

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

C.P. (I.B) No. 10/9/NCLT/AHM/2017


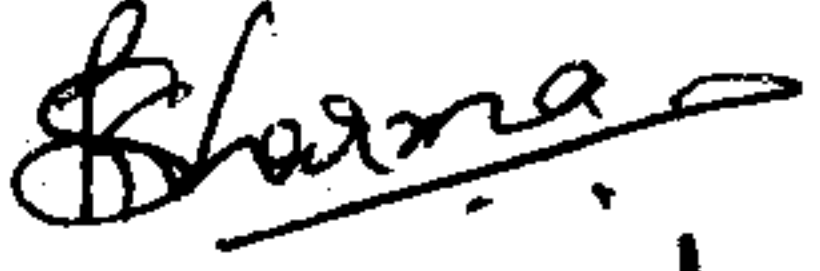
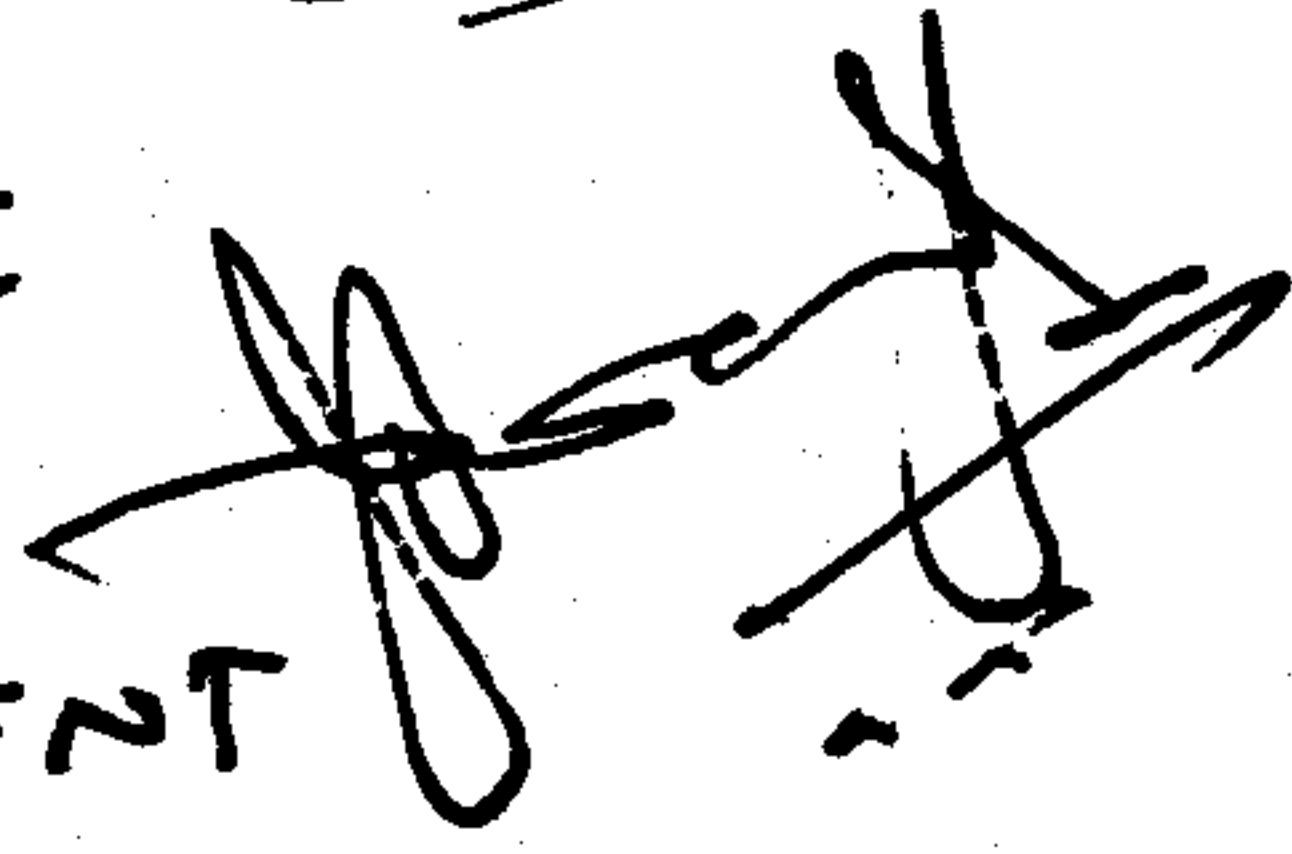
Coram:

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 05.05.2017

Name of the Company: Gujarat State Cooperative Cotton Federation Ltd.
V/s.
STI India Ltd.


Section of the Companies Act: Section 9 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.	SAHIL M. SHAH	ADVOCATE	CORPORATE DEBTOR -RESPONDENT	
2.	KUNAL SHARMA	L.A.	PETITIONER	
3.	MIHIR THAKORE	SENIOR ADVOCATE	CORPORATE DEBTOR -RESPONDENT	

ORDER

Learned CA Mr. Kunal Sharma present for Petitioner. Learned Senior Advocate Mr. Mihir Thakore with Learned Advocate Mr. Sahil Shah present for Corporate Debtor.

Order pronounced in open Court. Vide Separate Sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 5th day of May, 2017.

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. (IB) No. 10/9/NCLT/AHM/2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 5th day of May, 2017

In the matter of:

Gujarat State Cooperative Cotton
Federation Ltd., (GUJCOT)
Silver Arc "A" Block
Behind Town Hall
Ellis Bridge
Ahmedabad-380006 (Gujarat)

: Petitioner.
Operational Creditor.

Versus

STI India Limited,
Rau-Pithampur Link Road
Tehsil-MHOW
District-Indore-453 332
Madhya Pradesh

: Respondent
Corporate Debtor.

Appearance:

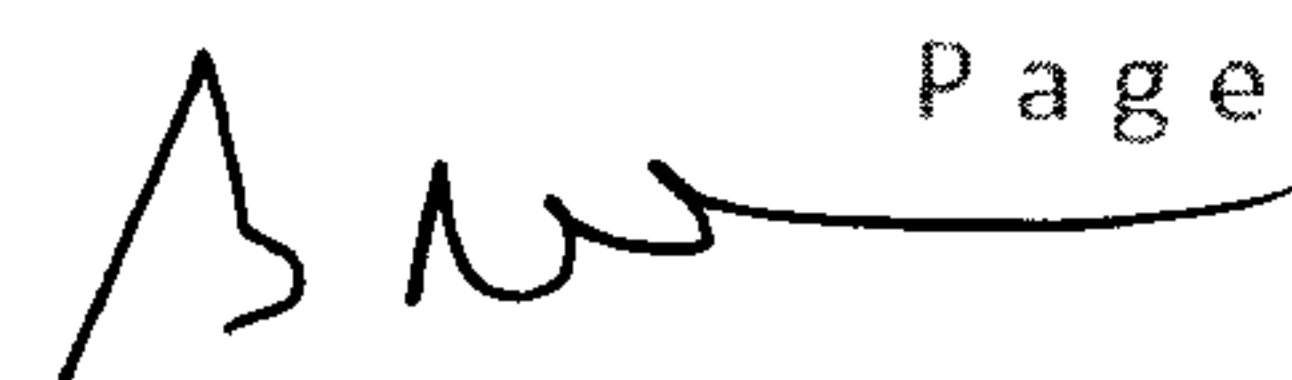
Mr. Rajesh Bohra, learned Advocate for Petitioner.

Mr. Mihir Thakore, learned Senior Advocate with Mr. Sahil Shah,
learned Advocate for Respondent.

FINAL ORDER

Pronounced on 5th day of May, 2017

1. Gujarat State Cooperative Cotton Federation Limited [hereinafter referred to as "GUJCOT"] filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter



referred to as “the Code”] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as “the Rules”].

2. The claim of the Petitioner (Operational Creditor), namely GUJCOT is for a principal amount of Rs. 42.25 Crores and interest amount of Rs. 61.59 Crores as on 31.3.2003 and thereafter interest at 18% p.a. till the date of payment of entire outstanding.

3. It is the claim of the Operational Creditor that it supplied cotton bales to the Corporate Debtor amounting to Rs. 142.56 Crores between 10.3.1998 to 24.6.2008 out of which an amount of Rs. 100.31 Crores up to 17.9.2008 has been paid. The outstanding principal amount payable to the Operational Creditor is Rs. 42.25 Crores. The Operational Creditor issued Demand Notice dated 27th March, 2017 as required by the Code to the Corporate Debtor in Form No.3 attaching the Invoices. Respondent Corporate Debtor issued reply to the said notice on 7.4.2017. Operational Creditor issued a rejoinder notice to the Corporate Debtor on 19th April 2017. Thereafter on 24th April, 2017 this petition is filed by the Operational Creditor against the Corporate Debtor under Section 9 of the Code read with Rule 6 of the Rules.

4. On this Petition, Operational Creditor served advance notice to the Corporate Debtor. The matter was listed before this Adjudicating Authority on 28.4.2017. At the request of the learned Counsel appearing for the Operational Creditor, in order to enable him to file reply notice issued by the Corporate Debtor and the Rejoinder Notice issued by the Petitioner along with other documents and with a direction to rectify the mistakes if any by the next hearing date, the matter was listed on 1.5.2017. On 1.5.2017, additional documents were filed by Operational Creditor and Written Submissions were filed by Corporate Debtor.



5. A perusal of the documents filed by both the parties disclose that Corporate Debtor in its Reply Notice dated 7.4.2017 raised the following aspects;

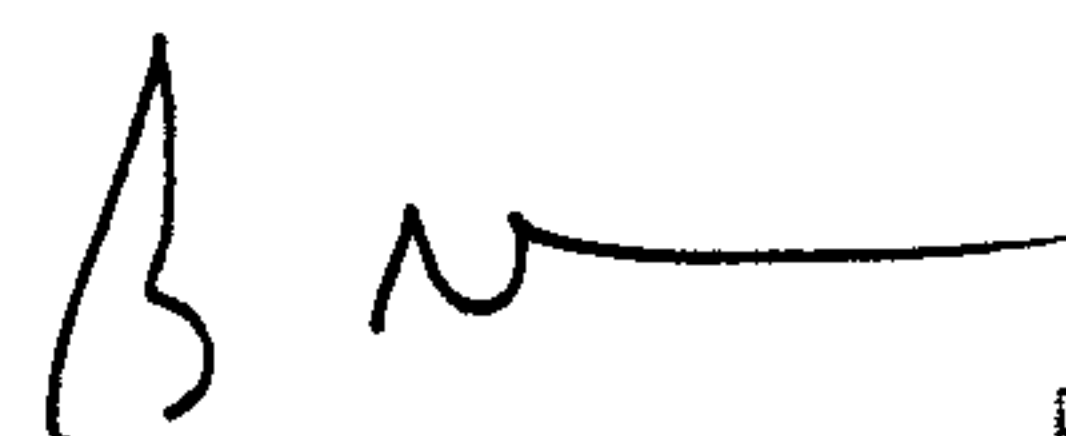
- (i) The amount of Rs. 42.25 Crores claimed to be default in the Demand Notice is not a liability of STI India Ltd.
- (ii) STI India Ltd ["STI India" for short] transferred the liability of Rs. 45 Crores after payment of balance to STI Finance Ltd with approval of GUJCOT. In support of the said plea, Corporate Debtor relied upon letter dated 1st March, 2005 executed by the Managing Director of GUJCOT to STI India.
- (iii) After 2005-2006 and 2006-2007, no other payments were ever made by STI India to GUJCOT in relation to the amount claimed in the Demand Notice since the liability was transferred to STI Finance Ltd ["STI Finance" for short]. In this connection, STI Finance, relied upon the letter dated 27th May, 2008 addressed by STI Finance to GUJCOT; letter dated 26th June, 2008 addressed by GUJCOT to STI Finance; letter dated 9th September, 2008 addressed by STI Finance, to GUJCOT; and letter dated 18th December, 2008 written by GUJCOT to STI Finance.
- (iv) It is the plea of the STI India that GUJCOT is not an Operational Creditor of STI India for the purpose of initiating insolvency proceedings against it under the Code.
- (v) It is the plea of the STI India that the claim of Rs. 42.25 Crores towards Principal and Rs. 61.59 Crores towards interest as on 31.3.2003 and thereafter interest at the rate of 18% p.a. till date of payment is false and incorrect and is not according to the understanding reached between STI

India and GUJCOT even before the liability was transferred from the books of STI India to STI Finance. In this connection, STI India has relied upon the letter dated 29th January, 2005 whereby the GUJCOT has categorically agreed to restrict the amount due from STI India to only the principal amount outstanding and to waive the interest and penalty with respect to the outstanding principal amount. STI India also relied upon the letter dated 9th September, 2008 issued by STI Finance to GUJCOT wherein it is mentioned that GUJCOT had agreed to make payment of Rs. 49 Crores in aggregate to be payable without any interest.

- (vi) The disagreement between STI India and GUJCOT was adjudicated upon by the Board of Industrial and Financial Reconstruction ("BIFR").
- (vii) The another plea taken by the Corporate Debtor is that proceedings are going on before the Court of Board of Nominees, Ahmedabad in Summary Lavad Case No. 214 of 2003 pertaining to the amounts claimed in the Demand Notice and the said Suit is pending.

6. It is clearly stated in the Reply Notice that STI India has no liability or debt towards GUJCOT in respect of the claim made in the Demand Notice. GUJCOT is not Operational Creditor of STI India. There exists dispute between STI India and GUJCOT in respect of the claims made in the notice. There exists Summary Lavad Case No. 214 of 2003 before the Board of Nominees in relation to the amount claimed in the Demand Notice.

7. In this factual background, now it has to be seen whether this Petition can be admitted or not.



8. Section 8 of the Code enjoins upon the Operational Creditor to deliver a Demand Notice of unpaid operational debt along with a copy of invoice, in case of occurrence of default demanding payment of the amount involved in the default to the Corporate Debtor in Form No.3.

9. In the case on hand, Petitioner placed on record that it has supplied cotton bales to the Corporate Debtor and an amount of Rs. 45 Crores towards Principal is due to it from STI India. The Petitioner has also placed on record the material to show that a default has occurred in repayment of the said amount. The crucial question is whether Petitioner is an 'Operational Creditor' in respect of STI India or not. Here, it is pertinent to refer to the plea of the Respondent, namely STI India that it has transferred its liability of payment of Rs. 45 Crores to STI Finance with the approval of GUJCOT and therefore GUJCOT is not an Operational Creditor as against STI India. In this context, it is necessary to refer to the proceedings that were conducted before the BIFR.

10. STI India initiated proceedings before the BIFR vide Case No. 743 of 2002. In the said Case, BIFR passed an order on 1.11.2010 stating that the outstanding dues of GUJCOT is the liability of STI India. STI India carried the matter in appeal before the Appellate Authority for Industrial and Financial Reconstruction ("AAIFR"), New Delhi vide Appeal No. 45/2011. The Appellate Tribunal, AAIFR by its order dated 29th April, 2013 remanded the matter to the BIFR with a direction to take into consideration the reply of the appellant STI India on the report of OA etc., Thereafter, the proceedings went on before the BIFR till 25.3.2014, as can be seen from the material placed on record by the Petitioner.

11. In view of the coming into force of the Insolvency and Bankruptcy Code, 2016, the proceedings before the BIFR abated. The finding given by the BIFR that the outstanding dues of GUJCOT is the liability of STI India has already been set aside by the Appellate

Tribunal, AAIFR. Therefore, as on today, there is no final finding on the aspect whether the outstanding dues of GUJCOT is liability of STI India or the liability of STI Finance. No doubt, STI India, basing on the letter of the Managing Director of GUJCOT dated 1.3.2005, is claiming that GUJCOT accepted for transfer of liability of STI Finance. But as can be seen from the letter dated 18th December, 2008 the Board Meeting of GUJCOT did not approve such transfer of liability. Whatever it may be, the outstanding amount due to GUJCOT is payable by SIT India or STI Finance is a dispute that has been raised by STI India even before the issuance of Demand Notice by Petitioner.

12. Here itself, it is pertinent to refer to the definition of 'dispute' in Section 5 (6) of the Code. It reads as follows;

- “5. (6) “dispute” includes a suit or arbitration proceedings relating to —
- (a) the existence of the amount of debt;
 - (b) the quality of goods or service; or
 - (c) the breach of a representation or warranty;

It is clear from the plea of the Respondent that it is denying its liability to pay to the GUJCOT and it says that liability had already been transferred to STI Finance.

13. Not only that, STI India in the correspondence that was exchanged between STI and GUJCOT stated that GUJCOT agreed to waive the entire interest and penalty. This is also a dispute regarding the outstanding amount claimed by the Petitioner.

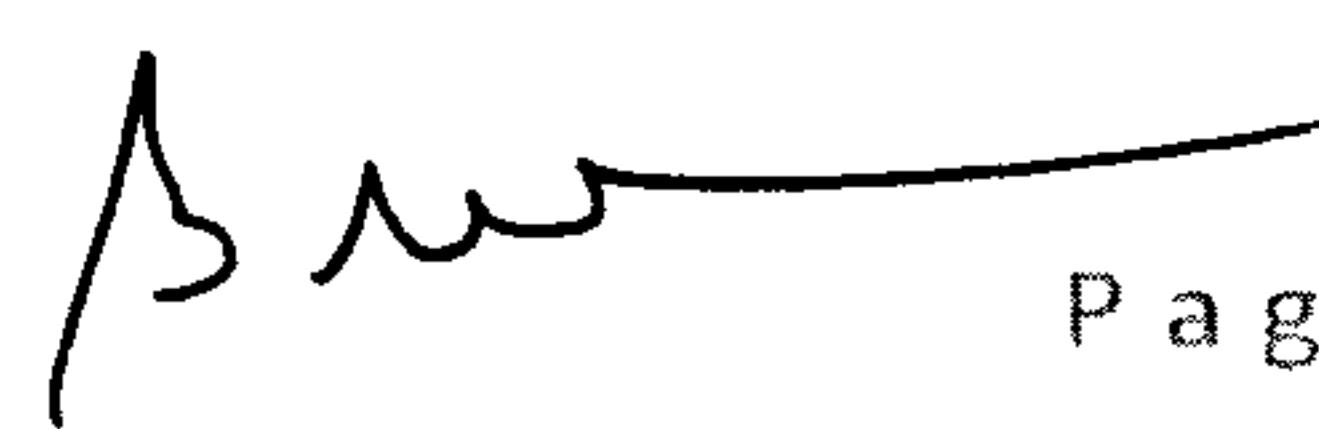
14. As can be seen from the Reply Notice, and as admitted by the Petitioner, a Suit was filed by GUJCOT before the Board of Nominees, Ahmedabad, vide Summary Lavad Case No. 214 of 2003 and it is pending. It is not an admitted fact that the amount claimed in the said Suit and the amount claimed in the Demand Notice is one

and the same and it relates to supply of cotton bales by GUJCOT to STI India. The said Suit which was instituted in the year 2003 is pending, as can be seen from the letter of the learned Advocate for STI India Ltd., before the Court of Nominees, vide "Annexure K" of the Submissions of the Respondent. It says that the said Suit was posted on 27.2.2017 for hearing. Therefore, a dispute which is covered by sub-section (6) of Section 5 of the Code has been raised by the Respondent even before the Demand Notice was issued, and notice of dispute has been given by the Respondent to the Petitioner.

15. Sub-section (5) of Section 8 of the Code says that Adjudicating Authority shall by an order admit the Application if no notice of dispute is received by the Operational Creditor or there is no record of dispute in the information utility. This Adjudicating Authority can only admit the Application filed under sub-section (2) of Section 9 when there is no dispute regarding the amount claimed in the Demand Notice. This Adjudicating Authority has no jurisdiction to decide whether the claim of the Petitioner is proved or not. It is for the other Forums to decide the said aspect. In fact, a Suit has already been filed by the GUJCOT in the year 2003 for the amount claimed in the Demand Notice and it is still pending.

16. It is contended by the learned Counsel appearing for the Petitioner that in view of Section 60 of the Code, this Adjudicating Authority has got jurisdiction to entertain or dispose of any claim made or against the Corporate Debtor or Corporate Person, including claims by or against any of its subsidiaries situated in India.

17. This argument by the learned Counsel for the Petitioner needs to be answered by this Adjudicating Authority. Section 60 of the Code deals with the jurisdiction of the National Company Law Tribunal ["NCLT"] in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors. It says that the place of Registered Office of the

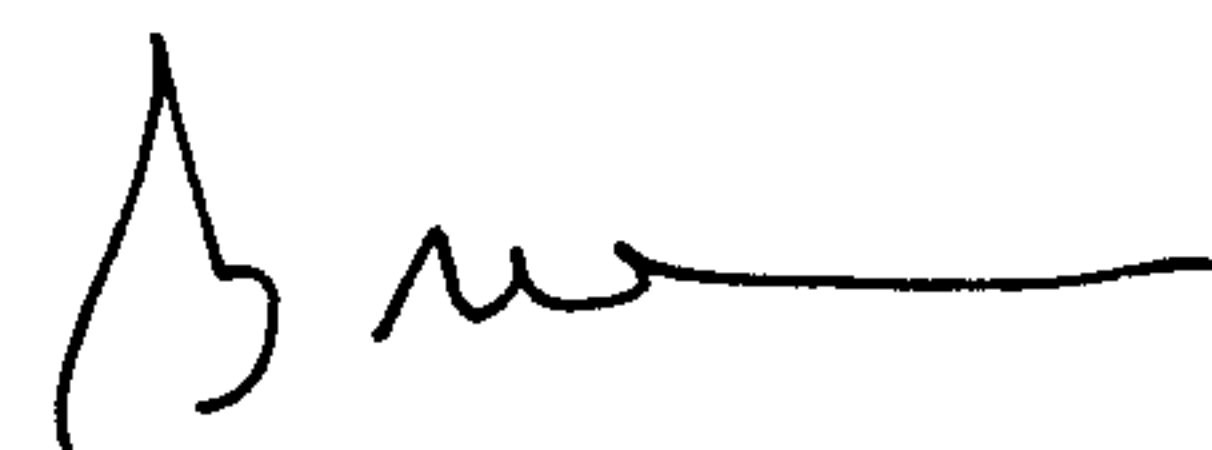


Corporate Person has to be taken into consideration for the purpose of territorial jurisdiction of the NCLT.

18. Sub-section (2) of Section 60 says that if a corporate insolvency process or liquidation proceeding of a corporate debtor is pending before National Company Law Tribunal, the Application relating to the insolvency resolution or bankruptcy of a personal guarantor of such Corporate Debtor shall be filed before the National Company Law Tribunal. Sub-section (3) of Section 60 deals with transfer of insolvency resolution process or bankruptcy proceedings of a personal guarantor of such corporate debtor pending in a Court or Tribunal to the Adjudicating Authority dealing with Insolvency Resolution Process or liquidation proceedings of such Corporate Debtor.

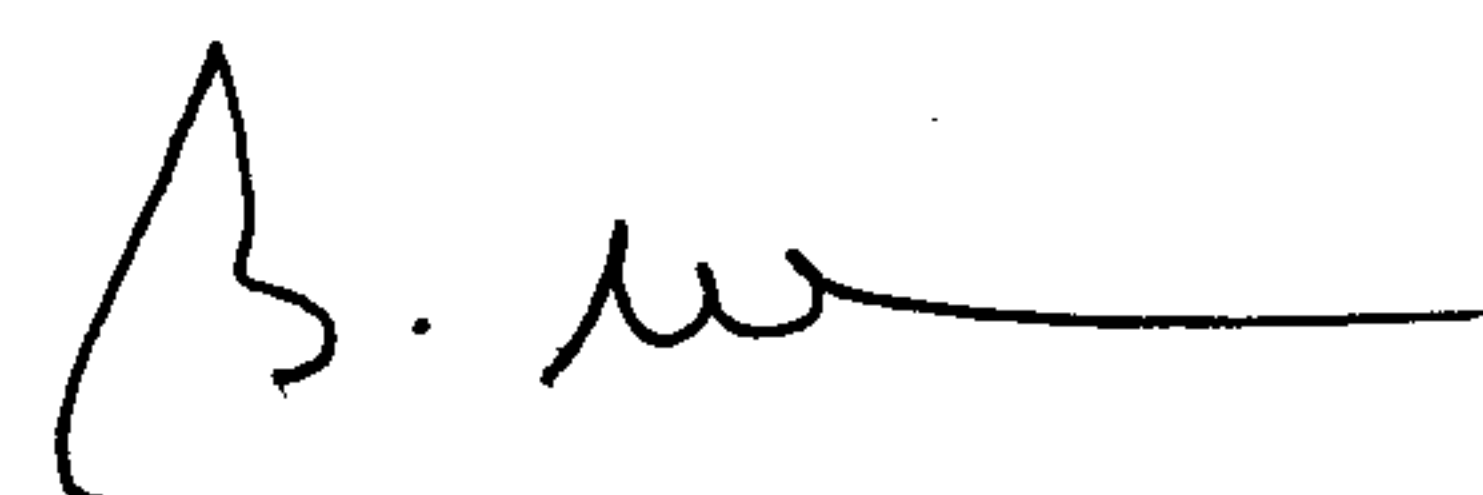
19. Sub-section (4) of Section 60 says that National Company Law Tribunal is vested with all the powers of Debt Recovery Tribunal as contemplated under Part III of the Code for the purpose of deciding the insolvency resolution process or liquidation proceeding of a guarantor by a Corporate Debtor whose proceeding is pending before the Adjudicating Authority.

20. Sub-section (5) of Section 60 says that National Company Law Tribunal shall have jurisdiction to entertain or dispose of any application or proceeding by or against the corporate debtor or corporate person. It only speaks of jurisdiction of National Company Law Tribunal. Clause (b) of sub-section (5) of Section 60 of the Code says that "the National Company Law Tribunal shall have jurisdiction to decide any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India. The words "any claim" referred to in Clause (b) of sub-section (5) of Section 60 relates to the stage after the admission of the Petition.




21. The provisions that govern the admission of a Petition for triggering the Insolvency Resolution Process by an Operational Creditor are contemplated in Section 9. Therefore, what is stated in Section 9 cannot be ignored on the ground that NCLT is given jurisdiction to decide the claims against the Corporate Debtor. Therefore, there is no merit in this argument of the learned Counsel for the Petitioner. The learned Counsel for the Petitioner also referred to the Eleventh Schedule of the Code wherein certain amendments to the Companies Act, 2013 were made by virtue of Section 255 of the Code. Under Section 280 of the Companies Act, 2013, as amended by Section 255 of the Code, this Tribunal (Adjudicating Authority) is having jurisdiction or to entertain or dispose of any suit or proceeding by or against the company and any claim made by or against the company, including claims by or against any of its branches in India. Section 280 of the Companies Act deals with jurisdiction of the Tribunal. The jurisdiction conferred on the Tribunal can be exercised only if the Petition filed by the Petitioner is admitted. There is an express provision in Section 9(5) of the Code, which says that the Adjudicating Authority shall reject the Application in case of notice of dispute received by the Operational Creditor. Therefore, it cannot be said that Section 280 of the Companies Act, 2013, which deals with jurisdiction of the Tribunal, cannot override the effect of sub-section (5) of Section 9 in respect of admission of a Petition filed by an Operational Creditor.

22. In view of the above discussion, this Petition is liable to be rejected and it is rejected under Section 9(5)(ii)(d) of the Code. The parties are directed to bear their own costs. The findings, if any, or the comments, if any, made in this Order, shall not be construed as an expression of definite opinion or even opinion on the claim of the Petitioner, in view of the fact that the Petition is being rejected at the stage of admission itself. This order shall not, in any manner,



prevent the Petitioner from adjudicating its rights in any other Forum including in the pending Suit.

23. Communicate copy of order to both parties.


BIKKI RAVEENDRA BABU
ADJUDICATING AUTHORITY
MEMBER JUDICIAL

*Pronounced by me in open court on
this the 5th day of May, 2017.*

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