

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 26th APRIL, 2024, 10:30 A.M.

**IA (IBC)/115/GB/2023
IA (IBC)/9/GB/2024
In CP (IB)/17/GB/2022**

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

IN THE MATTER OF	Indian Bank Vs Deshraj Bapanas
UNDER SECTION	U/s 7 of IBC, 2016

For Petitioner (s) :
For Respondent (s) : Mr. Bikash Yadav, Adv.
RP : Mr Ujwal Kr. Kalita, in person.

ORDER

**IA (IBC)/115/GB/2023
IA (IBC)/9/GB/2024
In CP (IB)/17/GB/2022**

Order pronounced in the open court *vide* separate common order, in the result, the above C.P is **dismissed** and both the I.As stands **disposed of**.

Detailed order follows.

Sd/-
Satya Ranjan Prasad
Member (Technical)

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

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
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IA (IBC)/115/GB/2023

And

IA (IBC)/9/GB/2024

In

CP (IB)/17/GB/2022

CP (IB)/17/GB/2022

In the matter of:

An Application Section 95(1) of the Insolvency and Bankruptcy Code, 2016, read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019;

-And-

In the matter of:

INDIAN BANK (Erstwhile Allahabad Bank, prior to Amalgamation/Merger with Indian Bank), Corporate Office at 252-266, Avai Shanmugam Salai, Chennai-14, Tamil Nadu, and one of its Zonal office at RG Baruah Road, Guwahati-3, Assam and carrying on its banking business through various branches, and in particular a branch named S.R.C.B Road Fancy Bazar Branch, Fancy bazar, Guwahati – 781001;

....Petitioner/Financial Creditor

-Versus-

MR. DESHRAJ BAPANAS, Residence at House No. 68, Arati Bhawan, Nabapur, Mazgaon, Tezpur, District Sonitpur-784001, Assam;

....Respondent/Personal Guarantor

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IA (IBC)/115/GB/2024

In the Matter of:

An Application under Rule 11 of NCLT Rules, 2016;

-And-

In the Matter of:

MR. DESHRAJ BAPANAS, Residence at House No. 68, Arati Bhawan, Nabapur, Mazgaon, Tezpur, District Sonitpur-784001, Assam;

....Applicant

IA (IBC)/9/GB/2024

In the Matter of:

An Application under Section 99 of the Insolvency and Bankruptcy Code 2016;

-And-

In the matter of:

UJWAL KUMAR KALITA, Residence at House No 15, Chandra Chowdhury Path, 1st Bye Lane, Bhetapara, Beltola, Guwahati- 781028, Assam.

....Applicant/RP

Coram:

Shri H.V Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances:

CP (IB)/17/GB/2022;

For Applicant/Financial Creditor : Mr. Subrata Dutta, Adv.

For Respondent : Mr. A.K Rai, Adv.

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In CP(IB)/17/GB/2022

IA (IBC)/115/GB/2023;

For Applicant : Mr. A.K Rai, Advocate

IA (IBC)/9/GB/2024;

RP : Mr. Ujwal Kumar Kalita

For Financial Creditor : Mr. Subrata Dutta, Adv.

Order reserved on: 18.04.2024
Order pronounced on: 26.04.2024

COMMON ORDER

1. The above Company Petition (“**CP**”) i.e. CP (IB)/17/GB/2022 under Section 95 of the Insolvency and Bankruptcy Code (“**IBC or Code**”) is filed by the Indian Bank (“**Financial Creditor**”) against Mr Deshraj Bapanas (“**Respondent Personal Guarantor/ Respondent PG**”) for ordering initiation of insolvency proceedings against the Respondent for an unresolved financial debt of Rs. 8,31,94,446/- as on 15.07.2022 granted to the CD/Principal Debtor M/s Cleanopolis Energy Systems India Pvt Ltd. The abovementioned CP was first listed on board on 29.07.2022. This Tribunal after satisfying regarding the service of formal notice to the Respondent PG *vide* its Order dated 20.12.2023 appointed Mr Ujwal Kumar Kalita as the RP to examine the Company Application and file his report.
2. Accordingly, the Ld. RP filed his report on 03.01.2024, recommending rejection of the above CA filed against the Respondent PG on the sole ground of non-service of “demand notice” dated 18.05.2022 in Form B by the FC to the Respondent PG under Rule 7(1) of the IBC Rules, 2019. In support of his recommendation, the Ld. RP examined and relied upon the postal receipt and the track report of the postal department which are annexed to the CP by the FC in support of service of demand notice on the

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Respondent PG. Since, the demand notice was returned with an endorsement “*Item Returned Addressee cannot be located*” by the postal authorities, the RP reached the above conclusion and recommended the rejection of the above CP because the service of demand notice on the guarantor is mandatory as per the provisions of the Code.

3. Opposing the recommendations of the RP, the FC filed objections to the report of the RP by way of an affidavit of Mr. Neeraj Kumar, Chief Manager, Indian Bank. It is the contention of the FC that they have dispatched the demand notice to the address of the Respondent PG available in their record which was said to have been furnished by the Respondent PG. It is also their contention that once the notice was dispatched to the correct address, it shall be presumed to have been served as per the presumptions available under Section 114 of the Indian Evidence Act, 1872 in regard to the presumption of following the common course of business and also as per Section 27 of the General Clauses Act, 1897.
4. In order to support their contention that they have dispatched the notice to the correct address of the Respondent PG, they have relied on Annexures 3, 4 and 5 annexed to the above referred objection affidavit. Annexure 3 is a driving license of the Respondent PG, in which the following address has been mentioned:

“**Address:** *Mr Deshraj Bapanas, Nabapur, Mazgaon, Tezpur, Sonitpur, Assam.*”
5. Annexure 4 is a printed form of the FC Bank in which details of the Respondent PG has been furnished including the permanent address of the Respondent PG which is as follows:

“**Permanent Address:** *Mr Deshraj Bapanas, Nabapur, Mazgaon, Tezpur, Sonitpur, Assam.*”
6. Annexure 5 is a copy of the sworn affidavit filed by the Respondent PG in the above CP wherein the address of the Respondent PG is mentioned as follows:

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“I, Sri Deshraj Bapanas..... R/O House No. 68, Arati Bhawan, Nabapur, Mazgaon, Tezpur- 784001, District: Sonitpur, Assam.”

7. Thus, the FC contends that the demand notice sent to the Respondent PG shall be presumed to have been served and the Respondent PG might have managed the postal authorities in getting the notice returned with a false endorsement. The FC also relied on the following citations in connection with the presumptions to be drawn in case of registered post etc. as laid down by the Hon’ble Supreme Court in *C.C. Alavi Haji v. Palapetty Muhammed & Anr 2007(6) SCC 555; Jagdish Singh v Natthu Singh (1992) 1 SCC 647; State of M.P v. Hiralal & Ors (1996) 7 SCC 523 and V.Raja Kumari v. P.Subbarama Naidu & Anr. (2004) 8 SCC 74.*
8. In the light of the above facts and circumstances and statutory provisions, the issues that fall for consideration are:
- a. Whether the FC has dispatched the notice to the correct address as per their own case.
 - b. Whether the statutory presumptions referred above and the case laws relied upon by the FC are applicable to the facts of the case.
9. In order to decide the above two issues, it is important to examine the address furnished by the FC in the main CP, i.e. CP(IB)/17/GB/2022 which is reproduced below:

4.	Address	Present	Permanent	Business
		House No-68, Arati Bhawan, Nabapur, Mazgaon, Tezpur, District- Sonitpur, Tezpur- 784001, Assam.	SAME	House No-68, Arati Bhawan, Nabapur, Mazgaon, Tezpur, District- Sonitpur, Tezpur- 784001, Assam.

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It is very clear from the above that the Bank is having the House No. and the name of the building of the Respondent PG in their records. It is also very clear from the above that the FC has sent the demand notice without mentioning the house number and name of the building either inadvertently or purposefully and now trying to justify their mistake under the shelter of above presumptions and case laws. *Prima facie*, the FC shall prove that they have dispatched the notice to the correct address in order to take shelter of the presumptions with respect to service, which is totally absent in this case. The FC having wrongly mentioned the address cannot take shelter of the above presumptions.

10. The presumptions of deemed service can be drawn if the postal cover is returned with an endorsement “*intimation served*”, “*unclaimed*”, or “*refused*”, Therefore, under the above referred facts, this Bench has no iota of doubt to hold that the notice was not sent to the correct address and the above referred presumptions and the case laws relied by the FC will not come to their aid and help.
11. For the aforesaid reasons, this Tribunal is of the considered opinion that the RP has not committed any illegality or irregularity in recommending rejection of the above CP, having agreed the co-existing liability of the Respondent PG, for want of service of demand notice which is mandatory under the provisions of the Code. Therefore, we have no option except to dismiss the above CP against the Respondent PG. Accordingly, the above CP is dismissed granting liberty to the FC to file fresh Company Petition after issuing fresh demand notice subject to the law of limitation.
12. IA (IBC)/9/GB/2024 is disposed of in light of the above observations. In view of dismissing the main CP, IA (IBC)/115/GB/2023 has become infructuous and is 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.

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14. Certified Copy of this order 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 26th day of April, 2024.