

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P. (I.B) No.510/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.04.2021**

Name of the Company: Vipul H Raja (Sole Proprietor)
(Financial Creditor)
V/s
Simandhar Broking Ltd
Section 7 of the Insolvency and Bankruptcy Code.

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.

2.

ORDER

(through video conferencing/physical)

None appeared on behalf of parties.

The order is pronounced in the open court vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 6th day of April, 2021


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

CP (IB) No.510/7/NCLT/AHM/2019

In the matter of:

Mr. Vipul Harshad Raja
34, Spring Valley Society
Behind Karnavati Club
S.G. Highway
Ahmedabad 380 058

: Petitioner
[Financial Creditor]

Versus

M/s. Simandhar Broking Limited
801, Wall Street-1
Opp. Orient Club
Ellisbridge
Ahmedabad 380 006

: Respondent
[Corporate Debtor]

Order delivered on 6th April, 2021.

Coram:

Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Applicant

:

Mr. Kiran Shah, FCA.

Respondent

Mr. Tushar Hemani, Sr. Advocate, with
Ms. Natasha Shah, Advocate.

ORDER

[Per se: Ms. Manorama Kumari, Member (J)]

1. Mr. Vipul H. Raja, 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

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referred to as "the Rules") seeking reliefs under Section 7(5)(a) and Section 13(1)(a)(b)(c) of the Code.

2. That, the applicant is an individual having office at Ahmedabad and having PAN AAWPR9102Q.
3. The respondent M/s. Simandhar Broking Limited is a company incorporated under the Companies Act, 1956 on 2nd March, 2007, having identification No. U67120GJ2007PLC050141 having its registered office at Ellisbridge, Ahmedabad. That Authorised and paid up share capital of the respondent company is Rs. 30,00,000/- each.
4. The learned FCA on behalf of the applicant submitted that, the applicant has provided finance as well as security margin to the respondent – corporate debtor since 26.12.2017. The total of which amounts to Rs.1,01,74,984.56 by way of actual payment and Rs.2,58,93,350/- in the form of share and securities. In support of the contention, the applicant has annexed details of payment as well as account ledgers as Annexure-C at page no. 92 and Annexure-D from page 93 to 96. The applicant has also annexed the details of shares and securities provided as security margin to the corporate debtor as Annexure-E at page no. 97, which reflects an amount of Rs.2,58,93,350/- in the form of share and securities.
5. It is further submitted by the applicant that the above said amount are derived after giving effect to all the necessary and appropriate

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entries and modification to the manipulated accounts received from respondent and the same is certified by the chartered accountant duly authorized by the applicant for the purpose owing to the manipulation done by the respondent. The said certificate of the chartered account is annexed as Annexure-I at page no. 165 to 166.

6. It is further submitted by the applicant that, the applicant had entered into an agreement with the respondent – corporate debtor for trade in shares and securities in the Cash Segment and Future and Option Segment and accordingly, the respondent had allotted the trade code – V006 to the applicant, but the respondent had neglected to provide even the copy of the agreement entered into between the applicant and the respondent. The copy of the request and reminders is annexed as Annexure-F from page no. 102 to 110.
7. The applicant further stated that he has furnished copies of bank statement of multiple account of the applicant for compliance of the records relating to the entries in a banker's book in accordance with the Bankers Book of Evidence Act, 1891, which clearly reflects that the debt of the applicant has not been paid and that the corporate debtor is unable to pay its debts. The copies of the bank statement are annexed with application as Annexure-G at page no. 111 to 154.

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8. It is further alleged that the corporate debtor manipulated with the account and ledgers in respect of the applicant so as to arrive at an outstanding balance, which suits convenient to the respondent at any point of time. However, the applicant at time and again revise the same. In support of the contention, the applicant annexed Annexure-H at page no. 155 to 164.
9. It is submitted that the amount of debt payable by the respondent / corporate debtor is more than the statutory limit prescribed under Section 4 of the IB Code.
10. On receipt of the notice, the respondent appeared and filed his affidavit in reply rebutting the allegations so made by the applicant.
11. The learned lawyer of the respondent submitted that the respondent company is involved in the business of stock broking and the applicant is the client of the respondent since 22.12.2017. It is submitted that the respondent company is trading in the stock exchange as per the instruction of the applicant, which can be seen from the trade data as available with National Stock Exchange. The respondent has also updated the applicant time to time. In support of the contention, the respondent annexed Annexure-B, along with the reply.
12. It is further alleged by the respondent that, the applicant filed complaint against the respondent company with Investor

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Grievance Resolution Panel, which came to be rejected, with observation, by the Members of Investor Grievance Resolution Panel on 16.08.2019. The copy of the said meeting held on 16.08.2019 is annexed as Annexure-C.

13. It is submitted that it is the applicant on the contrary is liable to pay an amount of Rs.23,48,095/- to the respondent as per the ledger for the period ending on 30.06.2019, Annexure-D.
14. It is further submitted that the applicant is closely associated with M/s. Jayprakash Associates and its director and upon the instruction of the applicant, the respondent company traded in market on behalf of the applicant and the applicant never raised concern till the said company made profits.
15. It is further submitted by the respondent that respondent had requested the applicant to clear and settle the outstanding dues of the respondent company and clarified that once the outstanding dues are settled the respondent will release the security, which have been given as collateral. In view of the above, the applicant is liable to pay an amount of Rs. 23,48,095/-.
16. It is further submitted by the respondent that the present petition to be dismissed on the ground that the applicant does not fall under the definition of financial creditor as defined under Section 5 (7) of Insolvency and Bankruptcy Code). Inasmuch as the applicant is the client of the respondent company and upon the

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instruction of the applicant, respondent company was doing trade in the stock market. In view of that, the applicant does not fall under the category of financial creditor.

17. It is further submitted that the company is a going concern having a share capital and paid up share capital is Rs.30,00,000/- and having more than 90 clients and is actively working for the benefit of its clients.

Findings

18. It is to be mentioned herein that when the matter was reserved after hearing from both sides, the respondent has approached the Hon'ble NCLAT, wherein the Hon'ble NCLAT passed an order on 19.11.2020, which said order is also communicated to this Bench. On perusal of the order, it is found that the respondent has filed an appeal before the Hon'ble NCLAT with an allegation that the respondent was not allowed sufficient opportunity to be heard, though, this Adjudicating Authority allowed the respondent to argue the matter on several occasions. It is to be mentioned that after resumption of hearing(s), post intervention of lockdown, due to Covid-19, the matter was taken for hearing time and again and on the request of the respondent several opportunity was granted from 16.07.2020.
19. Heard both sides at length also gone through the application and the reply along with the documents annexed with the application.

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20. On perusal of the records, it is found that the Applicant had provided finance as well as security margin to the Respondent since 26.12.2017, amounting to Rs.1,01,74,984.56/- by way of actual payments (**Annexure-C on pg. no. 92 and Annexure-D on pg. no. 93-96 of the application**) and Rs.2,58,93,350/- by way of shares and securities (**Annexure-E on pg. no. 97-101 of the application**). On the contrary, the Respondent has shown an amount of Rs.23,48,095/- to be payable by the Applicant (**Annexure-B on pg. no. 144-155 of the reply**). However, the Respondent has not shown any documents regarding filing of any suit/legal proceedings for recovery of the said amount as claimed to be payable by the Applicant.
21. It is alleged by the Applicant that the Applicant had entered into the agreement with the Respondent for trade in shares and securities in the Cash Segment and Future & Option Segment on account of which, the Respondent had allotted Trade Code-V006 but the Respondent has not provided the copy of the said agreement despite the requests and reminders (**Annexure-F (Colly.) on pg. no. 102-110 of the application**). However, the Respondent has not alleged/contended that there is no such agreement in absence of which the Respondent shall not be authorised to deal/transact on behalf of the Applicant which establishes that there exists an agreement between the Applicant and the Respondent, the copy of which seems to be unfurnished to the Applicant.



22. The Applicant has also furnished the copies of bank statements of multiple accounts of the Applicant (**Annexure-G on pg. no. 111-154**) for compliance of the records relating to the entries in a bankers book in accordance with the Bankers Book Evidence Act, 1891 to show that the debt of the Applicant has not been paid and that the Corporate Debtor is unable to pay its debts.
23. The Applicant has also furnished multiple ledgers (**Annexure-H on pg. no. 155-164 of the application and Annexure-B on pg. no. 44-80 of the rebuttal**) as circulated by the Respondent which shows different outstanding balance(s) even for same date(s) and the same raises a question upon the reliability of the said ledgers so circulated by the Respondent since the Applicant has placed on record, the copies of certain fake invoices which are issued by the Respondent having certain discrepancies/illegalities (**Annexure-C (Colly.) on pg. no. 81-83 and Annexure-E (Colly.) on pg. no. 86-91 of the rebuttal**) and sale of shares and security margin through journal entry (**Annexure-D on pg. no. 84-85 of the rebuttal**). Further, the Applicant has also placed on record the copies of certain fake invoices to the tune of Rs. 33,45,621.91/- which are issued by one – M/s. Ujala Finstock Pvt. Ltd. under the garb of being registered under the Ahmedabad Stock Exchange Ltd. which was deregistered even before issuance of the invoices, the effect of which is given in the ledgers issued by the Respondent (**Annexure-A (Colly.) on pg. no. 1-43**). The said position is a clear indication that the debt is due and that there is a default on the part of the Corporate Debtor since time and again, there are

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changes/modifications of the accounts and ledgers which are given effect to avoid the liability for the payment to the Applicant and instead, reflect a counter claim which is not pursued by the Respondent as against the Applicant.

24. During the course of oral arguments, an issue was raised by the Respondent that it does not come within the definition of the Corporate Debtor by stating that it is a Financial Service Provider (FSP) since it is a Stock Broking Company providing some Financial Services to the Applicant. On the other hand, the Applicant has stated that the Respondent is not a Financial Service Provider (FSP) and is covered under the definition of the Corporate Debtor. Hence, there is a question of law for consideration by this Adjudicating Authority that whether a company engaged/involved in the Stock Broking business can be considered as a Financial Service Provider so as to exclude it from the definition of the Corporate Debtor.

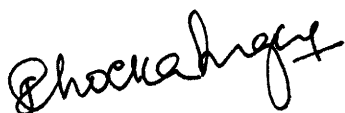
25. The Respondent has contended that the Respondent is a Financial Service Provider (FSP) within the meaning of Section 3(17) of the Code being registered with Securities and Exchange Board of India (SEBI) and thus, does not fall under the definition of Corporate Person under Section 3(7) of the Code. The Respondent has also contended that it is not a Corporate Debtor in terms of Section 3(8) of the Code not being a Corporate Person in terms of Section 3(7) of the Code since it is FSP in terms of Section 3(17) of the Code which is engaged in providing financial services in terms of Section


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3(16)(e) of the Code and is governed by the Financial Sector Regulator (FSR) in terms of Section 3(18) of the Code contending that the Respondent holds certificate of registration issued by SEBI as a Stock Broker.

26. The Respondent has relied upon the judgement of the Hon'ble NCLAT in the matter of **Praveen Kumar Mundra v/s. CIL Securities Ltd. (Company Appeal (AT) (Insolvency) No. 89 of 2019)** wherein the Hon'ble NCLAT has recorded the observations of the Adjudicating Authority, wherein, the Respondent had contended that the Respondent is a registered entity under SEBI for which the certificate of registration as Stockbroker was filed and thus, the Respondent was considered as FSP within the meaning of Section 3(17) of the Code which does not come under the definition of Corporate Person and that it is exempted from the purview of the Code. However, on perusal of the said judgment, it is found that Hon'ble NCLAT had dismissed the appeal, so preferred by the Appellant only on the ground of fraudulent and malicious intent for any purpose other than the resolution of insolvency or liquidation and therefore, it was clearly covered under Section 65 of the Code and that there was no adjudication or confirmation of the view of the Adjudicating Authority in respect of the Respondent being Financial Service Provider or not. Further, the Applicant has also submitted that the judgement which was referred to by the Adjudicating Authority i.e. **Randhiraj Thakur v/s. M/s. Jindal Saxena Financial Services Private Limited & Another (Company Appeal (AT) (Insolvency) Nos. 32 & 50 of**





2018) clearly speaks that the application was preferred against the Non Banking Financial Institution / Company (NBFC) which is covered under the purview of Financial Service Provider and not coming within the meaning of the Corporate Person / Corporate Debtor and hence, the said judgement of the Hon'ble NCLAT is not applicable to the present case since the Respondent is involved in Stock Broking business and is not a NBFC.

27. Moreover, the provisions of Section 3(16)(e) of the Code specifically mention that the financial services include rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of (i) buying, selling, or subscribing to, a financial product; (ii) availing a financial service; or (iii) exercising any right associated with financial product or financial service and accordingly, the said provision includes the rendering or agreeing to render advice on or soliciting for the products and services mentioned in the sub clauses (i), (ii) and (iii) of the aforementioned provision and that the said provision does not include the direct involvement of the products and services mentioned in the sub clauses (i), (ii) and (iii) of the aforementioned provision, instead it is directly engaged in buying, selling, or subscribing financial products for and on behalf of the Applicant. Thus, the respondent directly engaged in buying, selling or subscribing financial products for and on behalf of the applicant.
28. Based on the above contentions, it is observed that there is a thin line of difference with regard to the provisions of Section 3(16)(e)

of the Code and with regard to the business activities of the Respondent. Section 3(16)(e) of the Code, envisages that the term "Financial Services" shall include rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of (i) buying, selling, or subscribing to, a financial product; (ii) availing a financial service; or (iii) exercising any right associated with financial product or financial service whereas the Respondent being engaged/involved in Stock Broking business is directly dealing in the shares, securities, derivatives, etc. on behalf of its clients including the Applicant rather than only rendering advice or soliciting or agreeing in that regard. Hence, it can be said that the Respondent is covered under the purview of the Corporate Debtor and cannot be considered as the Financial Service Provider since it is directly dealing with the financial products and not only rendering advice or soliciting or agreeing in that regard.

29. In addition to the above, Section 5(8)(g) of the Code states that the Financial Debt shall include any derivative transaction which can only be entered into by a company which is registered with SEBI as its regulatory authority which is in contradiction with the stand taken by the Respondent being a company registered with SEBI.
30. However, on perusal of the documents available on record, it is found that the Respondent is entering into derivative transactions on behalf of the Applicant by taking instructions from the Applicant and sending email updates to the Applicant and that the invoices so issued by the Respondent itself reflect that the

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Respondent is entering into the derivative transactions in terms of Section 5(8)(g) of the Code.

31. It is to be mentioned herein that, if a company engaged in the business of Stock Broking or derivative transactions was to be considered as a Financial Service Provider (FSP) and was to be excluded from the CIRP proceedings, then the provisions of Section 5(8)(g) of the Code would have not been in existence and that the object of the law is not to have contradictions amongst the provisions of Section 3(16)(e) and Section 5(8)(g) of the Code. That apart, the provisions of Section 5(8)(g) of the Code are well incorporated with an intention to include the companies engaged in Stock Broking business and derivative transactions, since no companies other than those registered with SEBI can enter into such transactions. Hence, the Respondent is not covered under the definition of Financial Service Provider rather it is well covered under the definition of the Corporate Person and thus, it falls under the category of Corporate Debtor.

32. In addition to the above, also seen the Gazette Notification No. S.O. 4139(E) dated 18.11.2019, so issued by the Ministry of Corporate Affairs, submitted by the applicant, whereby, it has notified the categories of the Financial Service Providers, which include only the Non Banking Finance Companies (Including Housing Finance Companies) with an asset size of Rs. 500 crore or more as per last audited balance sheet and of which the Reserve Bank of India shall be the Appropriate Regulator. Hence, it can be said that the

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Respondent merely being a company engaged in Stock Broking business and derivative transactions cannot claim to be a Financial Service Provider, so as to claim exclusion from the applicability of the CIRP proceedings.

33. The Respondent has referred to Section 3(16) of the Code and relied upon the judgement of Hon'ble NCLAT in the matter of ***Housing Development Finance Corporation Ltd. v/s. RHC Holding (P.) Ltd. (Company Appeal (AT) (Insolvency) No. 26 of 2019***) which is already dealt with hereinabove. Moreover, the said judgement is applicable to NBFC and hence, not applicable to the present case since the Respondent is involved in Stock Broking business and is not a NBFC.
34. The Respondent has referred to the definition of the Financial Sector Regulator (FSR) under section 3(18) of the Code and stated that it includes SEBI and relied upon the judgement of the Hon'ble NCLAT in the matter of ***Randhiraj Thakur v/s. M/s. Jindal Saxena Financial Services Private Limited & Anr. (Company Appeal (AT) (Insolvency) No. 32 & 50 of 2018)***, however, the said judgement is applicable to NBFC and, hence, not applicable to the present case since the Respondent is involved in Stock Broking business and is not a NBFC. Also, the definition of the Financial Sector Regulator includes SEBI; however, the question under consideration is that whether the Respondent is covered under the purview of Financial Service Provider, so as to exclude

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it from the definition of the Corporate Person has been dealt with hereinabove.

35. The Respondent has contended that there must be "Financial Contract" as defined under Rule 3(1)(d) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and relied upon the judgement of the Hon'ble NCLT, Principal Bench, New Delhi in the matter of ***Divyansh Pratham Infracon (P.) Ltd. v/s. Dwarika Infocom (P.) Ltd. (IB-1159 (PB) of 2019)*** is not sustainable, in as much as, admittedly, there exists an agreement which was entered into between the Applicant and the Respondent on account of which the Respondent had allotted the Trade Code - V006 in the name of the Applicant but a copy of the same was not furnished to the Applicant for which numerous communications were made by the Applicant to the Respondent and the copies of the aforementioned communications are already annexed with the application and the same is a matter of record. Also, the present case relates to the Corporate Debtor being involved in a Stock Broking business and hence, the financial debt granted by the Applicant is not a regular loan transaction but a special transaction, wherein, the monies shall be utilized by the Respondent against the derivative transactions which shall be authorized by the Applicant and thus, the clause relating to the interest payable by the Respondent is not imposed by the Applicant in terms of Section 5(8) of the Code, wherein the interest is not supposed to be mandatory for the fact that the financial debt granted by the Applicant to the Respondent is a special

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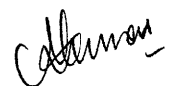
transaction. Further, the Applicant has not claimed any interest against the debts due from the Respondent. Moreover, regarding the consideration against the time value of money, the Applicant has duly furnished the security margin with the Respondent which is a pre-condition as per the provisions of SEBI Regulations for entering into the derivative transactions by the Applicant through the Respondent which establishes that the said transaction has the commercial effect of the borrowing granted by the Applicant to the Respondent and the details relating to the shares and securities provided as security margin to the Respondent are annexed to the application and the same are a matter of record.

36. The Respondent has also relied upon the judgement of the Hon'ble NCLT, Principal Bench, New Delhi in the matter of **Arvind Garg v/s. Jee Kay Polychem (P.) Ltd. (Company Petition (IB) No. 328 (PB)/2018)** wherein there was absence of evidence in support of the claimed interest and absence of the consideration for time value of money which has already been dealt with hereinabove.
37. The Respondent has referred to the judgement of the Hon'ble NCLT, New Delhi Bench, New Delhi in the matter of **Prayag Polytech P. Ltd. v/s. Good Marketing & Sales P. Ltd. (IB-219/ND/2019)** wherein the Petitioner could not satisfy about the details of the 'Financial Contract' and could not demonstrate the default in respect of the 'Financial Debt' which has been dealt with in the preceding paragraph(s).

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38. The amount of debt payable by the Respondent – Corporate Debtor is more than the statutory limit prescribed under the provisions of the section 4 of the Insolvency and Bankruptcy Code, 2016 as on the date of filing of the application i.e. 22.07.2019.
39. The Applicant has furnished the copy of Written Communication of the Proposed Interim Resolution Professional – CA Prakash Udhawdas Tekwani in Form – 2 in terms of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
40. Under the facts and circumstances as discussed hereinabove in sequel and from the material placed on record by the Applicant, this Adjudicating Authority is satisfied that the application is complete in all respects and the Corporate Debtor has committed default in paying the dues to the Applicant.
41. The documents and submissions so produced by the Financial Creditor clearly establish the 'Financial Debt' and there is default on the part of the Corporate Debtor in payment of the 'Financial Debt'.
42. In view of the above, the petitioner/financial creditor having fulfilled all the requirements of Section 7 of the Code, the instant petition deserves to be admitted.
43. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -



- (i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

44. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.


45. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the

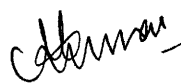




corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

46. This Adjudicating Authority hereby appoints CA Prakash Udhawdas Tekwani, having office at 387, Karnavati Complex, Opp. Central Bank of India, Revdibazar Cross Road, Kalupur, Ahmedabad, Gujarat-380 001, having Registration No. IBBI/IPA-001/IP-P01220/2018-2019/11941 to act as "Interim Resolution Professional" under Section 13(1)(b) of the I&B Code.
47. This Petition stands admitted.
48. Communicate a copy of this order to the Applicant/Financial Creditor, Respondent/Corporate Debtor and to the Interim Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority &
Member (Technical)


Manorama Kumari
Adjudicating Authority &
Member (Judicial)

Sudha