NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

IA No.30 of 2021
IN
C.P. (IB)No.09/GB/2019

Coram:
Hon'ble Shri H. V. Subba Rao, 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 17.09.2021

Name of the Company: JSVM Plywood Industries Ltd.
V/s
Sandeep Khaitan, RP
And
Piyush Periwal

Section of the Companies Act: Under Section 60(5) of IBC, 2016

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. D. CHAKRABORTY	Advocate	Petitioner (JSVM)	Present in Video Conference
2.	MR. ABHISHEK PRASAD	Advocate	RP	

O R D E R
Date of Order: 17.09.2021

The matter is taken up for hearing through Video Conferencing. Heard both the sides.

2. When the matter was taken up for hearing, the Registry has brought to the notice of this Bench that the Hon'ble Supreme Court has passed certain order on 19.08.2021 in this regard., which has been received by the Registry on 13.09.2021. The relevant part of the Order of the Hon'ble Supreme Court is reproduced below:-

"***O R D E R***

In the final paragraph of the order dated 12.08.2021 passed by the National Company Law Tribunal, ("the NCLT" for short) Guwahati, it was observed as under:

"The Petitioner is also hereby directed not to utilise the amount of Rs.32.50 lakhs till further instructions as the IAs filed earlier by the Respondent therein in this regard are being heard by this Hon'ble Bench."

The matter was directed to be listed on 17.08.2021.

Mr. Anand Varma, learned counsel appearing in support of application submits that the amount of Rs.32.5 lacs now stands credited to the bank account of the Resolution Professional with ICICI Bank Ltd. The apprehension is however, expressed about the pendency of the interim applications before the NCLT.

We, therefore, see no reason to keep this Miscellaneous Application pending on the file of this Court. The NCLT is however, directed to dispose of the pending interim applications referred to in the quoted portion of the order dated 12.08.2021.

Let concerned interim applications and pending applications, if any, be disposed of by the NCLT within four weeks from today.

The M.A. is disposed of accordingly."

3. Further, it has also been brought to the notice of this Bench by the Registry that another Order has also been passed by the Hon'ble NCLAT on 07.09.2021 in the matter which has been received by the Registry on 16.09.2021. The said order is also reproduced below:

"J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. *The present appeal has been filed by the 'Appellant' – 'PLBB Products Pvt. Ltd' (PLBB) under Section 61 of the 'Insolvency and Bankruptcy Code, 2016' (in short 'Code') against the order dated 10.02.2021 passed by the 'Adjudicating Authority' (National Company Law Tribunal), Guwahati Bench in I.A No. 05 of 2021 in CP(IB)/09/GB/2019.*

2. ***The Adjudicating Authority with a reasoned order has passed the following orders:***
    1. ***"Considering the arguments from both sides and all the points mentioned in point No. 22. 1 to 22. 20 above, especially the following points, we are of the considered view that the Suspended Management of the CD be given a chance to submit Resolution Plan as prayed for.***

a. *The issue of limitation is clear only from the orders of the Hon'ble Supreme Court of India and the order of the Hon'ble NCLAT dated 20.01.2020 and 24.11.2020 respectively. Hence, the pleadings of the Suspended Management to give him a chance for submitting a Resolution Plan, after the final judgment, being as an MSME Unit is reasonable.*
b. *Major part of the CIRP Proceedings and the approval of the present Resolution Plan had taken place during Covid Pandemic Period.*
c. *The CD is an MSME Unit a Corporate Guarantor to the Principal Borrower National Boards Ltd. (NBL). The CD is an Enterprise established on 11.12.1973 functioning fully and the provisions of Section 240 – A of IBC is applicable to the CD, which is reproduced below:*

> *"(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".*

d. *Original amount of Loan given to the Principal Borrower was for Rs.3.07 Crores only.*
e. *1.05.2000 – The Account became NPA*
f. *3.12.2001 – Corporate Guarantee was invoked for Rs.5,42,94,868.00 as on 31.10.2001.*
g. *30.04.2005 - OTS worked out way back in 2005 for Rs.215.89 lacs, but RS. 92.24 lacs was paid and the balance amount was not paid as per OTS arrangement.*
h. *The claim has been filed by the FC for Rs.133,54,94,330.00 as on 1.12.2018 in their application filed under Section 7 of IBC against the Corporate Guarantor for the loan disbursed amount of Rs. 3,07,71,127.00 by the IDBI to the Principal Borrower NBL.*
i. *The CD here is in operation and the claim of Rs.133,54,94,330.00 against the Corporate Guarantor for the loan of Rs.3.07 crores might have pushed the MSME Unit to a point of NO RETURN / not to make an attempt to repay such a big amount.*

2. *The prayer made in this IA is accepted to the following extent only-*

(1) *One chance is given to the Suspended Management of the CD, an MSME Unit as prayed for to submit a concrete composite Feasible and Viable Resolution Plan by 01.03.2021. No other one is allowed to submit any Plan.*

(2) *The Resolution Professional will place the Resolution Plan immediately, if submitted in time, before the COC for their examination of the proposal in line with the Judgment of the Hon'ble Supreme Court of India on 15.11.2019 in the case of COC of Essar Steel India Ltd. Vs Satish Kumar Gupta & others.*

(3) *The information relating to the CD etc. made available to the present Resolution Applicant shall be made available to the Suspended Management of the CD for enabling them to submit a Resolution Plan.*

(4) *The COC is at liberty to negotiate with the existing Resolution Applicant, the Suspended Management and accept the one which is commercially viable, technically feasible based upon the ground realities by a majority with a view to achieving maximisation of value of assets, promotion of entrepreneurship, availability of credit and balancing the interest of all the stakeholders.*

(5) *The COC is to take decision by 05.03.2021 and the Resolution Professional is to submit the report / plan, if any, before the Registry by 08.03.2021.*

23. Hence, this IA is disposed of with the above observations and directions."

The Adjudicating Authority has also raised the issue of how the Financial Creditor' claimed 43 times of the amount of loan disbursed 21 years back when the Financial Creditor is under RBI Regulations and capping of interest rate is in operation for several years for MSME unit. The Adjudicating Authority has also raised the issue that guarantee was invoked by the original lenders – IBBI for an amount of Rs.5,42,94,868 as on 31.10.2001. Now the Financial Creditor- SASF is claiming Rs.133,54,94,330 i.e. 24 times of the claimed amount in the 18 years. The Adjudicating Authority has also raised the issue of OTS.

3. The Appellant – PLBB is the 'Successful Resolution Applicant' whose Resolution Plan has been accepted by 91.84% of the members of the 'Committee of Creditors' (CoC) but the approval for the same is pending before the Adjudicating Authority. The 'Corporate Insolvency Resolution Process' (CIRP) commenced on 08.11.2019. The Appellant has also submitted that Respondent No. 1 (MSME-CD) has not submitted EoI of 09.11.2019, thereafter, based on CoC decision 'Form

–G' was published on 27.06.2020 where the Respondent No. 1 expressed interest but nit submitted the Resolution Plan. The Appellant is the sole Resolution Applicant whose Resolution Plan has been approved by the CoC after negotiations. The Respondent No. 1 has expressed desire to submit a Resolution Plan at a belated stage. They have also submitted that the Respondent No. 1 is involved in fraudulent and preferential transactions for which IA No. 51/ 2020 is pending before the Adjudicating Authority for disposal and it ought to be disqualified under section 29 A of the Code.

4. *The Respondent No. 1 (Promoter and Erstwhile Director of the Corporate Debtor) having stake in the Corporate Debtor) has challenged the order that the Appellant was not a party in IA No. 05/2021 filed by the Respondent No. 1 herein with the Adjudicating Authority to permit it to file a Resolution Plan as a 'Promoter' of MSME concerned (NPIL- Corporate debtor). The Respondent No. 1 has also submitted that the Appellant has no locus standi to file this appeal. The Respondent no. 1 has also raised that the RP of the Corporate Debtor has not provided him a copy of the Resolution Plan submitted by the Appellant to the CoC in accordance with Regulation 21 (III) of the IBBI Regulation and thereby violated non-compliance of Hon'ble Apex Court judgment in the case of Vijay Kumar Jain Vs. Standard Chartered Bank & Ors. In Civil Appeal No. 8430 of 2018 vide para 13 as enumerated below:*

> *"It is also important to note that every participant is entitled to a notice of every meeting of the committee of creditors. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting vide Regulation 21(3)(iii). Obviously, resolution plans are "matters to be discussed" at such meetings, and the erstwhile Board of Directors are "participants" who will discuss these issues. The expression "documents" is a wide expression which would certainly include resolution plans."*

He has raised the issue of misleading CoC and Adjudicating Authority on the RP and he has taken post facto approval of the CoC and is facilitating the approval of the Appellant's Resolution Plan. Constitution of CoC has

also not in order and even information memorandum has also factored not all the claims. The RP is engaged in private communication with the member of CoC. Certain matters are also being examined by IBBI in respect of certain objection raised by an operational creditor of CD and potential Resolution Applicant viz., 'M/s. ZSVM Plywood Industry Limited'. They have also raised the issue that under the provisions of the Code, if the Corporate Debtor is MSME, it is not necessary for the Promoter to compete with other Resolution Applicant to regain the control of the Corporate Debtor. The Resolution Professional has also appointed a known firm which has done several professional assignments with him before appointing them as the 'Forensic Auditors' of the CD which reflects the biasness, conflict of interest, coercion or undue influence on the other side and allegations against the promoter. He has also alleged that the RP has allowed SPV and SPC to submit EoI which was not published in the public domain and only facilitated the Appellant. He has also challenged the constitution of the CoC which is against the mandatory provision provided in ***Regulation 21 (III) of the IBBI Regulations and it is liable to be rejected. It has also been stated by the CD that the appellant was incorporated only on 20.07.2020.*** *In order to enable the appellant, the Resolution Professional has allowed SPV and SPC to participate in the process of submitting EOI as a prospective Resolution Applicant to assist the Appellant. He has also stated that the Code has been amended for the promoters of MSME to file Resolution Plan. The intention of the legislature is that the promoters of MSME should be encouraged to pay back the amount with the satisfaction of CoC to regain the control of the CD and entrepreneurship by filing Resolution Plan which is viable, feasible and fulfils the relevant criteria of laid by the Board and Code.*

5. *The Respondent No. 3 – Resolution Professional (RP) has submitted that IA No. 51/2020 in CP(IB) No. 09/GB/2019 is pending for disposal since November, 2020 before the Adjudicating Authority. The RP is awaiting appropriate direction in accordance with the provisions of the Code related to Section 43, 44, 45, 48, 49 & 66 of the Code which has resultant from some transaction audit. However, the IA was heard on 19.01.2021 apart from other dates and the reply has been submitted by the Corporate Debtor (CD) and RP has been asked to submit rejoinder. Hearing has taken place on subsequent dates via video conference, awaiting disposal.*

6. *We have gone through the submission made by the parties and the relevant records produced before this Appellate Tribunal and after carefully considering all the issues, we are having following observations:*

a. *This is the case of the CD which is an MSME Unit, a corporate guarantor to the principal borrower – National Board Limited. The CD was established on 11.12.1973.*

b. *Original amount of loan given to the principal borrower was Rs.3.07 crore, a claim has been filed by the Financial Creditor for Rs.133 Crore plus.*

c. *The CD has paid Rs.92.24 lacs on OTS worked out way back in 2005 for Rs.2.16 crore approximately.*

d. *Section 29-A R/w Section 240-A of the Code refers to the Resolution Applicant in respect of CIRP of any MSME and these two sections provide for certain reliefs to the promoter of the MSME as a prospective Resolution Applicant and is entitled to have opportunity to place Resolution Plan.*

e. *The Appellant has also cited various judgments as given below but the applicability of the same is under dark as the Adjudicating Authority has only permitted for giving an opportunity to MSME to submit a concrete, composite, feasible and viable resolution plan and no other one is allowed to submit any plan other than the Resolution plan already submitted by the Resolution Applicant;*

- *Kalinga Allied Industries India Pvt. Ltd. Vs. Hindustan Coils Ltd (Company Appeal (AT) (Ins) No. 518 of 2020- para 15*
- *Amit Gupta V. Yogesh Gupta in Company Appeal (AT) (Ins) No. 903 of 2019*
- *Dwarkadhish Sakhar Karkhana Ltd. Vs. Pankaj Joshi in Company Appeal (AT) (Ins) No. 233 of 2021*
- *Interups Inc. Vs. Kuldeep Kumar Bassi & Ors in Company Appeal (AT) (Ins) No. 1079 of 2020*

- *M/s. Surendra Trading Company Vs. M/s. Juggilal Kamlapat Jute Mills Company Ltd and Ors. (2017) 16 SCc 143*
- *Essar Steel India Ltd. Committee of Creditors Vs. Satish Kumar Gupta (2020) 8 SCc 531- para 127*
- *Manish Kumar Vs. Union of India and Anr. 2021 SCC Online Sc 30- para 69, 177 and 215*

f. Keeping in mind the intention of the legislature, there is no harm in giving an opportunity to the MSME in accordance with the provisions of the Code for keeping the promotion of entrepreneurship alive. The Adjudicating Authority has only provided an opportunity to the MSME and has given the liberty to the CoC to negotiate with existing Resolution Applicant and MSME unit also and accept the one which is commercially viable and technically feasible.

Considering the above observations, we do not find any infirmity in the order and hence, we are dismissing the appeal. However, the Adjudicating Authority is requested to consider IA No. 51 of 2020 in CP (IB) No. 09/GB/2019 before finally approving any Resolution Plan.

With these observations, we are disposing of the appeals.

Pending IAs, if any stands disposed of. Interim Orders, if any, passed by this Appellate Tribunal stands vacated. No orders as to costs."

4. The Hon'ble Supreme Court has mandated for disposal of the related Interlocutory Applications within Four weeks from 19.08.2021. However, the order of the Hon'ble Supreme Court has been received on 13.09.2021 and the matter has been taken up today by this Bench. The Hon'ble NCLAT has also requested this Bench to consider IA No. 51 of 2020 in CP (IB) No. 09/GB/2019 before finally approving any Resolution Plan.

5. However, the following related IAs relating to CP (IB) No. 09/GB/2019 have been heard and orders reserved:-

SR. No.	IA Number [under Section]	Filed by	Relating to
01.	37 of 2020 Under Section 19 read with Section 23 of IBC, 2016 read with Rule 11 & 15 of CLT Rules, 2016	Stressed Assets Stabilisation Fund (SASF) Versus National Plywood Ltd. (NPIL)	CP(IB) No.09/GB/2019
02	32 of 2021 Under Section 154 of IBC, 2016 read with Rule 11 of NCLT Rules, 2016	Sandeep Khaitan, RP Versus Suspended Board of NPIL	CP(IB) No.09/GB/2019
03	IA(IBC) 46 of 2021 Under Section 60(5) of IBC, 2016	Stressed Assets Stabilisation Fund (SASF) Versus Piyush Periwal and Sandeep Khaitan	CP(IB) No.09/GB/2019
04	27 of 2021 Under Section 65 & 75 read with Section 60(5) of IBC, 2016	Piyush Periwal Versus Stressed Assets Stabilisation Fund (SASF) and others	CP(IB) No.09/GB/2019
05	Cont. Appl. 1 of 2021 Under Section 74 of IBC, 2016	Sandeep Khaitan Versus Piyush Periwal	CP(IB) No.09/GB/2019
06	IA 14 of 2021 Under Section 60(5) of IBC, 2016	Dilip Construction Pvt. Ltd Versus Stressed Assets Stabilisation Fund (SASF) and Sandeep Khaitan, RP	CP(IB) No.09/GB/2019

and the following IAs relating to CP (IB) No. 09/GB/2019 are being heard by this Bench:-

SR. No.	IA Number [under Section]	Filed by	Relating to
01	51 of 2020 Section 25(j), 43, 45, 49 read with Section 44, 48 and 66 of IBC, 2016	Sandeep Khaitan Versus Piyush Periwal & others	CP(IB) No.09/GB/2019
02	30 of 2021 Under Section 60(5) of IBC, 2016	JSVM Plywood Industries Ltd. Versus Sandeep Khaitan, RP	CP(IB) No.09/GB/2019

		And Piyush Periwal	
03	31 of 2021 Under Section 30(6) read with 31(1) and 60(5) of IBC, 2016	Sandeep Khaitan, RP Versus Committee of Creditors	CP(IB) No.09/GB/2019
04	34 of 2021 Under Section 60(5) of IBC, 2016	JSVM Plywood Industries Versus SASF and others	CP(IB) No.09/GB/2019
05	35 of 2021 Under Section 60(5) of IBC, 2016	Piyush Periwal Versus Stressed Assets Stabilisation Fund (SASF) and others	CP(IB) No.09/GB/2019
06	IA (IBC) 43 of 2021 *Under Section* 60(5) of IBC, 2016	Piyush Periwal Versus Stressed Assets Stabilisation Fund (SASF) and others	CP(IB) No.09/GB/2019
07	IA (IBC) 47 of 2021 Under Section 60(5) of IBC, 2016	Piyush Periwal Versus Stressed Assets Stabilisation Fund (SASF)	CP(IB) No.09/GB/2019

6. The reliefs sought in IA No.30 of 2020 here filed by the Applicant are reproduced below:-

"7.1 That an order be passed directing the respondent no.1 to ratify all supply of goods to the CD during CIRP period and also to ratify the total entitlement against such supply amounting to Rs.72.12 lakhs inclusive of the amount of Rs.32.50 lakhs received by the Petitioner on 18.04.2020 against the supply of goods to CD to your petitioner.

7.2 That an order be passed directing the respondent no.1 to pay the balance outstanding amount of Rs.39.21 lakhs over and above the payment of Rs.32.50 lakhs already received by the Petitioner on 18.04.2020.

7.3 That an order be passed awarding interest to the Petitioner @18% p.a. from the date of raising of the bills till final payment of the outstanding balance amount of Rs.39.62lakhs for supply of goods during the CIRP period.

7.4 That an order be passed directing the respondent no.1 to manage the assets of the Corporate Debtor strictly in terms of the provisions of IBC bearing in mind the provision of Section 14(2A) and the object of IBC.

7.5 pass such other and further reliefs that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

8. Interim Relief:-

8.1 An order be made directing the respondent no.1 to ratify the payments made to the petitioner against the supply of goods and funds advanced to the CD inclusive of the payment of Rs.32.50 lakhs received by the Petitioner on 18.04.2020.

8.2 That an order be passed directing the respondent no.1 to withdraw the allegations raised in the FIR No.0112 of 2020 dated 28.04.2020 under Section 406/419/420/34 of IPC read with section 66 C and 66D of I. T. Act, 2000 and to take necessary steps before the appropriate authority in accordance to law for absolving the parties from any criminal liability.

8.3 Pass such other and further reliefs that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.

7. Heard the matter at length from both the sides. Both the parties have sought 7 days' time for filing written submission. Seven days' time is given to them to file written submission in 5/6 pages with a copy to the other side.

8. **Matter is reserved for orders.**

Sd/-
(**Prasanta Kumar Mohanty)**
Member (Technical)
& Adjudicating Authority

Sd/-
(H. V. Subba Rao)
Member (Judicial)
& Adjudicating Authority

/D-17.09.2021/