NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P. (IB)No.21/GB/2022

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 28.10.2022

In the matter of:

M/s. Brahmaputra Tubulars Pvt. Ltd.
Versus
State Bank of India and 2 others

Section: Under Section 10 of IBC, 2016

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. MUKESH SHARMA	Advocate	Petitioner/CD	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/-

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

Sd/-

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

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Order delivered on 28.10.2022

O R D E R
[Per: Shri Deep Chandra Joshi, Member (J)]

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

2. The Petitioner/Corporate Debtor i.e. M/s. Brahmaputra Tubulars Private Limited was incorporated on 08.10.2012 having **CIN: U27100AS2012PLC011292** and 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 i.e. M/s. Brahmaputra Tubulars Private Limited is Rs. 50,00,000.00 and the Paid-Up Share Capital is Rs. 26,29,000.00.

3. The Petitioner submits that:

3.1 The Corporate Debtor is in the business of manufacturing, supply, import, export 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 medium and high frequency induction furnaces, arc furnaces and rolling mill plant for producing various kinds of steel ingots and billets etc. The Petitioner 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. 1,73,729.00, Rs. 1,48,969.00 and Rs. 2,40,254.22 during the FY's 2019-20, 2020-21 and 2021-22 (up to 31.03.2022) respectively as per the audited balance sheets. The cumulative losses amounted to Rs. 5,62,952.22 as on 31.03.2022 eroding the entire paid up share capital and reserves.

3.3 The major Financial Creditor State Bank of India (SBI) classified the Petitioner's credit facilities as non-performing asset as on 16.02.2014 and issued 13 (2) notice under SARFAESI Act, 2002 on 20.03.2014 and NEDFi classified the petitioner's credit facilities on 01.07.2014 and issued notice under 13(2) SARFAESI on 07.07.2014 despite several requests made by the Petitioner for restructuring existing dues considering the huge financial / operational losses and financial stress being faced by the Petitioner.

3.4 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. 46,95,08,937.00 (Rupees Forty-Six Crore Ninety-Five Lac Eight Thousand Nine Hundred Thirty-Seven only) as per the books of accounts maintained by the petitioner. As the Petitioner failed to service interest and/instalment from time to time, SBI classified the Petitioner's facilities as non-performing assets (NPA) as on 16.02.2014 and issued 13 (2) notice under SARFAESI Act on 20.03.2014.

3.5 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. 16,74,05,882.00

(Rupees Sixteen Crore and Seventy-Four Lac Eighty-Five Thousand Eight Hundred Eighty-Two only) as per the books of accounts maintained by the Petitioner. As the Petitioner failed to service interest and/instalment 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.

3.6 There are no transactions since 2017-18 in the books account(s) of the Company due to non-operation of business and auction settlement procedures. However, the Directors of the Company had tried to retrieve the bank statements from NEDFi, but there was no response to their email dated 15.06.2022 seeking for updated loan account statements. Hence, the NEDFi loan account statements are available only from 01.04.2010 to 28.01.2018 and from 01.04.2021 to 31.03.2022 and no records available with the Corporate Applicant between 29.01.2018 to 31.03.2021.

3.7 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	2.62	13.14	NIL	-0.89
2019-20		13.13	NIL	-1.73
2020-21		13.11	NIL	-1.48
2021-22		13.11	NIL	-2.40

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. Corporate Guarantee provided to its group companies, which became defaulter, due to which it hampered the business of the company entirely.

v. 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.

vi. 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.

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

3.9 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	Name of Financial/Operational Creditor	Financial Creditors: i. State bank Of India (SBI) ii. North Eastern Development Finance Corporation Ltd. (NEDFi)
2	Address of Correspondence of Financial/Operational Creditor	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.
3	Total Debt Raised and Amount in default	**Total Financial Debt raised-72.47 Crores** **Total Financial Debt in default- 63.69 Crores** i. SBI- Total Debt raised-51.47 crores Amount in default: 46.95 crores ii. NEDFi- Total Debt raised-21 crores Amount in default: 16.74 crores **Operational Debt in default** Payable to capital goods and fixed assets-2.89 crores Deferred tax liabilities: 2.87 crores Trade payable: 17.50 lacs **Total debts due- 5.93 Crores**
4	Date when the Financial/Operational debt was incurred	i. SBI- 16.02.2014 ii. NEDFi- 01.07.2014
5	Particulars of Security held, if any, the date of its creation, its estimated value as per the Creditor	**Particulars of Security held with SBI** i) Hypothecation charge over the entire present and future stocks of RM, SIP and FG, Books debts and other current assets of the firm, Hypothecation of plant and machinery and other movable fixed assets of the firm acquired through the term loan in first charge pari-passu arrangement with NEDFi. ii) EM of land and building in pari passu arrangement with NEDFi as per details below iii) Leasehold right of land measuring 2.5 bighas covered by Dag No. 193/366, Patta No. 69 under village Silamhakhaiti, Mouza- Silasinduri ghopa, District- Kamrup in the name of M/S Brahmaputra Galvochem Pvt. Ltd. iv) Leasehold right of land measuring 3 bighas covered by Dag No. 193 (O)/366 (N), Patta No. 69 under village Silamhakhaiti, Mouza- Silasinduri ghopa, District- Kamrup in the name of M/S Brahmaputra Galvochem Pvt. Ltd. v) Two plots of land measuring 3 bighas 2 lechas covered by dag No. 146, Patta No. 98 of village- Silamhakhaiti, Mouza- Silasinduri ghopa, District- Kamrup, Assam vi) 2^{nd} Charge on entire Current Assets of the firm on pari-passu arrangement with NEDFi vii) 2^{nd} charge on entire Fixed Assets of the firm on reciprocal basis with NEDFi.
		Particulars of Security held with NEDFi

		Part I The whole of the movable properties of the Borrower including its movable plant and machinery, machinery spares, tools and accessories, stocks of raw material, 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 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 by any party to the order or disposition of the Borrower or in the course of transit or in high seas of on order, or delivery, howsoever and whosesoever in the possession of the Borrower and either by way of substitution or addition. **Part II** 1. EM over the below mentioned plots created on pari-passu basis with SBI: i) Leasehold right of land measuring 2.5 bighas covered by Dag No. 193/366, Patta No. 69 under village Silamhakhaiti, Mouza-Silasinduri ghopa, District- Kamrup in the name of M/S Brahmaputra Galvochem Pvt. Ltd. ii) Leasehold right of land measuring 3 bighas covered by Dag No. 193 (O)/366 (N), Patta No. 69 under village Silamhakhaiti, Mouza-Silasinduri ghopa, District- Kamrup in the name of M/S Brahmaputra Galvochem Pvt. Ltd. 2. Exclusive lien on subsidy claims of the company (CCIS of Rs. 7.32 Crores approx.)

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	14,52,143	No depreciation	14,52,143

2	Factory Building	3,82,43,517	has been charged as the Company has not carried out any operation during FY 2020-2021	3,28,30,117
3	Office Building	2,29,03,743		2,05,39,798
4	Furniture & Fixture	7,43,362		2,84,325
5	Plant & Machinery	20,18,76,834		15,31,14,294
6	Vehicles	13,40,911		6,99,232
7	Computer Systems	1,72,190		8,610
	Total	**26,67,32,700**		**20,89,28,519**

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 Rolling Mills Pvt. Ltd. (BISCON Steels Pvt. Ltd.)	Room No.19,2nd Floor, Vrindavan Market, S. J. Road, Athgaon, Guwahati-781001, Assam	State Bank of India and NEDFi	Related Company
2	M/s. Brahmaputra TMT Bars Pvt. Ltd.	Room No.19,2nd Floor, Vrindavan Market, S. J. Road, Athgaon, Guwahati-781001, Assam	State Bank of India and NEDFi	Related Company
3	Shri Santosh Jaiswal	Kunti Kunj, Krishna Nagar, Chatribari, Guwahati-781001	State Bank of India and NEDFi	Yes, he is the Director
4	Padma Nath Deka	Naboday Apartment, 1st Floor, Zoo Natrengi Road, Chinaki Path, M. T. Road, Guwahati-781 024	State Bank of India	Yes, he is the Director
5	Shri Mantosh Kumar	Krishna Nagar, Chatribari, Guwahati-781001	State Bank of India and NEDFi	Yes, he is a Shareholder

6	Shri Narayan Boro (Deceased)	Shanti Kachari Borobasti, Amingaon, NH-31, Kamrup PIN 781031	State Bank of India	Mortgagor
7	Shri Krishna Kanta Baro	Shanti Kachari Borobasti, Amingaon, NH-31, Kamrup PIN 781031	State Bank of India	Mortgagor

7. On the other hand, Respondent No. 1, SBI 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 Brahmaputra Iron & Steel Company 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 Respondent no. 1 has 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 18.02.2014 and accordingly respondent no. 1 initiated action under the SARFAESI Act, 2002 for recovery of the Debts due to it. All the secured assets of the Corporate Debtor was sold under the provisions of the SARFAESI Act, 2002. The answering respondent bank has received a sum of Rs. 16,00,16,118 (Rupees Sixteen Crores Sixteen Thousand One Hundred Eighteen) 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 filing OA No. 138/2016 before the DRT at Guwahati. Vide judgment and order dated 26.07.2017, the Ld. DRT at Guwahati has issued recovery certificate for a sum of Rs. 62,84,50,065 (Rupees Sixty-Two Crores Eighty-Four Lacs Fifty Thousand Sixty-Five) only with pendent lite and future interest @ 11.75% 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. The mater was taken up by this tribunal on 04.08.2022, 01.09.2022, 22.09.2022 and 14.10.2022.

O R D E R

9. 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 instalments to all the two 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. 5,62,952.22 as on 31.03.2022 eroding the entire paid up share capital and reserves.

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

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

10.2 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

10.3 Existence of debt is above Rupees One Crore;

10.4 Debt is due, payable in law and defaulted;

10.5 Default has occurred on 16.04.2014 with the major Financial Creditor to CD R1-SBI; on 01.07.2014 with NEDFi R2

10.6 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.

11. 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:

11.1 (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.

11.2 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.

11.3 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.

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

12. This Adjudicating Authority hereby appoints, as proposed, Mr. Purshotam Gaggar [Regn. No. IBBI/IPA-001/IP-P00487/2017-18/10875], having address at P. Gaggar & Associates, Chartered Accountants, Advika, 3rd Floor, Opp. Sukreswar Ghat Garden, MG Road, Panbazar, Guwahati-781001, Assam, 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.

13. 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.

14. 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.

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

16. 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/-	**Sd/-**
(**Prasanta Kumar Mohanty)** **Member (Technical)** **& Adjudicating Authority**	**(Deep Chandra Joshi)** **Member (Judicial)** **& Adjudicating Authority**