

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

CP(IB) 393/9/NCLT/AHM/2018

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.05.2020**

Name of the Company: Solartex India Pvt Ltd
V/s
Honest Derivatives Pvt Ltd

Section of the Companies Act / I & B Code : Section 9 of the Insolvency & Bankruptcy Code
2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
--------------	-------------------------------	--------------------	-----------------------	------------------

1.

2.

ORDER

The case is taken up through video conferencing.

The case is fixed for pronouncement of order today.

The order is pronounced in open Court as order in detail is recorded vide separate sheet.


**(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)**


**(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)**

Dated this the 28th day of May, 2020.

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

C.P. (I.B.) No. 393/9/NCLT/AHM/2018

In the matter of:

SOLARTEX INDIA PRIVATE
LIMITED

Having its Registered Office at:
105, 1st Floor, Raghuvir Textile
Mall, Aai Mata Road, Dhumbhal,
Parvat Patia, Surat – 395 010.

...Petitioner(OC)

Versus

HONEST DERIVATIVES PRIVATE
LIMITED

Having its Registered Office at:
E-43, 2nd Floor, Sumel Business
Park, Near New Cloth Market,
Outside Raipur Gate,
Ahmedabad - 380002.

Factory:

Gate No.50, Maldabadi, Tal:
Jamner, Dist: Jalgaon,
Maharashtra.

.....Respondent(CD)

Order delivered on 28.05.2020

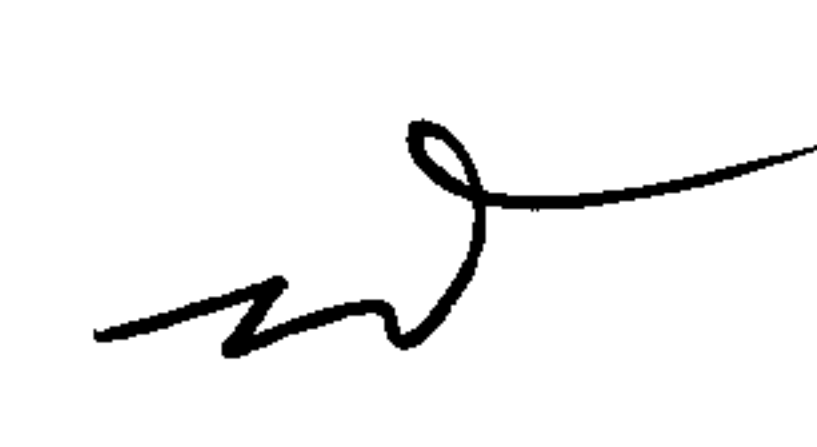
**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Mr. Pavan S. Godiawala & Mr. Naishal J. Modi, Advocates for the
Applicant.

Mr. Aditya B. Mehta For Universal Legal, Advocate for the
Respondent company.

✓



[Per: Mr. Prasanta Kumar Mohanty, Member(T)]

1. The present Petition is filed on 30.07.2018 under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IB Code' for short) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('IB Rules' for short) for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, Honest Derivatives Private Limited for the unpaid Operational Debt due.
2. The Petitioner, Solartex India Private Limited is a company incorporated under the Companies Act, 1956. The Petitioner is having its registered office at 105, 1st Floor, Raghuvir Textile Mall, Aai Mata Road, Dhumbhal Parvat Patia, Surat - 395010 and is engaged in the business of spinning, weaving and finishing of textiles and trading of coal and lignite cross the country. The present Petition is filed through Shri Samir Agarwal, the authorised Representative of the Petitioner.
3. It is submitted that the Respondent Company, Honest Derivatives Private Limited having its registered address at E-43, 2nd Floor, Sumel Business Park, Near New Cloth Market, Outside Raipur Gate, Ahmedabad - 380002 and Factory Gate No.50, Maldabadi, Tal: Jamner, Dist: Jalgaon Maharashtra was incorporated on 05.07.2007 with Identification Number: U93000GJ2007PTC051271. The Corporate Debtor is a company engaged in the business of

↖

↗

Manufacturers, Exporters and Suppliers of a Comprehensive variety of products that comprises Dextrose Powder, Corn Products, Glucose Liquid, Glucose - D Powder, Malt Dextrin Powder and Starch. The authorised capital of the company is INR.26,50,00,000.00 and the paid up capital is INR.24,14,00,000.00

4. It is submitted by the Petitioner that the Respondent/Corporate Debtor is indebted to the Petitioner for INR.21,57,700.38 (Rupees Twenty One Lakhs Fifty Seven Thousand Seven Hundred and Thirty Eight Paise Only) along with interest at the rate of 30% p.a. from the date i.e. due date each invoice till the date of actual payment. Details of transactions on account of which the debt fell due are mentioned herein below:

Sr. No.	Bill No.	Bill Date	Rate of Interest	Amount in INR.	Interest Amount in INR.
1	R/20	28.10.2016	30%	91,088.00	33,914.68
2	R/21	28.10.2016	30%	82,920.00	30,873.50
3	R/22	28.10.2016	30%	83,689.00	31,159.82
4	R/23	28.10.2016	30%	83,144.00	30,956.90
5	R/24	28.10.2016	30%	82,632.00	30,766.27
6	R/25	28.10.2016	30%	82,921.00	30,873.87
7	R/26	28.10.2016	30%	83,401.00	31,052.59
8	R/27	28.10.2016	30%	50,860.00	18,936.64
9	R/28	28.10.2016	30%	83,722.00	31,172.11
10	R/29	28.10.2016	30%	67,227.00	25,030.55
11	R/30	28.10.2016	30%	52,942.00	19,711.83
12	R/31	29.10.2016	30%	84,169.00	31,269.36
13	R/31	29.10.2016	30%	81,767.00	30,377.00
14	R/32	29.10.2016	30%	82,120.00	30,508.14
15	R/33	29.10.2016	30%	64,185.00	23,845.17
16	R/34	29.10.2016	30%	84,522.00	31,400.50
17	R/35	30.10.2016	30%	79,910.00	29,621.43
18	R/36	01.11.2016	30%	85,643.00	31,605.79
19	R/37	01.11.2016	30%	81,863.00	30,210.81

20	R/38	02.11.2016	30%	84,554.00	31,134.40
		TOTAL		15,73,279.00	5,84,421.38
		GRAND TOTAL			21,57,700.38

5. It is submitted that the Corporate Debtor placed an order for sale and supply of 500MT of Indonesian Coal vide their purchase order number HDPL/16-17/586 dated 27.10.2016. On the basis of purchase order placed by Corporate Debtor for supply of coal, Operational Creditor has fulfilled its order by supplying the required quantity, which were as per the required specifications to the Corporate Debtor despite the invoices are duly received and dues are acknowledged by the Corporate Debtor, the Corporate Debtor has not paid INR.15,73,279.00 and failed, neglected and omitted to pay the dues. The Corporate Debtor has not paid any payment for supply of goods against above mentioned invoices till date.

6. It is submitted that the Corporate Debtor is liable to make payment of the debt amount of INR.21,57,700.38 along with interest at the rate of 30% p.a. from the date of default i.e. **due date of each invoice till the date of actual payment.** Therefore, the Corporate Debtor is entitled to pay interest of INR.5,84,421.38 up to 31.01.2018.

7. It is submitted that the Operational Creditor has issued a Demand Notice in Form 3 and Form 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)




Rules, 2016 along with annexure mentioned therein on 05.02.2018 and delivered it to the registered office of Corporate Debtor through Speed Post on 09.02.2018.

8. It is submitted that the Operational Creditor has received a reply of notice from the Corporate debtor through their Lawyer IC Legal on 19.02.2018, which expresses the complete denial of the debt demanded by Operational Creditor contrary holding liable the Operational Creditor to pay an aggregating sum of INR.4,44,17,608.00 for some purported losses incurred by Corporate Debtor.

9. It is submitted that the Corporate Debtor **through its reply tried to create a dispute, which is purely spurious, hypothetical and illusory. At the very outset, no such dispute was in existence prior to their receiving of the statutory notice.** The Corporate Debtor's reference is entirely irrelevant to the claim of the Operational Creditor because as such the reply notice refers to some purported claims of the Corporate Debtor against **one of the associate concerns of the Operational Creditor, but not that of the Operational Creditor. The reply notice does not state any bona-fide or real dispute whatsoever between the parties in respect of claims of the Operational Creditor. The reply notice is devoid of any merits, and hence cannot be treated as a valid dispute notice under the Insolvency and Bankruptcy Code, 2016.**

✓

29

10. It is submitted that the Corporate Debtor tried to **involve our associate concern Rawalwasia Textile Industries Private Limited** into present claim, which is purely between Corporate Debtor and Operational Creditor. The Corporate debtor has **provided no valid** or tenable reason **in the reply** notice to do so.
11. It is submitted that the period of 10 days from the receipt of Demand Notice by Corporate Debtor has lapsed on 19.02.2018 and reply notice does not state any bona-fide or real dispute between the parties in respect of the said Demand Notice, and the Corporate debtor has **also not given any record of the pendency of the suit or arbitration** proceedings filed before the receipt of such notice or invoices.
12. It is submitted that the Operational Creditor maintains its Bank account with Oriental Bank of Commerce having account number 01024015003716. However, no amount is received in the Bank account of the Operational Creditor towards payment of dues of INR.21,57,700.38 including interest.
13. Now, the Petition is filed on 30.07.2018 under the Section 9 of the IB Code, by the Operational Creditor that the total **amount claimed is Rs.21,57,700.38** (Rupees Twenty One Lakhs Fifty Seven Thousand Seven Hundred and Thirty Eight Paise Only) which includes interest per annum

✓




@30% per annum till date of realization. **Date of Default is on 10.11.2016.**

14. The case was taken up by this Adjudicating Authority on 29.08.2018; The matter was heard on 12.10.2018, 27.11.2018, 10.01.2019, 20.02.2019, 18.04.2019, 24.06.2019, 20.08.2019, 11.09.2019, 16.09.2019, 14.10.2019, 05.11.2019 & 20.11.2019. Thereafter, arguments from both side were heard and concluded.

15. In response to the present I.B. Petition filed by the Petitioner, **the Corporate Debtor/Respondent has filed its Written submissions on 06.01.2020 as under:**

15.1 It is stated that the Respondent is a Private Limited Company incorporated under the Companies Act, 1956, and is engaged in the business inter alia of manufacture of starch products and other products for the past may years and has acquired vast reputation and goodwill in the industry. It was desirous of **purchasing coal for use in its boiler in the factory for the production** of starch and other products. The Respondent's sister concern Shri Tradco Deesan Private Limited ("STDPL") also required coal for Industries Private Limited represented, warranted and assured to the Respondent inter alia that Rawalwasia was

↙


7

competent and in a position to supply the quality, quantity and specification of coal required by the Respondent and STDPL. Mr. Samir Agarwal further represented that Rawalwasia had already imported 71700 metric tons on 25.09.2016. On the basis of the past dealings with Rawalwasia, the Respondent and Rawalwasia entered into a High Seas Sale Agreement dated 24.09.2016 ("HSS Agreement") for the sale of 1,500 metric tons of Indonesian Steam Coal, and STDPL and Rawalwasia entered into a High Seas Sale Agreement dated 24.09.2016 for the sale of 3,500 metrics tons.

15.2 It is stated that the HSS Agreement, **Rawalwasia called upon the Respondent** to pay certain Custom Duty to the respective authority. On 17.10.2016 the Respondent paid a sum of **INR.7,29,664.00 substantial amount of Custom Duty for the Coal which it was supposed to receive from Rawalwasia** under the HSS Agreement, but the sister concern of the Applicant, Rawalwasia has till date belligerently failed and neglected to supply the same to the Respondent.

15.3 It is stated that the Applicant commenced supply and delivery of coal to the Respondent only to the extent of 412 MT. The Applicant raised various invoices recording such supply and delivery. The last delivery was on or about 02.11.2016. The Respondent craves leave to refer to and rely upon the invoices issued by the Applicant.

15.4 It is submitted that the present petition is also liable to be rejected on the ground that there exists a pre-existing dispute in response to the Demand Notice dated 13.04.2018. The Respondent Corporate Debtor sent notice of dispute dated 24.04.2018 as per the provisions contained in Section 8(2)(a) of the IB Code and it is stated that on perusal of the notice of dispute dated 24.04.2018 it would be revealed that there are pre-existing disputes between the parties and as such, the present petition is liable to be rejected.

15.5 It is stated that on 17.09.2016 the Respondent addressed an email to the Petitioner inter alia stating that the Coal which was to be delivered, under the HSS Agreement has not yet been delivered to the Respondent.

↑



15.6 It is stated that the Respondent initiated proceedings on 26.03.2018 against the **Applicant** inter alia seeking damages and compensation losses suffered under the said PO by the Respondent bearing **Regular Civil Suit No.01 of 2018 before the Hon'ble Principal District Civil Judge Senior Division Jalgaon at Jalgaon**. The Applicant has not denied and challenged the statements, averments and contentions of the Applicant in the above mentioned Suit.

15.7 It is stated that the Respondent also filed a Suit on **15.03.2018 against Rawalwasia in respect of** the breaches and losses suffered by the Respondent under the HSS Agreement by the Respondent bearing **Civil Suit No.36 of 2018** before the Hon'ble Civil Judge Senior Division Jalgaon at Jalgaon. It is also pertinent to note that the Applicant has not denied and challenged the statement, averments and contentions of the Applicant in the above mentioned Suit.

15.8 It is stated that there was a **pre-existing dispute** between the parties even before the receipt of the **Form-3 notice dated 03.02.2018**

f



from the Petitioner. The respondent in order to substantiate the existence of the dispute between the parties. In view of the said correspondence that a dispute was already in existence way before the receipt of the notice under IBC which Petition is liable to be rejected.

15.9 It is stated that the existing disputes between the parties and in view of the Suit for damages pending before the Court **against the Petitioner**, the Petitioner **cannot seek to invoke** the provisions of the Bankruptcy Code for recovery any amount money, wherein admittedly the disputes between the parties **existing from the very beginning** such an exercise is impermissible in law.

15.10 Lastly, it is stated that the nature of industries consumption of coal. The inferior quality of goods was tested by the Respondent only upon receipt and usage. Upon finding out about the inferior and damaging quality, the Respondent immediately called upon the Applicant to rectify the same and to stop supply until such quality defects were rectified. The Respondent submits that present application be dismissed with exemplary and compensatory costs.

16. The Operational Creditor has suggested the name of Interim Resolution Professional is **Shri Kailash .T. Shah**, **having Insolvency Professional Registration No. IBBI/IPA-001/IP-P00267/2016-17/10511**, **Email-Id: shah_kailash@yahoo.com** **Address: 505, 21ST Century Business Centre, Near World Trade, Ring Road, Surat – 395 002, as an Interim Resolution Professional.**

Observations

17. The Petition has been filed on **30.07.2018** for unpaid operational debt due and defaulted of INR.21,57,700.38 with interest accrued thereon at the rate of 30% per annum from the respective due date of each invoice.
- 17.1 **Date of default is 10.11.2016 as per the agreed terms of payment after 07 days and they approached to the Corporate Debtor, Honest Derivatives Private Limited for payments many a times but they found that he was not intend to pay;**
- 17.2 Application is filed within the **limitation period as the date of default 10.11.2016**, whereas the date of filing this petition under Section 9 of IBC is **30.07.2018.**

✓



- 17.3 **The Petitioner issued demand notice dated 03.02.2018 to the Corporate Debtor.**
- 17.4 The Petitioner also filed copies of Invoices and copies of the Bank statements in support of its claim.
- 17.5 Respondent is a Company registered under the Companies Act and it is a Corporate Debtor within the meaning of sub-section (8) of Section 3 of the IB Code.
- 17.6 **No pre-existing dispute before issuing of Demand Notice is observed.** Defence taken by the Respondent is not tenable. The Respondent has taken defence of existing dispute prior to the issue of Demand Notice by the Petitioner **on 03.02.2018 but the fact is that the Respondent has filed Suit on 26.03.2018 against the Applicant i.e. after receipt of Demand Notice inter alia seeking damages and losses suffered under the said PO** by the Respondent bearing Regular Civil Suit No. 01 of 2018 before the Hon'ble Principal District Civil Judge Senior Division Jalgaon at Jalgaon.

However, the Respondent also filed a Suit on 15.03.2018 against Rawalwasia an associate concern in respect of the breaches and losses suffered by the Respondent under the HSS Agreement by the Respondent bearing Civil Suit No.36 of 2018 before

the Hon'ble Civil Judge Senior Division Jalgaon at Jalgaon. Hence, it is not considered as dispute.

17.7 The other suit has been filed against the Associate Company of the Petitioner for violation of HSS agreement but it does not relate in any way to the Petitioner's claim against the Respondent. Hence, this defence is not entertained.

ORDER

18. Considering the material, papers filed by the Petitioner on record, the arguments of the Counsels from the both sides and the facts mentioned in the Para No. 20, 20.1, 20.2, 20.3, 20.4, 20.5, 20.6 & 20.7 this Adjudicating Authority **is satisfied that,**

- a) Existence of debt is above **Rs. One Lac;**
- b) **Debt is due;**
- c) Default has occurred on **10.11.2016;**
- d) Petition has been filed **within the limitation period as the invoices are 2016 the date of default is 10/11/2016 whereas the Application is filed on 30.07.2018 which is within 3 years of the default of the debt;**
- e) Copy of the Application filed before this Tribunal has been sent to the Corporate Debtor, Notice has been duly served. The Respondent has failed to appear before this Adjudicating Authority and the Petition

↙



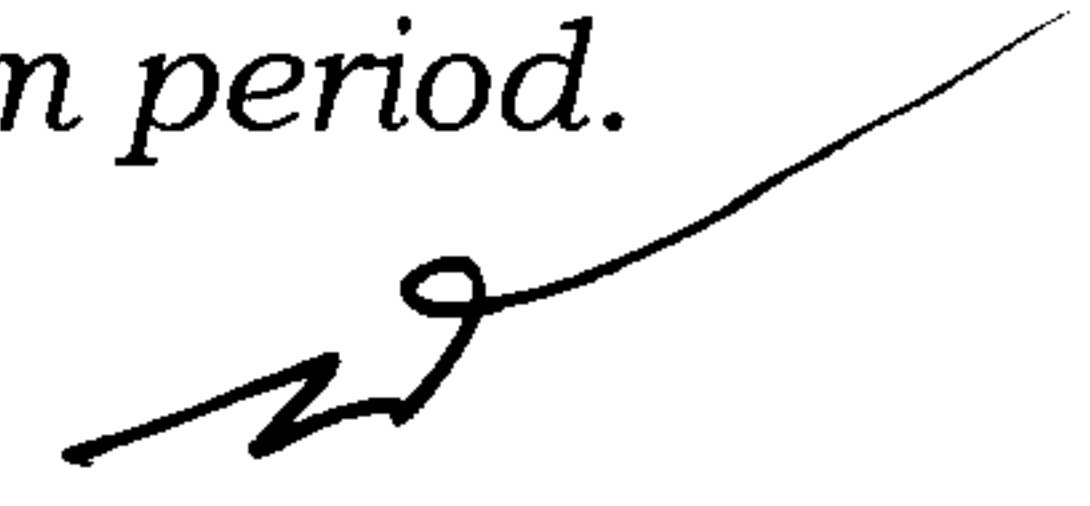
filed by the **Petitioner under Section 9 of IB Code is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor Company.

Therefore, the **present IB petition is admitted with the following directions:**

19. As per the provisions of Section 13 and 14 of the IB Code on the date of commencement of insolvency, this Adjudicating Authority hereby declares moratorium for prohibiting all of the following, namely: -

- I.(a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority.*
- (b) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.*
- (c) *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- (d) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
- II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*

✓



- III. *The provisions of sub-section (1) shall not apply to*
(a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*

20. This Adjudicating Authority hereby appoints **Shri Kailash .T. Shah, having Insolvency Professional Registration No. IBBI/IPA-001/IP-P00267/2016-17/10511, Email-Id: shah kailash@yahoo.com Address: 505, 21ST Century Business Centre, Near World Trade, Ring Road, Surat - 395 002, as an Interim Resolution Professional.**

The IRP is advised to file declaration disclosure statement within two days with this Registry.

The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions of Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with

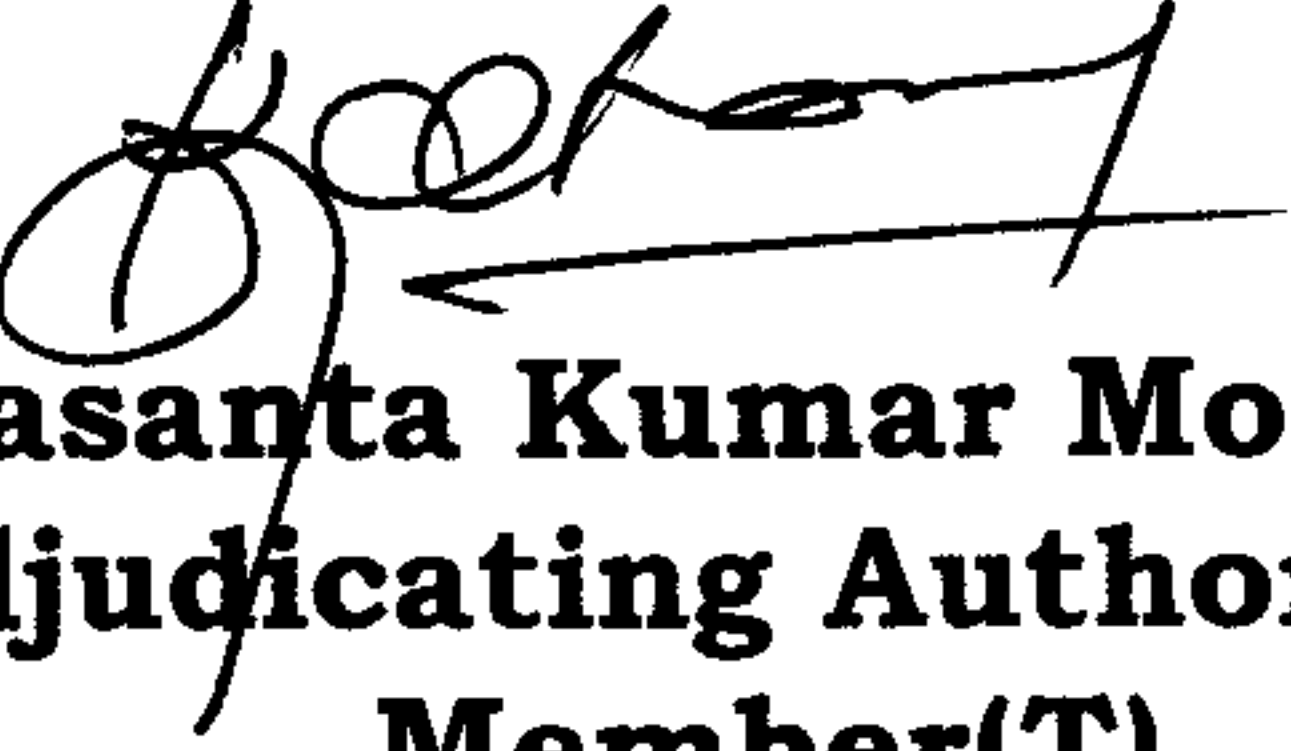
↙


↘

utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other persons associated with the management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

21. An authenticated copy of this order to be communicated by this Registry to the Operational Creditor/Corporate Debtor, as well as to the Interim Resolution Professional and the Registrar of Companies by Speed Post/Registered Post at the earliest.

Hence, this **CP(IB) No.393/9/NCLT/AHM/2018** is
**admitted on 28.05.2020 with the above observations
and directions.**


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member(T)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member(J)

SK