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NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ITEM NO. 06
C.P. (IB)No. 22/GB/2019

Coram:
Hon'ble Shri Deep Chandra Joshi, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 30.09.2022

In the matter of:

Punjab National Bank
V/s
Shree Sai Rolling Mills (India) Ltd.

Section: Under Section 7 of IBC, 2016

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. K.K. NANDI	Advocate	Petitioner/FC	Present in Video Conference
2.	MR. MUKESH SHARMA	Advoacte	Respondent/CD	
3.	MR. AMIT PAREEK	IRP	In Person	

ORDER
Date of Order: 30.09.2022

C.P. (IB)No. 22/GB/2019 was filed by Financial Creditor- Punjab National Bank against the Respondent/Corporate Debtor i.e., M/s. Shree Sai Rolling Mills (India) Ltd. under Section 7 of the Code for initiating CIRP in respect of the CD. NCLT Guwahati admitted the application for initiating CIRP in respect of the CD Vide order dated **its order 23.08.2019**. For clarity, relevant paras of the order dated 23.08.2019 are reproduced below:

i. *'The petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating Corporate Insolvency Resolution Process in respect of M/s. Shree Sai Rolling Mills (India) Ltd.*

ii. *We hereby declare a Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.*

iii. *The Moratorium is declared for the purposes referred to in Sections 14 of the Insolvency & Bankruptcy Code, 2016 The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately*

iv. *Moratorium under Section 14 of the Insolvency & Bankruptcy Code. 2016 prohibits the following*

   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 possession of the corporate debtor.*

v. *The 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*

vi. *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator*

vii. *The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process*

viii. *Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order. as the case may be.*

ix. *Necessary public announcement as per Section 15 of the IBC, 2016 may be made.*

x. *Mr. Anil Agarwal, AAA Insolvency Professionals LLP, 15F, Anil Roy Road, 2nd Floor, Kolkata - 700029, Registration No. IBBI/IPA-001/IP P00270/2017-18/10514, email- anilagarwal@aaainsolvency.com is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.*

xi. *The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant as per rules.*

xii. *Registry is hereby directed under Section 7(7) (a) of the IBC, 2016 to communicate the order to the Operational Creditor, the Corporate*

Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.

xiii. *The Interim Resolution professional is directed to strictly comply with the model timeline for CIRP as provided under Regulation 40A of IBBI (IRP for Corporate Person) Regulation, 2016."*

2. Aggrieved by the order dated 23.08.2019 of the NCLT Guwahati, an appeal was filed before the Hon'ble NCLAT by the suspended board of directors of the CD. Hon'ble NCLAT vide its order dated 27.09.2019 passed interim orders **to not constitute the COC until the next date.** Hence, CoC was not constituted and the matter was stayed. *Relevant* Part of the Hon'ble NCLAT's Interim Order dated 27.09.2019, on appeal filed by the CD against the admission order of the NCLT dated 23.08.2019, is reproduced below:

"Heard....

Counsel for the Appellant states that in all these Appeals, different companies are involved but the Directors of suspended Boards are common. In all these matters, similar orders have been passed on 23rd August, 2019 admitting the Section 7 Applications under Insolvency and Bankruptcy Code, 2016. The Counsel states that the Appellants were ready to settle the claims of the Banks with regard to these companies and had even given OTS proposals which were under consideration of the Bank but at the last moment, the Bank refused to accept the same during pendency of the Applications before the Adjudicating Authority. The Counsel states that the Appellants are still ready to settle the matters with the bank.

Post the case for admission (after Notice) on 11th November, 2019. Meanwhile, IRP will not constitute COC, till next date.

The IRP/ 'Resolution Professional' will ensure that the company remains going concern and the manufacturing and production of the company do not suffer; payment of wages to the employees / workmen are made on time and if any material is supplied during "Corporate Resolution Process", the payment must be paid to the supplier / creditor. The 'Insolvency Resolution Professional' will also take aid of (suspended) Board of Directors, paid Directors and employees. The person who is authorized to sign the bank cheques may issue cheques only after authorization of the Interim Resolution Professional. The Banks having accounts of the 'Corporate Debtor' will also cooperate with the 'Insolvency Resolution Professional' to ensure compliance of this order."

3. Further, Hon'ble NCLAT vide order dated 18.06.2020, allowed these appeals by setting aside the order dated 23.08.2019 passed by NCLT Guwahati and remanded the matter back to the Adjudicating

Authority to pass order afresh. Part of the Final Order dated 18.06.2020 of Hon'ble NCLAT is reproduced below:

> *"18. In the Impugned Order, the adjudicating authority has mentioned that the Corporate Debtor gained so much time on the pretext of settlement and also by filing Writ Petition before the Hon'ble High Court of Meghalaya at Shillong and it is high time to put an end to this matter.*
>
> *19. It is undisputed that by the order of the Hon'ble High Court dated 19th August 2019, parties were directed to maintain status quo till 26th August 2019. However, the Adjudicating Authority, without taking the status quo order of the Hon'ble High Court passed the Order of Admission on 23rd August 2019.*
>
> *.....*
>
> *27. On perusal of the record that it is also evident that there is no proper compliance under Section 7(5) (a) of the Insolvency and Bankruptcy Code, but this defect in the Application is a curable defect which can be rectified. It is also on record that the admission order was passed even after the status quo order of the Hon'ble High Court.*
>
> *28. In the circumstances, as stated above this Tribunal allows the instant Appeal setting aside the impugned order and matter is remanded back to the Adjudicating Authority to pass an order afresh, after providing an opportunity to the opposite party in the light of the directions in the body of the judgment. However, it is also made clear that the Adjudicating Authority should provide one more opportunity for the parties to consider the renewal of OTS and in the event of renewal of OTS, the said opportunity may be utilised by the parties in right earnest, of course in true letter and spirit. The parties are directed to appear before the Adjudicating Authority (NCLT, Guwahati Bench) on dated 29th June 2020. No order as to costs."*

4. **Aggrieved by the Order dated 18.06.2020 of Hon'ble NCLAT, both the Corporate Debtor as well as the Financial Creditor filed Appeals before the Hon'ble Supreme Court.**

5. After the order of Hon'ble NCLAT dated 18/06/2020, the Suspended Management filed an IA no 39 of 2020 to set aside impugned Order dated 23.08.2019 passed by this Bench; and pass an order afresh, after providing an opportunity to the party in the light of the directions given in the body of the judgment dated 18.06.2020 passed by the Hon'ble NCLAT, at New Delhi; This IA was disposed of by this Bench on 05/05/2021 and the relevant portion of the Order is reproduced below

"5. Heard both the sides at length. The learned Counsel appearing for the FC submits that the Hon'ble Tribunal may not entertain this IA filed by the CD on account of the Appeal preferred by the FC before the Hon'ble Supreme Court against the order of the Hon'ble NCLAT dated 18/06/2020. The Learned Counsel also submits that this matter may be taken up only after the verdict of the Hon'ble Supreme Court on the appeal preferred.

6. On the other hand, the Learned Counsel for the CD also submits that the matter need not be taken up before the verdict of the Hon'ble Supreme Court on the appeal preferred by the FC. The Learned Counsel for the CD also submits that there is no order from the Hon'ble Gauhati High Court in the Writ Petition (C) No.6029 of 2019 filed on behalf of three Companies and the said Writ may be considered closed/disposed of.

7. Considering the submissions of both the parties, the documents, affidavits, orders of the Hon'ble NCLAT and the Hon'ble Supreme Court made available, We do not find any reason to entertain this IA. Hence, this IA is not entertained and stands disposed of with the following observations.

8. The Hon'ble NCLAT has set aside the impugned order of this Bench and remanded back the matter to this Bench to pass an order afresh after providing an opportunity to the opposite party. Hence it is taken on record that the CIRP has been set aside and the Management of the Company has been handed over back to the erstwhile Management by the IRP on 20/06/2020.

9. It is also further taken on record that the IRP has been discharged from his assignment w. e. f. 20/06/2020 and the issue of his fees and payment of CIRP cost have been amicably settled between the IRP and FC.

10. Though the CIRP has been set aside but the Application filed by the FC before this Bench under Section 7 of the IBC is alive and not dismissed.

11. ***However, we are making it further clear that both the FC and the CD are at liberty to come before this Bench with regard to the Petition filed before this Bench by the FC under Section 7 of the IBC, after the outcome of the appeal preferred by the FC before the Hon'ble Supreme Court against the impugned order of the Hon'ble NCLAT dated 18/06/2020."***

6. **Hon'ble Supreme Court vide its order dated 14.07.2022, set aside the order of the Hon'ble NCLAT dated 18.06.2020 and restored the Company Appeal for hearing before the NCLAT.** Part of the order of Hon'ble Supreme Court is reproduced below:

"The order dated 18.06.2020 passed by the National Company Law Appellate Tribunal [in short, "NCLAT"] is the subject matter of challenge in the present appeals filed by the Director of the Company (Corporate Debtor) and the secured creditor. The NCLAT has remanded the matter to NCLT. Both, Corporate Debtor and the secured creditor are in appeals, aggrieved against the said order.

The appellant (as Corporate Debtor) has submitted one-time settlement again during the pendency of appeal before this Court, which has not been accepted by the secured creditor. Since, both Corporate Debtor and the secured creditor are aggrieved against the order passed by NCLAT, therefore, we deem it appropriate to set aside the order passed by the NCLAT on 18.06.2020 and request the NCLAT to pass an order afresh, after hearing the parties, in accordance with law.

Thus, the Company Appeal (AT)(Insolvency) No. 1005 of 2019 is restored to its original number. Let the appeal be listed for hearing before the NCLAT on 21.07.2022.

In view of above, the appeals are disposed of.

Pending interlocutory application(s), if any, is/are disposed of."

7. Hon'ble NCLAT heard and dismissed the "Company Appeal (AT) (Insolvency) No. 1004 of 2019 vide its order dated 02.09.2022. It has been held that any substance in the submission raised by the Learned Counsel for the Appellant is found and no error has been committed by this Adjudicating Authority in admitting Section 7 Applications against the Corporate Debtors. There are no merits in any of these Appeals. All the three Appeals have been dismissed. Relevant part of the order dated 02.09.2022 of Hon'ble NCLAT is reproduced below:

"1. These three Appeals raising common question of fact and law have been heard together and are being decided by this common Judgement. The Appellant is the Suspended Director of three Corporate Debtors. Three Corporate Debtors are (i) M/s. Shree Sai Prakash Alloys Private Limited, (Company Appeal (AT) Ins. No. 1003 of 2019; (ii) M/s. Shree Sai Rolling Mills (India) Limited, (Company Appeal (AT) Ins. No. 1004 of 2019) and (iii) M/s. Shree Sai Smelters (India) Limited, (Company Appeal (AT) Ins. No. 1005 of 2019.

2. Brief facts necessary to be noted for deciding these Appeals are:

- *Three Corporate Debtors as noticed above had been sanctioned credit facilities by the Punjab National Bank (hereinafter referred to as "Bank"). An amount of Rs. 58,29,00,000/-sanctioned to M/s. Shree Sai Prakash Alloys Pvt. Ltd. from 26th April, 2004 to 25th July, 2014. Credit Facility of Rs. 35,80,00,000/- was sanctioned to M/s. Shree Sai Rolling Mills (India) Ltd. from 20th May, 2005 to 29th August, 2014 and amount of Rs. 15,25,00,000/- was sanctioned to M/s. Shree Sai Smelters (India) Ltd. from 20th May, 2005 to 20th August, 2014.*

- *The Account of the Corporate Debtors were declared Non-Performing Assets (NPA) by the Punjab National Bank. The Account of M/s. Shree Sai Prakash Alloys Private Limited, M/s. Shree Sai Rolling Mills (India) Limited and M/s. Shree Sai Smelters (India) Limited were declared NPA on 12th May, 2015, 31st March, 2016 and 27th July, 2015 respectively.*
- *The amount became due and payable by the three Corporate Debtors, Bank filed Applications under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "The Code"). CP(IB) No. 24/GB/2019 against M/s. Shree Sai Prakash Alloys Private Limited, CP(IB) No. 22/GB/2019 against M/s. Shree Sai Rolling Mills (India) Ltd. and CP(IB) No. 23/GB/2019 against M/s. Shree Sai Smelters (India) Ltd.*
- *Notices were issued by the Adjudicating Authority in all the three Section 7 Applications. After filing Section 7 Applications, Corporate Debtors approached the Financial Creditor for settlement under "OTS". All the three Corporate Debtors submitted and prayed for One Time Settlement with the Bank in March, 2018. There was correspondence between all the three Companies with the Bank. The Bank sanctioned the OTS of Rs. 60 Crore by Letter dated 27.12.2018. Bank subsequently wrote on 29th June, 2019 to all the three Companies that deposit of only 6.79 Crore has been made whereas amount due till July, 2019 is 16.50 Crores as per OTS. Corporate Debtors were asked to deposit the amount within the stipulated time failing which OTS was to be treated as failed.*
- *By letter dated 31st July, 2019, Bank wrote to Corporate Debtors that OTS has failed.*
- *The Adjudicating Authority proceeded to consider Section 7 Application. The One Time Settlement was noticed. It was found that the Corporate Debtor failed to comply with the terms and conditions of OTS Proposal. Adjudicating Authority heard the parties and by Order passed on 23rd August, 2019 admitted all the three Company Petitions and initiated Corporate Insolvency Resolution Process and appointed Interim Resolution Professional as proposed by the Financial Creditor-the Bank.*
- *Aggrieved by the Order dated 23rd August, 2019 passed by the Adjudicating Authority, three Company Appeals bearing CA (AT) Ins. No. 1003 of 2019, CA(AT) Ins. No. 1004 of 2019 and CA(AT) Ins. No. 2005 of 2019 have been filed before this Appellate Tribunal.*

3. This Appellate Tribunal earlier heard all the three Appeals and by separate Order dated 18th June, 2020 passed in these Appeals allowed the Appeals by setting aside the Order dated 23rd August, 2019 passed by the Adjudicating Authority and remanded the matter back to the Adjudicating Authority to pass Order afresh.

4. Aggrieved by Judgement and Order of this Appellate Tribunal dated 18th June, 2020, both the Corporate Debtors as well as the Financial Creditor filed Appeals before the Hon'ble Supreme Court. Hon'ble

Supreme Court heard the Civil Appeal No. 2997 of 2020 along with three other Appeals and by Judgment and Order dated 14th July, 2022 set aside the Order of this Appellate Tribunal, NCLAT dated 18th June, 2020 and restored the Company Appeals for hearing before the NCLAT. Consequently, by the Judgement of Hon'ble Supreme Court dated 14th July, 2022, these Appeals have been listed on 21st July, 2022 and has been heard by this Appellate Tribunal. It is also relevant to notice that before the Hon'ble Supreme Court, the Corporate Debtor again sought liberty of the Hon'ble Supreme Court to submit OTS proposal before the Bank. Hon'ble Supreme Court also noted in its Order that Bank is not agreeable to the proposal made by the Corporate Debtor which statement is recorded in the Order dated 12th July, 2021.

5. It appears that proposals were also submitted by the Corporate Debtors for Settlement with the Bank during the pendency of the Appeal which however was not acceded to by the Bank resulting Hon'ble Supreme Court heard the matter on merits and passed the Order dated 14th July, 2022 as noticed above.

6. Learned Counsel for the Appellant in support of these Appeals made following submissions:

(i) The Bank arbitrarily did not accept the OTS proposal submitted by the Appellants whereas the Appellants were ready to deposit balance amount in reasonable time, the Bank once having accepted the OTS proposal ought to have revived the OTS proposal in view of the request made by the Appellants.

(ii) The Corporate Debtors had filed proceeding in the High Court of Meghalaya at Shillong against the Punjab National Bank where the Hon'ble High Court vide its Order dated 19th August, 2019 directed the parties to maintain status-quo till 26th August, 2019 which Interim Order was continued by Order dated 26th August, 2019 in which subsequent Order dated 16.09.2019 was passed disposing of the Writ Petition while continuing the Interim Order for two weeks to enable the Writ Petitioner to avail the Appellate Remedy. It is submitted that in view of the Status Quo Order passed by the High Court, the Adjudicating Authority could not have admitted the Section 7 Applications. The Adjudicating Authority ought to have maintained judicial discipline in not proceeding further in Section 7 Applications.

7. We have considered the submissions of learned counsel for the parties have perused the record.

8. We may first notice the submission of the Appellants based on OTS. Prayer for OTS was made by the Corporate Debtors in March, 2018. After some correspondence the Bank vide Letter dated 27.12.2018 approved the OTS for amount of Rs. 60 Crores with regard to all the three companies. Bank vide letter dated 29th June, 2019 communicated that amount as per OTS Approval is not being paid, in event due amount is not paid, OTS to be treated as failed. Subsequently, by letter dated 31st July, 2019 Bank declared the OTS failed and the Order of the Admission by the Adjudicating Authority was passed on 23rd August, 2019 thereafter.

9. There is no dispute between the parties that offer of 60 Crores made by the Appellants in regard to the dues of all the three Companies was accepted by the Bank and deposit of Rs. 3 Crore was also noticed by the Bank. Under the OTS, Appellants were to deposit Rs. 1.5 Crore each month. The OTS Proposal has been cancelled on 31st July, 2019. The Adjudicating Authority in paragraph 3 of the Order has noticed that Corporate Debtor has failed to comply with the terms and conditions of OTS Proposal. The Adjudicating Authority held that the Corporate Debtor defaulted in making payment towards the liability of the Bank, Company Petitions deserve to be admitted. Learned Counsel for the Appellant submits that efforts were also made by the Appellants to enter into OTS both before the Hon'ble Supreme Court and this Appellate Court but Bank has not considered to revive the OTS proposal submitted by the Appellants. Even after the Order of the Hon'ble Supreme Court, the Bank having not accepted any further OTS proposal of the Appellants, Appellants cannot claim settlement of dues with the Bank. Even the terms and conditions of the OTS which was accepted by the Bank was not complied by the Appellant resulting cancellation of the OTS. It is well settled that although settlement between the parties to be encouraged but the Court/this Tribunal cannot direct the Bank to accept the OTS as claimed for by the Corporate Debtors.

10. We thus are of the view that on the basis of submission of Learned Counsel for the Appellant that they have submitted OTS Proposal to revive the OTS, no fault can be found with the Order of the Adjudicating Authority admitting Section 7 Applications.

11. Now we come to the next submission of Learned Counsel for the Appellants. Learned Counsel for the Appellants relying on the order of the High Court submits that once the High Court of Meghalaya at Shillong having granted order of maintaining status quo, the Adjudicating Authority ought not to have proceeded with Section 7 Applications. The Applications under Section 7 was filed by the Bank on 19th May, 2018. Writ Petition No. 6029 of 2019 filed by the Corporate Debtors. Copy of the Writ Petition filed before the Gauhati High Court has been brought on record along with convenience compilation filed by the Appellant. In the Writ Petition (C) No. 6029 of 2019, following prayers have been made:

> *"In the premises aforesaid it is most humble prayed that your Lordships may be pleased to admit this petition, call for the records, issue notice upon the Respondents to show cause as to why the impugned letter dated 31.07.2019 (Annexure No. 14) shall not be set aside and quashed and on cause or causes being shown be further be pleased to stay the proceeding of Dairy No. 03(064) 2018 (Annexure No. 1) pending before the Ld. National Company Law Tribunal, Guwahati and/or pass such further Order/Orders as your Lordships may deem fit and proper.*
>
> *And for this act of kindness, your petitioners as in duty bound, shall every pray."*

12. ***The Gauhati High Court passed an Interim Order in the Writ Petition on 19th August, 2019 which is to the following effect:***

"Heard Mr. K.N. Choudhury, learned senior counsel appearing for the writ petitioner.

After hearing the arguments advanced by Mr. Choudhury, I am of the view that before passing any further order in the matter, the respondent bank must be heard.

In view of the above, Registry to list this case again on 26/08/2019 for motion as a fixed item.

The petitioner to serve a copy of the writ petition by hand upon the Branch Manager, PNB, Guwahati Branch, intimating him about the pendency of this proceeding and the next date fixed in the matter, so as to enable the bank to appear before this Court on the next date.

Till 26/08/2019, parties to maintain status quo in the matter."

13. *Before the National Company Law Tribunal, the Corporate Debtor filed an I.A. No. 57 of 2019 praying that in view of the Interim Order dated 19th August, 2019 passed by the Gauhati High Court, NCLT may not pronounce the order in Section 7 Applications. The Application 57 of 2019 was rejected by the Adjudicating Authority vide its Order dated 23rd August, 2019 in the Order rejecting I.A. No. 57 of 2019, following observations are made in Paragraph 3,4 and 5:*

"3. Before dealing with the above application, it is important to mention here that the arguments in the above company petition were heard by this Tribunal on 14th August, 2019 and the matter was reserved for orders. The learned Advocate appearing for the CD submitted before this Tribunal on 14-08-2019 that the CD is once again approaching the highest authority of the FC/bank for a settlement on 16-08-2019 and requested to adjourn the matter. In view of the above submission this Tribunal assured both the parties that this Tribunal will not pass orders before 20-08-2019 and both the parties are at liberty to inform this Tribunal on or before 20-08-2019 about the outcome of the compromise. It was also clarified that if nothing is head from either of the parties before 20-08-2019, orders will be pronounced in the above company petition at any time after 20-08-2019, as the CD did not raise any serious legal pleas in opposing the main company petition except saying that the bank has unilaterally cancelled the OTS proposal.

4. Accordingly, orders were made ready and, therefore, the matter is listed today for pronouncement of the orders. The CD knowing very well about the above position appears to have filed the above Writ Petition on 19-08-2019. Company Appeal (AT) (Insolvency) No. 1003, 1004, 1005 of 2019

5. We have carefully perused the order passed by the Hon'ble Gauhati High Court. The Hon'ble Gauhati High Court in its order merely directed the petitioner to serve copy of the Writ Petition by hand to the Branch Manager of the FC and intimate him about the pendency of the writ petition and the next date of hearing. While ordering the said notice to the respondent bank in the above Writ Petition, the Hon'ble High Court directed both the parties in the Writ Petition to maintain status quo. ***The said order does not contain***

any direction to this Tribunal in this regard*. The CD is conscious of the fact that this Tribunal may pass final orders in all the matters of the group companies relating to the CD at any time after 20-08-2019."*

14. Reasons were given by the Adjudicating Authority in refusing to stay the pronouncement of the Order. When the Adjudicating Authority has heard the Section 7 Application on 14th August, 2019 and reserved for Orders, Interim Order passed by Gauhati High Court thereafter on 19th August, 2019 could not have stopped the NCLT to pronounce the Order. There is one more aspect of the matter which need to be noticed i.e. the Order of the High Court dated 19th August, 2019 as noted above directed "the parties to maintain status quo in the matter" the direction was only to the parties, the High Court has not passed any order staying proceeding before the NCLT. Although specific prayer to that effect was made by the Corporate Debtors before the High Court as noted above. When specific prayer made by the Corporate Debtors to stay proceeding before NCLT was not acceded to nor any Interim Order was passed by the High Court stopping pronouncement of the Order, submission of the Learned Counsel for the Appellants that NCLT did not follow judicial discipline cannot be accepted.

15. Learned Counsel for the Appellant has relied on Judgement of the Hon'ble Supreme Court to the effect that Judgement passed by a Coordinate Bench on higher forum has to be respected. There cannot be any quarrel to the preposition laid down by the Hon'ble Supreme Court in [(2000) 1 SCC 644] in the matter of "Sub-Inspector Rooplal and Anr. Vs. Lt. Governor Through Chief Secretary Delhi and Ors", [(1985) 1 SCC 260] in the matter of "Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. & Ors" and [(1984) 2 SCC 488] in the matter of "Vishnu Ram Borah & Anr. Vs. Parag Saikia & Ors". Principle of Judicial Discipline is to be adhered to by all to ensure hierarchical discipline and for proper dispensation of justice but as noticed above in the present case, there is no breach of any judicial discipline by the NCLT as claimed by the Appellants. There was no Interim Order of the High Court restraining the NCLT to proceed with the concerned applications or not to pronounce any Judgment when the matter was heard and reserved for order even prior to passing of the Interim Order of the High Court. Further the Interim Order of the High Court directed to maintain status quo by both the parties i.e. Bank and the Corporate Debtors that cannot be read as any restraint to the NCLT. We thus do not find any substance in this submission also raised by the Learned Counsel for the Appellant.

16. For all the fore-going discussion, we do not find any substance in the submission raised by the Learned Counsel for the Appellant. No error has been committed by the Adjudicating Authority in admitting Section 7 Applications against the Corporate Debtors. There are no merits in any of these Appeals. All the three Appeals are dismissed."

8. **Hence, the matter has been reverted back to this tribunal by Hon'ble NCLAT. The matter was heard by this Bench on 29.09.2022** and relevant part of the order is reproduced

> *"Heard both sides. The learned Counsel for the Petitioner submits that the CIRP should be reinstated in respect of the CD as per the Hon'ble Supreme Court Order & Hon'ble NCLAT's order dated 02.09.2022 in Company Appeal(AT) (Insolvency) No. 1003, 1004 & 1005 of 2019. He further submits that he wants to replace the IRP and has suggested the name of Insolvency Professional Mr. Amit Pareek as the new IRP. The FC is directed to file Affidavit along with the Consent form of the proposed IRP by tomorrow 12 noon."*

9. **The FC has filed the Affidavit today and Consent form of the New IRP as directed yesterday and submits that:**

9.1 As per order dated 05.05.2021 of this Hon'ble Tribunal, Mr. Anil Agarwal, Ex-IRP, was released from his assignment with effect from 20.06.2020. **The name of Mr. Amit Pareek, an Insolvency Professional registered with ICSI Institute of Insolvency Professionals having registration no. IBBI/IPA-002/IP-N00413/2017-2018/11205 has been suggested as Interim Resolution Professional (IRP) by the Financial Creditor in place of Mr. Anil Agarwal.**

9.2 The IRP, Amit Pareek has vide Form No. 2 dated 29.09.2022 submitted written communication, whereby he has accepted his appointment as IRP.

10. Heard the counsels of both the sides. **Hon'ble NCLAT, vide its order dated 02.09.2022 has upheld the order passed by this Adjudicating Authority on 23/08/2019 in admitting the Application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016. Hence the Corporate Insolvency Resolution Process (CIRP) in respect of M/s Shree Sai Rolling Mills(India) Ltd. is reinstated today to be completed within a period of 180 days from 30/09/2022 and the time taken in legal proceedings from 23/08/2019 to 29/09/2022 is excluded.**

11. **Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016 is hereby declared**. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

11.1 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;

11.2 Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

11.3 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);

11.4 The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

11.5 The 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.

11.6 The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

11.7 The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec. 31 or passes an order for liquidation of corporate debtor under Sec. 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

11.8 Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

12. **This Adjudicating Authority hereby appoints, as proposed, Mr. Amit Pareek,** 4th Floor, K.C Choudhary Road, Ram Prasad Complex, Chatribari, Guwahati-781001, Kamrup (M), Assam, having IP Registration No. IBBI/IPA-002/IP-N00413/2017-18/11205 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 Form with the Registry within 3 days from the date this Order is uploaded on the E-portal.

13. **The Interim Resolution professional is directed to strictly comply with the model timeline for CIRP as provided** under Regulation 40A of IBBI (IRP for Corporate Person) Regulation, 2016 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 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-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.

14. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall complete the CIRP in time.

15. Registry is hereby directed under Section 7(7) (a) of IBC, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail immediately.

16. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

17. **Hence, the Corporate Insolvency Resolution Process (CIRP) in respect of M/s Shree Sai Rolling Mills(India) Ltd. is reinstated today i.e., on 30.09.2022 with the above directions.**

SD/-	**SD/-**
(Prasanta Kumar Mohanty)	**(Deep Chandra Joshi)**
Member (Technical)	**Member (Judicial)**
& Adjudicating Authority	**& Adjudicating Authority**

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OF THE ORIGINAL

Jagannath Mazumdar 06.X.22
DY REGISTRAR/ASST. REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

DY NO. 390/NCLT/GB
DATE 6/9/22