NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P (IB) No. 20/GB/2021

Coram: Hon'ble SHRI ROHIT KAPOOR, MEMBER (JUDICIAL)
Hon'ble SHRI PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW TRIBUNAL, GUWAHATI BENCH ON 01.04.2022.

Name of the Company: Byrnihat Coal Private Limited
...... Corporate Applicant
&
Sharma & Sons Corporation & Ors.
...... Respondents

Section: Section 10 of Insolvency and Bankruptcy Code, 2016

S.No.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. VISHAL GANDA	Advocate	Petitioner	Present in
2.	NONE			Video Conference

O R D E R

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, vide separate sheet.

Sd/-

(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority

Sd/-

(Rohit Kapoor)
Member (Judicial)
& Adjudicating Authority

O R D E R
[Date of Order: 01.04.2022]
[Per se: Prasanta Kumar Mohanty, Member (T)]

1. This application under Section 10 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "Code of 2016") has been filed by the Corporate Debtor/Applicant, namely Byrnihat Coal Private Limited, seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against itself.

2. It is submitted that the company i.e. Byrnihat Coal Private Limited **(CIN: U51909AS2005OTC007678)** was incorporated on March 4, 2005 and is also registered as an MSME under **UDYAM-AS-03-0000238**. The Petitioner is in the business to obtain, produce, trade etc. in coal, coke and its allied products.

3. The Authorized Share Capital of the Corporate Debtor (CD) Company i.e. Byrnihat Coal Private Limited is Rs. 1,20,00,000 (Rupees One Crore Twenty Lakh only) and the Paid-Up Share Capital is Rs. 1,17,85,000 (Rupees One Crore Seventeen Lakh Eighty-Five Thousand only). The Registered office is situated at House No. 3/1, Rajdeep Complex, First Floor, F.A. Road, Kumarpara, Guwahati-781009.

4. The Corporate Applicant submits that:

4.1 As on August 23, 2021, the Corporate Applicant has the following debts.

Name of Creditor	Address of the Creditor	Nature of Debt	Amount Outstanding (Rs.)
Sharma & Sons Corporation	Lal Bazar, Opp-Bharat Vikash Parishad, Jharia, Dhanbad-828111, Jharkhand	Coal Purchase	15,00,000.00

R.S.H Agro Products Limited	Village Ambher, 12th Mile, Jorabat, Guwahati-781023, Kamrup (M), Assam	Other Liabilities	21,60,000.00
Naresh Kumar Harlalka	Subham Apartment, Narayan Nagar, Guwahati-781009, Assam	Advance from Director	5,10,000.00
Punjab National Bank	LIC Building, Fancy Bazar Branch, Fancy Bazar, Guwahati-781023, Assam	Cash Credit	6,43,84,315.89
Punjab National Bank	LIC Building, Fancy Bazar Branch, Fancy Bazar, Guwahati-781023, Assam	CFITL	42,63,078.00
TOTAL			**7,28,17,393.89**

Sharma & Sons Corporation

The Corporate Applicant has issued orders for 'Coke (H. Coke)' from Sharma & Sons Corporation. Accordingly, the Coke (H. Coke) was sold to the Corporate Applicant at the rate of Rs. 18,000 per m.t and invoices were issued to the Corporate Applicant.

As per the terms of invoices, the Corporate Applicant was required to pay interest at the rate of 15 (Fifteen) percent in case the payment was not made within fifteen days, that is the due date. The Corporate Applicant failed to make timely payments of the aforesaid invoices on account of ban on coal mining by Hon'ble Green Tribunal and the Corporate Applicant was able to pay only Rs. 3,97,749/- (Rupees Three Lakh Ninety-Nine only). Accordingly, Rs. 15,00,000/- (Rupees Fifteen Lakh only) is still outstanding and payable.

R.S.H Agro Products Limited

An Amount of Rs. 21,60,000/- (Rupees Twenty-One Lakh Sixty Thousand only) is to be paid to R.S.H Agro Products Limited. The Corporate Applicant, on account of ban on coal by the Hon'ble Supreme Court of India and National Green Tribunal, was unable to make payments to its creditors.

Naresh Kumar Harlalka

On account of ban of coal mining and lock-down due to covid-19, the Corporate Applicant was suffering huge losses. Therefore, the Corporate Applicant was constrained to take advance from its director, Mr. Naresh Kumar Harlalka of Rs. 5,10,000/- (Rupees Five Lakh Ten Thousand only). However, despite the best efforts of the Corporate Applicant, the Corporate Applicant failed to pay the advances and an amount of Rs. 5,10,000/- (Rupees Five Lakh Ten Thousand only) is still outstanding.

Punjab National Bank (Cash Credit Facilities)

The Corporate Applicant was sanctioned a credit facility by Punjab National Bank for a total of **Rs. 7,00,00,000 (Rupees** Seven Crores only) through sanction letter dated February 7, 2015 vide account number 189008700009192. The said Credit Facility comprised of two parts which are as follows:

a. Rs. 4.50 crores were disbursed as cash credit (Hypothecation of stocks) at the rate of 12 percent, with a margin of 25 percent for stocks and 40 percent for book debt. The Corporate Applicant had hypothecated inventory lying at 12th Mile Stock Yard and the valuation of the said stock was to be done as per the terms of the Sanction Letter.

b. Rs 2.50 crores were disbursed as Inland Letter of Credit interchangeable with ILG Limit with a cash margin of 15 percent. The said amount was disbursed for the purpose of procurement of raw materials within India and to be issued in favour of Coal India Ltd. or other coal suppliers for procurement of coal for the purpose of trading. The Corporate Applicant had undertaken to comply with all the exchange/import trade control regulations of RBI in respect of imports under the aforesaid limit.

c. The Corporate Applicant, was in extreme financial distress due to ban on coal mining imposed by the Hon'ble Supreme Court of India and in view of the same, the Corporate Applicant was unable to repay the cash credit facility granted to it. Due to the failure to honor the obligations of the Sanction Letter, the banks issued letter dated September 4, 2019 and September 10, 2019, requesting the Corporate Applicant to clear its outstanding dues vide letters dated November 5, 2019 and December 3, 2019.

4.2 The Corporate Applicant received letters dated December 3, 2019 and December 4, 2019 from the Bank, reiterating its request to the Corporate Applicant to repay its outstanding dues, and in addition to the same, informing the Corporate Applicant that the account of the Corporate Applicant may slip into the category of a Non Performing Asset ("NPA").

4.3 Owing to the ban on mining of coal by the Hon'ble Supreme Court of India and the Covid-19 pandemic, the Corporate Applicant was unable to revive its operations and was undergoing severe financial distress.

4.4 The Bank taking cognizance of the fact, that the Corporate Applicant was unable to repay its facilities, made the following observations, vide letter dated 9th January, 2020:

- The Corporate Applicant has failed to make the repayments, despite several reminders.
- The outstanding amount is not commensurate to the sales as per the ABS, 2019.

- The Corporate Applicant is incurring losses for the last two consecutive financial years and no improvement in the business of the Corporate Applicant in the current year either.
- No business activity found by the Bank officials at the time of site visit.
- Despite lifting of ban by the Hon'ble Supreme Court on coal mining in Meghalaya, the business activity has not yet picked up.

4.5 The Director of the Corporate Applicant met with the officials of the bank, informing them of the pitiable condition of the Corporate Applicant owing to the ban on coal mining by the Hon'ble Supreme Court of India.

4.6 The Corporate Applicant was going hammer and tongs trying to save its Bank account from slipping into an NPA. The state of affairs of the Corporate Applicant had been deteriorating owing to the CAA and NRC protests in the north-east and further saw a standstill with the onset of the Covid-19 lockdown restrictions. The Bank vide letters dated 29th October, 2020 and 13th November, 2020 informed the Corporate Applicant that there was an overdue of Rs. 2.36 Crores (Rupees Two Crores Thirty-Six Lakhs only) in the cash credit account. The Corporate Applicant stated that due to the ban of National Green Tribunal, coal extraction and its transportation was heavily impacted and with the adverse impact of Covid-19, the Corporate Applicant faced liquidity mismatch in the operating cycle **Punjab National Bank (CFITL).**

4.7 The Corporate Applicant had filed an application cum undertaking for availing funded interest terms loan ("FTIL") under Covid-19 regulatory package for Reserve Bank of India for accounts having exposure of above Rs. 50 lakhs on August 22, 2020. Accordingly, the Bank disbursed an amount of Rs. 38,10,574 (Rupees Thirty-Eight Lakh Ten Thousand Five Hundred Seventy-Four only) on September 16, 2020 to the Corporate Applicant. However, the Corporate Applicant failed to pay the outstanding dues and an amount of Rs. 42,63,078.00 (Rupees Forty-Two Lakhs Sixty-Three Thousand and Seventy-Eight only) is still payable.

4.8 On account of non-payment of due interest/installment/overdue amount as per the guidelines of Reserve Bank of India, the bank sent a recall notice to the Corporate Applicant dated April 13, 2021 ("Recall Notice") whereby the Bank stated that the Cash Credit and CFITL **accounts of the Corporate Applicant have become an NPA on March 31, 2021** and the bank refused to permit the continuation of the said accounts. The cash credit account shows a debit of Rs. 7,07,96,649 (Rupees Seven Crore Seven Lakh Ninety-Six Thousand Six Hundred Forty-Nine only) and CFITL account shows a debit balance of Rs. 40,64,950 (Rupees Forty Lakh Sixty-Four Thousand Nine Hundred Fifty only) as on March 31, 2021. Accordingly, the bank requested the Corporate Applicant to pay the aforesaid amount within seven days of the receipt of the Recall Notice. The Corporate Applicant duly responded to the Recall Notice, vide a reply dated April 20, 2021, whereby the Corporate Applicant stated that its coal business was closed since last three years due to ban over coal extraction, imposed by National Green Tribunal. Despite the said ban on the coal extraction, the Corporate Applicant had paid interest within the stipulated time period, however, the business of Corporate Applicant has been adversely affected due to COVID-19. The Corporate Applicant further stated that due to country-wide lockdown on account Covid-19 the business of Corporate Applicant was shut down completely and was unable to oblige Bank's monthly interest. The Corporate Applicant stated that it was not in a position to make payment to the Bank on account of Covid-19.

4.9 Despite putting best efforts the Corporate Applicant failed to make any further payments. It was observed by the auditors of the Corporate Applicant that the Corporate Applicant would not be able to continue as a going concern entity. Due to the extreme financial distress, and no compromise being entered into by the parties, the Bank issued a notice under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 ("SARFAESI Act") dated April 23, 2021 declaring the Cash Credit account, NFB account and CFITL account of the Corporate Applicant as an NPA on account of non-payment of installment/interest/principal debt by the Corporate Applicant. The notice further mentioned that as on March 31, 2021, Rs 7,48,61,599.89 (Rupees Seven Crore Forty-Eight Lakh Sixty-One Thousand Five Hundred Ninety-Nine only) was due to the Banks. In case of failure to pay the said amount within sixty days of receipt of the SARFAESI notice, the Bank shall enforce the securities provided by the Corporate Applicant in terms SARFAESI Act.

4.10 Despite several attempts by the Corporate Applicant to resume its business, it could not get back on its feet. Thus, on account of default in payment of interest on loans taken from banks and financial institutions on several occasions and considering the present situation of the Corporate Applicant wherein the reserves and surplus of the Corporate Applicant were considerably depleted due to losses, the Board of Director of the Corporate Applicant decided to initiate proceedings under section 10 of the Code. Accordingly, a notice for an Extra Ordinary General Meeting dated May 10, 2021 to initiate CIRP against the Corporate Applicant was issued and a resolution dated June 4, 2021 was passed to initiate corporate insolvency proceedings under section 10 of the Code.

5. **It is also submitted that the major financial creditor Punjab National Bank (PNB) issued 13 (2) notice under SARFAESI Act, 2002, dated 23.04.2021 declaring the Petitioner's cash credit account, NFB account and CFITL account credit as non-performing asset.**

6. **The Petitioner has submitted the details of securities for Bank Credit facilities. The same are mentioned as below:**

Sl. No.	**Charge ID and date**	**Amount**	**Assets on which charge is created**
1.	10554755 9th Feb, 2015	7,00,00,000.00	Hypothecation of inventory lying at 12th Mile stock yard, including stock in transit, book debt arising out of genuine credit sales of the company both present and future, domestic and imported consisting of coal.
2.	10247935 29th Sept, 2010	22,55,00,000.00	All that piece and parcel of Landed Property at 12th Mile, Jorabat, Mouza: Sonapur, Kamrup, Assam, covered by dag no. 121 and 120, Patta No. 28 vide sale deed no 11735 measuring 3 Bigha 3 katha 10 Lecha owned by Byrnihat Coal Pvt. Ltd.

7. The Petitioner has submitted the following documents in order to prove the existence of Financial/Operational debt and the amount of default:

Sl. No.	**Particulars**
1.	A true copy of the Master Data of the Corporate Applicant **ANNEXURE 1**
2.	A copy of the Board Resolution dated September 3, 2021 **ANNEXURE 2**
3.	The written communication from the proposed Interim Resolution Professional **ANNEXURE 3**

4.	A copy of the certificate of incorporation **ANNEXURE 4**
5.	A copy of the Amended Memorandum of Association and Articles of Association of Corporate Applicant **ANNEXURE 5 (Colly)**
6.	A copy of the certificate of registration of Corporate Applicant **ANNEXURE 6**
7.	A copy of the loan sanction letter dated February 7, 2015 **ANNEXURE 10**
8.	A true copy of the bank statement for the period from February 1, 2020 to February 29, 2020 of Corporate Applicant. **ANNEXURE 11**
9.	A copy of the letters dated September 4, 2019; September 10, 2019; November 5, 2019 and December 3, 2019. **ANNEXURE 12**
10.	A true copy of the statement of bank account along with the ledger **ANNEXURE 23**
11.	A copy of the recall notice dated April 13, 2021 **ANNEXURE 24**
12.	A copy of the notice under SARFAESI Act dated April 23, 2021 to the Corporate Applicant **ANNEXURE 26**
13.	A copy of the notice for an Extra Ordinary General Meeting dated May 10, 2021 of the Corporate Applicant **ANNEXURE 27**
14.	A copy of the resolution passed at the Extra Ordinary General Meeting dated May 10, 2021 of the Corporate Applicant **ANNEXURE 28**
15.	A list of the Corporate Applicant's debt due to its Financial and Operational Creditors as on August 23, 2021 **ANNEXURE 29**
16.	A copy of certificates of Registration of charges **ANNEXURE 30**
17.	Copy of the relevant books of accounts of the corporate debtor evidencing the default to creditors **ANNEXURE 31**
18.	Copies of the audited financial statements of the corporate debtor for the last two financial years and the provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application. **ANNEXURE 32**

8. The Petitioner has prayed for admitting the Section 10 application filed by the Petitioner to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

9. On the other hand, the Respondent No. 4 i.e. Punjab National Bank has submitted that:

9.1 The entire contents of the application filed by the petitioner may be treated to be denied by the respondent Bank unless any part thereof is specifically admitted hereinafter. The application filed under section 10 by the petitioner **is an attempt to escape its outstanding liabilities which are due and payable to the respondent bank, by using** the mechanism of the IBC in order to obtain an order of moratorium in respect of the various recovery proceedings which have been instituted by the respondent bank.

9.2 Though there is an admitted default committed by the petitioner in the repayment in the repayment of its dues, mere commission of such default is not sufficient to trigger the provisions of the IBC. The objective of the IBC is resolution and reorganization of the stressed debtors but in the case of the petitioner it is the humble submission of the bank that the business model and financial structure of the petitioner is of such nature that no feasible resolution is possible in the present case. The petition under section 10 of the IBC is thus nothing but a device to gain time to drag the recovery proceedings by pretending to pursue the relief of resolution in this Hon'ble Tribunal.

9.3 Sri Kamal Kumar Harlalka, is a share-holder having percentage share in the petitioner company and he is also a personal guarantor in respect of the facilities granted to the petitioner company. The said person is also a Director in M/s RSH Agro Products Pvt. Ltd. which according to the petitioners is an unpaid operational creditor of the petitioner company and has alleged unpaid dues/claims.

Evidently, the said Sri Kamal Kumar Harlalka being the key person in both the Petitioner Company as well as M/s RSH Agro Products Pvt. Ltd. such claims of unpaid dues by the operational creditor is only a device to ensure the dominant participation of the existing promoters/ Directors in any future Committee of Creditors (COC) which may be constituted after the admission of the instant application. The Respondent Bank has filed the relevant details from the website www.mca.gov.in.

9.4 The Bank has also filed O.A No. 301/2021 in the DRT, Guwahati under section 19 of the Recovery of Debts and Bankruptcy Act. The bank has claimed an amount **of Rs. 6, 91, 28,926 (Rupees Six Crores Ninety-One lakhs Twenty Eight Thousand Nine Hundred and Twenty Six and** Ninety Paise only) inclusive of interest up to 20.12.2021 against the petitioner and others, including Sri Kamal Kumar Harlalka. The said O.A. No. 301/2021 was listed before the Ld. Presiding Officer of the DRT, Guwahati on 13.01.2022.

9.5 The issue of the default and its quantum being presently pending adjudication before the Ld. DRT Guwahati, and the petitioner having admitted in the present petition under reply that it is willing to settle its debts by sale of the assets, no fruitful resolution or reorganization is possible in the case of the petitioner company. **The petitioner has wilfully defaulted on the repayment of its dues, and it is not a mere** business failure but appears likely **to be a case of diversion and improper use of the facilities granted by the respondent bank.** The IBC is not to be permitted to be used by the promoters/directors **as an escape route to avoid the consequences** of their actions which have created the situation so as to lead to degradation of the accounts and slippage into NPA category.

9.6 **The respondent Bank has strong reasons to object to the application under section filed by the petitioner, and prays that the same may** be dismissed and the recovery proceedings may not be allowed to be delayed and frustrated due to the pendency of the same before this Hon'ble Tribunal.

10. The Corporate Applicant has filed a rejoinder to the reply of Respondent No. 4. The following submissions have been made by the applicant:

10.1 The Reply filed by the Respondent No. 4 is devoid of any substance and merit. The submissions made by the Respondent No. 4 are denied to the extent that they are contrary to and/or inconsistent with the averments and/or submissions made in this Rejoinder and the Application. The Corporate Applicant has filed the Insolvency Application in compliance with all the requirements under Section 10 of the Code, read with IBBI (Application to Adjudicating Authority) Rules, 2016. As per section 10(3) of the Code, the Corporate Applicant is required to comply with the following requirements, which have been duly complied.

10.2 As long as the application is complete and in line with the Code, the application under section 10 should be allowed. Therefore, the objections raised by the Respondent No. 4 are completely meritless.

10.3 The Hon'ble National Company Law Appellate Tribunal, New Delhi has held in *Unigreen Global Private Limited, In re, 2017 SCC Online NCLT 1780* that if any action has been taken by a 'Financial Creditor' under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of Debt Recovery Tribunal Act, 1993 before a Debt Recovery Tribunal cannot be a ground to reject an application under Section 10 of the Code, if the application is complete. Similarly, in the case of *Ramesh Kumar Gupta Vs. Mahesh Bansal, Company Appeal (AT) (Insolvency) No. 1408 of 2019*, the Hon'ble National Company Law Appellate Tribunal, New Delhi has held that pendency of any action under the SARFAESI Act or actions under the

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 shall not be a bar to initiate proceedings under Section 7 of the Code. The relevant portion is reproduced as follows:

> *"The pendency of actions under the SARFAESI Act or actions under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 does not create obstruction for filling an application under Section 7 of Insolvency and Bankruptcy Code 2016, especially in view of Section 238 of IBC. The Application is more to bring about a Resolution of Corporate Debtor than any penal action or any recovery proceedings. We do not find any substance in the Appeal."*

10.4 Therefore, pendency of any proceedings, including the original application bearing number O.A. No. 301 of 2021 under section 19 of Recovery and Debts and Bankruptcy Act, 1993 before Debt Recovery Tribunal, Guwahati, shall not bar the Corporate Applicant to file the present Insolvency Application.

10.5 As per Section 238 of the Code, the Code shall have an overriding effect over other statutes. The relevant provision is reproduced as follows:

> **"238. Provisions of this Code to override other laws-** *The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

10.6 The Code shall have an overriding effect over Recovery and Debts and Bankruptcy Act, 1993 and pendency of any proceedings under the said act shall not bar any proceedings under the Code. Without any prejudice, it is further submitted that both the objectives of both the statutes are completely different and independent of each other and the right to seek reliefs under the Code of the Corporate Applicant cannot be taken away merely because of pendency of proceedings under Recovery and Debts and Bankruptcy Act, 1993.

11. The Applicant has further stated that:

11.1 The Corporate Applicant thus proposes to appoint Mr. Akhil Ahuja, an Insolvency Professional, having Registration No. IBBI/IPA-001/IP-P02072/2020-2021/13213 resident at D-65, Defence Colony, New Delhi-110024 to be the Interim Resolution Professional if the said application is admitted in to CIRP by this Hon'ble Bench. The written communication from the proposed Interim Resolution Professional has been annexed

11.2 That, to the best of Applicant's knowledge, Mr. Akhil Ahuja is fully qualified and permitted to act as an insolvency professional in accordance with the Code and the associated rules and regulations.

O R D E R

12. Heard the Counsels for both the sides at length. This Application has been filed under section 10 of IBC by the CD seeking initiation of CIRP against itself. The Corporate Applicant and as well as the Financial Creditor have confirmed that the account of the Applicant is NPAs and the Applicant has defaulted in making payments of interest and installments to the FC here. There is no dispute that the debt is not due, not payable and not defaulted. On the other hand, the learned Counsel appearing for the Applicant has prayed for admission of the Application.

13. Reliance is placed on the judicial precedents of Hon'ble Supreme Court in the matter of ***M/s Innovate Industries Ltd. vs. ICICI Bank & Anr.*** as well as Hon'ble NCLAT in the matter of ***Unigreen Global Pvt. Ltd.*** **vs.** ***Punjab National Bank & Ors.,*** **Co. Appeal (AT) (Insolvency) No. 81 of 2017,** we find that the contentions/objections of the Financial Creditor/Objector (Punjab National Bank) have no merits as the legal position in this respect has already been settled by the Hon'ble Supreme Court as well as Hon'ble NCLAT. Therefore, pendency of SARFAESI proceedings or proceedings before the DRT cannot be a valid ground not to initiate Corporate Insolvency Resolution Process under section 10 of the

Code in respect of the Corporate Applicant/Corporate Debtor, if such application is found complete in all respects. The provisions of section 238 of the IBC have been given overriding effect to the provisions and proceedings under any other law. Hence, such contentions of the Financial Creditor/Objector are not legally tenable. Moreover the apprehensions and the contentions of the FC that their interest will be hampered if the Application is admitted as because the Shareholders and unpaid Operational Creditors of the Applicant Company shall play a dominant role in CoC ,Guarantors will be escaped and the IRP is appointed as suggested by the CD .All these apprehensions of the FC are not correct considering the facts that the IBC is very clear about the eligibility & the percentage of voting rights of a member in the CoC ; the provision in respect of a Guarantor under Sec 95 IBC and the replacement of an IRP by the CoC ,if needed ,with the required percentage of voting share of the FC in the first meeting itself under Sec 22(2) of IBC.

14. Considering the materials, papers filed by the Petitioner and the Respondents, this Adjudicative Authority is satisfied that:

14.1 The Corporate Applicant availed the loan/credit facilities from the Financial Creditor-PNB

14.2 The Applicant CD has also furnished:

i. The information relating to its books of account and such other documents,

ii. The information relating to the resolution professional proposed to be appointed as an interim resolution Professional; and

iii. The special resolution passed by shareholders of the Corporate Debtor approving filing of the application.

14.3 Existence of debt is above Rupees One Crore;

14.4 Debt is due, payable and defaulted;

14.5 Default has occurred on 31.03.2021 with the major Financial Creditor to the CD R4-PNB; The FC-PNB has issued Recall Notice on 13/04/2021(notice copy at page no 114 of the application)

stating the date of NPA of the Applicant account with them is 31/03/2021.

14.6 Application has been filed within the limitation period, as the existence of the debt due, payable and defaulted is on 31.03.2021 with PNB; when the Application under Section 10 of the IBC has been filed by the CD on 07.09.2021;

14.7 Copy of the Application filed before this Bench has been sent to the Financial Creditors, R4 has filed its reply and the application filed by the Corporate Debtor under Section 10 of the IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process against itself;

Hence, the present IB Petition is admitted with the following directions/observations. The date of admission of this petition is 01.04.2022.

15. As per the provisions of Section 13 and 14 of the IB Code on the date of commencement of insolvency, this Adjudicating Authority declares moratorium with effect from today for prohibiting all of the following, namely:

15.1 (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 foreclosure, 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 the possession of the Corporate Debtor.

15.2 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.

15.3 The provisions of sub-section (I) **shall not apply to-**

(a) Such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

15.4 The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

16. This Adjudicating Authority hereby appoints, as proposed by the CD/Applicant, Mr. Akhil Ahuja having IP Registration no. IBBI/IPA-001/IP-P02072/2020-2021/13213 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 has to submit Assignment Declaration before the Registry within 2 days from today.

17. The IRP is hereby advised to adhere to the time limit as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP") 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, honesty 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 obligations imposed by Section 20 of the Code, Rules and Regulations.

18. One of the prime objectives of the Insolvency and Bankruptcy Code, 2016 is to quickly find out a viable Insolvency Resolution Plan for the Corporate Debtor and in order to have a Resolution Plan Viable, feasible and implementation successful, in the era of Minimum Cost of funds-based Lending Rate ("MCLR")/Repo Linked Interest rate/Interest rate falling regime and competitive market condition, the Committee of Creditors (COC) may explore, while finalizing the Resolution Plan for the Corporate Debtor a MSME Unit, the possibility of loading maximum interest at the Respondent Bank's One Year MCLR or One Year MCLR+ 1% without any penal/overdue interest.

19. The Registry is hereby directed to communicate the authenticated copy of this order to the Financial Creditor, Corporate Debtor Company, the IRP and also to the Registrar of Companies, Guwahati immediately through speed post/registered post and e-mail, if available.

20. The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order.

21. Thus, the present IB Petition filed under Section 10 of the IBC stands admitted today i.e. 01.04.2021 with the above observations and directions.

Sd/-

(**Prasanta Kumar Mohanty)**
Member (Technical)
& Adjudicating Authority

Sd/-

(Rohit Kapoor)
Member (Judicial)
& Adjudicating Authority

/TD/RM/D-01.04.2022/