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

**C.P. (I.B) No. 21/10/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 29.05.2017**

Name of the Company: New Tech Forge & Foundry Ltd.  
V/s.  
State Bank of India & Ors.

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.	SIDDHARTHA SAMAL	Advocate	State Bank of India (Corp. Debtor)	
2.	MANOHAR CHHATWANI	Sr. Mgr.	Resp. No. 5 (IARC)	
③	RAJESH BOHRA	Advocate	Corp. Applicant	

**ORDER**

Learned Advocate Mr. Rajesh Bohra present for Petitioner/ Corporate Debtor.  
Learned Advocate Mr Siddhartha Samal present for Respondent no. 1. Authorised  
Representative Mr. Manohar Chhatwani present for Respondent no. 5.

Order pronounced in open Court. Vide separate sheet.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 29th day of May, 2017.

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

**C.P. No. (IB) 21/10/NCLT/AHM/2017**

**CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**

**Date: 29<sup>th</sup> day of May, 2017**

**In the matter of:**

New Tech Forge & Foundry Ltd.,  
207, Ajanta Commercial Complex  
Opp: Bombay Hotel,  
Gondal Road,  
Rajkot-360 002

: Corporate Applicant.

**Appearance:**

Shri Rajesh Bohra, Learned Advocate for the Corporate Applicant.  
Shri Sidharth Samal, Learned Advocate for Repsondent No.1/  
Financial Creditor.  
Shri Sunil Bhavsar, Learned Advocate for Respondent No.3/  
Financial Creditor.  
Shri Manohar Chhatwani, learned Authorised Representative  
for Respondent No.5.

**FINAL ORDER**

Pronounced on 29<sup>th</sup> day of May, 2017

1. New Tech Forge and Foundry 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. The Registered Office of the Petitioner Company is

situated at 207, Ajanta Commercial Complex, Opp: Bombay Hotel, Gondal Road, Rajkot-360 002.

3. In this Petition, State Bank of India, Oriental Bank of Commerce, Corporation Bank, State Bank of Hyderabad, International Asset Reconstruction Company Pvt. Ltd. (loan assigned by HDFC Bank) are shown as 'Financial Creditors'. Petitioner filed the List of Operational Creditors vide "Annexure-6" to this Petition.

4. Petitioner filed List of Financial/Secured Creditors, vide "Annexure-7". Petitioner also filed the Record of Registrar of Companies confirming the charges of the Financial Creditors. Petitioner filed details of statutory liabilities as on 8.5.2017 vide "Annexure-10".

5. Petitioner stated that notice under Section 13(2) of the SARFAESI Act was issued and possession of the assets of the Petitioner Company was taken over by the Secured Creditors. Petitioner also stated that Paschim Gujarat Vij Company Ltd., and Income Tax Department and Sales Tax Department issued Demand Notices to the Petitioner.

6. Petitioner named Interim Insolvency Resolution Professional in the Petition. Petitioner filed copy of the order passed by the BIFR in Case No. 37/2010. A perusal of the same disclose that the reference made by the Petitioner Company has been abated under the Third Proviso of Section 15(1) of SICA as SBI with the consent of other Banks in the consortium of the Banks has taken and completed action under Section 13(4) of SARFAESI Act.

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 11<sup>th</sup> May, 2017 and it was listed before this Adjudicating Authority on 15<sup>th</sup> May, 2017. Petitioner filed proof of despatch of copy of Petitioner. This Authority directed the Petitioner to file the documents relating to the proceedings pending or disposed before the DRT and BIFR. This Authority also directed the Petitioner to issue notice of date of hearing and serve copies of the order on the Creditors and file proof of service. On 18<sup>th</sup> May, 2017, Petitioner filed documents relating to the proceedings before the DRT and BIFR. Petitioner also filed proof of service of notice on the Financial Creditors. The Financial Creditors appeared through their Counsel.

10. On 23.5.2017, learned Counsel for the State Bank of India filed Objections stating that consortium of five Banks has taken already taken possession of the Corporate Applicant. SBI opposed for the appointment of Shri Devendra Padamchand Jain, proposed by the Corporate Applicant on the ground that he represented the Corporate Applicant in the Meeting of the Creditors held by the Bank. SBI has requested this Adjudicating Authority to appoint, Shri Premraj Ramratan Laddha, CA as Interim Resolution Professional.



11. After hearing of arguments of both the sides, learned Counsel appearing for the Petitioner agreed to suggest some other name as 'Interim Resolution Professional'. On 24.5.2017, learned Counsel for Petitioner proposed name of another person as Interim Resolution Professional along with Written Communication of Shri Arun Kumar Malani, as 'Interim Resolution Professional'.

12. Heard arguments of both the sides. Learned Counsel for Petitioner submitted that the Company has still got debts to be paid to the Secured Creditors, Operational Creditors, and Statutory Bodies. Learned Counsel for the State Bank of India submitted that they have already taken possession of the assets of the Petitioner Company and their assets may be permitted to be retained with them.

13. "Corporate Applicant" is defined in sub-section (5) of Section 5 of the Code.

14. "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.

15. "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.

16. 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.

17. During the course of hearing, learned Counsel appearing for the SBI opposed for the appointment of Shri Devendra Padamchand Jain on the ground that he appeared for the Corporate Applicant in the meeting of the Creditors conducted by the Bank. Learned Counsel appearing for Petitioner suggested the name of one Shri Arun Kumar Malani as "Interim Resolution Professional" and filed Written Communication of the proposed Interim Resolution Professional.

18. The materials on record clearly go to show that Petitioner committed default in payment of debts to Secured Creditors, Operational Creditors and Statutory Bodies. Petitioner also created mortgage on the moveable properties of the Company.



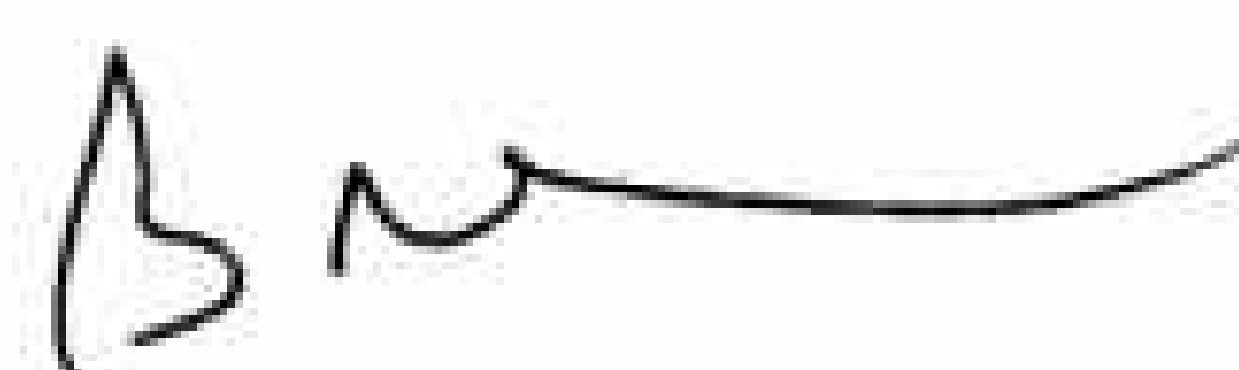
19. Hence, the Petition filed by the Corporate Applicant is admitted under Section 10(4)(a) of the Code.

20. 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.

21. Hence, Shri Arun Kumar Malani, having IP Registration No. IBBI/IPA-001/IP-00040/2016-17/1724 dated 23<sup>rd</sup> May, 2017 and residing at 6-1-68/33, Dream Valley, P306 PVNR, Shivrampally, RR District-500005, A-43, PR12, Hyderabad Telangana, 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.

22. 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;

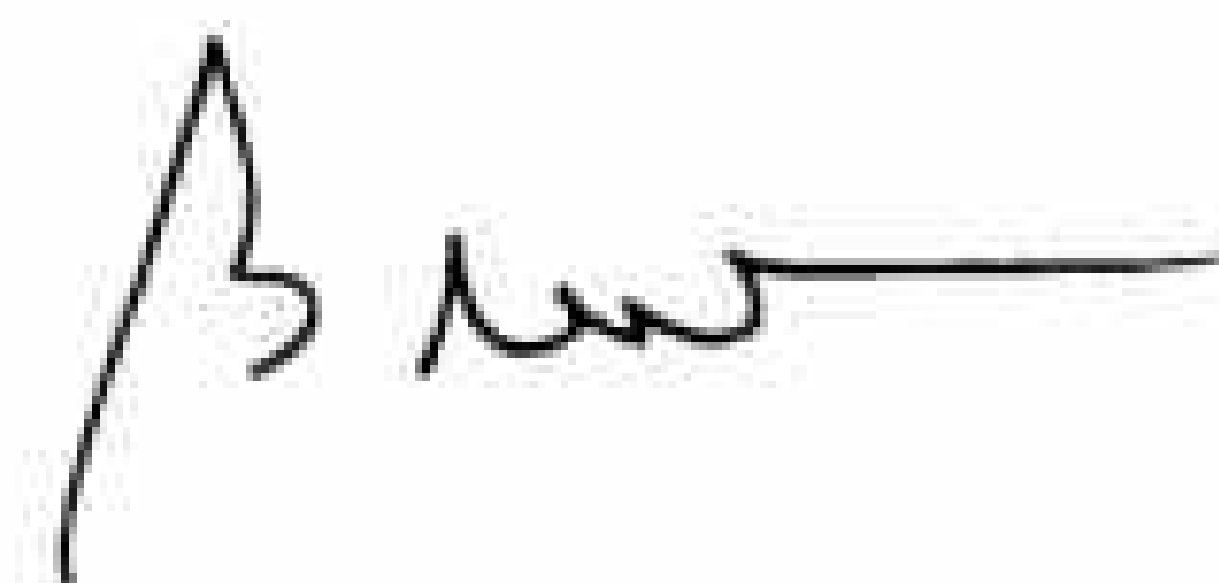


- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any 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.

23. 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.

24. This Petition is ordered accordingly.



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

 29/5/17  
**BIKKI RAVEENDRA BABU**  
**ADJUDICATING AUTHORITY**  
**MEMBER JUDICIAL**

*Pronounced by me in open court on  
this the 29<sup>th</sup> day of May, 2017.*

*RmR*