



**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**ORDER SHEET OF THE HEARING ON 25<sup>th</sup> JANUARY, 2024, 10:30 A.M.**

**IA (IBC)/52/GB/2023  
In  
CP (IB)/20/GB/2022**

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao  
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Meena Sureka, Liquidator, Vs Santosh Kumar Jaiswal, 2. Padma Nath Deka, 3. Mantosh Kumar, 4. Brahmaputra Aashiana Ltd.
Under Section	U/s 60(5) & 14 of IBC, 2016

For Petitioner (s) : Mr. S. Jain, Adv.

For Respondent (s) : Mr. Mukesh Sharma, Adv.

**ORDER**

Order Pronounced through VC *vide* separate sheets.

Sd/-  
**Satya Ranjan Prasad**  
Member (Technical)

Sd/-  
**H.V. Subba Rao**  
Member (Judicial)



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**ORDER SHEET OF THE HEARING ON 25<sup>th</sup> JANUARY, 2024, 10:30 A.M.**

**IA (IBC)/38/GB/2023  
In  
CP (IB)/21/GB/2022**

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao  
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Meena Sureka, Liquidator, Vs Brahmaputra Aashiana Ltd. 2. Santosh Kumar Jaiswal, 3. Mantosh Kumar, 4. Padma Nath Deka
Under Section	U/s 14 of IBC, 2016

For Petitioner (s) : Mr. S. Jain, Adv.

For Respondent (s) : Mr. Mukesh Sharma, Adv.

**ORDER**

Order Pronounced through VC *vide* separate sheets.

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**Satya Ranjan Prasad**  
Member (Technical)

Sd/-  
**H.V. Subba Rao**  
Member (Judicial)



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And

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In CP(IB)/21/GB/2022

IA(IBC)/52/GB/2023  
In CP(IB)/20/GB/2022

*In the matter of:*

An application under Section 60(5) and Section 14 of the Insolvency and Bankruptcy Code, 2016;

-And-

*In the matter of:*

**Meena Sureka**, Insolvency Professional having registration number IBBI/IPA-001/IP-P01422/2018-19/12163 and working for gain at Central Plaza, 6<sup>th</sup> Floor, Room No. H, 41, B.B. Ganguly Street, Kolkata- 700012;

**...Applicant**

-Versus-

**Mr. Santosh Kumar Jaiswal**, Suspended Director of Brahmaputra TMT Bars Pvt. Ltd., Brahmaputra Tubulars Private Limited and Brahmaputra Aashiana Limited, residing at H/No-14, Aashish Ramsa Hill, Kharguli, Guwahati, Assam—781004;

**... Respondent No. 1**

-And-

**Mr. Padma Nath Deka**, Suspended Director of Brahmaputra TMT Bars Pvt. Ltd., Brahmaputra Tubulars Private Limited and Brahmaputra Aashiana Limited, residing at Naboday Apartment, 1<sup>st</sup> Floor, Zoo Narengi Road, Chinaki Path, M.T. Road, Guwahati, Assam—781024;

**... Respondent No. 2**

-And-



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In CP(IB)/21/GB/2022

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**Mr. Mantosh Kumar**, Director of Brahmaputra Aashiana Limited, residing at Sikaria Complex, S.J. Road, Athgaon, Panbazar, Guwahati, Assam—781001;

... Respondent No. 3

-And-

**Brahmaputra Aashiana Limited**, having its registered office at 4<sup>th</sup> Floor Sagar Bizzplex, G.S. Road Shani Ram Bora Lane, Near Bora Service Station, Ulubari, Guwahati, Assam—781001;

... Respondent No. 4

IA(IBC)/38/GB/2023  
In CP(IB)/21/GB/2022

*In the matter of:*

An application under Section 60(5) and Section 14 of the Insolvency and Bankruptcy Code, 2016;

-And-

*In the matter of:*

**Meena Sureka**, Insolvency Professional having registration number IBBI/IPA-001/IP-P01422/2018-19/12163 and working for gain at Central Plaza, 6<sup>th</sup> Floor, Room No. H, 41, B.B. Ganguly Street, Kolkata- 700012;

...Applicant

-Versus-

**Brahmaputra Aashiana Limited**, having its registered office at 4<sup>th</sup> Floor Sagar Bizzplex, G.S. Road Shani Ram Bora Lane, Near Bora Service Station, Ulubari, Guwahati, Assam—781001;

... Respondent No. 1

-And-



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**Mr. Santosh Kumar Jaiswal**, Suspended Director of Brahmaputra TMT Bars Pvt. Ltd., Brahmaputra Tubulars Private Limited and Brahmaputra Aashiana Limited, residing at H/No-14, Aashish Ramsa Hill, Kharguli, Guwahati, Assam—781004;

**... Respondent No. 2**

-And-

**Mr. Mantosh Kumar**, Director of Brahmaputra Aashiana Limited, residing at Sikaria Complex, S.J. Road, Athgaon, Panbazar, Guwahati, Assam—781001;

**... Respondent No. 3**

-And-

**Mr. Padma Nath Deka**, Suspended Director of Brahmaputra TMT Bars Pvt. Ltd., Brahmaputra Tubulars Private Limited and Brahmaputra Aashiana Limited, residing at Naboday Apartment, 1<sup>st</sup> Floor, Zoo Narengi Road, Chinaki Path, M.T. Road, Guwahati, Assam—781024;

**... Respondent No. 4**

***Coram:***

Shri H. V. Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

***Appearances (through video conferencing):***

For Petitioner : Mr. S. Mitra, Mr. Saurav Jain (Adv.)

For Respondent : Mr. M .Sharma (Adv.)

**Order pronounced on: 09.01.2023**

**Order pronounced on: 25.01.2023**



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**And**

**IA(IBC)/38/GB/2023  
In CP(IB)/21/GB/2022**

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**COMMON ORDER**

1. **IA(IBC)/52/GB/2023 in CP(IB)/20/GB/2022** has been filed under Section 60(5) read with Section 14 of the Insolvency and Bankruptcy Code, 2016 by Meena Sureka, who is the Liquidator in CP(IB) No.20/GB/GB/2022, praying the following reliefs:
  - a) *Directions upon the Respondent No. 4 company and its directors being Respondent No. 1,2 and 3 to refund the amount of Rs. 1,00,000/- (Rupees One Lakh) in the account of the corporate debtor transferred during the CIRP of Brahmaputra TMT Bars Private Limited;*
  - b) *Directions upon the Respondent No. 1, 2 and 3, the suspended director of the Brahmaputra Tubulars Private Limited to refund the amount of Rs. 6,50,000/- (Rupees Six Lakh Fifty Thousand) in the account of the corporate debtor transferred post commencement of CIRP of Brahmaputra TMT Bars Private Limited; and*
  - c) *Direction upon the Respondents to make outstanding payments to Brahmaputra TMT Bras Private Limited arising during the CIRP of the Corporate Debtor; or*
  - d) *Any other directions which the Hon'ble National Company Law Tribunal, Guwahati Bench may deem fit in the facts and circumstances of the matter.*
  
2. **IA(IBC)/38/GB/2023 in CP(IB)/21/GB/2022** has been filed under Section 60(5) read with Section 14 of the Insolvency and Bankruptcy Code, 2016 by Meena Sureka, who is the Liquidator in CP(IB) No.20/GB/GB/2022, praying the following reliefs:
  - a) *Directions upon the Respondents to refund the amount in the account of the corporate debtor transferred during the CIRP of Brahmaputra Tubulars Private Limited; and*
  - b) *Directions upon the Respondents to make outstanding payments to Brahmaputra Tubulars Private Limited; or*
  - c) *Any other directions which the Hon'ble National Company Law Tribunal, Guwahati Bench may deem fit in the facts and circumstances of the matter.*



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3. Since, the issues for consideration involved in both the above IAs are common, both the IAs are hereby disposed of through this common order.
4. The main crux of the issues involved in the above IAs are as follows:
  - 4.1 *Vide* an order dated 28.10.2022, application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter 'IBC, 2016') read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was admitted and CIRP was initiated against Brahmaputra TMT Bars Private Limited and Brahmaputra Tubulars Private Limited. Mr. Manish Agarwalla was appointed as Interim Resolution Professional (hereinafter referred to as "erstwhile IRP-1") for Brahmaputra TMT Bars Private Limited (hereinafter referred to as "CD-1") and Mr. Purshottam Gaggar was appointed as Interim Resolution Professional (hereinafter referred to as "erstwhile IRP-2") for Brahmaputra Tubulars Private Limited (hereinafter referred to as "CD-2") and moratorium was thereafter imposed on the respective Corporate Debtors under Section 14 of IBC, 2016.
  - 4.2 The respective IRPs were replaced by the members of CoC and separate applications were filed before this Tribunal for the replacement of the Resolution Professional.
  - 4.3 Subsequently, upon perusal of the documents and the bank statements, the erstwhile IRPs came to know about some transactions which were apprehensive in nature entered into between the Corporate Debtors and the Respondents herein without any prior permission and/or intimation after commencement of CIRP against the Corporate Debtors.
  - 4.4 *Vide* order dated 10.02.2023, Mrs. Meena Sureka was appointed to act as an RP with respect to both of the Corporate Debtors *i.e.*, Brahmaputra TMT Bars Private Limited and Brahmaputra Tubulars Private Limited.



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- 4.5 The erstwhile IRP-1 of the CD-1(Brahmaputra TMT Bars Private Limited) had sent an email dated 09.01.2023 to the Respondents directing them for reversal of the amount paid by them post commencement of CIRP. Upon perusal of the documents, it is seen that a 2<sup>nd</sup> and 3<sup>rd</sup> reminder was also sent to the Respondents on 16.01.2023 and 23.01.2023 for the recovery of the above transferred amount. Even after receiving the above emails, the Respondent niether replied nor transferred the amount. Therefore, find no other alternative, on 30.02.2023, the erstwhile IRP filed an application under Section 14 of the IBC, 2016 which was numbered as IA (IBC)/16/60(5)/GB/2023 against the Respondents before this Tribunal. Since, Mrs. Meena Sureka was appointed as Resolution Professional with directions to carry out and perform such acts and duties as are required under the provisions of the Insolvency and Bankruptcy Code, 2016, IA (IBC)/16/60(5)/GB/2023 was disposed of *vide* order dated 23.03.2023 with the direction to the erstwhile IRP to handover the documents to RP. The IRP-1 had handed over all the documents to the RP in accordance with our order dated 23.03.2023.
- 4.6 The erstwhile IRP-2 of CD-2 (Brahmaputra Tubulars Private Limited) also informed the RP and handed over with the letter dated 11.01.2023 issued by him to the suspended board of director of the CD asking them to recover the amount of Rs.6,50,000/- from Brahmaputra Aashiana Limited (hereinafter referred as “BAL”) and transfer the same to the account of CD-2. The Applicant RP upon becoming aware of such transaction immediately issued several letters dated 22.02.2023 through speed post to the erstwhile management of CD-2 (Brahmaputra Tubulars Private Limited) and the directors of BAL asking them to refund the amount which was transferred in violation of the provisions of IBC, 2016. However, no response was received from the Respondents herein till date.



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4.7 The Applicant RP while performing her duties as envisaged under the provisions of IBC, 2016 and upon enquiries and diligences into the records of the Corporate Debtors as handed over by the IRPs, was appraised with the transactions that had taken place from the end of the suspended board of directors of the Corporate Debtors after the commencement of CIRP and that post commencement of CIRP.

4.8 The details of the transactions are as follows:

- i. An amount of Rs.7,50,000/- was debited from the account of the Brahmaputra TMT Bars Private Limited (CD-1) and the same was transferred to the Brahmaputra Aashiana Limited and Brahmaputra Tubulars Private Limited (CD-2)

<b>Date</b>	<b>Name Of The Company To Whom Paid</b>	<b>Amount (INR)</b>
01.11.2022	Brahmaputra Tubulars Pvt. Ltd.	6,50,000/-
01.11.2022	Brahmaputra Aashiana Ltd.	1,00,000/-

- ii. An amount of Rs. 6,50,000/- was debited from the current account of the Brahmaputra Tubulars Private Limited (CD-2) and the same was transferred to the Brahmaputra Aashiana Limited as on 02.11.2022.

4.9 Both the CDs *i.e.*, Brahmaputra TMT Bars Private Limited and Brahmaputra Tubulars Private Limited have common directors and the suspended board of directors of both CDs in spite of knowing the fact that the companies are in CIRP have violated the provisions of the Section 14 of the Code by transferring the above mentioned amount without any intimation to the RP or any other person.

4.10 Thus, the Respondents have violated the provisions of the Code, 2016 by making a payment during the CIRP of Corporate Debtor for past dues without filing any claim without the consent and/or approval of the Erstwhile IRP.



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Such payment was made intentionally for the undue advantage of its group entity and further to left the Corporate Debtors with nothing.

4.11 Hence, the Applicant RP has filed these two IAs for recovery of the aforesaid amount with respect to both the CDs.

5. On the other hand the Respondents have file their reply to both the IAs on 08.07.2023. Shorn of unnecessary details, the relevant points of contentions of the Respondents are as follows:

5.1 In order to release the Personal Guarantee/ Corporate Guarantee of all involved Promoters/Directors, sister companies, Mr. Santosh Kumar Jaiswal (Director of Brahmaputra Aashiana Ltd. and Suspended Director of CD-1 and CD-2) had decided in one meeting with the other personal guarantors to make an offer of Rs. 50,00,000/- (Rupees Fifty Lakh only) against the release of personal guarantee and had instructed the Respondent to deposit the 15% of the offer amount and the said initial deposited should be routed through one of borrower company as bank cannot accept third party upfront deposit and accordingly on 18.01.2022 had deposited Rs. 7,50,000/- as pre-conditioned and pre- deposits towards settlement of personal guarantee of the Respondents and its sister companies, as per RBI guidelines. Certainly, the pre- deposit money of Rs. 7,50,000/- was arranged from all the personal guarantors through known sources, friends, relative and others and on the same day, the money was transferred to the account of Brahmaputra Rolling Mills Pvt. Ltd. Later, on the same day, money was transferred to Brahmaputra TMT Bras Pvt. Ltd. and on the very same day on 18.01.2022, the said amount of Rs. 7,50,000/- was transferred to State Bank of India (SBI) with settlement compromise proposal dated 18.01.2022 as discussed with the said officials of SBI.

5.2 On 09.02.2022, SBI *vide* its letter no. SAMB/BR/2021-22/1112, had rejected



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the proposal and instead of transferring the same amount on the same date had intentionally waited till 29.10.2022, the very next day of the order dated 28.10.2022 thereby CIRP of the corporate debtor was admitted, whereas it is relevant to mention that the said order was not readily available to the Respondents and its representative to the CDs and there was a delay of 5-7 days (approx.). Since, money did not belong to Brahmaputra Tubulars Pvt. Ltd. nor Brahmaputra TMT Bars Pvt. Ltd. and thus with a view to send back the money to destination authority, the Respondents had transferred the money to one of the non- business company, Brahmaputra Aashiana Ltd.

- 5.3 There is no malafide intention to defraud the creditors and the business of both the Corporate Debtors was shut down on the day in the year of 2014, when the factory, land and office premises therein contained with all the plants and machineries, computers, disc, ledgers, inward and outward registers, vehicles had been put under lock and key by the consortium of Financial Creditors. Since, from the day when the physical possession was taken by the Financial Creditors, Respondent (Suspended Director Mr. Santosh Kumar Jaiswal) had run from pillar to post to settle the entire matter as the project of the companies were viable but in vain, nothing has happened as expected and lastly the said factory land and office premises of the Corporate Debtors have been sold in the year 2020 to M/s Sagar Industrial Park under the provisions of SARFAESI Act, 2002 read with Security Interest (Enforcement) Rules, 2002. By the consortium of the financial creditor which lead to commercial death of the Corporate Debtors and its directors.
- 5.4 The Respondent (Suspended Director Mr. Santosh Kumar Jaiswal) had sent his reply on 15.03.2023 against the Letter dated 22.02.2023 received from the Resolution Professional whereby he had properly explained the matter. The alleged amount of money as sort for direction to refund the said amount but



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the said amount does not belong to the Brahmaputra Tubulars Pvt. Ltd. nor Brahmaputra TMT Bars Pvt. Ltd. and is not within the ambit of assets or legal rights or beneficial interest of the Corporate Debtors, it is only the money purposefully used to settle the personal guarantee issued with the Financial Creditors and not for to defraud The Creditors.

- 5.5 The Resolution Professional/applicant had created an illusion by filing 2 Nos. of IAs (IA No. 38/GB/2023 and IA No. 52/GB/2023) on the same subject issue of Rs. 7,50,000/- which was not the money belonging to any of the Corporate Debtors by any means, business or non-business and the RP project the case of Rs.14,00,000/- (Rs.6,50,000/- in IA No. 38/GB/2023 and Rs.7,50,000/- in IA No. 52/GB/2023) and tried to mislead the Tribunal as the money involved in the issue is only Rs.7,50,000.
6. The matter was last heard on 09.01.2024, wherein the Ld. Counsel for the Applicant Mr. S. Mitra submitted that they only want to recover the amount and hence have not prayed for any criminal action against the Respondents. Mr. S. Mitra also relied on the judgment of *State Bank of India v. Debashish Nanda (Company Appeal (AT) (Insolvency) No. 49/2018, order dated 21.03.2018)*, where the Hon'ble NCLAT prevented the Bank from debiting amounts during moratorium from the Corporate Debtor's account. On the other hand, Mr. M Sharma, the Ld. Counsel for the Respondents submitted that the amount in question does not belong to any of the CDs and was merely used to settle the personal guarantee issued with the Financial Creditors and not with any intention to defraud the Creditors. Further, both the parties have agreed that the alleged amount in question in both the IAs is of Rs. 7,50,000.00 (Rupees Seven Lakh Fifty Thousand only).



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7. Heard both the sides at length and perused the material available on records. Before passing any order, it is pertinent to delve into the relevant provision of IBC, 2016, which is reproduced hereunder:

Section 14 of IBC, 2016 clearly lays down that:

*“(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--*

*(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 foreclose, 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.”*

8. From the plain reading of the aforementioned provision, it is clear that in terms of Section 14 (1)(b), during the period of moratorium any transfer, encumbering, alienating or disposing off the property of the Corporate Debtor is restrained. Further, the Hon’ble NCLAT in a plethora of judgments has held that the creditors cannot exercise set-off during the moratorium. Furthermore, the purpose and object of Moratorium is to temporarily freeze all actions as contemplated under Section 14 to enable the Corporate Debtor to resolve its Insolvency and to revive itself.
9. Admittedly, the transactions in question in the present case had been made on 01.11.2022 and 02.11.2022 after the initiation of the CIRP of both the CDs. Therefore, in terms of provision referred to *supra*, such transaction is made in contravention of Section 14(1)(b) of the IBC Code, 2016. Hence, this bench is of the considered view



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that there is a need to refund the amount in question to the Corporate Debtor as has been prayed for.

10. Since, the agreed amount of Rs. 7, 50,000.00 is common with respect to both the CDs *i.e.*, the amount was transferred from Brahmaputra TMT Bars Private Limited- Rs. 1,00,000.00 to the Brahmaputra Aashiana Limited and Rs, 6,50,000.00 to Brahmaputra Tubulars Private Limited on 01.11.2022 and subsequently on 02.11.2022 an amount of Rs. 6,50,000.00 was transferred from Brahmaputra Tubulars Private Limited (CD-2) to Brahmaputra Aashiana Limited. Hence, we hereby find all the Respondents in both the IAs *i.e.*, Mr. Santosh Kumar Jaiswal, Mr. Padma Nath Deka, Mr. Mantosh Kumar and Brahmaputra Aashiana Limited jointly and severally liable to refund the total aggregate amount of Rs. 7,50,000.00 as prayed for, to Brahmaputra TMT Bars Private Limited (CD-1) **within a period of two weeks from today, failing which interest @12% shall be levied till the date the final payment is made.**
11. Accordingly, the above two IAs- IA No. 52/GB/2023 and IA No. 38/GB/2023 are disposed of with the above observations and direction.
12. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
13. Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
14. Corresponding files be consigned to records.

Sd/-  
**Satya Ranjan Prasad**  
Member (Technical)

Sd/-  
**H.V. Subba Rao**  
Member (Judicial)

*Signed this on 25<sup>th</sup> day of January 2024.*