application stands disposed of accordingly. No order as to costs.



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

  
**BIKKI RAVEENDRA BABU**  
**ADJUDICATING AUTHORITY**  
**MEMBER JUDICIAL**

*Pronounced by me in open court on the 21<sup>st</sup> day of December, 2017.*