

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**CP. (IB) No. 21/GB/2021**

**Coram:**

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL  
COMPANY TRIBUNAL, GUWAHATI BENCH ON 24.03.2022**

**Name of the Company: Indian Bank**  
..... Financial Creditor  
**V/S**  
**M/S. GUWAHATI CONSTRUCTION PVT. LTD**  
..... Corporate Debtor

**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.

<b>S.No.</b>	<b>NAME (CAPITAL LETTERS)</b>	<b>DESIGNATION</b>	<b>REPRESENTATION</b>	<b>SIGNATURE</b>
1.	NONE	-	Petitioner/FC	Present in video
2.	NONE	-	Respondent/CD	Conference

**ORDER**

The Parties herein are 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/-**  
**(PRASANTA KUMAR MOHANTY)**  
**MEMBER (T) &**  
**ADJUDICATING AUTHORITY**

**Sd/-**  
**(ROHIT KAPOOR)**  
**MEMBER (J) &**  
**ADJUDICATING AUTHORITY**

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**ORDER**

**[Date of Order: 24.03.2022]**

**[Per se: Hon'ble Shri Prasanta Kumar Mohanty, Member (T)]**

**1. The present petition has been preferred by the Petitioner/Financial Creditor, i.e. Indian Bank 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 namely, M/S. Guwahati Construction Private Limited.**

2. The Petitioner/Financial Creditor namely, Indian Bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Registered Head Office at Office No. 254-260, Avvai Shanmugam Salai, Royapettah, Chennai-600014 and carrying on its Banking business through diverse branches and in particular a branch named, Indian Bank, SRCB Road, Fancy Bazar, Guwahati, Assam, Assam and is represented by its Chief Manager, Mrs. Vandana Singh. TAN of Indian Bank is IDIB000S504.

3. The Corporate Debtor namely Guwahati Construction Private Limited was incorporated on 21<sup>st</sup> Day of April, 2008 under the provisions of the Companies Act, 1956 vide **CIN: U45201AS2008PTC008661** having its Registered Office at Suren Paradies, Opposite Hanuman Mandir, G.S Road, Lachit Nagar, Guwahati, Assam-781007.

**4. It is submitted by the Petitioner that:**

**4.1 The Total defaulted amount in the Term Loan account including uncharged interest calculated up to 23.06.2021 stands at Rs. 3,41,41,590.00 (Rupees Three Crores Forty-One Lakhs Forty-One Thousand Five Hundred Ninety Only) as on 23.06.2021.**

**4.2 The loan account became Non-Performing Asset (NPA) on 27.12.2018 and is still continuing as NPA account. The statements of account along with Memorandum of Interest and Loan Instalments Report and Certificate in accordance with the Banker's Book Evidence Act, 1891 (18 of 1891) have been filed with the Petition marked as ANNEXURE: No. II.**

**5. The dates of default in the term loan Account occurred on several dates but declared as NPA on 27.12.2018.**

## **6. It is further submitted that**

- 6.1 The Financial Creditor (FC) in course of its business considering the application of the Corporate Debtor (CD) had sanctioned Working Capital Term Loan of Rs. 4 Crore (Rupees Four Crores only) for development of "Tagore Apartment" at Maligoan, Guwahati with margin of Rs. 540.51 Lakhs with interest BR+3.50% p.a. with monthly rests, repayable in 5 equal quarterly installments of Rs.80 Lakhs each along with contractual rate of interest, starting from March, 2017 with moratorium period of 27 months. **The Indian Bank as the Financial Creditor had sought to lodge this application for resolution of the loan account under the Insolvency Bankruptcy Code of 2016 with respect to its sanction in the form of Term Loan.**
- 6.2 M/S. Guwahati Construction Pvt. Ltd. to avail the credit facility signed and executed necessary loan agreements through its directors, and also created equitable mortgage of property, a plot of land measuring 7 Kathas under Dag No. 545 (O) 208 (N) Patta no. 218 (N) in Gotanagar, Jalukbari Mouza at B.G Colony, Maligoan, Guwahati which was developed by the company under the cover of an Agreement and power of Attorney, along with Hypothecation of Construction Material at Site, also created equitable mortgage of a Residential Flat of the director Viz. Ashim Kr. Mandal at 2<sup>nd</sup> Floor, Rajat Enclave, Unit No. 2A, Lachit Nagar, Guwahati, measuring 1175 Sq. Ft. with a market value of Rs. 46.50 Lakhs and FSV of Rs.40 Lakhs as per valuation also created equitable mortgage of a plot of land measuring 3 Kathas adjacent to the project and held under irrevocable Power of Attorney by the company in the name of Isha Biswas covered by Dag No. 175 and Patta No. 218.
- 6.3 The Credit Facility was secured by creation of equitable mortgage of land measuring 1 (One) Bigha 2 (Two) Kathas, covered by Dag No. 545(O)/1774(N) and 208(N) under K.P Patta No. 218(O)/516(N) of Village Gotanagar, Mouza Jalukbari in the District of Kamrup (M) Assam in the name of Smt. Rita Mandal. Land measuring 3(Three) Kathas covered by Dag No. 544 (Patta No.

70,79(O)/506/218(N) and after clubbing both the adjacent land the new demarcation stands as Dag No. 2017 of K.P Patta No. 199 of Village Gotanagar Mouza Jalukbari in the district of Kamrup(M) Assam in the name of Isha Biswas.

- 6.4 A residential Flat with super buildup area 1175 Sq. ft. being Flat No. 2A, situated at 2<sup>nd</sup> Floor under the name and style of SWARNALI APARTMENT. Along with proportionate share of 0.54 Acres situated over a plot of land measuring 1 Bigha 5 Lechas covered by Dag No. 996/1973 of K.P. Patta No. 1355 situated at revenue village Sahar Ulubari Part-II, under mouza Ulubari in the district of Kamrup (M), Assam.
- 6.5 The M/s. Guwahati Construction Pvt. Ltd. (Borrower) had also registered the charge over the secured properties (hypothecation and mortgaged properties) with the Registrar of Companies and relevant documents have been filed. The directors of M/s. Guwahati Construction Private Limited i.e. Shri Ashil Kumar Mandal and Smt. Rita Mandal along with one Ms. Isha Biswas stood as guarantor of the credit facility sanctioned to the borrower i.e. M/s. Guwahati Construction Pvt. Ltd.

7. Further, it is mentioned that since M/s. Guwahati Construction Pvt. Ltd (Borrower) failed to comply with the terms and conditions of the sanction and failed to repay the installment/dues or regularize the loan account in spite of repeated request made by the Indian Bank by showing various reasons.

8. The term loan account (A/C No. 50261323330) was classified as NPA on 26.08.2017. That on request made by the Corporate Debtor and on recommendation of Zonal Office of the Financial Creditor the credit facility was renewed vide its sanction letter dated 21.10.2017 by sanctioning Rs. 390 Lakhs under the terms and conditions as mentioned in the sanction letter. The Corporate Debtor again defaulted in repayment of the credit facility, as a result of which, the loan account of the Corporate Debtor has become NPA on 27.12.2018. Thereafter, having no other alternative, the Financial Creditor had issued several Reminder Letters to the M/s. Guwahati Construction Pvt. Ltd

(Borrower), to pay the interest and the loan installments. M/s. Guwahati Construction Pvt. Ltd (Borrower) while admitting its liability had requested some time to pay the dues but failed to pay the dues.

9. The Petitioner/FC has also submitted the particulars of Financial Debt such as Documents, Records and Evidence of Default. The same are mentioned below:

**9.1 Particulars of Security Held, the date of its Creation, its estimated value as per the Creditor:** The Financial Creditor has sanctioned Term Loan of Rs. 400 Lakhs initially and reduced the amount to Rs. 390 Lakhs subsequently to the borrower M/s Guwahati Construction Pvt. Ltd. The term Loan facility is secured by creating equitable mortgage of following:

- a. Created equitable mortgage of property, a plot of land measuring 7 Kathas under Dag No. 545 (O) 208 (N) patta no. 218 (N) in Gotanagar, Jalukbari Mouza at B.G Coloney, Maligoan, Guwahati in the name of one of the director of borrower Ms. Rita Mandal which is developed by the company. The same has been annexed as marked as **ANNEXURE No. I-XII.**
- b. Hypothecation of all the Construction Material at the construction site executed by the corporate debtor through authorized representative/director and the same has been annexed herewith and marked as **ANNEXURE No. I-XI.**
- c. Equitable mortgage of a residential Flat of the director Viz. Ashim Kr. Mandal at 2<sup>nd</sup> Floor, Rajat Enclave, Unit No. 2A, Lachit Nagar, Guwahati, measuring 1175 Sq. ft. with a market value of Rs. 46.50 Lakhs and FSV of Rs. 40 Lakhs as per valuation, the title documents have been annexed herewith and marked as **ANNEXURE No. I-XXVI.**
- d. Equitable mortgage of a plot of land measuring 3 Kathas adjacent to the project land held under irrevocable Power of Attorney by the company in the name of Isha Biswas covered by Dag No. 175 and Patta No. 218. The

title documents have been annexed herewith and marked as **ANNEXURE No. I-XXI**.

**9.2** Particulars of an order of Court, Tribunal or Arbitral Panel Adjudicating on the Default:

- e. The Financial Creditor as Applicant had filed an Original Application bearing O.A. No. 209 of 2019 before the Learned Debts Recovery Tribunal at Guwahati against the M/s. Guwahati Construction Private Limited / Corporate Debtor and personal Guarantors as Defendants for recovery of Rs. 4,97,21,710.00 (Rupees Four Crores Ninety-Seven Lakhs Twenty-One Thousand Seven Hundred Ten) and the said application is pending for disposal.

**9.3** Record of Default as Available with any Credit Information Company: Credit Information reports as generated from Trans Union CIBIL (**Annexure No. XXXXVI**).

**9.4** Entries in a Bankers Book in accordance with the Bankers Book Evidence Act, 1891 (**Annexure No. I-II**).

**9.5** Loan Application by the M/s. Guwahati Construction Private Limited. (**Annexure No. I-VI**).

**9.6 List of documents attached to the application in order to prove the Existence of Financial Debt, the amount and date of default:**

- a. Demand Promissory Notes both dated 24.01.2015. (ANNEXURE No. I-IX)
- b. Term Loan Agreement dated 17.01.2015. (ANNEXURE I-X)
- c. General Letter of Hypothecation dated 17.01.2015. (ANNEXURE I-XI)
- d. Letter of Guarantee dated 17.01.2015. (ANNEXURE I-XII)
- e. Registered Sale Deed No. 14756 of 2009. (ANNEXURE I-XIII)
- f. Patta No. 506 in the name of Mr. Deep Sarma. (ANNEXURE I-XIV)
- g. Power of Attorney No. 3478/09 executed by Dr. Deep Sarma in favor of Sri Lakhiraj Deka and rectification deed No. 11778/09. (ANNEXURE I-XV)

- h. Irrevocable General Power of Attorney No. 1247/11 dated 19.04.2011 executed by Smti. Rita Mandal in favour of M/s Guwahati Construction Pvt. Ltd
- i. Letter of confirming deposit of Title Deed by Ms. Rita Mandal dated 22.01.2015. (ANNEXURE I-XVI)
- j. Letter of Mortgage confirming depositing Title Deed dated 22.01.2015. (ANNEXURE I-XVII)
- k. Recital of mortgage. (ANNEXURE I-XVIII)
- l. Deed of Sale No. 12119 of 2009 dated 16.10.2009. (ANNEXURE I-XIX)
- m. Resettled Final Patta No. 191 in the name of Smt. Isha Biswas. (ANNEXURE I-XX)
- n. Power of Attorney No. 3003 of 2011 executed by Smt. Isha Biswas in favor of M/s Guwahati Construction Pvt. Ltd. (ANNEXURE I-XXI)
- o. Deed of Agreement No. 7068 of 2011 executed by Smti. Isha Biswas in favor of M/s Guwahati Construction Pvt. Ltd. (ANNEXURE I-XXII)
- p. Sale Deed No. 13603 of 2009 executed by Smti Khudi Kumar in favor of Smti. Isha Biswas. (ANNEXURE No. I- XXIII)
- q. Letter dated 22.01.2015 executed by Smti. Isha Biswas confirming deposit of title document of her property (ANNEXURE I-XXIV)
- r. Recital of Mortgage (ANNEXURE I-XV)
- s. Deed of Sale vide no. 6139/12 dated 29.06.2012 executed by Mrs. Ravi Pronita Pillai in favour of Sri Ashim Kumar Mandal. (ANNEXURE I-XXVI)
- t. NOC for construction from GMC dated 28.09.2004 (ANNEXURE I-XXVII)
- u. Deed of Agreement being deed no. 16499/07 dated 10.12.2007 entered between Sri Baikuntha Nath Patowari and M/s Swarnali Construction. (ANNEXURE I-XXVIII)
- v. Trace Map. (ANNEXURE I-XXIX)
- w. Deed of Sale No. 5123/08 dated 01.04.2008 (ANNEXURE I-XXX)

- x. Certificate dated 08.06.2007 issued by M/s Swarnali Construction (ANNEXURE I-XXXI)
- y. Letter dated 22.01.2015 executed by Sri Ashim Kumar Mandal confirming deposit of title documents of his property. (ANNEXURE I-XXXII)
- z. Recital of Mortgage (ANNEXURE I-XXXIII)
- aa. Deed of Indemnity executed by representative of Corporate Debtor dated 17.01.2015 (ANNEXURE I-XXXIV)
- bb. Deed of Indemnity executed by representative of Corporate Debtor dated 13.07.2015 (ANNEXURE I-XXXV)
- cc. Deed of Indemnity executed by representative of Corporate Debtor dated 13.07.2015 by Ashim Kumar Mandal in favor of financial creditor (ANNEXURE I-XXXVI)
- dd. Deed of Indemnity executed by representative of Corporate Debtor dated 13.07.2015 by Smti. Rita Mandal in favor of financial creditor (ANNEXURE I-XXXVII)
- ee. Valuation Report (Series) (ANNEXURE I-XXXVIII)
- ff. Letter from corporate debtor requesting financial creditor for allowing repayment period of 42 months for the project loan of Rs. 400 lacs for their Tagore Apartment (ANNEXURE I-XXXIX)
- gg. Copy of letter dated 10.08.2017 by the applicant. (ANNEXURE I-XXXX)
- hh. Sanction Letter dated 10.08.2017 in request of renewing credit facilities. (ANNEXURE I-XXXXI)
- ii. Notice under Section 13(2) of the Sarfaesi Act, 2002 (ANNEXURE I-XXXXII)
- jj. Representation dated 20.02.2019 by Corporate Debtor. (ANNEXURE I-XXXXIII)
- kk. Reply by the authorized officer of the Financial Creditor 04.03.2019 (ANNEXURE I-XXXXIV)

II. **Acknowledgement of liability dated 22.03.2016, 24.01.2017, 04.12.2018** (ANNEXURE I-XXXXV)

10. It is observed that the Respondent was not appearing in the matter. The learned counsel appearing for the Petitioner submitted that he had sent the petition copy to the Respondent as per order of this Bench but the same was returned with the remark "Addressee left". Earlier also, notice sent by the registry was returned with the remarks "Addressee left". The counsel for the petitioner prayed for admission of the matter. In the interest of justice, the Petitioner was directed to publish the notice in two daily News Papers- one in English and the other in vernacular language i.e. Assamese published from Guwahati giving 14 (fourteen) days clear notice to the respondent to appear in person or through its Counsel on the next date of hearing.

11. The matter was taken up on 10.03.2022 but in spite of the publication of notice, no one was present from the side of the Respondent. Sufficient Opportunities have been given to the Respondent to appear/file their replies in the matter. The counsel of the Petitioner submitted the details of the Loans disbursed, due date of repayment, default date of the loan and had prayed for admission of the Petition. The Counsel of the Petitioner had submitted that the Respondent was deliberately avoiding to appear before this Bench. **Hence the Petition was heard ex-parte and order was reserved.**

12. The Financial Creditor also has furnished the name of the Insolvency Resolution Professional to act as interim Resolution Professional

**ORDER**

**13. Heard the Counsel of the Applicant at length and perused the records/documents filed. Considering the materials made available by the Applicant Bank, arguments of the Counsel, this Adjudicating Authority is satisfied that:**

- 13.1 The Corporate Debtor availed the loan/credit facilities from the Financial Creditor;**
- 13.2 Existence of debt is above One Crore;**
- 13.3 Debt is due, payable and defaulted;** Credit Information reports as generated from Trans Union CIBIL has been filed. **(Annexure No. XXXXVI).**
- 13.4 Application has been filed within the limitation period, as the date of default is 27.12.2018, when the Application under Section 7 of the IBC has been filed by the FC i.e. Indian Bank on 23.09.2021; Debt Liability has been acknowledged on 22.03.2016, 24.01.2017 and 04.12.2018**
- 13.5 Copy of the Application filed before this Bench has been sent to the Corporate Debtor, though returned but the notice was published in two News Papers for the appearance of the Respondent and the application filed by the Applicant Bank 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 24/03/2022.**

14. 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:

- 14.1 (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 disposal 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 shall not be terminated or suspended or interrupted during the moratorium period.
- 14.2 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.
- 14.3 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.
- (b) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

**15. This Adjudicating Authority hereby appoints, as proposed by the FC, Mr. Purshotam Gagar, P. Gagar & Associates, Chartered Accountants, Advika, 3<sup>rd</sup> Floor, Opp. Sukreswar Ghat Garden, M.G. Road, Panbazar, Guwahati-781001, Assam having IP Registration No. IBBI/IPA-001/IP-P00487/2017-18/10875 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 has to submit the Assignment Declaration before the Registry within 2 days from today.**

16. 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 29 dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel 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-today 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 obligations imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

17. It is also observed that the Applicant Bank has claimed an aggregate amount of Rs. 3, 41, 41,590.00 (Rupees Three Crores Forty-One Lakhs Forty-One Thousand Five Hundred and Ninety only).

18. One of the prime objectives 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 maximum interest at the Applicant Bank's One Year MCLR or One Year MCLR + 1% without any penal/overdue interest.**

**19. The Registry is hereby directed to communicate the authenticated copy of this order to the Applicant/ Financial Creditor, Corporate Debtor Company, the IRP and also to the Registrar of Companies, Guwahati immediately through speed post/ registered post and e-mail, if available.**

20. The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**21. Thus, the present IB Petition filed under Section 7 of the IBC stands admitted today i.e. 24/03/2022 with the above Observations and Directions.**

**Sd/-**

**(Prasanta Kumar Mohanty)  
Member (Technical)  
& Adjudicating Authority**

**Sd/-**

**(Rohit Kapoor)  
Member (Judicial)  
& Adjudicating Authority**