

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




**C.P. (I.B) No.245/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 21.01.2020**

Name of the Company: IDBI Capital Markets & Securities Ltd  
V/s  
JBF Petrochemicals Ltd

Section of the Companies Act : Section 9 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.	MAULIK NANAVATI	ADVOCATE	RESPONDENT	
2.	MANVI DAMLE	"	"	
	ABHISHEK SHARMA	"	"	


**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 21st day of January, 2020

  
**MANORAMA KUMARI**  
**MEMBER JUDICIAL**

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

**C.P. No. (IB) 245/9/NCLT/AHM/2018**

**In the matter of:**

**M/s. IDBI Capital Markets & Securities Ltd.**

Mafatlal Centre, 3<sup>rd</sup> Floor

Nariman Point

MUMBAI 400 021

:

**Petitioner**  
Operational Creditor

**Versus**

**M/s. JBF Petrochemicals Ltd.**

Survey No. 273

Village Athola

Dadra Nagar Haveli

SILVASSA 396 230

:

**Respondent**  
Corporate Debtor

**Order delivered on 21<sup>st</sup> January, 2020.**

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

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

**Appearance:**

Advocate Maulaik Nanavati with Advocate Ms. Manvi Damle for  
corporate debtor.

Advocate Mr. Harsh Parekh for operational creditor

**ORDER**

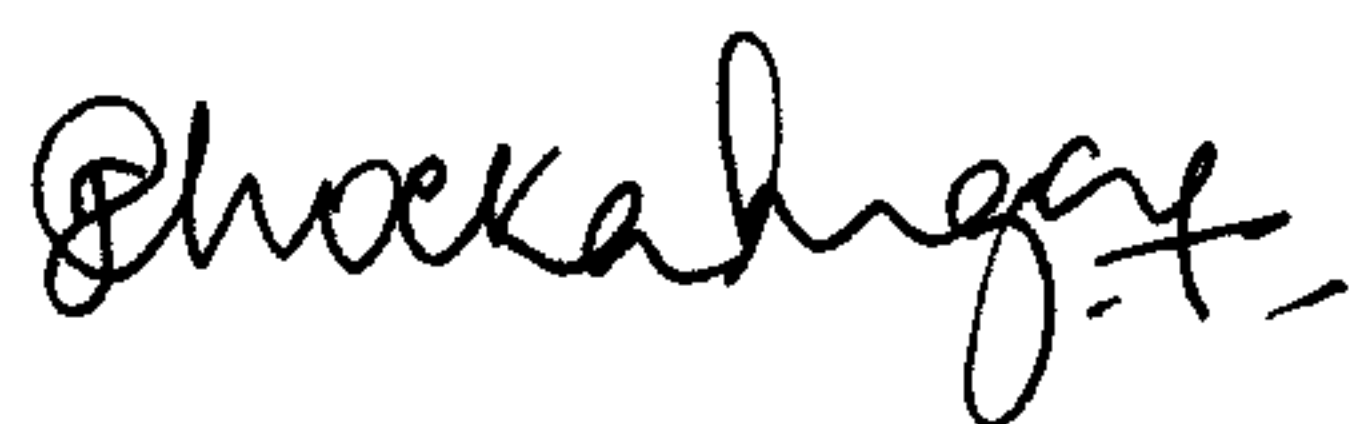
**[Per: Ms. Manorama Kumari, Member (J)]**

1. Mr. Utpal Mehta, being authorised person on behalf of the operational creditor M/s. IDBI Capital Markets and Securities Ltd. filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"].

*Chockalingam*

*Manorama*

2. The applicant/operational creditor is a company registered under the provisions of the Companies Act, 1956 having its registered office at Nariman Point, Mumbai 400 021 having identification No. U65993GO1075578 operates as investment banking and securities company and is, inter alia, engaged in offering services pertaining to investment banking, capital market, private equity, corporate advisory services etc.
3. The respondent corporate debtor is a limited company registered on 18.09.2008 having registration No. U24290DN2008PLC000287 having its registered office at Silvassa. Authorised share capital of the respondent company is Rs. 1250,00,00,000/- and paid up share capital is Rs. 1086,64,16,910/-.
4. The applicant/Petitioner has submitted that the respondent company had approached the operational creditor for engaging the operational creditor for assessment of working capital requirement and arrangement of working capital of the corporate debtor. That, pursuant thereto, an offer letter was executed in June, 2016 whereby the corporate debtor engaged the services of the operational creditor for assistance in providing working capital.
5. It is further stated by the applicant that pursuant of the aforesaid offer letter, the operational creditor provided the





services as envisaged in the offer letter and raised timely invoices in respect of the same. It is stated by the operational creditor that total three invoices dated 17.06.2016, 30.12.2016 and 31.03.2017 were raised by the operational creditor. That, the corporate debtor did not raise any grievance with respect to the services provided by the operational creditor, however, the corporate debtor has failed to clear payment of its dues for the aforesaid invoices, except for a part-payment of Rs. 20.00 lacs in respect of the invoice dated 17.06.2016 (page 33 of petition). That, the remaining payment of Rs. 78.00 lacs which was due and receivable by the operational creditor, was not made. Consequently, the operational creditor was constrained to issue demand notice attached with invoices under section 8 of the I & B Code upon the corporate debtor with regard to the unpaid outstanding debt of Rs. 78,00,000/-. That, the corporate debtor is in total default of **Rs. 78,00,000/- (Rupees seventy-eight lacs only)**. That, the default is continuing since last payment dated 31.03.2017.

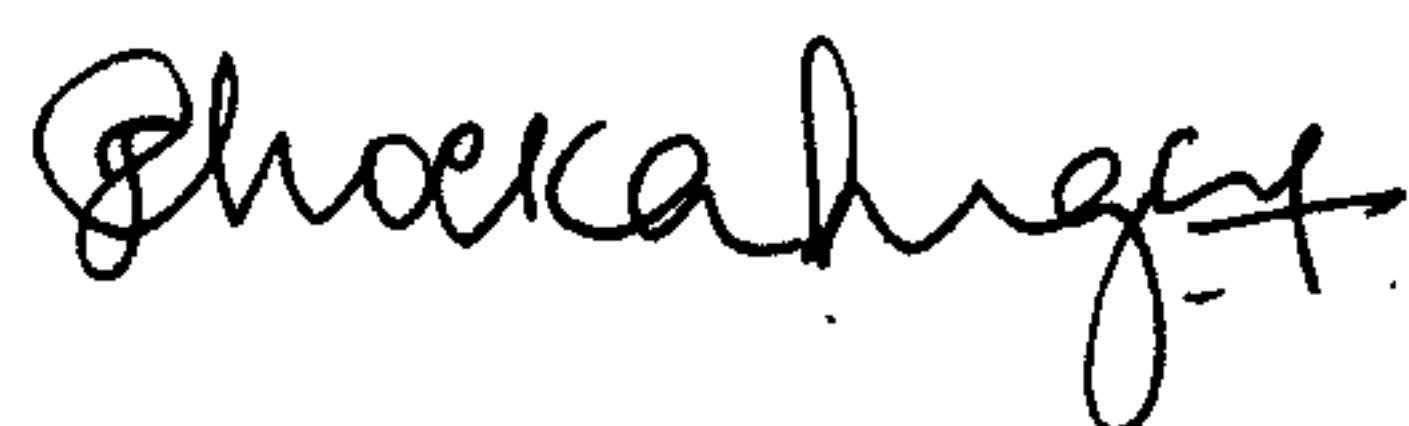
6. In support of its claim, the petitioner has submitted copy of documents like invoices, demand notice, statement of accounts, bank statement, authority letter etc.
7. The respondent filed affidavit in reply inter alia raising various objections/allegations. The first and foremost objection raised by the corporate debtor is "existence of

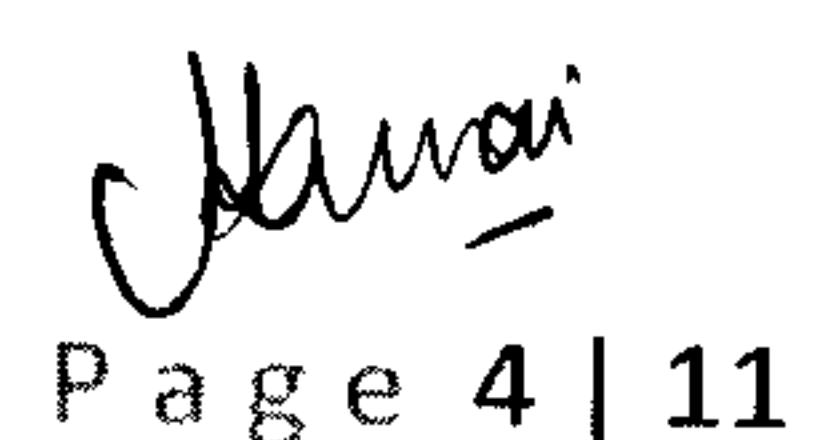
*Shoeka Hossain*

*Chatterjee*

dispute and deficient services rendered by the applicant". That, the respondent has also raised objections with regard to maintainability of the application on the grounds of authorisation, suppression of material facts and documents etc.

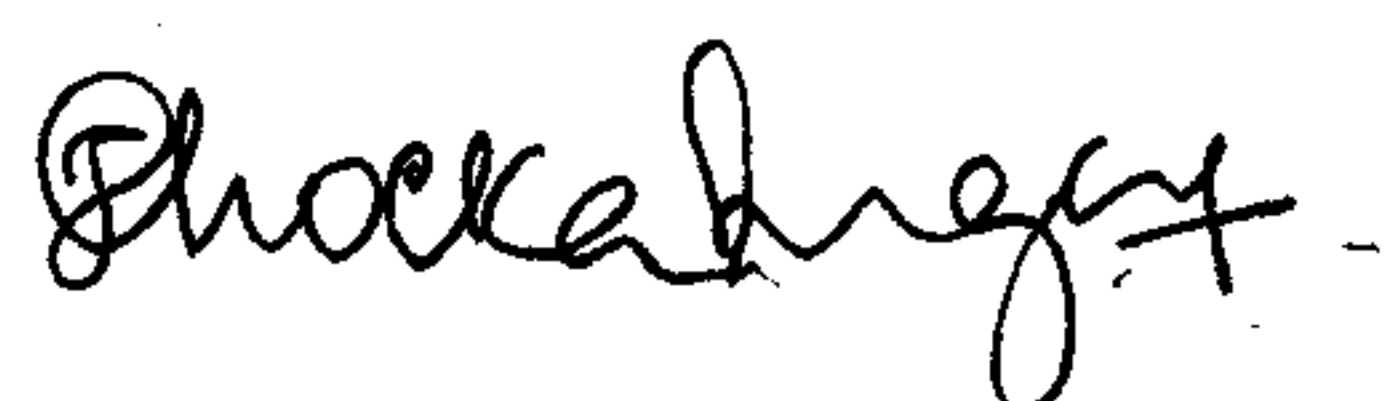
8. The respondent has further stated that it had made payment of Rs. 20.00 lacs towards the commencement fee under the first milestone. That, with respect to the second milestone i.e. issuance of sanction letter by IDBI Bank – Lead bank on behalf of all the banks, the applicant raised invoice dated 30.12.2016 for Rs. 30.00 lacs, even prior to issuance of sanction letter. That, the corporate debtor informed the applicant that the invoice dated 30.12.2016 for Rs. 30.00 lacs could not be raised as sanction letter was not received from IDBI Bank on behalf of all the lenders of the corporate debtor. That, sanction letter was issued by (i) IDBI Bank on 31<sup>st</sup>, January, 2017 for credit facilities of Rs. 360.00 crores (inclusive of Rs. 157.00 crores SBLC) and (ii) Indian Overseas bank for Rs. 140.00 crores (inclusive of Rs. 60 crores SBLC). That, though the aforesaid amounts were sanctioned, the same were not disbursed till date and thus, the second milestone was not achieved. Thus, as against the working capital of Rs. 1500.00 crores, only 283 crores (Rs. 140.00 crores – IDBI Bank and Rs. 60.00 crores – Indian Overseas bank) was sanctioned, which was also not disbursed. Further, as against the SBLC of Rs. 550.00 crores, the applicant could only arrange sanction of Rs.

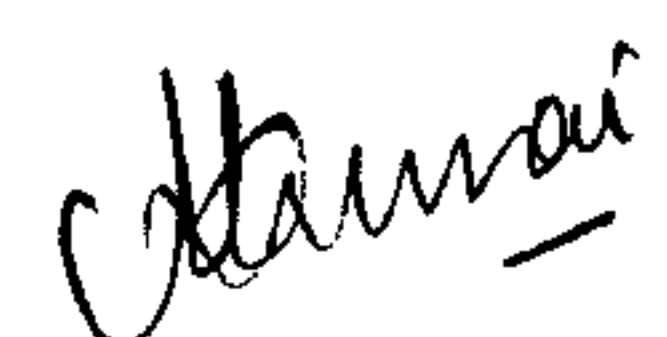


  
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217.00 crores, which was also not disbursed till date. Thus, the applicant has miserably failed to arrange for the sanction from the other lenders of the corporate debtor as contemplated in the offer letter and this led to non-fulfilment of the scope of services which gave rise to an existence of dispute. That, the non-completion of the assignment within the time stipulated in the offer letter not only amounts to existence of dispute but also caused loss to the corporate debtor.

9. The corporate debtor has further stated that it is not aware of the basis on which the invoice dated 31<sup>st</sup> March, 2017 was issued by the applicant for Rs. 45.00 lacs for the third milestone. That, the applicant is well aware that the services supposed to be rendered by it under the offer letter are incomplete and deficient, due to which the corporate debtor did not issue the **Advisor Assignment Completion Certificate** as required under Clause 14(g) of the offer letter, which is important document to show as proof of completion of work.
10. Corporate debtor raised objection with regard to affidavit verifying the application is not as per NCLT Rules, 2016 and is not executed on Rs. 100/- non-judicial paper.
11. Corporate debtor further raised objection with regard to demand notice dated 21.03.2018 issued to the corporate



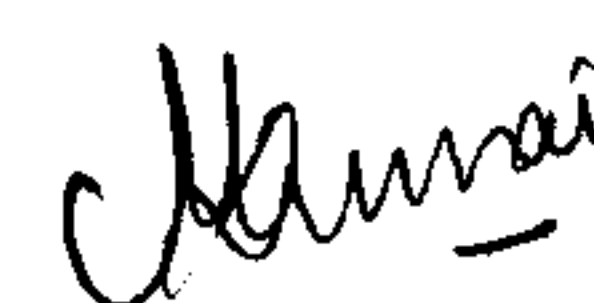
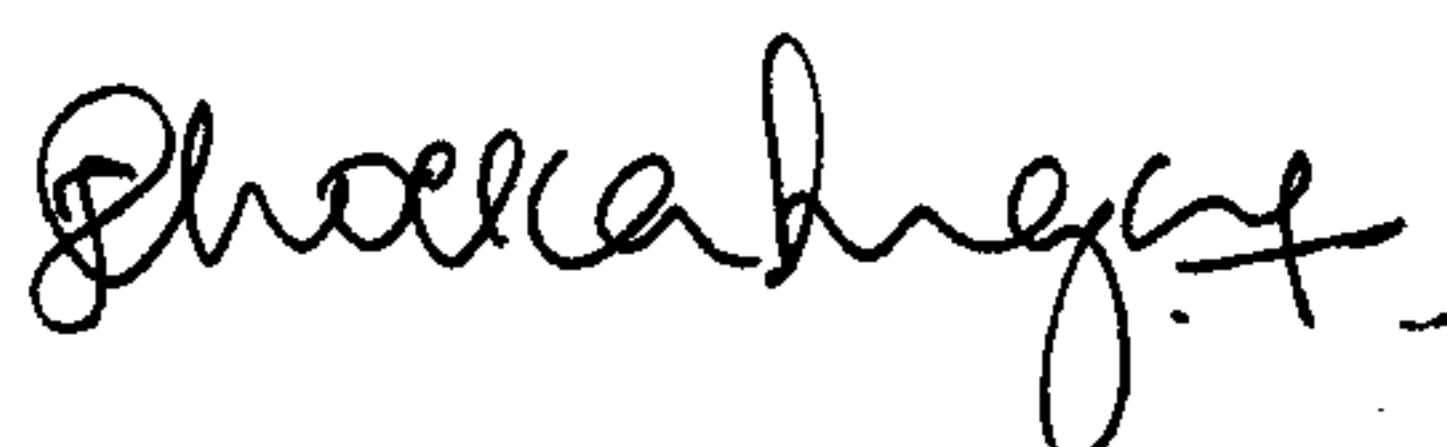


debtor is not as per form 3 and 4 of the I & B Code and it does not contain the details of agreement entered into between the parties and also relied on the decision in Mobilox Innovations Private Limited case. Further, the operational creditor suppressed the fact of receipt of dispute notice/reply from the corporate debtor raising the dispute vide reply letter dated 27.03.2018 as annexed at page No. 57 of the reply. In the said reply the corporate debtor has raised dispute with regard to no-disbursement of the loan amount as assured, till that date.

12. The corporate debtor has also raised objection in respect of the authority letter issued by one Ms. Chrisina D'souza is bad in law as she does not hold authority to delegate the power of signing the application filed under Section 9 of the I & B Code.

### **Findings**

13. Heard learned counsels appearing for both the sides as also perused the documents placed on record.
14. On perusal of the records it is found that the respondent company had approached the applicant to assist in arranging working capital requirement of maximum Rs. 2000.00 crores (including SBLC of Rs. 550.00 crores to be



given to ONGC Mangalore Petrochemicals Limited) or lower amount as per assessment of working capital of lead bank. According to the offer letter dated June, 2016 (page 20 to the application) the applicant was entitled to the following payment terms: -

No.	Sr.	Milestone	Amount in Lacs
01		Commencement fee	20.00
02		On issuance of sanction letter by IDBI Bank	30.00
03		On financial closure *	Balance fee
		Total fees payable	200.00

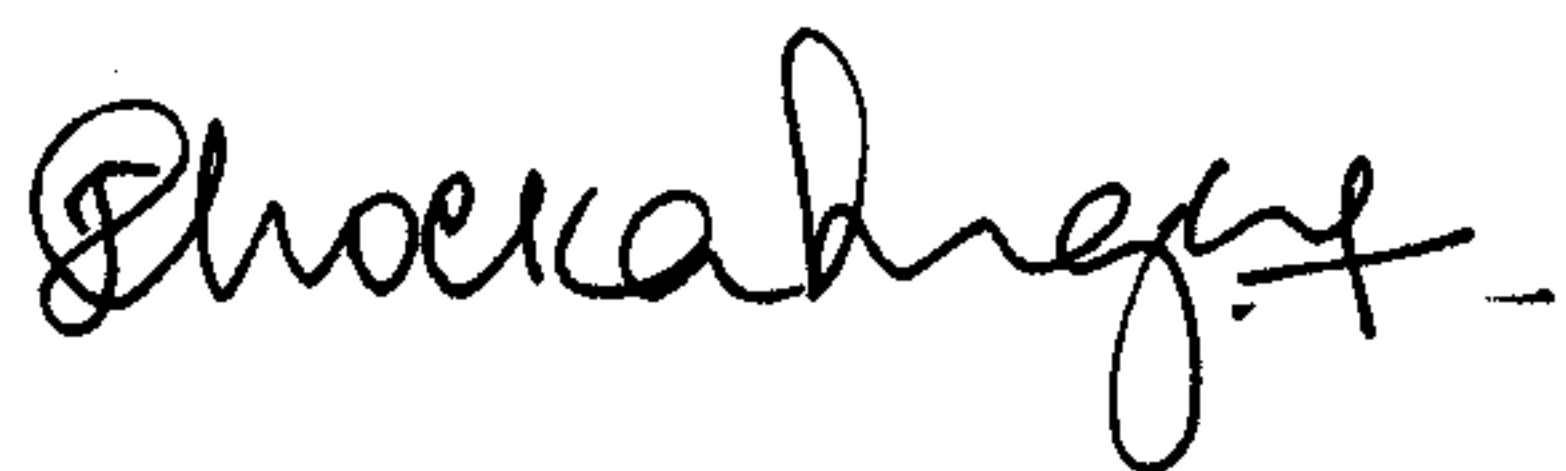
\*payable on pro rata basis, proportionate to the limits applied for.

15. On perusal of the records it is found that with respect to the first invoice dated 17<sup>th</sup> June, 2016 for Rs. 23.00 lacs (page 34 to the petition), the corporate debtor has already made payment of Rs. 20.00 lacs. With respect to the second invoice dated 30<sup>th</sup> December, 2016 (page 35 to the petition) and third invoice (page 36 to the petition) are not due and payable for the reasons as stated in the reply dated 28.03.2018 filed by the respondent at page No. 57 as Annexure "A", wherein the corporate debtor has categorically stated that the corporate debtor has only received sanction letter from IDBI Bank Limited for an amount up to Rs. 360.00 crores and that amount has not been disbursed till date. Thus, the purpose of engaging the services of the operational creditor for assistance in providing working capital has not been fulfilled. Even the operational creditor has also failed to produce any document(s) with regard to disbursement of the amount in favour of the corporate debtor.

*Shankar Singh*


*Munshi*

16. On perusal of the records it is also found that the operational creditor's demand notice dated 21.03.2018 has been replied by the respondent vide letter dated 27.03.2018 (page 59 to the reply by respondent) thereby raising a bona fide and genuine dispute and the said fact has not been disclosed by the applicant. On the contrary the petitioner by way of affidavit sworn that the corporate debtor has not raised any dispute.
17. It is also a matter of record that the corporate debtor has filed the affidavit in support of application, however the same is not executed in non-judicial paper nor any court fee is paid. Further, paragraph No. 2 of the General Affidavit verifying the petition annexed at page No. 45 of the application is not complete and spaces are kept vacant. Genuineness of the document is doubtful as to how the Public Notary has put his seal and signature in an incomplete document.
18. The Hon'ble Supreme Court in ***Mobilox Innovations (supra)*** gave a very wide meaning to the term '***the existence of a dispute***'. The Hon'ble Supreme Court held that word 'and' appearing in clause (a) of sub-section (2) of Section 8 must be read as 'or' keeping in mind the legislative intent and the fact that anomalous situation would arise if it is not read as 'or'. By reading it as 'and' the bankruptcy cases would be



stave off only where the cases are pending and the cases where dispute has arisen just few days back or where the limitation for filing cases is not over may be pushed in to insolvency process, though a dispute may exist. The code is designed in a manner that operational creditors with small debt are not able to push corporate debtor into premature insolvency resolution process it is enough that dispute exists between the parties.

19. Thus it is established that there is pre-existing dispute in as much as the operational creditor has totally failed to provide the services to the corporate debtor as till date not a single penny is disbursed in favour of the corporate debtor as agreed by the operational creditor, though the corporate debtor has paid an amount of Rs. 20.00 lacs as process fee.
  
20. On perusal of the records it is also found that on the basis of resolution passed on 26<sup>th</sup> October, 2017 and Office Circular dated 21.11.2017, Ms. Christina D'souza - Company Secretary of the applicant has authorised Mr. Utpal Mehta, to initiate CIRP proceedings against the respondent company and, accordingly, Mr. Utpal Mehta has signed and filed the instant petition on behalf of the applicant. Further, on perusal of the record it is found that Ms. Christina D'souza, Company Secretary and Compliance Officer authorised Mr. Utpal Mehta vide authority letter dated 23.04.2018 (page 19 of application) to file application



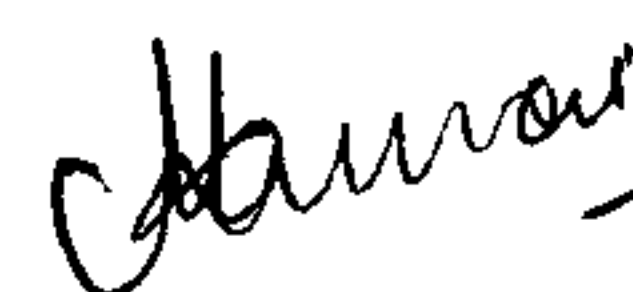
under Section 9 of the I & B Code 2016 before the NCLT, Kolkata bench only, not to Ahmedabad.

21. Further, by way of an office circular dated 21.11.2017 (page 14 of the application Mr. Garla delegated power to inter alia 'file' applications on behalf of the company before Tribunals to Mr. V. Gopinath and Ms. Christina D'souza, company secretary and compliance officer (page 17 of the application, point 4b). No express power to sign an affidavit in support of application to be filed before the Tribunal or court was conferred by Mr. Garla on Mr. Gopinath or Ms. D'souza.

In clauses 4a and 4d at serial No. 5 of the office circular relating to filing before the government and governmental authorities the word 'sign' has been expressly mentioned whereas the same stands omitted in 4b suggesting that the delegator of power knew the exact nature of power being delegated by him. Thus, power delegated to Ms. Christina by Mr. Garla is the power only to 'file' applications or lodge the same with the registry on behalf of the company and not 'sign' affidavit in support of the applications. Since Ms. Christina herself did not possess authority to sign affidavit on behalf of the company, she could not have further authorised Mr. Utpal Mehta to sign affidavit in support of the application on behalf of the company.

22. In view of what is stated herein above, the Adjudicating Authority is of the considered view that the instant





application devoid of merit and as such is not maintainable on the following grounds: -

- (i) That, there is pre-existing dispute;
- (ii) there is no default on the part of the respondent as the applicant has miserably failed to honour its obligation under the offer letter;
- (iii) Inadequacy of services of the applicant has disentitled it to claim any money from the corporate debtor under the offer letter dated June, 2016;
- (iv) The deponent i.e. Mr. Utpal Mehta has filed the application without any proper authority;

23. In the result, the instant application is dismissed. No order as to cost. However, this will not stand in the way of the Petitioner invoking the appropriate forum seeking to enforce its claim as against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration of the provision of IB Code, 2016.



**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**



**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**

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