

14

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

C.P. (I.B) No. 23/10/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 23.05.2017**

Name of the Company: New Tech Fittings Pvt. Ltd.
V/s.
Rajkot Nagarik Sahakari Bank Ltd.


Section of the Companies Act: Section 10 of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	RAJESH BOHRA	(ADVOCATE)	NEWTECH FITTINGS PVT LTD	
2.				

ORDER

Learned Advocate Mr. Rajesh Bohra present for Corporate Debtor/ Petitioner. None present for Respondent.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 23rd day of May, 2017.

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

C.P. No. (IB) 23/10/NCLT/AHM/2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 23rd day of May, 2017

In the matter of:

New Tech Fittings Ltd.,
207, Ajanta Commercial Complex,
Opp: Bombay Hotel,
Gondal Road,
Rajkot-360002

: Corporate Applicant.

Appearance:

Shri Rajesh Bohra, Learned Advocate for the Corporate Applicant.

FINAL ORDER

Pronounced on 23rd day of May, 2017

1. M/s. New Tech Fittings Ltd., filed this Petition under Section 10 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 7 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"].
2. Petitioner is a Company registered under the Companies Act, 1956.
3. In this Petition, it is shown that Rajkot Nagarik Sahakari Bank Limited [hereinafter referred to as "the Bank"] is the Financial Creditor, and it has also annexed names of

Operational Creditors as per "Annexure-6". As per Annexure-6, there are six Operational Creditors of the Corporate Applicant.

4. It is stated in the Petition that the total debts raised and the amount in default is shown in "Annexure-7". The details of total debts are also shown in Annexure-7 due to Secured Creditors which is put at Rs. 506.52 lakhs. The Corporate Applicant mortgaged its immovable properties.

5. In the Affidavit of the Petitioner dated 16th May, 2017 filed on 17th May, 2017 it is stated that no matter is pending with the Debt Recovery Tribunal, Ahmedabad and Urban Court, Rajkot relating to the Petitioner Corporate Applicant. It is further stated in the Additional Affidavit that Secured Creditor, namely Rajkot Nagarik Sahakari Bank Limited has already taken action under Section 13(2) and 13(4) SARFAESI Act, 2002. The Corporate Applicant has not preferred any appeal against the above actions. It is further stated in the Affidavit that the Bank has already sold the Company's assets, plant and machinery, land and building and residence of Guarantor's under auction.

6. A perusal of the order of the Board for Industrial and Financial Reconstruction (BIFR) dated 28.7.2009 made in Case No. 27/2008 of M/s. New Tech Fittings Pvt. Ltd., clearly shows that in view of the reason that the Bank had taken symbolic possession of the Company's assets under Section 13(4) of the SARFAESI Act, the Bench awaited the Reference of M/s. New Tech Fittings Pvt. Ltd., pending before the BIFR.

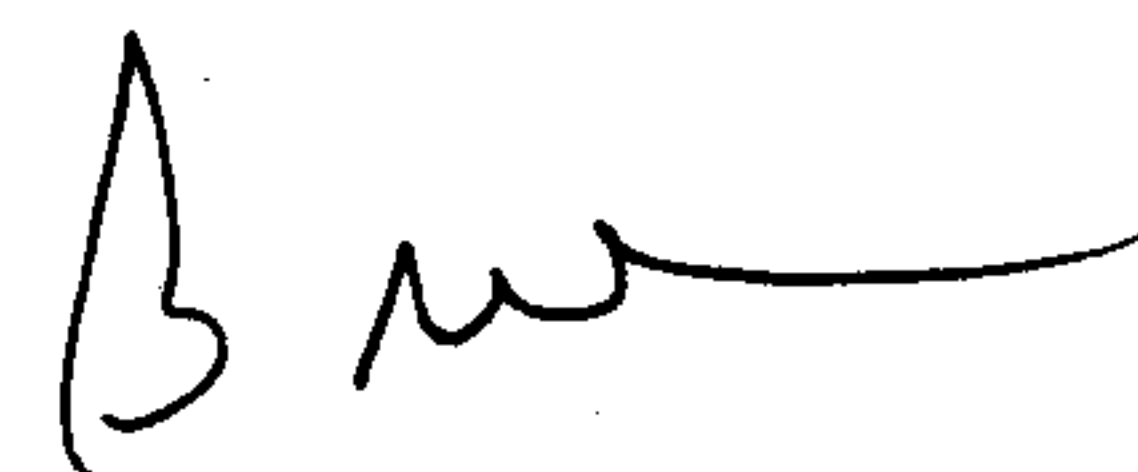
7. Moreover, in view of the Eighth Schedule of The Insolvency and Bankruptcy Code, 2016 there was amendment to The Sick

Industrial Companies (Special Provisions) Repeal Act, 2003. As per the said amendment, in Section 4, for sub-clause (b), new clause was substituted and as per the new clause the proceedings before the BIFR shall stand abated. The Proviso to Section 4 says, that the company in respect of which Reference is abated may make Reference to National Company Law Tribunal under the Insolvency and Bankruptcy Code within 180 days from the commencement of the Insolvency and Bankruptcy Code.

8. In the case on hand, the proceedings before the BIFR are abated not by virtue of Section 4 of The Sick Industrial Companies (Special Provisions) Repeal Act, 2003, but it is on account of taking possession of the assets of the Company by the Bank under the SICA.
9. This Petition is filed before this Adjudicating Authority on 11th May, 2017. Petitioner filed proof of service of petition on the Secured Creditor. This Adjudicating Authority directed the Petitioner to file documents relating to proceedings pending or disposed of before the DRT and BIFR. This Adjudicating Authority also directed the Petitioner to issue notice of date of hearing along with copy of the order of this Adjudicating Authority on the Creditor and file proof of service. Accordingly, Petitioner filed documents relating to the proceedings pending or disposed of before the BIFR and filed proof of service of notice of date of hearing.
10. Heard the learned Advocates appearing for the Corporate Applicant. The statements made in the Petition go to show that Corporate Applicant committed default in payment of debts to the Secured Creditor as well as Operational Creditors. The Bank namely, Rajkot Nagarik Sahakari Bank Limited is a

Secured Creditor. The names of the Operational Creditors and the debts due to them are mentioned in Annexure A-6 of the Petition. Petitioner also created mortgage for the immoveable properties of the Company.

11. "Corporate Applicant" is defined in sub-section (5) of Section 5 of the Code.
12. "Corporate Applicant" means 'Corporate Debtor' or 'member' or 'partner' of Corporate Debtor or individual in-charge of managing the operations and resources of the Corporate Debtor or a person having control and supervision over the financial affairs of the Corporate Debtor.
13. "Corporate Debtor" is defined in Section 3(8) of the Code. It shows that 'Corporate Debtor' means that corporate person who owes a debt to any person. In the case on hand, Petitioner is a 'Corporate Person' which owes debt to Secured Creditor and as well as Operational Creditors which includes mortgage of immoveable properties of the Company. Therefore, Petitioner, who is a Corporate Applicant, is also a Corporate Debtor. In that view of the matter, Petitioner is entitled to trigger insolvency resolution process, provided the Petitioner (Corporate Applicant/Corporate Debtor) committed default. Petitioner, being the Corporate Applicant/Corporate Debtor, admitted that he has committed default in repayment of loan to the Secured Creditor as well as Operational Creditors and other Governmental authorities which includes mortgage of properties. It is stated by the learned Counsel for the Petitioner that no liquidation order has been passed in respect of the Petitioner.



14. The proceedings under the SARFAESI Act abated because the Bank has taken possession of the assets of the Company. It is also stated by the learned Counsel appearing for the Petitioner that no proceedings are pending before the DRT. The Corporate Applicant, along with the Petition, furnished information as required under Clause (a) and (b) of Sub-section (3) of Section 10 of the Code. The Corporate Applicant filed the Petition under sub-section (1) in the prescribed form. The Corporate Applicant also proposed the name of the Resolution Professional. The Corporate Applicant also filed written communication of proposed Interim Insolvency Resolution Professional in Form-2.
15. Hence the Petition filed by the Corporate Applicant is admitted under Section 10(4)(a) of the Code.
16. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional.
17. Hence, Shri Devendra Padamchand Jain, having IP Registration No. IBBI/IPA-001/IP-00224/2016-17/1551 dated 13th January, 2017 and residing at A-43, Prime Plaza, Opposite DLA School, Bodakdev, Ahmedabad, is appointed as "Interim Insolvency Resolution Professional" who filed Form-2 and Certificate of Registration issued by the Insolvency and Bankruptcy Board of India. This Adjudicating Authority also directs the Corporate Applicant to make a public announcement

in terms of Clause (b) of sub-section (1) of Section 13 of the Code.

18. 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) However, the supply of goods and essential services to the corporate debtor shall not be terminated or suspended or interrupted during moratorium period. The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.

19. 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.

20. This Petition is ordered accordingly.

21. Communicate a copy of this order to the Corporate Applicant and to the Interim Insolvency Resolution Professional.


BIKKI RAVEENDRA BABU
ADJUDICATING AUTHORITY
MEMBER JUDICIAL

*Pronounced by me in open court on
this the 23rd day of May, 2017.*

RmR