

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
INDORE BENCH at AHMEDABAD  
COURT 1**




TP 123 of 2019 [CP(IB) 137 of 2019]

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 30.01.2020**

Name of the Company: Allahabad Bank  
V/s  
Indison Agro Foods Ltd

Section: Section 7 of Insolvency & Bankruptcy Code


<b>S.NO.</b>	<b>NAME (CAPITAL LETTERS)</b>	<b>DESIGNATION</b>	<b>REPRESENTATION</b>	<b>SIGNATURE</b>
1.	NITESH VERMA	ADVOCATE	APPLICANT	
2.	NIPUN SINGHANI VISHAL J. DAVE led by Sr. Adv. DAVID PATHWA	ADV.	RESPONDENT	 

**ORDER**

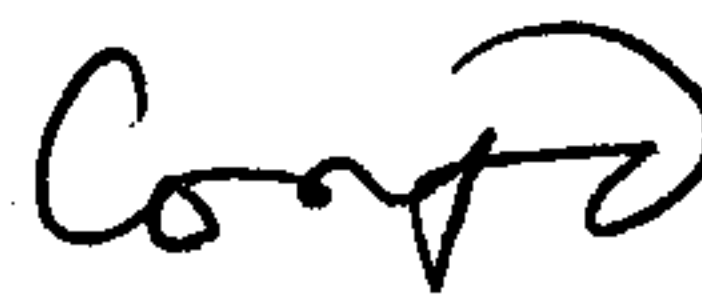
The Parties are represented through their respective Learned Senior Counsel.

However, due to some personal reasons, one of us [H.P. Chaturvedi, Member (J)] proposes to recuse from this Case, i.e., TP 123 of 2019 [CP(I.B) 137 of 2019].

The Registry is, therefore, directed to make a request to the Registrar, NCLT, New Delhi, to obtain necessary orders referring the matter to an appropriate Bench, wherein one of us [H. P. Chaturvedi, Member (J)] is not a Member.

  
**(HRIHAR PRAKASH CHATURVEDI)**  
**MEMBER (JUDICIAL)**

Dated this the 30th day of January, 2020

  
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In the matter of :-

Indison Agro Foods Ltd.,

V/s.

Allahabad Bank

IA No. 12 of 2020 in CP(IB) 137 of 2019 filed by the Corporate Debtor/Respondent and represented by the Learned Senior Counsel Mr. Navin Pahwa, (seeking permission from this Adjudicating Authority for **referring Insolvency Petition filed by Allahabad Bank** to the mediation and reconciliation panel under Section 442 of the Companies Act) was heard on 16.01.2020, wherein the Petitioner (Financial Creditor) opposed this IA No. 12 of 2020 and confirmed to the Adjudicating Authority that the Financial Creditor already declined the Corporate Debtor's OTS offer and Financial Creditor does not give consent for referring the mediation and reconciliation panel IA 12 of 2020 filed by the Corporate Debtor. The main petition was part heard on 16.01.2020 and posted for further hearing of main petition on 30.01.2020

When the matter is taken up today **for resumption of hearing of C.P (I.B) 137 of 2019**, as the learned senior counsel Mr. Navin Pahwa, appearing for the Corporate Debtor, immediately started arguing and conveyed to this **Adjudicating Authority that as per his views there is a difference of opinion between two Hon'ble Members of this Bench as per the daily order sheet (uploaded) of this Bench of last hearing dated 16.01.2020**. He read over the entire order sheet of 16.01.2020 of this Adjudicating Authority. The Counsel pressed for referring the matter to the Larger Bench as there is a difference of opinion between the Hon'ble Members.

The order sheet dated 16.01.2020 which was read over by the learned counsel for the corporate debtor, is reproduced herein below for reference.

*"The present Interlocutory Application IA 12 of 2020 is filed under Section 60(5) of the IBC by the Corporate Debtor, wherein the CD is seeking for reference to **mediation and conciliation panel in respect of application filed by the Financial Creditor (Allahabad Bank V/s. Indison Agro Foods Ltd.) under Section 7 of the IBC, which has been filed by***

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*the financial creditor, Andhra Bank V/s. Indison Agro Foods Ltd on 28.01.2019 seeking initiation of CIRP against the CD.*

*The FC has claimed total dues of Rs.98.77 Crores. CD has availed loan from SBI consortium banks, including the present FC and as per SBI letter of 23.07.2019, principal dues of the consortium is Rs.183.64 crores plus interest plus other expenses.*

*The Petition was first listed before this AA on 22.02.2019. Details of the hearing and order sheet are given below -*

*Chronology of the Order Sheets of CP(IB) No.137 of 2019:-*

<i>Date</i>	<i>Order</i>	<i>Next Date</i>
<i>22.02.2019</i>	<i>None present for the respondent. Registry was directed to serve the notice of hearing on the Respondent. Matter adjourned.</i>	<i>29.03.2019</i>
<i>29.03.2019</i>	<i>Respondent was directed to file their objections within three weeks with an advance copy to the petitioner. Matter adjourned at the request of Respondent.</i>	<i>07.06.2019</i>
<i>07.06.2019</i>	<i>Last chance was granted to the Respondent to file reply with a cost of Rs.5000/-. Matter adjourned at the request of the Respondent</i>	<i>19.07.2019</i>
<i>19.07.2019</i>	<i>Matter adjourned at the request of the Respondent. Petitioner filed an IA 420 of 2019 against which the Learned Lawyer for the Respondent sought time</i>	<i>23.08.2019</i>
<i>23.08.2019</i>	<i>IA 420 of 2019 - Learned Lawyer for the Respondent submitted that he has not received the copy of supporting affidavit, which was provided to the Respondent before the Court and thereafter time granted to file reply to the supporting affidavit.  In view of order passed in IA 420 of 2019, matter was adjourned.</i>	<i>27.09.2019</i>
<i>27.09.2019</i>	<i>Since matter pertaining to MP Jurisdiction, the matter was adjourned.</i>	<i>25.10.2019</i>
<i>25.10.2019</i>	<i>Learned Lawyer for the Financial Creditor appears and matter fixed for arguments in pending IA as well as final hearing</i>	<i>29.11.2019</i>
<i>29.11.2019</i>	<i>Learned Lawyer for the Applicant sought time due to bereavement in family and matter was adjourned</i>	<i>20.12.2019</i>

	<i>adjourned</i>	
18.11.2019	<i>IA 701 of 2019 filed By Shri Amir Suresh Bhatnagar for Suspended Management of the CD. Notice issued upon the RP and CoCs through lead bank. Matter adjourned.</i>	11.12.2019
11.12.2019	<i>IA 701 of 2019 – Matter adjourned</i>	16.12.2019
20.12.2019	<i>IA 420 of 2019 – matter adjourned on the request of Learned Lawyers of both the parties</i>  <i>(CP(IB) No.137 of 2019) –Learned Lawyer for the Respondent sought time. However, Learned Lawyer for the Petitioner submitted that the CD has started <b>disposing of movables and immovable properties</b> and requested for some restraining orders from this Adjudicating Authority, which was allowed.</i>	16.01.2020

1. ***IA 420 of 2019 is filed by the Petitioner Bank/Financial Creditor on 07.06.2019 placing on record, the following important facts and further developments, praying for closing the right of the Corporate Debtor to file objections/reply to their petition.***

*It is submitted by the Financial Creditor that Corporate Debtor filed their **affidavit in reply on 10.06.2015** and the Corporate Debtor further filed another affidavit in reply on **27.09.2019**. This Adjudicating Authority observed the following in their order on 20.12.2019 and posted for final disposal (admission/rejection) of the application filed under Section 7 of the IBC to 16.01.2020.*

2. ***Today, i.e. 16.01.2020, when the main petition CP(IB) No.137 of 2019 was taken up for hearing, the Senior Learned Counsel, Shri Nawin Pahwa appearing for the Corporate Debtor went on insisting to hear his IA 12 of 2020 in CP(IB) No.137 of 2019 filed under Section 65(5) first before hearing to the original the petition filed by the Financial Creditor under Section 7. The Learned Senior Counsel went on arguing seeking permission from this Adjudicating Authority for referring***

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*this Insolvency Application CP(IB) No.137 of 2019 to the **MEDIATION AND CONCILIATION PANEL** under Section 442 of Companies Act, 2013.*

- 3. On the other hand, the Learned Counsel for the Financial Creditor filed application under Section 7 on 28.01.2019 opposed to hearing the IA of Corporate Debtor first referring the points mentioned by them in their IA 420 of 2019 filed on 07.06.2019. The Learned Counsel also conveyed that the Financial Creditor has rejected their OTS offer, the Corporate Debtor is attempting to sell the goods/machines etc. Financial Creditor does not give consent for any Mediation/Reconciliation.*
- 4. The Senior Learned Counsel appearing for the Corporate Debtor could not clarify how his IA seeking permission from Adjudicating Authority for referring this Insolvency Application filed under Section 7 filed to Mediation and Reconciliation Panel when 353 days back application was filed, hearing from 22.02.2019 to 20.12.2019 have already taken place, replies from the Corporate Debtor submitted. At this stage, this Adjudicating Authority is only to **decide whether the petition filed by the Financial Creditor under Section 7 of IBC is to be accepted or rejected, considering the facts that whether the default has occurred OR NOT and the application under Section 7 filed under Sub Section 2 of Section 7 of the IBC is complete or not in all respects.***
- 5. When the application is yet to be admitted, the question of referring the petition to the Mediation and Conciliation panel does not arise and moreover the Learned Lawyer of the Financial Creditor strongly opposed to this prayer of the Corporate Debtor as they have **already rejected the OTS.** The Financial Creditor has declared the Corporate Debtor as a **wilful defaulter** and the Corporate Debtor has been detected as 'fraud' by the **Lead Bank, SBI** already mentioned in the page no.3 of their IA 420 of 2019 filed on 07.06.2019 before the Adjudicating Authority.*

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6. *After hearing this the IA 12 of 2020 filed by the Corporate Debtor, the main petition was heard. The Learned Lawyer of Financial Creditor almost concluded his arguments and the main matter posted for hearing on 30.01.2020.”*

On hearing the arguments it is told to the Learned Senior Counsel, Mr. Navin Pahwa that **there is no difference of opinion between the two Hon'ble Members in the daily order sheet and that order sheet has recorded only the facts and proceedings of the case for the last one year.**

It is also further told that when there is a difference of opinion, it is **recorded and the matter automatically referred to the Hon'ble President, NCLT, New Delhi/Larger Bench/Third Member for disposal of the Case.**

On the other hand, the Counsel for the Financial Creditor Mr. Nilesh wanted **the hearing of the main Petition** filed by them and the same should be completed as the matter is going on for more than one year at admission or rejection stage.

At this stage Hon'ble Member (J) opined that the matter needs to be referred to the President NCLT as pressed by the Learned Senior Counsel of the Corporate Debtor.

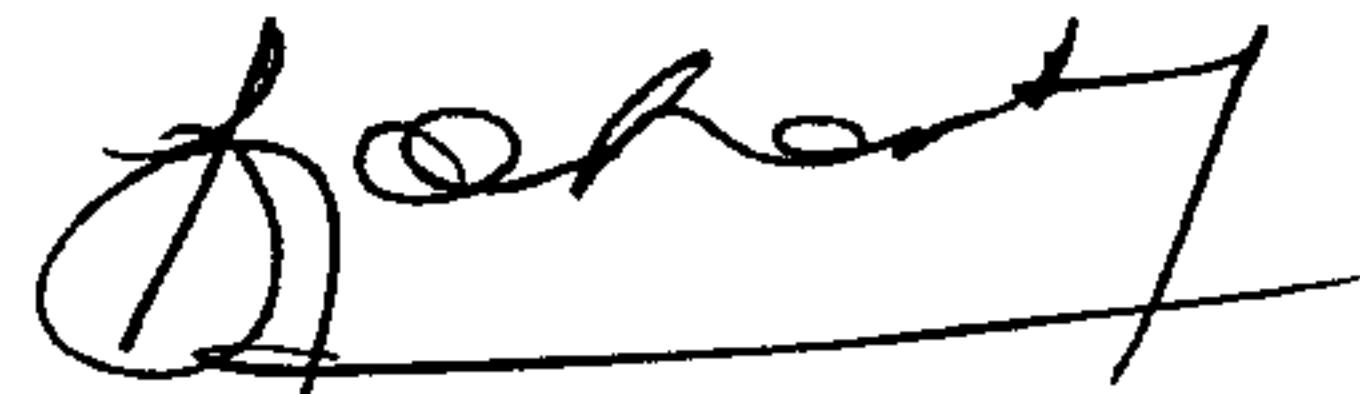
The Learned Senior Counsel for the Corporate Debtor referred to the order sheet of this Bench dated 16.01.2020 which is **reproduced above, is only showing the proceedings of the case.** There is no difference of opinion between two Hon'ble Members of this Bench.

1. **Hence, in my view there is no difference of opinion.** Pressing for referring the matter to the NCLT, Delhi/third bench by the **counsel for the Corporate Debtor** needs to be rejected/set side.
2. Petition under Section 7 of IBC has been filed one year back and it is still at **admission or rejection stage, which is against the objective of Insolvency & Bankruptcy Code, 2016.** The process should not be derailed on one or the other plea.
3. The Corporate Debtor had **already submitted its replies on 10.06.2018 and 27.09.2019** and the IA No. 12 of 2020 already heard in details on 16.01.2020.

One year has already passed since the application filed under Section 7 of 2016, and this Bench has already heard the matter at length. Hence, the matter needs to be disposed of by this Bench on merit without further loss of time.

Now, the Hon'ble Member (J) recuses from this case on some personal reasons in IA 19 of 2020 in TP 123 of 2019 [IA 12 of 2020 in C.P (I.B) 137 of 2019] but the undersigned [Hon'ble Member (T) ] is not recusing from the above IA and main petition.

Hence, the Registry may take up the matter with NCLT, New Delhi, for arrangement of another Judicial Member, so that the matter can be heard by the undersigned and other Member (J) for disposal of this IA 12 of 2020 and main CP (IB) 137 of 2018 filed under Section 7 of Insolvency & Bankruptcy Code, 2016 on merit without further loss of time.



**(PRASANTA KUMAR MOHANTY)**  
**MEMBER(T)**

Dated this the 30th day of January, 2020