NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P.(IB) No. 10/GB/2022

Coram:
Hon'ble Shri Rohit Kapoor, 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 21.06.2022

<u>IN THE MATTER OF:</u>

Indian Bank
... Petitioner/ Financial Creditor

Vs.

Shri Ram Awatar Agarwalla
... Respondent/ Personal Guarantor
of the CD- Meghalaya InfoTech Limited

Section: Under Section 95 read with Section 60(5) of the IBC Code, 2016 with Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rule, 2019.

Sl.No.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	NONE	-	-	-

ORDER

The case is fixed for pronouncement of Order. The Order pronounced in open court vide separate sheets enclosed.

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

Sd/-
(ROHIT KAPOOR)
MEMBER (J) &
ADJUDICATING AUTHORITY

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P.(IB) No. 10/GB/2022

IN THE MATTER OF:

INDIAN BANK

(Erstwhile Allahabad Bank prior to amalgamation/ merger to Indian Bank), a body Corporae a Banking Company duly constituted under the Banking companies (Acquisition and Transfer of undertaking) Act, 1970 having its Corporate Office at 252-266, Avai Shanmugam Salai, Chennai-14, Tamil Nadu and one of its Zonal Office at RG Baruah Road, Guwahati-3, and Carrying on the business of Banking through diverse branches and in particular a branch named Indian Bank, Lakhtokia Branch, Lakhtokia, S.S Road, Near Hotel Dynasty, Guwahati-781001, Assam and represented by Sri Ajit Kumar, Assistant General Manager of the said Branch

.... Petitioner/Financial Creditor

Vs.

SHRI RAM AWATAR AGARWALLA, Son of Shri Prakash Chandra Agarwalla, R. K. Choudhury Road, Narayan Nagar, Kumar para, Guwahati-781009, Assam.,

.... **Respondent/ Personal Guarantor of the CD- Meghalaya Infratech Limited**

Coram:
Hon'ble Shri Rohit Kapoor, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

<u>Order delivered on 21.06.2022</u>

<u>O R D E R</u>
[Per: Shri Prasanta Kumar Mohanty, Member (T)]

1. This Application has been filed by financial Creditor to initiate corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 under Section 95 with Section 60(2) of the Insolvency and Bankruptcy Read with Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rule, 2019, in respect of Shri.

Ram Awatar Agarwalla (Personal Guarantor of the CD- Meghalaya Infratech Limited)

2. Briefly stated by the Applicant that:

2.1 The Corporate Debtor (Meghalaya Infract Limited), a Private Limited Company by shares incorporated on 01.06.2007 and registered under the Companies Act, 1956 had approached the Financial Creditor (erstwhile Allahabad Bank prior to amalgamation/ merger to Indian Bank) and applied for Term Loan for Rs. 95.00 Crores vide Application for Term Loan dated 21.06.2010 and the Financial Creditor had agreed in principle to sanction a Term Loan (TL-I) Rs. 95.50 Crores (Rupees Ninety-Five Crores and Fifty lakhs) only and LC (One Time) of Rs. 25.00 Crores as a sub limit of the said Term Loan vide Sanction Letter 25.09.2010. The Authorized Signatories / Directors had accepted the term of the sanction by signing and executing an acknowledgment of Sanction letter dated 14.10.2010 and the terms and conditions. On the request of the Corporate Debtor the Financial Creditor modified the terms of the sanction vide Modification of Sanction dated 18.11.2010 and the Corporate Debtor duty acknowledge the said modifications vide Letter dated 19.11.2010. A Board resolution passed by the Board of Directors of the corporate Debtor dated 28.10.2010 acknowledged the said sanction and authorized the Directors to sign and execute the loan cum security documents and also requested the respondents herein to offer their personal guarantees. A DP Note dated 18.11.2010, Term Loan Agreement dated 18.11.2010, General Letter of Hypothecation dated 18.11.2010, (ADV-24) both dated 18.11.2010 were singed and executed by the Corporate Debtor represented by its Directors. The Respondent signed and executed Letter of Guarantee dated 18.11.2010 in favour of the Financial Creditor (erstwhile Allahabad Bank Now Indian Bank) as security for repayment of the loan.

2.2 Thereafter, the Financial Creditor (Erstwhile Allahabad Bank prior to amalgamation / merger to Indian Bank) was again approached by the Corporate Debtor for a fresh Term Loan to meet further construction costs of the Hotel Project against which a Term Loan of Rs. 95.50 Crores were already sanctioned. After considering the said Application, the Financial Creditor sanctioned a fresh Term Loan- II of Rs. 4.50 Crores vide Sanction Letter dated 04.05.2012 taking the total exposure of the Corporate Debtor to overall limit of Rs. 100.00 Crores. The Authorized Signatories/ directors had accepted the terms of the sanction by signing and executing an acknowledgment of Sanction Letter dated 04.05.2012 and the terms and conditions. A Board resolution passed by the Board of Directors of the Corporate Debtor dated 04.09.2012 acknowledged the said sanction and authorized the Directors to sign and execute the loan cum security documents and also requested the respondents herein to offer their personal guarantees in favor of Allahabad Bank consortium (Now known as Indian Bank). A DP Note dated 19.07.2013 was signed and executed by the Corporate Debtor represented by its Director. Meanwhile, the Corporate Debtor had also approached another financial Creditor (erstwhile Corporation Bank prior to amalgamation/ merger to Union Bank of India) for separate credit facility in the form of Term Loan and the said Financial Creditor sanctioned a Term Loan of Rs. 73.00 Crores vide Sanction Letter dated 20.06.2012. Hence a consortium of Two Banks (i.e. the present Financial Creditor Bank now known as Union Bank of India). The Financial Creditor was the lead Bank of the said consortium and the minutes of the first meeting of the Consortium Banker's dated 07.09.2012 outline the modalities of the formation of the consortium. Accordingly, joint/ consortium an Inter-se agreement dated 07.09.2012 was executed between the two consortium Banks and a Letter of Authority dated 07.09.2012 was issued to the Lead Bank by the erstwhile Corporation Bank. On such formation of the consortium, the Corporate Debtor represented by its director signed and executed consortium loan cum security documents such as the

Term Loan Consortium Agreement and Joint Deed of Hypothecation both dated 07.09.2012.

2.3 The Respondent signed and executed separate Deed of Guarantee Dated 07.09.2012 in favor of the consortium Banks which include the Financial Creditor (Erstwhile Allahabad Bank Now Indian Bank) as security for repayment of the loan. The entire loan facilities were also secured by mortgage created by corporate debtor. The Corporate Debtor had also registered the charge over the secured properties (hypothecated and mortgaged properties) with the Registrar of Companies.

2.4 However, the loan accounts subsequently got stressed due to non-payment of installments and the loan accounts became irregular and ultimately the Financial Creditor classified the loan accounts as NPA on 30.04.2015. **Personal Guarantee was also invoked vide Notice dated 04.01.2019.**

2.5 Revival Letters dated 17.08.2015 and 21.08.2015 were executed by the Corporate Debtor represented by its Managing director and the respondents as guarantors respectively thereby confirming the term loans of both the consortium bank and also the execution of the consortium loan cum security documents. It is further stated herein that Balance Sheets of the Corporate Debtors showing its liabilities towards the consortium banks for the financial years 2017-2018 and 2018-2019 dated 22.08.2017 and 26.06.2019 respectively were submitted by the Corporate Debtor.

2.6 Meanwhile, the Financial Creditor (Erstwhile Allahabad Bank) approached this Hon'ble Tribunal by filing a Petition under Section 7 of IB Code, 2016 for resolution of the Debt and the said petition has been registered as CP (IB) NO. 13/GB/2019 and after hearing the parties, this Hon'ble Tribunal was pleased to admit the petition vide order dated 28.08.2019 and as such the CIRP came to be initiated in respect of the Corporate Debtor and interim RP came to be appointed and he was confirmed as RP in the first CoC meeting held on 25.09.2019. At the 7th CoC meeting held on 06.03.2020, the COC with a 100% voting share approved the Resolution Plan of the successful resolution Applicant and the same was approved by this Hon'ble Tribunal vide Order dated 18.05.2020. However, one of the Resolution bidder challenged the order dated 18.03.2020 and passed by this Hon'ble Tribunal before the Hon'ble NCLAT and vide Judgment and order dated 19.10.2020 the Hon'ble NCLAT set aside both the orders and thereafter the successful Resolution Applicant and the RP preferred separate Civil Appeal Nos. 3665-3666/2020 and Civil Appeal Nos. 3742-3743/2020. **The Hon'ble Supreme Court vide Judgment dated 17.12.2021 set aside the Order dated 19.10.2020 passed by the NCLAT. Ultimately the entire Resolution Process came to an end after Resolution Applicant paid the entire Resolution amount. After the resolution amount of Rs. 64.30 Crores was received** by the Financial Creditors out of which the share of the Applicant Bank stood at Rs. 43.94 Crores and the balance have been received by the other financial creditor (erstwhile Corporation Bank and now Union of Bank of India).

2.7 Since the debt of the Financial Creditor could not be satisfied despite the Resolution, the financial Creditor seeks to lodge this application for further resolution of the Debt under the Code, of 2016 against the Personal Guarantor. Accordingly, before filing of this petition, a demand Notice (Form-B) dated 06.05.2022 under Rule 7(1) of the IBC Rules, 2019 have been sent through registered post to the Personal Guarantor (Respondent) and postal receipt and track report is enclosed hereto.

2.8 The Corporate Debtor failed to maintain the Term Loan accounts (TL-I A/C No. 50043499948 AND TL-II A/C No. 50612758456 maintained by the Financial Creditor (Now Indian Bank) Lakhtokia Branch. As the Corporate Debtor failed to pay the installments as per terms and conditions, the Term Loan accounts were classified as NPA on 30.04.2015. The Financial Creditors (the then Allahabad Bank and Corporation Bank) had jointly preferred an application under Sanction 19 of the RDBFI Act, 1993(Now known as Recovery of Debts and Bankruptcy Act, 1993) for recovery of Rs. 189,79,84,189.00 and the aid Original Application has been registered as 0A No. 473/2017 and the same has been pending disposal.

2.9 After the Resolution process before this Hon'ble Tribunal initiated in CP (IB) No. 13/GB/2019 had been completed, the Financial Creditor, Indian Bank had survival debt of Rs. 185,39,91,035.07 with interest calculated till 29.01.2022 against the personal guarantor, i.e., the Respondent, after adjustment of its share of the resolution amount and as such the Financial Creditor (Indian Bank) through the statements of accounts of the two loan accounts duly certified under Banker's Book of Evidence Act, 1879 established the debt as against the Personal Guarantor (Respondent) to the tune of Rs. 185,39,91,035.07 as on 29.01.2022.

2.10 In view of the above, having established the debt as against the personal guarantor as mentioned above, and from the documents relief upon, this Hon'ble Tribunal may be pleased to admit this Petition filed by the Financial Creditor (Indian Bank) for the Resolution of the Debt in question.

2.11 The instant application has been filed by the financial Creditor exclusively claiming the outstanding dues in the Term Loan accounts sanctioned by it. The Financial Creditor also submits that no security held by it or the Corporation bank (now Union Bank of India) as the same has already been released in favour of the successful Resolution Application through CIRP arising out of CP (IB) No. 13/GB/2019.

2.12 The Petition has been filed well within the period of limitation and also this Hon'ble Tribunal has the jurisdiction to decide on the matter.

3. In support of its Claim, the applicant has filed the following documents:

i. Application for Term Loan dated 21.06.2010
ii. Sanction Letter dated 25.09.2010

iii. Acknowledgment of Sanction Letter by corporate Debtor dated 14.10.2010.
iv. Board Resolution dated 28.10.2010
v. Modification of Sanction dated 18.11.2010.
vi. Letter acknowledging the modification of sanction dated 19.11.2010.
vii. D P Note dated 18.11.2010.
viii. Term Loan Agreement dated 18.11.2010
ix. General Letter of Hypothecation dated 18.11.2010
x. ADV-24 both dated 18.11.2010
xi. Letter of Guarantee dated 18.11.2010
xii. Sanction Letter dated 04.05.2012 by Financial Creditor (erstwhile Allahabad Bank prior to amalgamation to Indian Bank)
xiii. Acknowledgment dated 04.05.2012
xiv. Board Resolution dated 04.09.2012
xv. D P Note dated 19.07.2013 for Rs. 4.50 Crores
xvi. Minutes of the 1st Consortium Lenders meetings dated 07.09.2012
xvii. Inter-se agreement dated 07.09.2012
xviii. Letter of Authority dated 07.09.2012
xix. Consortium Term Loan agreement dated 07.09.2012
xx. Joint deed of Hypothecation Dated 07.09.2012
xxi. Deed of guarantee dated 07.09.2012 for Rs. 173.00 Lacs
xxii. Notice to Guarantor (invocation of guarantee) dated 04.01.2019
xxiii. Revival Letters dated 17.08.2015 and 21.08.2015
xxiv. Balance sheets for the financial years 2017-2018 and 2018-2019 dated 22.08.2017 and 26.06.2019
xxv. Demand Notice dated 06.05.2022 in respect of unpaid debt in default due from Meghalaya Infratech Limited under Rule 7(1) of the Insolvency and Bankruptcy Application to Adjudicating Authority for Insolvency resolution process of personal Guarantor to Corporate Debtors) Rules, 2019 with postal receipt and track consignment.
xxvi. CIBIL Report of Personal Guarantor
xxvii. Company Master Data obtained from MCA portal
xxviii. Duly certified statements of accounts of TL-I and TL- II under Banker's Book of Evidence Act, 1891
xxix. NCLT Order dated 28.09.2019 and SC Order dated 17.12.2021

4. The Applicant has proposed the name of **Mr. Sandeep Khaitan,** an Insolvency Professional registered with Institute of Chartered Accountants of

India, Insolvency Professional Agency, having registration number IBBI/IPA 32/2017-2018/10957, and resident of 2nd Floor, Sanmati Plaza, G.S Road, ABC, Guwahati-781005, Assam. **for Resolution Professional in this matter.** Mr. Sandeep Khaitan has submitted his written communication dated 01.06.2022 and declaration under Rule 9(2) of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 01.06.2022.

ORDER

5. Heard the learned Counsel at length and we observe that the Applicant has filed necessary documents to prove about the debts owed to the Financial Creditor submitting the application for insolvency resolution process as on

date of the application, the failure to pay within a period of fourteen days of the service of the notice of demand and relevant evidence of the default failure. We further observe that:

i. The Respondent is the Guarantor to the CD M/s. Meghalaya Infratech Pvt. Ltd.
ii. Application is filed by the FC proposing the name of Mr. Sandeep Khaitan as IRP
iii. The Application filed by the FC shows that the Debt owed by the Respondent to the FC is more than Rs. 1.00 Crore.
iv. Evidence of default has been filed.

6. The matter was first heard on 17.06.2022 before this bench. In view of the petition and order passed, the Interim-Moratorium commenced from 17.06.2022.

7. Considering the materials / papers filed by the Applicant on record, the Application filed under Section 95 of IBC is found to be complete for the purpose of appointing the Resolution Professional under Section 97 of IBC, 2016.

8. Hence, Mr. Sandeep Khaitan, an Insolvency Professional registered with Institute of Chartered Accountants of India, Insolvency Professional Agency, having registration number IBBI/IPA 32/2017-2018/10957, and resident of 2nd Floor, Sanmati Plaza, G.S Road, ABC, Guwahati-781005, Assam is hereby appointed as Resolution Professional. The RP is to file the Assignment Declaration within 2 (two) days from today with the Registry.

9. The Resolution Professional is directed to transact the proceedings with dedication, sincerity, honesty and strictly in accordance with the provisions under Section 99 of IBC and Regulations of IBBI. The Resolution Professional:

9.1 Shall examine the application referred to in Section 95 of the IBC Code, **2016 within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection** of the application.

9.2 The Resolution Professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing

a) Evidence of electronic transfer of the unpaid amount from the bank account of the debtor;
b) Evidence of encashment of a cheque issued by the debtor; or
c) A signed acknowledgment by the creditor accepting receipt of dues.

9.3 Where the debt for which an application has been filed by the creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.

9.4 For the purpose of examining an application, the Resolution Professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the Resolution Professional may provide such information.

9.5 The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.

9.6 The Resolution Professional shall examine the application and ascertain that –

a) The application satisfies the requirements set out in section 95;
b) The applicant has provided information and given explanation ought by the Resolution Professional under sub-section (4).

9.7 After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.

9.8 The Resolution Professional shall record the reasons for recommending the acceptance or rejection of the application in the report under subsection (7)

9.9 The Resolution Professional shall give a copy of the report under subsection (7) to the creditor.

10. List the matter on 28.07.2022 for perusal of the Report of the RP and further proceedings, if any.

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

Sd/-
(ROHIT KAPOOR)
MEMBER (J) &
ADJUDICATING AUTHORITY