53

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

C.P. (I.B) No. 17/7/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 26.05.2017

Name of the Company: State Bank of India, Colombo
V/s.
Western Refrigeration Pvt. Ltd.

Section of the Companies Act: Section 7 of the Insolvency and Bankrupcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Mr. Nirag Pathak i/b Shardul Amarchand Mangaldas & Co	Advocate	Financial Creditor	Pathak
2.	Kreina R. Parekh	Advocate	Corporate Debtor	K.R.Parekh

ORDER

Learned Advocate Mr. Nirag Pathak present for Financial Creditor/ Petitioner. Learned Advocate Ms. Kreena Parekh i/b Learned Advocate Mr. Arjun Sheth present for Respondent/ Corporate Debtor.

Order pronounced in open Court. Vide separate sheet.

26.5.17
BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 26th day of May, 2017.

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No. (IB) 17/7/NCLT/AHM/2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 26th day of May, 2017

In the matter of:

State Bank of India
Colombo Branch
Corporate Centre at
State Bank Bhavan,
Madame Cama Road,
Mumbai-400021 – And –
Branch Office at No.16,
Sir Baron Jayatilake Mawatha,
Colombo-01.
Sri Lanka : Petitioner/
Financial Creditor.

Versus

Western Refrigeration Private Limited,
Registered Office at
Survey No. 174/1,
Kanadi Road, Naroli Village,
Silvassa
Union Territory of Dadra & Nagar
Haveli. : Respondent/
Corporate Debtor.

Appearance:

Shri Amaya Gokhale, with Shri Nirag Pathak, learned Advocates for Petitioner Financial Creditor.

Shri M.R. Bhatt, learned Senior Advocate with Ms. Kreena Parekh o/b Shri Arjun Sheth, learned Advocate for Respondent Corporate Debtor.

ORDER

Pronounced on 26th day of May, 2017

1. State Bank of India, Colombo, Sri Lanka, filed this Petition 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"], seeking reliefs under Section 7(5)(a) and Section 13 of the Code.

2. M/s. Western Refrigeration Private Limited is a Private Limited Company registered under the Companies Act. Its Registered Office is situated in Silvassa, in Union Territory of Dadra & Nagar Haveli.

3. M/s. Haikawa Industries (P) Limited, is a Company incorporated in Sri Lanka under the Companies Ordinance. Registered Office of M/s. Haikawa Industries (P) Limited is situated at Plot No. 121 and 122, Phase-I, Katunayake Export Processing Zone, Katunayake, Sri Lanka.

4. The Registered Office of Petitioner Bank is situated at Corporate Centre, State Bank Bhavan, Madame Cama Road, Mumbai-400021. The Branch Office of the Petitioner Bank is situated at Office No. 16, Sir Baron Jayatilake Mawatha, Colombo, Sri Lanka.

5. Shri Pankajkumar Pathak, who is working as Chief Manager, State Bank of India, is the Authorised Signatory of the Petitioner Bank.

6. Petitioner Bank extended credit facilities to M/s. M/s. Haikawa Industries (P) Limited, which has been duly guaranteed by M/s. M/s. Western Refrigeration Private Limited and M/s. Indo Western Refrigeration Pvt.Ltd., by way of Corporate Guarantee and the Directors in their personal capacities as 'Guarantors'.

7. The Principal Borrower, M/s. Haikawa Industries (P) Limited, Colombo had defaulted in payment of financial assistance given to it. Inspite of several demands and reminders, M/s. Haikawa Industries (P) Limited has failed and neglected to make repayment and honour the terms and conditions of the Loan Agreement entered into between the Principal Borrower and the Bank.

8. It is the case of the Petitioner Bank that the amount is due and payable as on 31st January, 2017. It is also the case of the Petitioner that Principal Borrower, M/s. Haikawa Industries (P) Limited, Colombo has since gone into liquidation, a Provisional Liquidator was appointed on 26.4.2013. Petitioner lodged its claim before the Official Liquidator of the said Company at Colombo. Further, it is the case of the Petitioner Bank that Respondent Company executed a Guarantee Agreement on 14th January, 2008. It is the further case of the Petitioner that the liability of the Respondent Company to pay the outstanding balance with interest is co-existence with the liability of the Principal Borrower.

9. Petitioner Bank, on 13th February, 2017 got issued a legal notice to the Respondent Company demanding payment of Rs. 49,27,02,852.08 ps. as on 31.1.2017 within 10 days from the receipt of the notice failing which Petitioner Bank would initiate corporate insolvency resolution process under Section 7 of the Code. On 27.2.2017, Respondent Company issued a Reply to the legal notice stating that the matter is sub-judice and pending in Debt Recovery Tribunal (DRT), Mumbai as O.A. No. 242 of 2013. Respondent

Company disputed the said alleged claim of the Bank and thereupon on 8th May, 2017 Petitioner despatched the copy of the Petitioner to the Respondent Company by Registered Post and filed this Petition before this Adjudicating Authority. Petitioner Bank filed Additional Affidavit before this Adjudicating Authority on 9th May, 2017 enclosing the Memorandum of Association; Articles of Association; Audited Balance Sheet for the year 2014-2015 of the Respondent Company along with proof of despatch of copy of Petition to the Respondent Company. The Petition was listed before this Adjudicating Authority for the first time on 12.5.2017.

10. On 12.5.2017, this Adjudicating Authority directed the Petitioner Bank to issue notice of date of hearing to Corporate Debtor and file proof of service. The matter was listed for hearing before admission on 17.5.2017. On 17.5.2017, Respondent Company appeared through its learned Counsel before this Adjudicating Authority. This Adjudicating Authority directed the parties to file material papers filed in OA No. 242/2013. This Authority directed the Respondent Company to file Letter of Revocation of Guarantee, if any, and the papers relating to the proceedings pending before the Hon'ble High Court of Colombo. The matter was listed on 19.5.2017 for hearing before admission. The Managing Director of the Respondent Company filed Affidavit along with Guarantee Agreement dated 14th January, 2008,; letter dated 30.3.2010 revoking the Guarantee; copy of the notice dated 10.10.2012 issued by the Petitioner Bank to the Respondent Company and others; copy of the letter dated 1.11.2012 addressed to Mr. Bharat H. Mehta, Advocate for Petitioner Bank by the Respondent Company, copy of the Original Application No. 242 of 2013 filed before the DRT No.3, Mumbai by the Petitioner Bank against Respondent Company and its Directors; copy of the Plaint filed by the Respondent Company against the Petitioner Bank before the Hon'ble High Court of Western Province Holden in Colombo exercising civil jurisdiction. On 19.5.2017, arguments of learned counsel for the Petitioner and learned counsel

for the Respondent were heard. At the concluding stage of arguments, learned counsel for the Petitioner filed Written Arguments.

11. It is the case of the Petitioner Bank that the Guarantee Agreement dated 10.1.2008 is a continuing Guarantee and Respondent being a Corporate Guarantor is liable to pay the amount due from the Principal Borrower, M/s. Haikawa Industries (P) Limited. It is also the case of the Petitioner that Respondent Company has committed default in making payment of the outstanding amount due by the Principal Borrower and therefore Petitioner Bank is entitled to trigger the insolvency resolution process under Section 7 of the Code.

12. The case of the Respondent, as narrated in the Affidavit of the Managing Director of the Respondent Company is as follows;

12.1. The credit facilities availed by M/s. Haikawa Industries (P) Limited was restructured by the Petitioner Bank in terms of sanction letter dated 14th February, 2007. The credit facility was secured by way of Corporate Guarantee by the Respondent and the personal guarantee of Mr. Bhupinder Singhe Machre; Mr. Parmeet Singh Machre and Mr. Harmeet Singh Machre. The Corporate Guarantee is dated 14th January, 2008. It is stated by the Respondent Company that there is a Clause in the Corporate Guarantee which says that the Guarantee shall remain in force and be binding as a continuing security against the Guarantors till it is discontinued and determined. Further, it is the case of the Respondent that by letter dated 30th March, 2010, Respondent Company terminated the Corporate Guarantee and the said letter was duly served on the Petitioner Bank and acknowledged by the Petitioner Bank. Further, it is the case of the Respondent that inspite of the termination of the Corporate Guarantee as stated above, on 10th October, 2012

Petitioner Bank issued a Demand Notice calling upon the Respondent to pay the outstanding amount without mentioning about the termination of Guarantee. Respondent gave reply to the said letter on 1.11.2012 stating that the Guarantee was not enforceable and asked the Petitioner Bank to recover dues from the Principal Borrower. Petitioner Bank filed OA No. 242 of 2013 before the DRT against the Respondent Company and other Guarantors seeking a declaration that the various guarantees executed by the defendants from time to time are valid, subsisting and binding on the Guarantors and to pass an order under Section 19 of the Recovery of Debts Due to Financial Institutions Act directing the defendants to pay the amount of Rs. 40,25,71,409.20 ps. along with interest at the rate of 14.5.% p.a. with monthly rests from 1.11.2012 till the date of payment and issue of Recovery Certificate accordingly and for other reliefs.

12.2. Respondents stated that the Company filed a Declaratory Suit before the High Court of the Western Province Holden in Colombo exercising civil jurisdiction bearing No. CHC/233/2013 MR seeking declaration that the alleged Corporate Guarantee dated 14th January, 2008 is void *ab initio* and *non est*; and for a declaration that the Respondent Company herein should discharge from the aforesaid incomplete guarantee with effect from 22nd April, 2009; and for a declaration to declare that the alleged Corporate Guarantee dated 14th January, 2008 stand cancelled/determined/discontinued as unenforceable in law; and for a further declaration that the Petitioner Bank herein is not entitled to initiate any action against the Respondent Company herein in Sri Lanka or any other jurisdiction with regard the above said Guarantee. According to the Respondent that Suit is pending before the High Court of Western Province Holden, Colombo exercising civil jurisdiction. According to the Petitioner Bank, date of default is 10th October, 2012 and therefore Petitioner could have very well filed a petition for winding-up of Respondent under the provisions of the Companies Act, 1956. It is

also the case of Respondent that alleged default which occurred in October 2012 is well beyond the period of limitation prescribed under the Limitation Act.

13. A 'Financial Creditor' is entitled to file an Application for initiating Corporate Insolvency Resolution Process against a Corporate Debtor before the Adjudicating Authority, when a default has occurred, under Section 7(1) of the Code.

14. 'Financial Creditor' is defined in sub-section (7) of Section 5 of the Code, which read as follows;

> *"Financial Creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to".*

Therefore, in order to determine whether Petitioner Bank is a 'Financial Creditor' or not, one has to look at the definition of 'financial debt', which is defined in sub-section (8) of Section 5, which reads as follows;

> *(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes___*
>
> *(a) money borrowed against the payment of interest;*
>
> *(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
>
> *(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;"

Petitioner Bank filed only Guarantee Agreement dated 14th January, 2008 and the Statement of Accounts of M/s. Haikawa Industries (P) Limited, (Principal Borrower) for the period from 10.10.2012 to 14.3.2017. From the above said guarantee documents, it appears that the Principal Borrower, M/s. Haikawa Industries (P) Limited, was granted Cash Credit Loan; and Working Capital Term Loan.

14.1. Sub-clause (i) of sub-section (8) of Section 5 says that the amount of any liability in respect of any guarantee for any of the items referred to in sub-clause (a) to (h) is a 'financial debt'. Therefore, the amount lent to the Principal Borrower by the Petitioner Bank and for which the Respondent Company stood as a Guarantor amounts to 'financial debt' and therefore Petitioner Bank is a 'Financial Creditor'.

14.2. Respondent is a 'Company' registered under the Companies Act, 1956.

14.3. Sub-section (7) of Section 3 defines "Corporate Person", which means a "Company" as defined in Clause 20 of Section 2 of Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of Section 2 of the Limited Liability Partnership Act, 2008 or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider". Therefore, Respondent Company is a 'Corporate Person".

14.4. "Corporate Debtor" is defined in sub-section (8) of Section 3, which means a corporate person who owes a debt to any person". Debt is defined in sub-section (11) of Section 3. "Debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt". Sub-section (12) of Section 3 deals with 'default'. It says that "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. The first contention raised by the learned Counsel appearing for the Petitioner Bank is Respondent Company by its letter dated 27th February, 2017 refused to pay the amount demanded in the Notice dated 13th February, 2017 and therefore Respondent Company has committed default in non-payment of debt. In this case, as can be seen from the material placed on record, the first legal notice was issued by the Petitioner Bank to the Respondent Company on 10.10.2012. In the said notice itself, there was a demand by the Bank to the Respondent Company and other guarantors to pay the outstanding amount in Cash Credit Account and Working Capital Term Loan Account which is due from the

Principal Borrower, M/s. Haikawa Industries (P) Limited. The Reply was given by the Respondent Company to the said notice on 1.11.2012. In the said Reply, it is clearly stated that the Guarantee given by the Respondent Company is not enforceable and requested the Petitioner Bank to collect dues from the Principal Borrower, M/s. Haikawa Industries (P) Limited, It is pertinent to mention here that even before 1.11.2012, i.e., on 30th March, 2010 itself, Respondent Company wrote a letter to the Petitioner Bank stating that Corporate Guarantee stood discontinued and determined with immediate effect. The said letter was acknowledged by the Petitioner Bank. Respondent also filed the postal receipt of the Courier. Petitioner Bank did not deny the receipt of the letter dated 30th March, 2010 whereby Guarantee Agreement dated 14.1.2008 was revoked. On the other hand, Petitioner Bank having received the letter dated 30th March, 2010 did not make any whisper about it in the legal notice dated 10.10.2012 which was issued nearly two-and-a-half years after the revocation of the Guarantee. Therefore, the cause of action, if any, is there for the Petitioner Bank against the Respondent Company it was either on the day on which the revocation of the Guarantee i.e., 30th March, 2010 or at least on 1.11.2012 when the reply notice was received by the Petitioner Bank. The revocation of Guarantee and reply that the Agreement is unenforceable certainly amounts to refusal to pay as per the Guarantee Agreement dated 14.1.2008 unless the Bank concedes to the action of the Respondent Company. Therefore, the issuance of legal notice dated 13.02.2017 and its reply dated 27.2.2017 by any stretch of imagination do not constitute a first demand or the first refusal by the Respondent Company. Therefore, the first contention of the learned counsel appearing for the Petitioner Bank that it is the Notice dated 27.2.2017 issued by the Respondent Company to the Petitioner Bank that constitutes a refusal, do not merit acceptance.

16. The second contention is that the amount due from the Principal Borrower to the Petitioner Bank is a 'financial debt' and in

respect of which Respondent Company gave Corporate Guarantee, vide Agreement dated 14th January, 2008 and therefore the liability of the Respondent squarely falls under the definition of 'financial debt' as per Section 5(8)(1) of the Code. He further contended that the Petitioner nominated the Interim Insolvency Resolution Professional and provided the letter of the IRBI. The contention of the learned counsel for the Petitioner Bank is that the money lent to the Principal Borrower is a 'financial debt'. The liability of the guarantor, if any, under the Guarantee Agreement dated 14.1.2008 certainly comes within the definition of 'financial debt' as contended by the learned counsel for the Petitioner. The material on record clearly show that Petitioner nominated Interim Insolvency Resolution Professional and provided a Written Communication of the Interim Insolvency Resolution Professional. Therefore, Petitioner duly complied with Section 7(3)(b) of the Code.

17. The third contention of the learned Senior Counsel appearing for the Petitioner Bank is unlike Section 8 no defence is available to the Corporate Debtor in a Petition under Section 7 of the Code. He contended that in case of operational creditors, the Corporate Debtor is having a defence to show a pre-existing dispute in relation to the debt, but no such provision is there in Section 7 of the Code which exclusively applies to financial creditors. No doubt, Section 8 contemplates the existence of a dispute prior to the receipt of Demand Notice issued by the Operational Creditor is a defence available to the Corporate Debtor in the Petitions filed by the Operational Creditor. No such similar provision is there in case of a petition filed by 'Financial Creditor' under Section 7 of the Code. Here, it is pertinent to mention, that job of ascertaining the existence of default or the satisfaction that existence of default has occurred has not been entrusted to the Adjudicating Authority in Sections 8 and 9 of the Code, which relate to the petitions filed by the Operational Creditor, but whereas in a petition filed under Section 7 by a 'financial creditor', the job of ascertaining the existence of default

from the records of the information utility or on the basis of evidence furnished by the financial creditor and the satisfaction that default has occurred, is there on the Adjudicating Authority. While dealing with the Petitions filed by the Operational Creditor, the satisfaction or otherwise of the Adjudicating Authority regarding ascertaining the existence of default or the satisfaction regarding occurrence of default is not required. What is the criteria for admission of an application filed by the Operational Creditor under Section 9 of the Code is the Application must be complete; there must not be any repayment of unpaid operational debt; demand notice would have been given to the Corporate Debtor; notice of dispute would not have been received by the Operational Creditor; and there shall not be any disciplinary proceeding against the Interim Insolvency Resolution Professional. Therefore, in case of Operational Creditor, demand notice is contemplated and in response to such a demand notice if the Corporate Debtor informs the Operational Creditor that there exist a dispute and a suit or arbitration proceeding which has been initiated before the receipt of the demand notice, there ends the matter. Therefore, while comparing Section 7 and 8 of the Code, it must be borne in mind that the judicial function of the Adjudicating Authority is more in the case of Petition filed under Section 7 when compared to the petitions filed under Section 8 and 9 by the Operational Creditor. When it is contended by the learned counsel for the Petitioner that no demand notice is contemplated under Section 7 of the Code, before filing a Petition triggering the Insolvency Resolution Process under Section 7, it is not known why the Petitioner Bank chose to issue a Demand Notice dated 13.2.2017 to the Respondent Company. It is the argument of the learned counsel for the Petitioner that Reply dated 27.2.2017 issued by the Respondent, to the notice dated 13.2.2017 amounts to refusal to make payment under the Guarantee dated 14.1.2008. Therefore, it is obvious that the Petitioner Bank wants to create a second cause of action by issuing the notice dated 13.2.2017 to the Respondent and invite a refusal of payment which refusal is very well within the knowledge of Petitioner right from 30th March, 2010, the day on which the Guarantee was

revoked. Therefore, the contention of the learned counsel for the Petitioner Bank that no defence of pre-existing dispute is not at all available to a Corporate Debtor in a Petition filed by the Financial Creditor, in my considered view, may amount to close the doors of defence to the Corporate Debtor in case of Petitions filed under Section 7, which course is unknown to law and the principles of natural justice. To say that a Corporate Debtor against whom Insolvency Resolution Process, was triggered has no defence of pre-existing dispute and it is only the Corporate Debtor in case of Petition filed by the Operational Creditor is entitled to take defence of pre-existing dispute is nothing but asking this Adjudicating Authority in a classic way not to consider the defence of the Respondent Company. Therefore, this argument of the learned counsel for the Petitioner, when viewed superficially appears to be appeasing, but for the reasons stated above, the aforesaid contentions of the learned counsel for the Petitioner is against the principles of natural justice even in a summary judicial proceeding where consequences are having far reaching effect on the Company.

18. It is further contended by the learned counsel for the Petitioner Bank that the proceedings before the Court in Colombo has no bearing for the purpose of this Petition under Section 7 of the Code.

19. The contention of the learned Counsel for the Petitioner Bank that the proceedings before the Court in Colombo has no bearing for the purpose of this petition under Section 7 of the Code needs a careful scrutiny. In the Petition or in the Additional Affidavit filed by the Petitioner, it is nowhere stated that Respondent filed a Civil Suit against the Petitioner Bank before the High Court of Western Province Holden in Colombo which is exercising original jurisdiction. It is the Respondent, along with Affidavit of Managing Director of Company brought on record the copy of the Plaint in CHC-233/2013 MR filed before the High Court of Western Province Holden

in Colombo. A perusal of the said Plaint clearly goes to show that Plaintiff therein (Respondent herein) prayed for the following reliefs;

> *"a. Make a declaration that the aforesaid alleged corporate guarantee dated 14 January 2008 furnished by the Plaintiff Company to the Defendant arising out of the aforesaid commercial transactions is void ab initio and non-est;*
>
> *b. Make a declaration that the Plaintiff Company in any event stood discharged from the aforesaid incomplete guarantee with effect from 22nd April 2009;*
>
> *c. Make a declaration that the aforesaid alleged corporate guarantee dated 14 January 2008 furnished by the Plaintiff Company to the Defendant arising out the aforesaid commercial transactions stands cancelled/ determined/ discontinued and/or is unenforceable in law consequent to the aforesaid notice dated 30 March 2010;*
>
> *d. Make a declaration that the Defendant is not entitled to initiate any action against the Plaintiff Company in Sri Lanka and/or in any other jurisdiction with regard to the aforesaid Guarantee;*
>
> *e. Award the Plaintiff costs and such other and further relief as to Your Honours Court shall deem fit."*

20. The pleadings in the Plaint in CHC-233/2013 are as follows;

(i) The Guarantee Agreement dated 14th January, 2008 is an incomplete Guarantee;

(ii) The sanction letter dated 22nd April, 2009 given by the Petitioner Bank to the Principal Borrower has been unilaterally and fraudulently altered.;

(iii) There is collusive restructuring of Credit facilities without notice to the Respondent Company herein;

(iv) Respondent Company discontinued and determined the Guarantee dated 14th January, 2008 by its letter dated 30th March, 2010 which was duly served on the Bank on 1.4.2010;

(v) As on the date of discontinuation and determination of the Guarantee, no default had been committed by the Principal Borrower (HIPL) with regard to any facility availed by it from the Petitioner Bank. The discontinuation and determination of the guarantee was also accepted by the Petitioner Bank and thereby the Petitioner Bank estopped from denying the said discontinuance;

(vi) The discontinuance of the Guarantee was also informed to the official of the Bank in a meeting in March 2011;

(vii) One of the creditors of the Principal Borrower (HIPL) moved Commercial High Court of Colombo in Case No. HC Colombo 49/2011/CO praying for winding up of affairs of HIPL for which Petitioner herein is a party and in the said Petition the Commercial High Court of Colombo ordered winding up of HIPL on 5th April, 2013. Petitioner Bank lodged its claim by filing Form 10 under Rule 14 for an amount of USD 1.5 million along with 6% interest as on 2nd February, 2012;

(viii) The Court in India has no jurisdiction to entertain any dispute in relation to Credit facilities availed by HIPL or the alleged incomplete and invalid Guarantee Agreement.

21. The Petitioner Bank is not in position to deny the knowledge of the proceedings in the Suit in Colombo High Court. From the above said prayers made in the Plaint in CHC 233 of 2013 before the High Court of Colombo, Respondent herein has taken several pleas attacking the validity of the Corporate Guarantee including the alteration of sanction of terms and jurisdiction aspect also.

22. In this Petition, in case if an admission order is passed, this Adjudicating Authority shall issue an order of Moratorium under Section 13 of the Code in the matters covered by Section 14. The Moratorium order results in prohibition of continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order. In case if a moratorium order is passed by this Adjudicating Authority, in my considered view it may not be binding on the High Court of Colombo insofar as the proceedings in CHC 233 of 2013 are concerned. Therefore, Hon'ble High Court of Colombo can pass an order in CHC 233 of 2013 inspite of initiation of Insolvency Resolution Process and inspite of moratorium order. In case if the order of the Hon'ble High Court of Colombo is in favour of the Respondent, then a situation may arise whether the order of the High Court of Colombo would prevail or the order of this Adjudicating Authority would prevail. Therefore, in my considered view, it is not just and proper to hold that the pending proceedings in CHC/233/2013 MR before High Court of Colombo has no bearing or relevance on this Petition.

23. Learned Counsel for Petitioner contended that pendency of proceedings before DRT against Respondent Company is no bar to entertain this Petition. In support of the said contention, he relied upon the decision in ***The Hong Kong & Shanghai Banking Corporation Limited Vs. Agnite Education Limited, Chennai*** reported in *(2012) SCC Online Madras 2789: (2013) 176 Comp.Cases 313.* In that case, winding up petition was filed after the Bank obtained Recovery Certificate and on failure of Company to pay amount, in order to help all creditors. But in this case, Bank filed O.A. No. 242/2013 before DRT III, Mumbai, for a declaration that Guarantee Agreement dated 14.01.2008 is valid and subsisting after it was revoked by Respondent and for recovery of disputed amount. Therefore, the above said decision is not applicable on facts to this case. However, the pendency of any other proceedings in

other Forums is no bar for initiation of proceedings under Insolvency and Bankruptcy Code unless there is an express provision in other enactments, which expressly overrides the provisions of Insolvency and Bankruptcy Code.

Limitation Aspect:

24. Learned Counsel for Petitioner argued that the guarantee given by the Respondent Company is a continuing guarantee as per Section 129 of the Contract Act and therefore Respondent Company is liable to pay the outstanding amount due from the Principal Borrower. He also contended that limitation is not applicable in this case. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court in ***Mrs. Margaret Lalita Samuel Vs. The Indo Commercial Bank Ltd.,*** reported in ***(1979) 2 SCC 396***. He further contended that there is no refusal from the Respondent regarding obligation arising out of the Guarantee Agreement after the notice dated 10.10.2012 issued by the Petitioner Bank to the Respondent Company. He submitted that for the first time Respondent refused to make payment only on 27th February, 2017 and therefore the claim of the Petitioner is not time barred. He further contended that the Petitioner Bank filed proceedings against the Respondent Company before the DRT, Mumbai within the period of limitation and therefore the question of computing limitation from the date of default does not arise. He further contended that law of limitation is not a bar in filing of the application or admission of the application.

25. Learned Counsel appearing for the Respondent Company contended that on 30th March, 2010 itself, Respondent Company revoked the Guarantee by way of a letter and the said letter was received by the Petitioner Bank and therefore Respondent is not under an obligation to pay any amount that arises out of the

Guarantee Agreement. In support of his contention, he referred to Clause 8 of the Guarantee Agreement dated 14.1.2008 which reads as follows;

> *"(8). This guarantee shall remain in force and be binding as a continuing security against us until the expiration of one calendar month after you shall have received notice in writing from us to discontinue and determine the same. Provided however that no such notice of determination shall in a manner affect any liability incurred hereunder at any time up to the date of such determination and/or contingent liability which may have been incurred or to arise hereunder after the expiration of the said notice but in respect of any transaction whatsoever prior to the date of the expiry of such notice."*

Learned Counsel for the Respondent further contended that Petitioner Bank sought for a declaration from the Debt Recovery Tribunal that it is valid, subsisting and binding on the defendants. He further contended that Respondent Company also filed a Suit before the High Court of Colombo seeking a declaration that the Guarantee Agreement dated 14.1.2008 is void, ab initio. He contended that those proceedings were initiated in 2013 and they are pending. It is the contention of the learned Counsel for the Respondent Company that Petitioner without filing a winding-up petition under the provisions of the Companies Act, 1956, filed this Petition under the Insolvency Code. He contended that the Guarantee Agreement is unenforceable, the Respondent has no obligation to pay the amount and therefore there is no debt payable by the Respondent Company to the Petitioner Bank; and therefore there is no default in payment of debt. He further contended that this Petition is also barred by limitation taking into consideration the date of default which according to the Petitioner is 10th October, 2012.

26. Learned Counsel appearing for the Petitioner also contended that no limitation is provided for triggering the Insolvency Resolution Process either by the Financial Creditor, Operational Creditor or Corporate Debtor under the provisions of the Insolvency Code. In the Reply, it is stated by the Respondent that the alleged default occurred in 2012 and therefore this Petition is beyond the period of limitation prescribed under the Limitation Act. It is contended by learned Counsel for the Respondent that the alleged debt is barred by limitation as on the date of filing of this Petition.

26.1. There is no provision in the Insolvency Code providing limitation for triggering Insolvency Resolution Process by Financial Creditor, Operational Creditor or Corporate Debtor. It is pertinent to mention here that, under the Companies Act, 1956, there is no provision which says that Limitation Act is applicable for the proceedings before the Company Law Tribunal or the Company Court. But in the Companies Act, 2013, Section 433 deals with Limitation aspect. Section 433, which came into force with effect from 1.6.2016, reads as follows;

> *"The provisions of the Limitation Act, 1963 (36 of 1963) shall as far as may apply to the proceedings or appeals before the Tribunal or the Appellate Tribunal as the case may be."*

The wording used in Section 433 is that the provisions of the Limitation Act, 1963 are applicable to all proceedings before the Tribunal. It is not stated in Section 433 that the provisions of Limitation Act are applicable for the proceedings before the Tribunal in respect of the provisions of the Companies Act, 2013 alone.

26.2. "National Company Law Tribunal" is the Adjudicating Authority under the Insolvency Code in view of Section 60 of the

Insolvency and Bankruptcy Code, 2013. Therefore, any proceeding initiated under the provisions of the Insolvency Code before the Adjudicating Authority shall be treated as the proceeding before the National Company Law Tribunal. In that view of the matter, whether it can be said that the provisions of the Limitation Act, 1963 are applicable to the triggering of the Insolvency Resolution Process under the Code or not is a controversy which is not required to be answered in this case in a summary manner at the admission stage.

26.3. Coming to the aspect of limitation, for filing of winding up petitions under Section 433 read with Section 434 of the Companies Act, it is settled law that no period of limitation is provided for filing the winding up petition. However, in view of Section 433 (e) of the Companies Act, a winding up petition is maintainable when a company is unable to pay its debt which is due and payable. In the Judgment delivered by the Division Bench of the Hon'ble Delhi High Court in ***Interactive Media & Communication Solution (P.) Ltd. Vs. Go Airlines Ltd.***, relying upon the decision in ***Niyogi Offset Printing Press Ltd. Vs. Doctor Morepen Ltd.,*** *(2007) 2 CompLJ 548 Delhi* it was held that no period of limitation has been prescribed under the Limitation Act for filing a winding up petition but the debt should be one which is legally recoverable and is not barred under the Law of Limitation. In the case on hand, even according to the Petitioner, the default occurred on 10th October, 2012 (See Part IV, Column 4 at Page 4 of the Petition). Therefore, if the period of limitation is computed from the date of default mentioned in the Petition, this Petition which is filed on 8th May, 2017, is barred by limitation. But the special feature in this case is within the period of limitation, the Petitioner Bank filed OA No. 242 of 2013 before the DRT No.3, at Mumbai on 10.12.2012. Therefore, the next question is, when already the Bank filed OA No. 242 of 2013 before the DRT within the period of limitation, whether the Petition filed before this Tribunal under Section 7 of the Code on 8.5.2017 shall be treated as a Petition within limitation or not. The contention of the learned

Counsel for the Petitioner is that in view of the pendency of OA No. 242/2013 before DRT-3, the debt covered by this Petition is within time. The contention of the learned counsel for the Respondent is that the debt covered by this Petition is not within time. Here, it is pertinent to mention that before the coming into force of the Insolvency Code, the remedy of winding up was available to the Petitioner Bank under Section 433 and 434 of the Companies Act, 1956. But no such remedy was availed by the Petitioner. It is only after the Insolvency and Bankruptcy Code came into force, the Petitioner Bank again issued a notice dated 13.2.2017 and filed this Petition. In the Written Arguments filed by the Petitioner, it is mentioned that the Respondent Company refused to make payment through its letter dated 27.2.2017 after the receipt of the notice dated 13th February, 2017 from the Bank and therefore the claim of the Petitioner is not barred by limitation. This argument is already answered by this Adjudicating Authority in the earlier paragraphs. The refusal of Respondent to pay the amount if any due from the Principal Borrower, under the Guarantee Agreement dated 14.1.2008 was there on 30th March, 2010 itself or at least on 1.11.2012, when a Reply Notice was given by the Respondent to Mr. Bharat Mehta, Advocate for the Bank. Therefore, the argument of the learned counsel for the Petitioner that the claim of the Applicant is within time and is not barred by limitation on the ground that the refusal is there only on 27th February, 2017 is not correct and do not merit acceptance.

26.4. Coming to the limitation in respect of the continuing guarantees, learned counsel for the Petitioner brought to the notice of this Adjudicating Authority the decision, in ***Mrs. Margaret Lalita Samuel Vs. The Indo Commercial Bank Ltd.***, reported in ***(1979) 2 Supreme Court Cases 396***. The learned counsel for the Respondent on this aspect relied upon decision in ***Syndicate Bank Vs. Channaveerappa Beleri And Others***, reported in ***(2006) 11 Supreme Court Cases 506***. In the decision in *Mrs. Margaret Lalita*

Samuel (Supra), it is held that in case of a continuing guarantee so long as the account is a live account in the sense that it is not settled and there is no refusal on the part of the guarantor to carry out the obligation, the period of limitation cannot commence running.

26.5. In the decision in *Syndicate Bank (Supra)*, the decision in *Mrs. Margaret Lalita Samuel* was referred to and it is held in Para 10 as follows;

> *"10. Samuel, no doubt, dealt with a continuing guarantee. But the continuing guarantee considered by it did not provide that the guarantor shall make payment on demand by the Bank. The continuing guarantee considered by it merely recited that the surety guaranteed to the Bank, the repayment of all money which shall at any time be due to the Bank from the borrower on the general balance of their accounts with the Bank, and that the guarantee shall be a continuing guarantee to an extent of Rs. 10 lakhs. Interpreting the said continuing guarantee, this Court held that so long as the account is a live account in the sense that it is not settled and there is no refusal on the part of the guarantee to carry out the obligation, the period of limitation could not be said to have commenced running."*

In the decision of the *Syndicate Bank (Supra)*, it is held that in case of a continuing guarantee when there is a clause for demand of payment, the limitation starts running from the date of demand provided if the demand is made before the expiry of the period of limitation against the Principal Debtor get time barred. To clarify the above said position, in the Judgment in the case of *Syndicate Bank (Supra),* the Hon'ble Supreme Court gave an illustration also which is very much useful to understand the limitation aspect involved. It is as follows;

> *"Let us say that a creditor makes some advances to a borrower between 10-4-1991 and 1-6-1991 and the repayment thereof is guaranteed by the guarantor undertaking to pay on demand by the creditor, under a continuing guarantee dated 1-4-1991. Let us further say a*

demand is made by the creditor against the guarantor for payment on 1-3-1993. Though the limitation against the principal debtor may expire on 1-6-1994, as the demand was made on 1-3-1993 when the claim was "live" against the principal debtor, the limitation as against the guarantor would be 3 years from 1-3-1993. On the other hand, if the creditor does not make a demand at all against the guarantor till 1-6-1994 when the claims against the principal debtor get time-barred, any demand against the guarantor made thereafter say on 15-9-1994 would not be valid or enforceable."

In the case on hand also, the Guarantee is a continuing Guarantee. There was a demand for payment on 10.10.2012 itself. There was a refusal on the part of the Respondent by revocation of Guarantee on 30th March, 2010 and by giving Reply on 1.11.2012. Therefore, period of limitation starts running either from 30th March, 2010 or from 1.11.2012, but not from 27.2.2017 as stated in the Written Arguments of the learned counsel for the Petitioner.

Ascertainment of Default.

27. The most important function of this Adjudicating Authority in a Petition filed by a Financial Creditor under Section 7 of the Code is to ascertain the existence of default, and a default has occurred. Sub-section (4) of Section 7 says that the Adjudicating Authority shall ascertain the existence of default from the records of information utility or on the basis of other evidence furnished by the Financial Creditor under sub-section (3). Section 7(5)(a) says that if the Adjudicating Authority is satisfied that a default has occurred and application is complete and there is no disciplinary proceeding pending against the proposed Interim Insolvency Resolution Professional, it may admit the application.

28. Learned Counsel appearing for the Petitioner Bank contended that the statement of account of the Principal Borrower filed along with the Petition for the period from 10th October 2012 to 14.3.2017 coupled with the notice of refusal dated 27.2.2017 is

sufficient evidence to ascertain the existence of default and to satisfy that in fact a default has occurred. He also contented that in view of Section 7(4) of the Code, the Adjudicating Authority shall base its finding on the records of information utility or on the other evidence furnished by the financial creditor under sub-section (3). Here, it is pertinent to refer to Section 424 of the Companies Act, as amended by Article 32 of Eleventh Schedule of the Code by Section 255 of the Code. Section 424 of the Companies Act says, "The Tribunal is not bound by the procedure laid down in the Code of Civil Procedure but shall be guided by principles of natural justice and the provisions of the Companies Act or Insolvency and Bankruptcy Code and the Rules made thereunder". In view of the Section 424 of Companies Act, 2013 this Adjudicating Authority, applying the principles of natural justice, ordered notice of date of hearing to the Respondent. Respondent filed Reply Affidavit with documents. Therefore, in order to record a satisfaction whether there is existence of default and occurrence of default, it is necessary to consider the documents filed by the Petitioner Bank and as well as the Respondent Company and the contentions of both parties.

29. In order to satisfy about the ascertainment of default or occurrence of default in a summary proceeding of this nature, what should be taken into consideration is upper-most in the mind of this Adjudicating Authority. In that direction, it is necessary to take guidance from the Judgments of the Hon'ble Supreme Court in winding up matters under the Old Code. The leading Judgment of the Hon'ble Supreme Court on this aspect is in the case of ***Madhusudan Gordhandas & Co. vs. Madhu Woollen Industries Pvt.Ltd.,*** reported in AIR 1971 SC, Page 2600. Following the said decision, the Hon'ble Delhi High Court in ***Niyogi Offset Printing Press Ltd. Vs. Doctor Morepen Limited***, reported in *(2007) 2 CompLJ 548 Delhi*, held as follows;

"25. The rules as regards the disposal of winding-up petition based on disputed claims are thus stated by the Apex Court in Madhusudan Gordhandas & Co. v. Madhu Woollen Industries (P) Ltd. The Supreme Court has held that if the debt is bona fide disputed and the defense is a substantial one, the court will not wind up the company. The principles on which the court acts are:

(i) that the defense of the company is in good faith and one of substance;

(ii) the defense is likely tosucceed in point of law; and

(iii) the company adduces prima facie proof of the facts on which the defense depends."

30. In the Judgment of the Delhi High Court, there was a reference to the Judgment of the Hon'ble Madras High Court in ***Tube Investments of India Ltd v. Rim and Accessories (P) Ltd.,*** reported in ***1993 (3) Company Law Journal 322***, wherein the following principles relating to bona fide disputes have been evolved;

"(i) if there is a dispute as regards the payment of the sum towards the principal, however small that sum may be, a petition for winding up is not maintainable and the necessary forum for determination of such a dispute existing between parties is a civil court;

(ii) the existence of a dispute with regard to payment of interest cannot at all be construed as existence of a bona fide dispute relegating the parties to a civil court and in such eventuality, the Company Court itself is competent to decide such a dispute in the winding-up proceedings; and

(iii) if there is no bona fide dispute with regard to the sum payable towards the principal, it is open to the creditor to resort to both the remedies of filing a civil suit as well as filing a petition for winding up of the company."

31. In the same Judgment, there is also a reference to the Judgment of the Hon'ble Bombay High Court, in ***Softsule (P) Ltd. Re.,*** reported in *(1997) 47 Company Cases 438,* wherein it is held that "*a winding-up petition is not legitimate means of seeking to*

enforce payment of a debt which is bona fide disputed by the company. If the debt is not dispute on some substantial ground, the court/Tribunal may decide it on the petition and make the order." Keeping those aspects in mind, this Adjudicating Authority proceed to consider about occurrence or existence of default.

32. This proceeding is not against the Principal Borrower but against a Corporate Guarantor. The material on record clearly go to show that a liquidation order was passed against a Principal Borrower by the High Court of Colombo, and in the said liquidation proceedings, Petitioner Bank filed a claim also. The material on record clearly show that the Respondent discontinued and determined the Guarantee Agreement dated 14.1.2008 by addressing a letter dated 30th March, 2010 which was duly served on the Petitioner Bank. The Respondent took the plea of limitation. Petitioner Bank already filed OA No. 242/2013 before DRT-3, Mumbai on 10.12.2012 and it is pending. It is pertinent to mention that in OA No. 242/2013 filed before DRT, Mumbai, Petitioner Bank itself prayed for a declaration that the guarantees executed by the defendants in that suit from time to time are valid, subsisting and binding on the said defendants. One of the said defendants in the said Suit is the Respondent herein. More so Respondent also filed a suit for declaration that the Guarantee dated 14.1.2008 is not a valid guarantee before the High Court of Colombo which is void. The said Suit is also pending before High Court of Colombo. Several pleas were taken by the Respondent in the Suit filed by him before the High Court of Bombay against the Petitioner Bank which have been already narrated in this order which includes jurisdiction aspect of Courts in India. Therefore, even in the year 2012 and 2013 itself, there are proceedings by both parties in respect of this Guarantee Agreement dated 14.1.2008. From the material placed on record and from Clause 8 of the Guarantee Agreement, it is clear that Respondent Company is entitled to revoke the Guarantee by giving one month notice. When such is the case, the pleas taken by the

Respondent in this Petition in respect of the Guarantee Agreement or the pleas taken by the Respondent in the Suit filed by it in the High Court of Colombo or as defence in OA No. 242/2013 before DRT, Mumbai are bona fide and substantial defences and there is likelihood of Respondent herein succeeding in those proceedings.

32.1. The Adjudicating Authority need not be carried away by the documents filed by Financial Creditor alone in all cases, but in a given case it shall consider the relevant bona fide pleas of Corporate Debtor in earlier proceedings in order to satisfy about the existence of default or occurrence of default only.

33. Learned Counsel appearing for the Respondent contended that Petitioner suppressed the material facts and material documents and approached this Adjudicating Authority to trigger the Insolvency Resolution Process which may have serious consequences on the functioning of the Company. There is any amount of force in the contention of the learned Counsel for the Respondent. The Resolution Process be it under Section 7 or Section 9 result in serious civil consequences not only on the Corporate Debtor Company but on the Directors of the Company, Shareholders of the Company, Workers of the Company, Depositors of the Company. Once the Petition for triggering the insolvency resolution process by a financial creditor or operational credited is admitted, Interim Insolvency Resolution Professional will be appointed to manage the affairs of the Corporate Debtor Company and he will function in the place of Board of Directors with the aid, assistance and advise of the Committee of Creditors and has to evolve a resolution plan within 180 days. In case of failure to evolve a resolution plan or rejection of resolution plan the Respondent Company which is active and going concern may go to liquidation.

34. Looking to the facts of this case, Petitioner Bank having kept quiet for 2 ½ years without initiating any proceeding against Respondent after the revocation of the Guarantee Agreement, on the verge of limitation, filed OA No. 242/2013 against the Respondent Company. Thereafter, Petitioner Bank remained silent till notice was issued on 13.2.2017 with a view to trigger Insolvency Resolution Process. Even at the cost of repetition, it may be stated that the Petitioner Bank already made a claim before the Liquidator appointed in the winding up proceedings against the Principal Borrower. Of course, that may not be a ground for the Bank not to proceed against the Guarantor if Guarantee is enforceable. But the intermittent actions that are being taken up by the Petitioner Bank shows that it chose to have a chance remedy under the Code by suppressing the material facts including the revocation of Guarantee Agreement dated 14.1.2008. The incomplete record placed by the Petitioner Bank amounts to misleading also.

35. Coming to suppression of material facts, except the Petitioner's saying that proceedings before DRT are pending, it did not choose to file any papers relating to the proceedings before DRT. Petitioner totally suppressed the Suit filed by the Respondent before the High Court of Colombo. Petitioner having knowledge about revocation of Bank Guarantee, did not disclose about the same. Inspite of direction given by this Authority on 17.5.2017 to parties, Petitioner not filed documents relating to proceeding before DRT. Petitioner shall file the copies of Entries in Bankers' Book in accordance with the Bankers' Books Evidence Act. But it is stated by the Petitioner Bank that it has not maintained the account of the Respondent since it is a Guarantor, and, so saying, it filed Account Statement of a Principal Borrower for the period from 10.10.2012 to 14.3.2017. When the Petitioner Bank is not maintaining the account of the Guarantor separately, there is no possibility of Petitioner Bank filing such copies of accounts before this Adjudicating Authority.

36. Learned Counsel for the Petitioner lastly contended that the outstanding amount which is due by the date of revocation of guarantee has to be paid by the respondent and respondent company committed default in payment of such amount and therefore this petition has to be admitted. The said plea is not there in the Notices issued by the Petitioner. Petitioner did not file any account copy of at least even the Principal Borrower from the date of revocation of the Bank Guarantee till the date of notice dated 13.2.2017 along with Petition. Here, it is pertinent to mention that in the Civil Suit filed by the Respondent in the year 2012 itself. Respondent herein took a specific plea that as on the date of the revocation of Bank Guarantee, no amount is due by the Principal Borrower to the Bank. This plea is there in the Plaint in CHC/233/2013 MR at Para No.17. For the first time in the Written Arguments, which is presented at the conclusion of the oral arguments, a contention was made that the Respondent is liable to pay the outstanding balance at least as on the date of revocation of Guarantee. Along with the Written Submissions, copies of the Account of the Principal Borrower for the period from 1.3.2010 to 31.5.2010 are filed. Except that Statement of Account, no other document is filed by the Petitioner Bank to show that there is an outstanding balance due from the Principal Borrower as on the date of revocation of the Bank Guarantee inspite of the fact that Respondent as long back as in 2013 took a plea that no amount was outstanding from the Principal Borrower to the Bank as on the date of revocation of the Guarantee. Moreover, it is the plea of the Respondent in the Civil Suit filed by him before the Hon'ble High Court of Bombay that the revocation has to be given effect to from 22nd April, 2009. It is also the plea of Respondent in the Suit that Petitioner accepted revocation of Bank Guarantee and kept quiet for two and half years and thereby estopped to recover any amount under Guarantee. These pleas were raised in 2011 and 2013 by Respondent. Those pleas appear to be bona fide pleas. The answers to the said pleas will be available in the proceedings initiated by Petitioner Bank before DRT and in the Civil Suit filed by Respondent before High Court of Colombo.

37. In these set of facts, and in the light of controversy on limitation aspect and in view of bona fide substantial pleas raised by Respondent as long back in 2010, 2011 and 2013 in earlier proceedings, it is not just to record satisfaction of the authority regarding existence of default or occurrence of default in respect of liability, if any, and obligations, if any, that may or may not arise under the Guarantee Agreement dated 14.1.2008 determined on 30.3.2010.

38. In view of the above discussion, this Adjudicating Authority is of the view that there is no occurrence of default. This petition is rejected. There is no order as to costs.

39. Any opinion or finding given in this order is not binding on the recovery proceedings pending between the parties before the DRT or in the proceedings between the parties before the High Court of Western Province Holden in Colombo.

40. Communicate copy of this order to both parties.

B. Rave 26.5.17

BIKKI RAVEENDRA BABU
ADJUDICATING AUTHORITY
MEMBER JUDICIAL
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

Pronounced by me in open court on
this the 26th day of May, 2017.

RmR