NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP. (IB) No. 19/GB/2021

Coram: Hon'ble Shri Rohit Kapoor, Member (J) : Hearing through

Hon'ble Shri Prasanta Kumar Mohanty, Member (T) : Video Conferencing

Name of the Company:	Mukut Chandra Deka	...... Financial Creditor / Petitioner
	Versus	
	J S B Entrade Pvt. Ltd.	......Corporate Debtor / Respondent

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Section: Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY TRIBUNAL, GUWAHATI BENCH ON 10.12.2021

S.No.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. VISHAL GANDA	Advocate	Petitioner	Present in video
2.	NONE	Advocate	Respondent	Conference

O R D E R

The Petitioner / FC is represented through respective Learned Counsel (s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, through Video Conferencing vide separate sheet.

Sd/-	**Sd/-**
(PRASANTA KUMAR MOHANTY) **MEMBER (T) &** **ADJUDICATING AUTHORITY**	**(ROHIT KAPOOR)** **MEMBER (J) &** **ADJUDICATING AUTHORITY**

//D-10.12.2021//

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
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CP. (IB) No. 19/GB/2021

Coram: Hon'ble Shri Rohit Kapoor, Member (J) : Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conferencing

In the matter of:

Mr. Mukut Chandra Deka, H. No.3.A, Ambikagiri Nagar Path, Hatigarh Chariali, P. O. Zoo Road, Guwahati – 781024,Dist.Kamrup(M), Assam

… Petitioner / FC

Versus

J S B Entrade Private Limited, House No.31, F. A. Road, Kumarpara, Guwahati, Assam 781 009, India

Order delivered on 10th December, 2021

O R D E R
[Per se: Shri Prasanta Kumar Mohanty, Member (T)]

1. The present Petition has been preferred by the Petitioner/Financial Creditor, i.e. Mr. Mukut Chandra Deka under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in short) in respect of the Corporate Debtor (CD) namely, J S B Entrade Limited, who has failed to pay the due and payable financial debt of an amount of Rs.1,69,75,00.00 (Rupees One crore Sixty Nine lacs Seventy Five thousand) only as on 31.07.2021.

2. The facts as revealed from the Petition are that the CD had approached the FC for a loan of Rs.1,40,00,000.00 (Rupees One crore Forty lacs) only. The FC agreed to advance the working capital loan to the CD for the said amount and the FC disbursed the amount as debt to the CD vide Loan Agreement dated 24.02.2020. As per the terms of the Loan Agreement, it was decided between the parties that a sum of Rs.1,40,00,000.00 (Rupees One crore Sixty Nine lacs Seventy Five thousand) only would be disbursed to the CD which would be repayable within six months i.e. on or before 26.08.2020 at an interest rate of 1.25 per cent per month. True copies of the Loan Agreement dated 24.02.2020 and the bank statement for the period from 01.02.2020 to 29.02.2020 have been attached with the Petition.

3. That as per the terms of the Loan Agreement, the CD executed a promissory note on 26.02.2020 (First Promissory Note) in favour of the FC. A true copy of the same has been attached with the Petition.

4. That as on 26.08.2020 the CD had to pay the FC the principal amount along with the interest Rs.1,50,50,000.000 (Rupees One crore Fifty lacs Fifty thousand) only, which the CD had failed to repay.

5. It is submitted that pursuant to such non-repayment by the CD, the FC sent a recall notice on 27.08.2020 to the CD requesting the CD to repay the amount of loan advanced which was due and payable by him to the FC. As per the said recall notice, the CD was called upon to repay the amount due within a period of 15 days from the Repayment Date, i.e. by 09.09.2020. A true copy of the recall notice dated 27.08.2020 has been attached with the Petition.

6. It is submitted that vide a letter dated 01.09.2020, the CD requested to extend the time period of repayment of loan by nine months stating the reasons for such request for extension was due to financial distress to the CD on account of ongoing Covid 19 Pandemic. A true copy of the said letter dated 01.09.2020 requesting for extension is annexed with the Petition.

7. It is submitted that the FC granted extension for repayment of the loan to the CD vide letter dated 02.09.2020, whereby, extended the date of repayment of the loan amount along with interest till May, 2021 on the following conditions:

a) The parties shall execute an addendum to the Loan Agreement for modifying the time period for repayment of the loan amount along with interest and

b) The Corporate Debtor shall issue a fresh promissory note to that effect.

A true copy of the letter dated 02.09.2020 sent by the FC to the CD is annexed with the Petition.

Thus, in view of the above conditions, a revised promissory note was issued by the CD on 03.09.2020 along with an addendum to the Loan Agreement dated 3.09.2020. True copies of the revised promissory note and Addendum to the Loan Agreement both dated both dated 03.09.2020 have been annexed with the Petition.

8. It is stated that as per the agreement between the parties vide Addendum to the Loan Agreement, the CD was under obligation to repay the loan amount along with interest on or before 26.05.2021. However, CD could not repay the amount within that date and the amount repayable by the CD as on 31.07.2021 was Rs.1,69,75,000.00 (Rupees One crore Sixty Nine lacs Seventy Five thousand) only including the interest. A tabular calculation of the amount due is furnished below:

S. No.	Particulars	Amount in (Rs.)
Calculation of the Net Principal Amount Recoverable		
a.	Total amount of debt disbursed (from February 26, 2020 till July 31, 2021)	1,40,00,000.00
b.	Total amount received / repaid	Nil
c.	Net Principal amount recoverable	1,40,00,000.00
Calculation of the Net Interest Amount Recoverable*		
d.	Total Interest Accrued	29,75,000.00
e.	Less: Tax deducted at source on account of interest and deposited with the relevant authorities	Nil
f.	Balance Interest Repayable [(d) – (e)]	29,75,000.00
g.	Less: Interest Received by the Lender till July 31, 2021	Nil
h.	Net Interest Payable (till July 31,2021)	29,75,000.00
	Total amount recalled [(c) + (h)]	1,69,75,000.00

- The interest has been calculated at the rate of 1.25% p.m. from February 26, 2020 till July 31, 2021.

9. It is submitted that till date the FC has not received any amount from the CD and as aforesaid, the loan amount advanced to the CD was repayable on or before 31.07.2021 and disregarding the recall notices of the FC tantamount to default by the CD in terms of Section 3 (12) of the Code.

10. It is further submitted that in the light of the above, it can clearly be ascertained that the debt owed by the CD to the FC is a Financial Debt under Section 5 (8) of the Code which has been disbursed against the consideration for the time value of money in terms of the provisions of the Code and therefore, it is humbly prayed that the Corporate Insolvency Resolution Process be initiated in respect of the CD.

11. That an amount of Rs.1,69,75,000.00 (Rupees One crore Sixty Nine lacs Seventy Five thousand) only is payable to the FC, is claimed to be in default since 31.07.2021.

12. The Petitioner has also submitted the list of documents in order to prove the existence of Financial Debt and the amount in default. The same are mentioned below:

i. True Copy of Master Date of the CD as available at the website of the Ministry of Corporate Affairs – **Annexure -1**.
ii. Written communication from the proposed Interim Resolution Professional- **Annexure -2**.
iii. Copy of the Loan Agreement dated 24.02.2020 - **Annexure -3**.
iv. True copy of the bank statement for the period from 01.02.2020 to 29.02.2020 – Annexure -4.
v. Copy of the Promissory Note dated 26.02.2020 – Annexure-5.
vi. True copy of the recall notice dated 27.08.2020 – Annexure-6.
viii. Copy of the letter dated 01.09.2020- Annexure-7.

viii. True copy of the letter dated 02.09.2020 sent by the Financial Creditor to the Corporate Debtor- Annexure-8.

ix. True copy of the revised promissory note dated 03.09.2020- Annexure-9.

x. True copy of the Addendum to Loan Agreement dated 03.09.2020- Annexure-10.

13. The Respondent / CD vide its reply dated 22.11.2021 has admitted the facts narrated in the Petition and has further submitted that –

a) The Respondent was facing certain financial difficulties due to stagnation in edible oil sector and failed to fulfil its obligations under the Loan Agreement and Addendum to the Loan Agreement.

b) In 2020 there was a global outbreak of Covid 19 Pandemic which led to imposition of a nationwide lockdown and owing to the halt in the global markets, the barometer of the edible oil sector had plunged drastically, resulting in the slowdown. This has caused a dent on the business operations of the Respondent.

c) It is further submitted that due to the scale and impact of Covid 19 Pandemic on the global markets, there was decline in the demand for the products of the Respondent and this has caused a further decline in the business operations of the Respondent resulting in its financial distress. **The total liabilities of the Respondent as on March 31, 2021 was Rs.23.85 crores (Rupees Twenty Three crores Eighty Five lacs only.** The huge liabilities on the Respondent and the slowdown in the business of the Respondent is making it difficult for the Respondent to adhere to the terms of the Loan Agreement and Addendum to the Loan Agreement.

In view of the above facts and circumstances, the Respondents pray that this Hon'ble Adjudicating Authority may pass a suitable order in the best interest of the Respondent to keep it as a going concern.

O R D E R

14. The matter was take up on 15.09.2021, 23.09.2021, 16.10.2021, 11.11.2021 and on 26.11.2021. Till 16.10.2021, the Respondents remained absent despite service of notice. Only on 11.11.2021 one Mr. Dibya Singh, CA and on 26.11.2021 one Mr. H. Gupta, Advocate appeared representing the Respondent. Sufficient opportunities were given to the CD to appear/file reply. On 26.11.2021 the Counsel appeared and has expressed that he has no objection to the prayer of the Applicant to admit the Application and start CIRP.

14.2 However, both the parties were given liberty, when the matter was reserved on 26.11.2021, to file Written Submissions, if any, in 5 / 6 pages within 7 days from that day exchanging copy thereof with the other side. But, no one has filed any written submissions thereafter.

15. **Considering the materials made available by the Applicant, arguments of both parties and the facts mentioned hereinabove, this Adjudicating Authority is satisfied that,**

a) The Corporate Debtor availed the loan / cash credit facilities from the Financial Creditor.

b) Existence of debt is above Rupees One Crore.

c) Debt is due.

d) Default occurred on 31.07.2021.

e) Petition has been filed within the limitation period, as the existence of the debt due is found in the statement of accounts, when the petition under Section 7 of the IBC has been filed on 16.08.2021.

f) Copy of the Application filed before this Bench has been sent to the Corporate Debtor and the application filed by the Petitioner under Section 7 of the IBC is found to be complete for the purpose

of initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

Hence, the present IB Petition is admitted with the following directions/observations. The date of admission of this petition is 10.12.2021.

16. As per the provisions of Section 13 and 14 of the IB Code on the date of commencement of insolvency, this Adjudicating Authority declares moratorium with effect from today for prohibiting all of the following, namely :-

I. (a) 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.

(b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein.

(c) Any action to foreclose, recover or enforce any security interest created by the 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).

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

II. Supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

III. The provisions of sub-section (I) shall not apply to –

(a) Such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

17. **This Adjudicating Authority hereby appoints, as proposed, Mr. Manish Agarwalla, Room No.9, 5th Floor, Parmeshwari Building, Chatribari Road, Guwahati, Assam 781001, E-mail cammanishagarwalla@gmail.com, Registration No.IBBI/IPA-001/IP-P02082/2020-2021/13198 as an Interim Resolution Professional. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code. The IRP is to file Assignment Declaration with the Registry within 3 days from the date of this Order.**

18. The IRP is hereby advised to adhere the time limit as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP") and perform the duties as specified under Section 17, 18, 20 and 21 of IB Code. The IRP shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honest and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnels connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of the Corporate Debtor. In case there is any violation, the IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

19. It is also observed that the Petitioner has claimed an aggregate amount of Rs.1,69,75,000.00 (Rupees One crore Sixty Nine lacs Seventy Five thousand) as on 31.07.2021 plus unpaid interest, other charges and costs till repayment in full.

20. One of the prime objective of the Insolvency and Bankruptcy Code, 2016 is to quickly find out a viable Insolvency Resolution Plan for the Corporate Debtor and in order to have a Resolution Plan Viable, feasible and implementation successful, in the era of Minimum Cost of funds-based Lending Rate ("MCLR")/ Repo Linked Interest Rate/ Interest rate falling regime and competitive market condition, the Committee of Creditors (COC) may explore, while finalizing the Resolution Plan for the Corporate Debtor, the possibility of loading reasonable interest rate without any penal/overdue interest.

21. The Registry is hereby directed to communicate the authenticated copy of this order to the Financial Creditor, Corporate Debtor Company, the IRP and also to the Registrar of Companies, Guwahati immediately through speed post / registered post and email, if any.

22. The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order.

23. Thus, the present IB Petition e.g. CP (IB) No.19/GB/2021 filed under Section 7 of the IBC stands admitted on the date of this order i.e. 10.12.2021 with the above observations and directions.

Sd/-

(PRASANTA KUMAR MOHANTY)
MEMBER (T) &
ADJUDICATING AUTHORITY

//D-10.12.2021//

Sd/-

(ROHIT KAPOOR)
MEMBER (J) &
ADJUDICATING AUTHORITY