

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P (IB) No. 20/GB/2022

Under Section 10 of IBC, 2016

In the matter of:

Brahmaputra TMT Bars Pvt. Ltd. Corporate Debtor
&	
State Bank of India (SBI) & Two others Financial Creditor

Coram:

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

Order delivered on 28.10.2022

ORDER

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

1. This application has been filed under Section 10 of the Insolvency & Bankruptcy Code, 2016 by the Corporate Debtor/Petitioner, namely M/s. Brahmaputra TMT Bars Private Limited, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against itself.

2. The Petitioner/Corporate Debtor -M/s. Brahmaputra TMT Bars Private Limited (**CIN: U27310AS2005PTC007713AS2012PLC012193**) is an unlisted Public Limited Company. The Company was incorporated as a Private Limited Company at Kolkata in West Bengal on 25.04.2005 and presently, the following are the Directors:

- i. Santosh Kumar Jaiswal
- ii. Padma Nath Deka

The Registered office is situated at Room No. 19, 2nd Floor, Vrindavan Market, S. J. Road, Athgaon, Guwahati, Kamrup (M) Assam- 781001. The Nominal Share

Capital of the Corporate Debtor (CD) Company is Rs. 4,00,00,000.00 and the Authorized Share Capital is Rs. 3,82,87,500.00.

3. The Petitioner submits that:

- 3.1 The Corporate Debtor is in the business of manufacturing and supply of all varieties of steel and special steel. The company majorly services the North Eastern States of India and is also into the business of setting up of mini Steel Plants, steel furnaces, continuous casting and rolling mill plant for producing various kinds of steel ingots, deformed bas, TMT bars, etc. The CD Company majorly serves the North Eastern states of India, as this region has the highest consumption of Steel Products.
- 3.2 The Petitioner has incurred substantial loss of Rs. 1,87,32,656.00, Rs. 4,49,570.00 and Rs. 6,04,04,193.00 during the FY's 2019-20 and 2020-21 and 2021-22 (up to 31.03.2022) respectively as per the audited balance sheets. The cumulative losses mounted to Rs. 1,97,86,267.93 as on 31.03.2022 eroding the entire paid up share capital and reserves.
- 3.3 The Petitioner availed various credit facilities from SBI from time to time and the total dues payable to SBI as on 31.03.2022 are Rs. 65,76,77,970.00 (Rupees Sixty-Five Crore Seventy-Six Lac Seventy-Seven Thousand Nine Hundred Seventy only) as per the books of accounts maintained by the petitioner. As the Petitioner failed to service interest and/installment from time to time, SBI classified the Petitioner's facilities as non-performing assets (NPA) as on 28.10.2013 and issued 13 (2) notice under SARFAESI Act on 06.02.2014.
- 3.4 The Petitioner also availed credit facilities from North Eastern Development Finance Corporation Ltd. (NEDFi) from time to time and the total dues payable as on 31.03.2022 are Rs. 31,98,86,115.00 (Rupees Thirty-One crore and Ninety-Eight Lacs Eighty-Six Thousand One Hundred Fifteen only) as per the books of accounts maintained by the Petitioner. As the Petitioner failed to service interest and/installment from time to time, NEDFi classified the Petitioner's facilities as non-

performing assets (NPA) as on 01.07.2014 and issued 13 (2) notice under SARFAESI Act on 07.07.2014.


3.5 The Petitioner also availed credit facilities from Assam Gramin Vikash Bank (AGVB) and the total dues payable as on 31.03.2022 are Rs. 11,31,72,460.00, (Rupees Eleven Crore Thirty-One Lacs Seventy-Two Thousand Four Hundred Sixty only) as per the books of accounts maintained by the Petitioner. The Petitioner defaulted in payment of interest and/instalments due to huge financial losses and financial stress being faced by the Petitioner.

3.6 The reasons for acute financial stress of the Corporate Debtor:

A. Key Financials of the CD:

F.Y	Share Capital	Reserves	Turnover	Net Profit/Loss (Rupees in Crores)
2018-19	38.28	-99.08	NIL	-14.14
2019-20		-100.96	NIL	-18.73
2020-21		-105.90	NIL	-49.4
2021-22		-105.90	NIL	-6.04

- i. Buoyed by the Success of the steel business, the Company planned for upgradation of steel plant unit at Amingaon. The Petitioner submitted its application to the State Bank of India (SBI) for Financial Assistance in initially for Rs. 15 Crores which was sanctioned on 07.03.2006. After a lapse of 12 months, SBI Sanctioned additional limit from time to time on various dates vide Sanction/Enhancement letters dated 05.03.2008, 06.11.2009, 24.04.2010, 09.11.2010, 17.12.2011 and 19.07.2013.
- ii. Further, NEDFi, having first charge pari-passu over scheduled immovable properties as well as plant and machinery of the CD, had agreed to finance the said project and sanctioned Rs. 35



Crores to CD which was informed to SBI vide letters dated 22.06.2010. In view of setting up of the Captive Power Plant, project cost was assessed at Rs. 45 Crores, SBI has sanctioned Rs. 20 Crores, NEDFi sanctioned Rs. 15 Crores and for the remaining 10 crores, CD approached AGVB which was sanctioned vide sanction letter dated 29.10.2012.

- iii. However, during the year, 2013, CD defaulted in repayment of its dues to the financial creditors, the company (CD) suffered huge financial and operational losses across the group companies and which resulted in the proposed plan for merger of the five Brahmaputra group units into 3 units only, subjected to clearance from various lenders and stakeholders. But the proposal as well as restructuring was not accepted by the FCS which resulted in the complete closure of all operations of the group companies.

B. The stress in the Company is attributable to both internal and external factors such as

- i.** Interest Loss: Due to operational losses and financial stress which resulted in piling up of dues and resultant building up of huge interest cost without being able to service the debt. This has caused an additional unforeseen burden.
- ii.** Constraint on Profitability faced to lack of adequate need based Working Capital resulting in Company's inability to buy raw materials in time and on better terms and also selling finished products on unaffordable terms for quick realization.
- iii.** Continuous losses since FY 2014-15: The Company started incurring losses since FY 2014-15 onwards due to the intrinsic stress as enumerated in the above mentioned points.
- iv.** Physical possession of factory / running unit: SAMB, being a branch of SBI, took over physical possession of the factory/running unit along with the mortgaged land, i.e. secured

and unsecured properties of the CD by submitting false affidavit before the Ld. District Magistrate on 04.05.2016.

- v. E-Auction Sale of the scheduled mortgaged properties have been conducted by the FCs vide E-auction notice dated 19.02.2020 published in the newspaper dated 22.02.2020 and the said properties were sold out in auction.

3.7 The Corporate Debtor/Corporate Applicant has not incurred any ineligibility as per Section 11 of IBC, 2016.

3.8 The Corporate Debtor incurred heavy losses in the business and the liabilities are far in excess of the assets, the Petitioner seeks resolution of its insolvency through maximization of value of its assets under provisions of IBC, 2016.

4. The details of the amount of debt due and the date from which such debt due as mentioned in Part- III of this application is as follows:

PARTICULARS OF FINANCIAL/OPERATIONAL DEBT (CREDITOR WISE, AS APPLICABLE)		
1.	Names of Financial/Operational Creditors	Financial Creditors: i. State Bank of India (SBI) ii. North Eastern Development Finance Corporation Ltd. (NEDFi) iii. Assam Gramin Vikash Bank (AGVB)
2.	Address of Correspondence of the Financial /Operational Creditors	i. State Bank of India (SBI), Central Office at Madam Cama Road, Mumbai-400021 with its local office at Dispur, Guwahati and branch office at MRD Road, Bamunimaidan, Guwahati-781021 known as Stressed Assets Management Branch (SAMB) ii. North Eastern Development Finance Corporation Ltd. (NEDFi), "NEDFi House", G.S. Road, Dispur, Guwahati-781007 iii. Assam Gramin Vikash Bank (AGVB), G.S. Road, Bhangagarh, Guwahati-781005 and its branch office at Ganeshguri, Guwahati-781005

3.	Total Debt Raised and Amount in Default	<p>Total Financial Debt Raised- 11.145 Crores Total Financial Debt in default - 109.07 crores</p> <p>i. SBI- Total Debt raised: 66.45 crores Amount in default: 65.76 crores</p> <p>ii. NEDFi - Total Debt raised: 35 crores Amount in default: 3 1.98 crores</p> <p>iii. AGVB - Total Debt raised: 10 crores Amount in default: 11.3 1 crores</p> <p>Operational Debt in default Payable to capital good and fixed assets: 79.26 crores Trade payable: 6.26 crores Other current liabilities: 8.37 lacs Statutory dues payable: 7.23 crores</p> <p>Total Debts Due: 111.12 Crores</p>
4.	Date when the Financial/Operational Debt was incurred	<p>SBI- 28.10.2013 NEDFi- 01.07.2014 AGVB- May, 2014</p>
5.	Particulars of Security Held, if any, the Date of its Creation, Its Estimated Value as per the Creditor.	<p style="text-align: center;"><u>Particulars of Security held with SBI</u></p> <p>Schedule - A</p> <p>i. Leasehold right over a plot of land measuring 05 Bighas covered by Dag No.193/366, of Patta No.69 of Village –Sila Mahekhaiti, under Mouza – Sila Sindurighopa in Kamrup District, Assam.</p> <p>ii. Land measuring 05 Bigha 10 Lechas covered by Dag No. 149 of K. P. Patta No.04 of Village – Silamahekhaiti, under Mouza – Sila Sindurighopa at Amingaon, District – Kamrup, Assam.</p> <p>iii. Leasehold Right over a total plot of land measuring 03 Bighas 02 Lechas covered by Dag No.146 of Patta No. Sindurighopa in Kamrup District, Assam.</p> <p>Schedule –B (Pari Passu Charged With Nedfi):</p> <p>1. Primary:</p> <p>i) Pari Passu first Hypothecation of all the movable assets of the company, both present and future.</p> <p>ii) Equitable Mortgage of the land measuring 11520 sq. ft. (04 Katha) covered by dag No.147, Patta No.51 of Village Silamahekhaiti, under Mouza- Sila Sindurighopa, District Kamrup, Assam, owned by Brahmaputa TMT Bars Pvt. Ltd. together with building and civil structure thereon.</p>



		<p>iii) Equitable Mortgage of the land measuring 61776 sq. ft. (04 Bigha-01K-09L) covered by Dag No.144, Patta No.32 of Village Silamahekhaiti, under Mouza – Sila Sindurighopa, District Kamrup, Assam owned by Brahmaputra TMT Bars Pvt. Ltd. together with building and civil structures thereon.</p> <p>iv) Equitable Mortgage of leasehold right on land measuring 14400 sq. ft. (01 Bigha) covered by Dag No. 152, Patta No. 56 of Village Silamahekhaiti, under Mouza – Sila Sindurighopa in Kamrup District owned by Brahmaputra Iron & Steel Co. Pvt. Ltd. along with building and civil structures thereon.</p> <p>v) Equitable Mortgage of leasehold right on land measuring 04 Katha 15 Lechas, covered by Dag No. 153, Patta No. 24 of Village Silamahekhaiti under Mouza – Sila Sindurighopa in Kamrup District, Assam owned by Brahmaputra Iron & Steel Co. Pvt. Ltd. along with building and civil structure thereon.</p> <p>vi) Equitable Mortgage of leasehold right on land measuring 75744 sq. ft. (05 B-00K- 06L) covered by Dag No. 150/87, Patta No. 95 of Village – Sila Mahekhaiti, under Mouza – Sila Sindurighopa in Kamrup District, Assam, owned by Santosh Jaiswal along with building and civil structures thereon.</p> <p>2. Collateral:</p> <p>i) Pari-Passu second charge over the current assets including Book Debts of the Company, both present and future.</p>
		<p style="text-align: center;"><u>Particulars of Security held with NEDFi</u></p> <p>PART I</p> <p>The whole of the movable properties of the Borrower including its movable plant and machinery, machinery spares, tools and accessories, stocks of raw materials, semi-finished and finished goods, consumable stores, other movables excluding book debts, both present and future and whether installed or not and whether now lying loose and whether installed or not and whether now lying loose or in cases or which are now lying or stored in or about or shall hereafter from time to time during the continuance of the security of these presents be brought into or upon or be stored or be in or about all the Borrower’s factories, premises and godowns or wherever else the same may be or be held</p>

by any party to the order or disposition of the Borrower or in the course of transit or on high seas of on order, or delivery, howsoever and whosoever in the possession of the Borrower and either by way of substitution or addition.

PART II

- i. Equitable Mortgage or ownership right of land measuring 14400 sq. ft. (1B-0K-0L) covered by Dag No.153, Patta No.24 under village Silamaekhaiti, Nouza Silasendurii Ghopa owned by Brahmaputra Iron & Steel Co. Pvt. Ltd. with building and civil structures thereon.
- ii. Equitable Mortgage of leasehold right of land measuring 72864 sq. ft. (5B-6L) covered by Dag No.150 Patta No.14 under Village Silamaekhaiti, Mouza Silasenduri Ghopa standing in the name of M/s. Brahmaputra TMT Bars Pvt. Ltd. represented by its Director Shri Padma Nath Deka, belonging to Shri Puwa Ram Boro (represented by Shri Santosh Jaiswal, Irrevocable Power of Attorney Holder) with building and civil structures thereon.
- iii. Equitable Mortgage of ownership right of land measuring 11520 sq. ft (0B-4K-0L) covered by Dag No.147, Patta No.51 under village Silamaekhaiti, Mouza Silasundari Ghopa owned by Brahmaputra TMT Bars Pvt. Ltd. with building and civil structures thereon.
- iv. Equitable Mortgage of the land measuring 61776 sq. ft. (4B-1K-9L) covered by Dag No.144, Patta No.32 under village Silamaekhaiti, Mouza Silasundari Ghopa owned by Brahmaputra TMT Bars Pvt. Ltd. with building and civil structures thereon.
- v. Equitable Mortgage of ownership right of land measuring 14400 sq. ft. (1B-0K-0L) covered by Dag No.152, Patta No.56 under village Silamaekhaiti, Mouza Silasundari Ghopa owned by Brahmaputra Iron and Steel Pvt. Ltd. with building and civil structures thereon.
- vi. A commercial flat measuring 1340 sq. ft. in the 2nd floor of a RCC building (Sikara Complex, Athgaon) standing over a plot of land measuring 3 kathas covered by Dag No.609 of KP Patta No.781 of revenue village Sahar Guwahati Part -1, Mouza Guwahati, Kamrup, Assam together with undivided proportionate share of land and the privilege egress and ingress to and from the floor having common facilities of passage and staircase of the building standing in the name of Shri Santosh Jaiswal and sons (HUF).



		<p>vii. A commercial space measuring 3114 sq. ft. super built up area on the 3rd floor building with undivided proportionate share of land measuring approximately 5 kathas covered by Dag No.926 of KP Patta No.150 of Sahar Ulubari Part II, Mouza Ulubari, Kamrup Metro Bearing Holding No.381 within the Ward No.26 of GMC located at S. R. Bora lane adjacent to G. S. Road, Guwahati.</p> <p style="text-align: center;">Particulars of Security held with ADVB</p> <ol style="list-style-type: none">1. First charge ranking pari-passu with other term lenders (i.e. SBI and NEDFi) of the CPP Project over the plant and machineries, misc. fixed assets, electrical installations, fixtures, etc. that are installed in the GPP project.2. Immovable properties given as primary security:<ol style="list-style-type: none">i. First charge ranking pari-pasu with other term lenders of the CPP project over Equitable Mortgage of industrial land covered by Dag No.147, Patta No.51 admeasuring about 4 kathas owned by Brahmaputra TMT Bars Pvt. Ltd. with building and civil structures standing thereon situated at village Silamahekarti, Mouza Silasenduri Ghopa, North Guwahati, Assam.ii. First charge ranking pari-passu with other term lenders of the CPP project over Equitable Mortgage of industrial land covered by Dag No.144, Patta No.32 admeasuring about 4B-1K-0L owned by Brahmaputra TMT Bars Pvt. Ltd. with building and civil structures standing thereon situated at village Silamahekarti, Mouza Silasenduri Ghopa, North Guwahati, Assam.iii. First charge ranking pari-pasu with other term lenders of the CPP project over Equitable Mortgage of industrial land covered by Dag No.152, Patta No.56 admeasuring 1B-0K-0L owned by Brahmaputra Iron & Steel Co. Pvt. Ltd. and leased out to M/s. Brahmaputra TMT Bars Pvt. Ltd. with building and civil structures standing thereon situated at village Silamahekarti, Mouza Silasenduri Ghopa, North Guwahati, Assam.iv. First charge ranking pari-pasu with other term lenders of the CPP project over Equitable Mortgage of industrial land covered by Dag No. 153, Patta No.24 admeasuring about 1B-0K-0L owned by
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Brahmaputra Iron & Steel Co. Pvt. Ltd. and leased out to M/s. Brahmaputra TMT Bars Pvt. Ltd. with building and civil structures standing thereon situated at village Silamahekarti, Mouza Silasenduri Ghopa, North Guwahati, Assam.

- v. First charge ranking pari-pasu with other term lenders of the CPP project over Equitable Mortgage of industrial land covered by Dag No.150/87, Patta No.95 admeasuring about 5B-1K-6L situated at village Silamahekarti, Mouza Silasenduri Ghopa, North Guwahati in respect of which irreversible General Power of Attorney (POA) (Deed No.1695/270 dated 07.07.2009 registered with Sub registrar, Kamrup, Assam) is held by Santosh Jaiswal along with building and other civil structures standing thereon.

3. Collateral security:

- i. Second charge (ceded by SBI) over the entire current assets of the company M/s. Brahmaputra TMT Bars Pvt. Ltd. (related to billets/ingots manufacturing facility) both present and future.
- ii. Second charge (ceded by SBI) over the entire Plant & Machinery, movable assets, fittings and fixtures, utilities & equipment and other miscellaneous fixed assets of the company M/s. Brahmaputra TMT Bars Pvt. Ltd. (related to billets/ingots manufacturing facility) both present and future.
- iii. Second charge (ceded by SBI) over Equitable Mortgage of the leasehold rights over the factory land admeasuring 5 bighas covered under Dag No.193(O)/366(N) of Patta No.69 owned by Brahmaputra Iron & Steel Co. Pvt. Ltd. and leased out to M/s. Brahmaputra TMT Bars Pvt. Ltd. with building and other civil structures standing thereon (related to billets/ingots, manufacturing facility) situated at village Silamahekarti, Mouza Silasenduri Ghopa, North Guwahati, Assam.

4. Second Charge in favour of AGVB on the following properties:

- i. Current assets of the Company.
- ii. Existing plant & machineries and other movable fixed assets.

		iii.EM leasehold right over the factory land measuring 05 Bighas covered by Dag No.193(O)/366(N) of Patta No.69 of Village Sila Mahekhati under Mouza Silasenduri Ghopa in Kamrup District, Assam taken on lease from an associate concern M/s. Brahmaputra Iron & Steel Co. Pvt. Ltd. and building thereon at Amingaon, North Guwahati.
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5. The Petitioner has submitted the particulars of the fixed assets as:

Sl. No.	Particulars	Assets as on 31.03.2021 (Amount in Rs.)	Accumulated Depreciation	Net carrying amount (in Rs.)
1	Land Development and shed	NIL	No	NIL
2	Building & Civil Works	74,277,532	No depreciation has been charged as the Company has not carried out any operation during FY 2020-2021.	55,212,823
3	Furniture & Fixture	572,614		183,919
4	Plant & Machinery	199,334,921		118,910,334
5	Vehicles	12,964,867		4,734,316
6	Computer Systems	1,060,568		NIL
7	Office equipment	4,353,246		440,927
8	Misc. Fixed Assets	3,698,622		814,096
	Total	296,262,370		

6. Further, the Petitioner has submitted the details of the Guarantors/Mortgagors, who guaranteed Bank Credit Facilities and whether related to the CD and the Corporate Applicant:

Sl. No.	Name	Address	Name of Bank	Whether relater party to CD

1	M/s. Brahmaputra Iron & Steel Co. Pvt. Ltd.	Room No.19, 2 nd Floor, Vrindavan Market, S. J. Road, Athgaon, Guwahati-781001, Assam	State Bank of India, NEDFi and Assam Gramin Vikash Bank	Yes, he is the Director.
2	Puwa Ram Boro, represented by Shri Santosh Jaiswal, vide irrevocable General Power of Attorney Holder	House NO.14, Aashish, Ramsa Hill, Kharghuli, Guwahati -781004	State Bank of India, NEDFi and Assam Gramin Vikash Bank	Yes, he is the Attorney Holder
3	M/s. Brahmaputra TMT Bars Pvt. Ltd.	Room No.19, 2 nd Floor, Vrindavan Market, S. J. Road, Athgaon, Guwahati-781001, Assam	State Bank of India, NEDFi and Assam Gramin Vikash Bank	Company itself
4	Shri Santosh Jaiswal & Sons (HUF)	Kunti Kunj, Krishna Nagar, Chatribari, Guwahati-781001	NEDFi and Assam Gramin Vikash Bank	Yes, Director of HUF
5	Shri Sanjeev Jaiswal	Kunti Kunj, Krishna Nagar, Chatribari, Guwahati-781001	NEDFi and Assam Gramin Vikash Bank	Yes, he is the Director
6	Padma Nath Deka	Naboday Apartment, 1 st Floor, Zoo Natrengi Road, Chinaki Path, M. T. Road, Guwahati-781 024	NEDFi and Assam Gramin Vikash Bank	Yes, he is the Director
7	Smt. Bibha Jaiswal	Kunti Kunj, Krishna Nagar, Chatribari, Guwahati-781001	NEDFi and Assam Gramin Vikash Bank	Yes, Shareholder and HUF

7. On the other hand, Respondent No. 1 vide its reply in affidavit dated 13.10.2022, submits that:


7.1 The Bank has no objection if the applicant satisfies the requirement for initiating Insolvency Resolution process in respect of Corporate Debtor Brahma Putra TMT Bars Pvt. Ltd.

7.2 Save and except the statements, which are specifically admitted herein, all other statements made in the application are to be treated as denied by the Respondent No. 1.

7.3 Respondent No. 1 begs to offer no comments w.r.t. statements made in Part -1 Part-II of the application

7.4 With respect to statements made in Part III of the application, it is stated that the respondent No. 1 had sanctioned several credit facilities to the Corporate Debtor. The sanctioned loan was availed by the Corporate Debtor by opening and operating account opened in the name of the Corporate Debtor. The Loan account of the Corporate Debtor was classified as NPA on 01.07.2014 and accordingly Respondent No. 1 initiated action under the SARFAESI Act, 2002 for recovery of the Debts due to it along with other Financial Creditors North East Development Finance Corporation Ltd (NEDFi) and Assam Gramin Vikash Bank(AGVB), Respondent Nos. 2 & 3 herein. All the secured assets of the Corporate Debtor were sold under the provisions of the SARFAESI Act, 2002. Respondent No. 1 Bank-SBI has received a sum of Rs. 22,38,79,510.00 (Rupees Twenty-Two Crores Thirty-Eight Lacs Seventy-Nine Thousand Five Hundred Ten) only from the sale proceeds of the secured assets and the said amount is adjusted in the loan account of the Corporate Debtor.

7.5 Apart from action under the SARFAESI Act, 2002, the answering respondent Bank has also initiated action under the provision of the Recovery of Debts and Bankruptcy Act, 1993 against the Corporate Debtor and the guarantor of the loan by filling OA No. 303/2016 before the DRT at Guwahati. Vide judgment and order dated 20-07-2017, the



Ld. DRT at Guwahati has issued recovery Certificate for a sum of Rs. 95,68,82,348.55 (Rupees Ninety-Five Crores Sixty-Eight Lacs Eighty-Two Thousand Three Hundred Forty-Eight and Paise Fifty-Five) only with pendent lite and future interest @13.50% P.A. till realization along with costs of the application against the Corporate Debtor and guarantors of the loan and the recovery proceedings is pending before the Ld. Recovery Officer at Guwahati.

8. Further, Respondent No. 3 vide its reply in affidavit dated 28.09.2022, submits that:

8.1 The Bank has no objection if the applicant satisfies the requirement for initiating Insolvency Resolution process in respect of Corporate Debtor Brahmaputra TMT Bars Pvt. Ltd.

8.2 Save and except the statements, which are specifically admitted herein, all other statements made in the application are to be treated as denied by the respondent no. 3.

8.3 Respondent No. 3 begs to offer no comments w.r.t. statements made in Part -1 Part-II of the application

8.4 With respect to statements made in Part III of the application, Respondent No. 3 had sanction Term Loan of Rs. 10,00,00.000/- (Rupees Ten Crores) only to the Corporate Debtor vide sanction Letter dated 22.10.2012. The sanctioned loan was availed by the Corporate Debtor by opening and operating account opened in the name of the Corporate Debtor. The Loan account of the Corporate Debtor was classified as NPA on 09-08-2014 and accordingly Respondent No.3 inhibited action under the SARFAESI Act, 2002 for recovery of the Debts due to it along with other Financial Creditors State Bank of India and North East Development Finance Corporation Ltd.(NEDFi), Respondent Nos. 1 & 2 herein. All the secured assets of the Corporate Debtor were sold under the provisions of the SARFAESI Act, 2002. The answering respondent Bank has received a sum of Rs. 616.09 Lacs only from the sale proceeds of the secured assets

and the said amount is adjusted in the loan account of the Corporate Debtor.

8.5 Apart from action under the SARFAESI Act, 2002, the answering respondent Bank has also initiated action under the provision of the Recovery of Debts and Bankruptcy Act, 1993 against the Corporate Debtor and the guarantor of the loan by filing OA No. 369/2016 before the DRT at Guwahati. Vide order dated 07-03-2018, the Ld. DRT at Guwahati has issued recovery Certificate for a sum of Rs. 15,90,33,563.00 (Rupees Fifteen Crores Ninety Lacs Thirty-Three Thousand Five Hundred Sixty-Three) only with pendent lite and future Interest @13.50% PA. till realization along with costs of the application against the Corporate Debtor and guarantors of the loan and the recovery proceedings is pending before the Ld. Recovery Officer at Guwahati.

9. The mater was taken up by this tribunal on 04.08.2022, 01.09.2022, 22.09.2022 and 14.10.2022.

ORDER

10. 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. Both, the Applicant - CD here and all three Financial Creditors (FC) have confirmed that the accounts of the Applicant are NPAs and the Applicant has defaulted in making payments of interest and installments to all the three FCs/Respondents here. There is no dispute that the debt is not due, not payable in law and not defaulted. The CD has submitted that it has incurred cumulative loss of Rs. 1,97,86,267.93 as on 31.03.2022 eroding the entire paid up share capital and reserves.

11. Considering the materials, papers filed by both the Petitioner and the Respondents, this Adjudicating Authority is satisfied that:

11.1 The Corporate Debtor availed the loan/credit facilities from the Financial Creditors/Respondents;

11.2 The Applicant CD has 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 the filing of the application under Section 10 of IBC.
- iv. Applicant is not ineligible to make an Application to initiate Corporate Insolvency Resolution Process

11.3 Existence of debt is above Rupees One Crore;

11.4 Debt is due, payable in law and defaulted;

11.5 Default has occurred on 28.10.2013 with the major Financial Creditor to CD R1-SBI; on 01.07.2014 with NEDFi R2 and on May, 2014 with AGVB R3.

11.6 Copy of the Application filed before this Bench has been sent to the Financial Creditors 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 Application is 28.10.2022.

12. 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:

- 12.1 (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.

12.2 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.

12.3 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.

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

13. This Adjudicating Authority hereby appoints, as proposed, Mr. Manish Agarwalla [Regn. No. IBBI/IPA-001/IP-P02082/2020-2021/13198], having address at Room No 9, 5th Floor, Parmeshwari Building, Chatribari Road, Chatribari, Guwahati, Assam-781001, 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/directions 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.

14. 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 I&B 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.

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

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

17. Thus, the present IB Petition filed under Section 10 of the IBC stands admitted today i.e. 28.10.2022 with the above observations and directions.

Sd/-

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

Sd/-

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