

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P. (IB) No. 15/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 18.11.2022**

In the matter of:

M/s. Brahmaputra Galvochem Pvt. Ltd. - Corporate Debtor

Versus

State Bank of India - Financial Creditor

Section: Under Section 10 of IBC, 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	NONE	-	Petitioner	Present in Video
2.	NONE	-	Respondent	Conference

ORDER
Date of Order: 18.11.2022

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

Order delivered on 18.11.2022

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 Galvochem Private Limited seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against itself.

2. M/s. Brahmaputra Galvochem Private Limited is a private Limited Company incorporated on 16.08.1993, having CIN: U27105AS1993PTC003967 and presently the following are the Directors:

- i. Santosh Kumar Jaishwal (Director)
- ii. Padma Nath Deka (Director)

The registered office of the CD Company is at Room No. 19, 2nd Floor, Vrindavan Market, SJ Road, Athgaon Guwahati-781001 in Assam State. The Nominal Share Capital of the Corporate Debtor (CD) Company i.e. M/s. Brahmaputra Galvochem Pvt. Ltd., is Rs. 2,35,00,000.00 and the Paid-Up Share Capital is Rs. 2,33,17,600.00

3. The Petitioner submits that:
- 3.1 The Corporate Debtor is in the business of manufacturing of galvanizing of all kinds of steel tubes and pipes, dealer, importer and exporter of galvanized steel products. The Company majorly services the North Eastern States of India.
- 3.2 The petitioner has incurred substantial loss of Rs. 3,50,521.00, Rs. 2,18,767.00 and Rs. 1,75,471.40 during the FYs 2019-20, 2020-21 and 2021-22 (up to 31.03.2022) respectively as per the audited balance sheets. The cumulative losses mounted to Rs. 7,44,759.40 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 27.06.2014 and issued Sec. 13(2) notice under SARFAESI Act, 2002 on 05.07.2014, 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. 2,19,26,543.00, 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 Petitioners facilities as Non-Performing Asset (NPA) as on 27.06.2014 and issued 13 (2) notice under SARFAESI Act on 05.07.2014. It is pertinent to state herein that there are no transactions since 201-18 in the bank account (s) of the Company due to the non-operation of business and auction settlement procedure.
- 3.5 The reasons for acute financial stress of the Corporate Debtor:

A. Key Financials of the CD

FY	Share Capital	Reserves	Turnover	Net Profit/ Loss
2018-19	23.31	-3.81	NIL	-6.16
2019-20		-3.46	NIL	-3.50
2020-21		-3.24	NIL	-2.18
2021-22		-3.34	NIL	-1.75

- i. Buoyed by the Success of the steel business, the company planned for up gradation of TMT bars/rods unit at Amingaon. The Petitioner submitted its application to the State Bank of India (SBI) for financial assistance initially for Rs. 4.95 crores enhancing to Rs. 5.65 crores which was sanctioned on 18.04.2004. After a lapse of few years, SBI sanctioned additional limits from time to time on various dates, vide sanction letters dated 19.07.2010, 17.05.2011, 15.10.2012 and 07.03.2013.
- ii. 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.

- 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 due 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 unfavourable terms for quick realisation.
- 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.
- 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 newspaper dated 22.02.2020 and the said properties were sold out in auction.
- 3.6 The Corporate Debtor/Corporate Applicant has not incurred any ineligibility as per Section 11 of IBC, 2016.
- 3.7 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 Creditors	State Bank of India(SBI)
2.	Address of Correspondence of the Financial/ Operational Creditors	State Bank of India (SBI), Central Office at Madam Cama Road, Mumbai-400021 with its local office at Dispur, Guwahati and branch office at stressed Assets Management Branch (SAMB), Kolkata
3.	Total Debt Raised and Amount in Default	<p>Total financial Debt raised – Rs. 3.25 Crores Total Financial Debt in default- Rs. 2.19 crores</p> <p>SBI- Total Debt raised: Rs. 3.25 crores Amount in default: Rs. 2.19 crores</p> <p>Operational debt in default Payable to Capital Goods & fixed assets- Rs. 1.99 crores Deferred tax liabilities: Rs. 31.27 lacs Statutory Dues Payable- Rs. 12.91 lacs Other current liabilities – Rs. 5.85 lacs</p>

		Total debts due- Rs. 3.01 crores
4.	Date When The Financial/ Operational Debt Incurred	SBI-27.06.2014
5.	Particulars Of Security Held, if any, the date of its Creation, its Estimated Value as per the Creditor	<p>Particulars of Security held with SBI</p> <p>Schedule A Hypothecation charge on the stock of raw materials, stokes-in- process, finished goods, books debts, consumables and other current assets of the company, present and future.</p> <p>Schedule B 1. A plot of land measuring 7 Bighas 2 Kathas 10 Lechas covered by Dag No.-193/366 under K.P. Patta No. 69 at Village- Sila Mahekhai, under Sila Sinduri Ghopa Mouza, in the District of Kamrup (R), Assam and Building thereon belonging to the Company. 2. Personal Guarantee of Mr. Santosh Jaishwal and Mr. Sanjeev Jaishwal and Corporate Guarantee of M/s Brahmaputra Iron and Steel Company Private Limited.</p>

5. Fixed Assets of the CD Company viz., land, building & civil work, furniture and fixture and machinery are mentioned in the financial statement annexed which are mortgaged / charged to bank have been sold out through a private treaty by State Bank of India to M/s Sagar Industrial Park under the Provisions of SARFAESI Act, 2002 read with security interest enforcement Rules, 2002. The particulars of the fixed assets:

Sl. No.	Particulars	Assets as on 31.03.2021 (Amt. in Rs.)	Accumulated Depreciation	Net C carrying Amount (Amt. in Rs.)
1.	Land Development and shed	38,69,477	No depreciation has been charged as the Company has not carried out any operation during FY 2020- 2021	38,69,477
2	Building and Work	10408035		62,28,978
3.	Furniture and Fixture	1,69,350		8,468
4	Plant & Machinery	1,57,71,787		69,41,455
5.	Vehicles	4,26,400		21,320
6.	Computer Systems	1,02,950		Nil
7.	Utility Installation	66,36,891		17,43,321
8.	Misc. Fixed Assets	22,23,377		11,34,943
	Total	3,96,08,267		1,99,47,962

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 Related Party To Cd
1	M/s Brahmaputra Iron & Steel Co. Pvt. Ltd.	Room No. 19, 2 nd Floor, S.J. Road, Athgaon Guwahati- 781001, Assam	State Bank of India and NEDFi	Company itself
2	Sri Santosh Jaiswal	Kunti Kunj, Krishana Nagar, Chatribari, Guwahati-781001	State Bank of India and NEDFi	Yes , he is the Director
3	Padma Nath Deka	Noboday Apartment, 1 st Floor, Zoo Narengi Road, Chinaki Path, M.T. Road, Guwahati-781024	State Bank of India	Yes , he is the Director

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 Galvochem 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 and Part-II of the Application.

7.4 With respect to statements made in Part III of the Application, it is stated herein 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 27.06.2014 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 were sold under the provisions of the SARFAESI Act, 2002. The Answering Respondent Bank had received a sum of Rs. 1,87,00,000.00 (Rupees One Crore Eighty-Seven Lacs) 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 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. 166/2017 before the DRT at Guwahati. Vide judgment and order dated 20-09-2017, the Ld. DRT at Guwahati has issued recovery certificate for a sum of Rs. 3,47,00,080.67 (Rupees Three Crores Forty-Seven Lacs Eighty and Paise Sixty-Seven) only with pendent lite and future interest @ 12.25% 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 29.07.2022, 26.08.2022, 15.09.2022, 30.09.2022 and 10.11.2022.

ORDER

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 the Financial Creditors (FC)-SBI have confirmed that the accounts of the Applicant are NPAs and the Applicant has defaulted in making payments of interest and instalments to SBI- the FC/Respondent 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. 7,44,759.40 as on 31.03.2022 eroding the entire paid up share capital and reserves.

10. Considering the materials, papers filed, submissions made 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 Creditor/Respondent;

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;
- iii. The special resolution passed by shareholders of the Corporate Debtor approving the filing of the application under Section 10 of IBC; and
- 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 27.06.2014 with SBI, Respondent No. 1, Financial Creditor to the CD; and

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 18.11.2022.

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. 18.11.2022 with the above observations and directions.

Sd/-

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

Sd/-

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