

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

**C.P. (I.B) No.61/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 17.09.2020**

Name of the Company: Neesa Infrastructure Ltd.

Section : 10 of the Insolvency and Bankruptcy Code, 2016


<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER**

Advocate, Mr. Nipun Singhvi appeared on behalf of the Respondent.

The order is pronounced in the open court, vide separate sheet.

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 17th day of September, 2020

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

**C.P. No. (IB) 61/10/NCLT/AHM/2018**

**In the matter of:**

**M/s. Neesa Infrastructure Limited**

Plot No. 278/279  
Panchratna Industrial Estate  
Opp. Armec Cold Storage  
Changodar  
AHMEDABAD 382 213

:

**Applicant**  
[Corporate Debtor]

**Versus**

- 1. State Bank of India**  
2<sup>nd</sup> Floor, Paramsiddhi Complex  
Opp. V.S. Hospital  
Ellisbridge  
AHMEDABAD 38006
- 2. Indian Overseas Bank**  
Ashram Road Branch  
Chinubhai Tower  
Opp. Handloom House  
AHMEDABAD 380 009
- 3. Central Bank of India**  
Mid Corporate Finance Branch  
1<sup>st</sup> Floor, Central Bank Building  
Lal Darwaja  
AHMEDABAD 380 001
- 4. Small Industries Development Bank of India**  
Navjivan Amrit Jayanti Bhavan  
1<sup>st</sup> Floor, Post Box No. 10  
Navjivan P.O.  
Ahmedabad 380 014

**Petitioners**  
[Financial Creditors]

**Order delivered on 17<sup>th</sup> September, 2020**

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



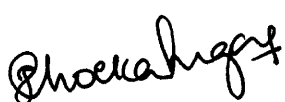
**Appearance:**

Advocate Mr. Sunil Bhavsar i/b. Advocate Mr. Sandeep Bhatt for  
Central Bank of India  
Advocate Mr. Aditya S. Raval for State Bank of India  
Advocate Harshada Darji for Indian Overseas Bank  
Advocate Mr. Nipun Singhvi and Advocate Mr. Vishal S. Dave for  
Small Industrial Development Bank of India

**ORDER**

**Per se : Ms. Manorama Kumari, Member (Judicial)**

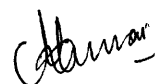
1. Mr. Sanjay Gupta, claiming himself to be the authorised signatory, on behalf of **M/s. Neesa Infrastructure Limited** filed this Petition under Section 10 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 7 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.
2. The applicant is a limited company registered under the Companies Act, 1956, having identification number U45203GJ2003PLC062049 and having registered office at Chagodar, Dist. Ahmedabad, Gujarat State.
3. On issuance of notice, the financial creditors viz. State Bank of India, Central Bank of India, Indian Overseas Bank and Small Industries Development Bank of India (SIDBI) appeared through counsels and filed objections.
4. Learned counsel for **SIDBI** submitted that there is suppression of facts, therefore, the instant application is not maintainable. It is also submitted that the application so filed by the applicant is not a corporate applicant in view of the fact that the Director has already been disqualified



  
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under Section 164 of the Companies Act, 2013. It is submitted that on the request of the applicant company, SIDBI had granted assistance to the applicant by restructuring the existing MSME RFS limit by way of conversion of outstanding limit into term loan of Rs. 10,92,52,943/- and funded interest term loan of Rs. 101.00 lacs under the Corporate Debt Restructuring (CDR) Mechanism on 15.03.2013. However, due to non-compliance of the terms and conditions and non-creation of security by the applicant, the defendant bank had to withdraw the said scheme on 17.12.2014.

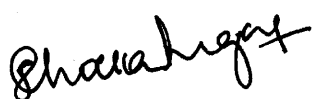
5. It is further submitted by learned lawyer of SIDBI that despite frequent reminders, request letter and notices, the applicant had not repaid the outstanding dues of the bank in the account and consequent upon which the bank had left with no option except to file recovery proceedings before Debt Recovery Tribunal (DRT) and the said recovery proceedings were initiated by filing Original Application being numbered as OA 189 of 2015 under Section 19 of the Recovery Debts due to Banks and Financial Institutions Act, 1993 before DRT-I, Ahmedabad is pending. Thereafter, the corporate debtor has filed this application to install the proceedings pending before DRT under RDDB Act, 1993 and SARFAESSI Act, 2002 as there is every apprehension that the bank may take over physical possession of the properties on which charge was created in favour of the bank. It is further alleged that the corporate debtor had manipulated the business of the company which is a deliberate attempt of fraud with the bank and which made the accounts of the corporate debtor as NPA. Hence, to avoid making lawful payment of the bank, the respondent has filed the instant application so as to stop the bank from taking any measures with regard to mortgage of properties etc.



6. **SIDBI** has also raised objection on the special power of attorney signed by the promoter Ms. Neelu Gupta on 02.12.2017, wherein one Mr. Sanjay Gupta, one of the promoters of the applicant company was authorised for doing acts as defined in the said power of attorney as the name of the Director is not available on the record of the financial creditor which is a matter of inquiry. It is further submitted by SIDBI that when name of Ms. Neelu Gupta is not available in the list of directors how Ms. Neelu Gupta can give special power of attorney and authorise Mr. Sanjay Gupta. It is further submitted that the instant application is nothing more than abuse of process of law, hence, appropriate order may be passed under section 65 of the Code.
7. **Indian Overseas Bank (IOB)** has also filed objection against the application filed under Section 10 of the I & B Code by the applicant denying the averments made in the application. It is submitted by the learned lawyer of IOB that the applicant company had approached the bank for financial assistance and had submitted loan application dated 13.04.2011. The bank had granted short term loan for working capital requirements of the applicant to the tune of Rs. 7.00 crores on various terms and conditions as mentioned in the sanction letter dated 10.05.2011. In view of granting of aforesaid term loan, IOB had executed necessary documents on 17.05.2011 pursuant to the resolution passed by the applicant in its Board Meeting dated 12.05.2011. The said documents are as follows: -
- (i) demand promissory note for Rs. 7.00 crores
  - (ii) declaration
  - (iii) Undertaking
  - (iv) letter of instalment
  - (v) consent cum authorisation letter



8. In view of execution of such documents, the corporate applicant had deposited title deeds of its immovable property situated at Village Lio-ka-guda, Tehsil Girwa, Dist. Udaipur, Rajasthan state with intention to create equitable mortgage thereof. The applicant had also executed irrevocable power of attorney/affidavit/declaration in respect of the aforesaid property on 17.05.2011. Necessary documents for creation of mortgage was made in respect thereof on 18.05.2011 and accordingly, the applicant had executed letter of confirmation etc. The said document is annexed as Annexure "H".
9. It is further submitted that the corporate applicant had failed and neglected to repay the loan as per the terms and conditions of the sanction and had approached the bank to roll over the said term loan vide request letter dated 17.10.2011. The respondent bank had accepted the request and rolled over the said short term loan for a period of 180 days on the existing terms and conditions and had issued sanction letter dated 18.11.2011 in respect thereof. The said letter is annexed as Annexure I. The applicant further failed to honour the terms and conditions of the said sanction letter dated 18.11.2011 and approached the bank for CDR empowered group – Mumbai vide request letter dated 25.06.2012 for restructuring of its existing debts under CDR mechanism. The CDR empowered group had ultimately approved the restructuring package on 31.12.2012 and had conveyed the terms and conditions of restructuring to the applicant vide letter No. CDR (PMJ) No. 1014/2012-13 dated 01.02.2013. Copy of said letter is annexed as Annexure "J". In view of aforesaid development, the bank had issued sanction letter dated 31.12.2012 and modified sanction letter dated 29.03.2013. Pursuant to the approval of CDR package, Master Restructuring Agreement dated 23.03.2013 was executed between the IOB, SBI, CBI and the applicant and



subsequently supplemental deed of master restructuring agreement was executed on 30.09.2013 between IOB, SBI, SIDBI and the applicant which is annexed as Annexure "M".

10. It is further submitted that, the applicant, thereafter, again failed and neglected to comply with the terms and conditions of the said approved restructuring package and even failed to pledge 51% of shares held by the Directors as per CDR scheme. In view of that, in the joint lenders meeting held on 15.09.2014, all the lenders had unanimously reiterated their mandate to revoke CDR mechanism and decided to further follow up the same with CDR empowered group for getting approval of withdrawal of CDR package. The corporate applicant filed a Civil Suit No. 2305 of 2014 in the Ahmedabad City Civil Court for damages/declaration/injunction and the respondent bank appeared and filed reply.
11. It is further alleged that the applicant had no intention to repay the loan and had diversified the funds. The account of the applicant was declared as NPA on 30.04.2014 and, thereafter, proceedings were initiated by the bank under SARFAESI Act, wherein, the mortgaged property was sold by the bank for a consideration of Rs. 13,68,58,600/- and sale certificate was issued to the auction purchaser on 27.10.2017. The respondent bank had also filed a recovery application before the Debts Recovery Tribunal – I at Ahmedabad being Original Application No. 53 of 2015, for recovery of its dues which is pending for adjudication. It is further alleged that the very purpose of filing of the instant application under section 10 is mala fide with a view to defraud the secured creditors, therefore, the application is required to be dismissed.

*Shankar*

*Chatur*

12. On receipt of the notice, **Central Bank of India (CBI)** also appeared and filed reply denying the statement made by the applicant in the instant application. It is submitted by CBI that the application so filed by the applicant is bad in the eye of law and not maintainable because the applicant has suppressed material facts, hence, the same is required to be dismissed. It is further submitted by the learned lawyer appearing on behalf of the bank that the bank has provided financial assistance to the applicant on 24.06.2011 and at the time of availing such facility the applicant has shown the following persons as Directors of the company: -

- 1) Mr. Sanjay Gupta (Promoter/Director)
- 2) Mr. Sandip R. Shah (Additional Director)
- 3) Mr. Arvind Kumar Gupta (Director)
- 4) Mr. Suresh Kumar (Additional Director)
- 5) Mr. Yogesh Ghisumal Gemavat (Addl. Director)

However, as per the latest verification with the Ministry of Corporate Affairs website, the applicant company is showing to have the following four directors: -

- 1) Mr. Sanjay Gupta, (Additional Director)
- 2) Mr. Arvind Kumar Gupta (Director)
- 3) Mr. Manoj Kumar Singhal (Director)
- 4) Mr. Bhaskar Jaswant Jani (Addl. Director)

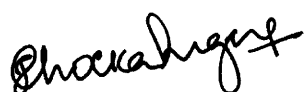
13. It is further submitted by the bank that the aforesaid development has never been informed to the bank, which clearly indicates that the applicant had some mala fide intention and oblique motive. That, details furnished in Annexure – I (page 7) of the application are incorrect and in contradiction with the list of promoters and Directors furnished at the time of availing the financial facilities from





the bank. That, on this ground alone i.e. suppression of facts, the application deserves to be dismissed in toto.

14. It is further submitted that the instant application is filed on the basis of Special Power of Attorney (SPA) signed by Ms. Neelu Gupta on 02.12.2017, wherein, one Mr. Sanjay Gupta, one of the promoters of the applicant company, was authorised for doing acts as defined in the said power of attorney. However, name of Ms. Neelu Gupta is not available in the record of the financial creditor as Director. Hence the very execution of power of attorney by Ms. Neelu Gupta is bad in the eye of law, having no locus standi. Further, in the said power of attorney, on oath, Ms. Neelu Gupta has shown herself as promoter and has also shown to have holding 4,50,000 equity shares of the applicant company, whereas, as per Annexure – I at page 7, Ms. Neel Gupta's shareholding is shown as 3,30,000 which itself shows that the applicant has not come with clean hands and has produced fabricated documents to support the present application, therefore, the instant application is required to be dismissed. It is further submitted that, even Ms. Neelu Gupta, while executing the Special Power of Attorney has not shown her Director Identification Number (DIN) which is mandatory for the signatory/Director of the company to mention DIN as per Section 154 of the Companies Act, 2013. That, under such circumstances, Ms. Neelu Gupta has no authority to execute SPA claiming herself to be one of the Directors of the company.
15. **State Bank of India (SBI)** also appeared through its counsel and filed reply, whereby SBI has given no objection to the said application.
16. Gone through the application as well as the record and the annexures filed therein. On perusal of the record it is found



that as per the record of financial creditor – Central Bank of India, there are five directors as stated in para No. 12 above. However, subsequently, when it is verified with the MCA portal it is found that the pattern and status of the Directors have been changed and the same was never been informed to the financial creditors viz. CBI. Further, Ms. Neelu Gupta was never been a Director on the Board of the applicant company and as such she cannot execute SPA in favour of Mr. Sanjay Gupta. Further, on perusal of the record it is found that no Board Resolution is ever passed by the company authorising Mr. Sanjay Gupta to file the instant application. Further, on perusal of the record it appears that Mr. Sanjay Gupta obtained Special Power of Attorney in his favour issued by Ms. Neelu Gupta flouting all the norms of the Companies Act thereby the very power given in favour of Mr. Sanjay Gupta is bad in the eye of law and as such the application is not maintainable for want of proper authorisation.

17. As per section 10 of the Code, the applicant has to be corporate applicant as provided under Section 10 (1) whereas the Corporate Applicant as per section 5 (5) defines as follows:

(5) *"Corporate Applicant" means –*

(a) *Corporate debtor; or*

(b) *a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or*

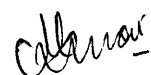
(c) *an individual who is in charge of managing the operations and resources of the corporate debtor; or*

(d) *a person who has the control and supervision over the financial affairs of the corporate debtor*





18. Admittedly, as also matter of record that, the applicant is not a corporate applicant as per form 6, Clause 3, the applicant is not a director and is disqualified under Section 164, wherein the name and address of the Director is shown as "presently, there is no Director on the Board of the Company due to disqualification under Section 164 of the Companies Act 2013". However, clause 3 of form 6 further discloses that the list of promoters along with their address attached.
19. As per the list of promoters (page 7), Ms. Neelu Gupta holds 3,30,000 shares whereas as per the Special Power of Attorney (page 8) dated 5<sup>th</sup> December, 2017, Ms. Neelu Gupta, wife of Mr. Sanjay Gupta shown to be holding 4,50,000 shares and the said SPA is executed on oath. Thus, it is amply clear that the instant application is filed on fabricated documents. Further, the applicant has not filed/disclosed the details of the unsecured financial creditors. However, as per Annexure 4 (Page No. 11 to 15), there are as many as 241 operational debtors, which includes sundry creditors for capital goods, sundry creditors for casting project, sundry creditors (Export), sundry creditors for employee, sundry creditors for contractor, sundry creditors for rolling mill, sundry creditors for trade creditors, sundry creditors for valves, sundry creditors for others, sundry creditors for consultancy, sundry creditors for goods, sundry creditors for operation etc. However, while going through the records it is found that there is no whisper about the outstanding amount. It is also pertinent to note that if the company is really insolvent why it has not opted for winding up application. Further, affairs of the company is managed by the Directors and not by the promoters. Since the promoters are already disqualified, the applicant has no authority to file the instant application.



20. On perusal of the record it is found that there is violation of Section 10 (3) (c). In the instant matter as there is no special resolution passed for filing the application. For the sake of convenience Section 10 (3) (c) is reproduced herein below: -

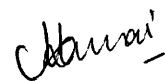
**Section 10 (3) (c)**

*the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.*

21. On perusal of the record i.e. balance sheet as on 31.03.2016 (page 254) it is found that under the head "deferred tax liability" an amount of Rs. 10,34,37,089/- has been shown thereby meaning that no returns have been filed by the company. It is also a matter of record that objector banks have already initiated proceedings under RDDB Act, 1993 and SARFAESSI Act, 2002 and to install the said proceedings, the applicant has filed the instant application, so as to initiate moratorium and to get stayed the proceedings initiated by the banks. Under such circumstances, the instant application has no merits and, therefore, requires to be dismissed.
22. In the result, Company Petition CP (IB) No. 61 of 2018 is dismissed as not maintainable.
23. No order as to cost.



**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**



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