

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 2nd July, 2024, 10:30 A.M.

**IA (IBC)/105/GB/2024
In CP (IB)/15/GB/2021**

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

IN THE MATTER OF	Sanjit Kumar Nayak Vs Tshering Pintso Bhutia
UNDER SECTION	U/r 11 of NCLT Rules, 2016

For Petitioner (s) : Ms. Namrata Basu, Adv for RP

For Respondent (s) :

RP : Mr. Sanjit Kr. Nayak, in person

ORDER

Order pronounced in the open court *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 2nd July, 2024, 10:30 A.M.

**IA (IBC)/106/GB/2024
In CP (IB)/16/GB/2021**

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

IN THE MATTER OF	Sanjit Kumar Nayak Vs Tshering Pintso Bhutia
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IA (IBC)/105/GB/2024

In

CP (IB)/15/GB/2021

And

IA (IBC)/106/GB/2024

In

CP (IB)/16/GB/2021

IA (IBC)/105/GB/2024 In CP(IB)/15/GB/2021

In the matter of:

An Application under Rule 11 of National Company Law Tribunal Rules, 2016;

-And-

In the matter of:

SANJIT KUMAR NAYAK, Liquidator of Hanumanta Engineering Private Limited having IP Registration Number: IBBI/IPA-003/IP-N00079/2017-18/10702 and having his office at 30E, Haramohan Ghosh Lane, Flat 2B, Suryadeep, Beliaghata, Kolkata- 700085;

....Applicant/Resolution Professional

-Versus-

TSHERING PINTSO BHUTIA, Personal Guarantor of Bluefern Ventures Private Limited residing at Ethenpa Villa, Damthang Road (Near Namchi Municipal Corporation), Gangyap, South Sikkim, Sikkim- 737126.

....Respondent

IA (IBC)/106/GB/2024 In CP(IB)/16/GB/2021

In the matter of:

An Application under Rule 11 of National Company Law Tribunal Rules, 2016;

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....Applicant/Resolution Professional

-Versus-

ONGMU BHUTIA, Personal Guarantor of Bluefern Ventures Private Limited residing at Ethenpa Villa, Damthang Road (Near Namchi Municipal Corporation), Gumpa Ghurpisey, Near Telephone Exchange, Gumpa Ghurpisey, Namchi, South Sikkim, Sikkim- 737126.

....Respondent

Coram:

Shri H.V Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances:

IA (IBC)/105/GB/2024 In CP(IB)/15/GB/2021

For Applicant : Mr. S. Mitra, Mr. A. Singh, Mr. N. Basu (Advs.)

RP (in person) : Mr. Sanjit Kr. Nayak

IA (IBC)/106/GB/2024 In CP(IB)/16/GB/2021

For Applicant : Mr. S. Mitra, Mr. A. Singh, Mr. N. Basu (Advs.)

RP (in person) : Mr. Sanjit Kr. Nayak

Order reserved on: 11.06.2024
Order pronounced on: 02.07.2024

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In CP(IB)/15/GB/2021
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In CP (IB)/16/GB/2021

COMMON ORDER

1. The above Applications namely, IA (IBC)/105/GB/2024 In CP(IB)/15/GB/2021 and IA (IBC)/106/GB/2024 In CP(IB)/16/GB/2021 are filed by Mr. Sanjit Kumar Nayak, Resolution Professional for Bluefern Ventures Pvt. Ltd., praying for the following reliefs:
 - a) *Exclude 568 days from 30.09.2022 to 19.04.2024 in terms of order of Liquidation and order of Cancellation of Resolution Plan dated 19.12.2023 passed in CP (IB) 5/GB/2018 (Bank of Baroda vs Bluefern Ventures Private Limited) morefully specified in paragraphs hereinabove;*
 - b) *Condone any delay in filing this instant application;*
 - c) *Direct the Corporate Insolvency Resolution Proceeding in CP 15/GB/2021 (Bank of Baroda vs Tshering Pintso Bhutia) and CP 16/GB/2021 (Bank of Baroda vs Ongmu Bhutia) to continue as it would have been as on 30.09.2022;*
 - d) *Such further or other order or orders be passed and/or directions are given as this Hon'ble Tribunal may deem fit and proper.*
2. The Company Petition being CP (IB) 15/GB/2021 was filed against Tshering Pintso Bhutia the Personal Guarantor of Bluefern Ventures Pvt. Ltd. Similarly, A Company Petition being CP (IB) 16/GB/2021 was filed against Ongmu Bhutia another Personal Guarantor of Bluefern Ventures Pvt. Ltd before this Tribunal on 31.09.2021. CIRP was admitted against the said Bluefern Ventures Pvt. Ltd on 21.12.2018 and thereafter the Personal Guarantors jointly filed their bid and took over the said Bluefern Ventures Pvt. Ltd as the SRA which was approved by this Tribunal by an order dated 30.09.2022.
3. By virtue of the modified Resolution Plan filed by the Personal Guarantors jointly the Financial Creditor was prohibited from proceeding against the Personal Guarantors.

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The same had been recorded in order dated 30.09.2022. This was owing to the fact that the Land upon which the Structure belonging to the Corporate Debtor was lying situate belonged to Mrs Ongmu Bhutia the Personal Guarantor of the Corporate Debtor. As the land belonged to the Personal Guarantor no substantial Resolution Plan was received by the Resolution Professional and it is also agreed by the Personal Guarantor Mrs Ongmu Bhutia that upon the Resolution Plan being approved the land would also be transferred to the Corporate Debtor.

4. That thereafter the Personal Guarantors' Resolution Plan was put into effect and the Personal Guarantors failed to make payment as envisaged in the Resolution Plan and as such an order of liquidation was passed on 19.12.2023 thereby in essence making the prohibition to proceed against the personal Guarantors ineffective.
5. Therefore, CP (IB) 15/GB/2021 and CP (IB) 16/GB/2021 now can be proceeded against the Personal Guarantor by virtue of failure of the Resolution Plan and by virtue of subsequent order of liquidation dated 19.12.2023.
6. The Resolution Professional pre-empted that the Company petitions against the Personal Guarantors being CP 15/GB/2021 and CP 16/GB/2021 stood automatically revived and shall be listed in due course and the Resolution Professional awaited the automatic listing but the same did not happen after which the Resolution Professional in the month of March, 2024 enquired with the Ld. Advocate on Record in respect of the listing. As none of the orders passed in CP 15/GB/2021 and CP 16/GB/2021 showed dismissal of the same and the Status on the online portal also showed the matters to be pending the Resolution Professional was more hopeful that the matters will be automatically listed upon passing of the Liquidation order.
7. Upon enquiry it was ascertained that the matters had to be mentioned, as the Resolution Professional is based in Kolkata he immediately made arrangements for mentioning and the matter was mentioned on 09.04.2024 and the matter was most

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graciously directed to be listed on 12.04.2024 when, the RP appeared and the matter was next fixed on 02.05.2024.

8. It is a fact that the matter was not neglected but it was due to the hindsight of the erstwhile Advocate on Record and Resolution Professional that the matter was not mentioned earlier as they had envisaged that the matter would be listed automatically.
9. In view of the Approval of the Plan filed in the CIRP of the Corporate Debtor the CP 15/GB/2021 and CP 16/GB/2021 stood extinguished on 30.09.2022 and it is only after the liquidation order dated 19.12.2023 that the CP 15/GB/2021 and CP 16/GB/2021 could again be proceeded with that it is from the date of Approval of Plan *i.e.* 30.09.2022 that the proceedings in CP 15/GB/2021 and CP 16/GB/2021 was stalled due to reasons mentioned hereinabove as such the time period from 30.09.2022 till date *i.e.* 568 days shall be excluded from the CIRP period.
10. Heard Ld. Counsel for the Petitioner and perused the material available on record. Since the Personal Guarantor (also Successful Resolution Applicant) failed to make the required payments under the Resolution Plan approved on 30.9.2022 despite repeated extensions and opportunities granted by this Tribunal, the Resolution Plan stood nullified and cancelled and consequently, a liquidation order in respect of the Corporate Debtor was passed on 19.12.2023 *vide* IA(IBC)/67/GB/2023 in CP(IB)/5/GB/2018. Therefore, CP(IB) No. 15/GB/2021 and CP (IB) No. 16/GB/2021 filed under Section 95 have to be taken to their logical conclusion and have to be proceeded with.
11. Hence, in view of the IA(IBC)/67/GB/2023 in CP(IB)/5/GB/2018 dated 19.12.2023 by which liquidation of the CD was ordered, the reliefs prayed for in these Applications at hand are granted *i.e.*, delay in filing this instant application is condoned, 568 days from 30.09.2022 to 19.04.2024 are excluded and the Corporate Insolvency Resolution Proceeding in CP 15/GB/2021 (Bank of Baroda vs Tshering

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In CP (IB)/16/GB/2021**

- Pintso Bhutia) and CP 16/GB/2021 (Bank of Baroda vs Ongmu Bhutia) to continue as it would have been as on 30.09.2022.
12. With the above observation and directions, these IAs are hereby allowed and disposed of.
 13. 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.
 14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
 15. File be consigned to records.

Sd/-

**Satya Ranjan Prasad
Member (Technical)**

Sd/-

**H. V. Subba Rao
Member (Judicial)**

Signed this on 02nd July 2024.