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

CP(IB) 305/7/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 : 18.12.2019**

Name of the Company: Bank of India

V/s.

Pacific Pipe Systems 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 18th day of December, 2019.

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

C.P. (I.B.) No. 305/7/NCLT/AHM/2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

In the matter of:

BANK OF INDIA

Incorporated under the Banking
Companies (Acquisition and Transfer of
Undertakings) Act, 1970 (Act V of 1970)

Having Registered Office at:
Bandra-Kurla Complex,
Star House, C-5, G Block,
Bandra(E), Mumbai – 400051

Having its Branch Office at:
Bank of India,
Ahmedabad Recovery Branch,
6th Floor, Bank of India
Building, Bhadra,
Ahmedabad-380001.

.....Applicant-Petitioner-Financial Creditor (FC)

Versus

PACIFIC PIPE SYSTEMS PRIVATE
LIMITED

Building No. 9,
Sigma Corporate,
Behind Rajpath Club,
Off. S.G. Road, Bodakdev,
Ahmedabad-380054

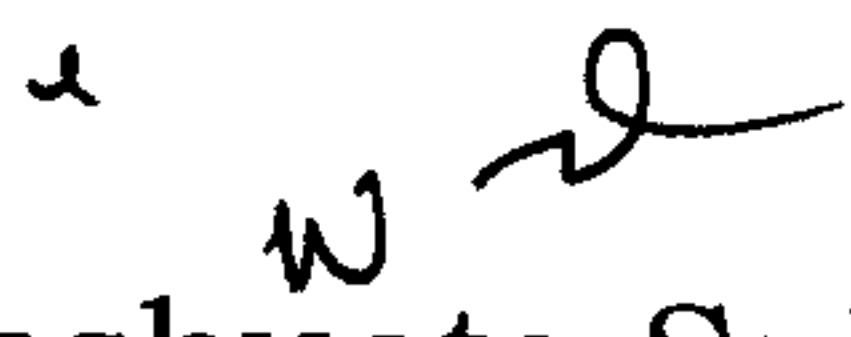
.....Respondent-Corporate Debtor (CD)

Appearance:

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

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Advocate, Mr. Shashuata Sukla for Mr. Sharvil P. Majmudar for the
Respondent/Corporate Debtor

Order Pronounced and delivered on 18/12/2019.

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

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, **Pacific Pipe Systems Private Limited** for the default committed by the Corporate Debtor in making repayment of the Term Loans, FITL & 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 Dineshkumar Vashrambhai Chavda, Bank of India, Zonal Office, Bhadra, Ahmedabad.
2. The Respondent Corporate Debtor (CD) Company, namely, **Pacific Pipe Systems Private Limited** was incorporated on **08/03/2008** with CIN: **U28110GJ2008PTC053182 (04-53182)**





3. The nominal share capital of the Respondent (CD) Company is **Rs.10,00,00,000/- (Rupees Ten Crores Only)** divided into **1,00,00,000/- (One Crore Only)** equity shares of Rs.10/- (Ten) each and the paid-up capital of the company is **Rs.5,00,00,000/- (Rupees Five Crores Only)** divided into **50,00,000/- (Fifty Lakhs Only)** equity shares of Rs.10/- (Ten) each. The Registered Office of the Corporate Debtor Company is situated at: **Building No. 9, Sigma Corporate, Behind Rajpath Club, Off. S.G. Road, Bodakdev, Ahmedabad-380054.**
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 establish, design, engineer, contract, produce, manufacture, treat, process, import, export, purchase, sell, finish, pack, repack, install, and to act as brokers, agents, consultants, merchants, stockists, distributors, suppliers, providers, collaborators, consignors, C&F agent, indenting agents, del-credre agent, job-workers, wholesalers, retailers, traders, concession aires, or otherwise to deal in all varieties, specifications, descriptions of pipes, pipe systems, tanks and products including Glass Reinforced Polyester (GRP) – using centrifugal***

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method, continuous filament winding using advancing mandrel method, continuous filament winding using helical winding method and also including Glass Reinforced Epoxy (GRE) - Amine and/or Anhydride systems using steam and/or induction cured using continuous filament winding by helical winding method, and the resultant product having applications in drinking water, fire fighting, seawater, sewer, treated water, chemicals and industrial wastes, oil & gas applications including onshore and offshore.

5. It is submitted that the Respondent Company applied for various loan facilities **from consortium Member Banks including Bank of India**. Applicant sanctioned TL Loans and Cash Credit facilities for total aggregate Limit of **Rs.61.85 Crores** with terms and conditions including collateral securities of properties.
6. The Corporate Debtor availed the Loans executing various documents and some documents executed by the mortgagors/guarantors in favour of the Applicant Bank binding themselves as liable to pay the loan facilities availed by the Corporate Debtor.

The total aggregate limit of Rs.61.85 Crores (FB/NFB) was sanctioned by the Applicant Bank vide sanction letter dated 21/06/2008 with certain terms and conditions





including hypothecation of plant and machineries, stocks and book debt, mortgage of immovable properties. Details of the charges created by the Corporate Debtor in favour of the Applicant as given below:

I Fund Based Limits:

- a) Cash Credit (Stock & Book Debt) for Rs.7.35 Crores.
- b) Term Loan (One time LC for import/purchase of capital goods) for Rs.32.50 Crores.

Total Fund Based Limit Rs.39.85 Crores.

II Non-Fund Based Limits:

- a) Inland Guarantee Rs.8.50 Crores.
- b) One time BG limit for Importing machinery by paying concessional duty Rs.5.50 Crores.
- c) Letter of Credit I/F, DP/DA 90 days (for Inland LC) 120 days (for foreign LC) Rs.8.00 Crores.

7. Subsequently, the Financial Creditor renewed the limit on 19/01/2012. Thereafter, the Financial Creditor restructured the Loan on 26/10/2013 as requested by the Corporate Debtor.

8. Corporate Debtor registered charge of their liability in favour of the Bank of India for Rs.61.85 Crores with ROC, Ahmedabad on **25.08.2008**.

CH ID No. 10117086 CH CERT No.20080825-9302086

CH SR No. 20080820-9206686

9. Corporate Debtor **again registered charge for Three Lenders with total amount of Rs.119.83 Crores including the charge for the Applicant Bank of Rs.61.85 Crores vide:**



CH ID No. 10142029 CH CERT No. 20090224-583858

CH SR No. 20090220-551670

10. **The last charge is Registered with ROC** by the Corporate Debtor, Ahmedabad **in favour of all Lenders including this financial Creditor on 11/01/2017 for Rs.109.39 Crores** including the Applicant's loan of Rs.51.41 Crores.

CH ID No. 10165131 CH CERT Dated 11.01.2017

CH FM CHG 1 Dated 11.01.2017

11. **The Corporate Debtor also filed Annual Return as at 31.03.2017 with ROC confirming their indebtedness as detailed below:**

Sr.No.	Particulars	Amount Outstanding
1.	Secured Loans Excluding Deposits	Rs.46,69,45,996/-
2.	Unsecured Loans Excluding Deposits	Rs.38,96,41,561/-
Total		Rs.85,65,87,557/-

12. The Corporate-Debtor has defaulted payment and the **date of default is 31/03/2014** as stated by the Petitioner Bank (page no. 6 to 11 of paper book). CIBIL Report (page no. 505 to 620 of the paper book) has been filed by the Bank which confirms that the Account is **in default**.

13. 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. 96 to 113 of paper book).
The Petitioner Bank has claimed their dues of **Rs.49,35,84,364.77 (Rupees Forty Nine Crores Thirty Five Lakhs Eighty Four Thousand Three Hundred & Sixty Four Rupees and Seventy Seven Paise Only)** as on **14.06.2018** as computed in the page no. 5 to 11 of the paper book which is given below:

Total aggregate amount due as on **14.06.2018.**

Sr. No.		Outstanding amount	Undebited interest + Penal interest + Other debits.	Recovery made from Corporate Debtor.	Total dues
1.	CC Facilities	4,37,53,498.40/-	10,98,20,623.78/-	2,28,21,633.81/-	13,07,52,488.37/-
2.	FITL	1,17,64,507.00/-	1,50,57,206.24/-	NIL	2,68,21,713.24/-
3.	Term Loan	7,37,00,000.00/-	5,14,06,137.77/-	7,26,905.00/-	12,43,79,232.77/-
4.	Term Loan	1,30,00,000.00/-	90,71,248.06/-	1,31,899.00/-	2,19,39,349.06/-
5.	Term Loan	11,24,00,352.00/-	7,84,31,651.33/-	11,40,422.00/-	18,96,91,581.33/-
	Total	(+) 25,46,18,357.40/-	(+) 26,37,86,867.18/-	(-) 2,48,20,859.81/-	49,35,84,364.77/-

14. The Petitioner Bank, in support of its contentions has **annexed the details of Financial Debt**, Records and evidences of default including copies of all the sanction letters, the workings showing the amount claimed to be in default and its calculation in tabular form as on 14/06/2018 along with ROC search report and Valuation reports as **detailed below:**

14.1 Copies of the **Sanctioned Letters** (Page No. 44 to 82 of the paper book)

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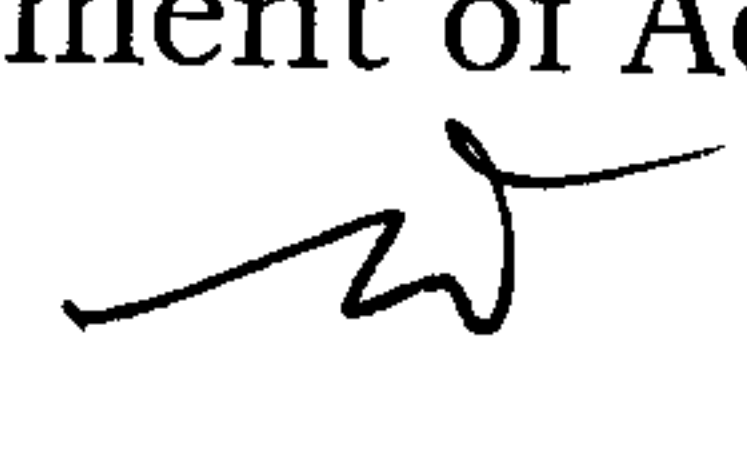
- 14.2 Statement of Accounts of the Corporate Debtor maintained by Bank of India along with Certificate issued under Banker's Book Evidence Act, 1891 (Page no.96 to 113 of paper book)
- 14.3 Copy of Hypothecation cum Loan Agreement dated 19/07/2008 (Page no. 125 to 157 of paper book)
- 14.4 Copy of Credit Facility Agreement dated 19/07/2008 between the Corporate Debtor and the Financial Creditor (page no. 158 to 203 of paper book)
- 14.5 **Inter-Se Agreement dated 23/01/2009 between BOI, THE KARUR VYSYA BANK LIMITED and ORIENTAL BANK OF COMMERCE AS MEMBERS OF BOI CONSORTIUM (page no. 204 to 213 of paper book).**
- 14.6 Copy of Letter of Authority Dated **23.01.2009** given by the Karur Vysya Bank Limited (page no. 214 to 215 of paper book)
- 14.7 Copy of Letter of Authority Dated **23.01.2009** given by the Oriental Bank of Commerce. (page no. 216 to 217 of paper book)
- 14.8 Copy of Article of Agreement dated **23/01/2009** between Corporate Debtor with BOI Consortium (page no. 218 to 226 of paper book).

- 14.9 Copy of Working Capital Consortium Agreement dated **23/01/2009** between Corporate Debtor with BOI Consortium. (page no. 227 to 258 of paper book)
- 14.10 Copy of Joint Deed of Hypothecation dated **23.01.2009** by and between Corporate Debtor with BOI Consortium. (Page No. 259 to 282 of paper book)
- 14.11 Copy of Indenture of Mortgage dated **15.06.2009** registered at **Sr. No. 2147 dated 10/06/2009** with SRO-Sanand. (page no. 283 to 341 of paper book)
- 14.12 Copy of Revival Letter dated **07/02/2010** (page no.342 to 343 of paper book)
- 14.13 Copy of first Supplemental Joint Deed of Hypothecation dated **04/05/2012** executed by & between Corporate Debtor with BOI Consortium. (page no. 350 to 354 of paper book)
- 14.14 Copy of First Supplemental Working Capital Consortium Agreement Dated **04.05.2012** between Corporate Debtor and Bank of India. (Page no. 355 to 360 of paper book)
- 14.15 Copy of Revival Letter Dated **04/05/2012** (page no. 361 to 363 of paper book)

- 14.16 Copy of first Supplemental Indenture of Mortgage dated **12/05/2012** executed by & between Corporate Debtor with BOI Consortium. (page no.364 to 370 of paper book)
- 14.17 Copy of Supplemental Deed of Hypothecation dated **27/12/2013** between Corporate Debtor and Bank of India (page no. 384 to 402 of paper book)
- 14.18 Copy of Credit Facility Agreement dated **27/12/2013** between the Corporate Debtor and the Financial Creditor. (page no. 403 to 440 of paper book)
- 14.19 Copy of Revival Letter dated **09/01/2014**. (page no. 441 to 444)
- 14.20 Copy of ROC Search Report Dated **10/04/2018**. (page no. 456 to 467 of paper book).
- 14.21 Copy of Valuation Reports (page no. 468 to 492 of paper book)
- 14.22 CIBIL Report (page no. 505 to 620 of paper book)

15. In response to the present I.B. Petition filed by the Petitioner Bank, the **Respondent has filed its objections on 29.08.2018.**

15.1 It is submitted that the application is not in the form Prescribed under the Insolvency and bankruptcy Code, 2016. The Statement of Account

is not attached in accordance with the Bankers Book Evidence Act, 1891 and hence, the proceedings filed by the applicant before the Tribunal are not maintainable.

15.2 It is submitted that the present Insolvency proceedings, having been initiated beyond the prescribed period of limitation of 3 years from the date of the loan, or in any event having been instituted beyond a period of 3 years from 31.03.2014, i.e. the alleged date of default, is barred by the law of limitation. It attracts Section 137 of Limitation Act, 1963.

15.3 It stated that the present Application is not maintainable in law since the Applicant has suppressed various material facts before this Tribunal and has not approached this Tribunal with clean hands.

15.4 It is stated and submitted that the Applicant is fully aware of the fact that the alleged claims of the Applicant are severely disputed by the Respondent. It is submitted that the Applicant has not even quantified the penal interest which it has charged for the alleged default.

- 15.5 This clearly shows that the present application is just a coercive pressure tactic and the same is an abuse of the process of law.
- 15.6 Lastly, the present application may be dismissed with costs and the interim relief sought by the petitioner be denied by this Tribunal.
16. The Learned Lawyer of the Applicant Bank(FC) clarified their positions and put forth their arguments **relying on the documents submitted by them, which were executed by the Corporate Debtor and the Mortgagors/Guarantors.**
17. **The Corporate Debtor has also executed Revival Letter dated on 07/12/2010, 04/05/2012 and 09/01/2014.** The Financial Creditor has also referred the CIBIL report filed with their application **which confirms the debt is in default.**
18. The Petitioner Counsel argued **that this claim does not attract Section 137 of limitation Act**, as claimed by the counsel of Corporate Debtor, **as because the clear acknowledgement of debt by the Corporate Debtor is available/submitted from the date of release of the Loan till 11/01/2017 by way executing documents, revival letters on 07/12/2010, 04/05/2012, 09/01/2014 and creating charge in favour of the Applicant Bank with ROC on 25/08/2008,**

24/02/2009, 13/05/2014, 11/01/2017 besides filing Balance Sheet of 31/07/2017. Confirming their indebtedness to the Applicant Bank.

ROC report filed by them is referred to in support of the charge created in their favour by the Corporate Debtor.

19. The Corporate Debtor offered OTS letter dated 27/02/2018, for request of meaningful and amicable One time settlement (OTS). It is already proposed for the settlement of the account for Rs.15.50 Crores to Rs.16.25 Crores. Hence, it is also a clear acknowledgment the party of the **Corporate Debtor that this amount is due and defaulted. Corporate Debtor has also offered another OTS for Rs.22.77 Crores which was rejected by the Applicant Bank on 23/01/2019.**
20. The matter was taken up and heard both sides before this Bench on 16.07.2018, 24.08.2018, 10.10.2018, 12.11.2018, 03.12.2018, 04.01.2019, 31.01.2019, 14.02.2019, 27.03.2019, 29.05.2019, 17.07.2019, 22.08.2019, and 20.09.2019. The counsels of the Petitioner and the Respondent were present and put forth their submissions before the Bench.
21. 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.

22. 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.

OBSERVATIONS

23. **It is observed 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.

23.1 The TL loans/CC/Non fund limit were sanctioned and released by the Petitioner Bank and the same were availed by CD, Pacific Pipe Systems Pvt. Ltd. **The Charges have been** filed by the CD with the ROC in favour of the Petitioner Bank as per the details mentioned in ROC Search Report dated on **10.04.2018** annexed at (Page no. 456 to 467 of the paper book)

23.2 The CD has defaulted in making repayment of loan/credit facilities to the Petitioner Bank and **the date of default is 31.03.2014**. The Statement of accounts and the **CIBIL**

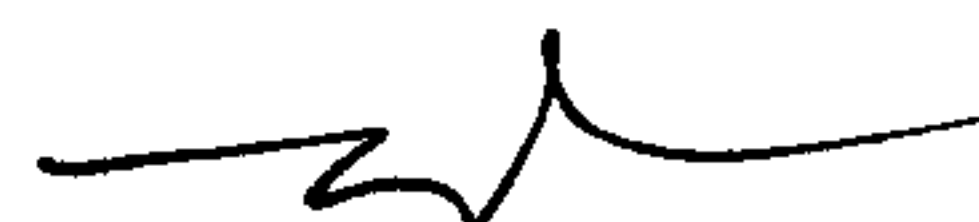


Reports submitted by the applicant Bank **confirm the default** committed by the Corporate Debtor.

23.3 The Petitioner Bank has filed the petition **within the period of limitation**, as the date of mortgage of the property is **15.06.2009**, SARFAESI proceeding initiated on **17.10.2014**, DRT proceedings started in 2014 and the Credits have come into the loan accounts on 04/03/2015.

23.4 Revival letters have been executed on 07/12/2010, 04/05/2012, 09/01/2014. Corporate **Debtor has acknowledged the debts of the Applicant by creating charge with ROC, Ahmedabad in favour of Financial Creditor on various dates including 25/08/2008, 24/02/2009, 13/05/2014 & 11/01/2017.** Corporate Debtor also filed Balance Sheet with ROC upto **31/03/2017 acknowledging their liability to the Applicant bank.**

23.5 Corporate Debtor offered OTS proposed on 27/02/2018 for Rs.15.50 Crores to Rs.16.25 Crores referring the earlier correspondence on **27/11/2017, 20/01/2018 and JLF meeting on 26/12/2017.** Their offer was not accepted by the Financial Creditor. Further as per records submitted **by the Corporate Debtor** (Page No.1 to 8 of paper book) **they had also offered detailed OTS amount of Rs.22.77 Crores for all three lenders by Managing Director Mr. Ashit Doshi of the Corporate Debtor which was not**



accepted by the Applicant Bank vide e.mail dated 23/01/2019.

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

ORDER

24. **Considering the material papers filed by the Petitioner Bank** and the facts mentioned in the **Para No.23, 23.1, 23.2, 23.4, 23.5 & 23.6** this **Adjudicating Authority is satisfied that,**

- (a) The Corporate Debtor availed **the loan /credit facilities** from the Financial Creditor Bank.
- (b) Existence of **debt is above Rs. One Lac;**
- (c) **Debt is due;**
- (d) Default has occurred on **31/03/2014;**
- (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.



Hence, **the present IB Petition is admitted** with the following Directions/observations. **The date of admission of this petition is 18/12/2019.**

25. 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, Mob. 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 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.**

26. 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** is 18/12/2019 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

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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.


27. The **IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section 17, 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.**

28. It is also observed that the Petitioner Bank has claimed **total dues of Rs.49,35,84,364.77/- which includes undebited interest, Penal interest and Other debts of Rs.26,37,86,867.18/-** One of the **prime objectives** of the Insolvency and Bankruptcy Code, 2016 is to **find** out an **Insolvency Resolution Plan in time** for the Corporate Debtor and 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 **Committee Of Creditor(s) (COC) may explore**, while finalizing the Resolution Plan for the Corporate Debtor, the **possibility of loading maximum interest** at the Applicant 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 at the rate of Petitioner Bank's One Year MCLR or One Year MCLR + 1% without any penal /overdue interest.
29. The **Registry is hereby directed** to communicate the authenticate copy of this order to the Financial Creditor, Corporate Debtor Company, the I.R.P and also to the Registrar of Companies, Gujarat immediately through speed post / registered post immediately.



30. Thus the present I.B petition filed Under Section 7 of the
**IBC stands admitted with the above direction and
observations.**


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (T)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (J)

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