

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

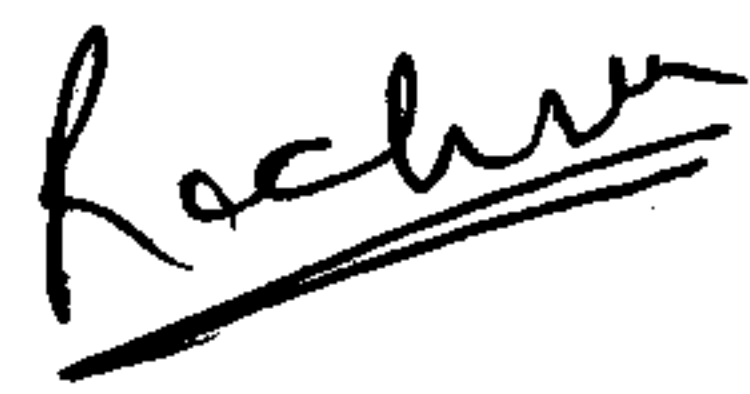
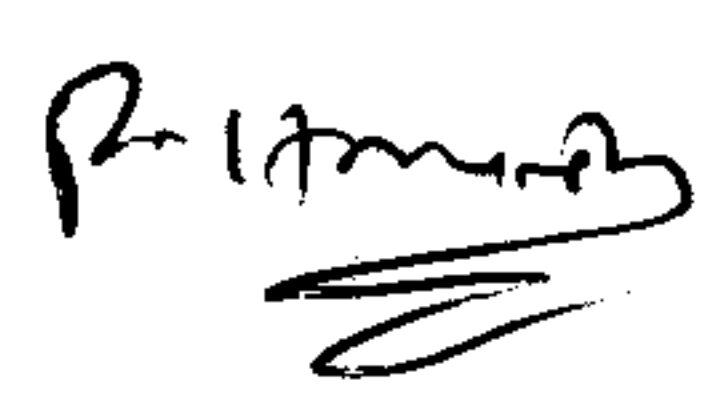
C.P. (I.B) No.536/NCLT/AHM/2018

**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 08.01.2020**

Name of the Company: Bank of Baroda.
V/s.
Shivpuri Water Infrastructure Pvt. Ltd.


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

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Rachna Pareek for Natasha Dhruvan Shah		Petitioner	
2.	Ruchabh H. Munchaw	Advocate	Respondent	


ORDER

The parties are represented through learned counsels.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 8th day of January, 2020


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(IB) 536/7/NCLT/AHM/2018

In the matter of:

Bank of Baroda
Corporate Business Branch,
Dena Laxmi Building, 2nd Floor
Ashram Road
Navrangpura,
Ahmedabad 380 009
Gujarat State

Head Office at
10-C, "G" Block,
Bandra Kurla Complex
Bandra (East)
MUMBAI 400 051

Petitioner
[Financial Creditor]

Versus

M/s. Shivpuri Water Infrastructure Private Limited
Building No. 9
Sigma Corporate,
Behind Rajpath Club
Off. C.G. Road
Bodakdev,
AHMEDABAD 380 054
Gujarat State

Respondents
[Corporate Debtor]

Order delivered on 8th January, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

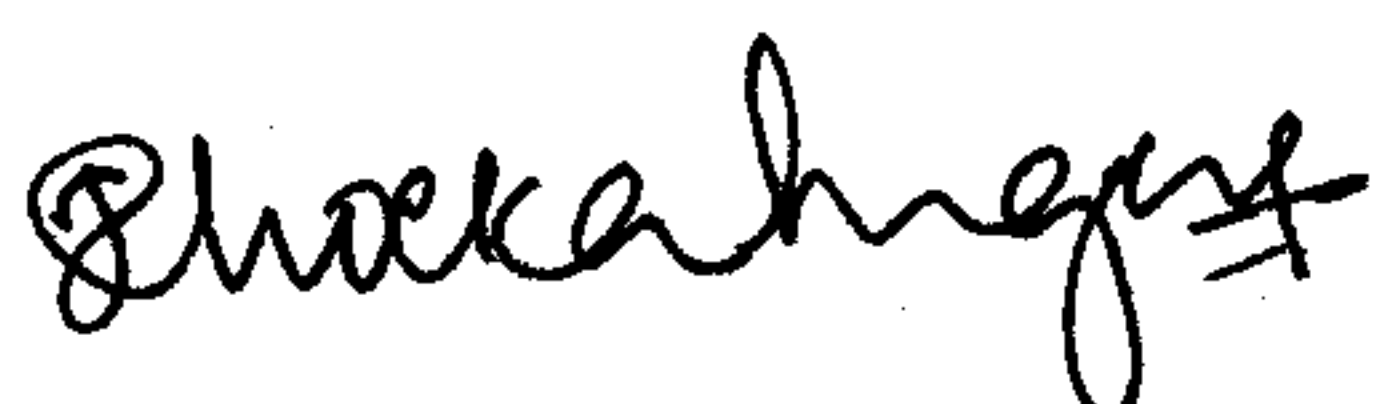
Appearance:

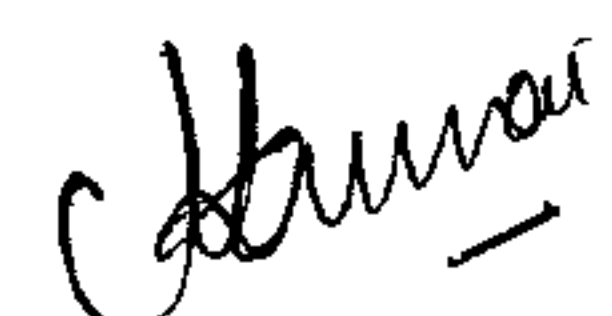
Advocate Ms. Natasha Shah for petitioner.
Advocate Mr. Rushabh Munshaw

ORDER

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

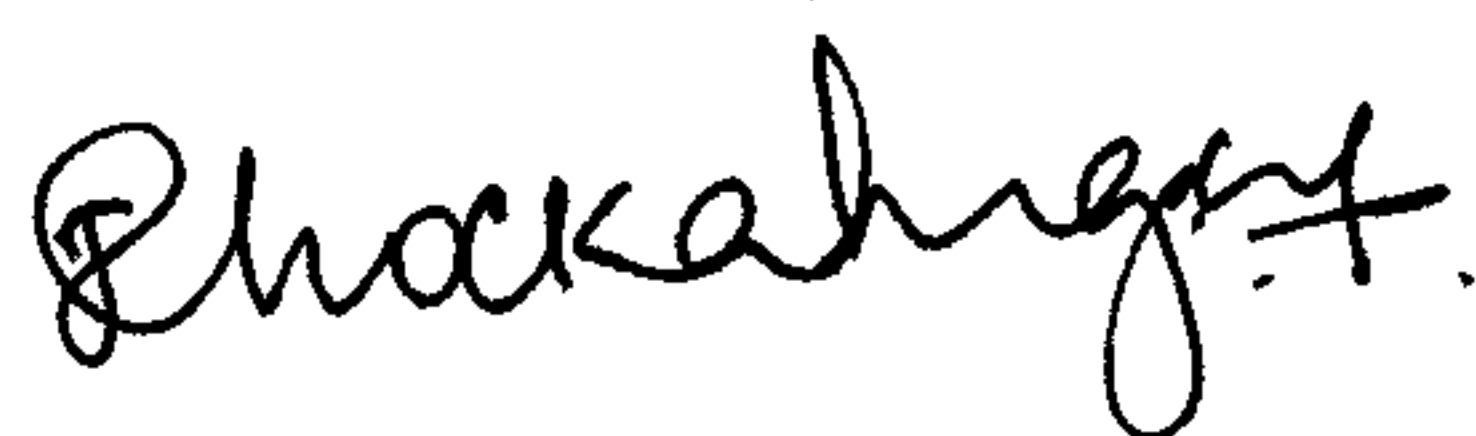
1. Mr. Ashik P. Shah, Chief Manager, being authorised signatory of Bank of Baroda, filed this petition under section





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(1)(a)(b)(c) of the Code.

2. That the applicant/financial creditor Bank of Baroda is a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertaking) Act 1970, having its Registered office at Dena Corporate Centre, C-10, G-Block, Bandra Kurla Complex, Bandra E, Mumbai 400 051 and branch at Ashram Road, Ahmedabad 380 009, Gujarat State.
3. During pendency of this application, Dena Bank is merged with Bank of Baroda vide Government of India Gazette Notification dated 02.01.2019. Accordingly cause title of the instant application is amended vide order dated 29.07.2019.
4. The respondent/corporate debtor M/s. Shivpuri Water Infrastructure Private Limited is a company incorporated under the Companies Act, 1956 on 28.08.2009, having identification No. U41000GJ2009PTC057906, having its registered office at Bodakdev, Ahmedabad, Gujarat State. That, Authorised share capital of the respondent company





is Rs. 51,00,000/- and paid up share capital is Rs. 51,00,000/-.

5. That, the applicant bank has submitted that through its Ashram Road Branch, Ahmedabad granted various financial credit facilities to the corporate debtor as per the details given below: -

- (i) **Fresh term loan of Rs. 20.27 crores on 15.06.2010 which was disbursed on 14.08.2010;**
- (ii) **The aforesaid term loan was restructured on 28.07.2014 to aggregating Rs. 29.67 crores including existing term loan of Rs. 17.23 crores, fresh FITL of Rs. 2.44 crores and bank guarantee of Rs. 10.00 crore. Date of disbursement of fresh FITL is 31st July, 2014.**
- (iii) **Thereafter, on 18.03.2016 the existing bank guarantee limit of Rs. 10.00 crore reduced to Rs. 3.00 crores. Date of issuance of bank guarantee of Rs. 3.00 crore is 25.03.2016.**
- (iv) **Thereafter the respondent company has been sanctioned fresh advance bank guarantee of Rs. 8.00 crores on 21.06.2017 which has not been availed by the company.**

6. Learned lawyer for the financial creditor has further stated that against the aforesaid credit facilities, the corporate debtor is in default of a total sum of Rs. 14,39,33,920.30 plus interest of Rs. 10,73,97,344.78 aggregating to **Rs. 25,13,31,265.08 (Rupees twenty-five crores thirteen lacs thirty-one thousand two hundred- sixty-five and paise eight only).**

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7. The financial creditor has further stated that the present Insolvency Resolution Application is filed under Section 7 of the IB Code, 2016 for the purpose of initiating corporate insolvency resolution process against the corporate debtor since it has lost its substratum and is unable to repay outstanding debt. That, the corporate debtor has already committed default of its debt towards the financial creditor by non-payment of instalment and/or interest of the various financial facilities availed through its Ashram Road Branch, Ahmedabad, Gujarat State.
8. The applicant bank has submitted copy of the following documents in support of their claim: -

Sl. No.	Particulars	Page Nos.
1	Form 1	1-10
2	Letter of authority dated 29.09.2018 along with power of attorney dated 28.08.2012	11-14
3	Extract of the details of the corporate debtor from web portal of the MCA	15
4	Written communication by the proposed IRP	16-17
5	Sanction letters dated 15.06.2010, 25.10.2011, 28.07.2014, 18.03.2016 and 21.06.2017 along with statement of accounts for the period from 14.08.2010 to 09.10.2018	18-40
6	Working computation of the amount claimed to be in default along with the statement of account	41-50
7	Certificate of registration of charge with ROC.	51-55
8	Valuation report evidencing the valuation of the properties given as security as per financial creditor	56-82
9	Declaration cum affidavit dated 03.08.2010	83-84
10	Declaration with respect to pending court cases of banks and financial institutions	85-87
11	Affidavit cum declaration dated 15.10.2014	88-90
12	Declaration in respect of pending court cases of bank and financial institutions dated 25.03.2016	91-95
13	Unattested memorandum of modification of hypothecation agreement dated 15.10.2014	96-104
14	Letter of acknowledgement of debt by borrower and/or guarantor dated 20.07.2016	105
15	Statement of account maintained by the applicant for the period from date of default to 09.10.2018 along with certificate dated 08.10.2018 issued in	105-115

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	accordance with the Bankers Book Evidence Act, 1891	
16	Agreement dated 15.05.2010 made among corporate debtor, applicant and Nagar Palika	116-119
17	General undertaking dated 09.08.2010	116-119
18	Loan agreement dated 11.08.2010	127-132
19	Agreement of hypothecation (Goods, Book Debts and other movable assets to secure multiple facilities) dated 11.08.2010	133-145
20	Power of attorney (Book Debts) dated 11.08.2010	146-148
21	Letter of guarantee dated 11.08.2010	149-158
22	Letter of guarantee dated 11.08.2010	159-168
23	Letter of general lien and set off borrowing arrangements from the borrowers dated 11.08.2010	169
24	Letter of general lien and set off from guarantor dated 11.08.2010	170-172
25	Letter of confirmation of guarantee by guarantor dated 11.08.2010	173
26	Undertaking cum unattested memorandum of modification of hypothecation agreement dated 31.07.2014	174-182
27	Letter of guarantee dated 15.10.2014	183-195
28	Corporate guarantee dated 15.10.2014	196-205
29	Confirmation of guarantee by guarantor dated 15.10.2014	206-210
30	Letter of counter guarantee for guarantee limits for Rs. 10 crore granted as on 15.10.2014	211-216
31	Letter of consent by guarantors for various credit facilities of Rs. 29.67 crores granted as on 15.10.2014	217-220
32	Letter of general lien and set off for borrowing arrangements from the borrower for various credit facilities of Rs. 29.67 crores granted on 15.10.2014	221-223
33	Letter of general lien and set off from guarantors for various credit facilities of Rs. 29.67 crores granted as on 15.10.2014	224-226
34	General undertaking executed between corporate debtor and the financial creditor dated 15.10.2014	227-237
35	Agreement of hypothecation dated 25.03.2016	238-262
36	Supplemental agreement dated 25.03.2016	263-270
37	Letter of guarantee dated 25.03.2016	271-283
38	Letter of guarantee dated 25.03.2016	285-297
39	Letter of guarantee for repayment dated 25.03.2016	298-302
40	Undertaking dated 25.03.2016	303-305
41	Undertaking dated 25.03.2016	306-311
42	Counter guarantee for guarantee limited dated 25.03.2016	312-321
43	General undertaking dated 25.03.2016	322-335
44	Supplemental agreement dated 20.07.2016	336-345
45	Letter of guarantee dated 03.08.2016	346-357
46	Declaration dated 04.08.2016	358-369
47	Mortgage dated 04.08.2016	370-393

9. The respondent company filed affidavit in reply/written submission raising the following objections: -

- (i) Application has not been preferred by an authorised officer;

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- (ii) Application is not in the form prescribed by the provisions of I 7 B Code and rules framed thereunder;
- (iii) Specific date of default has not been stated in the present application;
- (iv) Incomplete statements of accounts produced by the applicant;
- (v) Wrongful and erroneous calculation of amount claimed to be in default;
- (vi) Wrongful invocation of bank guarantee and breach of contract;
- (vii) Material suppression on part of applicant;
- (viii) Unlawful cut-backs by the applicant.

Findings

10. Heard learned counsels appearing for both the sides and perused the documents filed by the petitioner/respondent.
11. On perusal of the records it is found that the objections raised by the respondent company are illusory, imaginary and not supported by any document. On perusal of the records it is found that fresh term loan of Rs. 20.27 lacs was sanctioned to the respondent company on **15.06.2010** and the same term loan was reviewed and the terms of sanction were amended on **25.10.2011**. Again, the said term loan was reviewed/restructured on **28.07.2014**. It is also found that on **18th March, 2016** some modifications in terms and





conditions of the sanctioned loan has been approved by the applicant bank. On perusal of the records it is also found that on **21.06.2017** fresh sanction of advance bank guarantee of Rs. 8.00 crores have been granted by the petitioner bank in favour of the respondent company. It is also found that the corporate debtor **has acknowledged the debt by letter dated 20th July, 2016** which is annexed to the application **at page No. 105.**

12. On perusal of the records it is found that the application filed by the financial creditor is well within limitation. That, the documents filed along with the application is sufficient to prove that there exists financial debt and default occurred on the part of the corporate debtor. That, the account statement issued by the financial creditor, is annexed to the application at page No. 106-115 showing the account position of the corporate debtor as on 09.10.2018.
13. On perusal of the records, it is found that the letter of authority dated 29.09.2018 issued by Assistant General Manager of the applicant bank authorising Mr. Ashik P. Shah is proper and valid.
14. In view of the above discussions, the Adjudicating Authority is of the considered view that there is a debt due to "financial creditor" and there is default on the part of the corporate debtor. In "**Innoventive Industries Ltd. vs. ICICI Bank & Anr.(2018) 1 SCC 407**", the Hon'ble Supreme Court,



while explaining section 7 and 8 of the IB Code, observed and held as under: -

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a 'debt' becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3 (12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.

For the meaning of "debt", we have to go to Section 3 (11) which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of claim, we have to go back to Section 3 (6) which defines claim to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5 (7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5 (8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7 (1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor. It need not be a debt owed to the applicant financial creditor. Under Section 7 (2), an application is to be made under Sub-Section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in part I, particulars of the corporate debtor in

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part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4 (3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or sped post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7 (5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt" which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is complete, in which case it may give notice to the applicant to rectify the defect within seven days of receipt of a notice from the adjudicating authority. Under Sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within seven days of admission or rejection of such application, as the case may be.

15. In Mobilox Innovations (P) Ltd. vs. Kirusa Software (P) Ltd.

(2018) 1 SCC 353 Hon'ble Supreme Court held as under: -

"38.....in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility or other evidences produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due", i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority then the adjudicating authority may reject an application and not otherwise.....".

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16. That, the application is found to be complete in all respect. Hence it does not warrant any rejection or dismissal.
17. That, the records available shows that the applicant bank had sanctioned cash credit limit and term loans to the respondent company, to be repaid within the stipulated period as per the terms and conditions agreed between the parties.
18. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the financial debt to the Applicant and the respondent company has acknowledged the debt.
19. In the instant case, the documents produced by the Financial Creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'financial debt'.
20. There is no dispute in the case that the petitioner is the financial creditor. The application is also furnished in the prescribed form - 1 of the Rules and the prescribed fee has also been paid. Along with the application, the applicant proposed the name of the Resolution Professional namely Mr. Prawin Charan Dwary. The Adjudicating Authority hereby appoint Mr. Pravin Charan Dwary, 407, Akchhat

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Tower, Nr. Kotak Bank, Pakwan Cross Road, S.G. Highway, Bodakdev, Ahmedabad 380 054 (Email ID dwaryprawin@gmail.com) having registration No. IBBI/IPA-002/IP-N00331/2017-18/10937 to act as an interim resolution professional. Form 2 of the proposed interim resolution professional has been annexed and placed at page No. 16-17 of the application, where declaration is made that no disciplinary proceeding is pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

21. In the aforesaid background and as also discussed above, the application under Section 7 (2) of the IB Code is complete in all respects and there is debt due to the "financial Creditor" and there is default on the part of the "corporate debtor". Hence, there is no alternative but to admit the application in absence of any infirmity.
22. 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.
23. 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: -

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- (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.


24. 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.

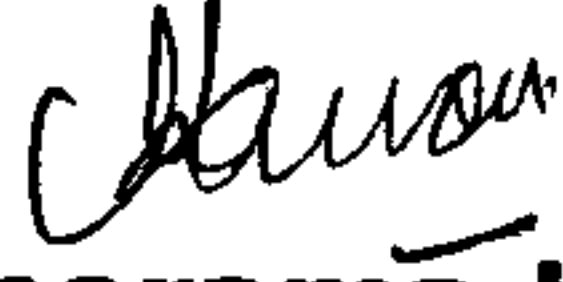
25. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of



Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

26. This Petition stands disposed of accordingly with no order as to costs.
27. 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)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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