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

C.P. (I.B) No. 459/7/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 20.09.2019**

Name of the Company: Bank of India
V/s
Radheshyam Agro Products 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>
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1.

2.


ORDER

None for the parties.

The case is fixed for pronouncement of order.

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


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


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

Dated this the 20th day of September, 2019.

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

C.P. (I.B.) No. 459/7/NCLT/AHM/2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)**

In the matter of:

Bank of India,
Having its registered office at:
Star House, Bandra-Kurla Complex,
C-5, G Block, Bandra(E),
Mumbai – 400051.

Having its Branch Office at:
Rajkot Main Branch,
Ground Floor,
Para Bazar, M.G. Road,
Rajkot – 360001.

.....Applicant-Petitioner-Financial Creditor

Versus

Radheshyam Agro Products Pvt. Ltd.
Chakkargadh Road By Pass,
Nr. Kanani's Farm,
Survey No. 484/3,
Amreli – 365601.

.....Respondent-Corporate Debtor

Appearance:

Mr. Ketan M. Parikh, Advocate, for the Applicant/Financial-Creditor.

Mr. Mohit Gupta, along with Mr. Tarun H. Rawat, Advocates for the Respondent/Corporate Debtor.

Order Pronounced and delivered on 20th September, 2019.





ORDER

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

1. The present I.B. Petition is filed by the Financial-Creditor **Bank of India** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), **seeking initiation of Corporate-Insolvency-Resolution-Process** ("CIRP" in Short) against the Corporate-Debtor-Company namely, Radheshyam Agro Products Pvt. Ltd. for the default committed by the Corporate Debtor in making repayment of the Loan/CC facility availed from the Bank. The Applicant (FC), Bank of India (BOI) is a Bank, incorporated under the provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. The application has been filed by the duly authorised officer Shri Brij Mohan Meena, The Chief Manager, Rajkot, Zonal Office, Bank of India.

2. The Respondent- Corporate Debtor (CD) Company, namely Radheshyam Agro Products Pvt. Ltd. was incorporated on 05.01.2010 with CIN: U01112GJ2010PTC059080.

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3. The share capital of the Respondent (CD) Company is Rs.6,75,00,000/- (Rupees Six Crores Seventy-Five Lakhs only) divided into 67,50,000 (Sixty-Seven Lakhs Fifty Thousand) equity shares of Rs.10/- (Ten) each and the paid-up share capital of the company is Rs.6,75,00,000/- (Rupees Six Crores Seventy-Five Lakhs only) divided into 67,50,000 (Sixty-Seven Lakhs Fifty Thousand) equity shares of Rs.10/- (Ten) each. The Registered Office of the Corporate Debtor Company is situated at: Chakkargadh Road By Pass, Nr. Kanani's Farm, Survey No. 484/3, Amreli-365601.

4. The main objects of the company, by which the Respondent (CD) Company is incorporated, are mentioned in the Memorandum of Association which are briefly mentioned as:

"To carry on the business of manufactures, importing, exporting, buying, selling or otherwise dealing in cotton, cotton seeds, linter, delinter, dehul, oil seed, oil cake & solvent extraction of all types of agro products.etc..."

5. It is submitted that the Respondent Company applied for various loan facilities and the same were sanctioned by the petitioner Bank. The Corporate Debtor availed the

Loans executing various documents and some documents executed by the guarantors in favour of the Bank binding themselves as liable to pay the loan facilities availed by the Corporate Debtor. Various loans/credit facilities granted by the applicant Bank are narrated as under:

(I) A Term Loan and CC to the tune of Rs.21.00 Crores (Rupees TwentyOne Crores Only), i.e. (a) Term Loan of Rs.14.00 Crores (Rupees Fourteen Crores Only) and (b) Working Capital - Cash Credit of Rs.7.00 Crores (Rupees Seven Crores) were sanctioned by the Applicant Bank vide **sanction letter dated 03.07.2010 with certain terms and conditions including mortgage of land and building which was duly accepted /acknowledged by the Corporate-Debtor (page no. 82 to 88, paper book).**

Mortgage of the property has been created on 18.11.2010 (page no. 141 to 165 of the paper book). The same was disbursed on 03.07.2010.

(II) Further, the loan/CC was enhanced to **Rs.26.76 Crores** (Rupees Twenty-Six Crores Seventy Six Lakhs only) with certain terms and conditions which were duly accepted/ acknowledged by the Corporate-Debtor (page no. 89 to 97 paper book) and the same was disbursed on **05.09.2011.**

(III) Further, the Petitioner Bank at the request of the CD, the loan/CC was enhanced/restructured to **Rs.34.69 Crores** (Rupees Thirty-Four Crores and Sixty-Nine Lakhs Only) vide their **sanction letter dated 23.12.2013 and the same was accepted/acknowledged by the Corporate-Debtor (page no. 98 to 112 of paper book).** The same was disbursed on 23.12.2013.

6. The charges for the enhancement have been created by the CD also in favour of Petitioner Bank with the ROC for Rs.34.69 Crores by filing form 8 on 08.01.2014 (Page No.295-304 of paper book). The ROC search report dated 09.01.2018 has been submitted by the Petitioner Bank confirming the existence of the charge in favour of the Petitioner Bank (page no.428 of paper book)
7. The Corporate-Debtor has defaulted payment and the **date of default is 05.11.2014** as stated by the Petitioner Bank (page no. 4 of paper book). CIBIL Report (page no. 972 to 981 of the paper book) has been filed by the Bank which confirms that the Account is in default.
8. The statements of accounts of the Corporate debtor have been filed and the Petitioner Bank has submitted a Certificate to this effect under Banker's Book of Evidence

Act, 1891. (Page no. 135-136 of paper book). The Petitioner Bank has claimed their dues of **Rs 56,41,402,627.03** as on 27.07.2018 as computed in the page no. 10 and 11 of the paper book which is given below:

Sr. No.	Details	Amount (Rs.)
1	Outstanding balance in respect of principal amount as on 30.05.2015	31,87,23,036.00
2	Plus: Other Debits	2,36,23,551.50
3	Interest up to 27.07.2018	19,14,32,135.06
4	Penalty up to 27.07.2018	3,09,74,393.15
5	Less: Recovery made after NPA	6,13,034.68
Total outstanding payable as on 27.07.2018		56,41,40,627.03

9. The Petitioner Bank, in support of its contentions has annexed the details of Financial Debt, Records and evidences of default from Annexure – I/6 to Annexure – I/30 along with the present I.B. Petition which also includes copies of ROC search report and Valuation reports.

10. The Petitioner Bank also has served notice to the CD under 13(2) of the SARFAESI Act on 31.12.2014.

Bank has also filed Original Application no. 137 of 2017 against the Corporate-Debtor & others, which is pending before the Debt Recovery Tribunal-I, Ahmedabad.

Petitioner Bank has placed on record that the Corporate Debtor had submitted a revised **One Time Settlement ("OTS")** proposal increasing the offer from Rs.12.00 Crores to Rs.14.56 crores to the **Bank on 01.06.2016** which is stated to have not been accepted by the Petitioner Bank.

11. The Corporate-Debtor and others have filed Securitization Application No.28/2016 against the Petitioner/Financial-Creditor before the Debts Recovery Tribunal-I, Ahmedabad challenging the measures taken by the Authorized officer of the financial creditor under the SARFAESI Act.

12. In the present matter, this Tribunal, vide its order dated 25.09.2018 had directed the Petitioner Bank to serve the notice of date of hearing to the Corporate Debtor and file the proof of service of notice before this

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Tribunal. In compliance to the same, the Petitioner Bank has furnished the proof of sending notice to the Corporate Debtor on 03.10.2018 to remain present before this Tribunal on 06.11.2018.

It is also stated that Petitioner Bank has served the copy of Application filed before this Tribunal to the Corporate Debtor as per the rule 4(3) of the Insolvency and Bankruptcy Rules, 2016.

13. In response to the present I.B. Petition filed by the Petitioner Bank, the Respondent has filed its objections on 10.04.2019, denying the debt and raised about not showing record of default with information utility, non-filing of certificate of the Banker Books of Evidence Act, no resolution available for power of attorney to file the Application by the authorised officer at this Tribunal.

Furthermore, it is contended by the CD that the term loan -I was to be paid by March 2015, FITL of Rs.2.22 Crores was to be paid by the end of March 2015 and the cash credit facility was regular till August 2014, but the Petitioner Bank illegally declared the account of Respondent Company as NPA.

14. In response to the objections raised by the Corporate Debtor in its affidavit, the Petitioner bank filed a compliance affidavit stating and opposing the contentions raised therein by the CD. Ld. Counsel appearing for the Petitioner Bank has filed the rebuttal documents which has been taken on record on 17.07.2019.
15. In response to the contentions raised by the Corporate Debtor that the Application filed by the Bank is beyond the period of limitation. In this regard, it was clarified by the Learned Counsel of the Petitioner Bank that the application under Section 7 of the I.B. Code, 2016 was filed by the Petitioner Bank on 30.08.2018. The mortgage has been created in the favour of the Bank on 18.10.2010 and the Corporate Debtor **has lastly deposited the amount of Rs.1,26,619.00 & Rs.1,28,645.00** respectively in their **accounts on 31.03.2017**. Therefore, the application has been filed within the limitation as per the provision of Insolvency and Bankruptcy Code, 2016.
16. The matter was taken up and heard both sides at this Bench on 06.11.2018, 20.12.2018, 12.02.2019,

20.03.2019, 26.04.2019, 17.07.2019, 06.09.2019. The counsels of the Petitioner and the Respondent were present and put forth their submissions before the Bench.

17. It is a settled legal position that the pendency of SARFAESI proceeding or other dispute does not prevent a Financial Creditor to trigger the C.I.R.P. because the nature of remedy being sought for under the provisions of the I.B. Code is "Remedy in Rem" in respect of the CD.

18. The Petitioner Bank has suggested the name of Insolvency Professional to be appointed, if this petition is allowed and the proposed I.R.P. has also given his affirmation/consent in writing, which is annexed with the present I.B. Petition.

19. It is also found, that the Petitioner Bank has submitted the documents duly executed by the Corporate Debtors and guarantors along with a Certificate under the Banker's Book of Evidence Act, 1891, in support of their IB Petition for initiation of C.I.R.P.



19.1 The loans/CC were sanctioned and released by the Petitioner Bank and the same were availed by CD, Radheshyam Agro Products Pvt. Ltd. The Charges have been filed by the CD with the ROC in favour of the Petitioner Bank on 08.01.2014.

19.2 The CD has defaulted in making repayment of loan/cc to the Petitioner Bank and **the date of default is 05.01.2014**. The Statement of accounts and the **CIBIL Reports** submitted by the applicant Bank confirm the default committed by the Corporate-Debtor.

19.3 The Petitioner Bank has filed the petition within the period of limitation, as **the date of mortgage of the property is 18.11.2010**, SARFAESI proceeding initiated in 2014, DRT proceedings started in 2017, Onetime settlement (OTS) revised offer (from Rs.12.00 Crores to **Rs.14.56 Crores**) **letter dated 01.06.2016** was **submitted by the Corporate Debtor** to the applicant Bank and the Credits have come into the loan accounts on 31.03.2017.

19.4 The present I.B. Petition is filed by duly authorised official of the Petitioner Bank in a prescribed format under **Section 7** of the I.B. Code annexing copies of loan documents **confirming the existence of debt default** and proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP)

20. Considering the material papers filed by the Petitioner Bank and the facts mentioned in the Para No. 19, 19.1, 19.2, 19.3, 19.4 this Adjudicating Authority is satisfied that,

(a) The Corporate Debtor availed the loan /cash credit from the Petitioner.

(b) Existence of debt above Rs. One Lac;

(c) Debt is due;

(d) Default has occurred on 5/11/2014;

(e) Petition had been filed within the limitation period;

(f) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the application filed by the **Petitioner Bank Under Section 7 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate-Debtor-Company.

Hence, **the present IB Petition is admitted** with the following Directions/observations. **The date of admission of this petition is 20.09.2019.**

21. This Adjudicating Authority hereby appoints, as proposed, **Mr.Chandra Prakash Jain**, having Insolvency Professional Registration No. **IBBI/IPA-001/IP-P00147/2017-18/10311**, **Email ID: jain_cp@yahoo.com**, **Resi. Ph. (079) (NIL)**, **Mobile No. 9824036127**, **Address: D-501, Ganesh Meridian, Opp. Gujarat High Court, Ahmedabad - 380060, Gujarat, India as an Interim-Resolution-Professional.** 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 Under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code.

22. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this




Adjudicating Authority declares moratorium with effect from today 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.*

implementation of MCLR and further from the date of implementation of MCLR till the date of approval of the Resolution Plan interest at the rate of Petitioner Bank's One Year MCLR or One Year MCLR + 1% without any penal /overdue interest.

25. The Petitioner Bank as well as the Registry is hereby directed to communicate a copy of this order to the Corporate Debtor Company parties as well as to the I.R.P and also to the Registrar of Companies at the earliest immediately through speed post / registered post.

26. Thus the present I.B petition filed Under Section 7 of IBC stands admitted.


**(Prasanta Kumar Maohanty),
Adjudicating Authority
Member (Technical)**

[Per: Mr. Harihar Prakash Chaturvedi, Member (Judicial)]

27. I have advantage to peruse the order pronounced by my Member Brother (Technical). While agreeing to and concurring with the findings given for admission of the present I.B. Petition and to initiate the C.I.R.P. in respect of Corporate-Debtor-Company, I wish to observe and express my view as under:



23. The **IRP is hereby advised to adhere the timelimit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section 18, 20, 21 of I.B Code. Further the personnels of the Corporate Debtor are advised to extend co-operation to Interim Resolution Professional as required Under Section 19 of IB Code.


24. It is also observed that the Petitioner Bank has claimed total dues of Rs.56,41,40,627.03 which includes interest, panel/overdue interest and other debits [for thirty eight months] from 30.05.2015 to 27.07.2018 to the tune of **Rs.24.59 Crores** against the balance outstanding of Rs.31.87 Crores as on 30.05.2015.

In order to have a Resolution Plan Viable, Feasible and implementation Successful, in the era of Minimum Cost of funds-based Lending Rate ("MCLR" in short) and Competitive market condition, the Resolution Applicant/ Committee Of Creditors (COC) **may explore, while finalizing the Resolution Plan for the Corporate-Debtor, the possibility** of loading maximum interest at the Petitioner Bank's Base Rate (BR) +1% from the date of default to the date of implementation of MCLR and

further from the date of implementation of MCLR till the date of approval of the Resolution Plan interest at the rate of Petitioner Bank's One Year MCLR or One Year MCLR + 1% without any penal /overdue interest.

25. The Petition^{er} Bank as well as the Registry is hereby directed to communicate a copy of this order to the Corporate Debtor Company parties as well as to the I.R.P and also to the Registrar of Companies at the earliest immediately through speed post / registered post.

26. Thus the present I.B petition filed Under Section 7^{of} IBC stands admitted.


(Prasanta Kumar Maohanty),
Adjudicating Authority
Member (Technical)

[Per: Mr. Harihar Prakash Chaturvedi, Member (Judicial)]

27. I have advantage to peruse the order pronounced by my Member Brother (Technical). While agreeing to and concurring with the findings given for admission of the present I.B. Petition and to initiate the C.I.R.P. in respect of Corporate-Debtor-Company, I wish to observe and express my view as under:



With regard to the observation made in Para 24 of the judgment stating that,

“In order to have a Resolution Plan Viable, Feasible and implementation successful, in the era of without any penal/overdue interest.”,

I would like to place reliance in a previous decision of this Bench of I.A. No. 431 of 2018 in the matter of **S. K. Gupta (RP) Vs. Essar Steel (India) Ltd.** and others decided on **08.03.2019** whereby the Resolution Plan was approved with certain direction and condition and the same came to be approved also by the Hon'ble NCLAT in its decision of **Standard Chartered Bank Vs. Satish Kumar Gupta Vs. Essar Steel (India) Ltd.** while deciding the above stated I.A. No. 431 of 2018 that this Bench placed reliance on a recent decision of Hon. Supreme Court in the matter of **K. Sashidhar Vs. Indian Overseas Bank (CA No.10673 of 2018 with CA No.10719 of 2018, CA No. 10971 of 2018 & SLP(C) No.29181 of 2018)** and it was noted that, we being an Adjudicating Authority are having limited scope to suggest or recommend to the CoC but cannot ^{have} jurisdiction to make a judicial review of a commercial decision that



may be taken by CoC nor we can probe commercial wisdom . Hence, we are conscious enough that what is being suggested by the Learned Member (Technical) in Para 24 of his judgment may be considered by the CoC in the light of the decision of Hon. Supreme Court in the matter of **K. Sashidhar Vs. Indian Overseas Bank**. For the sake of convenience, the relevant portions of the Apex Court's decision are reproduced here in below:

“38. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the Adjudicating Authority (NCLT) under Section 31(2) read with 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the Appellate Authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I & B Codes and not to act as a court of equity or exercise plenary powers.



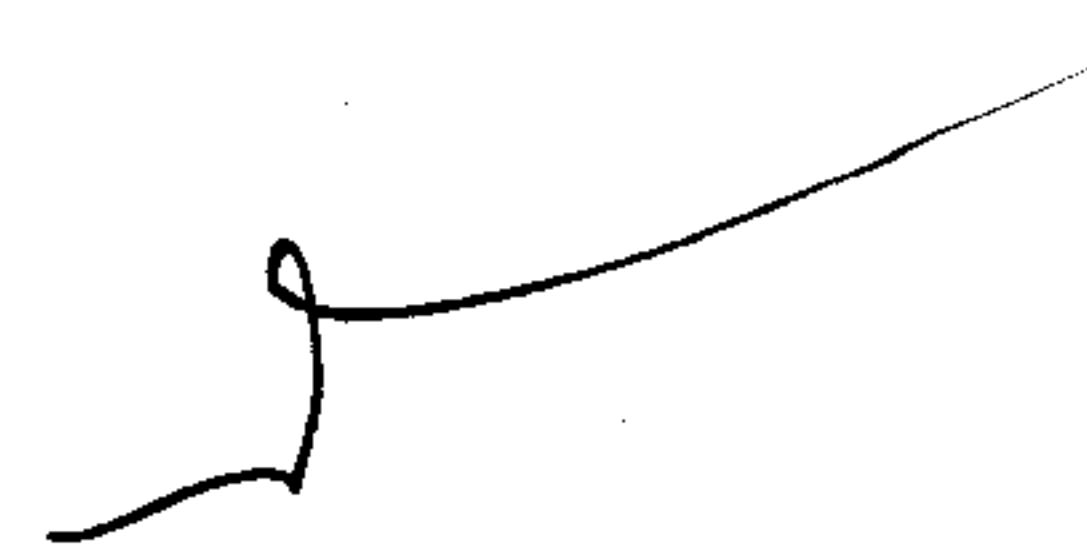
39. ***In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors.*** The fact that substantial or majority percent of financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75% (after amendment of 2018 w.e.f. 06.06.2018, 66%) of voting share of the financial creditors. To put it differently, the action of liquidation process postulated in Chapter-III of the I&B Code, is avoidable, only if approval of the resolution plan is by a vote of not less than 75% (as in October, 2017) of voting share of the financial creditors. Conversely, the legislative intent is to uphold the opinion or hypothesis of the minority dissenting financial creditors. That must prevail, if it is not less than the specified percent (25% in October, 2017; and now after the amendment w.e.f. 06.06.2018, 44%). The inevitable outcome of voting by not less than requisite percent of voting share of financial creditors to disapprove the proposed resolution plan, *de jure*, entails in its deemed rejection.



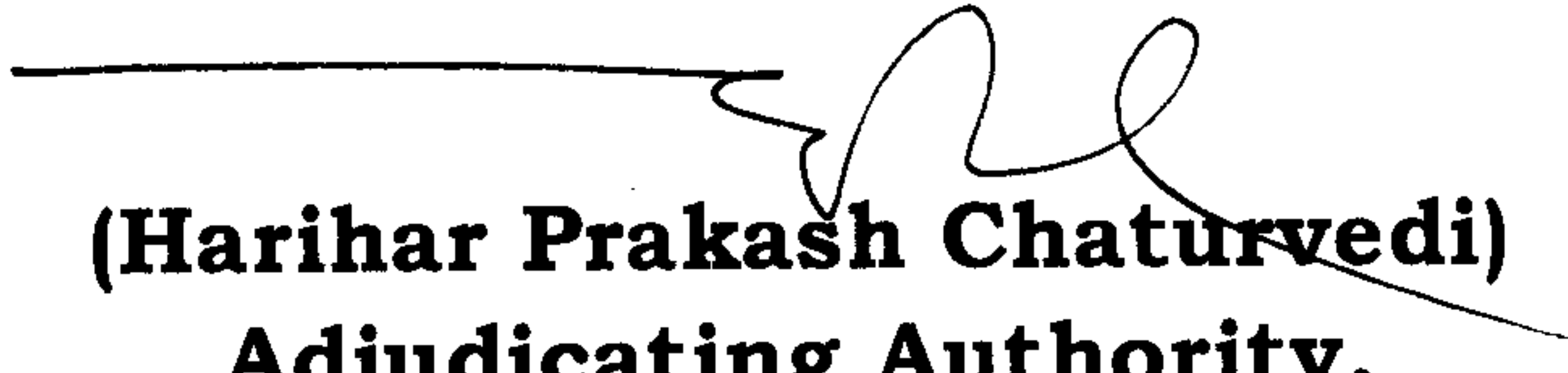
40. Notably, the threshold of voting share of the dissenting financial creditors for rejecting the resolution plan is way below the simple majority mark, namely not less than 25% (and even after amendment w.e.f. 06.06.2018, 44%). **Thus, the scrutiny of the resolution plan is required to pass through the litmus test of not less than requisite (75% or 66% as may be applicable) of voting share - a strict regime. That means the resolution plan must appear, to not less than requisite voting share of the financial creditors, to be an overall credible plan, capable of achieving timelines specified in the Code generally, assuring successful revival of the corporate debtor and disowning endless speculation."**

28. Hence, it is suggested that Para 24 of the judgment may be considered by the CoC in the light of aforesaid observation of Hon. Supreme Court in the matter of *K. Sashidhar Vs. Indian Overseas Bank*.

29. With the aforesaid observation, I concur with the decision of Learned Member (Technical) for admission of the present I.B. Petition.



30. Thus, the present I.B. Petition stands admitted to initiate the Corporate Insolvency Resolution Process (C.I.R.P.) in respect of the Corporate-Debtor-Company.


(Harihar Prakash Chaturvedi)
Adjudicating Authority,
Member (Judicial).

KP/AT