

59

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

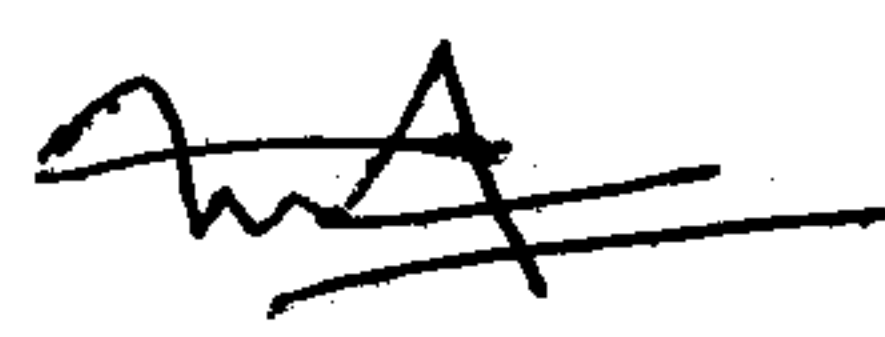

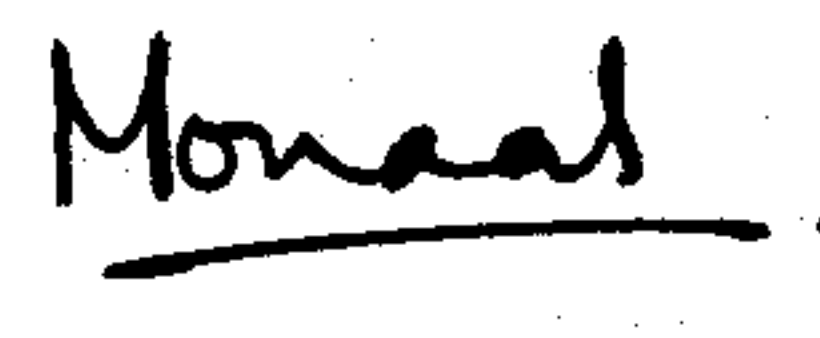
IA 393/2017 in C.P. (I.B) No. 19/7/NCLT/AHM/2017

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 22.12.2017**

Name of the Company: Anshuman Chaturvedi, RP
V/s.
IDBI Bank Ltd. & Ors.

Section of the Companies Act: Section 12 of the Insolvency and Bankruptcy
Code, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	AKSHAT KHARE	Advocate	For Applicant	
2.	Aditya Krishnamurthy	Advocate	R.P. For Caveator	
	MONAAL J. DAVAWALA	ADVOCATE	RESPONDENT NO. 8 (CAVEATOR)	

ORDER

Learned Advocate Mr. Akshat Khare i/b Moson Le Exparts present for Applicant.
Learned Advocate Mr. Monaal Davawala with Learned Advocate Mr. Aditya
Krishnamurthy present for Respondent no. 8.

Order in IA 393/2017 pronounced in open court. Vide separate sheets.


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 22nd day of December, 2017.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

IA 393/NCLT/AHM/2017

In

CP(IB) 19/7/NCLT/AHM/2017

In the matter of :-

Mr. Anshuman Chaturvedi,
Resolution Professional of
M/s Asian Natural Resources India Limited,
A-404, Express Zone,
Off. Western Express Highway,
Goregaon (East),
Mumbai - 400 063.

Applicant

Versus

1. IDBI Bank Ltd.,
NPA Management Group,
Lal Bungalow, Off. C.G. Road,
Ahmedabad - 380 006.
2. Bank of India,
Indore Mid Corporate Branch,
Ground Floor,
Airen Heights, Plot No.14 PU3,
Scheme No.54, Opp. Orbit Mall,
A.B. Road, Indore - 452010.
3. State Bank of India,
Commercial Branch, Near GPO,
A. B. Road, Indore-452001.
4. Oriental Bank of Commerce,
Head Office: Harsha Bhawan,
E-Block, Connaught Circus,
New Delhi - 110 001.
Through B/o: Chetak Center,
12/2 RNT Marg,
Indore - 452001.
5. UCO Bank,
Sanyogitaganj Branch,
20, Shradhanand Marg,
Indore - 452 001.
6. Union Bank of India,
Mid Corporate Branch,
Satguru Parinaya, Pu-3, Plot No.5,
Near Pakiza Plaza,
Indore - 452 010.
7. Standard Chartered Bank,
Group Special Assets Management,
Cresenzo, 7th Floor,
C 38/39, G Block,
Behind MCA Club,
Bandra Kurla Complex,





Bandra (East), Mumbai-400051.

8. Vitol S.A.
(Being Caveator),
301, Shivalik – 10,
Opp. SBI Zonal Office,
S.M. Road, Ambawadi,
Ahmedabad – 380 015.

Respondents

Order delivered on 22nd December, 2017

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

Appearance:

Mr. Akshat Khare for the Applicant.

Mr. Saurabh Soparkar, Senior Advocate with Mr. Monaal Davawala and Mr. Aditya Krishnamurthy, Advocates for Respondent No.8.

ORDER

[Per: Bikki Raveendra Babu, Member (J)]

1. The Committee of Creditors (CoC) of Asian Natural Resources India Limited, in its 2nd meeting held on 23rd November, 2017, authorized the Resolution Professional (RP), Mr. Anshuman Chaturvedi, to seek extension of moratorium period of the Corporate Debtor beyond 180 days on the following grounds:-

(a) That this Adjudicating Authority, vide its order dated 6th November, 2017 passed on the application of Vitol S.A., being IA No.230 of 2017 in CP(IB) No.19/7/NCLT/AHM/2017, directed the Resolution Professional to examine the transactions pointed out in the application, particularly the preferential transactions (Section 43) and undervalued transactions (Section 47);





That this Adjudicating Authority has directed the Resolution Professional/Interim Resolution Professional to take all reasonable steps to recover all the amounts due to the Corporate Debtor and, therefore, it is necessary to obtain the details of the receivables of the Company and do the needful in this regard;

- (b) That the valuation report for land has been obtained. However, the valuation report of other assets has not been obtained till date.
- (c) That there is no proper record of claims admitted.
- (d) That the RP is yet to understand the issues involved with Vitol S.A., seek the necessary legal advice on the same and put up the matter before CoC.
- (e) Take possession of all the documents for the erstwhile IRP, Mr. Nitin Parikh.

To ascertain preferential transactions (Sec.43), undervalued transactions (Sec. 47), etc., it is necessary to first identify these transactions. The RP appraised the CoC that he is yet to take handover from the IRP. Since there are no operations in the corporate debtor in last few years, RP will go through the financial statements and put necessary efforts to identify whether there are any transactions and then update the CoC on this matter to decide to appoint a competent agency.

- (f) Finalize the Information Memorandum.

The Chairman informed the committee that he is yet to evaluate the valuation report and the completion of Information Memorandum (IM). In order to implement the directions of this Adjudicating Authority and the requirements of the Insolvency and Bankruptcy Code 2016, it would be necessary to seek the extension of 90 days for the

Chairman

Page 3 | 12

Corporate Insolvency Resolution Process (CIRP) under Section 12.

2. Basing on the aforesaid resolution, the Resolution Professional has filed this application under Section 12(2) of the Insolvency and Bankruptcy Code, 2016.

3. The facts, in brief, that are germane for the disposal of this application are as follows:-

4. IDBI Bank Limited, as Financial Creditor, filed CP(IB) No.19 of 2017 against the Corporate Debtor, Asian Natural Resources India Limited. The said petition was admitted by this Adjudicating Authority on 23rd May, 2017, appointing Mr. Nitin Hasmukhlal Parikh as Interim Resolution Professional (IRP). The Interim Resolution Professional filed his report dated 13.06.2017 before this Adjudicating Authority giving the list of Financial Creditors and their claim amounts and constitution of Committee of Creditors.

5. The Interim Resolution Professional filed another report on 05.09.2017 stating that the first meeting of the Committee of Creditors was held on 20th June, 2017 and all the seven Financial Creditors, who are the members of the Committee, were present through their representatives. As per the report of the IRP dated 5.9.2017, one of the items of the agenda in the first meeting of the Committee of Creditors was to discuss regarding

 Page 4 | 12

appointment of a new Resolution Professional in the place of the IRP. The IRP in the said report stated that a decision has been taken to appoint some other Professional in his place. It is stated by the IRP that the said meeting was adjourned and the adjourned meeting was held on 20th July, 2017 at Indore. The IRP further stated in his report that the appointment of Resolution Professional required approval of 75% of the total votes. Six members of the Committee holding 65% of the total votes were in favour of continuation of the IRP, however, Standard Chartered Bank holding 35% of the total votes did not agree for the same and, hence, there was a stalemate in appointment of Resolution Professional.

6. On 31st July, 2017, Vitol S.A., one of the Operational Creditors of Asian Natural Resources India Limited, filed I.A. No.230 of 2017. The said application was disposed of by this Adjudicating Authority vide order dated 06.11.2017, wherein a direction was given to the Committee of Creditors to put an end to the stalemate in the appointment of Resolution Professional within one week by moving the Insolvency and Bankruptcy Board of India through this Adjudicating Authority. In the said order, Vitol S.A. was given permission to place the relevant material in respect of the allegations made by it against the Corporate Debtor before the Interim Resolution Professional or Resolution Professional and, in such case, if the Interim Resolution Professional or the Resolution Professional is of the view that he

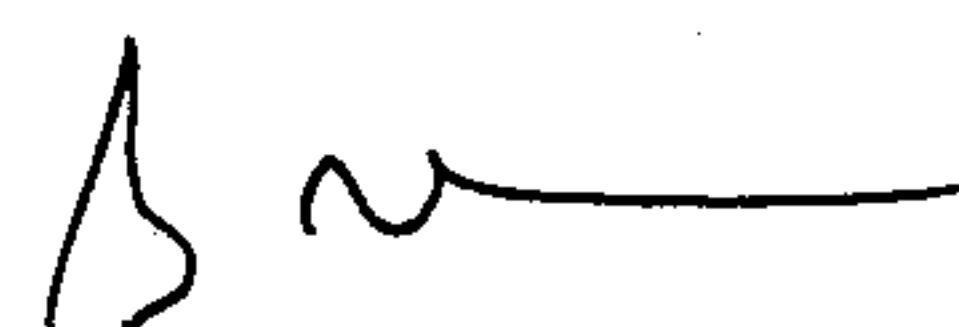


has to invoke the jurisdiction of this Adjudicating Authority either under Section 43 or under Section 45 or under Section 49 of the IB Code, he is entitled to approach this Adjudicating Authority.

7. On 7.11.2017, the Committee of Creditors, through IDBI Bank, filed I.A. No.369 of 2017 seeking the following reliefs :-

- (a) *To appoint Mr. Anshuman Chattervedi as the "Resolution Professional" as resolved by the Committee of Creditors in its meeting dated 04.10.2017 and replace Mr. Nitin Hasmukhlal Parikh (the Interim Resolution Professional appointed vide Order dated 23.05.2017) with Mr. Anshuman Chaturvedi u/s. 22(3) of the Insolvency and Bankruptcy Code, 2016 in resolution process of M/s Asian Natural Resources India Limited.*
- (b) *To extend the period of completing resolution process by 90 days beyond the period of 180 days (total 270) u/s. 12(2) of the Insolvency and Bankruptcy Code 2016 as resolved by the Committee of Creditors in its meeting dated 04.10.2017 in resolution process of M/s Asian Natural Resources India Limited.*

The said application was disposed of by this Adjudicating Authority on 16.11.2017 forwarding the name of Mr. Anshuman Chaturvedi as Resolution Professional in CP(IB) No.19 of 2017 to IBBI. Insolvency and Bankruptcy Board of India approved the name of Mr. Anshuman Chaturvedi as Resolution Professional by its letter dated 17.11.2017 and on the same day Mr.


 Page 6 | 12

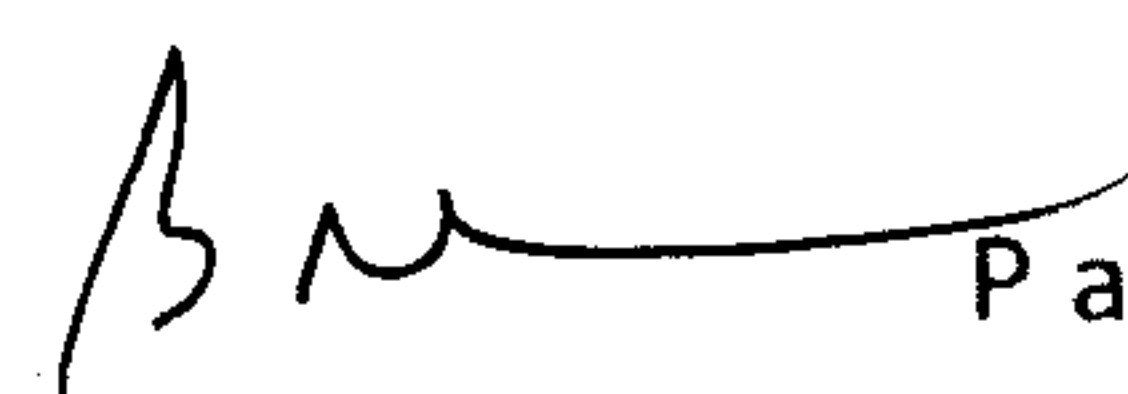
Anshuman Chaturvedi came to be appointed as Resolution Professional.

8. The Resolution Professional convened meeting of the Committee of Creditors on 23.11.2017. In the meeting of the Committee of Creditors held on 23.11.2017, a resolution was passed authorising the Resolution Professional Mr. Anshuman Chaturvedi to seek extension of moratorium period beyond 180 days. Thereafter, on 30th November, 2017, this application came to be filed seeking extension of time.

9. The grounds on which this application is filed have already been narrated in the first paragraph of this order.

10. The main contention of the learned counsel appearing for the applicant is that this Adjudicating Authority, in its order dated 16.11.2017 passed in IA No.369, permitted the Resolution Professional, after his appointment, to file an application under Section 12(2) of the IB Code, if so authorised by the Committee of Creditors.

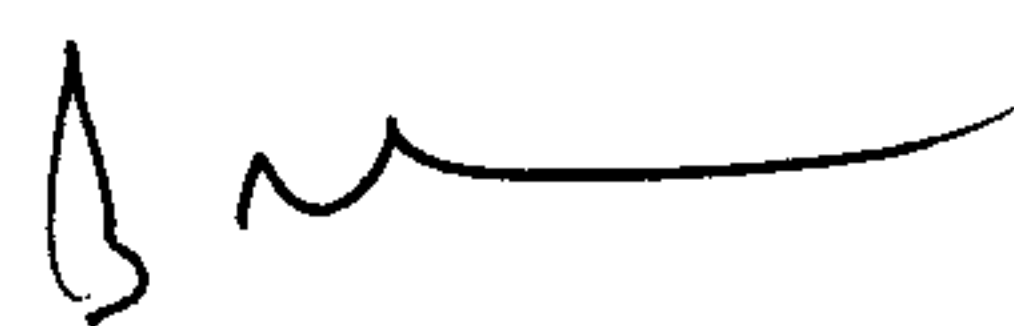
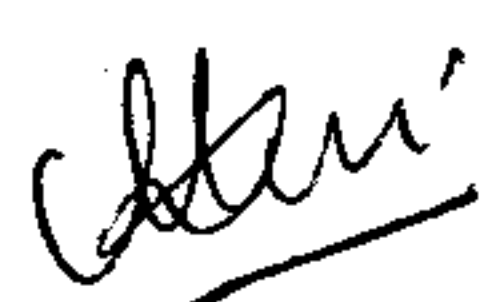
11. It is a fact that this Adjudicating Authority observed that the Resolution Professional is entitled to file an application under Section 12(2) of the IB Code, if so authorised by the Committee



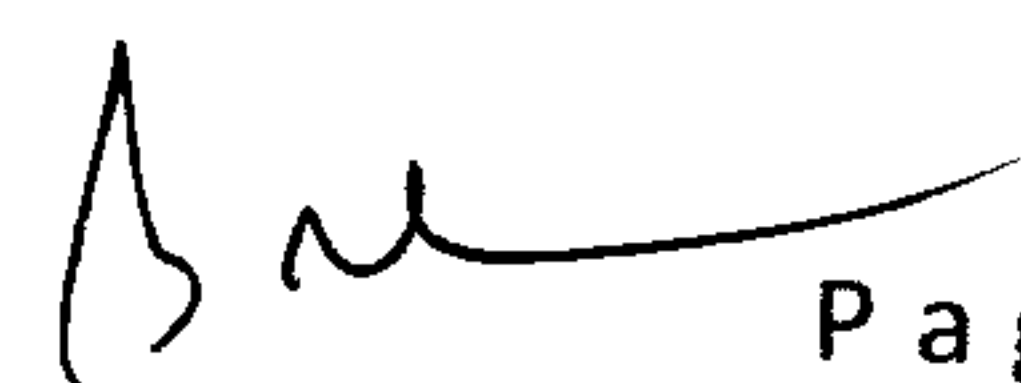
of Creditors. This observation was made while rejecting the request of the Committee of Creditors to extend the period of moratorium on the ground that it was not entitled to file such application. Therefore, the above said observation made by this Adjudicating Authority does not mean that the Resolution Professional is entitled to file an application seeking extension of moratorium period even after the expiry of 180 days' period. Such observation by this Adjudicating Authority in its order dated 16.11.2017 may not authorise the Resolution Professional to file an application seeking extension of period of moratorium after expiry of the period of 180 days, even if so authorised by the Committee of Creditors. Therefore, there is no force in this contention of the learned counsel appearing for the applicant.

12. Section 12(3) of the IB Code gives discretion to the Adjudicating Authority to extend the period of moratorium if the Corporate Insolvency Resolution Process cannot be completed within 180 days. In order to pass an order under Section 12(3) of the IB Code, this Adjudicating Authority must satisfy itself that the subject matter is of such that the Corporate Insolvency Resolution Process cannot be completed within 180 days. In the case on hand, the Corporate Insolvency Resolution Process was commenced on 23.5.2017. The first meeting of the Committee of Creditors was held only on 20th June, 2017. The second meeting of the Committee of Creditors was held on 23rd November, 2017.

The moratorium period of 180 days expired by 19th November, 2017. In between 20th June, 2017 and 23rd November, 2017, there is an adjourned first meeting of the Committee of Creditors held on 4th October, 2017. A perusal of the minutes of the adjourned meeting of the Committee of Creditors held on 4th October, 2017 discloses that the Committee of Creditors unanimously decided to make an application to NCLT for extension of period of moratorium upto 90 days beyond the period of 180 days to complete the resolution process. Basing on that resolution, the Committee of Creditors filed I.A. No.369 of 2017 seeking extension of moratorium period. The said application was dismissed on the ground that the Committee of Creditors cannot make such a request and such request has to be made by the Resolution Professional. From the resolutions passed in the first meeting of the Committee of Creditors and the adjourned first meeting of the Committee of Creditors and the second meeting of the Committee of Creditors, it appears that no efforts were made at least to obtain valuation of assets of the Corporate Debtor. It is pertinent to mention here that one of the Operational Creditors, i.e. Vitol S.A., whose claim is more than the claim of all the Financial Creditors put together, has not been given notice of any of the meetings of the Committee of Creditors. In fact, this Adjudicating Authority in its order in I.A. 230 of 2017 directed the Committee of Creditors to give notice to the Operational Creditors, including Vitol S.A. and consider their objections, if any raised by them. In spite of such direction by



this Adjudicating Authority, the Interim Resolution Professional or the Committee of Creditors did not choose to give any notice to Vitol S.A., the Operational Creditor, even for the meeting of Committee of Creditors held on 23.11.2017. There are serious allegations of collusion between Financial Creditors and Corporate Debtor to defeat the huge claim of the Operational Creditor in IA No.230 of 2017. Moreover, no efforts were made by the Committee of Creditors through the Interim Resolution Professional to take any steps in the Resolution Process. Moreover, the report of the IRP dated 5.9.2017 discloses that a stalemate was created in the matter of appointment of Resolution Professional because of the division among the Financial Creditors in the ratio of 65% : 35%. Therefore, it is clear case where the Committee of Creditors was unable to agree on appointment of Resolution Professional till 4.10.2017. It is also the grievance of the Operational Creditor that its representations were not taken care of by the Committee of Creditors. Therefore, it is a case where the resolution process could not be completed only because of the division among the Financial Creditors in the matter of appointment of Resolution Professional till 4.10.2017. It appears that the CoC has not acted in a manner in which it is expected to conduct itself in Resolution Process. The reason stated by the Committee of Creditors in their meeting held on 23.11.2017 that this Adjudicating Authority directed the Resolution Professional to consider the objections of Vitol S.A. (Operational Creditor) as one of the reasons seeking extension of



moratorium period does not appear to be a just reason. The exercise of considering the nature of transactions referred to by the Operational Creditors can even be considered by the Liquidator. The object of granting moratorium ~~period~~ is to complete the resolution process but not to defeat the claims of the Operational Creditors and others under the guise of moratorium. Moreover, when the Code prescribes 180 days' moratorium period, any application seeking extension of the period of 180 days must be filed by the Resolution Professional before the expiry of 180 days. But this application by the Resolution Professional was filed after the expiry of the moratorium period of 180 days. The contention of the learned counsel for the applicant that the Committee of Creditors moved an application seeking extension of moratorium period before the expiry of 180 days is not a ground to entertain this application. The observation of this Adjudicating Authority that the Resolution Professional, after his appointment, can file application seeking extension of moratorium period will not absolve the Resolution Professional to seek extension of time before the expiry of the period of 180 days.

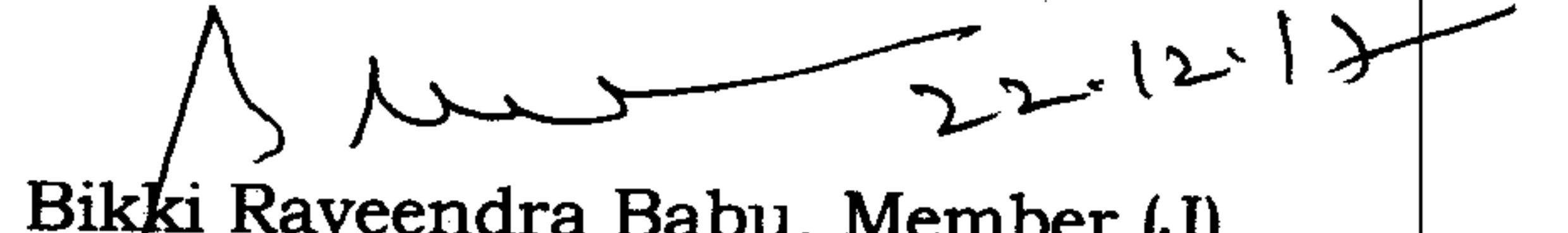
13. In view of the above discussion, this application seeking extension of moratorium period, having been filed beyond the period of 180 days, is not maintainable and this Adjudicating Authority is of the considered view that, even otherwise, there are no grounds to extend the period of moratorium. Hence, this



application is dismissed. The Committee of Creditors is directed to take further steps as per Chapter III of the IB Code.



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



22.12.17
Bikki Raveendra Babu, Member (J)
Adjudicating Authority.

gt