

17

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

C.P. (I.B) No. 48/7/NCLT/AHM/2017

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.07.2017**

Name of the Company: State Bank of India
V/s.
Alok Industries Ltd.

Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy
Code

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.	Animesh Bisht Gaurav Gupta Sahil Shah	} Advocates	Applicant	Gugupte
2.	ISHAN RAVINDRANATH PETRUSHKA DEAS	} ADVOCATES	Respondent	Ravindranath

ORDER

Learned Advocate Mr. Animesh Bisht with Learned Advocate Mr. Sahil Shah present for Petitioner/ Financial Creditor. Learned Advocate Mr. Ishan Ravendranath with Learned Advocate Ms. Petruska Deas i/b Haresh Jagtiani present for Respondent.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 18th day of July, 2017.

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

C.P. No.(IB) 48/7/NCLT/AHM/2017

In the matter of:

State Bank of India,
A body corporate established
Under the State Bank of India Act,
1955 and having its corporate
Centre at State Bank Bhavan,
Madam Cama Road,
Mumbai-400021 and acting
Through its Branch Office at
Backbay Reclamation Branch
Tulsiani Chambers,
Nariman Point,
Mumbai-400021

...

Petitioner
[Financial Creditor]

Versus

Alok Industries Limited,
A company registered under
The Companies Act, 1956
with CIN: L17110DN1986PLC000334
and having its registered Office at
17/5/1, 521/1,
Village Rakholi/Saily,
Silvassa-396230
Union Territory Dadra &
Nager Haveli, India.

...

Respondent
[Corporate Debtor]

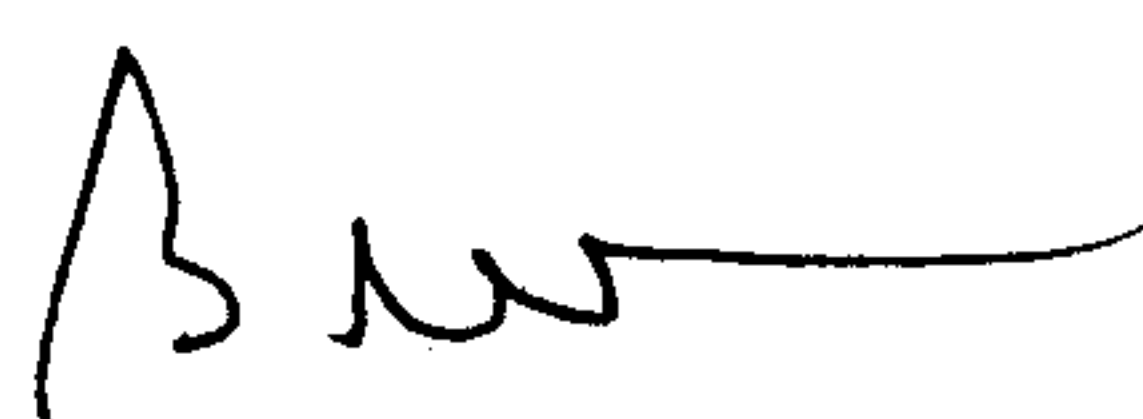
Order delivered on 18th July, 2017.

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

Appearance:

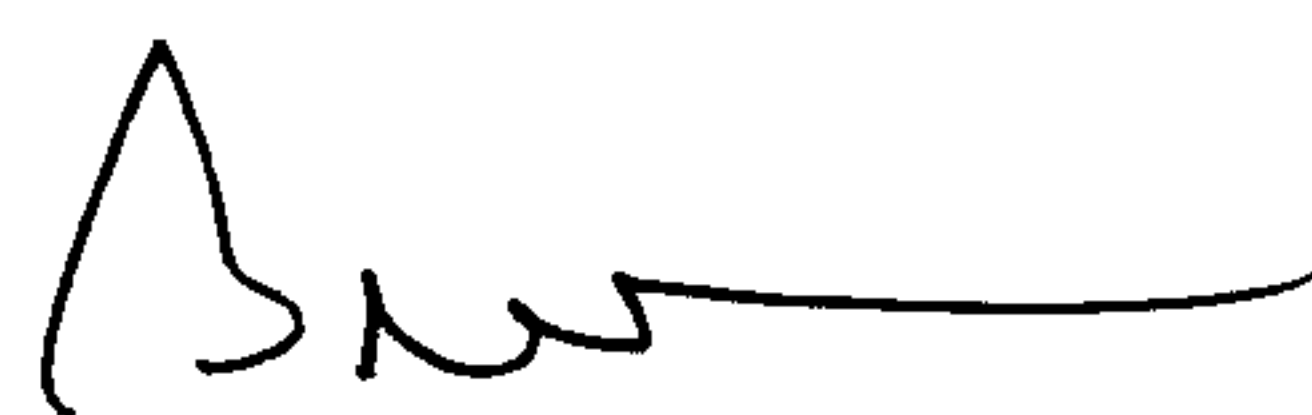
Shri Animesh Bisht, learned Advocate with Mr. Sahil Shah, learned Advocate for the Petitioner.

Mrs. Petrushka Deas, learned Advocate with Mr. Ishan Ravendranath and Mr. Haresh Jagtiani, learned Advocates for Respondent.



ORDER

1. State Bank of India a body Corporate established under the State Bank of India Act, 1955 having its Corporate centre at State Bank Bhavan, Madam Cama Road, Mumbai-400021 filed this application to initiate Corporate Insolvency resolution process in respect of Alok Industries Limited under the Insolvency and Bankruptcy Code, 2016.
2. It is stated that vide separate gazette notifications each dated February 22nd, 2017 State Bank of Hyderabad, State Bank of Patiala, State Bank of Mysore, State Bank of Travancore and State Bank of Bikaner and Jaipur have merged into SBI with effect from April 01, 2017.
3. For the purpose of this application various facilities granted to Alok Industries by the Associate Banks prior to the effect of merger is now considered as of facilities of State Bank of India.
4. Mr. Munna Prasad Thakur is a person authorised to file this application pursuant to Regulation of 77 of the State Bank of India General Regulations, 1955 (framed under Section 50 of the State Bank of India Act, 1955.) The authorisation letter dated 27 March, 1987 has been filed.
5. Alok Industries Limited is a Company registered under Companies Act, 1956 having its Registered Office at 17/5/1, 521/1, Village Rakholi/ Saily, Silvassa, 396 230, Union Territory Dadra & Nagar Haveli, India. The authorised Share Capital of Alok Industries is INR 4000,00,00,000/- (Rupees Four Thousand Crores) only. The paid up share capital of Alok Industries is INR 1377,31,78,950



(Rupees one Thousand Three Hundred Seventy-Seven Crores Thirty-One Lacs, Seventy-Eight Thousand Nine Hundred Fifty) only.

6. It is stated that State Bank of India including the Associates Banks had granted various term loans and working capital facilities to Alok Industries from time to time. The aggregate sanctioned amount as at the date of this application in Indian Rupees by State Bank of India and Associates Banks are as follows:

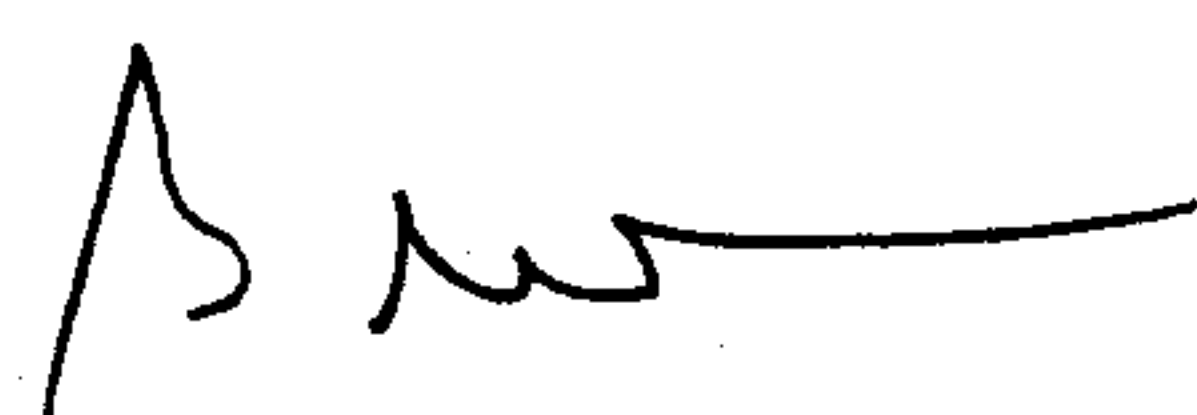
1. SBI: 4636.42 crores
2. SBBJ: 1483.30 crores
3. SBH: 976.76 crores
4. SBM: 727.16 crores
5. SBP: 772.41 crores
6. SBBT: 674.80 crores

The dates of disbursement relating to SBI and Associates Banks are annexed to the application as Annexures 10 to 15.

7. It is stated the following are the amounts defaulted as of 31 May, 2017 by Alok Industries.

1. SBI: 2218.56 crores (Annexure A-16)
2. SBP: 309.92 crores (Annexure A-17)
3. SBH: 419.20 crores (Annexure A-18)
4. SBM: 252.63 crores (Annexure A-19)
5. SBT: 320.04 crores (Annexure A-20)
6. SBBJ: 251.80 crores (Annexure A-21)

Alok Industries also provided securities for the facilities availed by it from SBI and its Associate Banks which are detailed in Annexure 22 to 27. It is stated that HongKong and Shanghai Banking Corporation Limited filed winding up Petition against Corporate Debtor (Alok Industries) before the Hon'ble High Court of Bombay on March 11,



2016 and the matter is still pending and the Petition has not been admitted.

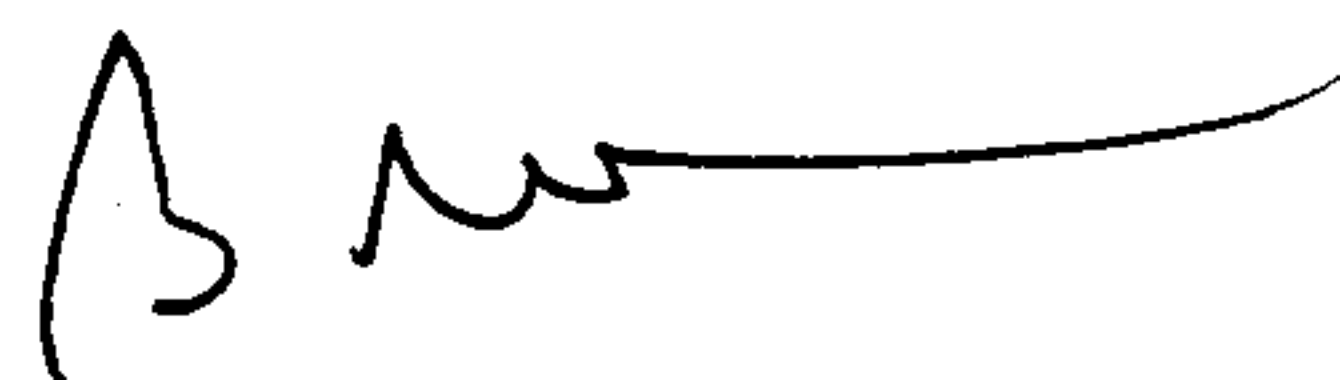
8. It is stated that the following record of default is available:

1. The CRILC report relating to creditor debtor generated on June 23, 2017 vide (Annexure A-90).
2. The CIBIL report relating to corporate debtor generated on June 22, 2017 (Annexure A-91).

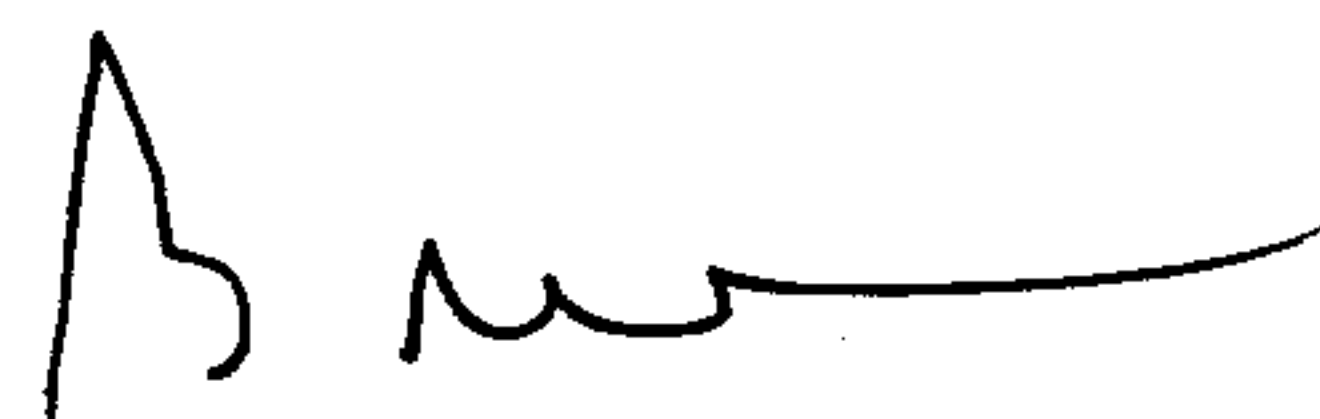
Applicant filed copies of entries in accordance with the Bankers Books Evidence Act, 1891.

9. It is stated that on June 27, 2017 Corporate Debtor acknowledged the outstanding balance as on May 31, 2017. It is also stated that Reserve Bank of India its letter dated June 15, 2017 directed the State Bank of India to initiate resolution process, singly or jointly with other lenders under the Insolvency and Bankruptcy Code, 2016 in respect of default committed by the Corporate Debtor (vide Annexure 125 and 126). Applicant proposed Mr., Ajay Joshi, Address: A-3/204, Oxford Village, Wanowrie, Pune- 411 040 as interim resolution practice.

10. Applicant served a copy of the application on the Corporate Debtor/respondent. This application is filed before this tribunal on June 29, 2017. This application is listed before this Tribunal for the first time on July 12, 2017. Respondent appeared before this Tribunal through his counsel and made a statement that Financial debt is due to the bank and for present he has no defence to make and respondent agreed for resolution process.



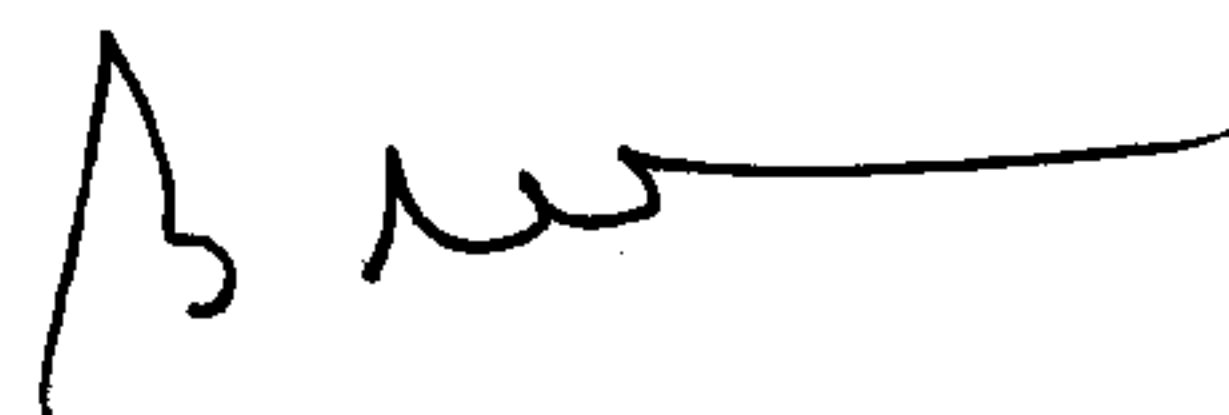
11. Heard the arguments of Learned Counsel appearing for the applicant and respondents. It is represented by both sides' counsels that the winding up proceedings filed by other creditors are pending before the Hon'ble High Court of Bombay but no winding up order has been passed in those winding up Petitions.
12. Learned Counsel appearing for the applicant referring to Section 446 of the Companies Act, 1956 contended unless and until winding up order has been made or the Official Liquidator has been appointed as Interim Liquidator, it cannot be said that other legal proceedings shall not be commenced or shall be proceeded with against the Company. He further, contended that in view of Clause-a of Sub-Section 1 of Section-14 coupled with Section 238 of the Insolvency and Bankruptcy Code, the provisions of the code shall have overriding affect notwithstanding anything inconsistent with the provisions contained in any other law for the time being in force.
13. In support of the said contention he referred to decision of the National Company Law Tribunal Division Bench, Chennai CA/1/(IB)/2017 decided at April 21, 2017 and the order of National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (Insol.) No. 41 of 2017 dated 19.05.2017.
14. Learned Counsel appearing for the Respondent also supported the arguments of the Learned Counsel for the applicant.
15. From the statements made by both sides Counsel it is clear that no order of liquidation has been passed and no appointment of Official Liquidator has been made by the Hon'ble High Court of Bombay in the winding up Petitions pending before the High Court.



16. In view of Rule 5 of Companies (Transfer of Pending Proceedings) Rules, 2016, winding up Petitions in which notice has been served on the Respondent shall be disposed of by the Hon'ble High Courts in which the winding up Petitions are filed and pending. But in winding up petitions in which notices have not been served on the Respondents, such winding up Petitions shall be transferred to the concerned Benches of the National Company Law Tribunal, having territorial jurisdiction. The winding up Petitions filed against respondent Corporate Debtor are pending before the Hon'ble High Court of Bombay and they are not Transferred to this Tribunal since it appears that notices in such petitions have been served on Respondents.

17. Now, the controversy is, in view of the pendency of the winding up petitions before the Hon'ble High Court of Bombay whether this Tribunal can entertain and pass orders in this application. In view of the fact that no winding up order has been passed and no Official Liquidator has been appointed in the winding up Petitions pending before the High Court, Section-446 of Companies Act, 1956 is not applicable. In view of Clause-a of Sub-Section 1 of Section-14 of the Code all proceedings against Corporate Debtor in any court of Law shall stand stayed, on the insolvency commencement date.

18. In view of Section-238 of the Code, the provisions of this code shall have overriding effect over any other law which is inconsistent with the provisions of the code. However, without going into the aspect of overriding effect, since no winding up order has been passed in the winding up Petitions, this adjudicating Authority is of the considered view that this application before this Authority is maintainable and this authority has got jurisdiction over the subject matter to pass orders.

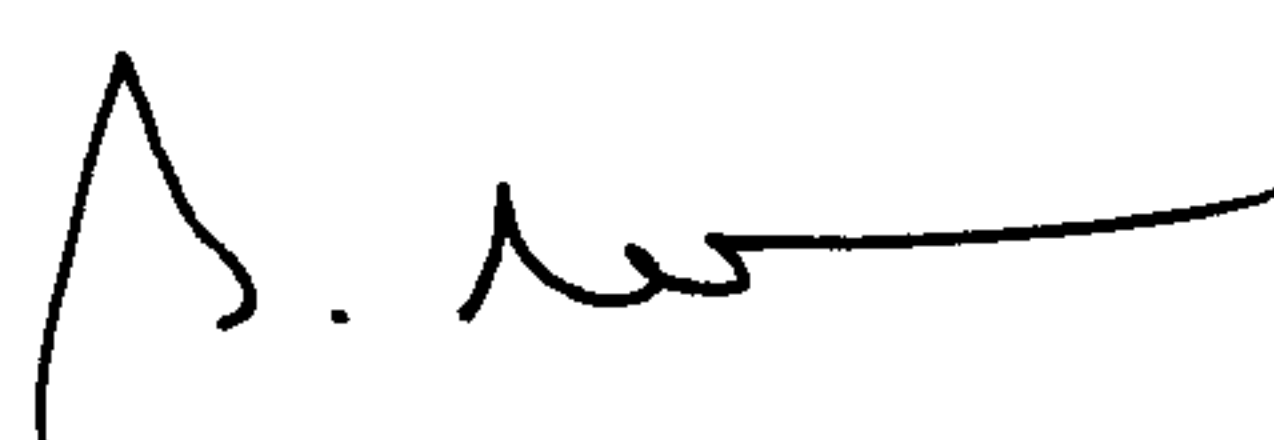


19. This view of this Authority has also been supported by the view taken by the National Company Law Tribunal, Division Bench, Chennai in CA/1/(IB)/2017 decided on April 21, 2017. It appears that Corporate debtor in the said Petitions filed Company Appeal No. 41/2017 before the National Company Law Appellate Tribunal and also filed petitions in the company petition pending before the Hon'ble High Court for orders to stay the process of the Insolvency proceedings.

20. The National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (Insol.) No, 41 of 2017, by its order dated May 19, 2017 observed that in view of the Section-14 and Section-238 of the Code the provisions of Insolvency and Bankruptcy Code, 2016 will prevail over any other law in force including Companies Act, 1956 under which winding up proceedings have been initiated. Therefore, it is clear that this Adjudicating Authority having jurisdiction over the subject matter of this Petition. In this case, the Corporate debtor admitted his liability by acknowledging the debt and making statement agreeing for resolution process before this Authority.

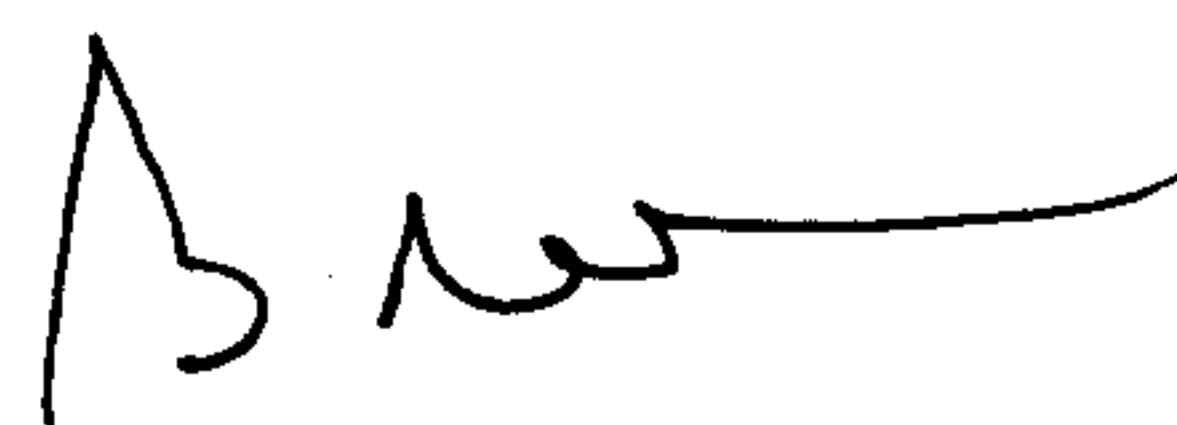
21. State Bank of India triggered the insolvency resolution process against the Corporate Debtor. In order to trigger the insolvency resolution process, Financial Creditor shall place on record material which is sufficient for this Adjudicating Authority to ascertain the debt and to satisfy that a default had occurred; application is complete; and there is no disciplinary proceedings pending against the proposed Interim Insolvency Resolution Professional.

22. Now, this Authority proceeds to consider whether there is sufficient material on record to satisfy that a default had occurred in payment of financial debt.



23. 'Financial Debt' is defined in Section 5(8) of the Code. In the case on hand, Financial Creditor placed on record sanction letters given by the State Bank of India and Associate Banks sanctioning the various Term Loans and other loans. Financial Creditor also placed on record, the Term Loan Agreements entered into between the State Bank of India, its Associate Banks on one hand, and the Corporate Debtor on the other hand. Financial Creditor also placed on record Facility Agreements entered into between the Banks and the Corporate Debtor. Financial Creditor also placed on record Guarantee Facility Agreement. Corporate Debtor acknowledged the debt by a letter dated 27th June, 2017 in respect of the outstanding balance as on 31st May, 2017. In fact, learned counsel appearing for the Corporate Debtor admitted the liability and default has occurred in repayment of the loan amounts to State Bank of India and Associate Banks. Therefore, this Adjudicating Authority basing on the material available on record, conclude that there exists default and a default has occurred in repayment of the financial debt.

24. A perusal of the application filed by the Financial Creditor shows that the same is complete in all respects. Financial Creditor also filed the Written Communication given by the proposed Interim Insolvency Resolution Professional in Form No.II. Financial Creditor also filed various copies of the accounts, Certificate under the Bank's Book Evidence Act and the copies of the ledger accounts of Corporate Debtor. Therefore, the application is complete in all respects. Hence, the Application is admitted under sub-section (5)(a) of Section 7 of the Code. This Adjudicating Authority is also appointing Shri Ajay Joshi, residing at A-3/204, Oxford Village, Wanowrie, pune-411040 having Regn. No. IBBI/IPA-003/IPN00019/2016-2017/10166 as "Interim Resolution Professional" under Section 13(1)(c) of the Code.



25. Section 13 of the Code says that after admission of the application under Section 7, the Adjudicating Authority shall pass an order declaring a moratorium for the purposes referred to in Section 14. Therefore, in view of the commencement of the Insolvency Resolution Process with the admission of this Petition and appointment of the Interim Resolution Professional, this Adjudicating Authority hereby passes the order declaring moratorium under Section 13(1)(a) prohibiting the following as laid down in Section 14 of the Code;

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

(iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(a) The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.

(b) The Applicant shall also make public announcement about initiation of Corporate Insolvency Resolution Process, as required by Section 13(1)(b) of the Code.

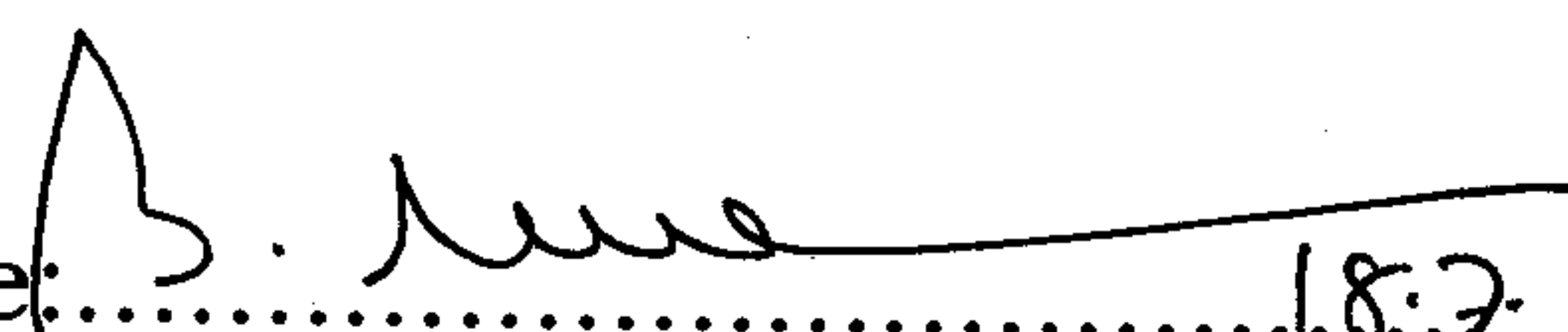
26. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.

27. This Petition is ordered accordingly.

28. Industrial and Commercial Bank of China Limited filed IA No. 188 of 2017 seeking permission to intervene in the proceedings in this Application and to stay the proceedings in this Petition after the matter is listed for pronouncement of orders.

29. The said Application is dismissed by this Authority by way of a separate reasoned order.

30. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.

Signature: 18.7.17
Sri Bikki Raveendra Babu, Member (J).
Adjudicating Authority.