



**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**IA (IBC) No. 85/GB/2022  
in IA (IBC) No. 2/GB/2022  
in C.P. (IB) No. 10/GB/2021**

**Coram:**

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

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.02.2023**

In the matter of:

Vishal Ghisulal Jain, RP of the Corporate Debtor

..... Applicant

V/s

Ananta Charan Nayak and 5 others

..... Respondents

Section: Under Rule 11 and 135 of NCLT Rules, 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	G.A PURUSHOTTAM	Advocate	RP	Present in Video Conference

**ORDER**

The Parties are 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/-**

**Sd/-**

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

**(Deep Chandra Joshi)  
Member (Judicial)  
& Adjudicating Authority**



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Vishal Ghisulal Jain, RP of the Corporate Debtor

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..... Respondents

**Memo of Parties**

**IN THE MATTER OF**

**Vishal Ghisulal Jain**

Resolution Professional of the Corporate Debtor  
Having address at 1003,  
Satra Plaza, Sector-19D  
Vashi, Navi Mumbai-400703

**..... Applicant**

**IN THE MATTER OF**

**1. Ananta Charan Nayak**

Promoter and Member of the Suspended  
Board of Director of the Corporate Director  
DIN: 01877378 having address at 2<sup>nd</sup> Kamakhya  
Commercial, C K Road, Opp: Hari Sabha, Panbazar  
Guwahati-781001 and Swarupananda Road,  
Lumding District, Nagoan, Assam- 782447.

**2. Umesh Senapati**

Member of the Suspended  
Board of Director of the Corporate Director  
DIN: 01877397 having address at 2<sup>nd</sup> Kamakhya  
Commercial, C K Road, Opp: Hari Sabha, Panbazar  
Guwahati-781001 and Swarupananda Road,



Lumding District, Nagoan, Assam- 782447.

**3. Biswajit Nayak**

Member of the Suspended  
Board of Director of the Corporate Director  
DIN: 01877422 having address at 2<sup>nd</sup> Kamakhya  
Commercial, C K Road, Opp: Hari Sabha, Panbazar  
Guwahati-781001 and Swarupananda Road,  
Lumding District, Nagoan, Assam- 782447.

**4. Renu Devi Nayak**

Member of the Suspended  
Board of Director of the Corporate Director  
DIN: 06556045 having address at 2<sup>nd</sup> Kamakhya  
Commercial, C K Road, Opp: Hari Sabha, Panbazar  
Guwahati-781001 and Swarupananda Road,  
Lumding District, Nagoan, Assam- 782447.

**5. Ms. Suhasini Nayak**

Manager (Finance) of the Corporate Director  
Having address at 2<sup>nd</sup> Kamakhya  
Commercial, C K Road, Opp: Hari Sabha, Panbazar  
Guwahati-781001.

**6. M/S Kumar Roybarman Prasanta & amp; Associate**

Statutory Auditor of the Corporate Debtor  
Membership No. 013905  
Having address at 140A/4, Netaji Subhash Chandra  
Bose Road, Regent Estate, Kolkata-700092

**..... Respondents**

**Order Pronounced On: 10.02.2023**

**ORDER**

**[Per: Shri Prasanta Kumar Mohanty, Member (T)]**

1. This Application has been filed under Rule 135 of the National Company Law Tribunal, 2016, and Orders XVI and XVII of the Code of Civil Procedure, 1908 for issuance of Bailable warrant against Respondent No. 1 to 6 Members of suspended Board of Directors of the Corporate Debtor and Statutory Auditor in furtherance to order dated 14<sup>th</sup> October, 2022, seeking the following reliefs:

- a. To issue bailable warrants against Respondent No. 1 to 6;



- b. Impose a fine and/or imprisonment may be deemed fit by this Hon'ble Tribunal as provided under the Section 70 of the Code on Respondent No. 1 to 5;
  - c. Pass such other order/directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case.
2. The Petitioner submits that:
- 2.1. A company petition under Section 7 of the Code was filed by State Bank of India against the Corporate Debtor. The aforesaid Petition i.e. CP (IB) No. 10/GB/2021 was admitted by the Hon'ble Tribunal on 26.08.2021 and the CIRP was initiated against the Corporate Debtor.
  - 2.2. The CD is engaged in the business of providing construction services and offers design-build, engineering, and infrastructure construction of railways, roadways and oil fields.
  - 2.3. He has been consistently facing resistance and non-cooperation from the Erstwhile Management, Directors and Statutory Auditor of the Corporate Debtor who have not been providing necessary assistance, co-operation, information and documents to the Applicant which is more particularly described hereinafter. The Directors have also impeded the functioning of the Applicant by not providing him assistance in taking control of the assets of the CD and in fact, have been intentionally creating hurdles and preventing the Applicant from taking control of the assets of the CD, as is his duty under the provision of the Code.
  - 2.4. After receiving the admission order dated 26.08.2021 on 27.08.2021, the Applicant sent Email dated 28.08.2021 to Respondent no. 1 and emails dated 04.09.2021 to Respondent no. 2 to 4 regarding the initiating of the CIRP against the Corporate Debtor vide order dated 26.08.2021 passed by the Hon'ble tribunal and his appointment as IRP of the Corporate Debtor.
  - 2.5. The Applicant informed Respondent no. 2-4 vide email dated 04.09.2021 that he along with his team would be visiting the



registered office of the Corporate Debtor to take over control over the affairs of the Corporate Debtor and for undertaking other relevant actions as contemplated under the provisions of the Code. It was also informed to Respondent No.2 - 4 that the Applicant would be visiting other locations of the Corporate Debtor as necessary.

- 2.6. The Applicant sent several emails to Respondent No. 1 and 5 reminding them that he had not received the documents mentioned in the Application filed by the Applicant under Section 19(2) of Insolvency and Bankruptcy Code, 2016 in National Company Law Tribunal. The said Interlocutory Application under Section 19(2) was filed against the Respondent for non-cooperation i.e. IA 02 of 2022. The orders passed in the Interlocutory Application 02 of 2022 is produced as under:

Sr. No	Order dated	Direction passed by this Hon'ble Tribunal	Remarks
1	06.01.2022	Hon'ble Tribunal directed the Applicant to intimate the next date of hearing to the Respondents by enclosing the order	The Applicant has complied with the order
2	27.01.2022	The Applicant sought the permission for substitute service i.e. Paper publication which was granted by this Hon'ble Tribunal	The Applicant has complied with the order and also filed the Affidavit of Service
3	10.03.2022	Hon'ble Tribunal directed the Applicant and the respondent to sit together within 7 days from the date of order.	The Applicant has complied with the order but there was no co-operation from the Respondent. It is further submitted that the Applicant filed an Affidavit.
4	24.03.2022	The Hon'ble Tribunal	The Applicant



		gave 3 days to Respondent to Comply with the order dated 10.03.2022 and for the Applicant to provide the Address of the Local Police Station situated near Corporate Debtor offices for further steps.	has complied with the order and there was no Co-operation form the Respondent
5	31.03.2022	Hon'ble Tribunal directed the Resolution Professional to file the report	The Applicant has complied with the order.
6	08.04.2022	Hon'ble Tribunal was informed that the respondent are not cooperating with to which the Council for the Respondent submitted that there will be full cooperation form the Respondent. The RP was directed to take necessary steps so that the CIRP is completed within stipulated time.	The Applicant has complied with the order and there is still no cooperation from the Respondent
7	12.05.2022	Hon'ble Tribunal directed the RP to file a status report relating to the contracts cancelled, CIRP process, resolution Plan.	The Applicant has complied with the direction. It is further submitted that the respondents have still not complied with order dated 12.05.2022.
8	19.05.2022	The Hon'ble Tribunal directed the respondents to appear in person and Applicant to send a copy of the order to Respondents and resolution professional to file and affidavit relating to	The Applicant has complied with the order however there was no Cooperation from the Respondents.



		development of the CIRP.	
9	10.06.2022	The Tribunal directed Applicant Respondent No. 1 to hand over all the papers to applicant. The Applicant was directed to file an affidavit detailing the development of the CIRP	The Applicant has complied with the order and there was no Cooperation from the respondents.
10	17.06.2022	Hon'ble Tribunal directed the Respondents to hand over all the papers and property to the Applicant further COC and the Applicant was asked to Appear in Person.	The Applicant has complied with the order
11	21.07.2022	Hon'ble Tribunal directed the Applicant to intimate the next date of hearing to the Respondents as no one appeared for the Respondent.	The Applicant has complied with the order
12	29.07.2022	The Applicant prayed that the substitution service be allowed and the notice of hearing be published in the newspaper as no one has appeared from the Respondents side which was granted by this Hon'ble Tribunal	The Applicant has complied with the order
13	25.08.2022	The Affidavit of Service for paper publication has been filed, none appeared for the Respondents.	The Applicant has complied with the order
14	16.09.2022	None appeared for the Respondents	
15	22.09.2022	None appeared for the respondents	
16	14.10.2022	Hon'ble Tribunal was informed that the respondents have not	<b>The Applicant complied by duly making</b>



		appeared in past 4 hearing and applicant have also made the newspaper publication. Hon'ble Tribunal directed the Applicant to make and IA for the issuance of the Bailable warrant.	<b>a newspaper publication in English newspaper and in vernacular language newspaper having circulation at</b>
17	11.11.2022	Hon'ble Tribunal again noted the non-appearance of the Respondents.	

- 2.7. The Applicant filed Contempt application against Respondent No. 1 to 6 in IA 52 of 2022 for not complying with the order dated 27.01.2022; 10.03.2022; 24.03.2022; 31.03.2022; 08.04.2022; 12.05.2022; 19.05.2022; 10.06.2022 and 17.06.2022 passed by this Hon'ble Tribunal in Interlocutory Application 02 of 2022.
- 2.8. This Tribunal in its order dated 14.10.2022 in IA 02 of 2022 passed the captioned matter an order stating that the bailable Warrants may be issued against the Respondents.
- 2.9. The respondents have failed to provide the requisite documents and necessary co-operation to the Applicant and due to the unavailability of requisite documents from the Respondents, the Applicant has been hampered in performing his duties for the smooth functioning of CIRP of the CD. Since the CIRP is a time bound process, unavailability of documents and information is causing unnecessary delay in the process.
- 2.10. As per Rule 135 of the NCLT Rules, 2016, the Adjudicating Authority can issue the warrant against the Respondents.

*135. Procedure for examination of witnesses, issue of Commissions- The provisions of the Orders XVI and XXVI of the Code of Civil Procedure, 1908 (5 of 1908), shall mutatis mutandis apply in the matter of summoning and enforcing attendance of any person and examining him on oath and issuing commission for the examination of witnesses or for production of documents.*



- 2.11. The Applicant is duty bound to carry out the process of CIRP until any direction/order is received from any Adjudicating Authority. However, the aforesaid actions of the Respondents are creating hindrance in carrying out the process and also affecting the purpose of the Code by not disclosing the essential details of the Cd, as that would affect the eligible applicant to participate and submit EOI and a Resolution Plan.
- 2.12. The Applicant having given sufficient time to Respondents to co-operate is constrained to approach this Hon'ble Tribunal under Rule 135 of the NCLT Rules, 2016 and orders XVI and XVII of the Code of Civil Procedure, 1908 for issuance of bailable warrants as the Respondents have not been entering appearance before this Hon'ble Tribunal and are trying to escape the clutches of law.

#### **ORDER**

3. Heard the Learned Counsel of the Applicant and perused the documents made available. It is seen from the records that every opportunity was given to the Respondents on several occasions to appear and present their case in the matter- IA (IBC) NO. 02 of 2022.

**4. The bench took IA(IBC) No. 02 of 2022 on 06.01.2022, 27.01.2022, 10.03.2022, 24.03.2022, 31.03.2022, 08.04.2022, 12.05.2022, 19.05.2022, 10.06.2022, 17.06.2022, 21.07.2022, 29.07.2022, 25.08.2022, 16.09.2022, 22.09.2022, 14.10.2022, 11.11.2022 and 20.01.2023. However, the Respondents failed to appear since the last 8 proceedings despite publication of notice in newspapers and giving them sufficient opportunities to appear and present their case.**

5. The Applicant in accordance with our order dated 14.10.2022 and 11.11.2022, has filed the present application under Rule 135 of the National Company Law Tribunal, 2016, and Orders XVI and XVII of the Code of Civil Procedure, 1908 for issuance of Bailable warrant against Respondent No. 1,



2, 3 and 6 Members of suspended Board of Directors of the Corporate Debtor and Statutory Auditor.

6. We, the adjudication authority is of the considered view that to secure the presence of the Respondents in the matter, it is necessary to issue bailable warrant against the Respondent No 1, 2, 3 and 6. Hence, bailable warrants against Respondents No. 1, 2, 3 and 6 in the sum of Rs. 5000.00 each are hereby issued for their appearance before this tribunal on 17.03.2023. The Respondent No. 4 and 5 are directed to be present in person in the next date of hearing for their submissions. If they do not appear on the next date of hearing, thereafter bailable warrant may be issued against them. The Applicant is directed to collect the warrants from the registry and it be delivered to the Concerned Police Station, to get the same executed.

7. Hence, IA (IBC) No. 85/GB/2022 in IA (IBC) No. 2/GB/2022 in C.P. (IB) No. 10/GB/2021, is hereby allowed and stands disposed of.

**Sd/-**

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

**Sd/-**

**(Deep Chandra Joshi)**  
**Member (Judicial) &**  
**Adjudicating Authority**