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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re NEWARK SPECIAL TECHNOLOGIES, INC., Debtor.	Case No. 2:18-bk-18929-NB Chapter 11 MOTION TO APPROVE STIPULATION REGARDING INTERIM USE OF CASH COLLATERAL AND GRANT OF ADEQUATE PROTECTION; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF CHRISTOPHER D. CROWELL IN SUPPORT THEREOF [Statement Regarding Cash Collateral or Debtor in Possession Financing Filed Concurrently Herewith] Hearing: Date: October 9, 2018 Time: 1:00 p.m. Place: Courtroom 1545 (Hon. Neil W. Bason) 255 East Temple Street Los Angeles, CA 90012

MOTION

Secured creditor State Bank of India (California) ("Bank") hereby moves the Court to approve the Stipulation Regarding Interim Use of Cash Collateral and Grant of Adequate Protection ("Stipulation") entered into by and between the Bank and debtor Newark Special Technology Inc., a Delaware corporation, erroneously identified on its bankruptcy petition as Newark Special Technologies, Inc. ("Debtor").

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This Motion is made pursuant to (among other authorities) 11 U.S.C. §§ 105(a), 361 and 363, Federal Rule of Bankruptcy Procedure 4001(d), and Local Bankruptcy Rule 4001-2. This Motion is based on the accompanying Memorandum of Points and Authorities and Declaration of Christopher D. Crowell, the Statement Regarding Cash Collateral or Debtor in Possession Financing filed concurrently herewith ("Cash Collateral Statement"), the other documents on file in this bankruptcy case, and any other evidence or argument the Bank may present at or before the hearing on the Motion.[1]

CONCISE STATEMENT OF RELIEF REQUESTED

Pursuant to FRBP 4001(d)(1)(B), the Bank provides the following summary of the material provisions of the Stipulation. This summary is not a complete description of all provisions of the Stipulation, whether or not specifically described below. Interested parties are advised to review the Stipulation itself (which is filed herewith) rather than relying exclusively on this summary.

Use of Cash Collateral (Stipulation at ¶ 3)

The Stipulation authorizes the Debtor to use cash collateral (as 11 U.S.C. § 363(a) defines such term) in which the Bank has an interest ("Cash Collateral") solely for the purpose of paying, and in amounts not to exceed (in any calendar month, on a line-item by line-item basis) by more than 10 percent, the expenses listed in the budget attached to the Stipulation as Exhibit 1 ("Budget"), from the Debtor's August 2, 2018, bankruptcy petition date ("Petition Date") through the earlier of November 30, 2018, or the date the Debtor's authorization to use Cash Collateral terminates in accordance with paragraph 10 of the Stipulation.

The Stipulation permits the Debtor, upon prior written notice to the Bank, to exceed the budgeted monthly amount for any line item by up to 15 percent, provided that the aggregate expenses in any calendar month may not exceed 110 percent of the total budgeted amount for each month without the Bank's written agreement. With the Bank's written agreement, the Debtor may exceed any budgeted monthly amount, either on a line-item by line-item or aggregate basis, without Bankruptcy

[1] The Debtor filed a Motion in Individual Chapter 11 Case for Order Authorizing the Use of Cash Collateral on September 12, 2018 (Dkt. No. 27), which sought an order approving the Stipulation. The Debtor's Motion, however, did not conform to the requirements of Federal Rule of Bankruptcy Procedure ("FRBP") 4001(d) and was not accompanied by the mandatory Cash Collateral Statement.

Court approval.[2]

Payments to the Bank (Stipulation at Recital E and ¶ 5)

The Stipulation requires the Debtor to make $2,800 monthly payments to the Bank, for each month (or part thereof) during which the Debtor is authorized to use Cash Collateral pursuant to the Stipulation. This is the current monthly payment owed to the Bank under the terms of the Forbearance and Modification Agreement entered into by and between the Bank, on the one hand, and the Debtor and certain other parties, on the other hand, as described in Recital E of the Stipulation. All payments shall be applied to reduce, dollar for dollar, the Bank's allowed secured claim under 11 U.S.C. § 506 (i.e., such payments shall not be applied to any unsecured portion of the Bank's allowed claim).

Replacement Lien (Stipulation at ¶ 6)

The Stipulation grants the Bank a replacement lien on all assets to which the Bank's prepetition lien would have attached but for the filing of the Debtor's bankruptcy petition ("Replacement Lien"), with the Replacement Lien to have the same validity, priority, and extent as the Bank's prepetition lien on the Debtor's assets. The Replacement Lien, however, shall not extend to any claims for relief the Debtor's bankruptcy estate possesses under 11 U.S.C. § 506(c), 544, 545, 547, 548, 549, 553(b), or 724(a), or any proceeds of such claims for relief.

The Stipulation grants the Bank the full protections of 11 U.S.C. § 364(e) with respect to the Debtor's grant of the Replacement Lien, to the extent applicable, in the event that the Bankruptcy Court's order approving the Stipulation is reversed or modified on appeal. The Stipulation further provides that the Bankruptcy Court's entry of an order approving the Stipulation shall be effective to create and perfect the Replacement Lien and there shall be no requirement to file or record any financing statement or other instrument to create or perfect the Replacement Lien.

Access to Collateral; Insurance; Reporting (Stipulation at ¶ 7)

The Stipulation requires the Debtor to (a) permit the Bank and its agents to access and inspect the Collateral (such term is defined, in paragraph 6 of the Stipulation, to include the Bank's pre-petition collateral and any property subject to the Replacement Lien or any lien of the Bank by virtue

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[2] Paragraph 3(b) of the Stipulation erroneously refers to the Bank as "Lender." All references to "Lender" in the Stipulation shall be deemed to refer to the Bank.

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of 11 U.S.C. § 552(b)) on two business days' notice to the Debtor; (b) keep the Collateral insured as required under the Loan Documents and the United States Trustee guidelines; and (c) comply with all financial reporting requirements under the pre-petition loan documents ("Loan Documents").[3]

Validation of Indebtedness and Bank's Secured Claim; Deadline for Challenge (Stipulation at ¶ 8)

The Stipulation provides for the Debtor's irrevocable waiver (for itself but not its bankruptcy estate) of any right to challenge or contest: (1) the validity or enforceability of the Loan Documents; (2) the validity, perfection, priority, or extent of the Bank's security interest in the Collateral; or (3) the amount the Debtor owed under the loan from the Bank as of the Petition Date. The Stipulation also provides for the Debtor's irrevocable waiver (again, for itself but not its bankruptcy estate) of any right to bring an action against the Bank under Chapter 5 of the Bankruptcy Code. The amount the Debtor owed as of the Petition Date was not less than $141,063.96, as set forth in Recital G of the Stipulation.

The Stipulation also provides for a deadline for any party in interest to challenge or contest (1) the validity or enforceability of the Loan Documents; (2) the validity, perfection, priority, or extent of the Bank's security interest in the Collateral; or (3) the amount the Debtor owed under the loan as of the Petition Date. That deadline is October 31, 2018, provided, however, that any chapter 11 trustee, creditors' committee, or chapter 7 trustee is appointed in the case shall have until the later of (1) October 31, 2018, or (2) 45 days following his, her, or its appointment to bring any such challenge or contest.

Waiver of 11 U.S.C. § 364(d) and 506(c) Rights (Stipulation at ¶ 9)

The Stipulation provides for the Debtor to waive any right, while the Debtor is authorized to use Cash Collateral pursuant to this Stipulation, to obtain credit or incur debt from any party other than the Bank secured by a lien on the Collateral that is senior to or of equal priority to the Bank's lien on the Collateral.

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[3] The Loan Documents are described in the Recitals to the Stipulation and are attached to the Bank's proof of claim filed in this case on September 6, 2018 (Claims Dkt. No. 3). Interested parties may obtain a copy of the Bank's proof of claim by contacting the Bank's counsel, whose contact information is set forth in the top-left hand corner of the first page of the Motion.

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The Stipulation also provides for the Debtor to waive any right to recover from the Collateral any costs or expenses of preserving, or disposing of, the Collateral, to the extent such costs or expenses are incurred while the Debtor is authorized to use Cash Collateral pursuant to the Stipulation.

Default/Termination (Stipulation at ¶ 10)

The Stipulation provides for automatic termination of the Debtor's authorization to use Cash Collateral pursuant to the Stipulation upon the Bankruptcy Court's entry of an order (1) converting this bankruptcy case to a case under chapter 7 of the Bankruptcy Code; (2) appointing a chapter 11 trustee in this bankruptcy case; or (3) granting relief from the automatic stay to the Bank or any other creditor with a security interest in the Collateral.

The Stipulation also provides that the Debtor will be in default under the Stipulation if the Debtor fails to full and timely perform any provision, term, or condition of the Stipulation, or takes any action in violation of the Stipulation. The Stipulation requires the Bank to give the Debtor written notice of the default and of the Bank's withdrawal of consent to the use of Cash Collateral. If the Debtor fails to cure the default to the Bank's satisfaction in the Bank's sole and absolute discretion within 10 business days thereafter, the Debtor's right to use Cash Collateral pursuant to the Stipulation shall immediately cease.

The Stipulation finally provides that the Bank may seek a Bankruptcy Court order terminating the Debtor's right to use Cash Collateral for any reason, regardless of whether the Debtor's authorization to use Cash Collateral has terminated or may be terminated pursuant to the provisions described in the preceding two paragraphs.

Reservation of Rights (Stipulation at ¶ 14)

The Stipulation provides for a broad reservation of rights in favor of the Bank, including (among other things) the Bank's right to seek relief from the automatic stay, or any other relief in the bankruptcy case.

DATED: September 18, 2018 HEMAR, ROUSSO & HEALD, LLP

BY: /s/ Christopher D. Crowell
Wayne R. Terry
Christopher D. Crowell
Attorneys for Secured Creditor
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MEMORANDUM OF POINTS AND AUTHORITIES

Statement of Relevant Facts

A. The Bank's Loan to the Debtor

On or about October 19, 2015, the Bank made a loan to the Debtor in the original principal sum of $440,000 ("Loan"), as evidenced by a U.S. Small Business Administration Note of even sum and date executed by the Debtor and delivered to the Bank ("Note"). [Bank's Proof of Claim filed September 6, 2018 (Claims Dkt. No. 3), Ex. 1.]

To secure repayment of the Loan, the Debtor executed and delivered to the Bank a Commercial Security Agreement dated October 19, 2015 ("CSA"), whereby the Debtor granted the Bank a security interest in (among other property) its present and future inventory, accounts, fixtures, equipment, and general intangibles, and all proceeds and products thereof (individually and collectively, and as more particularly described in the CSA, "Pre-Petition Collateral"). [Id. Ex. 2.] The Bank perfected its security interest in the Pre-Petition Collateral by filing a UCC Financing Statement assigned File Number 20154801832 ("Financing Statement") with the Delaware Department of State on October 20, 2015. [Id. Ex. 3.]

The Bank and the Debtor subsequently entered into a Change in Terms Agreement dated August 23, 2017 ("CIT"), whereby (among other things) the Loan amount was decreased and the Loan maturity date was advanced. [Id. Ex. 4.] Effective February 12, 2018, the Bank, the Debtor, and certain other parties entered into a Forbearance and Modification Agreement ("Forbearance Agreement"), whereby (among other things) the Debtor acknowledged its liability to the Bank under the Loan and the amount of the Loan balance, agreed that the Debtor has no offsets, defenses, claims, or counterclaims against the Bank with respect to the Debtor's Loan obligations, and gave the Bank a general release. [Id. Ex. 5.] Beginning on September 1, 2018, and on the first day of each succeeding month until the Loan maturity date, the Forbearance Agreement requires the Debtor to make $2,800 Loan payments to the Bank. [Id.]

The Note, the CSA, the Financing Statement, the CIT, the Forbearance Agreement, and all other documents and instruments executed or filed in connection with the Loan are hereinafter referred to individually and collectively as the "Loan Documents."

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As of the Debtor's August 2, 2018, bankruptcy petition date ("Petition Date"), the Debtor owed the Bank not less than $141,063.96 under the Loan, including a $138,887.22 principal balance, $619.28 in accrued interest, and $1,557.46 in late fees. [Id.]

B. The Debtor's Schedules and the Cash Collateral Stipulation

The Debtor's Schedule A/B values the Debtor's assets as of the Petition Date at $125,800, including (1) $200 cash; (2) an $8,000 security deposit (presumably held by the Debtor's landlord for its business premises); (3) $46,600 in accounts receivable (valued at their face amount, without any reduction for doubtful or uncollectible accounts); (4) $20,000 in work in progress; (5) $1,000 in office furniture; and (6) $50,000 in equipment. [Dkt. No. 1, pps. 10-14 of 34.]

The Debtor's Schedule D lists the Bank holding a $148,000 secured claim and lists three other purported creditors (Deepak Krishan, purportedly owed $350,000; Manhar Patel; purportedly owed $42,000; and Vinu Patel, purportedly owed $40,000). [Id. p. 15-17 of 34.] However, none of these purported secured creditors (or any other creditor) filed a now-active UCC Financing Statement with respect to the Debtor with the Delaware Secretary of State prior to October 20, 2015 (the date the Bank's Financing Statement was filed with the Delaware Secretary of State). [Declaration of Christopher D. Crowell filed herewith ¶ 2.]

The Bank and the Debtor have entered into a Stipulation Regarding Interim Use of Cash Collateral and Grant of Adequate Protection ("Stipulation"). [Id. ¶ 3, Ex. 2.] The material terms of the Stipulation are described in the accompanying Motion and include (among other things):

(1) authorization for the Debtor to use cash collateral (as 11 U.S.C. § 363(a) defines such term) in which the Bank has an interest ("Cash Collateral"), to operate its business[4] through the earlier of November 30, 2018, or the date the Debtor's authorization to use Cash Collateral terminates in accordance with paragraph 10 of the Stipulation, in accordance with a budget attached to the Stipulation as Exhibit 1 ("Budget"), subject to the Debtor's right to deviate from the Budget as set forth in the Stipulation; and

(2) the granting of certain protections to the Bank, including (without limitation) (a) the

[4] As reflected in the Stipulation at Recital H, the Debtor's business consists of a machine tool shop.

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requirement that the Debtor make monthly payments to the Bank in the amount required under the pre-petition loan documents ("Loan Documents") during the term of the Stipulation, (b) the granting of a replacement lien on post-petition collateral in favor of the Bank with the same validity, priority, and extent as the Bank's pre-petition liens; (c) the Debtor's waiver of any right (for itself but not its bankruptcy estate) to challenge the Bank's rights under the Loan Documents or bring an action against the Bank under Chapter 5 of the Bankruptcy Code; (d) the establishment of a deadline for any other party in interest to bring any such challenge; and (e) the Debtor's waiver of certain rights under 11 U.S.C. §§ 364(d) and 506(c). [Id.]

ARGUMENT

A. Relevant Statutes

11 U.S.C. § 363(a) generally defines "cash collateral" to include cash and cash equivalents in which the bankruptcy estate and an entity other than the estate have an interest, including the proceeds, products, or profits of property subject to a security interest under 11 U.S.C. § 552(b), whether existing before or after the bankruptcy petition date. In turn, 11 U.S.C. § 552(b) (with certain enumerated statutory exceptions) provides generally that a security interest may extend to post-petition proceeds, products, or profits of property if the security agreement so provides.

11 U.S.C. § 363(c)(2) prohibits the trustee (and, by virtue of 11 U.S.C. § 1107(a), a chapter 11 debtor in possession) from using cash collateral absent the consent of each entity with an interest in such cash collateral or court authorization. 11 U.S.C. § 363(e) requires the court, on request of an entity that has an interest in property to be used by the bankruptcy estate, to "prohibit or condition such use … as is necessary to provide adequate protection of such interest."

11 U.S.C. § 361 provides that such adequate protection may be provided by requiring the trustee or debtor in possession to make cash payments to the affected entity, by granting such entity an additional or replacement lien, or otherwise "granting such other relief … as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property."

B. The Court Should Approve the Stipulation

By virtue of the Loan Documents, the Bank has a senior, perfected, and unavoidable interest in Cash Collateral and substantially all other assets of the Debtor. The Court should approve the

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Stipulation because it grants the Debtor authority to use Cash Collateral (which the Debtor needs to continue operating its business) while granting the Bank necessary and standard protections against the risk of a decline in the value of its collateral as a result of the Debtor's continuing operations. If the Debtor's scheduled asset values are approximately accurate (as to which the Bank takes no definitive position at this time), the Bank's claim is substantially undersecured, highlighting the need for the protections afforded the Bank in the Stipulation.

The Court should permit the Debtor to use Cash Collateral without requiring the Debtor to make payments to any other creditors who may hold a security interest in the Debtor's assets, for three reasons. First, the Bank believes that some or all of the other scheduled secured creditors may have filed UCC Financing Statements (if at all) only in California, which would be ineffective to perfect a security interest in the Debtor's assets since the Debtor is a Delaware corporation. See Uniform Comm. Code §§ 9-301(1), 9-307(e), and 9-501(a)(2). If these purported creditors' liens are unperfected, they would be subject to avoidance under 11 U.S.C. § 544(a). Second, even if these purported creditors held perfected and unavoidable security interests, any money paid to the Bank will reduce the Bank's senior secured claim and therefore improve their relative position. In other words, paying the Bank provides "adequate protection" to creditors holding junior secured claims just as well as would payments made directly to them. Third, if the Bank in fact is undersecured, it would be particularly inappropriate to pay any money to junior secured creditors until the Bank is paid in full. Instead, the Debtor should hold any excess cash in the bankruptcy estate subject to the Bank's lien.

CONCLUSION

For the foregoing reasons, the Bank requests that the Court enter an order approving the Stipulation.

DATED: September 18, 2018 HEMAR, ROUSSO & HEALD, LLP

BY: /s/ Christopher D. Crowell
Wayne R. Terry
Christopher D. Crowell
Attorneys for Secured Creditor
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DECLARATION OF CHRISTOPHER D. CROWELL

I, Christopher D. Crowell, declare:

1. I am an attorney licensed and admitted to practice before this Court, am employed by Hemar, Rousso & Heald, LLP ("HRH"), counsel of record in this bankruptcy case to the Bank. I am one of the HRH attorneys with primary day-to-day responsibility for this matter. I have personal knowledge of the matters set forth in this declaration, except as to matters stated on information and belief, which I believe to be true after reasonable inquiry. All capitalized terms not defined in this declaration have the meanings the accompanying Motion or Memorandum of Points and Authorities ascribes to such terms.

2. I have reviewed the Search Results for a search of the Delaware Secretary of State's records with respect to the Debtor through January 15, 2016. Based on that review, I am informed and believe that no other creditor filed a now-active UCC Financing Statement with respect to the Debtor with the Delaware Secretary of State prior to October 20, 2015 (the date the Bank's UCC Financing Statement was filed with the Delaware Secretary of State). A true and correct copy of the Search Results are attached hereto as Exhibit 1.

3. After the Petition Date, I negotiated the conditions pursuant to which the Bank would authorize the Debtor to use Cash Collateral with Joseph L. Pittera, who is the Debtor's counsel of record in this bankruptcy case. Our respective clients' agreement in that regard is reflected in the Stipulation Regarding Interim Use of Cash Collateral and Grant of Adequate Protection, a true and correct copy of which is attached hereto as Exhibit 2.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on September 18, 2018, at Encino, California.

/s/ Christopher D. Crowell
CHRISTOPHER D. CROWELL

EXHIBIT 1

CT Lien Solutions

a Wolters Kluwer Business

JENNIFER BLAKE
Sacramento Team 2
555 Capitol Mall,
Suite 1000
Sacramento CA 95811
9164036136
jennifer.blake@wolterskluwer.com

Search Results

ANNA JIN
State Bank of India (California)
SBA Dept.
707 Wilshire Blvd, #2900
Los Angeles CA 90017

Order #: 52104532 / 1
Customer #: 30864 / --
Date: 02/03/2016
Reference 1: NEWARK
Reference 2: 800800260

Target Name: NEWARK SPECIAL TECHNOLOGY INC.
File #:20160322360, File Date:01/15/2016, Filing Type:Termination, Filing Order#:52103462

State: Delaware

Jurisdiction: DE, Secretary of State
Search Type: UCC Name Search to Reflect

Debtor Name Search to Reflect: **Searched:** 5 Years **Searched Through:** 01/15/2016
Results: See Attached Certified Search

Disclaimers: --
Comments:
--

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Delaware

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Page 1

CERTIFICATE

TERMINATED

SEARCHED FEBRUARY 3, 2016 AT 7:42 P.M.
FOR DEBTOR, NEWARK SPECIAL TECHNOLOGY INC.

1 OF 2	FINANCING STATEMENT	20142208957
	EXPIRATION DATE: 06/06/2019	
DEBTOR:	NEWARK SPECIAL TECHNOLOGY INC	
	1212 SOUTH VAIL AVENUE	ADDED 06-06-14
	MONTEBELLO, CA 90640	
SECURED:	CONTINENTAL BUSINESS CREDIT LLC	
	21031 VENTURA BLVD STE 900	ADDED 06-06-14
	WOODLAND HILLS, CA 91364	REMOVED 04-23-15
SECURED:	MBMJ CAPITAL LLC	
	23622 CALABASAS ROAD, SUITE110A	ADDED 04-23-15
	CALABASAS, CA 91302	

F I L I N G H I S T O R Y

20142208957	FILED 06-06-14	AT 12:39 P.M.	FINANCING STATEMENT
20151753911	FILED 04-23-15	AT 6:33 P.M.	FULL ASSIGNMENT
20160322360	FILED 01-15-16	AT 2:20 P.M.	TERMINATION

Jeffrey W. Bullock, Secretary of State

20160703686-UCC11
SR# 20160579770

Authentication: 201776986
Date: 02-03-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

Delaware

The First State

2 OF 2 FINANCING STATEMENT 20154801832

EXPIRATION DATE: 10/20/2020

DEBTOR:	NEWARK SPECIAL TECHNOLOGY INC.		
	1212 S. VAIL AVENUE	ADDED	10-20-15
	MONTEBELLO, CA 90640		
DEBTOR:	MAGORIEN HONING & HYDRAULICS (DBA)		
	1212 S. VAIL AVENUE	ADDED	10-20-15
	MONTEBELLO, CA 90640		
SECURED:	STATE BANK OF INDIA (CALIFORNIA)		
	707 WILSHIRE BLVD. SUITE 2900	ADDED	10-20-15
	LOS ANGELES, CA 90017		

"FIRST POSITION"

F I L I N G H I S T O R Y

20154801832 FILED 10-20-15 AT 4:38 P.M. FINANCING STATEMENT

E N D O F F I L I N G H I S T O R Y

THE UNDERSIGNED FILING OFFICER HEREBY CERTIFIES THAT THE ABOVE LISTING IS A RECORD OF ALL PRESENTLY EFFECTIVE FINANCING STATEMENTS, FEDERAL TAX LIENS AND UTILITY SECURITY INSTRUMENTS FILED IN THIS

Jeffrey W. Bullock, Secretary of State

20160703686-UCC11
SR# 20160579770

Authentication: 201776986
Date: 02-03-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

Delaware

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OFFICE WHICH NAME THE ABOVE DEBTOR, NEWARK SPECIAL TECHNOLOGY INC. AS OF JANUARY 15, 2016 AT 11:59 P.M.

Jeffrey W. Bullock, Secretary of State

20160703686-UCC11
SR# 20160579770

Authentication: 201776986
Date: 02-03-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

EXHIBIT 2

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Christopher D. Crowell (SBN 253103)
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STATE BANK OF INDIA (CALIFORNIA)

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re NEWARK SPECIAL TECHNOLOGIES, INC., Debtor.	Case No. 2:18-bk-18929-NB Chapter 11 STIPULATION REGARDING INTERIM USE OF CASH COLLATERAL AND GRANT OF ADEQUATE PROTECTION

This Stipulation Regarding Interim Use of Cash Collateral and Grant of Adequate Protection ("Stipulation") is entered into by and between Newark Special Technology Inc., a Delaware corporation, erroneously identified on its bankruptcy petition as Newark Special Technologies, Inc. ("Debtor"), and State Bank of India (California) ("Bank," and individually and collectively with the Debtor, "Parties"), by and through their respective counsel, with reference to the following facts:

RECITALS

The Bank's Loan to the Debtor

A. On or about October 19, 2015, the Bank made a loan to the Debtor in the original principal sum of $440,000.00 ("Loan"), as evidenced by a U.S. Small Business Administration Note of even sum and date executed by the Debtor and delivered to the Bank ("Note").

B. To secure repayment of the Loan, the Debtor executed and delivered to the Bank a Commercial Security Agreement dated October 19, 2015 ("CSA"), whereby the Debtor granted the Bank a security interest in (among other property) its present and future inventory, accounts, fixtures, equipment, and general intangibles, and all proceeds and products thereof (individually and collectively, and as more particularly described in the CSA, "Pre-Petition Collateral").

C. The Bank perfected its security interest in the Pre-Petition Collateral by filing a UCC Financing Statement assigned File Number 20154801832 ("Financing Statement") with the Delaware Department of State on October 20, 2015.

D. The Bank and the Debtor subsequently entered into a Change in Terms Agreement dated August 23, 2017 ("CIT"), whereby (among other things) the Loan amount was decreased and the Loan maturity date was advanced.

E. Effective February 12, 2018, the Bank, the Debtor, and certain other parties entered into a Forbearance and Modification Agreement ("Forbearance Agreement"), whereby (among other things) the Debtor acknowledged its liability to the Bank under the Loan and the amount of the Loan balance, agreed that the Debtor has no offsets, defenses, claims, or counterclaims against the Bank with respect to the Debtor's Loan obligations, and gave the Bank a general release. Beginning on September 1, 2018, and on the first day of each succeeding month until the Loan maturity date, the Forbearance Agreement requires the Debtor to make $2,800.00 Loan payments to the Bank.

F. The Note, the CSA, the Financing Statement, the CIT, the Forbearance Agreement, and all other documents and instruments executed or filed in connection with the Loan are hereinafter referred to individually and collectively as the "Loan Documents."

G. As of the Petition Date (as such term is defined below), the Debtor owed the Bank not less than $141,063.96 under the Loan, including a $138,887.22 principal balance, $619.28 in accrued interest, and $1,557.46 in late fees.

This Bankruptcy Case

H. The Debtor commenced this bankruptcy case by filing a voluntary chapter 11 petition on August 2, 2018 ("Petition Date"), with the United States Bankruptcy Court for the Central District of California ("Bankruptcy Court"). The Debtor remains in possession of its bankruptcy estate and no trustee or creditors' committee has been appointed.

I. Since the Petition Date, the Debtor has continued to operate its business, which consists of a machine tool shop ("Business").

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J. The Debtor desires to use cash collateral (as 11 U.S.C. § 363(a) defines such term) in which the Bank has an interest ("Cash Collateral") to pay the ordinary and necessary expenses of operating the Business. The Bank consents to the Debtor's use of Cash Collateral on an interim basis, retroactive to the Petition Date, on the terms and conditions set forth in this Stipulation.

STIPULATION

1. Incorporation. The Recitals contained above are incorporated herein by this reference, and the Parties acknowledge and agree that the information recited above is true and correct.

2. Effective Date. This Stipulation shall be effective upon the Bankruptcy Court's entry of an order approving this Stipulation in its entirety; provided, however, that the Bank's consent to the Debtor's use of Cash Collateral in accordance with paragraph 3 below shall be effective when each Party shall have delivered this Stipulation, signed by such Party, to the other Party. The Debtor shall promptly seek Bankruptcy Court approval of this Stipulation pursuant to Federal Rule of Bankruptcy Procedure 4001(d) and (to the extent any other creditors assert an interest in Cash Collateral and do not expressly consent in writing to the terms and conditions of this Stipulation) Bankruptcy Court authorization to use Cash Collateral pursuant to Federal Rule of Bankruptcy Procedure 4001(b).

3. Use of Cash Collateral.

a. The Debtor may use Cash Collateral solely for the purpose of paying, and in amounts not to exceed (in any calendar month, on a line-item by line-item basis) by more than 10 percent, the expenses listed in the budget attached hereto as Exhibit 1 ("Budget"), from the Petition Date through the earlier of (a) November 30, 2018, or (b) the date the Debtor's authorization to use Cash Collateral terminates in accordance with paragraph 10 below. The Debtor represents that the $28,000.00 line item in the Budget for payroll expense includes no more than $12,000 per month to be paid to insiders (as 11 U.S.C. § 101(31) defines such term) and that such compensation has not been materially increased during the six months before, or after, the Petition Date.

b. Notwithstanding the foregoing sentence, upon prior written notice to the Bank, the Debtor may exceed the budgeted monthly amount for any line item by up to 15 percent, provided, however, that the aggregate expenses in any calendar month shall not exceed 110 percent of the total budgeted amount for each month without Lender's written agreement. With Lender's written agreement, the Debtor may exceed any budgeted monthly amount, either on a line-item by line-item or aggregate basis, without Bankruptcy Court approval.

4. Carve-Out for United States Trustee and Court Fees. Notwithstanding anything to the contrary in this Stipulation, the Bank shall and hereby does release its security interest in the Collateral (as such term is defined in paragraph 6 below) as necessary to permit the Debtor to pay any fees due in this bankruptcy case (a) to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6), and (b) to the Clerk of the Bankruptcy Court, to the extent such fees are incurred but have not been paid during a calendar quarter during which the Debtor is authorized to use Cash Collateral hereunder.

5. Payments to the Bank. As protection against a decline in the value of the Pre-Petition Collateral, the Debtor shall make $2,800.00 monthly payments to the Bank in the same manner and at the same time as set forth in the Loan Documents, for each month (or part thereof) during which the Debtor is authorized to use Cash Collateral pursuant to this Stipulation; provided, however, that the Debtor shall make the $2,800.00 payment to the Bank for September 2018, to the extent not already paid, no later than two Business Days following the Bankruptcy Court's entry of an order approving this Stipulation. For purposes of this Stipulation, the term "Business Day" means any day that is not a Saturday, Sunday, or legal holiday as defined in Federal Rule of Bankruptcy Procedure 9006(a)(6). All said payments shall be applied to reduce, dollar for dollar, the Bank's allowed secured clam under 11 U.S.C. § 506.

6. Replacement Lien. As further adequate protection against a decline in the value of the Pre-Petition Collateral, and in addition to any lien of the Bank by virtue of 11 U.S.C. § 552(b) ("Section 552(b) Lien"), the Bank shall be granted a replacement lien ("Replacement Lien") on all assets to which the Bank's prepetition lien would have attached but for the filing of the Debtor's bankruptcy petition, with the Replacement Lien to have the same validity, priority, and extent as the Bank's prepetition lien on the Debtor's assets; provided, however, that the Bank's Replacement Lien shall not extend to any claims for relief the Debtor's bankruptcy estate possesses or may possess arising under 11 U.S.C. §§ 506(c), 544, 545, 547, 548, 549, 553(b), or 724(a), or any proceeds of any such claims for relief. The Bank, having entered into this Stipulation in good faith, is entitled to the full protection of 11 U.S.C. § 364(e) with respect to the Debtor's grant of the Replacement Lien, to the

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extent applicable, in the event that the Bankruptcy Court's order approving this Stipulation is reversed or modified on appeal. The Bankruptcy Court's entry of an order approving this Stipulation shall be effective to create and perfect the Replacement Lien and there shall be no requirement to file or record any financing statement or other instrument to create or perfect the Replacement Lien. The Pre-Petition Collateral, individually and collectively with all property subject to the Replacement Lien and the Section 552(b) Lien, shall be referred to individually and collectively as the "Collateral."

7. Access to Collateral; Insurance; Reporting. The Debtor shall (a) permit the Bank and its agents to access and inspect the Collateral on two Business Days' notice to the Debtor; (b) keep the Collateral insured as required under the Loan Documents and the United States Trustee guidelines; and (c) comply with all financial reporting requirements as required under the Loan Documents.

8. Validation of Indebtedness and Bank's Secured Claim; Deadline for Challenge.

(a) The Debtor for itself but not its bankruptcy estate acknowledges and affirms that it knows of no basis, and irrevocably waives any right, to challenge or contest (1) the validity or enforceability of the Loan Documents; (2) the validity, perfection, priority, or extent of the Bank's security interest in the Collateral; or (3) the amount the Debtor owed under the Loan as of the Petition Date as set forth in Recital G above. The Debtor for itself but not its bankruptcy estate further acknowledges and affirms that it knows of no basis, and irrevocably waives any right, to bring any action against the Bank under Chapter 5 of the Bankruptcy Code.

(b) The deadline for any party in interest to challenge or contest (1) the validity or enforceability of the Loan Documents; (2) the validity, perfection, priority, or extent of the Bank's security interest in the Collateral; or (3) the amount the Debtor owed under the Loan as of the Petition Date as set forth in Recital G above shall be October 31, 2018; provided, however, that any chapter 11 trustee, creditors' committee, or chapter 7 trustee appointed in this case shall have until the later of (1) October 31, 2018, or (2) 45 days following his, her, or its appointment to bring any such challenge or contest.

9. Waiver of 11 U.S.C. §§ 364(d) and 506(c) Rights. The Debtor waives any right, while the Debtor is authorized to use Cash Collateral pursuant to this Stipulation, to obtain credit or incur debt from any party other than the Bank secured by a lien on the Collateral that is senior or of equal

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priority to the Bank's lien on the Collateral. The Debtor also waives any right to recover from the Collateral any costs or expenses of preserving, or disposing of, the Collateral, to the extent such costs or expenses are incurred while the Debtor is authorized to use Cash Collateral pursuant to this Stipulation.

10. Default; Termination.

(a) Automatic Termination. Notwithstanding any other provision contained herein, the Debtor's authorization to use Cash Collateral pursuant to this Stipulation shall terminate immediately and automatically, without any obligation of the Bank to provide notice to the Debtor, upon the Bankruptcy Court's entry of an order (1) converting this bankruptcy case to a case under chapter 7 of the Bankruptcy Code; (2) appointing a chapter 11 trustee in this bankruptcy case; or (3) granting relief from the automatic stay to the Bank or any other creditor with a security interest in the Collateral.

(b) Noticed Termination. If the Debtor fails to fully and timely perform any provision, term or condition of this Stipulation, or takes any action in violation of this Stipulation, the Debtor shall be in default under this Stipulation. In the event of a default, the Bank shall give written notice to the Debtor of the default and of the Bank's withdrawal of consent to the use of Cash Collateral. The Debtor's right to use Cash Collateral pursuant to this Stipulation shall immediately cease upon the expiration of 10 Business Days after the giving of such written notice, unless prior to such time the Debtor has cured such default to the Bank's satisfaction in the Bank's sole and absolute discretion or obtained an order of the Bankruptcy Court authorizing the continued use of Cash Collateral.

(c) Right to Seek Termination of Cash Collateral Use. Regardless of whether the Debtor's authorization to use Cash Collateral has terminated or may be terminated pursuant to the preceding paragraphs 10(a) or 10(b), the Bank may seek a Bankruptcy Court order terminating the Debtor's right to use Cash Collateral for any reason, including but not limited to a lack of adequate protection of the Bank's interest in the Collateral.

11. Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given via U.S. mail and e-mail as indicated below and shall be deemed given upon e-

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mail transmission:

If to Bank: Wayne R. Terry, Esq.
Christopher D. Crowell, Esq.
Hemar, Rousso & Heald, LLP
15910 Ventura Boulevard, 12th Floor
Encino, CA 91436
E-mail: wterry@hrhlaw.com and ccrowell@hrhlaw.com

If to Debtor: Joseph L. Pittera, Esq.
Law Offices of Joseph L. Pittera
1308 Sartori Avenue, Suite 109
Torrance, CA 90501
E-mail: jpitteralaw@gmail.com

12. No Deemed Lender Control. The Bank shall not be deemed to be in "control" of the operations of the Debtor, or to be acting as a "responsible person" or "owner" or "operator" with respect to the operation or management of the Debtor solely by reason of any credit extended to the Debtor under the Loan Documents, or the grant to and/or exercise by the Bank of any rights or remedies hereunder or thereunder.

13. No Implied Authorization. Except for transactions in the ordinary course of the Debtor's business or as authorized by the Bankruptcy Court, the Debtor shall not sell, transfer, lease, encumber, or otherwise dispose of any property of the bankruptcy estate, without the prior written consent of the Bank, and no such consent shall ever be implied from any action, inaction, or acquiescence by the Bank.

14. Reservation of Rights. This Stipulation does not prejudice the Bank's right to seek relief from the automatic stay, or any other relief, in this bankruptcy case, or the Debtor's right to oppose any such request for relief. Nothing in this Stipulation constitutes or shall be construed as an admission by the Bank that its interest in the Collateral is or will be adequately protected by the provisions of this Stipulation or otherwise. Except as otherwise expressly set forth herein, this Stipulation is not a waiver or modification of any of the rights of the Bank, including (by way of example and without limitation) all rights set forth in the Loan Documents and the right to assert that amounts were or are owed under the Loan Documents, as of the Petition Date or any other date, in addition to the amounts set forth in Recital G above. The Bank has no obligation or duty to any other entity to exercise any of its rights, remedies, claims, powers, benefits, and privileges. Any delay in exercising or the failure to exercise any of the Bank's rights, remedies, claims, powers, benefits, or

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privileges does not constitute a waiver thereof, nor subject the Bank to any liability to any entity, and no other entity may rely upon any such delay or failure or in any way seek to assert a defense to any obligation owing based on any such delay or failure.

15. Successors and Assigns. The provisions of this Stipulation shall be binding and inure to the benefit of the Bank, the Debtor, and its bankruptcy estate, and the respective successors and assigns of each of the foregoing.

16. Modification of Stipulation and Effect of Modification of Order. The terms and conditions set forth in this Stipulation may not be altered, modified, or affected without the prior written consent of the Debtor and the Bank. If any provision of any Bankruptcy Court order approving this Stipulation is modified, vacated, terminated, amended or stayed, the Bank's consent to the Debtor's use of Cash Collateral shall cease immediately thereupon; provided, however, that no such occurrence shall affect, limit or modify (a) the validity of any claim the Bank may have, under 11 U.S.C. § 507(b) or otherwise, for any amounts of Cash Collateral used pursuant to this Stipulation; or (b) the validity, enforceability, priority, or perfection of any lien or security interest granted under this Stipulation.

17. Unenforceability. If the Court does not approve this Stipulation for any reason, then this Stipulation has no effect, and neither the Stipulation nor any action taken, nor any statement made, in connection with the negotiation, preparation, formulation or seeking approval of this Stipulation may be referred to by any entity in connection with any proceeding or action, whether in this bankruptcy case or otherwise.

18. Consent and Mutual Agreement. Whenever any action may be taken under this Stipulation upon the prior written consent of the Bank or the prior mutual written agreement of the Parties, the action may be taken without any further notice or action or order of the Bankruptcy Court unless notice and a hearing would be required under the Bankruptcy Code.

19. No Agreement to Provide Financial Accommodation. No provision of this Stipulation shall in any way impose upon the Bank any duty or obligation (a) to provide any financing or financial accommodation to the Debtor, any of its affiliates, or any other party; (b) to collect, sell, lease or otherwise dispose of the Collateral; (c) to proceed against any party, person, individual, or entity or to

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exhaust any security held by the Bank; or (d) to otherwise pursue any action, right or remedy in the Bank's power whatsoever.

20. Survival of Obligations. The provisions of this Stipulation and any actions taken in accordance with this Stipulation shall survive entry of any order (a) confirming any plan in this bankruptcy case; (b) converting this bankruptcy case to a case under chapter 7 of the Bankruptcy Code; or (c) dismissing this bankruptcy case. Unless otherwise ordered by the Bankruptcy Court, the Bank's liens on the Collateral shall continue in full force and effect and maintain their priority until all the obligations owed under the terms of the Loan Documents and this Stipulation are paid in full.

21. Counterparts. This Stipulation may be executed in counterparts, each of which, when executed and delivered, shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signatures sent in PDF attachments to e-mails shall be effective as original signatures.

22. Time is of the Essence. The Parties expressly agree that time is of the essence with respect to all deadlines and time periods provided for under this Stipulation.

DATED: August 31, 2018

HEMAR, ROUSSO & HEALD, LLP

BY: ______________________
Wayne R. Terry
Christopher D. Crowell
Attorneys for Secured Creditor
STATE BANK OF INDIA (CALIFORNIA)

DATED: August 31, 2018

LAW OFFICES OF JOSEPH L. PITTERA

BY: ______________________
Joseph L. Pittera
Attorneys for Debtor
NEWARK SPECIAL TECHNOLOGY INC.

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EXHIBIT 1

	Magorien
Income	
Sales	45,000.00
Total Income	45,000.00
Cost of Goods Sold	
Freight & Shipping Costs	200.00
Outside Services - Shop	1,500.00
Shop Maintenance & Repairs	250.00
Shop Supplies	1,000.00
Workman's Comp	866.60
Total COGS	3,816.60
Expense	
Advertising and Promotion	50.00
Attorney Fees	-
Automobile Expense	-
Bank Service Charges	25.00
Computer and Internet Expenses	50.00
Interest Expense	-
Internet Charges	120.00
Liability Insurance	483.30
Licenses & Fees	50.00
Meals and Entertainment	100.00
Misc. Expenses	200.00
Office Expense	175.00
Office Supplies	200.00
Outside Services - Office	50.00
Payroll Expenses for shop employees	16,000.00
Payroll Expenses for Neel & Bud	12,000.00
Postage and Delivery	20.00
Professional Fees	200.00
Rent Expense	5,100.00
Repairs and Maintenance	125.00
Sub Contract Work	
Taxes	150.00
Uniforms	-
Electricity	1,200.00
Gas Expense	200.00
Trash/Waste	100.00
Water	150.00
Payment to SBI	2,800.00
Total Expense	39,548.30
Net Income	1,635.10

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

15910 Ventura Boulevard, 12th Floor, Encino, California 91436

A true and correct copy of the foregoing document entitled (*specify*): MOTION TO APPROVE STIPULATION REGARDING INTERIM USE OF CASH COLLATERAL AND GRANT OF ADEQUATE PROTECTION; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF CHRISTOPHER D. CROWELL IN SUPPORT THEREOF will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 09/18/18, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:
On (*date*) 09/18/18, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _______________, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

09/18/18	Sanaz Adnani	
Date	*Printed Name*	*Signature*

Service List

1. To Be Served by the Court Via Notice of Electronic Filing

Debtor's Counsel: jpitteralaw@gmail.com

United States Trustee: dare.law@usdoj.gov; ustpregion16@la.ecf.usdoj.gov

2. Served by United States Mail

Debtor
Newark Special Technology, Inc. (dba Magorien Honing and Hydraulics)
Attn: Batuk Viradia, President
1212 South Vail Avenue
Montebello, CA 90640

Purported Secured Creditors

Deepak Krishan
1630 Pepperwood Circle
Orange, CA 92869

Manhar Patel
12641 Woodgreen Avenue
Los Angeles, CA 90066

Vinu Patel
235 Liberty Street
Metuchen, NJ 08840

Twenty Largest Unsecured Creditors

Anil Prasad
3734 S. Canfield Avenue #103
Los Angeles, CA 90034

Casey Steele
1612 Myrtle Street
Sulphur Springs, TX 75482

Pat Jett
P.O. Box 902
Downey, CA 90241

Tower Industries, Inc.
c/o Law Offices of Julian A. Pollok
505 North Brand Boulevard, Suite 1050
Glendale, CA 91203

Tower Industries, Inc.
Attn: Tom Stull, Agent for Service of Process
5699 Happy Canyon Road
Santa Ynez, CA 93460

United States Trustee/Judge

United States Trustee
Attn: Dare Law
915 Wilshire Boulevard, Suite 1850
Los Angeles, CA 90017

Hon. Neil W. Bason
U.S. Bankruptcy Court/Roybal Federal Bldg.
255 East Temple Street, Suite 1552
Los Angeles, CA 90012