

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

C.P. (I.B) No.17/NCLT/AHM/2019

**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 27.05.2020**

Name of the Company: Union Bank of India
V/s.
Greendiamz Biotech Ltd.

Section: 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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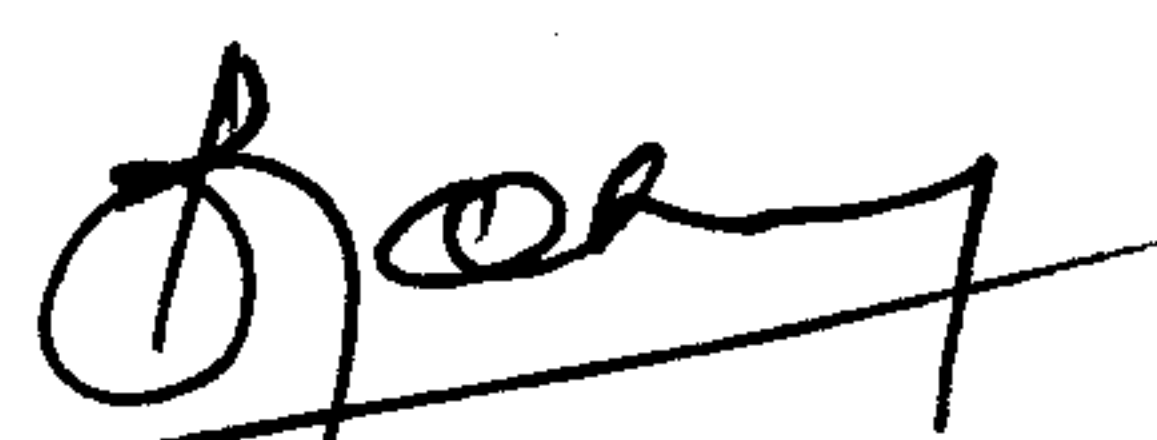
ORDER

The case is taken up through Video Conferencing.

Today, the case is fixed for Pronouncement of Order.

The Order is Pronounced in Open Court.

The CP(IB) No. 17 of 2019 is allowed, the detailed order recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 27th day of May, 2020.

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

CP (IB)No.17/7/NCLT/AHM/2019

In the matter of:

Union Bank of India

A body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act 1970 and having its **Head Office** at Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai - 400 021 and one of its **Branch office** amongst others by name Asset Recovery Branch, 172/1, Premchand House, 2nd Floor, Old High Court way, Ashram Road, Ahmedabad 380009

..... Petitioner
(Financial Creditor)

Versus

M/S. Greendiamz Biotech Limited

Registered Office at: Setu, Suite 303-4-5, Ship Cross Road, Off C.G.Road, Navrangpura, Ahmedabad 380009, Gujarat

Factory Office Address: 811 Rushabh Estate, Near Railway Crossing, Bavla Sanand Road, Bavla, Gujarat 382220

..... Respondent
(Corporate Debtor)

Order delivered on 27th May, 2020.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

And

Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)

Appearance:

Advocate, Mr. Mahendra P. Parmar, for the Petitioner-Financial Creditor.

Advocate Mr. Aditya J. Pandya, and Ms. Urvashi Jindal, PCA, for the Respondent-Corporate Debtor.



ORDER

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

1. The present Petition is filed by the Union Bank of India (hereinafter referred to as the Petitioner), through its Authorized Signatory (under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'I & B Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ["Adjudication Rules" for short] for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s.Greendiamz Biotech Limited**, the Corporate Debtor.
2. The Corporate Debtor Company, viz.,M/s. Greendiamz Biotech Limited, was incorporated on 08/05/2009, under the provisions of the Companies Act, 1956, CIN : U36990GJ2009PLC056869, having its registered office at Setu, Suite 303-4-5, Ship Cross Road, Off C.G.Road, Navrangpura, Ahmedabad-380009, Gujarat.
3. The Authorised Share Capital of the Corporate Debtor company is Rs.5,00,00,000/- (Rupees Five crore only) divided into 50.00 lakhs equity shares of Rs.10/- each and Paid Up Share Capital is Rs.5,00,00,000/- (Rupees Five Crore only) divided into 50.00 lakhs equity shares of Rs.10/- each.
4. The petitioner states that various loan/credit facilities have been granted to the corporate debtor. The details/particulars thereof and the total outstanding debts are described well in the

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prescribed format of the present application, which are stated as under:-

Part-IV

Particulars of Financial Debt

1. Total amount of debt granted Date of last Sanction/Renewal : 28.03.2013 vide Sanction letter No.VAD/ADV/549/13
Date(s) of disbursement

CC Hyp.

Date of Disbursement	Amount [Rs.]
30.12.2009	28,50,00,000/-

LC/LG

Date of Disbursement	Amount [Rs.]
17.12.2013	4,45,00,000/-

Term Loan-I

Date of Disbursement	Amount [Rs.]
29.09.2009	8,00,00,000

Term Loan-II

Date of Disbursement	Amount [Rs.]
13.04.2012	1,11,00,000

Term Loan-III

Date of Disbursement	Amount [Rs.]
28.09.2012	6,40,00,000/-

Total Rs. 48,46,00,000/-

2. Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and days of default in tabular form) **Rs. 85,71,54,265=28**
Tabular form given hereunder (as on 30.09.2018)

Account No.	Nature of Loan & Amount	Ledger Balance [Rs.]	Unpaid Interest + Penalty	Other Expenses	Date of Default	Total days of Default	Total Amount Claimed to be in Default
313505010077425	CC Hyp	327435305.54	269377492.14	226554	24.07.2013	1894	597039351.68
313507030002711	LC Devolved	17362495.98	15370580.00	0.00	17.12.2013	1748	32733075.98
313506110000879	Term Loan-I	63977243.95	54292575.00	924490	24.09.2013	1832	119194308.95
313506110000887	Term Loan-II	9708409.00	7632539.00	0.00	31.10.2013	1795	17340948.00
313506310000004	Term Loan-III	50293835.67	40552745.00	0.00	24.09.2013	1832	90846580.67
Total:		468777290.14	387225931.14	1151044			857154265.28

Statements of accounts (account wise) enclosed from Page No. 175 to 197 A/32 to A/36

5. It is submitted that at the request of the Respondent-Corporate Debtor, the Petitioner has sanctioned and disbursed aforesaid loan/credit facilities by executing necessary loan agreements with the Respondent-Corporate Debtor, such loan disbursed is recoverable with interest at applicable rate of interest.
6. In order to secure above stated credit facilities, the respondent-corporate debtor, through its authorized signatory/director, borrower/co-borrowers/guarantors, has duly executed various security documents, in favour of the Petitioner Bank (Financial Creditor), which are annexed with the present IB Petition, and described as under:-

Part-V

Particulars of financial debt [documents, records and evidence of default]

1. Particulars of security held, if any, the date of its creation, its estimated value as per the creditor.
 - i) Hypothecation Agreement of Goods & Debts (SD-06) was executed on 29.03.2013 to the extent of Rs.48,46,00,000/-. Total value of plant and machinery assessed at about **Rs.60590000/-** as per valuation report dated 30.12.2017, Annexure-A/24.
 - ii) Equitable Mortgage registered with Sub Registrar, Ahmedabad-3 (Memnagar) bearing No.9260 dated 30.09.2009 for Rs.31,10,00,000/- created on the immovable properties jointly belonging to(i) Mr. Champatbhai Rikhabhai Sanghvi and (ii) Mr. Deepak Champatbhai Sanghvi as described in Schedule-A of this application, Annexure-A/18.

- iii) Equitable Mortgage registered with Sub Registrar, Ahmedabad-3 (Memnagar) bearing No.8255 dated 14.06.2010 for Rs.31,10,00,000/- created on the immovable properties jointly belonging to the Corporate Debtor as described in Schedule-B and C of this application, Annexure-A/19.
- iv) Supplemental Equitable Mortgage registered with Sub Registrar, Ahmedabad-3 (Memnagar) bearing No.13210 dated 20.12.2011 for Rs.48,49,00,000/- (Enhanced from Rs.31,10,00,000/-) created on the immovable properties as described in Schedule- A B and C of this application, Annexure-A/20.

Estimated Market Value of three immovable properties **Rs. 90026892/-** assessed *vide* Valuation Report dated 21.08.2017 and 23.08.2017, Annexure-A/25 (Colly.)

- v) ROC Search Report dated 06.11.2009 given by Abhishekkumar Associates showing charge of hypothecation over movables and mortgage over three immovable properties filed/created on 26.09.2009 on aggregate amount of **Rs.31.10 Crores**, Annexure-A/21.
- vi) ROC Certificate of charge dated 25.11.2012 showing mortgage/charge created on 28.09.2012 for an amount of Rs.6,40,00,000/-bearing charge ID No.10387591, Annexure-A/22.
- vii) ROC Certificate of charge dated 30.04.2013with Form-8(Charge of Hypothecation) bearing charge ID No.10178083, Annexure-A/23. Charge/Mortgage created on 26.09.2009 and modified on 29.03.2013 for Rs.48,46,00,000/-

2. Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any.



- i) Applicant has filed an Original Application bearing No. 123 of 2015 on 02.03.2015 in Debts Recovery Tribunal-I, Ahmedabad against the Corporate Debtor which is pending for adjudication. Presently the matter is listed on 10.12.2018 for final hearing.
 - ii) The Corporate Debtor has filed a Securitization Application bearing No. 161 of 2018 before the Debts Recovery Tribunal-I, Ahmedabad on 30.08.2018 against the measure taken by the Applicant which is pending for adjudication and presently listed on 22.11.2018.
- 3 List of other documents attached to this application in order to prove the existence of financial debt, the amount and date of default :
- 1) Corporate Debtor's Board Resolution dated 29.03.2013 accepting the terms and conditions of sanction and authorizing its Director Mr. Champat R. Sanghvi to execute various security documents as stated in the resolution.
 - 2) Letter dated 29.03.2013 from the Corporate Debtor regarding various undertakings to the applicant.
 - 3) Letter to be obtained from the Directors in cases where advances have been permitted to Private Limited/Limited Companies (AD-10)
 - 4) Demand Promissory Note dated 29.03.2013 for Rs.28,50,00,000/-
 - 5) Demand Promissory Note dated 29.03.2013 for Rs.8,00,00,000/-
 - 6) Demand Promissory Note dated 29.03.2013 for Rs.1,11,00,000/-
 - 7) Demand Promissory Note dated 29.03.2013 for Rs.6,40,00,000/-
 - 8) Demand Promissory Note dated 29.03.2013 for Rs.14,45,00,000/-
 - 9) Composite Deed of Hypothecation (SD-20) dated 29.03.2013 for Rs.48,46,00,000/- executed by the Corporate Debtor
 - 10) Hypothecation Agreement of Goods & Debts (SD-06) dated 29.03.2013 for Rs.48,46,00,000/- executed by the Corporate Debtor.

- 11) Letter of Undertaking not to alienate Hypothecated Goods (AD-12) dated 29.03.2013 for Rs.48,46,00,000/-
- 12) Letter of Continuity (AD-09) dated 29.03.2013 for Rs.28,50,00,000/-
- 13) Text of the Consent Clause executed by Corporate Debtor
- 14) Agreement on Rate of Interest (For Base Rate) dated 29.03.2013
- 15) Memorandum of Entry for Deposit of Title Deeds for Rs.31.10 Crores registered with Sub Registrar, Ahmedabad-3 (Memnagar) at serial No.9260 dated 30.09.2009.
- 16) Supplemental Memorandum of Deposit of Title Deeds for Rs.31.10 Crores registered with Sub Registrar, Ahmedabad-3 (Memnagar) at serial No.8255 dated 14.06.2010.
- 17) Supplemental Equitable Mortgage to secure the credit facility aggregating to Rs.48.49 Crores enhanced from Rs.31.10 Crores registered with Sub Registrar, Ahmedabad-3 (Memnagar) at serial No.13210 dated 20.12.2011.
- 18) Recall Notice dated 01.01.2014 issued by the applicant to Corporate Debtor.
- 19) Notice dated 04.02.2014 by the applicant u/s 13(2) of the SARFAESI Act 2002 issued to Corporate Debtor.
- 20) Company's Master Data of Corporate Debtor
- 21) Balance Sheet of the Corporate Debtor for the year. Ending 31.03.2012.
- 22) Schedule of Properties Mortgaged by Corporate Debtor
- 23) List of Related Parties

7. The Petitioner submits that at the time of availing the credit facilities, the corporate debtor company, including the co-

borrowers/guarantors had agreed to and assured the Petitioner-Financial Creditor that the loan/credit facilities as availed by it would be repaid as per the terms and conditions of the repayment schedule of the Loan Agreement(s), but the same could not be materialised despite its repeated requests, reminders and personal follow-up, the respondent-corporate debtor and its guarantors have failed to pay the outstanding amount to the petitioner-financial creditor.

8. It is further stated that the Corporate Debtor had submitted an One Time Settlement (OTS) offer for **Rs.1600.00 lakhs** and the same could not be considered by the Applicant and the same was communicated to the Corporate Debtor *vide* letter dated **12.07.2018**.
9. It is further stated that total outstanding dues payable to the applicant by the Corporate Debtor in all the accounts is **Rs.85,71,54,265=28 (Rupees Eighty Five Crores Seventy One Lakhs Fifty Four Thousand Two Hundred Sixty Five and Paise Twenty Eight Only)** inclusive of unpaid interest+ penalty and other expenses up to 30.09.2018.
10. In the light of above stated statutory provisions and by perusal of the record, it goes to show that the present IB Petition has been filed by the Petitioner-Financial Creditor, through its authorized signatory, namely, **Mr.Rajesh Kumar Mishra, Chief Manager, Union Bank of India, Asset Recovery Branch, Ahmedabad**, he has filed an affidavit in support of the present



petition. The relevant paragraphs of the said affidavit are state as under:-

5 I say that the Corporate Debtor, *vide* letter dated 05.08.2015, requested the Applicant for allowing operations on cut back basis. The applicant has approved provision of cutback facility of 20% on credit turnover in the month of September 2015 subject to the terms & conditions conveyed *vide* letter dated 12.08.2015 (acknowledged by the Corporate Debtor on 13.08.2015). As per the said terms accepted by Corporate Debtor, Corporate Debtor has opened a new CD account in Vadaj Branch of the applicant and started the operations and agreed by the Corporate Debtor, 20% of the credits received in the CD account was to be appropriated as cut back towards the recovery in the NPA accounts of the Corporate Debtor. The applicant opened the said current account on 24.09.2015 in the name of Corporate Debtor and regular credits payments were arranged by the Corporate Debtor through their Current Account towards repayment of dues in their loan account. Corporate Debtor has arranged the repayment of dues in its loan account on various dates starting from 11/02/2016 and the **last such payment received from Corporate Debtor is on 31/05/2017.** Thereafter Corporate Debtor *vide* their letter dated **07/12/2017 submitted One Time Settlement offer of Rs.16.00 crores to the Applicant towards settlement of dues in their loan account.** Regular repayments arranged by Corporate Debtor and OTS-cum acknowledgement letter dated 07/12/2017 signed by the Corporate Debtor, fresh period of limitation started for recovery of dues from the Corporate Debtor. Hence the default of the Corporate Debtor in payment of debts stood revived from time to time and is still continuing as on the date of the

present application. Thus, the present application has been filed within the limitation under section 238-A of the Code (inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act,2018 **with effect from 06.06.2018 read with article 137 of the Limitation Act.**

- 6 I say that as per my utmost knowledge there are no other financial creditors except the applicant.
- 7 I say that the Corporate Debtor is carrying on the business of manufacturing and trading of bio-degradable material.
- 8 I say that *vide* FGMO Note No.GM (FGMO) 1615 dated 18.09.2009, the applicant sanctioned to Corporate Debtor initially (i) an Import L.C. of Rs.725.00 lakhs (ii) L.G.of Rs.100.00 lakhs (iii) C.C.-Hyp. of Rs.700.00 lakhs (iv) PC/FDBP of Rs.300.00 lakhs and (v) Term Loan of Rs.1285.00 lakhs aggregating total credit facilities for Rs.31.10 Crores for which the Corporate Debtor has executed required security documents in favour of the applicant. (hereinafter referred to as the credit facilities)
- 9 I say that the credit facilities were renewed *vide* FGMO Note No.FGMO/ADV/160 dated 30.11.2011 where the credit facilities were enhanced by increasing Import LC from Rs.725.00 lakhs to Rs.1685.00 lakhs along with interchangeability of Rs.500.00 lakhs to CC(H) limit, LG at existing level of Rs.100.00 lakhs, CC(H) limit was enhanced from Rs.700.00 lakhs to Rs.1550.00 lakhs, PC/PDBP limit of Rs.300.00 lakhs, Term Loan at outstanding level 1064.00 lakhs and sanction of fresh Term Loan of Rs.250.00 lakhs.
- 10 I say that subsequently, the Corporate Debtor faced trouble in production activities and liquidity crunch resulting into excess/overdue in the accounts. Hence, the Import L/C of Rs.240.00 lakhs was devolved and



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paid by opening Devolved L/C loan account.

- 11 I say that in September 2012, at the request of the Corporate Debtor *vide* FGMO Note No.FGMO/ADV/262/(B) dated 28.09.2012, the credit facilities of the Corporate Debtor were restructured by sanctioning WCTL of Rs.640.00 lakhs comprising of irregular portion of Rs.205.00 lakhs from CC account, overdue (Instalment +Interest) of Rs.180.00 lakhs of Term Loan I & II and LC devolved of Rs.240.00 lakhs.
- 12 I say that despite restructuring of limits, the Corporate Debtor failed to serve the interest to the desired extent and overdue instalments of Term Loans and hence, the account of the Corporate Debtor was classified as Non Performing Asset (NPA) on 31.12.2013.

11. On being notice issued to the Corporate Debtor, in respect of the present IB Petition, the Corporate Debtor company caused appearance, through its Counsel, and filed its reply wherein it did not categorically deny its debts liability towards the Petitioner-Financial Creditor Bank, but only sought some time for making acceptable one-time settlement proposal to the Petitioner. The relevant paragraphs of the reply are stated as under:-

29. *That the Corporate Debtor is trying everything in its power to settle the liability of the petitioner bank before the*

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admission of this insolvency petition in this Hon'ble Tribunal.

In paragraph-35 & 36, it is stated as under:

35. *That the corporate debtor requests for grant of some time to come up with a onetime settlement proposal that would be feasible to the corporate debtor and acceptable to the petitioner bank.*

36. *In view of the above mentioned circumstances we would request the Hon'ble Authority to not admit the Insolvency Resolution petition filed against us by Union Bank of India and give us some time to come up with an acceptable onetime settlement proposal for the applicant bank.*

12. In the light of above given facts and circumstances of the present case, we examined the merits and admissibility of the present IB Petition, under the discipline of the Insolvency and Bankruptcy Code, so as to find it complete or otherwise.

13. The relevant provisions of Section 7 of the IB Code speaks as under;

7. Initiation of Corporate Insolvency Resolution Process by Financial Creditor.

(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—*For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

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[Handwritten signature]

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

14. In support of the present IB Petition, the Petitioner Bank has further proposed name of the IRP, **Mr. Chandra Prakash Jain** (Registration No. IBBI / IPA-001/IP-P00147/2017-18/10311 (having address at C.P. Jain & Co., Chartered Accountants, D-501, Ganesh Meridian, Opp. High Court, S.G. Road, Ahmedabad-380 060, E-mail: cpjain@cpjain.com; jain_cp@yahoo.com, Mobile: 98240 36127). The Petitioner has also annexed a Written Communication, Annexure: A/2, received from the proposed Interim Resolution Professional, Mr.

Chandra Prakash Jain, by giving his consent in prescribed format by declaring that there is no disciplinary proceeding pending against him.

15. We have heard the submissions of the learned counsel for both the parties and perused the pleadings of both sides and material available on record. We place reliance on a decision of the Hon'ble Supreme Court in the matter of ***M/s. Innoventive Industries Ltd. vs. ICICI Bank &Anr. [Civil Appeal Nos.8337-8338 of 2017]*** has ruled such that if the Adjudicating Authority is satisfied that there is a debt and default has been occurred, then the Adjudicating Authority is bound to admit the Application. For the sake of convenience, the relevant portion of the aforesaid Judgment of the Hon'ble Supreme Court is being reproduced hereinbelow:

"27. *The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under*

Section 5 (21) means a claim in respect of provision of goods or services.

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"**
16. By placing reliance on the above stated decision of the Hon'ble Supreme Court, the debt is well established and the default has been occurred because the outstanding loan is still unpaid. This satisfies the requirement of Section 3(11) and (12) of the I &B

Code for triggering the Corporate Insolvency Resolution Process in respect of the Corporate Debtor company.

17. On perusal of the record, it is undisputedly established that the Petitioner-Financial Creditor duly sanctioned and have disbursed various loan facilities to the Corporate Debtor and the same were availed and utilized by it. The Corporate Debtor also confirmed its debts liability, through One Time Settlement by offering Rs.1600 lakh to the petitioner by its letter dated 07.12.2017, which could not be materialized. The Corporate Debtor was irregular in making repayment of its loan and the last payment was made by it on 31.05.2017. Hence, the present IB Petition is found to be filed well within limitation and maintainable.

18. Consequently, this Adjudicating Authority hereby admits the IB Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, for initiation of Corporate Insolvency Resolution Process, in respect of the Corporate Debtor. Further this Adjudicating Authority declares moratorium under Section 14 of the Code, with following orders and directions:

- (i) This Adjudicating Authority hereby appoints proposed IRP, by the Petitioner, **Mr. Chandra Prakash Jain** (Registration No. IBBI / IPA-001/IP-P00147/2017-18/1031, having address at C.P. Jain & Co., Chartered Accountants, D-501, Ganesh Meridian, Opp. High Court, S.G. Road, Ahmedabad-380 060, E-mail:

cpjain@cpjain.com; jain_cp@yahoo.com, Mobile: 98240 36127) under Section 13 (1) (c) of the Code.

- (ii) That the order of Moratorium under Section 14 of the Code shall come to effect from 27/5/ 2020 till the completion of 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.
- (iii) That the Bench hereby prohibits the institution of suits or continuation of pending suit 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 **SARFAESI Act, 2002**; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (iv) That the supply of essential goods or services to corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of the Corporate Debtor.
- (v) That the provisions of Section 14 sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



- (vi) The IRP so appointed shall make public announcement of Corporate Insolvency Resolution Process be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.
- (vii) The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *inter alia*, by Sections 17,18,20, 21 of the Code. It is further made clear that all the personnel connected with Corporate Debtor, its promoter or any other person associated with Management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the corporate debtor, its promoter or any other person required to assist or co-operate with IRP, does not assist or co-operate, IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.
- (viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor company' and manage the operations of the Corporate Debtor company as a going concern as a part of its obligation imposed by Section 20 of I & B Code, 2016.
- (ix) The Petitioner-Financial Creditor is directed to communicate a copy of this order to the Interim Resolution Professional, the Corporate Debtor and the Registrar of Companies, Gujarat.

19. The Registry is directed to communicate a copy of this order to the Petitioner-Financial Creditor, Corporate Debtor and to the Interim Resolution Professional **Mr. Chandra Prakash Jain** (having address at C.P. Jain & Co., Chartered Accountants, D-501,

Ganesh Meridian, Opp. High Court, S.G. Road, Ahmedabad-380
060, E-mail: cpjain@cpjain.com; jain_cp@yahoo.com, Mobile:
98240 36127) and the concerned Registrar of Companies, after
completion of necessary formalities.

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



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



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

SR