

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P. (I.B) No.264/NCLT/AHM/2018

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 02.07.2020**

Name of the Company: Bank of India
V/s.
Techno Forge Ltd.

Section : Section 7 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.

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**ORDER
(through video conferencing)**

The Order is pronounced in the open court vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 2nd day of July, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P. (IB) No. 264/7/NCLT/AHM/2018

In the matter of:

Bank of India
Registered Office at:
Star House, C-5, "G" Block,
Bandra Kurla Complex,
Bandra (East),
Mumbai-400051

And Branch Office at:

Vadodara Mid-Corporate Branch,
Bank of India Building,
2nd Floor, Raopura,
Vadodara-390001
(Gujarat)

.... Petitioner
(Financial Creditor)

Versus

M/S. Techno Forge Limited
1022 GIDC Estate,
Ankleshwar, Bharuch,
Gujarat-390002

.... Respondent
Corporate Debtor

Order delivered on 02.07.2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance:

Mr. Ketan M. Parikh and Ms. Natasha Dhruman Shah, Learned Lawyer
for the Petitioner.

Mr. Himanshu C Desai, Learned Lawyer for the Respondent.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member (T)]

1. Shri Mohan Haripant Zingade, Assistant General Manager of Bank of India, on behalf of the Petitioner/Financial Creditor, Bank of India has filed this Petition under Section 7 of the Insolvency

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and Bankruptcy Code, 2016 [hereinafter referred to as "the IB Code"] read with Rule 4 of the insolvency and Bankruptcy Application to Adjudicating Authority Rules, 2016 (hereinafter referred to as "the Rules") for the purpose of initiating corporate insolvency resolution process [hereinafter referred to as "CIRP"] against M/S. Techno Forge Limited, the Respondent Company, the Corporate Debtor.

2. M/S. Techno Forge Limited, the Respondent, a company was incorporated under the provisions of the Companies Act, 1956 under the name and style of M/S. Techno Forge Limited having its Registered Office at 1022 GIDC Estate, Ankleshwar, Bharuch, Gujarat- -361002.
3. The Authorised Share Capital of the Respondent Company, the Corporate Debtor is Rs.8,00,00,000/- (Rupees Eight Crores only). The Paid-Up Share Capital of the Respondent Company, the Corporate Debtor is Rs.4,31,00,000/- (Rupees Four Crores Thirty One Lakhs only).
4. As per Part IV of the application, the total amount of debt sanctioned by Bank of India, the Financial Creditor amounted to Rs. 2473lakhs. It is further stated that aggregate amount of default as on 01.05.2014 amounted to Rs. 29,44,59,663.63/-.The date of NPA is 01.05.2014. The date of default is 01.05.2014.
5. The Applicant Bank classified the account of the Respondent Company as NPA on 01.05.2014 and issued a notice under Section 13(2) of the SARFAESI Act on 21.07.2014 to the Borrower/Respondent is a private company and their Directors stood as Guarantors in their personal capacity for the Respondent Company.
6. It is further submitted that Applicant Bank filed O.A. No. 466 of 2018 on 24.04.2018 before the Hon'ble Debts Recovery Tribunal-II at Ahmadabad and the said matter is pending.





7. It is stated by the Applicant Bank that aforesaid Credit Facilities were secured by Mortgage and Equitable mortgage of immovable property by deposit of title deeds and hypothecation of Movable Assets (Unencumbered Machineries) and Pledge of FDR and NSC of the Corporate Debtor.
8. The Petitioner submitted the following documents in support of his claim.
- Copy of Power of Attorney dated 16.08.2007 along with the Board resolution authorizing Shri Mohan Haripant Zingade.
 - Copy of written communication for proposed Interim Resolution Professional dated 19.04.2003,10.06.2004
 - Copy of sanction letters along with the acknowledgment of debt/securities dated 17.05.2010, 22.12.2010, 05.09.2012, 29.06.2012, 28.08.2012, 16.02.2012,27.08.2013, 25.02.2014, 26.02.2014,14.02.2014,19.05.2015
 - Copy of the working computation of the amount claimed to be in default.
 - Copy of Certificate of Registration of Charge dated 18.09.2014
 - Copy of Valuation reports of property. Date of Valuation is 08.08.2017
 - Copies of Statement of Account maintained by the Applicant for the period from 16.09.2010 to 30.04.2018 along with the certificate dated 21.04.2018 issued in accordance with Banker's Book Evidence Act,1891
 - Copy of Fourth Supplemental Deed of Hypothecation dated 19.03.2014
 - Copy of Fourth Supplemental Memorandum of Entry dated 18.09.2014
 - Copy of Notice issued by the Applicant under Section 13(2) of SARFAESI Act,2002 dated 21.07.2014
 - Copy of the Acknowledgment of Debt by the corporate Debtor on 19.05.2015.
 - Statement of Accounts of the credit facility, maintained by the Bank.

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9. The Respondent Company has contended that there are serious errors in calculation of interest and the quantum of amount alleged to be due from the respondent company is in excess of actual amount due to the paid to the applicant bank. Further bank has not credited/deducted Rs.7, 30, 000/- against amount deposit/paid by the Respondent Company against sale proceed of used/old machineries plus interest thereof. So, due amount mention in the application is exaggerated & incorrect.
10. The Respondent Company has also stated that the petitioner has not come with clean hands and there has been an offer by the bank during Dec. 2017 to settle the dues for sum of Rs. 12.5crore. The said offer is under negotiation and counter offer made by this applicant is still under consideration of the applicant bank.
11. Heard the Learned Counsel for both sides.
12. The counsel for the Respondent submitted that the present petition is prima facie not maintainable, on account of improper authority of the officer of the applicant. The copy of Power of Attorney dated on 16.08.2007 along with board resolution authorising Shree Mohan Haripant Zingade does not authorise the said officer to initiate proceedings before this Hon'ble Tribunal under the provision of IB Code. Therefore the present insolvency application is void abinitio.
13. In response to the same, Counsel for the Applicant submitted that the present application is filed by the authorised representatives on behalf of the Applicant Bank and in order to substantiate the aforesaid, with the prior permission, the Applicant filed the following documents and contented that:





- a) **Branch Circular No.111/152 dated 26.12.2017:** The Applicant submitted that the aforementioned circular provides for the sanctioning authority for the purposes of authorising the initiation of actions under the provisions of code and thus in view of this circular, the applicant submit that the Deputy General Manager is empowered and authorised to sanction the initiation of the actions under the provisions of the code in case wherein the amount claimed to be in default is up to Rs 50 (Fifty)crores . In the present case, considering the fact that the amount claimed to be in default is Rs.29,44,59,666.
- b) **Inter office Memorandum dated 09.04.2018:** The Applicant submitted that this memorandum approves the initiation of actions under the Code against the corporate debtor being Techno Forge Limited and therein it specifically authorises the Assistant General Manager, Vadodara MCB Branch to initiate the actions against the corporate debtor. Further, the applicant submitted that aforesaid approval was granted by the Zonal Manager(Vadodara Zone) is in the rank of Deputy General Manager and thus, he was duly empowered and authorised by the Applicant. Further the applicant submitted that the Assistant General Manager duly competent and authorised to initiate actions on behalf of the Applicant against the Corporate Debtor. The petitioner has also filed a letter date 28.02.2020 giving authorisation in favour of Mr. Mohan Haripant Zingade.
14. Further the application is filed by Mr. Mohan Haripant Zingade Asst. General Manager who is authorised to grant loan, recover loan and to initiate insolvency proceedings.
15. The Hon'ble NCLAT in Para 39 of Palogix Infrastructure Private Ltd. Vs. ICICI Bank Ltd. observed as:





“If a plea is taken by the authorised officer that he was authorised to sanction loan and had done so, the application under section 7 cannot be rejected on the ground that no separate specific authorization letter has been issued by the ‘Financial Creditor’ in favour of such officer designate.”

16. The Hon’ble NCLAT in Gouri Prasad Goenka Vs. Punjab National Bank in Company Appeal (AT) (Insolvency) No. 28 of 2019 held as:

“11. Learned Counsel for Appellant also tried to emphasise that the application was not filed by duly authorized person. Some more technical issues were raised. We have considered these aspects and it is noticed that the Adjudicating Authority has taken every relevant factor into consideration. It found that the Form 1 was signed by the Chief Manager of the Financial Creditor who was the duly authorized person to file the same. Contention raised by Appellant that the power of attorney was executed prior to enactment of I & B Code and could not extend the authority to file application under section 7 of the IB Code is bereft of merit both in technique as also in substance. Once the authority was given, inter alia, to file litigation pertaining to recovery of the outstanding debt of the Financial Creditor, it becomes irrelevant whether the law governing such recovery or providing for a mechanism like the resolution process contemplated under IB Code was or was not in force on the date when the authority was given. Any interpretation to the contrary would be absurd”.

17. In view of the above, the contention of the Respondent that the application was filed without authority is not sustainable.
18. The petition is filed on 09.05.2018 and the date of default is 01.05.2014. In this regard, it is noted that the debt is acknowledged by the Corporate Debtor on 19.05.2015(page92&96)

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and last entry (credit) in loan A/c. is on 07-07-2017(page no.362 of the application).Hence, the present IB Petition filed on 09.05.2018 is well within the period of limitation.

19. The Petitioner has proposed the name of Mr. Bhavi Shreyans Shah having Registration No. IBBI/IPA-001/IP-P00915/2017-18/11521 to act as IRP under Section 13(1)(b) of the IB Code and written communication in Form-2 of IBBI has been submitted by the proposed IRP.
20. From the documents placed on record, this Adjudicating Authority is satisfied that default has been committed by the Corporate Debtor in repayment of loan amount to the Bank. The petition is complete. As a consequence, the instant petition is admitted in terms of Section 7 of the IB Code and the moratorium as envisaged under the provisions of Section 14(1) of IB Code and extracted hereunder shall follow in relation to the Respondent Corporate Debtor.

(1) Subject to provisions of sub-Section (2) and (3), on the Insolvency Commencement date, the Adjudicating Authority herein declares moratorium for prohibiting all of the following viz;-

- (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.

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- (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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(54 of 2002);
 - (iv) the recovery of any property by an owner as lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (2) The supply of goods and essential services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

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21. This Adjudicating Authority hereby appoints Mr. Bhavi Shreyans Shah having Registration No. IBBI/IPA-001/IP- IP-P00915/2017-18/11521 to act as "Interim Insolvency Resolution Professional" under Section 13(1)(b) of the IB Code.
22. The petition stand disposed of accordingly with no order as to costs.
23. Communicate a copy of this order to the Petitioner, Respondent and to the Interim Insolvency Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority &
Member (Technical)


Manorama Kumari
Adjudicating Authority &
Member (Judicial)

R.S.