



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH C-IV

IA-725/2023 IN IA-3709/2022

and IA-3710/2022

CP/IB/469/(MB)/2021

Under Section 10 of the IBC, 2016

In the matter of

Nashik Forge Private Limited

Order delivered on: **28.04.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Applicant in IA-725/2023 : Mr. Ranit Basu a/w Ms. Maitri Malde, Adv. For the Applicant in IA-725/2023 present.

For the Petitioner(s) : Mr. Amit Tungare a/w Mr. Deep Dighe Adv.

For the Financial Creditor : Ms. Prachi Pandya a/w Ms. Monica Salian i/b Corporate Attorneys, Adv. For state Bank of India.

Ms. Dipesh U Siroya, Ld. Counsel for Om Forbes present.



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**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This is a Company Petition is filed under section 10 of the Insolvency & Bankruptcy Code, 2016 (“Code”) by M/s. Nashik Forge Private Limited (“Corporate Debtor”) seeking initiation of Corporate Insolvency Resolution Process (CIRP).
  - 1.1. The Company Petition is filed on 03.02.2021 and credit facility with State Bank of India were classified as NPA on 31.08.2019. The date of default is pleaded accordingly.
2. The Corporate Debtor was incorporated on 26<sup>th</sup> May 2005 as a Private Limited Company for the purpose of designing, manufacturing, selling, altering and supplying various types of ferrous and nonferrous forgings steels, press tools, press parts, jigs, fixtures, turned parts, brushes as per the specifications of the clients. The Corporate Debtor had availed various services from different operational creditors and financial creditor since incorporation.
  - 2.1. The Corporate Debtor had availed loan facility from the State Bank of Bikaner & Jaipur [later merged into State Bank of India (SBI)] for an aggregate amount of Rs.3,37,00,000/- on 03.03.2009.
  - 2.2. Further, the said loan facility from SBI was enhanced and modified from time to time and the last sanction was for total limits of loan facility of Rs.8,98,00,000/- on 09.04.2019. However, due to the economic turnover and negative economic effects in the automobile industry resulting into a snow ball effect severely affecting the small sized entities providing support and ancillary services to the said industry, the Corporate Debtor



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- failed to pay the loan instalments and finally, it was declared Non Performing Asset on 31.08.2019.
- 2.3. As on 02.12.2019, the total outstanding amount to SBI was Rs.8,99,49,996/-. On account of inability to make payments of its dues, SBI issued a Notice dated 02.12.2019 to the company for the aforesaid aggregate outstanding amount.
- 2.4. The State Bank of India served various notices from time to time after default in repayment of loan instalment such as:
- 2.4.1. A notice u/s 13(2) of the SARFAESI Act on 19.12.2019;
- 2.4.2. A notice to take possession under the SARFAESI Act on 05.02.2020;
- 2.4.3. A notice to take possession under the SARFAESI Act on 21.03.2020;
- 2.5. Therefore, it is clear from all the above facts that the default occurred in pre-Covid period i.e. before 24.03.2020 (The account was declared NPA on 31.08.2019 by SBI) and total amount of default is more than the threshold of Rs.1,00,00,000/- (The outstanding as per SBI notice dated 02.12.2019 is Rs.8,99,49,996/-).
- 2.6. Apart from the aforesaid loan from SBI, as on 31.03.2020, the Corporate Debtor has other outstanding financial creditors amounting to around Rs.1.30 Crore as well as other Operational Creditors amounting to Rs.5.73 Crore and provision for government related dues amounting to Rs.2.72 Crores.
- 2.7. Also as on 31.03.2020, the turnover of the company had drastically declined to Rs.634.21 lacs i.e. reduction of around 60% than the turnover of previous with a Loss of Rs.1613.77 lacs. Further, the net worth of the company also became negative at around Rs.12.38 as against the positive net worth in the previous financial year. This clearly indicates significant



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erosion on net worth of the company on account of heavy losses incurred during the F.Y.2018-19 and 2019-20.

- 2.8. Further, SBI served a demand notice to recover outstanding amount on 12.06.2020. Further, SBI served a notice to take symbolic possession under Section 13(4) of the SARFAESI Act on 24.07.2020.
- 2.9. Further, during the Covid-19 induced lockdown, the financial position of the Company deteriorated even further, and it further seriously impacted the Company's position to revive itself and make payment of its outstanding dues. Accordingly, since the liabilities of the company already due for payable in comparison to the value of assets available for realization and payment, the Board of Directors in their meeting held on 16.08.2020 concluded that it is no more feasible to continue with the business operations of the company under the ongoing circumstances and accordingly, opted to initiate Corporate Insolvency Resolution Process of the Corporate Debtor Company by making an application under Section 10 of the Code. The aforesaid decision was further upheld and approved by the Shareholders at their meeting held on 18<sup>th</sup> January, 2021, and accordingly, this application is being filed.
- 2.10. Further, as evident from above and as per the financial position of the Company on the basis of the provisional financials as on 31<sup>st</sup> January, 2021, the net worth of the company further eroded to negative of around Rs.13.01 Crore. In fact, as on 31.01.2021, the book value of the Fixed Assets of the Corporate Debtor is Rs.4.05 Crore whereas the liabilities with respect to Financial and Operational Debt required to be paid are around Rs.18.07 Crore.
- 2.11. The Applicant Corporate Debtor has filed audited financial statements for last two years (2018-19 and 2019-20) as well as provisional financial



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statement as on 31.01.2021 and list of creditors as on 31.01.2021. The Applicant also filed a written communication from Mr. Sitansh Magia who has consented to act as Interim Resolution Professional (IRP).

3. IA-3709/2022 is filed by M/s. Arm and Hammer Forging Private Limited, stating to be an Operational Creditor of the Corporate Debtor, wherein the applicant has prayed for imposition of a costs of Rs.1 Crore under Section 65 of the Code as the Corporate Debtor has deliberately suppressed and concealed material facts. On perusal of said application this Bench finds no substance in the averments as the default and the financial position is quite apparent from the financial statement placed before us. Further, we find that the copy of special resolution as required under Section 10(3)(c) of the Code is enclosed with the petition and this finds no infirmity therein. Accordingly, IA-3709/2022 is application is **dismissed**.
4. Another application which is filed by M/s. Arm and Hammer Forging Private Limited is numbered as IA-3710/2022. On perusal of the facts and prayer contained therein, this Bench notices that it is identical to IA-3709/2022. This Bench further finds that the Applicant has filed one document namely “reply on behalf of the Respondent/Operational Creditor namely M/s Sunder Forgings to the Application/petition under Section 10 of the Insolvency and Bankruptcy Code,2016”. In substance the Applicant has attempted to object to the maintainability of petition primarily to protect the interest of the Operational Creditor. This Bench of the considered view that the interest of all stakeholders of the Corporate Debtor is protected by the Code and Resolution Plan gets approval only if, it takes care the interest of all stakeholders. Accordingly, IA-3710/2022 is also **dismissed**.



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5. IA-725/2023 is filed by M/s. Mobitech Systems and Services, stating to be an Operational Creditor of the Corporate Debtor, wherein the applicant has informed this Bench that the amount owed by the Corporate Debtor to it not correctly stated in the company petition and accordingly, has prayed of protection of its interest. This Bench of the considered view that the interest of all stakeholders of the Corporate Debtor is protected by the Code and Resolution Plan gets approval only if, it takes care the interest of all stakeholders. Accordingly, this IA-725/2023 is also **dismissed**.
6. Heard all the Counsel(s) and perused the material available on record. This Bench finds that the Corporate Debtor has enclosed the information relating to its financial position; proposed interim resolution professional; and special resolution approving filing of present application. Further, the Corporate Debtor has committed default and is not in a position to meet its financial commitments to the creditors. The Application filed by the Corporate Debtor is complete in all respect. Accordingly, this Bench is of the considered view that present application deserves to be **admitted**.

**ORDER**

7. The petition bearing CP(IB) 469/MB-IV/2021 filed by **Nashik Forge Private Limited**, the Corporate debtor/Applicant, under section 10 of the IBC read with rule 7(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**.
- I. There shall be a moratorium under section 14 of the IBC, with consequential directions as mentioned below:



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- (i) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Applicant including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the Corporate Applicant any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Applicant in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Applicant.
- (ii) That the supply of essential goods or services to the Corporate Applicant, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (iii) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (iv) That the order of moratorium shall have effect from the date 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 Applicant under Section 33, as the case may be.



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- (v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.
- (vi) This Bench hereby appoints the proposed Resolution Professional after perusing the written communication in Form 2 by the RP, Mr. Sitansh Magia, having address Flat no. 9, Bhaveshwar Sadan, Plot no. 207, Mata Laxmi Hospital Road, Sion East, Mumbai City, Maharashtra ,400022 having IBBI Registration No: IBBI/IPA-002/IP-N00293/2017-2018/10850, and Email id: ip.sitansh@gmail.com, as Interim Resolution Professional to carry the functions as mentioned under the Code.
- II. The Registry is hereby directed to communicate this order to the Applicant. The Learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith and in any case, not later than two days from the date of this Order.
- III. A copy of this Order be sent to the Registrar of Companies Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-

**Prabhat Kumar**  
**Member (Technical)**

SVR/28.04.2023

Sd/-

**Kishore Vemulapalli**  
**Member (Judicial)**