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

C.P. (L.B) No. 113/7/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 14.09.2017

Name of the Company: J M Financial Assets Reconstruction Co. Ltd
V/s.
Sandhya Prakash Ltd.

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MIHIR PARIKH	Adv.	Applicant	<u>M.P.K.</u>
2.				

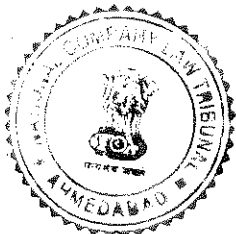
ORDER

Learned Advocate Mr. Mihir Parikh present for Applicant/ Financial Creditor. None present for Respondent.

Order pronounced in open Court. Vide Separate Sheets.

B. Raveendra Babu
BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 14th day of September, 2017.



for K.M. Raveendra
Asstt. Registrar
NCLT Ahmedabad Bench
Ahmedabad

Certified as True Copy of Original

Date: 15/9/2017.
Place: Ahmedabad

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

C.P. No.(IB) 113/7/NCLT/AHM/2017

In the matter of:

JM Financial Asset Reconstruction
Company Limited
7th Floor, Cnegy,
Appasaheb Marathe Marg
Prabhadevi
Mumbai-400025

: Applicant.
[Financial Creditor]

Versus

Sandhya Prakash Limited
"Sandhya Prakash Bhavan",
16, Malviya Nagar,
Bhopal-462003
Madhya Pradesh

: Respondent.
[Corporate Debtor]

Order delivered on 14th September, 2017.

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

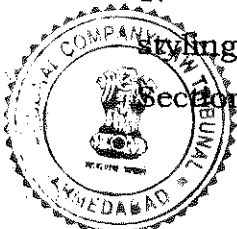
Appearance:

Mr. R.S, Sanjanwala, Senior Advocate with Mr. Mihir Parikh, learned advocate for the Applicant.

Ms. Shikha Sethia, learned Advocate with Mr. Rajdeep Lahiri and Mr. Rahul Gajera on behalf of Singhani Legal Services, learned Advocates for Respondent.

ORDER

1. JM Financial Asset Reconstruction Company Limited, styling itself as 'Financial Creditor', filed this Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ["IB Code"]



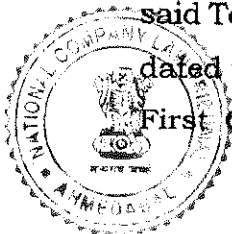
for short] read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("IB Rules" for short) with a request to initiate Corporate Insolvency Resolution Process against Sandhya Prakash Limited, treating it as 'Corporate Debtor'.

2. JM Financial Asset Reconstruction Company Limited is a Company incorporated under the Companies Act, 1956 and registered as an Asset Reconstruction Company under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, having its Registered Office in Mumbai.

3. Sandhya Prakash Limited (Respondent) is a Company incorporated and registered under the Companies Act, 1956 having its Registered Office in Bhopal, Madhya Pradesh. Respondent Company is engaged in the business of printing, newspaper, packaging, real estate etc.

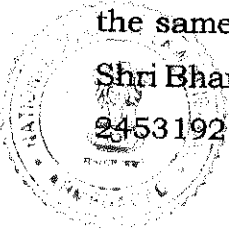
4. Respondent initially obtained loans from Housing and Urban Development Corporation Limited (HUDCO) and Dena Bank which were subsequently assigned to JM Financial Asset Reconstruction Company Limited. After assignment of the debts the Applicant restructured the loans and sanctioned additional loans to the Respondent Company.

5. HUDCO sanctioned a Term Loan of Rs. 18.50 Crores to the Respondent for project construction of Multiplex Mall "AURA" at Bhopal in the State of Madhya Pradesh (hereinafter referred to as "the Mall Project") in respect of above said Term Loan, a Loan Agreement dated 4th April, 2008 was executed between the Respondent, its Directors and HUDCO. The said Loan Agreement was amended. The said Term Loan of Rs. 18.50 Crores is secured by Hypothecation Deed dated 28th April, 2008. The borrowers and the Co-Borrowers created First Charge by creating mortgage by deposit of Title Deeds with



HUDCO with respect to the immovable properties situated in District-Bhopal in the State of Madhya Pradesh. Smt. Bharati S. Patel, Smita B. Patel, Shri Bharat S. Patel and DSP Fingerprint Limited pledged their shares of the Respondent Company and executed Agreement for Pledge of Shares on 29th April, 2008 in favour of Financial Creditor. Guarantors, Shri Bharat Patel, Smt. Bharati Patel and Smt. Smita B. Patel executed Personal Guarantee Deed dated 28th April, 2008 in favour of Financial Creditor. M/s. Surya Offset Printers (India) Private Limited executed a Deed of Corporate Guarantee dated 28th April, 2008. As per the Loan Agreement dated 4th April, 2008, Respondent shall open an Escrow Account into which the Respondent shall deposit or cause to be deposited all amounts accruing under the Scheme in the said account and the account shall be operated by the Respondent on the terms and conditions contained in the Escrow Agreement dated 28th April, 2008. Applicant filed all the relevant documents relating to the said loan transactions.

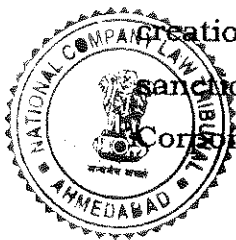
6. Dena Bank sanctioned Term Loan of Rs. 8.50 Crores to the Respondent vide Sanction Letter dated 16th September, 2010 read with Letters dated 20th September, 2010, 24th September, 2010, 18th October, 2010 and 4th November, 2010 for construction of AURA Mall under the multiple banking arrangements with HUDCO. The Loan Agreement dated 24th September, 2010 was executed between the Respondent and Dena Bank. The said loan is also secured by Agreement of Hypothecation of goods etc. The Respondent Company, and Mr. Bharat Patel and Smt. Bharati Patel created a Charge by deposit of title deeds with respect to their immovable properties situated in Bhopal, State of Madhya Pradesh and the mortgage is recorded in the Memorandum of Entry dated 10th November, 2010. Personal Guarantee was also given by Shri Bharat Patel, Smt. Bharati Patel and Smt. Smita Patel by executing Deed of Mortgage dated 24th September, 2010. Corporate Guarantee was furnished on the same day by M/s. Surya Offset Printers (India) Private Limited. Shri Bharat Patel, Smt. Bharati Patel and Smt. Smita B. Patel pledged 2453192 shares held by them in the Respondent Company by



executing an Agreement of Pledge. A Revised Agreement dated 8th November, 2010 was executed by the Respondent, and its Directors in favour of Dena Bank. Applicant filed all the documents relating to the loan sanctioned by the Dena Bank.

7. HUDCO and Dena Bank vide separate registered Assignment Agreements both dated 30th March, 2013 assigned the financial asset pertaining to the Corporate Debtor together with the security interest created thereof and all their rights, title, and interest thereon in favour of the Applicant under the provisions of the SARFAESI Act. As per the Assignment Agreements, Dena Bank and HUDCO assigned and transferred the financial debt in favour of the Applicant who is the Financial Creditor.

8. After the assignment of debt in favour of the Applicant, Corporate Debtor and Guarantors vide their letter dated 9th April, 2013 requested the Financial Creditor for restructuring of the outstanding loans of the Corporate Debtor on the terms and conditions mentioned in the letter. On the request of Corporate Debtor, the Financial Creditor vide its letter dated 16th April, 2013 agreed to grant Additional Facility of Rs. 12 Crores and restructuring of the outstanding dues. Accordingly, Restructuring Agreement dated 18th April, 2013 was executed between the Corporate Debtor, Mr. Bharat Patel, Mrs. Bharati Patel, Mrs. Smita Patel and Surya Offset Printers (India) Private Limited and the Financial Creditor thereby agreed to the terms of Restructuring Agreement. As per the Restructuring Agreement, the debt acquired from HUDCO is Rs. 21,34,44,661/- and Rs. 7,59,16,048/- as acquired from Dena Bank and it is treated as outstanding debt. As per the Restructuring Agreement, the existing security interest already created in favour of HUDCO and Dena Bank would continue and ensue for the benefit of Financial Creditor. The Restructuring Agreement also provides for creation of Additional Security Interest. Financial Creditor sanctioned Additional Loan of Rs. 12 Crores to the Corporate Debtor. Corporate Debtor executed Loan Agreement dated 18th April, 2013.



An Addendum to the Loan Agreement was executed on 23rd April, 2013. The Additional Loan is also secured by Deed of Hypothecation, by Mortgage and by Personal Guarantors, Corporate Guarantee etc. Financial Creditor vide letter dated 28th February, 2014 restructured the loans and additional loan was rescheduled. Further, on the request of the Corporate Debtor, another sum of Rs. 5 Crores was given as loan by a letter dated 26th February, 2014. In that connection, Loan Agreement dated 28th February, 2014 was executed. The said loan was secured by Deed of Hypothecation by creating charge on the immovable properties by deposit of title deeds, by giving Personal Guarantees and Corporate Guarantee, and by pledging the shares.

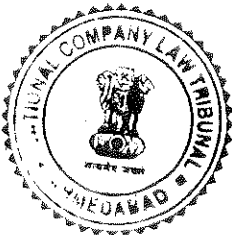
9. The Corporate Debtor, vide its letter dated 9th April, 2013 acknowledged that they have not been able to meet their loan obligations on time and requested the Financial Creditor for restructuring of the outstanding loans. The Corporate Debtor in its communication dated 31st January, 2014 addressed to the Financial Creditor acknowledged the defaults committed to Punjab National Bank and requested the Financial Creditor to take over their 'NPA' account with Punjab National Bank. The Financial Creditor vide its letter dated 22nd May, 2015 called upon Corporate Debtor to make payment of outstanding overdue amount in accordance with the repayment schedule by 30th June, 2015. Corporate Debtor by its Reply dated 2nd June, 2015 acknowledged that they could not meet with the commitment with the Financial Creditor by making regular payment against the outstanding dues. Corporate Debtor acknowledged the outstanding amount in respect of the Restructured Loans and Additional Loans of Rs. 12 Crores and Rs. 5 Crores as on 31st March, 2015 and 31st March, 2016 by executing Letters of Acknowledgement of Total Outstanding Dues on 8th May, 2015 and 20th April, 2016. Corporate Debtor signed Balance Confirmation Letter dated 1st April, 2015 in respect of Additional Loan of Rs. 12 Crores and Rs. 5 Crores. Similarly, Corporate Debtor has confirmed the balance payable to the Financial Creditor as on 31st March, 2016

in respect of Additional Loan of Rs. 12 Crores and Rs. 5 Crores by signing the Balance Confirmation Letter dated 13th April, 2016 confirming the balance of Additional Loans, viz., Rs. 29,76,49,799. The Corporate Debtor in its Balance Sheets for the Financial Year ended on 31st March, 2013, 31st March, 2014 and 31st March, 2016 admitted and acknowledged the outstanding dues due to the Financial Creditor.

10. The Financial Creditor initiated measures under the SARFAESI Act by issuing a notice dated 10th April, 2017 under Section 13(2) of the SARFAESI Act to the Corporate Debtor, Mr. Bharat Patel, Mrs. Bharati Patel, Mrs. Smita Patel, M/s. Surya Offset Printers (India) Private Limited, and DSP Fingerprint Limited. The Corporate Debtor and its Directors and Guarantors issued several letters dated 5th June, 2017. Syndicate Bank has also initiated action under SARFAESI Act and brought the property situated in Arera Colony, Bhopal for sale. The said property is part of the property mortgaged by the Corporate Debtor, Shri Bharat Patel and Smt. Bharati Patel to the Financial Creditor. Financial Creditor addressed a letter dated 7th October, 2016 to the Syndicate Bank objecting to the auction of the aforesaid property by Syndicate Bank. Thereupon, Financial Creditor filed Securitisation Application No. 31/2017 before Debt Recovery Tribunal at Jabalpur against Syndicate Bank, Corporate Debtor and others which is pending adjudication. The following are the outstanding amounts as on 4th August, 2017:-

A. Loans acquired from Dena Bank and HUDCO.

Particulars	Amount (in Rs.)
Principal Outstanding	28,93,60,709
Interest	54,87,52,740
Penal Interest	5,91,39,613
Total	89,72,53,062



B

B. Additional Loan of Rs. 12 Crores.

Particulars	Amount (in Rs.)
Principal Oustanding	12,00,00,000
Interest	17,28,55,910
Penal Interest	2,26,88,562
Total	31,55,44,473

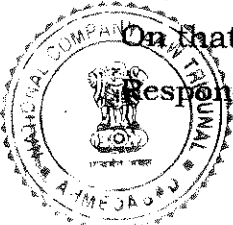
C. Additional Loan of Rs. 5 Crores.

Particulars	Amount (in Rs.)
Principal Oustanding	5,00,00,000
Interest	5,56,86,709
Penal Interest	81,27,035
Total	11,38,13,744

Grand Total Rs. 132,66,11,279/-

Financial Creditor received an amount of Rs. 37,00,000/- from the Corporate Debtor.

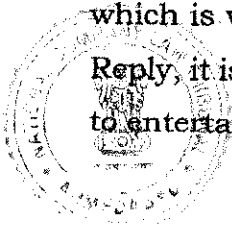
11. This Application was, for the first time, listed before this Adjudicating Authority on 30th August, 2017. Copy of the Application has been served on the Respondent and proof of service is filed. This Adjudicating Authority directed the Applicant to comply with Column-7 of Part V of Form-1, i.e., copies of Entries in Bankers Books in accordance with Bankers' Books Evidence Act, and accordingly notice was issued under Section 7(5) of the Code. This Adjudicating Authority also directed the Applicant to serve notice of date of hearing along with copy of order and file proof of service and listed the matter on 1st September, 2017 for objections and hearing. Applicant filed proof of service of notice on Respondent on 1.9.2017, however the Applicant did not file copies of bankers books, and hence the matter was listed on 5.9.2017. On 5.9.2017 Applicant filed Certified statement of account along with Affidavit. Respondent appeared through their learned Counsel and requested time to file Objections. The matter was listed on 8.9.2017 for filing objections. On that date, Respondent took time for filing objections. Ultimately, Respondent filed Reply on 11th September, 2017.



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12. In the Reply, it is stated that the Company for the purpose of construction of AURA Multiplex Mall in Bhopal deliberated with HUDCO and Dena Bank for its financing and financial assistance. On 30th March, 2013 due to non-completion of project of constructing the Mall the entire debts and liabilities stood transferred to the present Financial Creditor. The representatives of Corporate Debtor were coerced into agreeing upon the interest rate of 25% per annum, compounded monthly which is inadmissible as per the extant laws of India. In fact Applicant gave advertisements in Economic Times and Times of India for sale of AURA Mall for which bills worth Rs. 13.80 lakhs were raised against the Company. The Applicant did not communicate the result of advertisements for 7 months. Thereafter, Applicant issued notice under Section 13(2) of the SARFAESI Act on 10th April, 2017. The assets of the Company worth more than Rs. 300 Crores were illegally mortgaged with the Financial Creditor for the initial loan of Rs. 45.94 Crores and now the Applicant established liability of Rs. 132 Crores which is 3 times over and above the initial amount in a span of 4 years and 3 months which is highly improbable and grossly illegal. Respondent also pleaded that in complete deviation to the terms and conditions agreed between JM Financial Asset Reconstruction Company Ltd, a letter of termination of service was served upon the Company without any prior intimation or communication.

13. Respondent also stated that it has also published the sale of Aura Mall in the Economic Times for which 27 prospective responses have come but the Company could not capitalise the responses as the Applicant already terminated their engagement with the Company due to the reasons best known to the Applicant. Respondent also stated in the Reply about the glorious past of the Company and the bright future for reviving the unit. Respondent also stated that it has credited all its income into Escrow Account which is with IDBI and therefore there is no question of default. In Reply, it is stated that this Adjudicating Authority has no jurisdiction to entertain this Application since the jurisdiction is there only to the



Courts at Mumbai, India and to no other Courts as per the Agreements between the parties.

14. The first objection that is to be answered is regarding jurisdiction of this Adjudicating Authority. No doubt, the Agreements between the parties show that the Courts at Mumbai are having jurisdiction.

14.1. It is settled law that the parties cannot confer jurisdiction on Courts or Tribunals unless the Courts or Tribunals are having jurisdiction over the subject matter and as well as the territorial and pecuniary jurisdiction.

14.2. If more than one Court or Tribunal is having jurisdiction over a particular subject matter or over a particular pecuniary limit or the territorial limits, then if there is an Agreement between the parties, the Courts situated at a particular place, on which the parties agree, will have jurisdiction.

14.3 Section 60, sub-section (1) of the IB Code reads as follows;

"60.(1). The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located."

In the case on hand, the Registered Office of the Company is situated in Bhopal, Madhya Pradesh. Therefore, the National Company Law Tribunal at Ahmedabad is having territorial jurisdiction over the State of Gujarat and Madhya Pradesh. In this context, even if the parties to the Agreements agree for jurisdiction of the Courts at Mumbai, the Courts at Mumbai will have no jurisdiction to entertain the Insolvency Resolution Process in respect of the Corporate Debtor, since Tribunal at Mumbai has no territorial jurisdiction over Bhopal.

14.4. Therefore, it is held that this Adjudicating Authority (NCLT), is having jurisdiction to entertain the Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

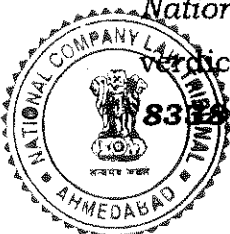
15. The Hon'ble National Company Law Appellate Tribunal, in **Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017** in the matter of **M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr**, decided on on 17th January, 2017, held as follows in the following paragraphs;

"82. As discussed in the previous paragraphs, for initiation of corporate resolution process by financial creditor under sub-section (4) of Section 7 of the Code, 2016, the 'adjudicating authority' on receipt of application under sub-section (2) is required to ascertain existence of default from the records of Information Utility or on the basis of other evidence furnished by the financial creditor under sub-section (3). Under Section 5 of Section 7, the 'adjudicating authority' is required to satisfy -

- (a) Whether a default has occurred;*
- (b) Whether an application is complete; and*
- (c) Whether any disciplinary proceeding is against the proposed Insolvency Resolution Professional.*

83. Once it is satisfied it is required to admit the case but in case the application is incomplete application, the financial creditor is to be granted seven days' time to complete the application. However, in a case where there is no default or defects cannot be rectified, or the record enclosed is misleading, the application has to be rejected."

16. The above said Judgment delivered by the Hon'ble National Company Law Appellate Tribunal is also confirmed by the verdict of the **Hon'ble Supreme Court in Civil Appeal Nos. 8337-8348 of 2017** delivered on 31st August, 2017.



17. In the case on hand, the Application is complete since the defects pointed out have been rectified as narrated in the earlier paragraphs of this order. Applicant filed documents in support of the assigned debts borrowed from HUDCO and Dena Bank. Applicant also filed the documents relating to the Additional Loans sanctioned by the Financial Creditor. The documents are not at all disputed by the Corporate Debtor, except disputing the rate of interest. Even according to the Respondent, they are ready to sell the Aura Mall and pay the amounts to the Applicant. The termination of services by the Applicant in deviation to the terms and conditions and it has been done without prior intimation or communication to Corporate Debtor is no ground to come to a conclusion that a default has not occurred in repayment of financial debt. The material on record clearly go to show that in order to finance the project of 'Aura Mall', Respondent-Corporate Debtor borrowed monies from HUDCO and Dena Bank and furnished Securities, Guarantee Agreements and Corporate Guarantee, as well as Pledge of Shares. The Registered Assignment Agreements executed by HUDCO and Dena Bank in favour of the Applicant clearly show that the monies borrowed from them along with the Securities were assigned to the Applicant. Since the monies were borrowed by the Corporate Debtor from the HUDCO and Dena Bank on interest basis, it is a 'financial debt'. Such 'financial debt' has been assigned to the Applicant. Moreover, the Applicant has also granted Additional Financial Assistance of Rs. 12 Crores and Rs. 5 Crores to the Respondent on interest basis. Therefore, it is also a 'financial debt'. The documents on record, including the Notice under SARFAESI Act, clearly show that a default has been committed by the Respondent in repayment of the financial debt. Therefore, Applicant is a 'Financial Creditor' and Respondent is a 'Corporate Debtor'. A default has been committed by the Corporate Debtor in repayment of the financial debt. The Applicant proposed the name of Mr. Devendra Padamchand Jain as 'Interim Insolvency Resolution Professional' and also filed his Written Communication.



18. In view of the above discussion, this Application deserves to be admitted and it is accordingly admitted under Section 7(5) of the Code.

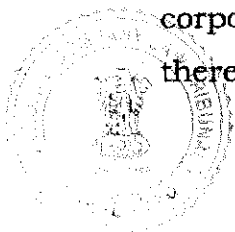
19. This Adjudicating Authority hereby appoint Shri Devendra Padamchand Jain, having his address at A-43, Prima Plaza, Opposite DLA School, Bodakdev, Ahmedabad-380054, and having Registration No. IBBI/IPA-001/IP-P00255/2017-18/10484 under Section 13 (1) (c) of the Code.

20. The Interim Insolvency Resolution Professional is hereby directed to cause public announcement of the initiation of 'Corporate Insolvency Resolution Process' and call for submission of claims under Section 13(1)(b) read with Section 15 of the Code and Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The other Secured and Unsecured Creditors and Operational Creditors are also entitled to file their claims before the Interim Insolvency Resolution Professional.

21. This Adjudicating Authority hereby order moratorium under Section 13(1)(a) of the IB Code prohibiting the following as referred to in Section 14 of the Code;

(a) 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;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;



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(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.

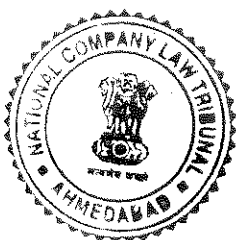
(i) However, the order of moratorium shall not apply in respect of supply of essential goods or services to Corporate Debtor.

(ii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.

(iii) The order of moratorium comes into force from the date of the order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.

22. This Application stands disposed of accordingly. No order as to costs.

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



Signature: *B. Raveendra Babu*

Sri Bikki Raveendra Babu, Member (J).

Adjudicating Authority.

Certified as True Copy of Original

Date: 15/9/17
Place: Ahmedabad

K. Raveendra Babu
Asstt. Registrar 13

NCLT Ahmedabad Bench
Ahmedabad