NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.A. (CAA) No. 11/2021

IN THE MATTER OF:

ARUNACHAL TEA & INDUSTRIES PRIVATE LIMITED (ATIPL)

...Transferor Company

AND

JALANNAGAR TEA ESTATE PRIVATE LIMITED (JTEPL) **...Transferee Company**

Section: Section 230-232 of Companies Act, 2013.

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	BABU LAL PATNI	Company Secretary	Petitioners	Through
2.				Video Conference

Order delivered on 17th September, 2021

CORAM: HON'BLE SHRI H. V SUBBA RAO, MEMBER (J)
HON'BLE SHRI PRASANTA KUMAR MOHANTY, MEMBER (T)
Hearing through Video Conference

ORDER
[Per se: Hon'ble Shri H.V. Subba Rao, MEMBER (J)]

The case is fixed for pronouncement of Order. The Order pronounced in open court vide separate sheets enclosed.

Sd/-	**Sd/-**
(Prasanta Kumar Mohanty)	**(H.V. Subba Rao)**
Member (Technical)	**Member (Judicial)**

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.A. (CAA) No. 11/2021

IN THE MATTER OF:

ARUNACHAL TEA & INDUSTRIES PRIVATE LIMITED,
(Hereinafter referred as ATIPL)
A Company incorporated under the provisions Of the Companies Act, 1956 (CIN U21012AS1943PTC000574) and having Registered Office at Jalannagar, Dibrugarh, Assam- 786005.

…**Transferor Company**

AND

JALANNAGAR TEA ESTATE PRIVATE LIMITED,
(Hereinafter referred as JTEPL)
A Company incorporated under the provisions Of the Companies Act, 1956 (CIN U01132AS1944PTC000580) and having Registered Office at Jalannagar, Dibrugarh, Assam- 786005.

… **Transferee Company**

Order delivered on 17/09/2021

CORAM: HON'BLE SHRI H. V. SUBBA RAO, MEMBER (J)

HON'BLE SHRI PRASANTA KUMAR MOHANTY, MEMBER (T)

Hearing through Video Conference

ORDER

[Per se: Hon'ble Shri H. V. Subba Rao, MEMBER (J)]

1. The present joint application is filed under **Sections 230 to 232 of the Companies Act, 2013**, by the Applicant Companies seeking the following reliefs:

a) Dispensing with the convening of meeting of the equity shareholders of the Applicant Companies in view of the Written Consents given by the Shareholders.

b) That following necessary direction(s) may be given in case the Hon'ble NCLT does not dispense with the convening of the meeting of equity shareholders of the applicant companies,

    i. The method of convening, holding and conducting the said meeting of equity shareholders of the applicant companies.
    ii. Fixing the date and time for all meetings be held at the registered office or any other places as deemed fit and proper;
    iii. Appointing a Director of the Company as Chairperson for the meetings to be held.
    iv. Fixing the quorum and the procedure to be followed at the meeting or meetings, including voting in person or by Proxy/Authorized Representative at the meeting.
    v. Advertisement/publication of Notice of meeting or meetings in the Sentinel (Guwahati) in English Edition and in Agradoot (Guwahati) in Assamese Edition or any other newspaper as deemed fit and proper for all the applicant companies;
    vi. Dispatch of Notice of the meeting or meetings by speed post and/or courier and/or hand delivery and/or electronic means;
    vii. Chairperson of the respective meeting or meetings may be directed to file report within 15 days from the date of meeting or meetings and copies of the said report be also delivered to the Applicant Companies;

c) Dispensing with the convening of meeting of the Secured Creditors of the Applicant Companies as the Secured Creditor i.e. Punjab National Bank, 4, N.C. Dutta Sarani, Kolkata- 700001 and Punjab National Bank, Jalan Nagar Branch have filed its No Objection Certificate dated **29.07.2021**.

d) That following necessary direction(s) may be given for convening of the meetings of Unsecured Creditors of the Applicant Companies,

i. The method of convening, holding and conducting the said meeting of equity Unsecured Creditors of the applicant companies
ii. Fixing the for all meetings be held at the registered office or any other places as deemed fit and proper;
iii. Appointing a Director of the Company as Chairperson for the meetings to be held.
iv. Fixing the quorum and the procedure to be followed at the meeting or meetings, including voting in person or by Proxy/Authorized Representative at the meeting.
v. Advertisement/publication of Notice of meeting or meetings in the Sentinel (Guwahati) in English Edition and in Agradoot (Guwahati) in Assamese Edition or any other newspaper as deemed fit and proper for all the applicant companies;
vi. Dispatch of Notice of the meeting or meetings by speed post and/or courier and/or hand delivery and/or electronic means;
vii. Chairperson of the respective meeting or meetings may be directed to file report within 15 days from the date of meeting or meetings and copies of the said report be also delivered to the Applicant Companies;

e) Notice be given to sectoral regulators or authorities as required under sub-section (5) of Section 230;

f) That leave be granted to file application under sub-rule (2) of rule 3 of the Rules by the Applicant Companies to sanction the proposed Scheme of Amalgamation within 4 weeks from the date when Chairperson files its report;

g) Such further order or orders be made and/or direction or directions be given as to this which the Hon'ble Tribunal may deem fit and proper.

2. The benefits/reasons that have necessitated and/or justified the said Scheme of Amalgamation are, inter alia as follows:

a) The proposed Scheme shall result in consolidation of the business in one entity and strengthen the position of the merged entity, by enabling it to harness and optimize the synergies of the applicant companies. Accordingly, it would be in the best interests of the shareholders of the Transferor Company and Transferee Company.

b) All the Applicant Companies belong to the same management group, thus post-merger, there shall be no change in the management and control of the Transferee Company. The amalgamation of Transferor Company with the Transferee Company would lead to a more efficient utilization of capital for future growth of the amalgamated entity.

c) The amalgamation will result in administrative and operational rationalization, organizational efficiencies, reduction in overheads and other expenses and optimal utilization in various resources. It will prevent cost duplication and the resultant operations would be substantially cost-efficient. Consequently, the Transferee Company will offer a strong financial structure and facilitate resource mobilization and achieve better cash flows. The synergies created by the amalgamation would increase the operational efficiency and integrate business functions.

d) The amalgamation will provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage assets, capabilities, experience and infrastructure of the companies. The amalgamation will also reduce the managerial overlaps involved in operating different entities, ease and increase operational and management efficiency, integrate business functions, and eliminate duplication and rationalization of administrative expenses.

e) Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined businesses which can be deployed more efficiently to fund organic and inorganic growth opportunities to maximize shareholder value.

f) Improved organizational capability and leadership arising from the pooling of human capital that has diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry. Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement; and synchronizing of efforts to achieve Uniform Corporate Policy.

3. A copy of the Composite Scheme of Amalgamation, for which this joint application is filled for sanctioning, is annexed with the application marked as **Letter-"E"** and the terms and conditions of the Scheme are set out in the Composite Scheme of Amalgamation, a copy of which is annexed as mentioned herein above.

4. The Applicant Companies submit that the Board of Directors of each of the Applicant Companies are of the opinion that the proposed Composite Scheme of Arrangement would benefit their shareholders, creditors, employees and the general public.

5. It is stated that the Board of Directors of both the Applicant Companies have at their respective meetings held on 16th Day of March, 2021 by resolutions passed unanimously, approved a Draft Scheme of Amalgamation of **ATIPL** (hereinafter referred to as "Transferor Company") with **JTEPL** (hereinafter referred to as the

"Transferee Company") whereby all the properties, assets, rights and claims whatsoever of the Transferor Company and their entire undertakings together with all their rights and obligations relating thereto are proposed to be transferred to and vest in Jalannagar Tea Estate Pvt. Ltd, the Transferee Company. Copies of the minutes of the said meetings at the hearing of this application, if necessary.

6. It is submitted that the terms and conditions of the amalgamation are fully stated in the said Scheme of Amalgamation, a copy whereof is annexed hereto and marked as **ANNEXURE "E"**.

7. It is stated that the valuation report of the Company has been carried out and approved by **Mr. Manish Gadia, a Registered Valuer having REGN. NO. IBBI/RV/06/2019/11646** and is bona fide and reasonable, a copy whereof is annexed hereto and marked as **ANNEXURE "F".**

8. It is submitted that there are no investigations or proceedings pending under Section 206 to 229 of the Companies Act, 2013 against any of the Applicant Companies.

9. It is also stated that none of the Directors of the Applicant Companies have any material interest in the said scheme of amalgamation except as Directors and Shareholders in general and the extent of which will appear from the Register of Director's Shareholding maintained by the respective Companies.

10. It is also stated that Applicant Companies have also affirmed affidavits as required in terms of Section 230(2) of the Companies Act, 2013.

11. It is also submitted that the Applicant Companies has prepared a List of Creditors as on 31.12.2020 for the purpose of approval of the Scheme. List of Creditors are enclosed herewith marked as Annexure **"G & H".**

12. It is submitted that in as much as all the shareholders of the Applicant Companies, **ATIPL** and **JTEPL** have duly consented in writing by way of an affidavit and have agreed to the terms and conditions of the proposed scheme, it is therefore

submitted that the requirement of convening and holding a meeting to ascertain the wishes of the shareholders of the applicant Companies be dispensed with. The list of all shareholders of the applicant companies along with their individual affidavits are annexed hereto and marked as **ANNEXURE "I & J".**

13. It is also submitted that the Hon'ble Tribunal may be pleased to dispense with the convening and holding of the meeting of shareholders of the Applicant Companies.

14. It is further submitted that if this Hon'ble Tribunal does not dispense with the convening and holding of the meetings of the equity shareholders, directions may be given for holding separate meeting(s) of the equity shareholders of the Applicant Companies at their registered office address or such other places as this Hon'ble Tribunal may deem fit and proper for the purpose of considering, and if thought fit, approving Scheme of Amalgamation, with or without modification and direction be given to serve the notices of the shareholders of the applicant companies under speed post, registered post, courier or hand delivery or electronic means and direction be given for publication in the newspaper for convening and holding meeting of the shareholders of the Applicant Companies aforesaid.

15. It is submitted that the Hon'ble National Company law Tribunal may be pleased to dispense with the convening and holding of the meeting of Secured Creditors of the Applicant Companies as the Secured Creditor i.e. Punjab National Bank, 4, N.C. Dutta Sarani, Kolkata- 700001 and Punjab National Bank, Jalan Nagar Branch have filed its No Objection Certificate dated **29.07.2021**.

16. It is further submitted that the necessary directions may be given for holding separate meeting(s) of the unsecured creditors of the Applicant Companies at their registered office address or such other places as this Hon'ble Tribunal may deem fit and proper for the purpose of considering, and if thought fit, approving Scheme of Amalgamation, with or without modification and direction be given to serve the notices of the creditors of the applicant companies under speed post, registered post, courier or hand delivery or electronic means and direction be given for publication in the

newspaper for convening and holding meeting of the creditors of the Applicant companies aforesaid.

17. It is also submitted that the accounting treatment, proposed in the Scheme of Amalgamation in clause 3.9 (a) is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act. A certificate under Section 230(7) confirming the same is provided by **M/s Ladia & Associates**. Chartered Accountants, a copy whereof is annexed hereto and marked as **ANNEXURE "K".**

18. It is submitted that no one will be prejudiced if any order is made and/or directions are given as prayed for and this application is made bona fide and for the ends of justice. Unless orders are made as prayed for, the applicant companies will suffer irreparable loss and injury.

19. It is submitted that as per order dated 23.08.2021 of this Hon'ble Bench, Mr. Manoj Jalan, the Director of both the Applicant Companies i.e. ARUNACHAL TEA & INDUSTRIES PRIVATE LIMITED and JALANNAGAR TEA ESTATE PRIVATE LIMITED have filed an affidavit dated 30.08.2021 wherein it is stated that the Petitioners are not ineligible under Section 29A of the Insolvency and Bankruptcy Code, 2016.

20. The Petitioners have suggested the following names of the Directors of both the Transferor and the Transferee Companies who is to be appointed as the Chairperson for convening the meeting of the Unsecured Creditors of both the Applicant Companies. The names are

a. Manoj Jain, (DIN: 00182169),or

b. Vineeta Jain, (DIN: 00187767) or

c. Sajan Kumar Agarwalla. (DIN: 07420708)

21. **The Applicant Companies further submit that no prejudice would be cause to any one, if an order is made and/or directions are given as prayed**

for hereinabove and hence, appropriate orders/ directions be passed by this Tribunal for serving notice upon:

1. **Regional Director, North Eastern Region, Ministry of Corporate Affairs, Guwahati**
2. **The Registrar of Companies, Guwahati**
3. **The Official Liquidator, Guwahati**
4. **The Income Tax Authorities, having jurisdiction over the affairs of the Company.**

22. Having heard the learned advocate for the Applicant Companies and by considering the consent affidavits filed on behalf of the shareholders and secured creditors, **the meeting of the Shareholders and the Secured Creditors of the Applicant Companies are hereby dispensed with.**

23. Therefore, in our view, the present Company Application deserves to be allowed. Accordingly, it is allowed in terms of the prayer clause and subject to following directions:

i. The Applicant Companies to issue a notice, in Form No. CAA.3 along with disclosures mentioned under Rule 6, as per the provisions of Section 23 (5) read with Rule 8 of the Companies Act, to

   a. Regional Director, North Eastern Region, Guwahati,

   b. The Registrar of Companies, Guwahati

   c. The Official Liquidator, Guwahati

   d. Income Tax Authority concerned and

by informing that their representations, if any, to be made within a period of 30 days from the date of receipt of such notice, **failing which it would be presumed that they have no objections to make on the proposed Company Scheme/ proposal.** Such notices shall be sent forthwith by registered post or by speed post or by courier or by hand delivery at the office of the above authorities as required by sub-rule (2) of the Rule 8 of the Companies (CAA) Rules, 2016. **The aforesaid authorities who desire to make any representation under sub-section (5) of Section 230, shall send the same to the Tribunal within a period of 30 (Thirty) days from the date of receipt of such notice, failing which it would be deemed that they have no representations to make on the proposed arrangement/proposals/demerger.**

24. The Meeting of the Unsecured Creditors of the Transferor Company i.e. Arunachal Tea & Industries Private Limited be convened and held **at the registered office at Jalannagar, Dibrugarh, Assam- 786005 on Tuesday, the 9th day of November, 2021 at 10.00 AM** for the purpose of considering the proposed Scheme of Amalgamation of ARUNACHAL TEA & INDUSTRIES PRIVATE LIMITED (Transferor Company) with JALANNAGAR TEA ESTATE PRIVATE LIMITED (Transferee Company).

25. The Meetings of the Unsecured Creditors of the Transferee Company i.e. Jalannagar Tea Estate Private Limited be convened and held **at the registered office at Jalannagar, Dibrugarh, Assam- 786005 on Tuesday, the 9th day of November, 2021 at 11.30 AM** for the purpose of considering the proposed Scheme of Amalgamation of ARUNACHAL TEA & INDUSTRIES PRIVATE LIMITED (Transferor Company) with JALANNAGAR TEA ESTATE PRIVATE LIMITED (Transferee Company).

26. At least 30 days before the said Meetings of the Unsecured Creditors of the Applicant Companies to be held as aforesaid, a Notice convening the said Meeting at the place, day and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by registered post or by air mail or by courier or by speed post or by hand delivery to each of the Unsecured Creditors of the Applicant Companies at their respective registered or last known addresses or by e-

mail to the registered e-mail address of the Unsecured Creditors as per the records of the Applicant Companies.

27. At least 30 clear days before the Meetings of the Unsecured Creditors of the Applicant Companies to be held as aforesaid, a Notice convening the said Meeting at the place, day and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the registered office of the Applicant Companies as aforesaid and shall also be published once each in **Sentinel (Guwahati) in English Edition and in Agradoot (Guwahati) in Assamese Edition**.

28. The Applicant Companies undertake to:

i. Issue Notice convening Meeting of the Unsecured Creditors as per Form No. CAA.2 (Rule 6) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

ii. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013.

iii. Issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and

iv. Advertise the Notice convening Meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertakings are accepted.

29. **Mr. Manoj Jalan (DIN: 00182169)**, **Director** failing him **Ms. Vineeta Jalan (DIN: 00187767) Director, of both the Transferor and the Transferee Companies** is appointed as Chairperson for the Meetings of the Unsecured Creditors of

the Applicant Companies. The Scrutinizer for the Meetings shall be **Mr. Subhash Mal Nahata, Practicing Chartered Accountant** and his remuneration is settled with the Director of the Applicant Companies.

30. The Chairpersons appointed for the aforesaid Meeting(s) to issue the Notices of the Meeting(s) referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the Meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the Meeting(s) by any person(s).

31. The quorum for the aforesaid Meeting(s) of the Unsecured Creditors shall be as prescribed under Section 103 of the Companies Act, 2013.

32. In case if the Quorum as noted above is not present at the Meeting(s), then the Meeting(s) shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of quorum valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the persons entitled to attend and vote at the Meeting is filed with the registered office of the Applicant Companies at least 48 hours before the Meeting(s).

33. The voting by proxy or Counsel in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the Meeting(s), is filed with the Applicant Companies at its Registered Office, not later than 48 hours before the aforesaid Meeting(s) as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

34. The value and number of the shares of each member shall be in accordance with the books/ register of the Applicant Companies and where the entries in the books/ register are disputed, the Chairperson of the Meeting(s) shall determine the value for the purpose of the aforesaid Meeting(s) and his decision in that behalf would be final.

35. The Chairpersons of the Meeting(s) of all the Applicant Companies to report to this Tribunal, the result of the Meeting(s) within seven days of the conclusion of the Meeting(s), and the said report shall be filed as per Form CAA 4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

36. **Learned Counsel for the Applicant Companies submits that there are 1 (One) Secured Creditor in the Transferor Company. However, there are 44 (Forty-Four) Unsecured Creditors in the Transferor Company. The list of the Secured and the Unsecured Creditors is annexed and marked as ANNEXURE "G" at Page 162- 165.**

37. **Learned Counsel for the Applicant Companies submits that there are 1 (One) Secured Creditor in the Transferee Company. However, there are 43 (Forty-Three) Unsecured Creditors in the Transferee Company. The list of the Secured and the Unsecured Creditors is annexed and marked as ANNEXURE "H" at Page 166- 169.**

38. The Bench hereby directs the Applicant Companies to issue Notice to all their Unsecured Creditors to whom the amount is due and payable, as on 31st March, 2020. The Notice shall be sent via Courier/ Air Mail/ Registered Post/ Speed Post/ Hand Delivery/ Email as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Companies. It shall be the duty of the Applicant Companies to ensure that every creditor is put on notice as regards the present Scheme.

39. The Applicant Companies to serve the notice upon- (i) the Regional Director, North Eastern Region, Ministry of Corporate Affairs, Guwahati (ii) Registrar of Companies, Guwahati (iii) the Official Liquidator, Guwahati and (iv) the Income tax Authority within whose jurisdiction the Applicant Companies are assessed to tax, clearly indicating the PAN of the company concerned pursuant to section 230(5) of the Companies Act, 2013 and as per rule 8 of the Companies (Compromises, Arrangements

and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the authorities within 60 (Sixty) days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

40. **The Applicant Companies shall host the notices along with a copy of the Scheme on their respective websites, if any.**

41. The Applicant Companies shall file a compliance report with the Registry in regard to the directions given in this order by way of affidavit of service. That leave is granted to the Applicant Companies to file an application under sub-rule (2) of Rule 3 of the Rules by the Applicant companies to sanction the proposed Scheme of Amalgamation within 4 weeks from the date when Chairperson files its report.

42. The Applicant Companies shall also serve notice upon other Sectoral regulators as may be applicable to the Applicant Companies pursuant to the section 230(5) of the Companies Act, 2013 and as per the rule 8 of the Companies (Compromises, Arrangement & Amalgamation Rules, 2016. If no response is received by the Tribunal from such regulators within 60 (Sixty) days of receipt of the notice it will be presumed that such regulators have no objection to the propose scheme.

43. As per the judgment of the Hon'ble Supreme Court of India, all the Applicant Companies here are directed to file Affidavits that they are not illegible under section 29 A of IBC 2016 within 15 days from today.

44. The Applicant Companies shall file a compliance report with the Registry in regard to the directions given in this Order.

45. With the aforesaid directions/observations, the present Company Application, **being first motion petition** stands allowed and disposed of.

Sd/-	**Sd/-**
(Prasanta Kumar Mohanty)	**(H.V. Subba Rao)**
Member (Technical)	**Member (Judicial)**

//td/D-17.09.2021//

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P. (IB)No.39/GB/2019

Coram:

Hon'ble Shri H. V. Subba Rao, 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 17.09.2021

Name of the Company: Punjab National Bank … Petitioner / FC
V/s
Sonapur Herbal Centre Pvt.Ltd. … Respondents / CDs

Section of the Companies Act: Under Section 7 of Insolvency and Bankruptcy Code, 2016.

S. NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. S. DUTTA	Advocate	Petitioner	Present in Video
2.	MR. BIKASH SHARMA	Advocate	Respondent	Conference

O R D E R
Date of Order: 17.09.2021

The Parties are represented through their respective Counsel(s).

Today, the present matter is kept for pronouncement of order.

The present matter i.e. CP (IB) No.39/GB/2019 is rejected and disposed of.

The detailed order is recorded vide separate sheet.

Sd/-
(**Prasanta Kumar Mohanty)**
(Member (Technical)
& Adjudicating Authority

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

/D- 17.09.2021/

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

C.P. (IB)No.39/GB/2019

<u>In the matter of</u>:

Punjab National Bank
(A Body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, Mahabir Market Branch [PAN No.AAACP0165G], SRCB Road, Fancy Bazar, Guwahati – 781001, Assam, Phone 0361 – 2540487, Email Id.-bo3213@pnb.co.in

...**Financial Creditor**

V/s

Sonapur Herbal Centre Pvt. Ltd., incorporated on 31.06.2000, CIN No.U85191ML2000PTC006265, Registered Office situated at Them Market, Khanapara, District- Ri Bhoi, Meghalaya- 793001, Ph.9957577741, Email Id. sonapurherbal@yahoo.com

...**Corporate Debtor**

Order delivered on 17th September, 2021.

Coram:
Hon'ble Shri H. V. Subba Rao, Member (J):
And
Hon'ble Shri Prasanta Kumar Mohanty, Member (T):
Hearing through Video Conference

<u>Appearance</u>: For the Petitioner /FC - Mr. S. Dutta, Advocate

For the Respondent /CD - Mr. Bikash Sharma, Advocate

<u>O R D E R</u>
[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present I. B. Petition [CP (IB) No.39/GB/2019] is filed by the FC Punjab National Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor namely, Sonapur Herbal Centre Pvt. Ltd.,

for the default committed by the Corporate Debtor in making repayment of advance availed from the Petitioner/FC.

2. The Petitioner is a Body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having one of its Branches known as Mahabir Market Branch [with PAN No.AAACP0165G], SRCB Road, Fancy Bazar, Guwahati – 781001, Assam, Phone 0361 – 2540487, Email Id.-bo3213@pnb.co.in.

3. The Respondent Corporate Debtor (CD) Company, namely Sonapur Herbal Centre Pvt. Ltd., is a Private Limited Company incorporated on 31.06.2000 with CIN No.U85191ML2000PTC006265 having its Registered Office situated at Them Market, Khanapara, District- Ri Bhoi, Meghalaya- 793001, Ph.9957577741, Email Id. sonapurherbal@yahoo.com and having Nominal / Authorised Share Capital of Rs.5,00,00,000.00 (Rupees Five crores) only and paid-up Share Capital of the Respondent (CD) Company is Rs.4,29,00,000.00 (Rupees Four crores Twenty Nine Lacs) only.

4. The Petitioner has also proposed Shri Yogesh Gupta [C/o. M/s. S. Jaykishan, Chartered Accountants] Suite No.2D and 2E, 12 Ho-Chi-Minh Sarani, Kolkata- 700071, Ph- (033) 4003-5801, having IP Registration NO.IBBI/IPA-001/IP-P00349/2017-18/10650, Email yogeshgupta31@rediffmail.com to be appointed as IRP.

5. It is stated that total amount of Debt granted to the CD Company was Rs.18,29,84,000.00 (Rupees Eighteen crores Twenty Nine lacs Eighty Four thousand) only being the sum total of Rs.16,00,00,000.000 (TL) and Rs.2,29,84,000.00 (FITL). The details of disbursement of the Term Loan and FITL component upon restructuring are as under:

Date(s) of Disbursement of Term Loan	Sl.No.	Date	Amount in (Rs.)
	1	29.06.2010	12375607.00
	2	29.06.2010	21832117.00
	3	30.06.2010	792276.00
	4	29.09.2010	15000000.00

	5	23.11.2010	15000000.00
	6	03.02.2011	25000000.00
	7	18.04.2011	30000000.00
	8	30.06.2011	40000000.00
	Total		**16,00,00,000.00**
	1	30.12.2014	**2,29,84,000.00**
	Total		**2,29,84,000.00**

6. It is stated that the total amount in default in the Term Loan account [A/c No.321300IC00000043] including uncharged interest calculated up to 31.10.2019 stands at Rs.18,46,31,206.70 (Rupees Eighteen crores Forty Six lacs Thirty One thousand Two hundred Six and paise Seventy) only as on 31.10.2019. The dates of default in the Term Loan Account, therefore, occurred on 31.05.2016 and 30.09.2016. Total defaulted amount in the Funded Interest Term Loan (FITL) account [A/c No.321300IC00000113] including uncharged interest stands at Rs.3,35,91,363.91 (Rupees Three crores Thirty Five lacs Ninety One thousand Three hundred Sixty Three and paise Ninety One) only as on 31.10.2019. The dates of default in the FITL Account, therefore, occurred on 30.04.2016, 31.05.2016 and 30.09.2016. Therefore, the total defaulted amount in the Term Loan (TL) and in the Funded Interest Term Loan (FITL) comes to Rs.18,46,31,206.70 + Rs.,35,91,363.91 = Rs.21,82,22,569.91 (Rupees Twenty One crores Eighty Two lacs Twenty Two thousand Five hundred Sixty Nine and paise Ninety One) only. The loan accounts became Non-Performing Asset (NPA) on 30.09.2016 and are still continuing as NPA accounts.

Statements of Accounts along with Interest Calculation, Capitalized Penal Interest Calculation Sheets and Certificates in accordance with the Bankers Book of Evidence AC, 1891 (18 of 1891) has been filed with the Petition marked as **ANNEXURES I-A, I-B, I-C, I-D, I-F, I-I and I-J.**

7. It is stated that the Financial Creditor has sanctioned a Term Loan limit of Rs.16,00,00,000.00 crores (Rupees Sixteen crores) only and subsequently a Funded Interest Term Loan (FITL) of Rs.2,29,84,000.00 (Rupees Two crores Twenty Nine lacs Eighty Four thousand) only aggregating to Rs.18,29,84,000.00 (Rupees Eighteen crores Twenty Nine lacs Eighty Four thousand) only in favour of the Corporate Debtor.

8. It is stated that the Punjab National Bank as the Financial Creditor had sought to lodge this application under the Code of 2016 with respect to its finance in the form of Term Loan Limit of Rs.16,00,00,000.00 crores (Rupees Sixteen crores) only and subsequently a Funded Interest Term Loan (FITL) of Rs.2,29,84,000.00 (Rupees Two crores Twenty Nine lacs Eighty Four thousand) only respectively aggregating to Rs.18,29,84,000.00 (Rupees Eighteen crores Twenty Nine lacs Eighty Four thousand) only and the said loans were secured by way of the following:-

(i) Hypothecation of Assets to secure Term Loan dated 29.06.2010 for Rs.16,00,00,000.00 crores (Rupees Sixteen crores) only **(Annexure I-V).**

(ii) Supplementary Agreement for Reschedulement of Term Loan dated 30.12.2014 **(Annexure I-AH).**

(iii) E.M. created by the Corporate Debtor over a piece or parcel of land measuring 7 Bighas – 2 Kathas – 10 Lechas covered by Dag No.210 and 437 of KP Patta No.110 Revenue Village – Kamarkuchi Non K, under Mouza – Panbari, Sub-Registry Office- Guwahati, District – Kamrup (M), Assam standing in the name of Corporate Debtor by deposit of KP Patta No.10 dated 02.11.2007 **(Annexure I-Y).**

(iv) E.M. created by the Corporate Debtor over a piece or parcel of land measuring11 Bighas – 2 Kathas – 10 Lechas covered by Dag No.138 and 139 of KP Patta No.112 & 113 Revenue Village – Kamarkuchi Non K, under Mouza – Panbari, Sub-Registry Office- Guwahati, District – Kamrup (M), Assam standing in the name of Corporate Debtor by deposit of Registered Sale Deed No.8547 of 2008 dated 04.06.2008. **(Annexure I-AB).**

(v) E.M. created by the Corporate Debtor over a piece or parcel of land measuring 9 Bighas – 3 Kathas – 8 Lechas covered by Dag No.72 and of KP Patta No.114 Revenue Village – Kamarkuchi Non K, under Mouza – Panbari, Sub-Registry Office- Guwahati, District – Kamrup (M), Assam standing in the name of Corporate Debtor by deposit of **Registered Sale Deed No.9324 of 2008 dated 23.06.2008**. **(Annexure I-AC).**

(vi) E.M. created by the Corporate Debtor over a piece or parcel of land measuring 9 Bighas – 0 Kathas – 0 Lechas covered by Dag Nos. 210(old) and 409(new) of KP Patta No.92 and 93 Revenue Village – Kamarkuchi Non K, under Mouza – Panbari, Sub-Registry Office- Guwahati, District – Kamrup (M), Assam standing in the name of Corporate Debtor by deposit of **Registered Sale Deed No.2555 of 2011 dated 17.03.2011 along with Deed of Rectification being Deed No.2953 of 2011 dated 31.03.2011**. **(Annexure I-AE & AF).**

(vii) E.M. created by the Corporate Debtor over a piece or parcel of land measuring 7 Bighas – 0 Kathas – 0 Lechas covered by Dag No.290 Part of 30 years Grant Patta Revenue Village – Kamarkuchi Non K, under Mouza – Panbari, Sub-Registry Office- Guwahati, District – Kamrup (M), Assam standing in the name of Corporate Debtor by deposit of **Registered Sale Deed Np.15618 of 2007 dated 28.11.2007**. **(Annexure I-AL).**

9. It is submitted that the Corporate Debtor which had created equitable mortgage of its aforementioned properties by deposit o title deeds in favour of the Financial Creditor and also confirmed the same by signing and executing Confirmation Letters dated 15.05.2008, 29.06.2010, 29.06.2010, 17.05.2011 and 23.01.2015 **(Annexures I-Z, I-AA, I-AD, I-AG and I-AM).**

10. The Personal Guarantors have executed security documents including Deed of Guarantee dated 29.06.2010, Agreement of Guarantee dated 12.01.2015 and Supplementary Agreement of Guarantee dated 12.01.2015 **(Annexures I-X, I-AJ and I-AK).** The estimated value of the hypothecated and mortgaged properties standing in the name of the Corporate Debtor as per Valuation Report dated 12.12.2018 prepared by the registered and empanelled valuer Sri Nripen Chandra Das, is Rs.19,08,15,000.00 (Rupees Nineteen crores Eight lacs Fifteen thousand) only **(Annexure I-AZ).**

The Certificate of Registration of Charge along with list of index of registered charges crated by the Corporate Debtor in favour of the Financial Creditor as available on the website www.mca.gov.in **(Annexure I-K).**

11. It is stated that the Financial Creditor as an Applicant had filed an Original Application bearing O.A. NO.336/2017 before the Debts Recovery Tribunal at Guwahati against the Corporate Debtor and the Personal Guarantors as Defendants for recovery of Rs.16,00,70,323.36 (Rupees Sixteen crores Seventy thousand Three hundred Twenty Three and paise Thirty Six) only and the said application is pending for disposal. Further, the Corporate Debtor had also filed a Title Suit being TS No.01/2017 before the Civil Judge No.2 Kamrup, Metro, Guwahati challenging the Section 13(2) notice issued by the Financial Creditor Bank under SARFAESI Act, 2002 and the said case is pending disposal before the learned Civil Court. The learned Civil Court was pleased to dismiss the Petition [Mic. (J) Case No.01/2017] for granting Ad-Interim and permanent injunction vide Order dated 18.05.2017 and the Corporate Debtor as Appellant preferred an Appeal before the Hon'ble Gauhati High Court (FAO No.33/2017) and the said Appeal is pending before the Hon'ble Gauhati High Court and the Hon'ble Gauhati High Court had directed the Corporate Debtor not to take any coercive step under the SARFAESI Act, 2002.

12. It is further stated that Record of Default with the Information Utility, CRILIC (Central Repository Information on large Credits) Report as on 30.09.2019 dated 15.11.2019 is annexed with the Petition marked as ANNEXURE (I-AN).

13. It is stated that the latest and complete copy of the Financial Contract reflecting all amendments and waivers to date are as given hereunder:-

(i) Request by the Corporate Debtor requesting financial assistance vide Project Report (DPR)/proposal from the Financial Creditor **(Annexure I-M).**

(ii) Applications dated 27.02.2014 and 13.11.2014 for additional Term Loan and/or Restructuring /Reschedulement of the existing Term Loan **(Annexures I-N and I-O).**

(iii) Sanction Letter No. NEC/Credit dated 04.05.2010 issued by the Financial Creditor to the Corporate Debtor **(Annexure I-P).**

(vi) Sanction Advice dated 24.12.2014 for Restructuring of the Term Loan and FITL issued by the Financial Creditor to the Corporate Debtor **(Annexure 0I-Q).**

(v) Term Loan Agreement dated 29.06.2010 for Rs.16,00,00,000.00 crores (Rupees Sixteen crores) only executed by the Corporate Debtor in favour of the Financial Creditor **(Annexure I-U)**.

(vi) Hypothecation of Assets to secure Term Loan dated 29.06.2010 for Rs.16,00,00,000.00 crores (Rupees Sixteen crores) only executed by the Corporate Debtor in favour of the Financial Creditor **(Annexure I-V).**

(vii) Supplementary Agreement for Reschedulement of Term Loan dated 30.12.2014 executed by the Corporate Debtor in favour of the Financial Creditor **(Annexure I-AH)**.

(viii) FITL Agreement dated 30.12.2014 executed by the Corporate Debtor in favour of the Financial Creditor **(Annexure I-AI).**

14. The Petitioner / Financial Creditor, in order to prove the existence of financial debt, amount due and date of default, has attached the following documents with the Petition:-

(i) Term Loan Agreement dated 29.06.2010 for Rs.16,00,00,000.00 crores (Rupees Sixteen crores) only executed by the Corporate Debtor in favour of the Financial Creditor **(Annexure I-U)**.

(ii) Hypothecation of Assets to secure Term Loan dated 29.06.2010 for Rs.16,00,00,000.00 crores (Rupees Sixteen crores) only executed by the Corporate Debtor in favour of the Financial Creditor **(Annexure I-V)**.

(iii) Undertaking dated 29.06.2010 for Rs.16,00,00,000.00 crores (Rupees Sixteen crores) only executed by the Corporate Debtor in favour of the Financial Debtor **(Annexure I-W).**

(iv) Supplementary Agreement for Reschedulement of Term Loan dated 30.12.2014 executed by the Corporate Debtor in favour of the Financial Debtor **(Annexure I-AH).**

(v) FITL Agreement dated 30.12.2014 executed by the Corporate Debtor in favour of the Financial Debtor **(Annexure I-AI).**

(vi) Extract of minutes of Board Resolution of the Corporate Debtor both dated 27.05.2010 **(Annexure I-R and I-S)**.

(vii) Extract of minutes of Board Resolution of the Corporate Debtor dated 29.12.2014 **(Annexure I-R and I-T)**.

(viii) Deed of Guarantee dated 29.06.2010 signed and executed by Sri Sanjay Goswami, Smt. Srabana Goswami, Sri Suresh Sharma, Sri Purushottam Lal Murarka and Sri Paban Kumar Sharma as Personal Guarantors in favour of the Financial Creditor **(Annexure I-X).**

(ix) Agreement of Guarantee dated 12.01.2015 signed and executed by Sri Harsh Sharma and Smt. Seema Murarka as Personal Guarantors for the limit of Rs.2,29,84,000.00 (Rupees Two crores Twenty Nine lacs Eight Four thousand) only in favour of the Financial Creditor **(Annexure I-AJ).**

(x) Supplementary Agreement of Guarantee dated 12.01.2015 signed and executed by Sri Purushottam Lal Murarka and Sri Suresh Sharma, as Personal Guarantors for the overall limit in favour of the Financial Creditor **(Annexure I-AK).**

(xi) Confirmation Letters dated 15.05.2008, 29.06.2010, 29.06.2010, 17.05.2011 and 23.01.2015 confirming the deposit of Title Deeds for creation of Equitable Mortgage by the Corporate Debtor **(Annexures I-Z, I-AA, I-AD, I-AG and I-AM)**.

(xii) Recall Notice Letter dated 25.05.2017 to the Corporate Debtor **(Annexure I-AP).**

(xiii) Demand Notice dated 06.10.2016 to the Corporate Debtor under Section 13(2) of the SARFAESI Ac, 2002 **(Annexure I-AQ)**.

(xiv) Representation dated 04.12.2016 by the Corporate Debtor **(Annexure I-AR).**

(xv) Reply dated 14.12.2016 by the Financial Creditor **(Annexure I-AS).**

(xvi) Letter dated 21.12.2016 by the Financial Creditor **(Annexure I-AT).**

(xvii) Reply dated 26.12.2016 and letter dated 28.12.2016 by the Corporate Debtor **(Annexure I-AU)**.

(xviii) Letter dated 28.12.2016 by the Corporate Debtor **(Annexure I-AV).**

(xix) OTS proposal dated 11.02.2019 by the Corporate Debtor **(Annexure I-AW).**

(xx) Audited Balance Sheets cum Financial Statements of the Corporate Debtor for the Financial Year ending 2017and for the year ending 2018 (Reflecting the Loan) (Annexures I-AX and I-AY).

15. It is submitted that the Petition has been filed by the Financial Creditor exclusively for resolution of the outstanding dues/debts in the Term Loan and FITL accounts sanctioned by it. The Financial Creditor has exclusive charge over the hypothecated and mortgage properties and the Petition is well within the period of limitation under Article 137 of the Limitations Act for filing the present application under Section 7 of the IBC, 2016.

16. It is also submitted that the interest being accumulating over the defaulted amount till date, the default on behalf of the Corporate Debtor is of continuous nature and hence still in force.

17. The Petitioner /Financial Creditor has prayed for the following relief/s:

"1. To admit the application and pass an order for initiating the Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code");

2. To appoint Shri Yogesh Gupta [C/o. M/s. S. Jaykishan, Chartered Accountants] Suite No.2D and 2E, 12 Ho-Chi-Minh Sarani, Kolkata- 700071, Ph- (033) 4003-5801, having IP Registration NO.IBBI/IPA-001/IP-P00349/2017-18/10650, Email yogeshgupta31@rediffmail.com to be appointed as an Interim Resolution Professional in terms of Section 16 of the Code, as proposed;

3. To cause a public announcement of initiation of Corporate insolvency resolution process and calling for submission of claims under Section 15 of the Code; and

4. To declare a moratorium in terms of Section 14 of the Code;

18. When the matter came up on 10.02.2021, it was informed during the proceedings, by the learned Counsels for the Petitioner/FC and the Respondents/CD that the Hon'ble Gauhati High Court has passed certain Orders in the Writ Petition filed by the CD before the Hon'ble Gauhati High Court accordingly, the matter was adjourned on that day with a direction to the learned Counsels of both the Financial Creditor and the Corporate Debtor to submit the copy of the Judgement passed by the Hon'ble High Court in the aforesaid Writ Petition. The relevant part of the Order of this Bench dated 10.02.2021 is reproduced hereunder for clarity:-

> *"2. It is informed during the proceedings, by the learned Counsels for the Petitioner and the Respondents that the Hon'ble Gauhati High Court has passed certain Orders in the Writ Petition filed by the CD before the Hon'ble Gauhati High Court. In view of the Order passed by the Hon'ble Gauhati High Court, the matter is adjourned as prayed for. Copy of the order of the Hon'ble High Court has not been submitted either by the Petitioner or by the Respondents before the Registry. The Learned Counsels of both the FC and the CD are hereby directed to submit the copy of the Hon'ble High Court by 03.03.2021."*

19. However, an order was passed in the aforesaid Writ Petition (C) by the Hon'ble High Court on 17.03.2021 and the copy of the same has been filed by the learned Counsel for the Financial Creditor. The relevant part of the Order of the Hon'ble High Court is reproduced hereunder for reference:-

> ***"There is an offer which has been made before this Court by the Senior Counsel Mr. K. N. Choudhruty and the same has been accepted on principle by the concerned Bank. One of the terms of offer as suggested by the learned Senior Counsel is that they shall be depositing an amount of Rs.5 crore with the Bank on or before 24.03.2021.***
>
> ***In view of the same, we simply adjourn the matter to give space and time to the parties to reach a conclusion."***

20. Subsequently, when the matter came up before this Bench on 24.03.2021, during the proceedings, the learned Counsel for the Financial Creditor has submitted that

Rs.5.00 crores (Rupees Five crores) only has been deposited by the Respondent /CD with the FC Punjab National Bank as per the Order of the Hon'ble High Court and he prayed for some time to discuss the matter with the FC for further course of action. The matter was adjourned on that day as requested for by posting the same on 03.05.2021. The Order passed by this Bench on 24.03.2021 is reproduced hereunder:

"O R D E R

Date of Order: 24.03.2021

The matter is taken up for hearing through Video Conferencing. The Learned Counsel Mr. S. Dutta is present for the Applicant / FC and the Learned Counsel Mr. Bikash Sharma is present from the side of the respondents/CD. Heard both sides.

2. Order of the Hon'ble Gauhati High Court in WP(C) dated 17.03.2021 is filed. Part of the Order of the Hon'ble High Court is reproduced here:

> *"There is an offer which has been made before this Court by the senior counsel Mr. K. N. Choudhury and the same has been accepted on principle by the concerned Bank. One of the terms of offer as suggested by the learned senior counsel is that they shall be depositing an amount of Rs.5 crore with the Bank on or before 24.03.2021.*
>
> *In view of the above, we simply adjourn the matter to give space and time to the parties to reach a conclusion.*
>
> *Put up on 24.03.2021."*

3. During the proceedings today, the Learned Counsel for the Applicant has submitted that Rs.5.00 crores (Rupees Five crores) only has been deposited by the Respondent with the FC Punjab National Bank as per the order of the Hon'ble High Court. Hence, the Learned Counsel for the Applicant has prayed for some time to discuss the matter with the FC for further course of action.

4. The Application under Section 7 of IBC is filed on 27.11.2019 and 482 days have passed since the Application filed which needs to be admitted or rejected within Fourteen (14) days.

5. The FC is at liberty to withdraw the Application, if it does not want to pursue.

6. The matter is adjourned as prayed for by both the Applicant and the Respondents.

7. List the matter on 03.05.2021."

21. This Bench had taken up the matter on 03.05.2021, 10.08.2021 and 26.08.2021 and passed the following orders:

03.05.2021:

"O R D E R
Date of Order: 03/05/ 2021

1. *The matter is taken up for hearing through Video Conferencing. Learned counsel for the parties are present. The learned Lawyer appearing for the FC submits that Hon'ble High Court Gauhati has given four months' time from 24/03/2021 to the CD to clear the agreed amount The CD has already deposited Rs.5.00 crores earlier This development has been confirmed by the learned Lawyer appearing for the CD In view of the development the learned Counsel of the FC prays for adjournment of the matter for four months The order of the Hon'ble High Court has not been filed.*

2. It is observed that the application filed under Sec 7 of IBC has been dragged for more than five hundred (500) days at the Admission/Rejection stage This is not a Recovery court The objectives of the IBC shall not be allowed to be defeated The Applicant has to make its stand clear whether to pursue the application filed or not. However in the interest of justice the prayer of the Applicant is accepted as a last chance and matter is adjourned.

3. However it is made it clear that since the Application is filed under Section 7 of IBC and five hundred days have already crossed since the application filed, the matter may be disposed of on merit or dismissal of the Application for non-prosecution on next date. The Applicant is directed to file the copy of the Judgement of the Hon'ble High court within seven days today.

4. The matter is adjourned to 10.08.2021."

10.08.2021:

"O R D E R
Date of Order: 10.08.2021

The matter is taken up for hearing through Video Conferencing. The Learned Counsel Mr. S. Dutta is present for the Applicant / FC and the Learned Counsel Mr. Bikash Sharma is present from the side of the respondents/CD. Heard both the learned Counsels. The matter is going on for more than 500 days at the admission/rejection stage of the Application. Today the learned Counsel appearing for the Petitioner has submitted that the Respondent Company has paid total Rs.15.00 crores and still they are yet to pay interest of Rs.1.00 crore plus.

2. On the other hand, the learned Counsel appearing for the Respondent has submitted that it has paid Rs.19.00 crores plus as they have paid Rs.5.00 crores earlier. On 23.07.2021 they have also paid another amount of Rs.14.00 crores *plus. Hence, total amount paid is Rs.19.00 crores plus. There is no amount payable by the CD to the FC. Hence, the Petition should be dismissed. The learned Counsel for the Petitioner has further submitted that he is yet to get clear position from the FC.* ***Since there is no clarity with regard to the amount paid by the Respondent Company whether it is Rs.15.00 crores plus or Rs.19.00 crores plus, both the Petitioner as well as the Respondents are hereby directed to file an Affidavit by tomorrow 12.30 PM relating to the exact amount paid by the CD/exact amount received by the FC, further, any amount is leftover to be paid by the CD to the FC. Since the application is filed under Section 7 of IBC, this matter needs to be disposed of without further loss of time.***

3. ***List the matter tomorrow i.e. on 11.08.2021."***

<u>26.08.2021:</u>

"<u>O R D E R</u>

Date of Order: 26.08.2021

Matter is taken up for hearing through video conferencing. Heard the learned Counsels appearing on behalf of the Petitioner and the Respondents.

2. Counsel for the Petitioner Mr. S Dutta is not well and was represented by his Junior Counsel Ms. Rimly Haloi. She prayed for some time.

3. The matter under IBC is going on for the last 2 years and it needs to be disposed of on merit without further loss of time.

4. The counsel of the Respondent has submitted that it has paid full amount to the FC as claimed by them before the Hon'ble High Court, Guwahati. The amount paid by them is Rs.21.81 crores (Rupees Twenty-One Crores and Eighty-One Lakhs Only). Further, the CD has submitted a letter to FC for waiver of any further amount beyond the claim amount made before Hon'ble High Court, Guwahati. On the other hand, the FC has filed an affidavit confirming that it has received Rs.21.81 crores (Rupees Twenty-One Crores and Eighty-One Lakhs Only) but balance and the deferred interest up to 31.07.2021 is Rs.1.55 crores (Rs. One Crores and Fifty-Five Lakhs Only) is still outstanding.

5. Since the amount claimed by the FC before the Hon'ble High Court, Guwahati has been reportedly paid, the Respondent CD is directed to file the copy of the application filed by the FC before the Hon'ble High Court relating to the amount to be paid to the FC within 3 days from today for disposal of the matter.

6. Considering the prayer made by the Junior Counsel for adjournment, the matter is adjourned for a short period.

7. ***List the matter on 02.09.2021****."*

22. The CD M/s. Sonapur Herbal Centre Pvt. Ltd. has filed Affidavit on 07.09.2021 wherein it is stated that-

(i) The Corporate Debtor considering future prospect and reputation of the Company agreed to pay outstanding as mentioned hereinabove in affidavit in full and final within a period of four months, accordingly the Hon'ble High Court in WP(C) No.1032 of 2020 (Sonaur Herbal Pvt. Ltd. Vs. Punjab National Bank) was pleased to grant time of four months to pay outstanding. Consequently, the Corporate Debtors paid an amount of Rs.19,81,10,727.00 (Rupees Nineteen Crores Eighty One Lacs Ten thousand Seven hundred Twenty Seven) only, against the demand of the Financial Creditor of Rs.19,81,10,727.00 (Rupees Nineteen Crores Eighty One Lacs Ten thousand Seven hundred Twenty Seven) only as mentioned in the affidavit in opposition filed by the Financial Creditor before the Hon'ble Gauhati High Court in W.P.(C) No.1032 of 2020. Moreover the Financial Creditor has admitted the amount of repayment of Rs.21,81,10,727.00 (Rupees Twenty One crore Eighty One lac Ten thousand Seven hundred Twenty Seven) only in affidavit submitted before this Tribunal.

(ii) **It is pertinent to mention that the Financial Creditor has submitted its affidavit in which they stated that after filing of this proceeding, the Financial Creditor has received total amount of Rs.21.81 crores. However, they claimed further Rs.1,55,08,327.26 as balance interest, charges etc.**

(iii) **The Hon'ble Tribunal after hearing both parties directed on 02.09.2021, the Corporate Debtor to submit affidavit after payment of Rs.1,22,569.91 (Rupees One lac Twenty Two thousand Five hundred Sixty Nine and paise Ninety One) only. However, the Corporate Debtor paid complete outstanding of Rs.1,58,15,895.00 (Rupees One crore Fifty Eight lacs Fifteen thousand Eight hundred Ninety Five) only along with all interest, charges without going into dispute.**

(iv) **The Financial Creditor after receipt of the said amount, returned all property documents and accepted the said amount which is more than the directed amount of Rs.1,22,569.91 (Rupees One lac Twenty Two thousand Five hundred Sixty Nine and paise Ninety One) only by this Bench and claimed amount before this Bench by the Financial Creditor. Hence, this petition may be dismissed since nothing is remaining in application.**

(v) **The Corporate Debtor submits that the Hon'ble Tribunal may dismiss this Petition CP(IB) No.39 of 2019 considering the fact that claim amount in application has been paid. More particularly order dated 24.03.2021 passed by the Hon'ble Gauhati High Court and order dated 02.09.2021 passed by this Hon'ble Tribunal have been complied by the Corporate Debtor.**

O R D E R

23. It is now ovserved from the records / documents / Affidavits made available and the arguments advanced by the Counsels of both the parties that:-

(1) **The Applicant FC (Punjab National Bank) had filed an Application under Section 7 of IBC for initiating Corporate Insolvency Resolution Process in respect of the Corporate Debtor M/s. Sonapur Herbal Centre Pvt. Ltd. for default amount of Rs.21,82,22,569.91 (Rupees Twenty One crores Eighty Two lacs Twenty Two thousand Five hundred Sixty Nine and paise Ninety One) only which included the FITL amount of Rs.3,35,91,363.91 (Rupees Three crore Thirty Five lacs Ninety One thousand Three hundred Sixty Three and paise Ninety One) only.**

(2) After receipt of Rs.21,81,10,727.00 (Rupees Twenty-One Crore and Eighty-One lac Ten thousand Seven hundred Twenty Seven) only, the Financial Creditor has claimed further Rs.1,57,04,052.09 (Rupees One crore Fifty Seven lac Four thousand Fifty Two and paise Nine) only towards up-to-date balance and deferred interest. Hence, the total claim amount made by the Financial Creditor is Rs.23,39,26,622.00

(Rupees Twenty Three crore Thirty Nine lac Twenty Six thousand Six hundred Twenty Two) only.

(3) The Corporate Debtor has paid the entire claim amount with up-to-date interest of the Financial Creditor of Rs.23,39,26,622.00 (Rupees Twenty Three crore Thirty Nine lac Twenty Six thousand Six hundred Twenty Two) only.

24. We consider nothing survives in this Petition and hence the matter is disposed of as the amount claimed by the Financial Creditor has been fully paid by the Corporate Debtor.

25. **The Applicant FC is hereby directed to hand over the documents, all securities etc. obtained for this advance to the Respondent / CD within 10 (Ten) working days from today and file a compliance report within 5(Five) days thereafter with the Registry.**

26. **Hence this Application filed under Section 7 of IBC is disposed of as nothing survives when the entire amount claimed by the Applicant / Financial Creditor has been fully paid by the Corporate Debtor.**

Sd/-	**Sd/-**
(**Prasanta Kumar Mohanty)** **(Member (Technical)** **& Adjudicating Authority**	**(H. V. Subba Rao)** **Member (Technical)** **& Adjudicating Authority**

//D/17.09.2021//