



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

03

ORDER SHEET OF THE HEARING ON 08th NOVEMBER, 2023, 11:00 A.M.

IA (IBC)/88/GB/2023

CP (IB)/3/GB/2020

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Gautam Saha, 2. Abhijit Dutta,-Vs-Kamal Agarwal, RP
Under Section	U/R 11

For Petitioner (s) :

For Respondent (s) :

ORDER

Order Pronounced through VC *vide* separate sheets.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**I.A. (IBC)/88/11/GB/2023
In C.P. (IB) No.03/GB/2020**

In the matter of:

Insolvency and Bankruptcy Code, 2016. An application under Rule 11 of National Company Law Tribunal Rules, 2016, seeking relief for consideration of proposed amount for settlement;

-And-

In the matter of:

Manish Soni

... Operational Creditor

-Versus-

Concept Eduventures Private Limited

... Corporate Debtor

-And-

In the matter of

Gautam Saha, having address at Subham Heights, Kahilipara, Guwahati-781019;

Abhijit Dutta, having address at Flat No. A2, Block B3, City Heart Apartment Bora service, GS Road, Guwahtai-781007

... Applicants/Suspended Directors

-Versus-

Kamal Agarwal, (Ex-Resolution Professional IBBI/IPA-001/IP-P00868/2017-2018/11466), having address at 487/27 School Road, Near Peeragarhi Metro Station, New Delhi-110087.

... Respondent

Coram:

Shri H. V. Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For the Petitioners : Mr. Bikash Sharma, Adv.

For the Respondent : Mr. Kamal Agarwal, RP



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

I.A. (IBC)/88/11/GB/2023
In C.P. (IB) No.03/GB/2020

Order pronounced on: 08.11.2023

ORDER

1. The present application has been filed by Gautam Saha and Abhijit Dutta (Suspended Board of Directors of the CD), under Rule 11 of the National Company Law Tribunal Rules, 2016 with the prayer to allow the proposal made by the Respondent No. 1 and 2 for settlement amounting in all to the tune of 40 Lakh as full and final settlement/conclusion of all pending IAs i.e., I.A. (IB) No.40/2021, I.A. (IB) No. 11/2022 and I.A. (IB) No. 17/2022).
2. The Petitioners submit that:
 - 2.1 An application under section 19(2), section 43 and section 66 of the Insolvency and Bankruptcy Code, 2016 was filed by the Resolution Professional against the Applicants before the National Company Law Tribunal, Guwahati Bench in C.P. (IB) 03/(GB)/2020.
 - 2.2 NCLT Guwahati bench on the date of hearing on 17.03.2022 verbally discussed the proposal for settlement by depositing Rs. 51,00,000 (approx.) in order to dispose of the IAs pending in the matter C.P(IB)/03/2020 and hence directed the Corporate Debtor/Respondents to file fresh reply in all the 3 pending IAs i.e., I.A. (IB) No.40/2021, I.A. (IB) No. 11/2022 and I.A. (IB) No. 17/2022) and come up with settlement proposal. However, thereafter the bench was reconstituted and hence through this present IA filed before this NCLT, Guwahati the same is brought before the notice of the present bench to consider the settlement proposal by the Applicants who are the Suspended Directors.
 - 2.3 At the outset, though the allegation against the Suspended Directors (Applicant No. 1 and 2) are not admitted but considering the length of the litigation and anxiety the Suspended Directors/Applicants approached relatives and friends for the assistance and offered an amount of Rs.40 Lakh as full and final settlement/conclusion of all pending IAs i.e. I.A. (IB) No.40/2021, I.A. (IB) No. 11/2022 and I.A. (IB) No. 17/2022) without



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

I.A. (IBC)/88/11/GB/2023
In C.P. (IB) No.03/GB/2020

prejudice to his rights to context the aforesaid cases, if the offer is taken down by Tribunal.

- 2.4 This tribunal has accepted the Resolution Application submitted by one applicant i.e., V.C. Education in which the Financial Creditor has been allotted Rs. 45 lakh against the total admitted claim of Rs. 57,08,936.52. Similarly, Operational Creditors (Employees/workmen) granted an amount of Rs. 5 Lakh against the total amount of Rs. 11, 58,970.00. Further, in the case of Operational Creditor (other than Employees/workmen) an amount of Rs. 20 lakh accepted by this Tribunal in against the claim amount of Rs. 63,45,671.00 and the remaining amount of 10 lakh paid to the ESIC and 25 lakh paid to the Resolution Professional. As at the time of acceptance of the Resolution Application, the Tribunal mentioned about the payment to the Operational Creditors and discussed on the last only amount of Rs 50, 04,500.00 need to be paid to the Operational Creditor if made in full. Hence, the suspended directors pleaded before the relatives and friends for help and were able to arrange an aggregate amount of 40 lakh which they offered before the Tribunal as settlement amount.
- 2.5 The Corporate Debtor being the certified holder of MSME is also entitled for the benefits entitled under the IBC laws
- 2.6 If the proposal for the settlement is not accepted, the Applicant/Suspended directors will suffer irreparable loss and injuries.
- 2.7 In the similar situation matter in C.P. (IB) NO. 08/GB/2020 *Punjab National Bank vs. Megha Granules Private Limited* where this Tribunal accepted similar proposal and disposed of their I.As.
3. The Ex-Resolution Professional of the Corporate Debtor, the Respondent herein submits as under:
- A. Preliminary Submissions:



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

I.A. (IBC)/88/11/GB/2023
In C.P. (IB) No.03/GB/2020

- i. The above application was first listed on 21.08.2023 and this tribunal directed the Respondent/RP to file reply within two weeks, by serving advance copy to the applicant. Copy of the order dated 21.08.2023 in IA 88/GB/2023 has been annexed.
- ii. The above application is filed by the Suspended Directors praying for acceptance of Rs 40 Lakh against disposal of three pending IAs i.e., IA 40 of 2021 filed under section 19(2) of the Code, IA 11 of 2022 file under section 43 of the Code and IA 17 of 2022 filed under section 66 of the Code.
- iii. The Resolution Plan in the matter was approved *vide* order dated 24.03.2022 in IA No. 61 of 2021. The observations and directions in the order dated 24.03.2023 in IA 61/GB/2021 as is relevant to the present application is as follows:

It is observed at para 13.1, 13.2 and 13.3 of the order dated 24.03.2022 in IA 61/GB/2021 that the above IAs are pending, and the prayer made in these IAs are also recorded as under:

Para 13.1: IA 40 of 2021 filed under 19(2) of the IBC 2076 read with section 68 70,71 72 & 236 of IBC 2016 read with rule 11 of the NCLT Rules 2016 to direct the Respondents to share the information required by the resolution professional and further refer the matter to the Board (Insolvency & Bankruptcy Board of India for filing complaint with the special court established under chapter XXVIII of the Companies Act, 2073 Sufficient opportunities were given to the Respondents to extend full cooperation to the RP but the RP has now filed the Report that all Respondents, except R 6 and R 7, have not cooperated as required under the IBC.

Para 13.2: IA 11 of 2022, filed under Section 43 of the IBC, 2016 read with rule 11 of the NCLT rules, 2016 praying the following:

- a. Pass an order requiring the respondent no 1 (Gautam Saha) and the respondent no 2 (Abhijit Dutta) to pay back Rs 36,87,1641.00 (Rupees Thirty-Six Lakhs Eighty-Seven Thousand One Hundred and Sixty-Four) and Rs 21,15,5001.00 (Rupees Twenty-One Lakhs Fifteen



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

I.A. (IBC)/88/11/GB/2023
In C.P. (IB) No.03/GB/2020

Thousand Five Hundred) respectively into the account of the Corporate Debtor;

- b. Pass an order on the preferential transactions identified by the respondent no 4 (Transaction Auditor) as this Hon'ble Court may deem fit and proper.*

Para 13.3: *IA 17 of 2022, filed under Section 66 of the IBC, 2016 read with rule 11 of the NCLT rules, 2016, seeking order against respondents herein to contribute to the assets of the corporate debtor along with an order to refer the matter to the Central Government under section 213 of the Companies Act, 2013 for appointing inspector(s) to investigate into the affairs of the corporate debtor.*

Para 14.4: *it is directed to the resolution professional "The resolution professional in the capacity of the chairman of the monitoring committee shall continue to pursue all the avoidance applications under Section 43 and 66 of the Code."*

Para 15.6: *It is further observed that "The CoC has Passed a resolution that all the claw back received in pursuance to the avoidance applicants shall be distributed in accordance with the directions of this Bench and the RA has also confirmed that they would not claim any amount, if recovered from the Suspended Management under Sec 43 and 66 of IBC The Suspended Management is not cooperating and the RP has to pursue the matters filed under Section 19, 43 & 66 of IBC Since no further amount is to be paid to the FC and there are no workers, the amount to be recovered, if any, is to be paid to the Employees/ Faculties and so on as per the Sec 53 of IBC only after the payment of fees of the RP of Rs 50,000.00 p.m.*

Para 15.7: *There is a direction to the RP "The learned RP is to follow these matters meticulously for satisfaction of the claims of the Creditors including the claims of Employees/ Faculties, Government and other OCs not satisfied to the extent of Rs 2,01,17,008.00.*

Copy of the order dated 24.03.2022 in IA 61/GB/2021 approving the resolution plan have been annexed.



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

I.A. (IBC)/88/11/GB/2023
In C.P. (IB) No.03/GB/2020

- iv. In compliance with the directions of this tribunal at para 15.7, the RP is meticulously following these pending IAs even after the approval of the resolution plan.
- v. The corporate debtor was into the business of running of coaching institutes in and around Guwahati and had earned huge name and fame for itself. However, the Applicants (Suspended Directors) deliberately managed the Corporate Debtor in a manner which were detrimental to the interests of its employees, faculties, creditors and other stakeholders. The Suspended Directors had money to spend on their luxuries but defaulted in making payment to their employees and faculties as well, and also towards the EMI owed to the Financial Creditors and payment of dues of other Operational Creditors. There is also a default in payment of statutory dues. It is stated that instead of making payments to the employees, faculties, creditors and towards government dues, they were spending on acquiring properties, either, in their own name or in the name of their spouses. Further, they spend huge amounts towards buying of luxury and expensive vehicles including BMW and Porsche. The fraudulent and wrongful acts of the Applicants were not towards the brink of the insolvency but way before 2015 as is admitted and evident from the e-mail dated 01.09.2015 written by the Applicant No. 2 to the Applicant No 1. Copy of e-mail dated 01.09.2015 written by the Applicant no 2 to the Applicant no 1 along with email dated 02.04.2021 received from the Applicant in the main petition have been annexed.
- vi. The contents of the e-mail dated 01.09.2015 is also not denied by the Applicants and is also discussed in the meeting held on 27.12.2020 wherein the Applicant no 1 replied to the queries raised by the RP. It is also pertinent to note that the Applicant no 1 in reply to the query no 2 is admitting that the *“Problem started in the company since Nov-Dec 2015 onwards on account of interest on TDS due. Default in payment of TDS were Rs 40- 45 Lakh and the reason for default in payment of TDS was due to fund crunch in 2014. Therefore, problem started since 2014.”* Copy of e-mail dated 10.02.2021 sent to the Applicants by the RP



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**I.A. (IBC)/88/11/GB/2023
In C.P. (IB) No.03/GB/2020**

recording the minutes of meeting held in person on 27.12.2020 at Brahmaputra Hotel in Guwahati have been annexed.

- vii. The Applicants have miserably failed to provide all the information and records as was required and therefore an application IA 40 of 2021 filed under Section 19(2) of the Code is still pending. The list of pending information and records required was repeatedly sent to all the Respondents in IA 40 of 2021 including the Applicants herein and was last sent on 22.05.2022 in compliance of order dated 20.05.2022 in IA 40 of 2021. Copy of e-mail sent to the Applicants herein requesting to provide the necessary information and records have been annexed.
- viii. The Applicants defaulted in payments but continued to make payment either to themselves or to their related parties and did not even shared the details of the related parties when asked for. It is seen from the bank records that between 01.04.2017 till 31.03.2019 there is payment of Rs. 61,98,200.00 (Rupees Sixty One Lakh Ninety Eight Thousand and Two Hundred only) in the account of the Applicant no 1 and Rs. 73,00,000.00 (Rupees Seventy Three Lakhs) in the account of applicant no 2. Further, there is a payment of Rs 93, 00,000.00 (Rupees Ninety-Three Lakh Only) to one related party Mr. Tapan Shah without any justification. Copy of details of payment made to the account of applicant no 1 and 2 from 01.04.2017 till 31.03.2019 as obtained from the bank records along with e-mails exchanged seeking information on Mr. Tapan Shah have been annexed.
- ix. The default of the applicants herein are also evident from the notice of mismatch received from the service tax department for financial year 2015-16 and 2016-17, which were forwarded to the applicants herein, however, there is no reply till date. Thereafter, there is a show cause notice dated 14.06.2022 demanding payment of service tax. Interest and penalty of Rs. 11,22,400.00 Further, on account of the default in payment of TDS, the DCIT Guwahati has sent a demand notice of Rs. 51,26,524.00 (Rupees Fifty One Lakhs



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**I.A. (IBC)/88/11/GB/2023
In C.P. (IB) No.03/GB/2020**

Twenty Six Thousand Five Hundred and Twenty Four only) on 30.06 2021, which is again forwarded to the applicants However, there is no reply to the same as well. Copy of notice dated 23.09.2020 and 28.01.2021 received from GST Division Guwahati for mismatch in the Service Tax Returns forwarded to the Applicants as well as the show cause notice dated 14.06.2022 demanding Rs 11,22,400.00 and the demand notice of Rs 51,26,524.00 received from DCIT Guwahati vide e-mail dated 30.06.2021 have been annexed.

- x. The Applicants submit that the haircut/shortage to the creditors/ stakeholders post payment of proceeds received from the resolution plan can be covered upon payment of Rs 40 Lakh only is merely illusionary and a miserable attempt to mislead this Tribunal as is also recorded at para 15.7 of the order dated 24.03.2022 in I.A. 61 of 2021 of this Tribunal, that the unsatisfied claim is to the extent of Rs 2,01,17,008.00 (Rupees Two Crore One Lakh Seventeen Thousand and Eight Only)
- xi. A summary of the unsatisfied claim which was admitted and not disputed by the applicants is summarized below for the sake of convenience:

Stakeholders		Amount paid under the plan	Deficit
Financial Creditor	57,07,837	45,00,000	Nil
Employees	11,58,917	5,00,000	6,58,917
Faculties	62,66,741	20,00,000	42,66,741
ESIC	10,89,161		Nil
Government Dues (TDS)	51,26,532	Nil	51,26,532
Other OC's Suppliers	86,87,890	Nil	86,87,890
Total Deficit			1,87,40,080

Copy of details of payment made out of the proceeds of the resolution plan and shortages/ haircut have been annexed.

- B. Para-wise reply:



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

I.A. (IBC)/88/11/GB/2023
In C.P. (IB) No.03/GB/2020

- i. Without prejudice to the above, the respondent RP denies to all the averments made by the applicants unless the same are matter of record or are specifically admitted hereinafter.
- ii. The contents of para 1 are submission by the applicants and merits no reply.
- iii. The contents of para 2 are matter of record and merits no reply.
- iv. The contents of para 3 are wrong and denied, it is denied that on 17.03.2022 there was any verbal discussions on the proposal of settlement by this Tribunal. In fact, on 17.03.2022, IA 17/GB/2022 filed under section 66 was listed and there was no appearances on behalf of the Applicants. Copy of order dated 17.03.2022 in IA 17/GB/2022 of this Tribunal has been annexed.
- v. The contents of para 4 & 5 are wrong and denied.
- vi. The details of unsatisfied claim are detailed at para 11 above and further the submissions that the financial health of the applicants are in a dilapidated condition cannot be accepted as they gained at the cost of the other stakeholders as mentioned above.
- vii. The contents of para 6 & 7 are prayer to this Tribunal and merits no reply. The reliance upon the order of this Tribunal in CP (IB) No. 08/GB/2020 in the matter of Punjab National Bank Vs. Megha Granules Private Limited cannot be commented upon as the applicants has failed to attach the copy of the order.
- viii. In view of the above facts and circumstances it is hereby prayed before this Tribunal to
 - a. Direct the applicants herein to satisfy the deficit to the tune of 1, 87,40,080.00;
 - b. Direct the applicants to contribute to the fees 50,000/- per month and actual expenses of the Respondent/Ex-RP as detailed above;
 - c. Pass any further order(s)/ direction(s) as this Tribunal may deem fit and proper.



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

I.A. (IBC)/88/11/GB/2023
In C.P. (IB) No.03/GB/2020

4. We have heard the submissions made by the Ld. Counsel for the Applicants along with the Ld. Counsel for the Respondent and have meticulously gone through the documents produced on record.
5. From the records, it is seen that the order dated 17.03.2022 passed by this tribunal does not mention any verbal discussion on the proposal of settlement. The relevant part of the order dated 17.03.2022 in I.A. (IBC) 17/GB/2022 is reproduced herein below:

“O R D E R

Date of Order: 17.03.2022

The matter is taken up for hearing through Video Conferencing. Heard the learned RP. Nobody is present from the side of the Respondents.

2. This Application is filed by the Applicant / RP under Section 66 of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016. He has submitted all the details relating to the transactions and confirmed that he has forwarded the copy of the Application to the Respondents. Since no one is present from the side of the Respondents, the Applicant / RP is again directed to forward a copy of the Application once again to the Respondents along with a copy of the today's Order intimating the next date of hearing for their appearances/submissions, if any.

3. The Registry is directed to issue notice to the Respondents for their appearances.

4. List the matter on 08.04.2022.”

6. It is observed that the Applicants have failed to produce any proof of the said settlement proposal between the Applicants and the Respondents. Hence, the submissions made by the Applicants are not accepted.
7. Further, the Hon'ble Supreme Court in *E S Krishnamurthy vs. Bharath Hi Tech Builders Pvt. Ltd, 2021 SCC OnLine SC 1242*, held that the Adjudicating Authority



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

I.A. (IBC)/88/11/GB/2023
In C.P. (IB) No.03/GB/2020

cannot compel a party to the proceedings before it to settle a dispute while also observing that:

“While the Adjudicating Authority and Appellate Authority can encourage settlements, they cannot direct them by acting as courts of equity...”

8. Since, in the present case the Erstwhile RP/ Respondent is denying the averments made by the Applicants with regards to settlement amounting Rs. 40 Lakhs as full and final settlement/conclusion of all pending IAs i.e., I.A. (IB) No.40/2021, I.A. (IB) No. 11/2022 and I.A. (IB) No. 17/2022) and there is no record of such settlement in any of our orders, the prayer made by the Applicants for consideration of proposed amount for settlement needs to be rejected.
9. **The three pending IAs i.e.,** I.A. (IB) No.40/2021, I.A. (IB) No. 11/2022 and I.A. (IB) No. 17/2022 shall be heard by this bench on merits and material available on records.
10. **Hence, I.A. (IBC)/88/11/GB/2023 stands dismissed accordingly.**
11. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
12. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
13. File be consigned to records.

Sd/-

Satya Ranjan Prasad
Member (Technical)

Sd/-

H.V. Subba Rao
Member (Judicial)

Signed this on 8th day of November, 2023