

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P. (IB)No.05/GB/2021

In the matter of:

Damayanti Tea Industries,
(A Unit of M/s. Chandrabali Commercial India Pvt. Ltd.),
Incorporated under the Companies Act on 27.07.2020
under CIN No.U51909AS2000PTC006260, having its
Registered Office at 3rd Floor, Junction Floor, R. K. B.
Path, Dibrugarh- 786001, Assam

V/s

M/s. Bochapathar Tea Estate Pvt. Ltd., incorporated on
20.01.1947, CIN No.U01132AS1947PTC000756,
Registered Office situated at P. N. Road, Dibrugarh,
Assam – 786001.

Order delivered on 23rd August, 2021.

Coram:

Hon'ble Shri H. V. Subba Rao, Member (J):

Hearing through

And

Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

<u>Appearance:</u>	For the Petitioner	-	Mr. Anand Varma, Advocate Mr. Tarun Varma, Advocate
	For the Respondent	-	Mr. A. K. Roy, CS Mr. Amit Pareek, CS

ORDER

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present I. B. Petition is filed by the Damayanti Tea Industries 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, M/s. Bochapathar Tea Estate Pvt. Ltd., for the default committed by the Corporate Debtor in making repayment of advance availed from the Petitioner Company.

2. The Applicant is a Private Limited Company incorporated on 27.07.2000 under the Companies Act with CIN No.U51909AS2000PTC006260, having its Registered Office at 3rd Floor, Junction Floor, R. K. B. Path, Dibrugarh- 786001, Assam and is a Unit of M/s. Chandrabali Commercial India Pvt. Ltd.).

3. The Respondent Corporate Debtor (CD) Company, namely M/s. Bochapathar Tea Estate Pvt. Ltd. is also a Private Limited Company incorporated on 20.01.1947 with CIN No.U01132AS1947PTC000756 and having its Registered Office situated at P. N. Road, Dibrugarh, Assam – 786001 and the paid-up Share Capital of the Respondent (CD) Company is Rs.44,46,000.00 (Rupees Forty Four Lacs Forty Six thousand) only.

4. The Applicant has also proposed Mr. Sandeep Khaitan, 2nd Floor, Sanmati Plaza, G. S. Road, ABC, Guwahati 781 005, Email ID: khaitansandeep@gmail.com, mobile No.+918011048037 having Registration No.IBBI/IPA-001/IP-P00532/2017-2018/10957 to be appointed as IRP.

5. It is stated that the Corporate Debtor M/s. Bochapathar Tea Estate Pvt. Ltd. executed an agreement on 01.02.2017 with the Applicant Damayanti Tea Industries and availed advance of Rs.3,34,30,000.00 (Rupees Three Crores Thirty Four Lacs Thirty thousand) only with an interest payable at 16% per annum which was accrued to Rs.1,16,47,912.00 (Rupees One Crore Sixteen thousand Forty Seven thousand Nine hundred Twelve) only till 30.11.2020, disbursed on dates mutually agreed upon and the same was to be paid back in the form of 12,50,000 kgs. Of green tea leaves divided over in instalments till December, 2017.

6. It is stated that the total amount in default is Rs.2,67,05,726.00 (Rupees Two Crore Sixty Seven lacs Five thousand Seven hundred Twenty Six) only. The total principal amount paid to the Corporate Debtor is Rs.3,34,30,000.00 and the total amount received by the Petitioner from the Corporate Debtor is Rs.1,83,72,185.80 and interest for the period from 12.01.2017 to 30.11.2020 is Rs.1,16,47,912.56. Thus, grand total amount paid to the Corporate Debtor is Rs.4,50,77,912.56 and the balance payable by the Corporate Debtor is Rs.2,67,05.726.76.

7. It is stated that as per the agreement dated 01.02.2017, the agreement was valid for a period of 1(one) year till 31.01.2018 and the debt was to be paid on or before 31.01.2018, but the Corporate Debtor defaulted in repaying the debt till 31.01.2018. Hence, the date of default is 31.01.2018.

8. It is further stated that the Corporate Debtor in its Financial Statement for the financial year 2016-2017 has acknowledged its debt of Rs.84.72 lacs as on 31.03.2017 towards the Applicant and the interest upon the advance amount has been accruing at the rate of 16% per annum till the date as per the agreement dated 01.02.2017.

9. It is submitted that the Applicant 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 and is in consonance with the law laid down by the Hon'ble Supreme Court in the case of B. K. Educational Services (P) Ltd Vs. Parag Gupta & Associates reported in (2019) 11 SCC 633.

10. 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. The working for computation of amount claimed to be in default payable by the Corporate Debtor to Financial Creditor given in tabular form is attached with the petition marked as **Annexure -3**.

11. Further, in support of the claim, the proof of existence of financial debt, the amount due for payment and the date of default, the Financial Creditor has furnished the copy of the following documents:

- (i) Copy of the Agreement dated 01.02.2017 executed between Financial Creditor M/s. Damayanti Tea Industries and the Corporate Debtor M/s. Bochapathar Tea Estate Pvt. Ltd. – **Annexure -4**.
- (ii) Copy of the Bank Statements from 01.09.2016 to 31.08.2018 of the Financial Creditor M/s. Damayanti Tea Industries – **Annexure -5**.
- (iii) Copy of a chart of Daily Interest Calculation for the Corporate Debtor M/s. Bochapathar Tea Estate Pvt. Ltd. – **Annexure-6**.

(iv) Copy of the Audited Accounts for the Financial Year 2016-2017 of the Corporate Debtor M/s. Bochapathar Tea Estate Pvt. Ltd. – **Annexure-7**.

12. The Applicant 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 an Interim Resolution Professional in terms of Section 16 of the Code;
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;

13. When the matter came up, this Bench directed the Applicant to clarify the following points:

- a. The Advance is given by the Petitioner to the Respondent for supply of Green leaves to the tune of 12,50,000 Kgs. and both the parties bind themselves to specifically perform their part of the Contract without fail. In the event of default one can take action against the defaulting party.***
- b. The amount of advance would be Rs.2,35,80,000.00 but the application filed for the amount paid is Rs.3,34,30,000.00.***
- c. The rate of per Kg of Green leaves is not fixed on the date of agreement, then on what basis the rate of per Kg is fixed to determine the amount of due and default.***
- d. The Petitioner generally declares the rate of green leaf supplied to it based on the market rate of green leaves for the respective fortnight declared in the area. There is apparently no scope available for the Respondent to decide the rate of green leaves per Kg to be supplied.***
- e. The Petitioner, immediately on the transfer of goods to the Respondent as stipulated, shall debit the account of the***

Respondent. Authority to debit the Respondent's account is available with the Petitioner.

14. The Petitioner has submitted the following clarifications:
- i. The Petitioner i.e. the Financial Creditor advanced payment to the Respondent / Corporate Debtor as loan which was to be utilized by the Corporate Debtor and repayment thereof was to be done in terms of green tea leaves as mutually agreed, which the Respondent defaulted to pay as per the agreed terms.
 - ii. The Corporate Debtor has acknowledged the advancement of money by the Financial Creditor as loan and the same has been recorded in the Audited Accounts for FY 2016-2017 (ANNEXURE-7 to the CP, Pg.171). The relevant portion of the same is reproduced as under:

"5. OTHER CURRENT LIABILITIES

- iii) Damayanti Tea Industries Balance as on 31st March 2017 is Rs.8472870. It is in the nature of Loan and interest @16% is paid to them. But shown as "other Current Liabilities"*
- iii. As per Section 7(5) of IBC, the Financial Creditor, can file an application for initiation of corporate insolvency resolution process against the Corporate Debtor before the Hon'ble Adjudicating Authority when a 'default' has occurred, and The Adjudicating Authority on satisfaction of occurrence of a 'default' may admit an application under Section 7.
- iv. As per Section 3(12) of IBC, 'default' means non-payment of debt when the whole or any part or instalment of the amount has become due and payable and is not paid by the Corporate Debtor. As per Section 3 (11) of the Code, 'debt' means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and further as per Section 3 (6) (b) 'claim' means a right to remedy for breach of contract under any law for the time being in force, if such right gives right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.
- v. In the present matter, the Respondent failed to repay the advanced amount in terms of green tea leaves as per the terms of the agreement

dated 01.02.2017, and hence gave rise to the Petitioner's claim, which the Respondent was liable to pay and hence a 'debt'. In lieu of which the Petitioner/Financial Creditor has filed the above-noted application under Section 7 of IBC and is well within its capacity to do so as Financial Creditor to the Respondent.

Clarification to para 3(b):

- vi. The Petitioner/Financial Creditor, as per the agreement 01.02.2017, agreed to advance amount of Rs.2,35,80,00.00 but then as per the mutually agreed terms advanced an amount of Rs.3,34,30,000.00 which was advanced as per the need of the Respondent/Corporate Debtor. The details of the advanced loan amount on different dates is provided in detail at Annexure -3 (Page 26 to 29) of the Petition, and is substantiated with the bank statements in Annexure-5.
- vii. **The Respondent/Corporate Debtor initially made the repayments in terms of green tea leaves on different dates and lastly on 16.12.2017 as provided in detail in Annexure-3 and further excess amounts were advanced to the Respondent / Corporate Debtor as per mutual consent subject to repayment within the duration of operation of the agreement dated 01.02.2017 which was operative for the duration of 1 year i.e. up to 31.01.2018. Hence, the above noted application under Section 7 of the Code is filed for the advanced loan amount of Rs.3,34,30,000.00.**

Clarification to para 3 (c):

- viii. As per Clause 1 of the agreement, the period of one year of the agreement could be advanced further by the parties on their mutual consent but in the present case the Respondent / Corporate Debtor defaulted in repayment of the advanced loan amount as on the last date of the agreement i.e. 31.01.2018. Hence, the said agreement was not extended by the Respondent / Corporate Debtor. The relevant portion of Clause 1 of the agreement is reproduced as under:

"1. The agreement shall commence from the 1st day of February, 2017 and the period of the agreement shall be one year from the date of commencement hereof. The period of one year may be extended by the parties on their mutual consent".

Clarification to para 3 (d):

- ix. The rate of green tea leaves was fixed on the basis of the existing market rates in agreement of both Petitioner / Financial Creditor and the Respondent / Corporate Debtor. The rates were declared by the Financial Creditor as per clause 6 of the agreement dated 01.02.2017 which is reproduced as under:

"6. The Party of the First part, generally declares the rate of green leaf supplied to it, based on the market rate of green leaves for the respective fortnight declared in the area, with an extra weightage on the fine leaf count for the supply of green leaf for the fortnight. On the finalization of rate for the supply of green leaves as mentioned above, the Party of the Second Part, for the green tea leaves supplied during the period, with the amount so calculated, such that the amount of the party of the Second Part gets diminished by such an amount and the interest on the rest is charged accordingly."

- x. The rate per Kg of green tea leaves was not fixed on the date of agreement due to green tea leaves being an agricultural product are subject to rising and falling market rates and a pre-determined fixed rate at the date of agreement was not possible as the same could be in prejudice to either the Financial Creditor or Corporate Debtor on account of rise and fall in market rates of green tea leaves. Hence, an arrangement of declaring the rate of green tea leaves based on the market rate of green tea leaves for the respective fortnight declared in the area was agreed upon by both Financial Creditor and the Corporate Debtor while executing the agreement dated 01.02.2017.

Clarification to para 3(e):

- xi. The rate of green tea leaves is declared by the Petitioner / Financial Creditor as per the market rates of green leaves for the respective fortnight declared in the area as explained in the above para and the declaration of the said rate is completely dependent on existing market rate for green tea leaves.
- xii. Further, after declaration of the market rate for green leaves, the same is subject to finalization as provided under Clause 6 and subject to agreement of both the Parties in consonance with the existing market rate of green tea leaves. Hence, the determination of rate per Kg of green tea leaves weighs heavily on the existing market rate in the area subject to rise and fall and the same has been reflected under Clause 6 of the agreement dated 01.02.2017.

Clarification to para 3(f):

- xiii. The Petitioner /Financial Creditor maintained the accounts of loan advanced to the Respondent / Corporate Debtor with an interest of 16% per annum which was as per Clause 5 of the agreement dated 01.02.2017, the relevant portion being reproduced as under:

"5. The Party of the First Part immediately on the transfer of funds to the Party of the Second Part, as stipulated shall debit the account of the Party of the Second Part, with an interest to be calculated at the rate of 16 per cent per annum."

- xiv. Further, on account of repayment received from the Corporate Debtor, the accounts maintained of advance loan amount with interest would get diminished of such repayment as done by the Corporate Debtor. The same was as per the latter part of Clause 6 of the agreement dated 01.02.2017 which is being reproduced as under:

"6.On the finalization of rate for the supply of green leaves as mentioned above, the Party of the Second Part, for the green leaves supplied during the period, with the amount so calculated, such that

the amount of the party of the Second Part gets diminished by such an amount and the interest on the rest is charged accordingly."

- xv. Also, it is pertinent to mention that the Respondent / Corporate Debtor was liable to settle the accounts by the end of tea season and after the settlement of accounts, if any party was liable to receive any amount from the other then the same could be claimed as per Clause-7 of the agreement dated 01.02.2017. The relevant portion of Clause-7 is being reproduced as under:

"The Party of the Second Part, agrees to settle the account so created by the end of the tea-season, 2017 and after the settlement of accounts, the party, whichever is entitled to receive any amount from the other can claim the same from the other and the other party shall have to pay accordingly without any default."

- xvi. Hence, the Petitioner / Financial Creditor was liable to receive the outstanding amounts after settlement of accounts with the Respondent / Corporate Debtor but the Respondent / Corporate Debtor defaulted in doing the same, in lieu of which the present application under Section 7 of the Code is filed before this Hon'ble Adjudicating Authority.

The Petitioner has also cited the following Judgments of the Hon'ble Supreme Court in support of its claims:

1. Innovative Industries Ltd. Vs. ICICI Bank
2. Radha Exports (India) (P) Ltd. Vs. K. P. Jayaram (2020) 10 SCC 538
3. Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India (2019) 8 SCC 416

Hence, it is respectfully prayed that this Hon'ble Adjudicating Authority may be pleased to admit the present application under Section 7 of IBC and initiate the corporate insolvency resolution process.

15. The Corporate Debtor vide its reply dated 02.03.2021 to the petition submitted that the Company Petition in CP (IB) No.05/2021 is not maintainable for the reasons that (a) the applicant is not a person under IBC

2016 and cannot file an application under section 7 of IBC, 2016 and (b) the applicant has omitted following material facts knowing it to be material and are liable for punishment under section 75 of IBC 2016:

- (i) One Mr. Sunil Kumar Agarwalla is the Managing Director of Chandrabali Commercial (I) Pvt. Ltd., a closely held private company. Damayanti Tea Industries is a division of Chandrabali Commercial (I) Pvt. Ltd. Mr. Sunil Kumar Agarwalla has signed the Board Resolution dated 21 December 2020 of Chandrabali Commercial (I) Pvt. Ltd. to authorise Mr. Hridayananda Konwar to sign and file the application under Section 7 of IBC and that CP (IB) No.05/2021 has been filed pursuant to the said board resolution as mentioned here in above this paragraph. The said Board Resolution is enclosed in CP (IB) No.05/2021 as **Annexure I on page No.23.**
- (ii) On the alleged date of default being 31.01.2018, the entire operation of the Corporate Debtor Bochapathar Tea Estate Pvt. Ltd. (BITCO) including finance, accounts, management was in the hands of one Mr. Sunil Kumar Agarwalla. The entire operation of BTCO including finance, accounts, management was given by BTCO to Mr. Sunil Kumar Agarwalla on and from 27th September, 2017 vide Power of Attorney executed by BTCO on 27 September, 2017 in favour of Mr. Sunil Kumar Agarwalla on perpetual basis. Copy of the Power of Attorney is enclosed as **Annexure C.**
- (iii) An MOU was executed between the Corporate Debtor Bochapathar Tea Estate Pvt. Ltd. (BITCO) and Mr. Sunil Kumar Agarwalla on 27.09.2017 for assignment of all control of the company and its tea gardens to Mr. Sunil Kumar Agarwalla on perpetual basis. Copy of the MOU is enclosed as **Annexure D.**
- (iv) The Office of the Recovery Officer Assam Tea Employees Provident Fund Organisation, Dibrugarh Zone had attached all the Tea Gardens of Corporate Debtor Bochapathar Tea Estate Pvt. Ltd. (BITCO) and appointed Mr. Sunil Kumar Agarwala as Receiver of the Tea Gardens of Corporate

Debtor Bochapathar Tea Estate Pvt. Ltd. (BITCO). The Letter of Appointment of the Receiver is attached as **Annexure E**.

- (v) **The Hon'ble Gauhati High Court vide order dated 23.03.2018 passed in WP (C) No.1716/2018 ordered status quo in regard to the ownership of the Tea Gardens and factory of Bochapathar Tea Estate Pvt. Ltd. (BITCO) and the said order is still in effect. Mr. Sunil Kumar Agarwalla was respondent no.10 in W.P. (C) 1716 / 2018. A copy of the WP (C) 1716/2018 without annexure and a copy of the aforesaid order are attached collectively as Annexure F.**
- (vi) The agreement dated 01.02.2017 between Bochapathar Tea Estate Pvt. Ltd. (BITCO) and Damayanti Tea Industries, on the basis of which this Petition has been filed and executed by Mr. Sunil Kumar Agarwalla on behalf of Damayanti Tea Industries.
- (vii) No amount is due and payable in respect of the alleged transactions pursuant to the aforesaid agreement dated 01.02.2017.
 - (a) The purported claim in CP (IB) No.05/2021 is based on an agreement dated 01.02.2017 between Damayanti and BTCO, a copy of which is enclosed as **Annexure 'G'**. It would appear from para 7 of the aforesaid agreement that it was agreed between Damayanti and BTCO that by the end of tea season, 2017, the accounts would be settled and whichever party is entitled to receive any amount from the other party can claim the same from the other party after such settlement. From 29 September 2017 the entire management and control of BTCO including its tea Gardens and factory was given to the said Mr. Sunil Kumar Agarwalla. **It would be pertinent to mention that the entire control and management of BTCO was with the aforesaid Mr. Sunil Kumar Agarwalla from 27th September, 2017.** It would also be pertinent to mention that no accounts, no ledger, no details of any transaction has been shared by Mr. Sunil Kumar Agarwalla with BTCO or its Board of Directors for the period starting from 27th September

2017. Further, there is no information available with BTCO or Board of Directors of BTCO as to what quantity of green tea leaves has been transferred from BTCO to Damayanti since 27th September, 2017, that is the date on which the entire management and control went into the hands of Mr. Sunil Kumar Agarwalla. However, neither any settlement has been done nor any claim has ever been made by Damayanti from BTCO in respect of the transactions pursuant to the aforesaid agreement dated 1st February, 2017. It would also be pertinent to mention that BTCO has filed **its Annual Financial Statement up to 31st March, 2017 in the November 2019, that is after the Management of BTCO was changed pursuant to the order dated 25th January, 2019 of the Hon'ble NCLT Guwahati Bench under section 241-242 of the Companies Act, 2013 in CP No.01/2016.** A copy of the aforesaid order is attached as Annexure I. Since, the claim has not been settled there is no liability or obligation on BTCO and as such there is no debt as per section 3 (11) of IBC, 2016 payable by BTCO to Damayanti. Further, no amount is due and payable by BTCO to Damayanti. There is no financial debt within the meaning of the term under section 5 (8) of IBC, 2016, payable by BTCO to Damayanti. Further, there is no default within the meaning of the term under section 3 (12) of IBC, 2016. Therefore, there is no "cause of action" giving any entitlement to Damayanti under Section 7 of IBC, 2016. I further say that the aforesaid agreement dated 1st February, 2017 between Damayanti and BTCO is not a valid contract under the laws applicable for the time being and as such the said agreement dated 1st February, 2017 between Damayanti and BTCO is not enforceable in law.

- (b) **Rates at which tea supplied by BTCO to Damayanti has not been declared:** As per para 6 of the terms and conditions mentioned in the aforesaid agreement dated 1st February, 2017 between Damayanti and BTCO, Damayanti was to declare the rates of tea on the basis of which price was to be determined. **BTCO has never received**

any intimation or information about the rates or the price at which the tea supplied by BTCO could be or had been valued.

Further, even in CP (IB) No.05/2021 no document has been enclosed to indicate the rate at which green leaf has been valued or that what was the market rate for relevant batches of supply of green leaf.

(c) Attachment of Tea Gardens by the Provident Fund Department:

Due to Provident Fund default, the tea gardens of BTCO were attached by the Office of Recovery Officer, Assam Tea Employees Provident Fund Organization, Dibrugarh Zone (here in after referred as "**Provident Fund Department**"), vide orders of attachment dated 13th December, 2017, copies whereof are collectively attached as **Annexure 'H'**. The Provident Fund Department appointed the aforesaid Mr. Sunil Kumar Agarwalla as "Receiver" to manage all the gardens of BTCO, vide the appointment letters dated 29th January, 2018, copies of which are collectively attached as **Annexure 'E'**.

(d) Collusive Transactions: In the facts and circumstances as narrated above, it would be apparent that it is one Mr. Sunil Kumar Agarwalla, who is in overall charge of BTCO as well as of Damayanti and that in fact CP (IB) No.05.2021 is based on collusive transactions. On the basis of which there cannot be a financial debt within the meaning of the term under Section 5 (8) of IBC, 2016. In the facts and circumstances as narrated above, it would also appear that CP (IB) No.05/2021 has been filed with a malicious intent to initiate Insolvency Resolution Process / liquidation and that CP (IB) No.05/2021 has been filed for fraudulent and malicious initiation of proceedings as mentioned in section 65 of IBC, 2016. In fact CP (IB) No.05/2021 is based on collusive transactions and is a sham.

(e) Attempt to bypass the Status Quo Order of the Honourable Gauhati High Court: Vide order dated 23 March 2018 the Honourable Gauhati High Court in writ petition being WP (C) 1716/2018 ordered Status Quo in regard to the ownership of the Tea Gardens and Factory of BTCO and the said order is still in effect. Mr. Sunil Kumar Agarwalla

was respondent no.10 in WP (C) 1716/2018. A copy of WP (C) 1716/2018 with annexures and a copy of the aforesaid order are attached collectively as **Annexure F. Since, Mr. Sunil Kumar Agarwalla is not able to alienate or acquire the tea gardens of BTCO due to the aforesaid order of the Gauhati High Court, he is using Damayanti to achieve his latent and vested interest.**

- (f) **Order of the NCLT Gauhati Bench dated 25th January 2019:** It would be pertinent to mention that there were massive mismanagement in BTCO and a petition being CP (IB) No.01/241(4)/242(4)/243(1) (b)/GB/2016 was filed under section 241 & 242 of the Companies Act, 2016 by Shanta Prasad Chakraborty and others against BTCO and others in the year 2016. The allegations of financial irregularities, other mismanagement and operations were established and CP (IB) No.01/241(4)/242(4)/243(1) (B)/GB/2016 was allowed vide order dated 25th January, 2019 by Hon'ble NCLT Guwahati Bench, a copy of the order is enclosed as **Annexure 'I'**. In the aforesaid order, the Hon'ble NCLT Guwahati Bench had directed the management of BTCO to appoint an Independent Director and Directors from petitioner side for proportionate representation. Pursuant to the said direction Mr. Ranjan Mukherjee has been appointed as an Independent Director and Shanta Prasad Chakraborty has been appointed as a director.
- (g) **Efforts of revival of BTCO by the changed management:** After the appointment of Independent Director, there was a strong effort to revive BTCO and its financial position. However, since earlier management had given all control of BTCO to Mr. Sunil Kumar Agarwalla. The entire financial information is retained by Mr. Sunil Kumar Agarwalla and he is not sharing the financial information with the Board of Directors, despite repeated requests. Mr. Sunil Kumar Agarwalla has not prepared the Annual Accounts of BTCO. It would be pertinent to mention that due to non-sharing of financial information by Mr. Sunil Kumar Agarwalla, the present management is not able to

prepare the accounts. **Annual financial statements of BTCO have neither been prepared nor audited for the financial years ended 31/03/2018, 31/03/2019 and 31/03/2020.**

(h) False and misleading submission: (a) **False claim regarding the amount of loan:** The applicant in CP(IB) No.05/2021 has repeatedly alleged that BTCO had executed an agreement dated 1st February, 2017 with Damayanti and availed financial assistance of Rs.3,34,30,000.00 (Rupees Three Crores Thirty Four lakhs Thirty thousand). Kindly refer:-

- (I) Para 2 of synopsis and list of dates in page 1 of the application.
- (II) List of dates in Page 2 of the application.
- (III) Part- IV of Form- 1 on page 10 of the application

The aforesaid allegation is manifestly false and misleading. It is denied and disputed that BTCO availed financial assistance of Rs.3,34,30,000.00 (Rupees Three Crores Thirty Four lakhs Thirty thousand). A careful reading of the aforesaid agreement dated 1st February, 2017 between BTCO and Damayanti would make it absolutely clear that the agreement was for a sum of Rs.2,35,30,000(Rupees Two Crore Thirty Five lakhs Thirty thousand) only **and there was no scope for any loan under the said agreement beyond a sum of Rs.2,35,30,000(Rupees Two Crore Thirty Five lakhs Thirty thousand)**. The relevant para of the aforesaid agreement is produced hereunder for ready reference:

"AND WHEREAS the Party of the First Part will pay a sum of Rs.2,35,30,000/- (as per Annexure I), in total to the Party of the Second Part on different dates as mutually agreed in between themselves as advance amount towards purchase of the green tea leaves and the said amount shall carry on interest at the rate of 16% per annum and shall be adjusted towards supply of green tea leaves by

the Party of the Second Part from time to time as detailed in the Schedule of Payment.

*Copy of the agreement is attached as **Annexure G**.*

(i) It would be pertinent to mention that the entire control and management of BTCO was with the aforesaid Mr. Sunil Kumar Agarwalla from 27th September, 2017. It would also be pertinent to mention that no accounts, no ledger, no details of any transaction has been shared by Mr. Sunil Kumar Agarwalla with BTCO or its Board of Directors for the period starting from 27th September, 2017. The aforesaid facts would indicate that:-

(a) Any amount even if transferred from Damayanti to the bank account of BTCO beyond an aggregate sum of Rs.2,35,00,000 (Rupees Two Crore Thirty Five Lakhs) is outside the aforesaid agreement dated 1st February, 2017 between BTCO and Damayanti. As such the alleged payment by Damayanti between the period 3rd October, 2017 to 18th January, 2018 amounting to an aggregate sum of Rs.97,00,000 is outside the aforesaid agreement dated 1st February, 2017. The aforesaid sum of Rs.97,00,000 cannot be considered as loan and has not time value of money in the absence of any agreement between BTCO and Damayanti. The said sum has been transferred to the bank account of BTCO without the consent or approval of BTCO or the Board of Directors of BTCO. Further, interest @16% per annum cannot be charged on the aforesaid sum of Rs.97,00,000 as the same is not covered by the aforesaid agreement dated 1st February, 2017. It would also be pertinent to mention that as the entire control of all operations including financial operations of BTCO are with the aforesaid Mr. Sunil Kumar Agarwalla, we don't even know as to how much money has been paid to Damayanti or any other unit of Chandrabali Commercial (I) Pvt. Ltd. or to any other person. Further, there is no information available with

BTCO or Board of Directors of BTCO as to what quantity of green tea leaves has been transferred from BTCO to Damayanti since 27th September, 2017, that is the due date on which the entire management and control went in to the hands of Mr. Sunil Kumar Agarwalla.

(j) Misleading submission in the additional affidavit:

- (i) On page 6 and 7 of the Additional Affidavit and under the heading "Clarification to Para 3 (D)" the Applicant has submitted that rate of green tea leaves was fixed on the existing market rate in agreement of both Petitioner and Respondent. The said submission is entirely false. It is denied and disputed that the rates of green tea leaves was fixed on the existing market rate in agreement with the Respondent in CP (IB) No.05/2021. In fact the Respondent in aforesaid application **do not know even today the rate at which the green tea leaves were valued by the Damayanti and whether they were market rate or not.**
- (ii) It would be pertinent to mention that the Applicant has simply mentioned the amount adjusted against the loan as mentioned in page 27 to 29 of the application and said chart. It would show that they have completely suppressed the quantity of the green leaves received from BTCO and rate at which the same has been valued.
- (iii) It would be pertinent to mention that it has been repeatedly mentioned in CP (IB) No.05/2021 that the rates of green tea leaves would be determined as per market rates. However, ANNEXURE –II to the aforesaid agreement dated 1st February, 2017 has already determined the rate of green tea leaves as Rs.20 per kg and on the basis of that rate, the quantity has been determined as 12,50,000 kg. A copy of the aforesaid ANNEXURE II has been enclosed by the applicant in page 37.

- (iv) **It is submitted that the CP (IB) No.05/2021 has been filed as a sinister design and the provisions of IBC, 2016 have been sought to be used to achieve illegal objectives.** CP (IB) No.05/2021 has not been filed with any intention for maximization of value of assets of BTCO or to balance the interest of the stakeholders or for priority payment of government dues. It would also appear that CP (IB) No.05/2021 has been filed with a malicious intent to initiate Insolvency Resolution Process / liquidation of BTCO or for a purpose other than resolution of insolvency or liquidation and that CP (IB) No.05/2021 has been filed for fraudulent and malicious initiation of proceedings as mentioned in section 65 of IBC, 2016. In fact, if CP (IB) No.05/2021 is allowed it would create a bad precedence and would defeat the objectives with which the IBC, 2016 has been enacted. In the facts and circumstances as narrated above CP (IB) No.05/20-21 deserves to be dismissed with cost as non-maintainable and as such I pray for dismissal of CP (IB) No.05/2021 with cost.
- (v) Each averment in CP (IB) No.05/2021, unless expressly admitted and unless appear from the authentic record is denied and disputed as if the same has been specifically traversed, denied and disputed.
- (vi) For the facts and circumstances, as narrated above, CP (IB) No.05/2021 is liable to be dismissed with cost and the applicant is liable to be and be punished pursuant to the provisions of Sections 65 and 75 of IBC, 2016.

16. In the Rejoinder dated 22.3.2021 on behalf of the Applicant / FC it has been submitted that the averments made in Para 6 (b) are wholly wrong, misconceived, untenable and denied to its entirety, except to what is a matter of record, for the following reasons:

- i. The Power of Attorney executed by Mr. Sunil Kumar Aggarwal with the Corporate Debtor was in his own personal capacity whereas the agreement dated 01.02.2017 was executed between the Corporate Debtor and the Financial Creditor i.e. Damayanti Tea Industries is totally distinct with no overlapping of any sorts as both the parties to the agreement are corporate entities and have executed the said agreement within their separate legal capacities.
- ii. The said Mr. Sunil Kumar Aggarwal had no role in management of affairs of Corporate Debtor. The said Mr. Sunil Kumar Aggarwalla vide e-mail dated 29.09.2020 had brought to the notice of the Corporate Debtor that he had no involvement with the affairs of Corporate Debtor since 29.01.2018 and warned the Corporate Debtor to restrain from using his name before its creditors and making false claims on its behalf.
- iii. Vide a letter dated 12.10.2020 addressed to the said Mr. Sunil Kumar Aggarwalla, the Corporate Debtor has acknowledged the very debt it owes to the Financial Creditor.

29. It is submitted that the averments made in Para 7 are wrong and denied, except what is a matter of record, as the arguments of the Corporate Debtor is largely based upon unavailability of records and change of management and the same do not validate committing default in payment of debt or performing of obligations under a contract. The averments made with respect to Mr. Sunil Kumar Aggarwal does not create any barrier for repayment of debt as under the agreement dated 01.02.2017, the Corporate Debtor had been accepting financial assistance from the Financial Creditor since 12.01.2017 and the same continued till 18.01.2018 which was clearly way before any change in management. **It is to be noted that, the Corporate Debtor made payments in terms of green tea leaves since 07.04.2017 to latest till 16.12.2017 and the change of management after November 2019 in pursuance of order NCLT, Guwahati Bench, does not validate or barricades Corporate Debtor's default in payment of debt for the period of agreement i.e. February 2017 to January 2018. Further averments of the Corporate**

Debtor about agreement dated 01.02.2017 not being a valid contract is false, misconceived and unsustainable in the eyes of law.

30. It is submitted that the averments made in Para 8 are wrong and wholly denied. The Financial Creditor always apprised Corporate Debtor about prevalent market rates of green tea leaves and subsequently Corporate Debtor had made repayments byway of green tea leaves till 16.12.2017. All the repayments made by Corporate Debtor prior to 16.12.2017 were made in terms of then prevalent market rates which was not disputed by Corporate Debtor even once while making the said repayments.

31. It is submitted that the averments made in Para 9 are wrong, irrelevant and denied, except to what is a matter of record, as the default in payment of provident fund dues and default in payment of debt due by the Corporate Debtor are very distinct proceedings. It is further submitted that provident fund dues do not constitute to be an asset of the Corporate Debtor and hence, are irrelevant in the present case. The attachment of tea gardens by Assam Tea Employees Provident Fund Organization, Dibrugarh Zone do not provide immunity to Corporate Debtor from repayment of debt due. The default in payment of debt is the sole liability of Corporate Debtor and the same does not subside even if the tea gardens have been attached by the Provident Fund Department.

32. It is submitted that the averments made in Para 10 are wrong, misconceived and denied as the present application has been filed solely due to default of the Corporate Debtor in payment of due debt and no other reason. The Corporate Debtor has failed to provide any information with respect to question of debt due has instead tried to mislead the Hon'ble Adjudicating Authority. The Financial Creditor, a separate corporate entity, is not concerned with the actions of Mr. Sunil Kumar Aggarwal in his personal capacity and the same is not a matter for consideration with respect to default in payment of debt by Corporate Debtor. The agreement dated 01.02.2017 between the Corporate Debtor and Financial Creditor is not at all affected by actions of Mr. Sunil Kumar Aggarwal in his personal capacity and hence, shall not be of any consequence in the present application.

33. It is submitted that the averments made in Para 11 are wrong, irrelevant and wholly denied, except to what is a matter of record, as the present application has been filed under Section 7 for initiation of corporate insolvency resolution process against the Corporate Debtor for default in payment of debt, which is well within the rights of the Financial Creditor and separate legal remedy and is in no manner contravening the order dated 23.03.2018 of the Hon'ble High Court in WP (C) 1716/2018. It is pertinent to note that, after a careful perusal of Annexure F of the reply [page 60-65, @Pg.63], the Corporate Debtor i.e. M/s. Bochapathar Tea Estate Private Limited is itself the Respondent NO.4 in WP (C) 1716/2018 and hence the order dated 23.03.2018 and the rights of the Financial Creditor under Section 7 of the Code are in no manner overlapping each other with respect to the facts. Hence, the averments advanced by the Corporate Debtor are in too misconceived and irrelevant to the present application.

34. It is submitted that that the averments made in Para 12 are wrong, irrelevant and wholly denied except to what is a matter of record, as the order dated 25.01.2019 of NCLT, Guwahati Bench in the matter of CP No.01/241(4)/242(4)/234(1)(B)/GB/2016 is a matter of internal management of the company and cannot validate Corporate Debtor's default in payment of debt. It is pertinent to note that Mr. Shanta Prasad Chakraborty, the authorized person of Corporate Debtor deposing the reply filed on its behalf, has himself instituted CP No. 01/241(4)/242(4)/234(1)(B)/GB/2016 before NCLT, Guwahati against the Corporate Debtor and is the Petitioner in the said case. It is submitted that the Corporate Debtor's internal mismanagement does not give the right to non-payment of debt due to Financial Creditor.

35. It is submitted that the averments made in Para 13 are wrong, irrelevant and denied for want of knowledge. It is further submitted that the irrelevant averments of the Corporate Debtor are clearly not in line with the actions of the Corporate Debtor with respect to the default of debt and subject matter of present application.

36. It is submitted that the averments made in Para 14, except to what is a matter of record, are wrong and wholly denied for the following reasons:

- i. The total amount of financial assistance i.e. Rs.3,34,30,000.00 was advanced to the Corporate Debtor has been duly calculated as per the terms of agreement dated 01.02.2017 and the same is evident from the Bank Statements annexed under Annexure -5 of the Application (Page 39 to 116) and the calculation of interest accrued upon financial assistance has been annexed under Annexure 6 of the Application [Page no. 117 to 158].
- ii. The Corporate Debtor has not provided any evidence as to refute the calculation of debt by the Financial Creditor instead tried to misguide the Hon'ble Adjudicating Authority with meaningless averments. It is submitted that the Averments of the Corporate Debtor that financial assistance of Rs.97,00,000.00 between the period of 03.10.2017 to 18.01.2018 is outside the purview of agreement dated 01.02.2017 is inherently false and misconceived as the said additional amount was transferred under mutual agreement during the period when agreement dated 0-1.02.2017 was operational i.e. between 01.02.2017 to 31.01.2018.
- iii. In addition to the above, the said amount was accepted by the Corporate Debtor and no dispute as to transfer of the said amount was ever raised by the Corporate Debtor and neither has been returned to the Financial Creditor till date. The Corporate Debtor has wilfully accepted the said amount within the period of operation of the agreement dated 01.02.2017 and had been sitting idle over the whole amount till date.
- iv. It is further submitted that as the Hon'ble Supreme Court held in the matter of *Innoventive Industries (supra)*, the dispute with respect to amount of debt is of no consequences as long as the debt itself is due, and the same shall not be a ground to dismiss and application under Section 7 of the Code.
- v. It is further submitted that that as the Hon'ble Supreme Court held in the matter of *Radha Exports (India) (P) Ltd. (supra)* defines 'debt' as a liability or obligation in respect of a claim and the claim means a right to payment

even if it is disputed. The Code gets triggered the moment default is of Rs.1,00,000.00 or more and the same is applicable in the present case.

Hence, the averments made by the Corporate Debtor are evident of their own wilful default in making repayments to the Financial Creditor.

37. It is denied that the averments in Para 15 are wrong and denied for the following reasons:

- i. The averment made by the Corporate Debtor that the rate of green tea leaves was not fixed as per prevalent market rate is false and unsustainable and has been replied to sufficiently in the preliminary submissions above. The fact that repayment in terms of green tea leaves were made by the Corporate Debtor in pursuance of the agreement dated 01.02.2017 cannot be said to be paid without any rate fixation. The prevalent market rates were declared by the Tea Board with respect to green tea leaves and the same was applicable on the repayments of the Corporate Debtor.
- ii. The averment made by the Corporate Debtor that the quantity of the green tea leaves has been suppressed by the Financial Creditor is of no consequence as it has been sufficiently shown by the Financial Creditor that an outstanding debt of Rs.2,67,05,726.00 had become due and payable and the Corporate Debtor has defaulted in making payments towards the same.
- iii. The averment made by the Corporate Debtor that the rate of green tea leaves has been pre-determined at Rs.20/kg as per Annexure II of the agreement dated 01.02.2017 [Page no.37] is wholly wrong and misconceived. It is pertinent to note that Annexure II of the agreement provides for "Expected" quantities of green tea leaves to be supplied by the Corporate Debtor as repayments towards the loan advanced by the Financial Creditor. The term "expected" itself connotes that the quantity of green leaves was to be determined as per the prevalent market rates. The detailed market rate and dated at which repayments were made by the Corporate Debtor has been provided in Annexure R-1 of this rejoinder.

Even if the above averment is taken to be true, the Corporate Debtor has still defaulted in making repayments as per the agreement. The whole exercise of the Corporate Debtor is nothing but an attempt to mislead the Hon'ble Adjudicating Authority and should not be relied upon in any manner.

38. It is submitted that the averments made in Para 16, 17 & 18 are denied to its entirety. It is denied that the present application is not maintainable.

39. It is denied that the present application filed by the Financial Creditor deserves to be rejected by this Hon'ble Tribunal with costs. In view of the preliminary submissions stated above. It is submitted that it has been sufficiently proved by the Applicant/Financial Creditor that the debt was due and the Corporate Debtor committed default in payment of debt but not even a single document has been placed on record by the Respondent Corporate Debtor to evidence otherwise. It is further submitted that the Financial Creditor / Applicant has a good case on merits and is likely to succeed in the present CP (IB) No.05/2021."

17. The Respondent has further filed written submission on 16.04.2021 affirming the same statements it has made in their submission on 02.03.2021.

18. The Applicant has filed another Affidavit on 29.04.2021 reiterating its claims as mentioned in its earlier submissions on 19.02.2021 and 22.03.2021 citing various Judgments of the Hon'ble Supreme Court including the Judgment in the matter of Assets Reconstruction Company (India) VS Bishal Jaiswal & Anr. – Civil Appeal 323 of 2021. It has stated that it is irrelevant to connect the actions of Mr. Sunil Kumar Aggarwal and the orders of the Hon'ble High Court, Guwahati dated 23.03.2018 and the order of the NCLT, Guwahati Bench dated 25.01.2019.

19. Hence, in the present case, the nature of loan amount advanced with an interest of 16% p.a. under the agreement dated 01.02.2017 by Petitioner/ Financial Creditor to the Respondent / Corporate Debtor with repayment to be done in terms of green tea leaves is fairly covered under the Hon'ble Supreme Court's judgment in the matter of Pioneer Urban Land and Infrastructure Ltd. vs. Union of India (supra).

20. The Corporate Debtor has made false averments that there is no amount payable to the Financial Creditor but has further contradicted itself by acknowledging the debt but disputing the 'quantum' of amount due as debt. It is to be noted further that the Corporate Debtor has acknowledged the debt due to the Financial Creditor under various annexures of the reply and this rejoinder in the present matter.

21. The Corporate Debtor has falsely mentioned that no rate of green tea leave was declared by the Financial Creditor and further stated that it does not know at what rates the repayments made prior to defaults were assessed by the Financial Creditor. The averments are plainly absurd and with no evidence to support the same.

22. The matter was taken up lastly on 22.02.2021, 23.03.2021, 19.04.2021 and 03.05.2021.

ORDER

23. Heard both the sides at length, perused the documents, written submissions and affidavits of both the sides. In our considered view, **this Application needs to be rejected on the following grounds:**

This Application has been filed on the strength of the execution of an agreement dated 01.02.2017 between Damayanti Tea Industries (a Unit of M/s. Chandrabali Commercial India Pvt. Ltd.), the party of the First Part and M/s. Bochapathar Tea Estate Pvt. Ltd., the party of the Second Part. As per this agreement, the Party of the First Part will pay a sum of Rs.2,35,00,000/- (as per Annexure 1) in total to the Party of the Second Part on different dates as mutually agreed in between themselves **as Advance amount towards purchase of the green tea leaves and the said amount shall be adjusted towards supply of green tea leaves by the Party of the Second Part.** On the other hand, the Party of the Second Part will supply quality green tea leaves to the tune of 12.50 lac kgs. approximately to the Party of the First Part. Both the parties bind themselves for **special performance** on their part without fail. In the event of default on the part of any one of the parties, the other party can take action against the defaulted party. **Hence, it is clearly established that the amount given is Advance only for procurement of green tea leaves from the Respondent Company. This advance is certainly not for utilisation of production of tea of**

the Respondent Company, as the entire amount of advance is given in instalments month-wise for procurement of green tea leaves month-wise.

Hon'ble NCLAT in the case of Niyati Chemicals Vs. Minepro Minerals Pvt. Ltd., Company Appeal (AT) (Insolvency) No.861 of 2020 in its order dated 08.10.2020 held that "as far as IBC is concerned "providing advance against business dealings" is not covered under "Financial Debt" hence Section 7 of IBC cannot be invoked for such transactions."

Hence, this application filed under Section 7 of IBC for the advance given to the CD for procurement of green Tea Leaves is not considered under the Financial Debt and thereby this application is hereby rejected.

24. It is evident from the Agreement that the Rate per kg. of green tea leaves is not fixed on the date of agreement. It would be fixed in future. On the other hand, the Respondent is expected to supply 12.50 lacs kgs. of quality green tea leaves to the Applicant without knowing the rate. **It is clearly established that the amount payable and its due date are not known neither to the Petitioner nor to the Respondent. Hence, the amount payable and the date of default is not established. It is further found from the documents and submissions made during the arguments that the Applicant has not provided the details to the Respondent relating to the quantum of green tea leaves received ,rate at which it is sold, the amount of sales proceeds credited and the said bank account maintained. Derivative arrangement or provision is also not there.**

The Applicant has submitted the Bank Statements of its own Bank Account maintained with the Axis Bank wherein it is shown the disbursement of the advance amount to the CD date-wise but **payment received from the CD is not at all reflected in the said account.** The only declaration given by the Applicant in the Application filed is that the CD has paid Rs.1,83,72,105.80 (Rupees One crore Eighty Three lacs Seventy Two thousand One hundred Five and paise Eighty only).

The other provision available in the said agreement is that the account of the Second Party -Respondent is in the hands of the First Party- Petitioner and the Petitioner itself has the authority to debit the Account of the CD, once the proceeds of the leaves sold is credited. Hence, everything right from

generally fixing the rate per kg of green tea leaves till the debit of the account is retained with the Applicant.

In addition to that, it is submitted by the Applicant that it has given further advance after September, 2017 when the CD is reportedly defaulting and the entire management of the CD was with Mr. Sunil Kumar Aggarwalla. It is not clear the purpose and intention of the Petitioner to give further reported advance to the CD without any request from or any fresh agreement with the Respondent.

The Applicant has cited the balance sheet of 2017-2018 of the CD but the said Balance Sheet was prepared only on 01.11.2019 which shows Rs.84,72,870.00 (Eighty Four lacs Seventy Two thousand Eight hundred Seventy only) as **Other Current liabilities** towards Damayanti Tea Industries. The Auditor has not shown this amount as Overdue /NPA in its report. Tea Industry is a going concern. The Applicant has reportedly given further advance of Rs.98,50,000.00 on its own. Auditor has reported that the copy of the Original Agreement was not furnished to them while the balance sheet was being prepared by them. No further balance sheet has been prepared after 31.03.2018.

One of the prime conditions for admission of Application filed under Section 7 of IBC is that there should exist a debt which has become due and payable by the CD ,the CD has committed default in payment of the same on due date and the date of default must be established. In this case ,the documents have not been produced by the Petitioner to show the quantum of green tea leaves received from CD, the rate at which green tea leaves purchased/sold and the amount payable to/receivable from the CD and thereby it is clear that the amount of default and the date of default are not established. Then the pleadings of the Applicant that the Respondent has defaulted in making payment of the amount due do not carry any substance.

Hence, the Application filed under Section 7 of IBC needs to be rejected on this ground also.

25. **It has become necessary to bring the following facts of the case in to the light which have surfaced during the course of arguments advanced and on perusal of the documents submitted.**

25.1 **Agreement** dated 01.02.2017 entered into between the Petitioner and the Respondent for advance to be given to the Respondent for procurement of green tea leaves from the Respondent Company **“is a Debt Trap Agreement certainly leading to Default, forced Closure, Hostile Takeover, Sale and liquidation of the Company receiving Advance for supply of green Tea Leaves in future.”** It is one sided agreement and almost everything is in the hands of the Petitioner – which gives advances for procurement of the tea leaves and almost nothing is there in the hands of the Respondent required to supply the green tea leaves against the advance received. No rate of tea leaves per kg. is fixed at the time of agreement and it would be decided only in future. **There is no derivative provision also.** The Company giving advance generally declares the rate of green tea leaves to be supplied to it, based on market rate and credit the amount into the Respondent’s account. Account of the Respondent is maintained by the Petitioner Company and it is also **having authority to debit the** account of the CD towards the advance made by it when the sale proceeds is credited in to the account of the Respondent.

25.2 **The appropriate Authority may take cognizance of prevailing of this type of Agreement and take suitable measures so these type of Agreements with such terms and conditions are not in operations and the needy Tea Estates Companies availing advance from others for supply of Green Tea Leaves are prohibited from the Debt Trap, Exploitation, Imminent Closure, Hostile Takeover and Liquidation, When Advances/loans are available from the established Financial Institutions/Banks with transparent, fair terms & conditions, insurance coverage and reasonable/lower rate of interest to the Tea Estates / Tea Plantation / Agriculture Advance / MSME Tea Industries.**

25.3 The role of Mr. Sunil Kumar Aggarwalla right from the Agreement dated 01.02.2017 till the filing of this Petition. As per the documents submitted by the Applicant and the Respondent, Shri Sunil Kumar Aggarwalla –

- (a) Signed the agreement on behalf of the Applicant on 01.02.2017 for advance.
- (b) Has taken over entire charge of the CD from 27.09.2017.
- (c) Has been appointed as Receiver of the CD Tea Gardens by EPFO.
- (d) Has not ensured preparation of the balance sheet of the CD during the crucial period for determination of debt due as on 31.03.2017 – 31.03.2018. The balance sheet has been prepared for the year 2017-18 only on 01.11.2019 i.e. after the induction of the New Director by this Bench while disposing the Company Petition filed under Section 241/242/243/244 of the Companies Act.

Company Master Data obtained on 21.12.2020 does not show any charge has been filed with ROC after 2004.

- (e) As the Managing Director of the Chandrabali Commercial India Pvt. Ltd., where the Applicant Damayanti Tea Industries is a Division of Chandrabali Commercial India Pvt. Ltd. has signed the Board Resolution dated 21.12.2020 authorising Mr. Hiridayanana Konwar to sign and file this Application before this Bench. Accordingly this Application has been filed.

26. Vide order dated 23.03.2018, the Hon'ble Gauhati High Court in WP (C) 1716/2018 ordered status quo in regard to the ownership of the Tea Gardens and factory of BTCO and the said order is still reportedly in effect. Mr. Sunil Kumar Aggarwalla was respondent No.10 in WP (C) 1716/2018.

27. Hence this Application filed under Section 7 of IBC is rejected so as to no cost.

Sd/-

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

/Deka- 23.08.2021/

Sd/-

**(H. V. Subba Rao)
Member (Technical)
& Adjudicating Authority**