

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

IA 21 of 2020 in TP 82 of 2019 CP(IB) 140 of 2018

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 29.05.2020**

Name of the Company: Krishidhan Seeds Pvt Ltd
V/s
United Bank of India

Section: IA for Directions

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.

2.

ORDER

The case is taken up through video conferencing.

The case is fixed for pronouncement of order today.

The order in detail is recorded vide separate sheet.



**(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)**



**(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)**

Dated this the 29th of May, 2020

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
INDORE BENCH AT AHMEDABAD**

**IA No. 20 of 2020
IN
CP(IB) No. 500/7/NCLT/AHM/2018**

In the matter of :

Krishidhan Seeds Pvt. Ltd.,
302, Royal House, 11/3 Usha Ganj,
Indore-452001

... Applicant

Versus

State Bank of India
Central Office at :
State Bank Bhavan,
Madame Cama Road,
Nariman Point, Mumbai

.....Respondent

**IA No. 21 of 2020
IN
CP(IB) No. 140/7/NCLT/AHM/2019**

In the matter of :

Krishidhan Seeds Pvt. Ltd.,
302, Royal House, 11/3 Usha Ganj,
Indore-452001

... Applicant

Versus

United Bank of India
Head office at:
11, Hemantu Basu Sarani,
Kolkata-700 001 & its stressed
Assets Management Branch at
Mezzaine Floor, 25, Sir P.M. Road,
Fort, Mumbai-400 001.

.....Respondent

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

Appearance :

Applicant : Learned Counsel Mr. Kunal P. Vaishnav along
with Learned Senior Counsel Mr. S. N. Soparkar

Respondent: Learned Counsel Mr. Anip Gandhi

Order delivered on 29th May, 2020

COMMON ORDER

[Per : Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL]

1. The present Interlocutory Applications are filed in respect of pending IB Petition bearing CP(IB) No. 500/7/NCLT/AHM/2018 filed by the Petitioner/Financial Creditor i.e. State Bank of India against the Respondent/Corporate Debtor i.e. Krishidhan Seed Pvt. Ltd. Similarly, the same Applicant has further preferred an application i.e. IA No. 21/NCLT/AHM/2020 in CP(IB) No. 140/7/NCLT/AHM/2019 in the matter of United Bank of India v/s. Krishidhan Seed Pvt. Ltd. Both IB petitions are pending for adjudication before this Court.
2. Since the issue involved in both the IA's are common and the same prayer/reliefs are being sought for by the present Applicant seeking for Stay of the proceeding in the above mentioned IB Petition i.e. CP(IB) No.

500/7/NCLT/AHM/2018 & CP(IB) No.
140/7/NCLT/AHM/2019 till an order is passed by this
bench in pending IA No. 274 of 2018 and IA No. 365 of
2019 in (CP No. 17 of 2014). Hence, both these IA's are
dealt with together and being disposed of by the present
common order.

3. For the sake of convenience, the relevant common
averments made by the Applicant in these IA's are
reproduced herein below:

- 1. This Tribunal to pass the Interim Order dated 12/9/2017 in the Company Petition No. 17 of 2014 new numbered as Transfer Petition No. 62 of 2016. As per the order dated 12/9/2017 (which was challenged before Hon'ble NCLAT) and is been uphold by the Hon'ble NCLAT, in para 81(iii) it is hold that the meeting of the Board of Directors of the Company shall be conduced following the provisions of the Companies Act, 2013 and as per the Articles of Association of the Company alongwith 2 agendas mentioned therein.**
- 2. Thereafter the main matter was listed before this Tribunal on various dates. After hearing this Tribunal has passed an order dated 26/6/2018 wherein Independent Directors are appointed on**



the board of the Company to manage the affairs of the Company as to protect the paramount interest of the Company and that the meeting shall be held at the earliest wherein the issue raised in the IA No. 83 of 2018 (for sale of Akola property) be placed before board. The Board meeting took place on 19/7/2018 at the office of the Company at Pune which was chaired by Mr. Jaynarayan Karwa, MD Mr. Sunil Karwa, Director Mr. Mukund Karwa and 3 Independent Director appointed by this Tribunal being Mr. S.C. Kalani, Mr. Manoj Kumar Mandal and Dr. Pramod Agrawal in the presence of Justice (Retd.) Mr. K.K. Lahoti.

- 3. It is submitted that as per the Articles of Association (AoA) of the Company, which are not challenged. modified or superseded by any order are in force and the Board of Directors are governed by the said AoA. It is submitted that during the meeting of Board of Directors the Chairman as per the AoA right to cast 2nd vote if there is a tie in the votes while taking the decision on the Agenda. The applicant therefore filed the IA No. 274 of 2018 in the month of July 2018 before this Tribunal to pass appropriate orders on the issue regarding casting vote. The Copy of the IA No. 274 of 2018 in CP No. 17 of 2014 is attached as Annexure "A" to this***

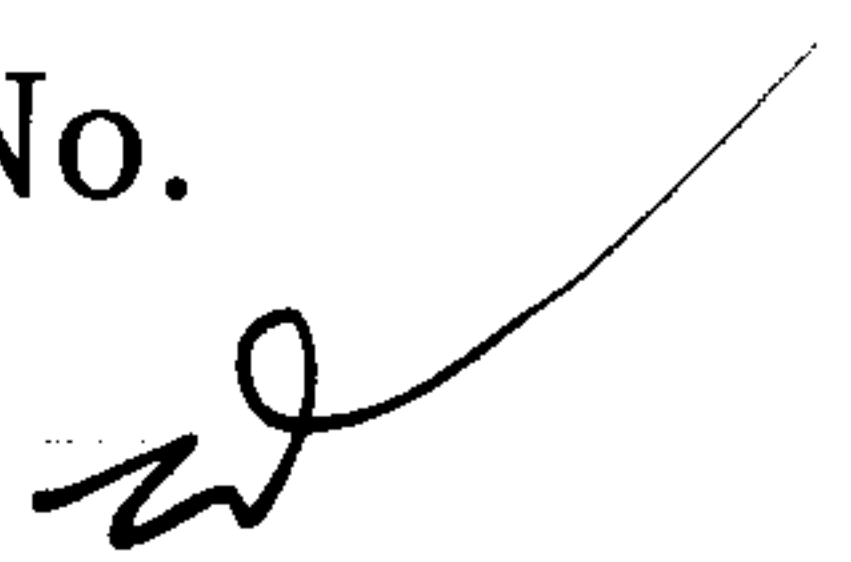
application. Thereafter, the matter was heard in August and the parties were required to give written submission and hearing was fixed in August 2018. In the meantime, the Respondent herein filed an application ("Insolvency Application") before the Learned NCLT, Ahmedabad under Section 7 of the Insolvency & Bankruptcy Code, 2016 ("IBC") for initiating corporate insolvency process against the Applicant. It is time and again pointed out by CLB on 25/4/2014 and by this Tribunal on 12/9/2017 and has observed that to meet with the urgent liabilities of the Company the decision on sale of Akola properties was to be taken immediately.

- 4. Thereafter the matter IA was getting adjourned and since the matter was not heard, the Chairperson of the Applicant approached the Hon'ble NCLAT and it was observed by the Hon'ble NCLAT vide order dated 12/12/2018 (Copy at Annexure "B") to the application in Appeal No. 409 of 2018, that the application being IA No. 274 of 2018 may be disposed of by this Tribunal as early as possible and that parties should not be allowed unnecessary adjournments. After the order dated 12/12/2018 passed by the Hon'ble NCLAT the matter was heard and reserved for passing orders on 8/1/2019 (Copy at Annexure "C") to this application.**

5. Thereafter an order was passed on 7/6/2019 (Copy at Annexure-“D”) to the application that since the order in IA No. 274 of 2018 is reserved and order is expected to be pronounced first the main matter was adjourned to 28/6/2019. Thereafter, IA No. 274 of 2018 was listed on 26/8/2019 for de novo hearing before this Tribunal. Thereafter, on 6/12/2019 the said IA No. 274 of 2018 was heard by this Tribunal and the arguments for the applicant was heard and matter was kept on 19/12/2019 for hearing the Respondent in that IA. However, on 19/12/2019 the matter was adjourned to 24/1/2020.

6. Looking to the facts and the dispute involved and looking to the pending matter before this Tribunal regarding the sale of plots which can be used to meet with the urgent liabilities of the company in the interest of justice the IA No. 274 of 2018 can be expeditiously heard and thereafter the company can also get funds to meet with its liability, if any, against the Respondent Bank and other creditors of the Company.

4. The present IA's are opposed by the None-Applicant/Financial Creditor (the Petitioner/s in main IB Petition) by filing Reply and Additional Affidavit by contending such that both proceedings in CP(IB) No.



500/7/NCLT/AHM/2018 & CP(IB) No. 140/7/NCLT/AHM/2019 were filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, while the pending IA's in question are subject matter of Company Petition (TP No. 62 of 2016 arisen out of CP No. 17 of 2014) which were moved under Section 397-398 of the Companies Act, 1956 and at present are being governed under Section 241-242 of the Companies Act. Hence the nature of both the proceedings are entirely different. Further, "***the time is essence of the Code***" in the IB proceedings, hence it would not be proper for this Adjudicating Authority to Stay the proceeding under Insolvency & Bankruptcy Code, 2016 on such pretext of pendency of some IA in other proceeding Act/Section in the NCLT.

5. In addition to the above IB proceedings are not meant for recovery of debts but for bringing revival /resolution for stressed Company. Therefore, even, if, the present Petition are admitted, this would be in paramount interest of the Corporate Debtor Company, because the management of the Company can have no divine right to

keep continue with the management, if Company has committed default of its debts.

6. Further, the None-Applicant Bank's are not concerned with some inter-se dispute among the Directors of the Company on alleged mis-management/oppression. Hence, such reason the IBC Proceedings which are time bound in nature cannot be stalled otherwise it may lead to multiplicity of the proceedings. Moreover, an inter-se dispute amongst the parties and which are subject matter of the other proceeding (Company Petition) cannot form basis to seek for the Stay in the IB proceedings.
7. We have heard submissions at length of Learned Counsel for both the parties and perused the material available on record.
8. It is evident that such IA's pertaining to Company Petition filed u/s. 397-398 (Companies Act) were heard earlier by the previous bench of this NCLT, but, could not be disposed of, because some of Respondent has preferred (Counter) Application No. 365 of 2019, for impleadment in this IA No. 274 of 2018, which is yet to be heard by

this NCLT. The issue arisen therein for consideration of this Court as to whether IA No. 365 of 2019 filed by Mr. Mukund Karwa is pre-requisite to disposed of the IA No. 274 of 2018 thus, the case was adjourned for hearing on 05/03/2020 and further on 27/03/2020 and thereafter, it could not be called for hearing due to continuing situation of lockdown.

9. Therefore, by taking into consideration such circumstances of the deferment of the IBC proceeding for indefinite period could not be just and proper, because the "**time is essence of the Code**". Further, nature of remedy being sought for in IBC proceedings are in fact **Remedy in Rem and not in personem**.

10. So far as the alleged sale of the Akola property is concerned, wherein certain issues have arises, which are debatable as pointed out by Counsel for both the parties while hearing concerned IA No. 274 of 2018 in CP 17 of 2014. In this matter, then Company Law Board has appointed the Administrator- cum- Facilitator to **Hon'ble Shri K.K. Lahoti (Retd. (Acting) Chief Justice of Madhya Pradesh High Court**, who regularly submitted

his report to this bench by raising some legal quarry to be considered and answered by the NCLT. Which is such that when the Board of Directors are divided equally then, whether the Administrator can cast its 'Decisive Vote' or otherwise. Thus, the Learned Administrator has referred the issue to this bench for further consideration. He further opined that sale of the Akola Property without having NOC from the Secured Creditor/ Banks would not be appropriate. Although the property might not have been mortgage with or security is with the Banks.

11. It is also pointed out that Lenders/Bank in its JLF meeting has opposed the proposed sale of Akola property, which is also a debatable issue to be considered by the NCLT. In addition to the above such IA has been opposed by filing other IA's seeking counter prayer/relief. Therefore, these issues need to be considered elaborately and to be dealt with in accordance with the law, thereafter, this bench of NCLT can form appropriate opinion on the issue those are subject matter of IA No. 274 of 2018 and IA No. 365 of 2019. As this may take considerable time therefore, it would not proper to keep pending the present IB Petition/s nor is warranted in the



eyes of law. Therefore, the present IA's cannot be entertained.

12. It is also matter of record in the aforesaid Company Petition that there is some Arbitral Appeal/proceeding is pending amongst the parties before the Competent Civil Court of law. Pursuant to this bench has passed an interim order in IA No. 274 of 2018 by observing that disposal of this Company Petition could be subject to final outcome of pending Arbitral Award/proceedings. As per record, this NCLT while passing an order in IA No. 4/2016, TP 62-A/2016 to TP 62-E/2016 with TP 62/397-398/NCLT/AHM/2016 (New), CA No. 67/2015, 77/2015, 195/2015, 1/2016, CP No. 17/397-398/CLB/MB/2014(old) dated 12th September, 2017 has held as such in para no. 78 of the order : ***“Arbitral Award cannot be treated as waste paper till it is set aside and in view of the finding that this Tribunal has got jurisdiction to decide on the aspect of oppression and mismanagement and to pass necessary orders if acts of oppression and mismanagement are established and considering the impact of award, this Tribunal is of the view that pending finalisation of the Arbitral Award there is no***

need to give a conclusive finding on the alleged acts of oppression and mismanagement and grant final reliefs”.

13. It is matter of record that being impugned with the above-stated order was taken into the Appeal before the Hon'ble NCLAT and was confirmed, vide its order dated 21st December, 2017 (passed in Company Appeal (AT) No. 361 of 2017) wherein their Lordship have pleased to observed in para 21 of the decision as such : “ **From the judgment/order which has been passed by the NCLT, we find that in the given set of facts of the present matter, the recourse adopted by NCLT cannot be found fault with. After such excessive hearing and detailed order which the learned NCLT painstakingly recorded, it could have recorded whether or not oppression and management was made out but it did not do so. NCLT appears to have tried to avoid complications which may arise by recording findings on this count when arbitral award is yet to become final and as matter is pending in the District Court. Looking to the materials which NCLT had in front of it, which it has also referred to in the impugned order and materials which are part of records, the NCLT has exercised discretion vested in it to safeguard the interest of the Company and when the exercise of the jurisdiction appears to be judicious and not casual or unfounded, we do not think it appropriate on our**

part to interfere with the impugned order. We find the observation and reasons recorded by the NCLT to proceed to pass orders which are in the nature of interim orders till arbitral award reached finality to be justified in the facts and circumstances as appearing from the record. There is no substance in this appeal.

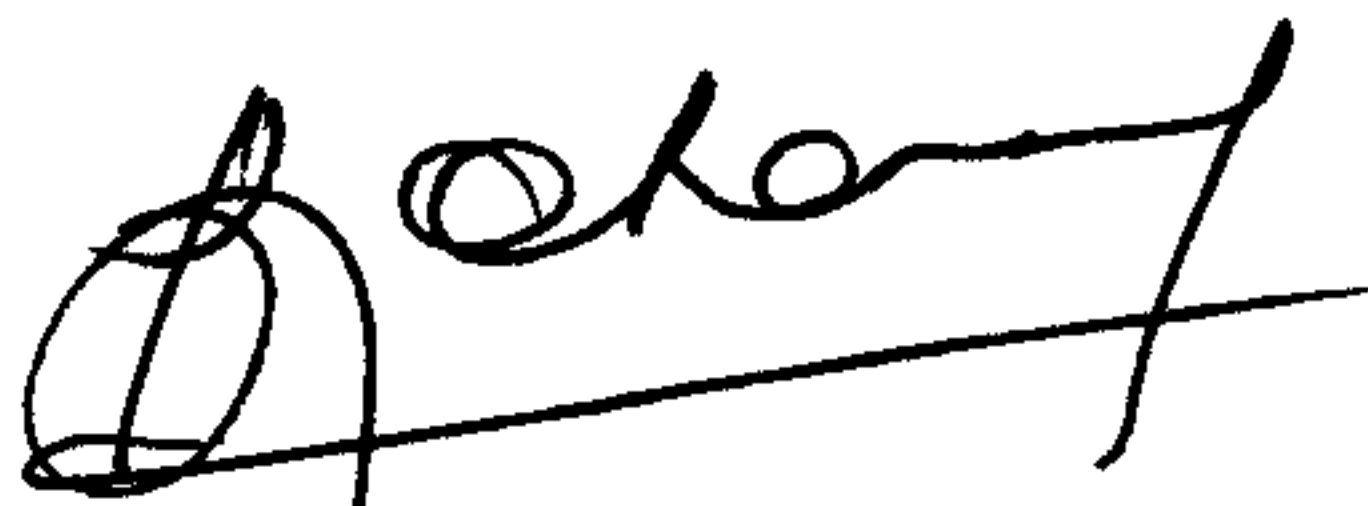
The appeal is dismissed with costs quantified at Rs. 1 lac to be paid jointly and severally by the three appellants to the Respondents 1 to 7.”

14. Further, it is also matter of record that Krishidhan Seeds Pvt. Ltd. itself preferred IB Petition against its own subsidiary i.e. Krishidhan Vegetables Pvt. Ltd., wherein TP 114 of 2019 in CP(IB) No. No. 405 of 2018 is being disposed of as per its merits under the discipline of IBC Code by this bench by its order dated 29.05.2020. Hence, there arise no occasion for this Adjudicating Authority to take different view for postponing the hearing in the present IB Petition/s, which has been filed against the Krishidhan Seeds Pvt. Ltd. by the Bankers i.e. State Bank of India in CP(IB) 500 of 2018 and United Bank of India in CP(IB) 140 of 2019 are the subject matter of the present IA's No. 20 & 21 of 2020, this count the present IA's fails liable to be rejected.

15. With the aforesaid observation, **IA 20 of 20 in (IB) 500 of 2018 & IA 21 of 2020 in CP(IB) 140 of 2019 are rejected being not maintainable. No order as to costs.**

16. **The main IB Petitions i.e. CP(IB) 500 of 2018 and CP(IB) 140 of 2019 are fixed for the hearing under the discipline of IBC and as per its procedure.**

List the main matters for hearing on 26.6.2020.



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



**(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)**

Dated this the 29th day of May, 2020.

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