

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA (IBC)/42/2021
In
CP (IB) No. 08/GB/2020**

Coram:

Hon'ble Mr. H. V SUBBA RAO, MEMBER (J) : Through Video
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (T) : Conference

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW TRIBUNAL, GUWAHATI BENCH ON 09.09.2021.

Name of the Company: **Sandeep Khaitan** **IRP**
In
Punjab National Bank **Financial Creditor**
Versus
M/s Megha Granules Pvt. Ltd. **Corporate Debtor**

Section: **Under Section 12 r/w Section 60(5) of Insolvency and Bankruptcy Code, 2016**

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR. ABHISHEK PRASAD	Advocate	Petitioner /IRP	Through
2.	NONE	-	Respondent	Video Conference

ORDER

The Applicant 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.

The Interlocutory Application IA (IBC)/42/2021 is allowed and disposed of.

Sd/-

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

Sd/-

(HARI VENKATA SUBBA RAO)
MEMBER (J) &
ADJUDICATING AUTHORITY

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

IA (IBC)/42/2021

In

CP (IB) No. 08/GB/2018

In the matter of:

HRISIKESH DASGUPTA, IRP

Of M/s Megha Granules Pvt. Ltd.
Sanmati Plaza, 2nd Floor, G.S Road
Guwahati 781005

.... Applicant

IN

PUNJAB NATIONAL BANK
Zonal Sastra Centre, Guwahati Zone
Hem Baruah Road, Panbazar
Guwahati- 781001

... Financial Creditor

VERSUS

MEGHA GRANULES PVT. LTD

Having registered office at
Industrial Growth Centre (AIIDC)
Chaygoan, Village- Chatabari,
District- Kamrup, Assam- 781124

... Corporate Debtor

Order delivered on 09.09.2021

Coram:

Hon'ble Mr. H. V SUBBA RAO, MEMBER (J) : Through Video
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (T) : Conference

The matter is taken up through Video Conference. Heard the Ld. Counsels appearing on behalf of the Petitioners.

ORDER

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

1. This instant application has been filed under section 12 R/W Section 60(5) of the Insolvency and Bankruptcy Code, 2016 on behalf of Interim Resolution Professional

seeking exclusion of 55 days from the timeline of Resolution Process on account of Writ Petitions filed by the Suspended Board before Hon'ble High Court and Interim Orders restraining coercive steps by the IRP, Appeal filed before Hon'ble NCLAT as well as Intermittent Lockdown imposed due to the Covid 19 Pandemic.

2. It is stated by the Petitioner that the application for initiating Corporate Insolvency Resolution Process was filed by the Punjab National Bank (Financial Creditor) under Section 7 of the I B Code.

3. It is also stated that the said application was duly heard and admitted by the Hon'ble Tribunal vide order dated 05.05.2021. The Applicant herein was provided with an authenticated copy of the order dated 05.05.2021.

4. It is submitted that after the admission of the application under Section 7 of the Code, one of the Directors and member of the Suspended BOD filed a Writ Petition being W.P. (C) No. 2956/2021, under his name and in the name of the CD, before the Hon'ble Guwahati High Court ("**Hon'ble High Court**"). The Writ Petitioners therein sought the following reliefs:

"82. THAT, this petition is being made bona fide and in the interest of justice.

In the premises aforesaid the petitioner prays that this Hon'ble Court may be pleased to call for the records of the case, issuing rule calling upon the respondent to show case as to why the order dated 05/05/2021 shall not be suspended till pandemic or the petitioner shall be able to approach and get proper order from NCLAT and shall not be directed to take appropriate decision on the petitioner representation dated 23/04/2021 and communicate that outcome of the said representation and/or why a writ of mandamus be not issued directing the respondent bank not to adopt/initiate any coercive action against the petitioner for recovery of the loan amount during the pendency of the process of settlement/compromise/and till pandemic over and after hearing the parties be pleased to make the rule absolute and/or pass such further or other orders as Your lordships may deem fit and proper.

AND

During the pendency of the Rule, Your Lordship may be pleased to direct the Respondent Bank from adopting any coercive action against the petitioner for recovery of loan amount during the pendency of the Rule, and please to stay order dated 05/05/2021 and/or pass such further or other order(s) as Your Lordship may deem fit and proper."

5. It is stated by the Applicant that the Writ Petitioners deliberately misled the Hon'ble High Court due to which the Hon'ble High Court passed as order dated 12/05/2021, whereby the Applicant IRP was directed not to take any coercive action against the Corporate Debtor till 21/05/2021. A copy of Hon'ble Guwahati High Court's order dated 12/05/2021 is annexed herewith and marked as **ANNEXURE A-1**.

6. It is also submitted that since the Hon'ble High Court had not stayed the CIRP, the Applicant IRP proceeded with the issuance of the public announcement (on 13/05/2021) in accordance with Section 13 and Section 15 of IBC read with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") and *inter alia* invited the submission of claims.

7. It is submitted that on 22/05/2021, another Director and member of the Suspended BoD filed an appeal before the Hon'ble National Company law Appellate Tribunal ("**NCLAT**") challenging the order of admission dated 05/05/2021.

8. Additionally it is submitted that on 25/05/2021, an interlocutory application was filed before the Hon'ble High Court, once again under the CD's name, seeking modification of its order dated 12/05/2021.

9. It is again submitted that the Hon'ble High Court vide its Order dated 28/05/2021 was pleased to extend the interim protection and consequently, direct the Applicant IRP to not take any coercive action against the Corporate Debtor till the appeal filed before the Hon'ble NCLAT were not listed and heard or till 15/06/2021,

whichever was earlier. A copy of Hon'ble Guwahati High Court's order dated 28/05/2021 is annexed herewith and marked as **ANNEXURE A-2**.

10. It is submitted that the Applicant IRP was therefore handicapped and could not take coercive steps against the Corporate Debtor. The IRP did convene the 1st Meeting of CoC vide notice dated 06/06/2021 and the 1st CoC meeting was held on 11/06/2021, but the same was deferred by the then sole Financial Creditor State Bank of India in view of the interim orders passed by the Hon'ble High Court and no effective decision was taken at the said 1st Meeting of the CoC. A true and correct copy of the Notice, Agenda and Minutes of the 1st COC Meeting are annexed herewith and marked as **ANNEXURE A-3 (colly)**. The Applicant IRP also filed his Status Report before this Hon'ble Tribunal informing of the constitution of the COC and of its 1st meeting.

11. It is thereafter submitted that the Hon'ble High Court vide order dated 15/06/2021 extended the Interim protection granted vide its Order dated 28/05/2021 and held as follows:

*"It is apparent from the interim order dated 28/05/2021 passed by this Court that the purpose of the order was to extend some protection to the Writ Petitioners till such time the applications filed before the NCLAT were taken up for hearing on merit. In view of the above and considering the fact that the application filed by the Writ Petitioners are admittedly posted for hearing on 21/06/2021 before the NCLAT, I find force in the submission of Mr. Sharma that the operation of the interim order deserves to be extended till such time the applications are considered by the NCLAT on merit and an order is passed thereon. **As such, the interim order dated 28/05/2021 is hereby extended till such time, the applications already filed by the Writ Petitioners and posted for hearing before the NCLAT on 21/06/2021 are decided by a speaking order.***

In so far as the IA (C) 1085/2021 is concerned, the same is taken on record. After going through the statements made therein and after considering the submissions of Mr. Goenka, this Court is of the prima facie opinion that there has been no violation of the interim order dated 28/05/2021 by holding the meeting of the CoC. However, the petitioners

would be at liberty to move appropriate application in the matter, if so advised.

Let this writ petition and the connected IAs be posted again after three weeks for necessary orders."

(emphasis supplied)

A copy of the Hon'ble High Court's order dated 15/06/2021 is annexed herewith and marked as **ANNEXURE A-4**.

12. The above said interim orders passed by the Hon'ble High Court came to expire only upon the final disposal of the appeal filed by the suspended Board by the Hon'ble NCLAT on 29.06.2021. A true and correct copy of the judgment and order dated 29.06.2021 passed by the Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 406 of 2021 is annexed herewith and marked as **ANNEXURE A-5**. **Relevant part of the order of Hon'ble NCLAT is reproduced below:**

"This appeal has been filed by the Suspended Director of the Corporate Debtor 'M/s Megha Granules Pvt. Ltd.' against impugned order dated 5th May, 2021 vide which the Adjudicating Authority (National Company Law Tribunal) Guwahati Bench, Guwahati admitted application under Section 7 of Insolvency and Bankruptcy Code, 2016 (for short 'I & B Code') having no. C.P. (IB) No. 08/GB/2020. The Application under Section 7 was initially filed by United Bank of India on 9th March, 2020 and after United Bank of India merged with the Punjab National Bank, Punjab National Bank sought to file amended petition so as to add the claim of Punjab National Bank also which was outstanding against the same Corporate Debtor and as United Bank of India and Punjab National Bank had been part of same consortium in which the financial facilities had been extended to the Corporate Debtor. The amended petition under Section 7 of I & B Code was filed on 30th November, 2020.

2. The Appeal claims and it is argued that the Corporate Debtor had approached four Banks for financial assistance namely State bank of India, Central Bank of India, United Bank of India and Punjab National Bank, as the Corporate Debtor wanted to establish integrated plastic

packaging unit in Kamrup, Assam. The Appeal refers to the financial facilities extended which started from June, 2014 and the necessity to restructure the facilities extended with fresh repayment schedule commenced on and from 30th June, 2016. The Appeal refers to Strategic Debt Restructuring Scheme between the parties. According to the Appeal, the accounts of the Corporate Debtor stood overdue initially on 30th June, 2014 and subsequently on execution of the master Restructuring Agreement which was dated 27th April, 2015 with new repayment schedule on and from 30th June, 2016.

3. The Learned Counsel for the Appellant made submissions on above lines. The Counsel referred to the various orders passed by the Adjudicating Authority between 9th October, 2020 till 5th April, 2021 to submit that initially the Financial Creditor itself took time to file Amended Petition and the Corporate Debtor had appeared only on 22nd February, 2021 and was granted time to file reply. It is stated that on 22nd March, 2021, Corporate Debtor had engaged Advocate and time was sought. Subsequently, according to the Learned Counsel the Adjudicating Authority did not grant sufficient time to file reply although the Petition was voluminous. It is argued that full opportunity to defend against the application was not given. The Corporate Debtor had defenses to make which the Corporate Debtor mentioned in the Written Submissions and which according to Learned Counsel were not considered by the Adjudicating Authority while passing the impugned order.

Order of 09.02.2021 by NCLT, Guwahati:

"3. In spite of service of Notice, the Respondent has not appeared today. The Registry has also informed that the Notice sent by the Registry had also comeback. The Learned Counsel for the Petitioner is in favour of admission of the Application. It is observed that the matter was taken up on 09.10.2020, 13.11.2020, 08.12.2020 and 05.01.2021. Neither the Respondent nor his Counsel was present. Since this Application is filed under Section 7 of IBC no more adjournment is possible. However, in the interest of justice to the stakeholder, the Learned Counsel of the Petitioner is advised to intimate once again to the Respondent through post/ e-mail/ over phone about the next date

of hearing. If the Respondent does not appear on the next date of hearing the application shall be disposed of on merit."

Order of 22.02.2021 by NCLT, Guwahati:

"Matter is taken up through video conferencing. The Learned Counsel for the petitioner Mr. S Dutta is present. Mr. S. Agarwal, Director of the Respondent Company is also present in person. Heard both sides. Mr. Agarwal, Director of the Respondent Company has stated that he was never informed earlier about the filing of the application and he has not received copy of the same. On the other hand the Petitioner has stated that copy of the application has been sent to the Respondent. In the interest of justice, the Petitioner is directed to serve once again copy of the petition along with its annexures upon the Respondent within three (3) days. Since the Registered Office of the Respondent Company at Guwahati is reportedly closed as per the submission of the Ld. Counsel representing the FC the Respondent is directed to collect the copy of the application from the Learned Counsel of the Petitioner personally and file its reply, if any, within Ten (10) days thereafter. A copy of the reply to be submitted by the Respondent needs to be served upon the Petitioner. Since this is an application filed under Section 7 of IBC 2016, no further time will be allowed."

6. This application has been filed under Section 7 of the IBC and this matter has been taken up by this Bench six (6) times earlier. As per the sub-section 4 of Section 7 of the IBC, Application filed under Section 7 of IBC needs to be admitted or rejected within 14 (fourteen) days of the receipt of the Application.

7. Heard both the sides. We do not find any reason to adjourn the matter further. However, liberty is given to both the sides to file their written submissions within 10 (ten) days from today, exchanging the copy thereof to each other as prayed for by the Learned Counsels of the Respondent and the Petitioner.

8. Matter is reserved for orders."

13. Thereafter the Petition is admitted by the NCLT Guwahati on 05/05/2021.

14. At Annexure 4 of the Appeal there is I.A. (Civil) 1739/2019, order passed by this Hon'ble Gauhati High Court on 2nd September, 2019 shows that Counsel for United Bank of India had taken up the matter with Hon'ble High Court on the basis of I.A filed to vacate the interim order dated 7th January, 2019 passed in WP (Civil) 8855/2018. This Hon'ble High Court inter alia passed orders, as under:-

*"Be that as it may, since there is a remedy available to the petitioner under the statute against the notice issued under the SARFAESI Act, 2002 and considering the fact that the petitioner has failed to deposit any amount with the bank till today, **I am of the view that the interim order dated 07/01/2019 should not be continued any further in its present form. The order dated 07/01/2019, therefore stands vacated.**"*

15. There is no substance in claim of the Appellant in "M/s Megha Granules Pvt. Ltd. vs. Punjab National Bank" that order to vacate stay dated 7th January, 2019 was obtained by Respondent No. 2- United Bank of India and so benefit cannot be taken by Respondent No. 1- Punjab National Bank. The order was not vacated specific to United Bank of India.

16. Thus, there is no substance even in the Appeal filed with e-Filing No. 9910122/01921/2021.

17. (A) For reasons mentioned above, we do not find substance or any reason to admit either of these appeals.

(B) We decline to admit Company Appeal (AT) (Insolvency) No. 406 of 2021.

(C) We decline to admit unnumbered Company Appeal (AT) (Insolvency) filed with e-Filing No. 9910122/01921/2021.

18. It is also submitted that upon the disposal of the appeal by the Hon'ble NCLAT and the resultant expiry of the interim orders, the Applicant IRP has taken effective steps for taking over the assets, accounts, properties and operations of the Corporate Debtor.

19. It is stated that immediately before the admission of CIRP by this Hon'ble Tribunal vide order dated 05.05.2021, on 04.05.2021, the Government of Assam imposed intermittent lockdown in the State of Assam and all the private offices were allowed to be functional only till 2:00 PM on all days. Further, due to the intermittent lockdown imposed and restriction on inter-state/ district movement, the IRP was also not able to visit the plant sites of the Corporate Debtor located in a different districts. True and correct copies of Order(s) issued by Assam State Disaster Management Authority imposing intermittent lockdown in the State of Assam are annexed herewith and marked as **ANNEXURE A-6**.

20. It is also mentioned that because of the Covid 19 lockdown and the litigations initiated by the suspended Board and interim orders passed by the Hon'ble High Court, the CIRP has suffered a loss of 55 days (from 05.05.2021 till 29.06.2021). On account of the aforesaid reasons, the Applicant is filing the Present Application seeking an exclusion of 55 days from the time period provided under Section 12 of the Code. The Applicant IRP has obtained the approval of the CoC for seeking such exclusion in the time period of the CIRP. A true and correct copy of Minutes of the 2nd COC Meeting are annexed herewith and marked as **ANNEXURE A-7**.

21. The applicant in the instant petition has prayed for an order with the below mentioned reliefs:

- (i) That this Hon'ble Adjudicating Authority may be pleased to allow the exclusion of 55 days from the timeline of resolution process.
- (ii) Costs of the application be paid by Corporate Debtor;

- (iii) That this Hon'ble Tribunal may pass any such orders and/or directions and further reliefs as deemed fit and proper.

ORDERS

22. Heard the Counsel appearing for the R.P at length. The learned R.P has sought exclusion of 55 days' time from the timeline of CIRP as approved by the CoC due to the number of litigations including the Writ Petitions filed before Hon'ble High Court by the Suspended Directors, Appeal filed before Hon'ble NCLAT by the CD and lockdown for the second wave of the Covid 2019.

23. We observe that reasons mentioned in the prayer for exclusion of 55 days from the timeline of the CIRP period are satisfactory.

Hence exclusion of 55 (Fifty Five) days are hereby allowed from the timeline of the CIRP as prayed for.

24. The IRP/RP is hereby directed to ensure completion of CIRP within 180 days and find out a viable Resolution Plan for the Stressed Assets without further loss of time.

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical) &
ADJUDICATING AUTHORITY**

Sd/-

**(H.V. Subba Rao)
Member (Judicial) &
ADJUDICATING AUTHORITY**

//td/D/09.09.2021//