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

**C.P. (I.B) No. 137/10/NCLT/AHM/2017**

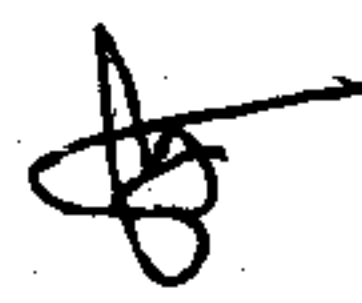
Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**  
**Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 22.12.2017**

Name of the Company: Sunil Sunderlal Luhar.  
(Gaytech Engineering Pvt Ltd.)  
V/s.  
Indian Bank

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>
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1.	Sachin Joshi	C.A.	Gaytech Engng Pvt Ltd	
2.				

**ORDER**

Learned Advocate Mr. Sachin Joshi present for Corporate Debtor/Petitioner. None present for Respondent.

Order pronounced in open court. Vide separate sheets.

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 22nd day of December, 2017.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

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

**C.P. No.(IB) 137/10/NCLT/AHM/2017**

**In the matter of:**

M/s. Gaytech Engineering  
Private Limited,  
310,331-332, Race Course Tower,  
Race Course Circle,  
Vadodara-390007

: Corporate Debtor.

**In the matter between:**

Shri Sunil Sunderlal Luhar  
904, 9<sup>th</sup> floor Palm View Apartment,  
Vadodara-390007,  
Gujarat.

: Petitioner.  
[Corporate Applicant].

Versus

Indian Bank,  
1, Sujata Society,  
Hari Nagar Char Rasta,  
Gotri Road,  
Baroda, Gujarat.

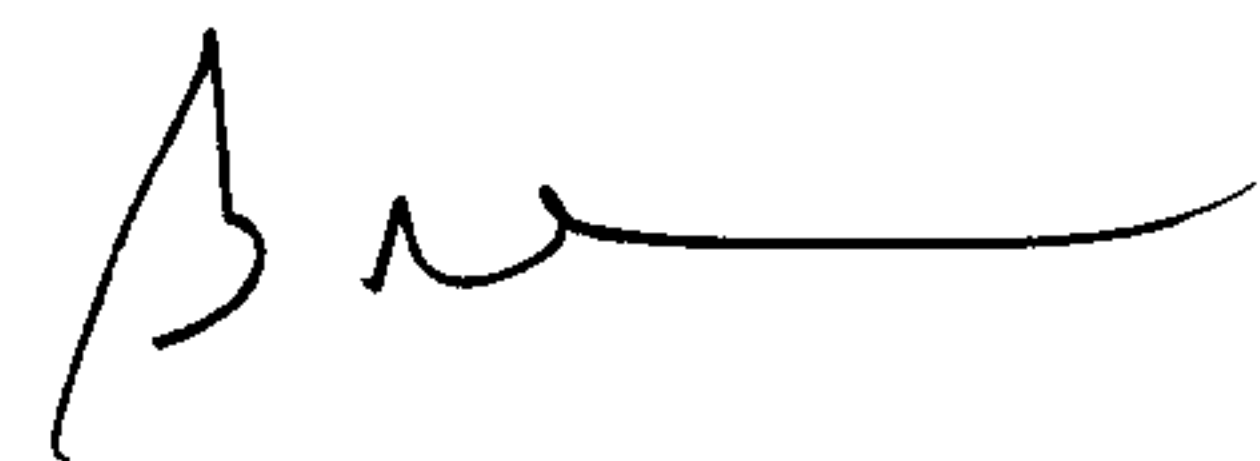
: Respondent.  
[Financial Creditor].

Order delivered on 22<sup>nd</sup> December, 2017.

**Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J) – And -  
Hon'ble Ms. Manorama Kumari, Member (J).**

**Appearance:**

Mr. Sachin Joshi, learned FCA present for Petitioner.  
Ms. Bhakti Shevade, on behalf of Mr. Biju Nair, learned Advocate  
for Respondent.





**ORDER****[ Per: Hon'ble Sri Bikki Raveendra Babu, Member (J) ]**

1. Gaytech Engineering Private Limited, in its meeting of Board of Directors held on 15<sup>th</sup> September, 2017 resolved to file a petition under the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal for initiation of resolution process, and further resolved to place the matter before the Extraordinary General Meeting. The Board of Directors also resolved that Shri Sunil Sunderlal Luhar be authorised to do all necessary acts and sign all petitions necessary under the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal.
2. Gaytech Engineering Private Limited in General Body Meeting held on 15<sup>th</sup> September, 2017 by way of Special Resolution resolved to initiate Corporate Insolvency Resolution Process considering the Company's critical financial condition.
3. Pursuant to the said Resolutions, Shri Sunil Sunderlal Luhar, Director of M/s. Gaytech Engineering Private Limited filed this Petition under Section 10 of the Insolvency and Bankruptcy Code, 2016 ["the Code" for short] read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a request to trigger Corporate Insolvency Resolution Process in respect of M/s. Gaytech Engineering Private Limited, the Registered Office of which is situated in Varodara, Gujarat.
4. The Paid-Up Share Capital of the Corporate Debtor is Rs. 24,88,000/-. The Corporate Applicant showed 'Indian Bank' as 'Financial Creditor'. The total debt raised is Rs. 882.78 lacs. The total amount of default is Rs. 10,36,85,017.17 ps, as detailed below;

Term Loan	:	Rs. 1,91,75,615.75
Working Capital Term Loan	:	Rs. 7,98.26.727.28






Funded Interest Term Loan : Rs. 45,99,507.14

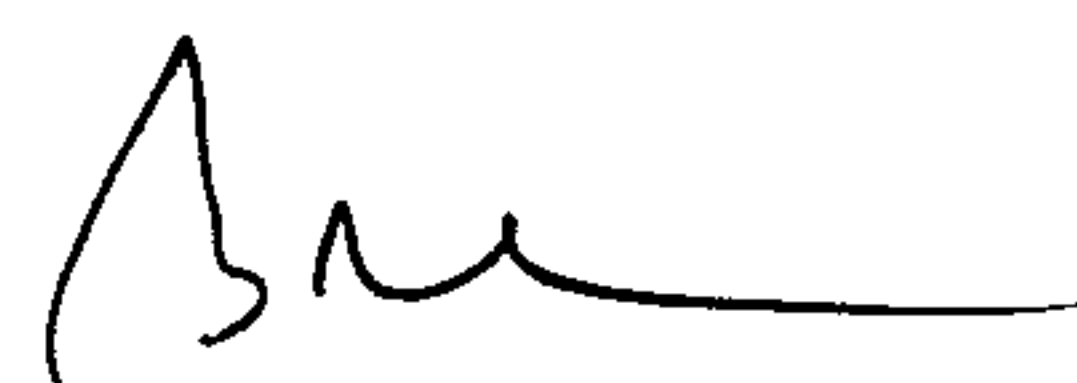
5. Corporate Applicant furnished details of securities held by the Indian Bank along with Audited Financial Statements for the current year and last two financial years. It is stated by the Corporate Applicant that Indian Bank issued notices to the Company and the last one being dated 4.9.2017 which is a notice of intended sale under Rule 6(2) and 8(6) of The Security Interest (Enforcement) rules, 2002 under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
6. The Corporate Applicant also stated that the Indian Bank filed Original Application under Section 19 of the Recovery of Debt (Due to Banks and Financial Institutions) Act. 1993 before the Debt Recovery Tribunal-II at Ahmedabad, Gujarat and its connected documents. The Corporate Applicant proposed the name of CA Vinod N. Pahilwani as Interim Resolution Professional and filed his Written Communication. The Corporate Applicant filed List of Assets and Liabilities of the Corporate Debtor and particulars of claims against the Corporate Debtor.
7. The Corporate Applicant despatched the copy of the Petition to the Financial Creditor. The Indian Bank appeared through its Counsel and filed its objections. It is stated in the objections that Corporate Debtor in order to evade the process of law by delaying the recovery process initiated this Petition. It is further stated that the Corporate Debtor did not follow the mandatory provisions of the Code and making an attempt to mislead the Tribunal. It is stated by the Financial Creditor/Indian Bank that it has issued a notice under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor and the guarantors demanding payment of Rs. 10,29,39,908.27 ps. on 4.4.2016. But the Corporate Debtor did not comply with the said notice. Thereafter, the Financial Creditor took symbolic possession of the secured assets on 15.7.2016. Thereafter, the Financial Creditor approached the District Magistrate



under Section 14 of the SARFAESI Act, for taking possession of the secured assets and the said proceeding is pending. Meanwhile, the Financial Creditor proceeded for sale of secured assets under Section 13(4) of the SARFAESI Act by publishing e.auction sale notice, but no bidders turned up. In these circumstances the Corporate Debtor preferred the present Petition to stall the recovery measures. The Corporate Debtor also filed Civil Suit before the Civil Court, Vadodara being Special Civil Suit No. 141 of 2016 making allegations against the Financial Creditor and falsely claiming damages. The loan account of the Corporate Debtor became 'NPA' and thereafter the Corporate Debtor never approached the Financial Creditor. In spite of rescheduling the repayment of term loan the Corporate Debtor did not choose to repay the loan amount. The intention of the Corporate Debtor is not to resolve the debt but to avoid the process of law by abusing the provisions of the IB Code. The object of the IB Code is to maximize the value of assets of Corporate Debtors to promote entrepreneurship, availability of credit and balance of interest of all the stakeholders. According to the Financial Creditor, the Corporate Insolvency Resolution Process is aimed for the genuine Corporate Debtors but not to the present Corporate Debtor.

8. According to the Corporate Applicant and the Financial Creditor a 'financial debt' is due from the Corporate Debtor to the Financial Creditor. Admittedly, the Corporate Debtor committed default in repayment of financial debt. Admittedly, proceedings are pending before the Debt Recovery Tribunal. Admittedly, the Financial Creditor initiated action under the provisions of the SARFAESI Act and the proceedings came to the stage of sale of secured assets of the Corporate Debtor.

9. The main objection of the Financial Creditor is that the Corporate Debtor with an intent to stall the recovery proceedings filed this Petition by misusing the provisions of the IB Code.



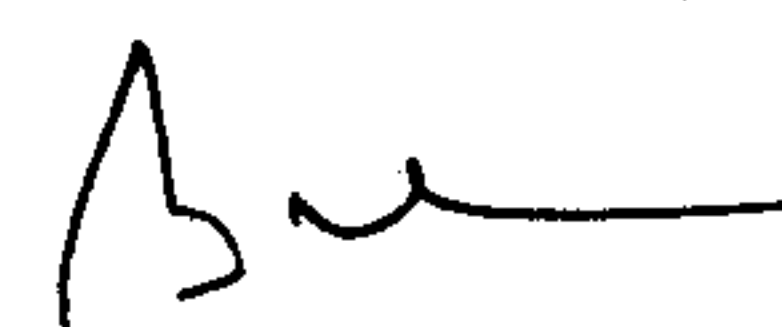


10. The initiation of proceedings under the SARFAESI Act or the pendency of proceedings before the DRT is no ground for not commencing the 'Insolvency Resolution Process', in view of the overriding effect given to Section 238 of the Code. The pendency of other proceedings in respect of the debts due by the Corporate Debtor to the Financial Creditor is not a ground not to admit this Application. More over, in view of Section 14 of the IB Code, all the proceedings pending before any other forum including the Debt Recovery Tribunal and the Civil Court will be stayed, in case if this Petition is admitted.

11. The object of the Code is, no doubt, to protect the genuine Corporate Debtors with a view to maximise their value of assets and find out a 'Resolution Plan' to revive the Companies. Incidentally, in the process of evolving a Resolution Plan, there is an opportunity for the Corporate Debtor to have a moratorium and thereby delay the other recovery proceedings. But, that is only for a prescribed period of 180 days or for a further period of 90 days, if extended by the Adjudicating Authority. Therefore, on the ground that the Corporate Debtor is going to have the benefit of moratorium, it is not just and proper not to initiate Corporate Insolvency Resolution Process. Therefore, the main objection of the Financial Creditor that the intention of the Corporate Debtor is not to revive the Company and to delay the proceedings may not be a ground not to admit this Petition.

12. In view of the above discussion, this Application is admitted under Section 10(4)(a) of the Code.

13. This Adjudicating Authority hereby appoint, Mr. Vinod N. Pahilwani, CA, as 'Interim Insolvency Resolution Professional' having address at E-1/304, Kashivishweshwar Flats, Opposite Khushboo Corner, Jetalpur Road, Vadodara-390007, with Registration No.

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IBBI/IPA-001/IPP00509/2017-18/10910, under Section 13(1)(c) of the Code.

14. The Interim Insolvency Resolution Professional is hereby directed to cause a 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.

15. 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 Company/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 Company/corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the Company/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 Company/corporate debtor.


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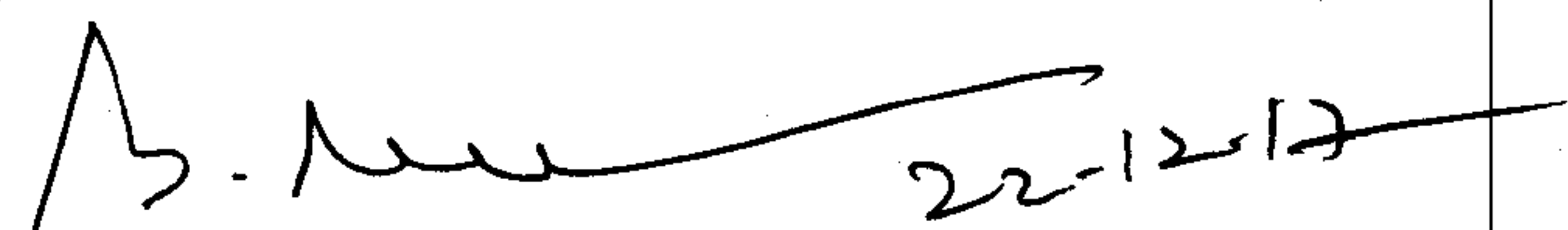


- (i) There shall not be any interruption, suspension or termination of supply of essential goods or services to the Corporate Debtor during the moratorium period.
  - (ii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with 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.
16. This Application is disposed of accordingly. No order as to costs.
17. Communicate a copy of this order to the Corporate Applicant; and to the Respondent Financial Creditor, and to the Interim Insolvency Resolution Professional.

Signature:

  
**Ms. Manorama Kumari,**  
**Member (Judicial)**  
**Adjudicating Authority.**

Signature:

  
**Sri Bikki Raveendra Babu,**  
**Member (Judicial)**  
**Adjudicating Authority.**

Rmr..