

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301

C.P.(IB)/123(AHM)2022

Order under Section 7 IBC

IN THE MATTER OF:

State Bank of India

.....Applicant

V/s

Jay Formulation Ltd

.....Respondent

Order delivered on: 26/09/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –I, AHMEDABAD**

CP(IB)/123(AHM)/2022

(An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of M/s. Jay Formulations Ltd.

STATE BANK OF INDIA

Head Office:-

Corporate Centre State Bank Bhavan,
Madam Cama Road, Nariman Point,
Mumbai-23.

Branch at:

Stressed Assets Management Branch,
2nd Floor, Paramsiddhi Complex,
Opp. V.S. Hospital, Ellisbridge,
Ashram Road, Ahmedabad-380006.

...Applicant/Financial Creditor

VERSUS

M/s. JAY FORMULATIONS LTD.

Having Address at:

13, 1st Floor, Hari-Krishna Complex,
Behind City Gold, Ashram Road,
Ahmedabad-380009.

...Respondent/Corporate Debtor

Order pronounced on 26.09.2023

CORAM :

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance

For the Applicant : Mr. Pranav G. Desai, Adv.
For the Respondent : Mr. Chaitanya Patel, Adv.

ORDER

(Per: BENCH)

1. This is an Application filed on 06.05.2022 by the **State Bank of India** (hereinafter referred to as “**the Applicant/Financial Creditor**”) against **Jay Formulations Limited** (hereinafter referred to as “**the Respondent/Corporate Debtor**”) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (“**IBC, 2016**”), seeking thereof to initiate the Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor, to appoint IRP and declare moratorium.
2. Perusal of From Part-I indicates that the Applicant is a Bank. The registered office of the Financial Creditor is situated at State Bank Bhavan, Madam Cama Road, Nariman Point, Mumbai-23.
3. The application is affirmed by one Mr. Pankaj Srivastava, C/o- SAM Branch, Paramsiddhi Complex. 2nd Floor, Opp. V. S. Hospital, Ellisbridge, Ahmedabad.
4. As per the direction of this Tribunal vide order dated 05.09.2023, the Applicant has filed the revised Form-1. The same was taken on record as per interim order dated 20.09.2023.

5. Perusal of Part-II reveals that the Corporate Debtor is one M/s. Jay Formulations Limited (CIN: U17119GJ1988PLC010855). The date of incorporation is 15.06.1988. The registered office of the Corporate Debtor is situated at 13, 1st floor, Hari-Krishna Complex, behind City Gold, Ashram Road, Ahmedabad-380009.
6. The Applicant has nominated Mr. Vinod Tarakchand Agrawal, having Registration No. IBBI/IPA-001/IP-P00641/2017-18/11090 (Email: ca.vinod@gmail.com) to act as Interim Resolution Professional (“IRP”).
7. Perusal of Part-IV reveals that the Bank has granted various credit facilities since the year 2001 to the Corporate Debtor and the total amount in default is claimed to be Rs.64,63,86,588/- as on 31.03.2022 plus contingent liability not yet devolved of Non-Funded Facilities of Rs.1,00,000/-. The date of default is mentioned as 29.03.2021 and the date of NPA is mentioned as 29.06.2021.
8. It is stated that the Demand Notice U/s. 13(2) of the SARFAESI Act, 2002 was issued by the Bank which is dated 05.07.2021. The working for computation of the amount and days of default is annexed as Exhibit “F”.

9. The Applicant Bank has given details of various securities to held by the Bank which are as under:

<u>Particulars of security</u>	<u>Date of Creation</u>	<u>Estimated Value * (Rs. In Crores)</u>
Hypothecation charge over entire current and future assets purchased out bank's finance including all types of stocks, receivables and other current assets, hypothecation of stocks and receivables.	22.05.2001	NIL
	09.04.2006	
	17.02.2007	
	18.01.2008	
	12.01.2009	
	23.03.2009	
	29.12.2011	
	09.11.2012	
Hypothecation of plant and machineries purchased out of Bank's finance and other unencumbered plant and machineries		6.67



sq.mtrs. build up area situated, lying f7land being at Dist Sub-district Ahmedabad, Taluka Bavla, Mouje Kerala of Survey No.155 and 156 bounded as under :	5 29.03.201	
	6 27.09.201	
North : Plot No.1301 South : 30 Mtr.wide road East : Agriculture farm West : Plot No.704	7 13.10.201	
	8 24.09.201	
Memorandum of entry of title deeds for creation of equitable mortgage of the following properties belonging to mortgagor Shri Rakshit Ashwinbhai Patel (Director, Guarantor and Mortgagor)	9 17.04.202	00.86
	0 14.08.202	
(iii) All the piece and parcel property being Flat No.A-62 admeasuring 1071 sq.fts. (carpet area) i.e. 1665 sq.fts. (super built up area) i.e. 155 sq.mtrs. alongwith the bungalow standing thereon of "Orchid Woods" situated on Final Plot No.296 of Town Planning Scheme No.26, Survey No.866 mouje Makarba, Taluka Vejalpur, Registration district and sub-district of Ahmedabad-4 (Paldi) alongwith the construction standing thereon, which is bounded as under :	0 12.02.202	
	1	
North : common road of building South : Flat No.A-63 East : Common plot West : Flat No.A-616		00.86
(iv) All that piece and parcel property being Flat No.B-63 admeasuring 1071 sq.fts. (carpet area) i.e. 1665 sq.fts. (super built up area) i.e. 155 sq.mtrs. alongwith the bungalow standing thereon of "Orchid Woods" situated on Final Plot No.296 of Town Planning Scheme No.26, Survey No.866 mouje Makarba, Taluka Vejalpur, Registration district and sub-district of Ahmedabad-4 (Paldi) alongwith the construction standing thereon, which is bounded as under :		00.86
North : Flat No.B-62 South : Common road of building		



<p>East : Common road West : Flat No.B-64</p> <p>(v) All the piece and parcel property being Flat No.B-74 admeasuring (carpet area) i.e. 1665 sq.fts. (super built up area) i.e. 155 sq.mtrs. alongwith the bungalow standing thereon of "Orchid Woods" situated on Final Plot No.296 of Town Planning Scheme No.26, Survey No.866 mouje Makarba, Taluka Vejalpur, Registration district and sub-district of Ahmedabad-4 (Paldi) alongwith the construction standing thereon, which is bounded as under :</p> <p>North : Flat No.B-71 South : Common road of building East : Flat No.B-73 West : Common garden</p> <p>Copy of Registration of charge of the Registrar of Companies is enclosed as Exhibit 'G'.</p>	
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10. The Applicant has filed OA No. 184 of 2022 before the Debts Recovery Tribunal - I of Gujarat State on 19.02.2022. The OA is pending for adjudication.
11. The Applicant has relied upon the following documents:

ANNEXURE – I

Exhibit	Particulars
'A'	THE LATEST AND COMPLETE COPY OF THE FINANCIAL CONTRACT REFLECTING ALL AMENDMENTS AND WAIVERS TO DATE. (As per attached separate list)
'B'	CERTIFIED ACCOUNT STATEMENT OF COMPANY
'C'	CERTIFICATE U/S. 2-a OF THE BANKER'S BOOK EVIDENCE ACT, 1891
'D'	<ol style="list-style-type: none"> 1. Annual Balance sheet for 2019-20 of M/s Jay Formulation Ltd. 2. Copy of Index of Charges from official Website of Registrar of Companies as on 12.02.2020. 3. Notice of demand u/s. 13(2) of SARFAESI Act, 2002 dated 05.07.2021 issued by State Bank of India demanding outstanding dues as on <u>30.06.2021</u> of Rs. 59.93 Crores (inclusive of interest upto 30.06.2021)

'E'	Copy of order passed by the Debts Recovery Tribunal I, Gujarat State Ahmedabad in O.A. No. 184 of 2022.
'F'	The workings for computation of amount and days of default in tabular form.
'G'	Certificates of Registration of charge issued by Registrar of Companies.
'H'	Authorization for submitting application on behalf of the applicant.
'I'	Authorization to accept the service of the process on behalf of the applicant.
'J'	Copy of CIBIL report.
'K'	Proof of Service
'L'	Copy of the Receipt of E-Filing the Receipt

EXHIBIT A (SEPARATE LIST)

M/s Jay Formulations Ltd. Ahmedabad, was established on <u>15.06.1988</u> . They are banking with us since 31.12.1996.	
Sr. No.	Details of documents
1/A	Memorandum of Entry dated 22.05.2001
1.	Memorandum for recording extension of mortgage by deposit of title deeds governing enhanced limit dated 09.04.2006.
2.	Letter of arrangement dated 17.02.2007.
3.	Agreement of loan cum hypothecation dated 20.02.2007
4.	Guarantee Agreement dated 20.02.2007.
5.	Memorandum for recording extension of mortgage by deposit of title deeds covering enhanced limit dated 11.04.2007.



6.	Letter of arrangement dated 17.01.2008.
7.	Supplemental Agreement of loan cum 18.01.2008.
8.	Guarantee Agreement dated 18.01.2008.
9.	Memorandum for recording extension of mortgage by deposit of title deeds covering enhanced limit and/or creation of equitable mortgage on additional properties for existing limits and enhanced limits and additional facilities dated 18.01.2008
10.	Letter of arrangement dated 23.12.2008
11.	Supplemental Agreement of Loan cum hypothecation dated 12.01.2009.
12.	Guarantee Agreement dated 12.01.2009.
13.	Memorandum relating to deposit of title deeds for creation of further charge for term loan overall limit where initial charge is created by way of mortgage by deposit of title deeds dated 12.01.2009.
14.	Letter of arrangement dated 21.03.2009.
15.	Supplemental Agreement of Loan cum hypothecation dated 23.03.2009

16.	Guarantee Agreement dated 23.03.2009.
17.	Memorandum relating to deposit of title deeds for creation of further charge for term loan overall limit dated 06.06.2009.
18.	Letter of confirmation for extension by deposit of title deeds covering enhanced limit dated 01.06.2009.
19.	Letter of arrangement dated 29.12.2011.
20.	Supplemental Agreement of loan cum hypothecation dated 29.12.2011.
21.	Guarantee Agreement dated 29.12.2011.
22.	Letter of arrangement dated 09.11.2012.
23.	Supplemental Agreement of loan cum hypothecation dated 09.11.2012.
24.	Guarantee Agreement dated 09.11.2012.
25.	Memorandum relating to deposit of title deeds for creation of further charge for overall limit where the initial charge is created by way of mortgage by deposit of title deeds dated 09.11.2012.
26.	Letter of arrangement dated 16.01.2015.
27.	Supplemental Agreement of Loan cum hypothecation dated 16.01.2015.
28.	Guarantee Agreement dated 16.01.2015
29.	Memorandum relating to deposit of title deeds for creation of further charge for term loan overall limit dated 17.01.2015.
30.	Letter of arrangement dated 23.03.2016
31.	Supplemental Agreement of Loan cum hypothecation dated 23.03.2016
32.	Guarantee Agreement dated 23.03.2016.



33.	Memorandum relating to deposit of title deeds for creation of further charge for term loan overall limit dated 29.03.2016.
34.	Letter of arrangement dated 27.09.2017.
35.	Supplemental Agreement of Loan cum hypothecation dated 27.09.2017
36.	Guarantee Agreement dated 27.09.2017
37.	Memorandum relating to deposit of title deeds for creation of further charge for term loan overall limit dated 28.09.2017
38.	Letter of arrangement dated 17.11.2018
39.	Supplemental Agreement of loan cum hypothecation dated 17.10.2018,
40.	Guarantee Agreement dated 17.10.2018.
41.	Memorandum relating to deposit of title deeds for creation further charge for term loan overall limit dated 17.10.2018
42.	Letter of arrangement dated 24.09.2019
43.	Supplemental Agreement of Loan cum hypothecation dated 24.09.2019.
44.	Guarantee Agreement dated 24.09.2019.
45.	Memorandum relating to deposit of title deeds for creation of further charge for term loan overall limit dated 24.09.2019
46.	Supplemental Agreement of loan-cum-Hypothecation dated 17.04.2020
47.	Agreement to register mortgage with Sub-Registrar dated 17.04.2020.

48.	Letter of arrangement dated 14.08.2020
49.	Letter of arrangement dated 14.08.2020.
50.	Supplemental Agreement of loan cum hypothecation dated 14.08.2020
51.	Guarantee Agreement dated 14.08.2020.
52.	Memorandum relating to deposit of title deeds for creation of further charge for term loan overall limit dated 14.08.2020 for Rs.54.10 crore.
53.	Memorandum relating to deposit of title deeds for creation of further charge for term loan overall limit dated 14.08.2020 for Rs.60.85 crore:
54.	Letter of arrangement dated 12.02.2021
55.	Copies of the Resolutions of Board of Directors of the Company dated 17.02.2007, 26.11.2007, 09.11.2012, 24.12.2008, 14.08.2020, 30.03.2020, 08.02.2021.



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12. It is stated that the Corporate Debtor acts as a manufacturer, supplier and exporter of allopathic medicines/pharmaceuticals. The Corporate Debtor was enjoying financial assistance from the Financial Creditor from 2001 which were renewed/reviewed/enhanced from time to time.
13. Pursuant to the account being declared as NPA on 29.06.2021 in the books of the Financial Creditor, the Financial Creditor decided to recall the entire advances.
14. It is stated that despite the recall notice, the Corporate Debtor has not repaid the Financial Creditor, and hence, the present application.

15. The Financial Creditor has filed the Record of Default (“**RoD**”) with Information Utility on the e-portal on 07.07.2023. Perusal of the same indicates that for various facilities, separate RoD is issued and all the RoD’s are having date default as 29.03.2021 and “deemed to be authenticated” and the authentication was completed on 31.01.2023.
16. Perusal of the RoD reveals that the default amount is more than Rs.1,00,00,000/- (Rupees One Crore).
17. Reply was filed by the Corporate Debtor on the E-portal on 12.10.2022 and an additional reply was filed by the Corporate Debtor on 07.08.2023. Reply has been affirmed by one Mr. Rakshit Ashwinbhai Patel in the capacity of Authorized Signatory. The summary of the various objections are as under:
 - i. The Financial Creditor has not clearly mentioned the date of default.
 - ii. The default amount is within the period covered U/s. 10A of the IBC, 2016.
 - iii. The Applicant has already initiated steps under the SARFAESI Act.
 - iv. The business of the Corporate Debtor was adversely affected during COVID-19.

v. The Respondent is MSME.

18. Rejoinder was filed on the E-portal on 24.09.2022. In rejoinder, the Financial Creditor clarified that the date of NPA is 29.06.2021. The actions of the Applicant under the provisions of the SARFAESI Act, 2002 and under the provisions of the RDB Act, 1993 cannot prohibit the Applicant from filing application U/s. 7 of the IBC, 2016.
19. As per the rejoinder, reference to alleged several schemes for MSME is not relevant in the facts and circumstances of the case, the Respondent is not falling within the pecuniary criteria set by the Government for extending financial assistance for MSME sector companies.
20. The Financial Creditor has already given the benefits of the Government guidelines on the COVID-19 pandemic to the Corporate Debtor and sanctioned further loan facilities of CCECL of Rs.6.75 Crore on 18.04.2020 and GECL facility of Rs.2.42 Crore on 13.08.2020.
21. We have heard the counsels from both sides and have perused the records. Revised Form 1 has been filed by the Applicant on 12.09.2023 under Dairy No. D3528 dated 13.09.2023 which mentions that the date of default is 29.03.2021 which is not falling within the 10A period. The Respondent has not objected to the same which is recorded in interim

order dated 20.09.2023. Further, the Respondent has filed the written submissions on 25.09.2023 under Inward No. 3732 which has also been taken into consideration.

22. The Applicant has produced the Record of Default with Information Utility. Perusal of the same reveals that the date of default is 29.03.2021 and defaulted amount is more than Rs.1,00,00,000/- (Rupees One Crore) which is not falling within the purview of Section 10 A of Insolvency and Bankruptcy Code, 2016. Taking into consideration the above facts, we are convinced that the Corporate Debtor has defaulted on a financial loan in excess of Rupees One Crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application.

23. Further, the Hon'ble Supreme Court in the case of Innoventive Industries Limited v. ICICI Bank Limited, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

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 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 speed 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 incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence 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 that the adjudicating authority may reject an application and not otherwise.

24. In view of the same, the Application filed by the Applicant/financial Creditor under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

25. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under:-

(i) The Respondent/Corporate Debtor- **M/s. Jay Formulations Ltd.** is admitted in the Corporate Insolvency Resolution Process under section 7 of the IBC, 2016.

(ii) As a consequence thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.

- a. *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;*
- 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

e. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

(iv) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.

(v) As proposed by the Financial Creditor, we appoint **Mr. Vinod Tarakchand Agrawal, having Registration No. IBBI/IPA-001/IP-P00641/2017-18/1109, (email-ca.vonod@gmail.com)**, under section 13 (1)(c) of the Code to act as Interim Resolution Professional (“**IRP**”) of Corporate Debtor, subject to the

condition that no disciplinary proceedings are pending against him. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (vii) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.

- (viii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (x) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016.
- (xi) The Financial Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per the Rules.

(xii) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

26. Accordingly, CP (IB)/123(AHM) 2022 stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

Rajeev/PS