



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court Room-2**

IA 644 of 2019 in C.P.(I.B) 342/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 13.02.2020**

Name of the Company: Vijay Timber Industries Pvt Ltd
V/s
Chief Manager through its Punjab
National Bank ARM Branch
Section of the Companies Act : Section 65(1) r.w 60(5) 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.	SUNIL BHASKAR	ADVOCATE	(APPLICANT) CORPORATE PERSON VIJAY TIMBER	
2.	Rajiv Katheria } Anup Goudar }	Adv.	Resp- Original P.N.B	


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 13th day of February, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

**Inv. P 16/17/18 of 2019
IA No. 644 of 2019
IN/WITH
C.P.(IB) No. 342/7/NCLT/AHM/2018**

Inv. P 16 of 2019

Shri Anandkumar P. Chopra,
R/o Revenue Survey No. 515/1,
Vill: Mithi Rohar,
Taluka: Gandhidham-Kutch

.....Applicant
(Proposed Intervener)

Versus

1. Punjab National Bank
2. Vijay Timber Industries Pvt. Ltd.

.....Respondents

Inv. P 17 of 2019

Shri Bhatti Jamnaram Mishrimal,
Plot No. 1,2 and 3,
Survey No. 259/1.
Vill: Mithi Rohar,
Taluka: Gandhidham-Kutch

.....Applicant
(Proposed Intervenor)

Versus

1. Punjab National Bank
2. Vijay Timber Industries Pvt. Ltd.

.....Respondents

Inv. P 18 of 2019

Shri Keshar Singh Bhursingh Chaudhary,
Shed No. E-17, First Floor,
E-18 and E-19,
GIDC Gandhidham,
Taluka: Gandhidham-Kutch

.....Applicant
(Proposed Intervenor)

Versus

1. Punjab National Bank
2. Vijay Timber Industries Pvt. Ltd.

.....Respondents

IA 644 of 2019

Vijay Timber Industries Pvt. Ltd.
Plot No.445,
Sector - 1/A,Ground Floor,
OSLO Circle,
Gandhidham-370201

..... Applicant
(Original Respondent)

Shankar Singh

Shankar

Versus

Punjab National Bank,
ARM Branch,
Circle Office,
6th Floor, Gujarat Bhavan,
Opp: M.J. Library, Ellisbridge,
Ahmedabad-380006.

..... Respondent
(Original Applicant)

CP(IB) No. 342 of 2018

Punjab National Bank
Having its registered office at
Plot No.4, Sector-10,
Dwarka,
New Delhi-110 075.

And Branch Office at:

ARM Branch,
Punjab National Bank
Circle Office, 6th Floor,
Gujarat Bhavan,
Opp: M.J. Library,
Ellisbridge,
Ahmedabad-380006

:
Petitioner
(Financial Creditor)

Versus

M/s. Vijay Timber Industries Pvt. Ltd.
Plot No.445,
Sector - 1/A, Ground Floor,
OSLO Circle,
Gandhidham,
Gujarat-370201

:
Respondent
Corporate Debtor

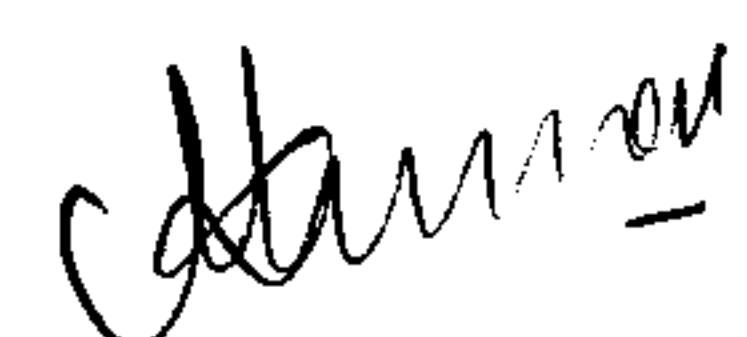
Order delivered on 13th February, 2020

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

Appearance: Inv. P 16 of 2019:

Mr. Sunil Bhavsar Learned Lawyer for the Respondent.
Mr. Anilkumar Mundra Learned Lawyer for Intervener.
Mr. Raju Kothari and Mr. Anip Gandhi Learned Lawyer for Punjab
National Bank.





Appearance: Inv. P 17 of 2019:

Mr. Sunil Bhavsar Learned Lawyer for the Respondent.
Mr. Anilkumar Mundra Learned Lawyer for Intervener.
Mr. Raju Kothari and Mr. Anip Gandhi Learned Lawyer for Punjab
National Bank.

Appearance: Inv. P 18 of 2019:

Mr. Sunil Bhavsar Learned Lawyer for the Respondent.
Mr. Anilkumar Mundra Learned Lawyer for Intervener.
Mr. Raju Kothari and Mr. Anip Gandhi Learned Lawyer for Punjab
National Bank.

Appearance: IA 644 of 2019:

Mr. Sunil Bhavsar Learned Lawyer for the Applicant.
Mr. Raju Kothari and Mr. Anip Gandhi Learned Lawyer for Respondent.


Appearance: CP(IB) No.342 of 2018:

Mr. Raju Kothari and Mr. Anip Gandhi Learned Lawyer for the Petitioner.
Mr. Sunil Bhavsar Learned Lawyer for the Respondent.

COMMON ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member(T)]

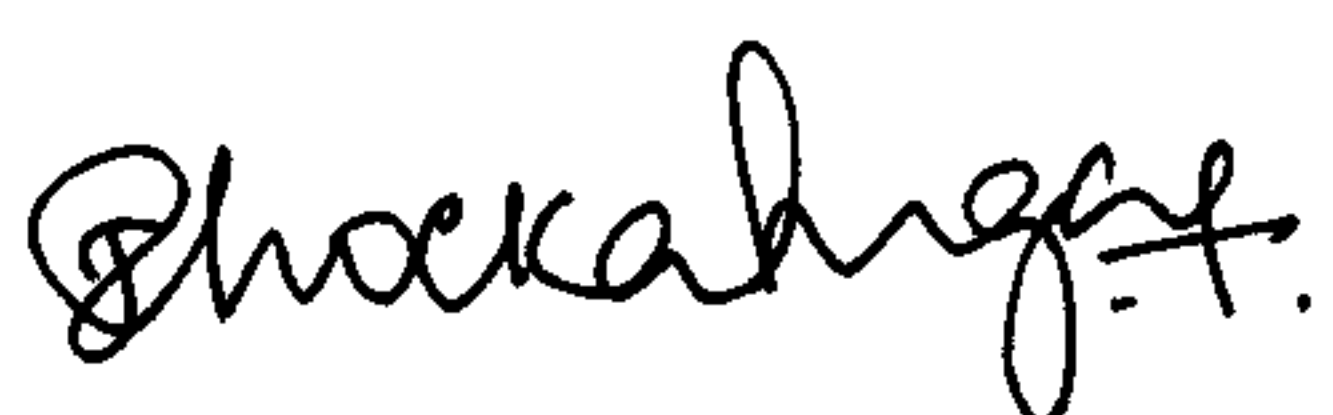
1. Shri Dinesh Solanki, Chief Manager of Punjab National Bank, the Petitioner/Financial Creditor has filed this Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the IB Code"] read with Rule 4 of the insolvency and Bankruptcy Application to Adjudicating Authority Rules, 2016 (hereinafter referred to as "the Rules") for the purpose of initiating corporate insolvency resolution process [hereinafter referred to as "CIRP"] against Vijay Timber Industries Pvt. Ltd., the Respondent company, the Corporate Debtor.
2. Vijay Timber Industries Pvt. Ltd., the Corporate Debtor, a company was incorporated under the provisions of the Companies Act, 1956 under the name and style of Vijay Lumbers Pvt. Ltd. The name of the Company was subsequently changed from Vijay Lumbers Pvt. Ltd. to Vijay Timber Industries Pvt. Ltd., having its Registered Office at Plot No. 445, Sector – 1A, Ground Floor, OSLO Circle, Gandhidham, Gujarat 370 201. The

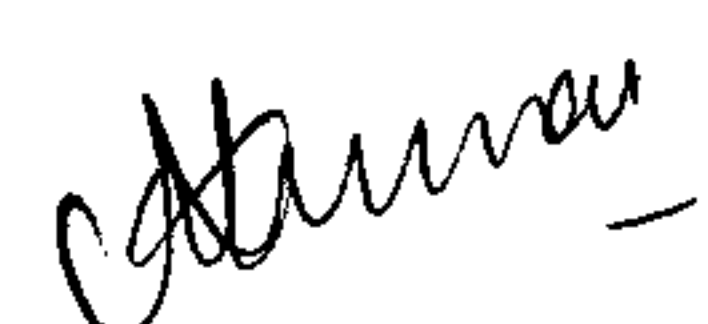




Company is engaged in the business activity of trading in timber and manufacturing of plywood.

3. The Authorised Share Capital of the Respondent Company, the Corporate Debtor is Rs. 4,00,00,000/- (Rupees Four Crores only). The Paid-Up Share Capital of the Respondent Company, the Corporate Debtor is Rs. 3,25,90,000/- (Rupees Three Crores Twenty-Five Lakhs Ninety Thousand only).
4. As per Part IV of the application, the total amount of debt sanctioned by Punjab National Bank, the Financial Creditor to the Respondent Company, the Corporate Debtor amounted to Rs. 1050 Lacs - Rs. 400 Lacs towards Cash Credit Hypothecation, Rs. 50 Lacs towards CC Hypothecation of Book Debts and Rs. 600 Lacs towards Non Fund Based FLC(DA). It is further stated that aggregate amount of default as on 31stMay, 2018 amounted to Rs. 185,92,32,695/- (Rupees One Hundred Eighty-Five Crores Ninety-Two Lakhs Thirty-Two Thousand Six Hundred Ninety-Five Only). The date of NPA is 13th June, 2009. The date of default is 13.06.2009.
5. The Petitioner, the Financial Creditor, has detailed facts, as under:
 - 5.1 It is submitted by the Petitioner that the Respondent Company i.e. the Borrower and the other Guarantors failed to honour the terms and conditions of the credit facilities granted by the Bank and hence, the Applicant Bank classified the account of the Respondent Company as "Non-Performing Account" (NPA) on 13.06.2009 and issued a notice under Section 13(2) of the SARFAESI Act on 16.07.2009 to the Borrower and on 12.12.2009 to Guarantor M/s. Vijay Timber Industries and its Partners.
 - 5.2 It is further submitted that Applicant Bank filed O.A. No. 27 of 2010 on 04.03.2010 for claim of Rs. 48,45,13,576/- (Rupees Forty-Eight Crores Forty-Five Lakhs Thirteen Thousand Five Hundred Seventy-Six only) with further interest before the Hon'ble Debts Recovery Tribunal-II at Ahmedabad and the said matter is pending.





- 5.3 It is submitted by the Applicant that Respondent Company challenged the entire proceedings initiated under SARFAESI Act by way of Securitization Application No. 62 of 2009. The said appeal was disposed of vide Order dated 02.08.2016. However, the Hon'ble Debt Recovery Tribunal-II granted an opportunity of raising objections under Section 13(3)(A) of Securitization Act. Since the Respondent Company could not file the objections within ten days, the Respondent Company preferred Misc. Application No. 57 of 2016 on 24.08.2016 but the said Misc. Application was dismissed.
- 5.4 The Applicant Bank submits that after the dismissal of Misc. Application No. 57 of 2016 on 24.08.2016, a lot of litigation has taken place with the last dismissal by Hon'ble High Court of Gujarat vide its order dated 06.02.2018.
- 5.5 It is submitted by the Applicant Bank that the Hon'ble Debts Recovery Tribunal II Ahmedabad issued a Recovery Certificate on 27.12.2017 against the Respondent No. 1 Company in O.A. No. 27 of 2010. However, the Applicant Bank has not taken the symbolic/physical possession of any of the properties of the Respondent Company.
- 5.6 It is further submitted by the Applicant Bank that winding up petitions- Company Petition No. 97 of 2005 preferred by TEBE HANDELSGESSELLSCHAFT GMBH and Company Petition No. 185 of 2005 preferred by Anchor Corporation Limited are pending against the Respondent Company.
6. It is stated that following security documents were executed by the Corporate Debtor in favour of the Financial Creditor:

Sr. No.	Security Held	Value of Security (Rs. In Lakhs)
1.	Plot No.BB-S-57 Ward 12 A, Gandhidham	60.54
2.	Plot No.52/53, Sector 4, Gandhidham	714.00
3.	Plot No.182, Sector-12B, Gandhidham	109.00
4.	Shed No.17E, GIDC, Gandhidham	147.00

Shankar Singh

Shankar Singh

5.	Plot No.51, Sector-10C, Gandhidham	288.00
6.	Plot No.11, Sector-10C, Gandhidham	189.00
7.	Survey No.259/1, Plot No.1,2 & 3, Village, Mithirohar	459.00
8.	Survey No.515/1, Village, Mithirohar	666.00
9.	Survey No.516, A-7-36 G, Village Mithirohar, Gandhidham & Survey No.573 paiki (24), Mithirohar, Gandhidham	996.00
10.	Survey No.419/P/1 and 419/P/2.	255.00
	Total:	3883.54

7. It is stated by the Applicant Bank that aforesaid Credit Facilities were secured by equitable mortgage of property by deposit of title deeds and hypothecation of Movable Assets (Plant and Machinery) of the Corporate Debtor.
8. It is further stated by the Applicant Bank that there is no Succession Certificate or Probate or Will or Letter of Administration or Court Decree under the Indian Succession Act.
9. The Petitioner submitted that there is a financial contract reflecting all amendments and waivers to date which are as under:
- Term Loan dated 29.12.2005. Annexure-I.
 - Hypothecation of Assets to secured term loans dated 29.12.2005. Annexure-J
 - Deed of Hypothecation to secure LC Facility dated 25.07.2006. Annexure-K
 - Hypothecation of goods and books deeds to secure cash credit facilities dated 27.01.2006. Annexure-L
 - Deed of Hypothecation to secure LC dated 27.07.2007. Annexure-M
 - Agreement of Guarantee dated 29.12.2005 by Indermal R. Shah. Annexure-N

Shankar Singh

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- Agreement of Guarantee dated 29.12.2005 by Vijay Timber Corporation. Annexure-O
- Agreement of Guarantee dated 29.12.2005 by (1) Smt. Badamidevi Indermal Shah, (2) Smt. Pushpadevi Gulabchand Shah, (3) Sr. Gulabchand Indermal Shah, (4) Sr. Vijay Kumar Indermal Shah, (5) Smt. Manjudevi Vijay Kumar Shah and (6) Smt. Sangeeta Devi Kantilal Shah. Annexure-P
- Agreement of Guarantee dated 27.07.2007 by Vijay Timber Industries Pvt. Ltd. Annexure-Q
- Agreement of Guarantee dated 27.01.2006 by Shri Gulabchand Indermal Shah (HUF). Annexure-R
- Agreement of Guarantee dated 27.01.2006 by M/s Vijay Timber (Kandla) Pvt. Ltd. Annexure-S
- Agreement of Guarantee dated 27.06.2006 by (1) Smt. Badamidevi Indermal Shah, (2) Smt. Pushpadevi Gulabchand Shah, (3) Sr. Gulabchand Indermal Shah, (4) Sr. Vijay Kumar Indermal Shah, (5) Smt. Manjudevi Vijay Kumar Shah (6) Smt. Sangeeta Devi Kantilal Shah and (7) Sri Indermal R. Shah. Annexure-T
- Agreement of Guarantee dated 19.10.2006 by (1) Shri Indermal (2) Shri Gulab I Shah (3) Shri Vijay Indermal (4) Badamibai (5) Pushpadevi (6) Majula (7) Sangeeta and (8) Gulab I Shah. Annexure-U
- Agreement of Guarantee dated 31.03.2006 by Vijay Timber (Kandla) Pvt. Ltd. Annexure-V.
- Agreement of Guarantee dated 27.07.2007 by (1) Shri Indermal Shah, (2) Vijaykumar I. Shah, (3) Gulabchand I. Shah and (4) Ashvinbhai G. Shah. Annexure-W
- Agreement of Guarantee dated 19.10.2006 by Vijay Timber (Kandla) Pvt. Ltd. Annexure-X
- Agreement of Guarantee dated 27.07.2007 by Smt. Badmidevi Shah. Annexure-Y
- Agreement of Guarantee dated 27.07.2007 by Shri Gulabchandbhai I. Shah. Annexure-Z
- Agreement of Guarantee dated 27.07.2007 by M/s. Timber (Kandla) Pvt. Ltd. Annexure-Z1

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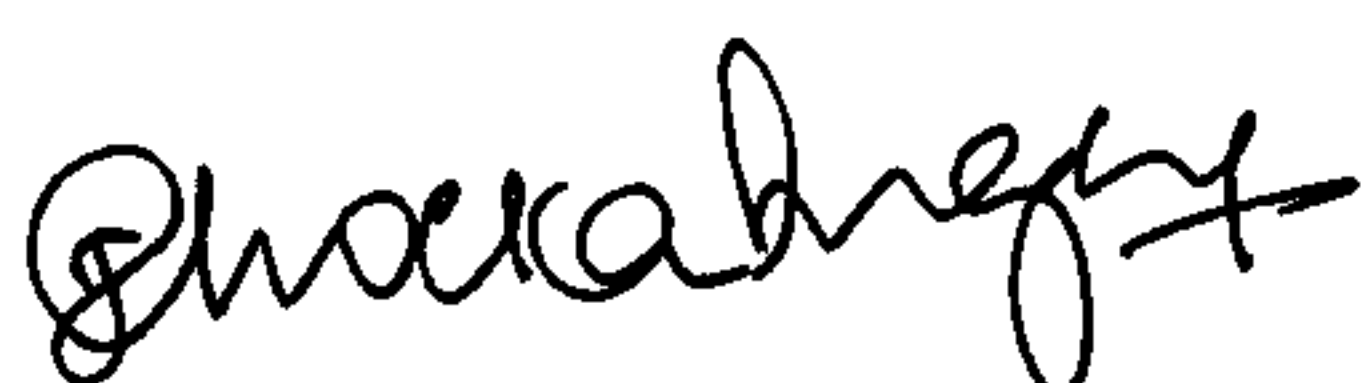
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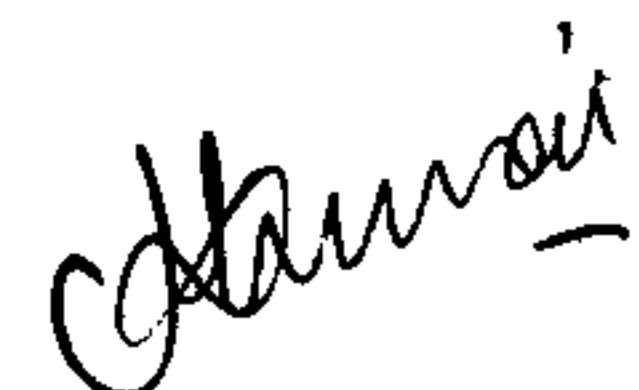
- Agreement of Guarantee dated 27.07.2007 by Shri Vijay Timber Industries (P) Ltd. Annexure-Z2
 - Agreement of Guarantee dated 27.07.2007 by Shri Vijay Timber Industries (P) Ltd. Annexure-Z3
 - Agreement of Guarantee for working capital term loan dated 27.09.2008. Annexure-Z4
 - Agreement of Guarantee for working capital term loan dated 27.09.2008. Annexure-Z5
 - Agreement of Guarantee dated 30.03.2009 by Shri Gulabchand I Shah (HUF). Annexure-Z6.
 - Agreement of Guarantee dated 30.03.2009 by (1) Indermal Shah (2) Shri Gulabchand I Shah, (3) Ashwin Gulabchand Shah ad (4) Vijaykumar I.Shah. Annexure-Z7
 - Agreement for cash credit / working capital term loan- existing borrowers dated 30.03.2009. Annexure-Z8
 - Resolution dated 23.01.2006. Annexure-Z9
 - Resolution dated 12.03.2009. Annexure-Z10
 - Undertaking dated 27.07.2007. Annexure-Z11
 - Deposit of Title dated 28.07.2007. Annexure-Z12
 - Deposit of Title dated 29.01.2006. Annexure-Z13
10. The Applicant Bank submits that the account was classified as NPA on 13.06.2009 and issued Demand Notice under the provisions of the SARFAESI Act on 16.07.2009 to the Borrower and dated 12.12.2009 to the Guarantor. An amount of Rs.,185,92,32,695/- remained due as on 31.05.2018.
11. The Respondent Company made its submission on 05.03.2019, some of them are narrated hereunder. The Respondent Company has denied all the allegations, averments, statements and declarations made in the aforesaid Insolvency Application filed by the Applicant Bank and further submitted that entire contents of the aforesaid Insolvency Application are untrue and the Applicant Bank has suppressed many material and vital facts and stated many false things to mislead and misguide this Adjudicating Authority.





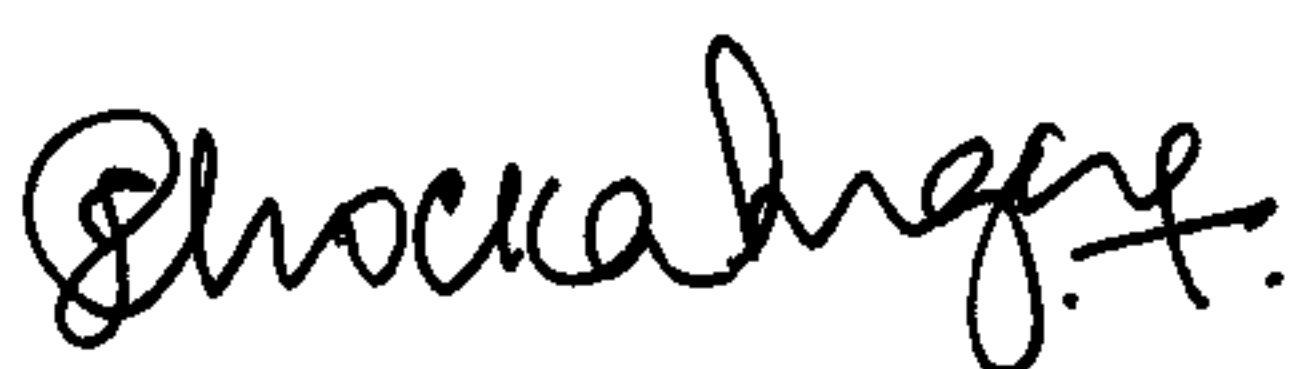
- 11.1 The Respondent Company has also stated that authorised officer of the Applicant Bank, who signed the aforesaid Insolvency Application on behalf of the Applicant Bank, has no authority to file present Insolvency Application on behalf or in the name of the Applicant Bank. The said authorized officer has no power or authority even to sign the present insolvency application.
- 11.2 The Respondent Company has also stated that aforesaid Insolvency Application is not filed within the period of limitation. The present insolvency application is barred by law of limitation.
- 11.3 The Respondent Company has termed the entire claim of the Applicant Bank as vague, false, frivolous and without any evidence. The Respondent Company has stated that that account of the Respondent Company was allegedly classified by the Applicant Bank as NPA on 13.06.2009 wrongly and illegally and the Respondent Company became sick due to wrongful act and wilful negligence on the part of the Applicant Bank due to not providing adequate working capital and loan in time and due to these reasons, the Respondent Company incurred heavy losses and damages and therefore, could not repay the loan dues as agreed and hence the loan account of the Respondent Company became sick and the Respondent Company has filed its counter claim on 17.08.2015 before Hon'ble Debt Recovery Tribunal-II Ahmedabad, for an amount of Rs. 1188.45 Crores as on 28.02.2015 together with interest @18% per annum with the monthly rests from the date 01.03.2015 till the recovery and the outcome of the said counter claim will have a direct impact on the present Insolvency Application.
12. The Applicant Bank in its rebuttal has stated that Respondent Company has not denied their liability; they have filed their objections mainly on the ground of limitation in filing CP(IB) No. 342 of 2018.
- 12.1 The Applicant Bank has referred the proposal of the Respondent Company dated 31.05.2017 annexed as **Annexure "Z-18"** with their rebuttal. The Applicant Bank has further stated that Respondent Company has acknowledged Applicant Bank's debts in their Balance

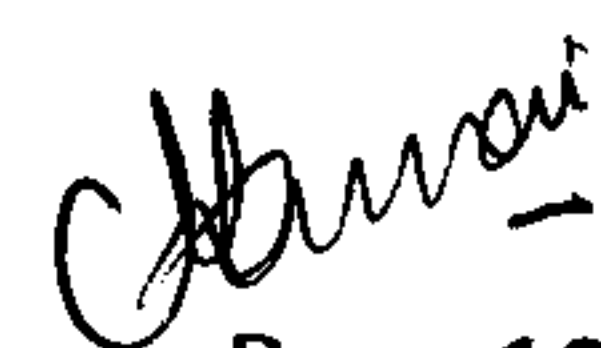




Sheets for the year ended on 31.03.2016 and annexed copy of Balance Sheet with their rebuttal as **Annexure "Z-19"**.

- 12.2 The Applicant Bank has further submitted that Hon'ble Debts Recovery Tribunal II Ahmedabad has by its order dated 06.10.2017 passed a decree against the Respondent Company and annexed with their rebuttal, a copy of aforesaid order as **Annexure "Z-20"**. It is further submitted by the Applicant Bank that Hon'ble Debts Recovery Tribunal II Ahmedabad issued a Demand Notice in view of the Recovery Certificate on 27.12.2017 and annexed with their rebuttal, a copy of the aforesaid Demand Notice dated 27.12.2017 as **Annexure "Z-21"**.
13. The Respondent Company has submitted their submissions on the lines of their preliminary objections and has added nothing new. The Respondent Company has also stated that IA No. 644 of 2019 filed by the Respondent Company may be treated as part and parcel of this written submissions/arguments.
14. It is submitted by the Applicant Bank that Respondent Company i.e. Borrower and other Guarantors have failed to honour the terms and conditions of the credit facilities granted by the Bank and hence the Applicant Bank has classified the account of the Respondent Company as "Non Performing Account" (NPA) on 13.06.2009. The Respondent Company has lost its substratum and is unable to repay the outstanding amount of Rs. 185,92,32,695/- (Rupees One Hundred Eighty Five Crores Ninety Two Lacs Thirty Two Thousand Six Hundred Ninety Five only) including interest till 31.05.2018 plus further interest till the date of payment.
- 14.1 It is submitted by the Applicant Bank that date of NPA is 13.06.2009 and further submitted that as evident from the pleadings in Affidavit in Support (Page 570 to 587 of the Application), there are various litigations. It is submitted that the Notice under Section 13(2) of the SARFAESI Act was initiated on 12.12.2009 and as evident from Para 2.8, 2.9, 2.10, 2.11 and 2.12, it is clear that the said proceedings are pending till filing of the present application. Relying upon the Judgment of Hon'ble NCLAT in the matter of Shehnath Singh in Company Appeal (AT)

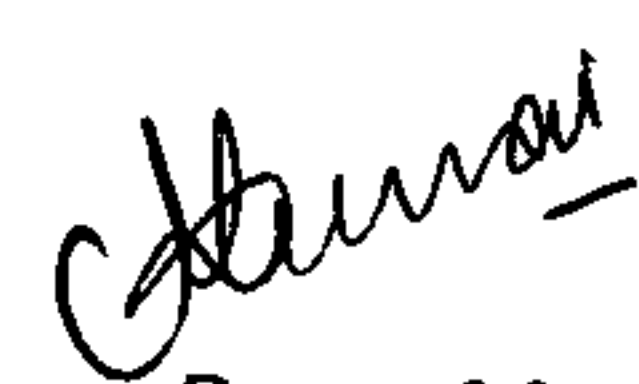




No. 672 of 2019, wherein it was held that in computing the period of limitation, the time during which the Applicant has been prosecuting with due diligence, another civil proceeding against the Corporate Debtor shall be excluded, the Applicant Bank has submitted that the aforesaid petition is within the limitation.

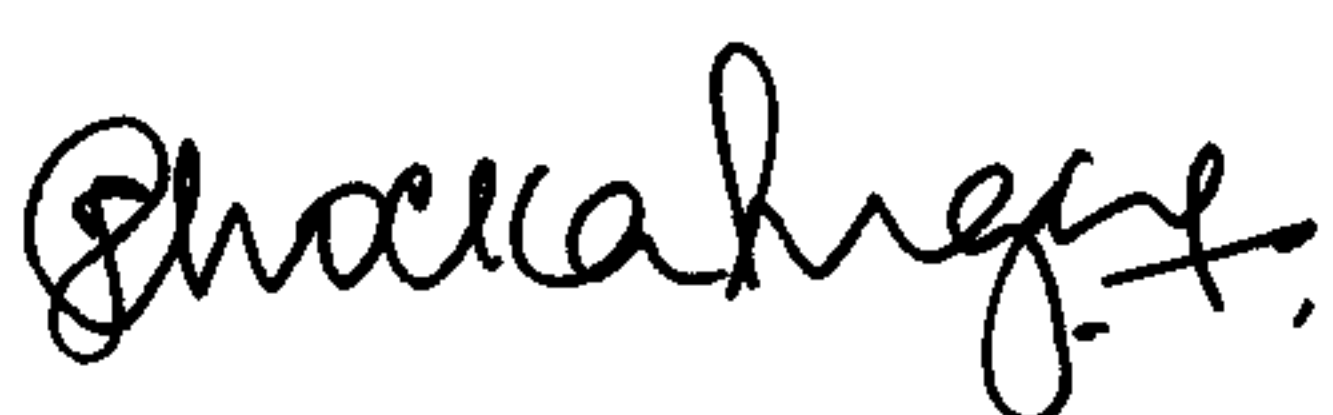
- 14.2 It is submitted by the Applicant Bank that the date of NPA is 13.06.2009 and the Applicant Bank initiated the proceedings before the Hon'ble Debts Recovery Tribunal-II at Ahmedabad by way of filing an O.A. No. 27 of 2010 filed on 04.03.2010 (Page 535 of the Application). The said O.A. No. 27 of 2010 filed on 04.03.2010 was decreed on 06.10.2017 (Page 28 of the Rebuttal Affidavit) and the Recovery Certificate was issued on 27.12.2017 (Page 185 of the Application). As per the above referred Judgment of Sheshnath Singh, the period from 04.03.2010 to 27.12.2017 is required to be excluded for computing the period of limitation. It is further submitted that the aforesaid application CP(IB)No. 342 of 2018 is filed in July, 2018 and even on this ground, the present Application is within limitation.
- 14.3 The Applicant Bank has further submitted that O.A. was decreed on 06.10.2017 (Page 28 of Rebuttal Affidavit) and as per the order of Hon'ble NCLAT, reported in 103 Taxman at Page 111 in the matter of Satyendra Jain, it is held that the period of 12 years from the date of decree would be applicable for filing the proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Paragraph 14 of the said Judgment). The said Judgment further says that the Application to be admitted on satisfaction that (i) default has occurred, (ii) the application is complete and (iii) no disciplinary proceedings are pending against the proposed IRP. Therefore, it is submitted by the Applicant Bank that even on this ground, the Petition is within limitation.
- 14.4 The Applicant Bank states that the date of NPA is 13.06.2009 and the Applicant Bank has submitted Balance Sheet of the Respondent Company as on 31.03.2016 (Page 7 of the Rebuttal Affidavit). It is submitted by the Applicant Bank that Respondent has admitted the claim of the Applicant Bank in their Balance Sheet. It is further submitted by the Applicant Bank that during the course of hearing, the





Applicant Bank had supplied the Annual Report of the Respondent Company for the Financial Year 2017-18 wherein the Respondent Company has admitted the liability of the Applicant Bank as on 31st March, 2018 in their Balance Sheet. The Applicant Bank states that as per the Judgment of the Hon'ble NCLT Mumbai, in the matter of Edelweiss Asset Reconstruction Company Limited vs. Birla Cotsyn (India) Limited reported in 101 Taxman at Page 76, it is held that the amount reflected in the Balance Sheet would extend the period of limitation for three years from the date of the Balance Sheet. It is further held that it is logical to assume that the liability reflecting in the latest years were also reflected in the intervening Balance Sheets. Therefore, even on this ground, the Petition is within the limitation.

- 14.5 The Applicant Bank submits that date of NPA is 13.06.2009 and the Applicant Bank initiated SARFAESI Proceedings and RDDB proceedings in the year 2009/2010 and are pending till 2017/2018. The Applicant Bank further submits that the aforesaid period is excluded for computing the period of limitation. The Applicant Bank further submits that the Respondent Company has admitted their liability vide their letter dated 31.05.2017 and it is very much evident from the letter that the Respondent Company requested for proposal for amicable solution. It is submitted by the Applicant Bank that the proposal dated 31st March, 2017 would extend the period of limitation to further three years and hence even on this ground, the Application is within the limitation.
15. The Respondent Company has stated that on Page 570 which is affidavit in support, the Applicant has mentioned the word "Operational Creditor" instead of word "Financial Creditor" and hence the Petition deserves to be rejected.
- 15.1 In reply to this, the Applicant Bank submits that Applicant Bank has correctly mentioned the Section and hence this typographical error cannot be a ground to dismiss the Petition.
16. The Applicant Bank has submitted that filing of counter claim itself is an evidence that the Respondent Company is admitting the claim of the Applicant Bank. The Applicant Bank has further submitted that such



issues or any dispute, even if exists, cannot be a ground to dismiss a Petition filed under Section 7 of the IB Code. The Applicant Bank is relying on the Judgment of the Hon'ble NCLAT inn Company Appeal (AT) No. 1021 of 2019 in the matter of Karan Goyel wherein it is held that pre-existing dispute cannot be a subject matter of Section 7 Petition.

17. As far as the objection of the Respondent Company regarding existence of series of litigations, including parallel proceedings, pending before the parties, the Applicant Bank submits that pendency of any proceeding is no bar to Section 7 Petition relying on the Judgment of NCLT, Ahmedabad in the matter of Neesa Leisures Limited wherein it was held that pendency of proceedings for winding up under SARFAESI Act, RDDB Act or even pendency of Civil Suit is no bar to the main proceedings under IB Code. The Applicant Bank submits that Applicant Bank has disclosed all the litigations and has enclosed the various orders passed in various matters which are at Annexure D, E, F, G, H, H-1, H-2, H-3, H-4 and H-5.
18. The Applicant Bank has submitted that Third Parties, being an entity other than the Financial Creditor/Corporate Debtor, are not offered the right to be heard and to intervene the proceedings under Section 7 of IBCode as rightly held by the NCLT Ahmedabad in the matter of Neesa Lesures Limited.
19. In response to the objection of the Corporate Debtor, the Applicant Bank submits that properties were put to auction through the Recovery Officer, Debt Recovery Tribunal-II, Ahmedabad but the sale is not still confirmed and no amount is still realized. However, relying upon the Judgment of the Hon'ble NCLAT in the matter of Vinit Khosla Reported in 110 Taxman at Page 217, wherein it was held that at the stage of admission of application, the Adjudicating Authority need not enter into such dispute and requirement is to give limited notice and consideration would be to see whether or not satisfaction by Adjudicating Authority would be reflected on the basis of Section 7(5).

Shivacharya

Chauhan

20. During the pendency of Petition CP(IB) No. 342 of 2018, Intervention Applications No. 16, 17 and 18 of 2019 have been filed and Interlocutory Application No. 644 of 2019 has been filed.
- 20.1 Intervention Applications No. 16, 17 and 18 of 2019 have been filed by the tenants of the properties of the Corporate Debtor. These Intervention Applications cannot be entertained in view of the Judgment passed by the Hon'ble Supreme Court of India and Hon'ble NCLAT wherein it is categorically settled that in respect of application filed under Sections 7, 9 or 10 of IB Code, no Intervention Application is to be entertained. Accordingly, these Intervention Applications are not maintainable.
- 20.2 Interlocutory Application No. 644 of 2019 is filed by one Mr. Prakash Damodardas Ramchandani, POA holder of the Corporate Debtor, the original Respondent in the Petition CP(IB) No. 342 of 2018. The averments in the IA are more or less similar to the preliminary objections filed by the Respondent Company and hence do not require detailed deliberations.
21. In respect of petition filed under Section 7 of IB Code for initiation of CIRP by Financial Creditor, the Adjudicating Authority has to see the existence of financial debt, whether the default has occurred and whether the petition is complete.
22. On the perusal of the records submitted along with the petition, this Adjudicating Authority is of the considered view that:
- 22.1 Petition in Form-1 filed by Shri Dinesh Solanki, Chief Manager of the bank and in support of the same, the Petitioner has filed authorization letter and the petition is complete.
- 22.2 There is financial debt owed by the Respondent to the Petitioner.
- 22.3 Date of default is 13.06.2009.
- 22.4 (a) As per judgment of *Hon'ble NCLAT in the matter of Shehnath Singh in Company Appeal (AT) No. 672 of 2019*, wherein it was held that in





computing the period of limitation, the time during which the Applicant has been prosecuting with due diligence, another civil proceeding against the Corporate Debtors shall be excluded. Relying upon this judgment, time taken in Hon'ble Debt Recovery Tribunal-II, Ahmedabad from 04.03.2010 to 16.10.17 is required to be excluded for computing the period of limitation.

- 22.4 (b) The Applicant Bank has filed the balance sheet of the Corporate Debtor certified by the auditors for the year 2015-16 & 2017-18 in which an amount of Rs.26,43,50,000/- is shown as the debt due to the applicant bank as on 31.03.2015, 31.03.2016, 31.03.2017 & 31.03.2018. Further, in the statement of accounts for the year 2015-16, in addition to showing the debt due to the bank as liability in the Balance-sheet, in the Note No.22 to the Accounts, the auditors of the company have certified as

“the bank borrowings of the company have been classified as non-performing assets by the banks in earlier years.”

This shows that the debt due to the bank is acknowledged in the balance sheet of the Corporate Debtor in earlier years also. It is a matter of record that the debt due to the bank is shown as liability in the balance sheet of the Corporate Debtor as on 31.03.2015, 31.03.2016, 31.03.2017 and 31.03.2018 and further the auditors have also certified that the bank borrowings of the Respondent Company has been classified as non-performing assets by the banks in earlier years. It leads to the view that the debt is carry forward in the balance sheet of the Corporate Debtor in each and every previous year. The presumption is an inference of certain facts drawn from other proved facts from other available document(s). The Hon'ble Delhi High Court in *Zest Systems (P) Ltd. Vs. Centre for Vocational Entrepreneurship Studies reported in 2018 SCC Online Del 12116 dated 19.09.2018* held that entry made in the company's balance-sheet amounts to an acknowledgement of the debt and has the effect of extending the period of limitation under Section 18 of the Limitation Act, 1963.

Shoekha Singh

Shoekha Singh

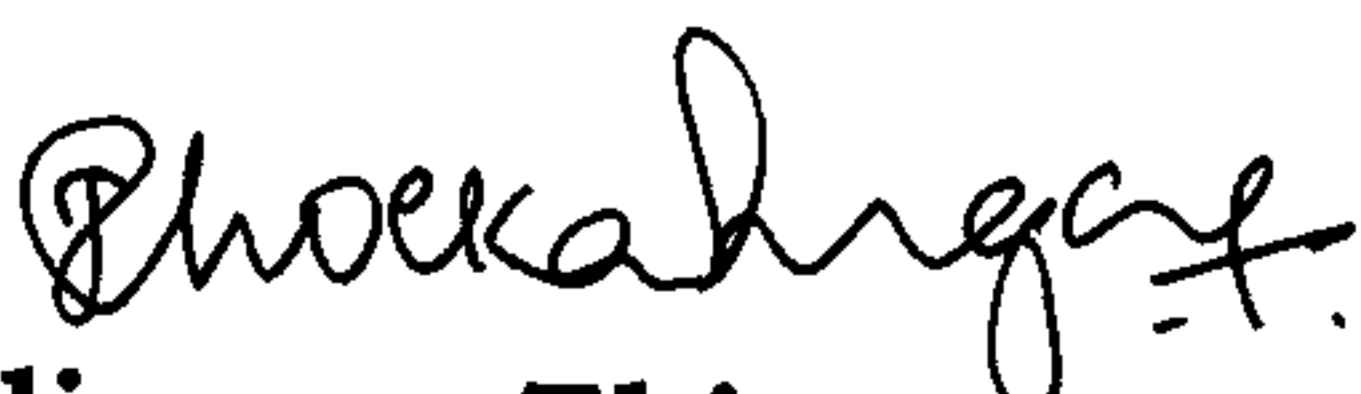
- 22.4 (c) The Respondent vide its letter dated 31.05.2017 to the Applicant Bank has made certain proposals for amicable solution which amounts to acknowledgement of the debt by the Respondent. There is also a reference of their earlier letter dated 01.12.2016.
- 22.4 (d) In view of the above, the petition is not barred by law of limitation.
23. The Petitioner has proposed the name of Mr. Rameshchandra D. Choudhary having Registration No. IBBI/IPA-001/IP-P00157/2017-18/10326 to act as IRP under Section 13(1)(b) of the IB Code and written communication in Form-2 of IBBI has been filed by the proposed IRP.
24. From the documents placed on record, this Adjudicating Authority is satisfied that default has been committed by the Corporate Debtor in repayment of loan amount to the Bank. The petition is complete. As a consequence, the instant petition is admitted in terms of Section 7 of the IB Code and the moratorium as envisaged under the provisions of Section 14(1) of IB Code and extracted hereunder shall follow in relation to the Respondent Corporate Debtor.
- (1) Subject to provisions of sub-Section (2) and (3), on the Insolvency Commencement date, the Adjudicating Authority herein declares moratorium for prohibiting all of the following viz;-
- (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 Securitization and


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Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(54 of 2002);

- (iv) the recovery of any property by an owner as lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (2) The supply of goods and essential services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) 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.
- (4) 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.
25. This Adjudicating Authority hereby appoints Mr. Rameshchandra D. Choudhary having Registration No. IBBI/IPA-001/IP-P00157/2017-18/10326 to act as "Interim Insolvency Resolution Professional" under Section 13(1)(b) of the IB Code.
26. The petition along with Intervention Petitions No.16,17,18 of 2019 and IA No. 644 of 2019 stand disposed of accordingly with no order as to costs.
27. Communicate a copy of this order to the Petitioner, Respondent and to the Interim Insolvency Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

PC