

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA No.32/2021
In
IA No. 37 of 2020
In
CP (IB) No. 09/GB/2020**

Coram: Hon'ble Mr. H. V SUBBA RAO, MEMBER (J)

Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW
TRIBUNAL, GUWAHATI BENCH ON 07.10.2021**

Name of the Company: **Sandeep Khaitan, RP** Applicant
Versus
Suspended Board of Directors, NPIL. Respondent

Section: **Under Rule 154 read with Rule 11 of the NCLT Rules, 2016**

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. ABHISHEK PRASAD	Advocate	Petitioner	Through
2.	MR. ABHIJIT SARKAR	Advocate	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.

Sd/-

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

Sd/-

**(H.V SUBBA RAO)
MEMBER (J) &
ADJUDICATING AUTHORITY**

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA No.32/2021
In
IA No. 37 of 2020
In
CP (IB) No. 09/GB/2019**

In the matter of:

SANDEEP KHAITAN, RP for National Plywood Industries Limited, having registered address at 2nd Floor, Sanmati Plaza, ABC, Guwahati-781005

.... **Applicant**

VERSUS

SUSPENDED BOARD OF DIRECTORS, NPIL through Mr. Piyush Periwal, Chairman cum Managing Director, having registered office at 12E, Judges Court Road, ALipore, Kolkata-700027, West Bengal

.... **Respondent**

Order delivered on 07th October, 2021

Coram: Hon'ble Mr. H. V SUBBA RAO, MEMBER (J)

Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (T)

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

ORDER

[Per: SRI PRASANTA KUMAR MOHANTY, MEMBER (T)]

1. That Stressed Assets Stabilization Fund had filed an application for initiation of Corporate Insolvency Resolution Process ("CIRP") U/S. 7 of the Insolvency & Bankruptcy Code ("IBC") against M/s National Plywood Industries Ltd., the Corporate Debtor ("CD"). The same was admitted by the Hon'ble National Company Law Tribunal, Guwahati bench vide

order dated 26.08.2019 whereby the Applicant was appointed as the IRP. Thereafter, vide order dated 08.11.2019, the appointment of IRP was confirmed as the Resolution Professional of the CD.

2. During the CIRP, the Applicant was facing persistent non-cooperation by the Suspended Board of Directors and other personnel of the Corporate Debtor and was also shocked to learn that the Suspended Board of Directors/Mr. Piyush Periwal, had made illegal and unauthorized transfers/transactions from the bank account(s) of the Corporate Debtor, exclusively being operated by the IRP/RP since the initiation of CIRP. Consequently, the Applicant/Resolution Professional was constrained to file an application under Section 19(2) read with Section 23(2) of the Code before this Hon'ble Tribunal seeking appropriate measures and directions.

3. While hearing the aforementioned I.A., this Hon'ble Tribunal on 24.03.2021 directed the Applicant to furnish/file certain information and documents; in compliance whereof the Applicant, vide an Affidavit dated 30.04.2021, filed the requisite information/documents. It is relevant to mention here that the Affidavit **(running into 756 pages) was filed both by e-filing (filing no. 1806122000122020- filed on 30.04.2021) as well as by physically filing (filed on 03.05.2021).**

4. The documents/ information sought vide the Order dated 24.03.2021 and the corresponding annexures filed are tabulated as follows:

S. No.	Documents/Information Sought	Annexures filed by RP with Affidavit dated 30.04.2021
a.	Copy of the FIR filed and correspondence made with the Banks	ANN. 2, pg. 56-69: FIR and cyber cell complaint ANN. 3, pg. 70-209: emails exchanged between RP and banks
b.	Plea made before the Hon'ble High Court, Guwahati	ANN. 6, pg. 273 -632: Crl. Petition No. 454/2020 filed by JSVM Plywood Industries Ltd. before the Hon'ble Gauhati High Court, and Reply filed by RP before the High Court.

c.	Copy of the appeal preferred before the Hon'ble Supreme Court against the impugned order of the Hon'ble High Court	ANN. 7, pg. 633 –678: Appeal filed before the Hon'ble Supreme Court Along with this, the Final Judgment & Order dt. 22.04.2021 passed by the Hon'ble Supreme Court was filed as ANN. 1, pg. 28-55
d.	Major receipts details of the sale proceeds and Major Expenditure after the RP has taken over the charge	ANN. 9, pg. 680 –684: Tabulated version of major receipts details of sale proceeds and Major Expenditure after the RP took over the charge.
e.	CIRP expenses including the fees of IRP, RP, and other legal expenses for filing cases/appeals	ANN. 10, pg. 685–688: Tabulated version of CIRP expenses including the fee of the IRP, RP and other legal expenses for filing cases/appeals.
f.	Copy of the Notice of layoff	ANN. 11, pg. 689 -702: Copy of the Notice of Layoff.
g.	Any correspondence with the Sole CoC Member, Stressed Assets Stabilization Fund requesting them to fund during the CIRP to keep the CD a going concern	ANN. 12, pg. 703-709: Copies of correspondence between SASF and RP
h.	The reasons for not accepting the raw materials from the regular supplier for running the Unit, keeping the matter of 32.50 lacs pending to be heard by this Bench while disposing the I.A. No. 51 of 2020 filed by the RP under Section 43,45 etc. instead of shutting down the CD and laying off the workforce	Pg. 13 to Pg. 19 of Affidavit & ANN. 14, 15, 16 & 17, pg.729–744

A copy of the Order dated 24.03.2021 is annexed hereto as **Annexure A**. A copy of the proof of e-filing dated 30.04.2021 as well as proof of physical filing dated 03.05.2021 is annexed hereto as **Annexure B (Colly)**.

5. Even though the Applicant complied with the directions contained in the Order dated 24.03.2021 and fully submitted the document/information as directed, the Order dated 04.05.2021 passed in IA No. 37 of 2020 in CP (IB) no. 09/2019 has inadvertently recorded that the Applicant/Resolution Professional filed only one of the documents/information sought and did not file the remaining documents and/or information. The said inadvertent observation does not take into account that the Applicant herein has filed all the documents

in terms of the Order dated 24.03.2021 with his Affidavit dated 30.04.2021 and hence suffers from an inadvertent clerical error and accidental omission.

6. The relevant portions of this Hon'ble Tribunal's order dated 04.05.2021 are as follows:

"3. The RP is not present today. The Learned Lawyer Mr A. Verma appearing for RP submits that the RP has filed all documents /papers/information on 27/04/2021 before this Registry as directed by this Bench on 24/03/2021. However, it is observed from the Documents filed, the RP has filed the document relating to point no (a) only i.e. copy of the FIR. No other documents have been filed as directed from point no (b) to (h).

6. The RP is once directed to file related papers/documents/information from point b to h as called for in our order dated 24/03/2021 within fifteen days from today so that appropriate order may be passed to ensure the Objectives of IBC are achieved. The RP is also directed to be present in person on next hearing day for certain clarifications.'

A copy of the Order dated 04.05.2021 is annexed herewith as **Annexure C**.

7. Since the said Order dated 04.05.2021 suffers from an inadvertent clerical error and accidental omission, the Applicant humbly prays for the same to be rectified. The relevant provisions of the NCLT Rules, 2016 in this regard are being reproduced below for ease of reference.

*" 11. **Inherent Powers-** Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal."*

*" **154. Rectification of Order-***

(1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification...."

8. It is respectfully submitted that the present Applicant is seeking rectification of the Order dated 04.05.2021 since as it gives an incorrect impression to the COC and other

stakeholders that the RP has failed to comply with the directions of this Hon'ble Tribunal, thereby casting a shadow on the RP's functioning.

9. The present Application has been made bona fide and in the interests of justice. The balance of convenience is in favour of the Applicant and no harm or loss whatsoever will be caused if the present Application is allowed. However, grave harm and irreparable loss will be caused to the Applicant if the present Application is not allowed.

10. The applicant in this instant Petition has prayed for the following relief(s):

(i) Rectify the Order dated 04.05.2021 to the effect that the directions contained in the Order dated 24.03.2021 were complied with and consequently record that the information and documents sought were filed by the RP vide his Affidavit dated 30.04.2021; and

(ii) Such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

ORDER

11. Heard the Counsel of the Petitioner and he has stated that he has filed all the documents with the Registry as directed by this Hon'ble Bench on 24.03.2021 running into 756 pages through e-filing on 30.04.2021 followed by physical filing on 03.05.2021 i.e. just before one day of the hearing, though this Bench had directed the RP to file the documents by 15.04.2021.

12. The relevant portion of the Order passed by this Bench on 24.03.2021 is reproduced here.

"The matter is taken up for hearing through Video Conferencing. The Learned Counsels for the Petitioner as well as for the Respondent are present. Mr. Sandeep Khaitan, Resolution Professional is also present in person. Heard both the sides. Since, the matter is pending before the Hon'ble Supreme Court, all the other related matters are adjourned today.

2. *The Learned Counsel for the Director of the Suspended Management Shri Piyush Periwal submits that the personal account of Shri Periwal maintained with HDFC Bank*

*is still blocked and he has not been allowed to operate his personal account in spite of the Order of this Bench dated 22.02.2021. It is not clear, when the RP has submitted that he has not given any instructions to any Bank to block the operation of Personal Account of Shri Piyush Periwal, how the Personal Accounts of the Director are blocked by the Banks. The Learned Counsel for the Director of the Suspended Management has prayed for directing especially the HDFC Bank to allow operation of the Personal Account. **The necessity and importance of a Personal Account in these days are known to everyone. HDFC Bank as well as other Banks, if any, with which the Director of the Suspended Management is operating his Personal Account, are hereby directed to allow operation, if blocked only in relation to CP(IB) No.9/GB/2019 immediately. Any delay in unblocking the accounts shall attract the other provisions of the IBC, besides penalty.***

3. *The Learned Counsel for the Suspended Management has reiterated once again the submission made by them in their Affidavits filed before this Bench on 07.03.2021 with regard to the expenses amounting to Rs.86,27,694.00 especially the said expenses of Rs.32.50 lacs.*

The Learned Counsel for the Suspended Management has stated that –

- (i) During the CIRP, the Petitioner here Learned RP stopped all trading activities with M & S Ply despite the healthy profits that the CD could have made, if it continued business as usual.*
- (ii) When the CD was being managed by the Board, post the orders of the Hon'ble Supreme Court and Hon'ble Tribunal dated 20.01.2020 and 28.01.2020, the management restarted business with M & S Ply to keep the CD as a going concern. As per the Petitioner's own admission in his layoff notice dated 28.01.2021, no one was willing to supply material to the CD during CIRP. In March 2020, the CD under the management placed an order of 10 trucks with M & S Ply and paid an advance against these supplies of Rs.25 lacs to M & S Ply between 06.03.2020 and 17.03.2020. These orders were manufactured by M & S Ply as per the specific requirements of the CD but could not be supplied due to the nationwide lockdown on 25th March 2020 for COVID-19.*
- (iii) Once lockdown was lifted, CIRP had resumed based on the order of the Hon'ble Tribunal dated 27.04.2020 and the Petitioner stopped all business of the CD. All production in the CD's factory has been suspended by the Petitioner since 07.07.2020 and the Petitioner declared a layoff on 28.01.2021. The Petitioner also stopped all trading activities being conducted from the Delhi office of the CD, despite the orders already placed with M & S Ply.***

The Learned Counsel has alleged that the Resolution Professional has filed FIR against the supplier of the raw materials to the CD and therefore, no one was ready to supply raw material to the CD Production has been suspended. Layoff has been declared on 28.01.2021. On the other hand, the Learned Counsel of the RP as well as the RP in person have submitted that there is no funds available to keep the CD in operation and funds have been reportedly paid by the CD to the Associate Companies. The RP has filed IA under Section 43, 45 etc. before this Bench in this regard.

4. Though the RP has stated that he has not filed FIR against the Promoter Director of the CD, but he has filed an Affidavit on 17.03.2021 before the Registry enclosing the copy of the orders of the Hon'ble High Court dated 04.02.2021 and the Hon'ble Supreme Court dated 23.02.2021 relating to the FIR, criminal case with a prayer for taking on record and passing appropriate orders.

5. Part of the order of the Hon'ble High Court is reproduced below:

Order of the Hon'ble High Court dated 04.02.2021

"Case No.Crl. Pet./454/2020

ISVM Plywood Industries Ltd.

Versus

The State of Assam and Anr.

2. Sandeep Khaitan

ORDER

Date: 04.02.2021

This interlocutory application has been filed by the petitioner praying for an interim direction to allow the petitioner to operate its bank account No.149905001306 maintained with the ICICI Bank Limited, Chandrasekharpur Branch, Bhubaneswar and to unfreeze the bank account of its creditors over which lien has been created and the accounts have been frozen pursuant to lodging of an FIR by the Respondent No.2.

Learned counsel for the petitioner submits that the petitioner company had financial relation with the National Plywood Industries Limited (NPIL) and it had supplied goods to NPIL, for which NPIL is liable to pay a huge amount to

the petitioner. It is also contended by the learned counsel for the petitioner that an insolvency proceeding has been initiated in respect of the NPIL and the respondent No.2 has been appointed by the Company Law Tribunal as Resolution Professional.

An amount of Rs.32.50 Lakhs was received by the petitioner on 18.04.2020 from the NPIL towards outstanding dues through a regular banking channel and the payment confirmation made by the NPIL was also received by the petitioner. Even after receiving the said amount of Rs.32.50 lakhs from the NPIL on 18.04.2020, there was an outstanding amount of approximately Rs.39.62 lakhs as on 07.06.2020 due from the NPIL. However, in the meantime, an FIR was lodged by the respondent no.2, who has been appointed as resolution professional in respect of NPIL alleging that the suspended CMD of the NPIL siphoned of Rs.32.50 lakhs by way of transferring the same to the account of the petitioner without authority. In connection with the Margherita P. S. Case No.112/2020, which was registered on the basis of the said FIR and upon instruction from the respondent No.2, the ICICI Bank Limited, Chandrasekharapur Branch, Bhubaneswar proceeded to mark lien on the account of the petitioner. The bank account of the creditor of the petitioner company maintained with various banks to which money was transferred by the petitioner in course of business transactions were also frozen. It is also submitted that the bank account of NPIL maintained in the ICICI Bank Limited was also initially frozen and lien was created, but subsequently the lien was lifted from the bank account of the NPIL.

It is the contention of the learned counsel for the petitioner that the entire allegation made in the FIR was against the CMD of the NPIL, who was purportedly suspended after initiation of the insolvency proceeding, inasmuch as, the gravamen of the allegation was that the suspended CMD has transferred the said amount to the account of the petitioner without any authority. Mr. Chakraborty also submits that the money was deposited with the account of the petitioner towards payment of the dues which the NPIL owed to the petitioner for supplying goods and still there are outstanding amount due from the NPIL after deposit of Rs.32.50 lakhs. The lien on the bank account of the petitioner and other bank as indicated above were created illegally under the instruction of the respondent No.2, which has caused immense hardship to the petitioner company, which has more than

300 employees engaged in remote areas. Learned counsel for the petitioner further contended that the petitioner is ready to abide by any condition including execution of bond for alleged amount of Rs.32.50 lakhs.

Learned counsel for the respondent submits that the petitioner has filed another writ petition being WP(C) No.118/2020 before the Itanagar Permanent Bench of this Court relating to the same issue and as such, no interim order can be passed in the present petition, inasmuch as, the issue pertaining to the interim relief sought herein was also involved in the said writ petition. In response to the above submission, learned counsel for the petitioner submits that the petitioner is ready to give an undertaking to withdraw the said writ petition filed before the Itanagar Permanent Bench, if an interim order is made subject to the condition of withdrawal of the said writ petition.

From the material on record, it is apparent that there was business relation between the petitioner company and the NPIL, which is evident from the various documents annexed to the petition. Only question raised in this FIR is that the money was transferred by the suspended CMD without any authority, inasmuch as, the entire state of affairs of NPIL was vested with the respondent No.2, who has been appointed as resolution professional. Only incriminating allegation against the petitioner is that the suspended CMD has personal interest in the petitioner company being an associate company, which is however, a disputed fact required to be investigated by police.

But that as it may, having considered the entire gamut of the matter and the nature of accusation brought against the present petitioner, I am of the view that freezing of all the bank accounts as indicated above would certainly cause unnecessary hardship, which may not be necessary for the investigation of the present FIR in view of the nature of accusation made therein as well as in view of the offer made by the petitioner to furnish a bond. Therefore, in my considered view, the petitioner is entitled to the interim relief as sought for. Accordingly, it is provided that the lien created upon the bank account No.149905001306 maintained with the ICICI Bank Limited, Chandrasekharapur Branch, Bhubaneswar be lifted, the petitioner and its creditors shall be allowed to operate the bank account over which lien has been created and the accounts have been frozen pursuant to the instruction of the respondent No.2 in connection with Margherita P.S. Case No.0112/2020, until further order of the court.

It is however, made clear that the interim relief granted to the petitioner as above with regard to unfreezing the bank account and lifting of lien shall be subject to the condition that the petitioner shall withdraw the WP(C) No.118/2020 filed before the Itanagar Permanent Bench of this Court and furnishing an indemnity bond undertaking to refund the amount of Rs.32.50 lakhs if required, subject to final outcome of the criminal case.

I.A. stands disposed of."

6. Part of the order of the Hon'ble Supreme Court is reproduced below:

"Petition (s) for Special Leave to Appeal (Crl.) No(s). 1549/2021

Sandeep Khaitan

... Petitioner(s)

Versus

JSVM Plywood Industries Ltd. & Anr.

... (Respondent (s))

O R D E R

Issue notice, returnable on 09.03.2021.

Mr. C. K. Raj, learned advocate appearing for R-1 on caveat accepts notice.

Respondent No.2 – State be served through the learned Standing counsel for the State.

The affidavit in response, if any, be filed by the respondent on or before 04.03.2021.

Rejoinder, if any, be filed by 08.03.2021. The matter shall be disposed of finally on 09.03.2021.

In the meantime, interim relief as prayed for in Para 8(i) is granted."

7. The Role and Responsibility of the RP during CIRP period is very clear. The RP has been appointed by this Bench. Under the IBC, the Resolution Professional shall perform all his functions contemplated, inter alia, in Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with the provisions of the Code, Rules and Regulations. The Resolution Professional will ensure that the company remains a 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.

8. The CD is an MSME Unit and was in operation before CIRP and during some period of the CIRP also. Now, the production is suspended and layoff notice is issued. It appears that the objectives of the IBC is being defeated in the process of reported preferential transactions, claims and counter claims, allegations and counter allegations, FIR, criminal cases and appeals etc.

9. Hence, it has become essential to know the following facts from the RP to pass necessary orders to ensure that the objectives of the IBC are not defeated during the CIRP / till a viable Resolution Plan for the MSME CD is approved. The RP / COC must not loose sight of the Section 240-A of the IBC, 2016 which reads as under.

"(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of Section 29-A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises"

The RP is directed to file the following before the Bench on or before 15.04.2021-

- (a) Copy of the FIR filed and correspondence made with Banks***
- (b) Plea made before the Hon'ble High Court, Guwahati***
- (c) Copy of the Appeal preferred before the Hon'ble Supreme Court against the impugned order of the Hon'ble High Court***
- (d) Major Receipts details of the sale proceeds and Major Expenditure after the RP has taken over the charge***
- (e) CIRP expenses including the fees of IRP, RP and other legal expenses for filing cases/appeals***
- (f) Copy of the Notice of layoff***
- (g) Any correspondence with the Sole CoC Member, Stressed Assets Stabilization Fund requesting them to fund during the CIRP to keep the CD a going concern***

(h) The reasons for not accepting the raw materials from the regular supplier for running the Unit, keeping the matter of Rs.32.50 lacs pending to be heard by this Bench while disposing the IA No.51 of 2020 filed by the RP under Section 43, 45 etc. instead of shutting down the CD and laying off the workforce.

10. The RP is hereby directed to furnish the above documents/papers/information on or before 15.04.2021 and ensure that the objectives of the IBC are not defeated on account of one/two transactions, FIR, cases, appeals, allegations and counter allegations which has resulted now into the closure of the CD and issue of Notice of layoff of employees etc.

11. List the matter on 19.04.2021."

13. When the matter was taken up on 24.03.2021 the Registry had placed the documents which were mentioned in our earlier Order dated 03.05.2021. The Registry has submitted that the other documents deposited in the Mail Box by the Petitioner were not opened for two days at that time due to Covid restrictions. Hence, the Registry could not locate those documents on that day, but the same has been placed today.

14. The documents filed by the RP are taken on record. Nothing survives in this Petition now.

15. Hence, this Petition is disposed of with the above observations.

**Sd/-
(PRASANTA KUMAR MOHANTY)
MEMBER (T) &
ADJUDICATING AUTHORITY**

**Sd/-
(H. V. SUBBA RAO)
MEMBER (J) &
ADJUDICATING AUTHORITY**

/tkd/D-06.10.2021//