

**IA No.14 of 2021
IN
C.P. (IB)No.09/GB/2019**

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

Name of the Company: M/s. Dilip Construction Pvt. Ltd.
V/s
Stressed Assets Stabilization Fund (SASF)
And
Sandeep Khaitan, RP

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR. ABHIJIT SARKAR	Advocate	Petitioner	Present in
2.	MR. A. PRASAD	Advocate	Respondents	Video
3.	MR. RITIN ROY	Advocate	CoC	Conference

The matter is taken up for hearing through Video Conferencing. The learned Counsels appearing for the Petitioner and the Respondents are present. As per the earlier order dated 12.08.2021, the CoC was directed to clarify the point in the light of the latest Order of the Hon'ble Supreme Court relating to interest free loan. The CoC has not filed the reply. The Counsel has sought another 7 days' time to file written submissions in the form of Affidavit. Seven days' time is granted from today as prayed for.

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority
/Deka-23.08.2021/

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

C.P.No.11/GB/2021

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

C.P.No.12/GB/2021

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

Comp. Appln. 3 of 2021
IN
C.P. No.05/2021

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

Name of the Company: Mrs. (Dr.) Nilufar Rahman
V/s
Rahman Properties Ltd. & others

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR. S. CHAMARIA	Advocate	Petitioner	Present in Video Conference
2.	MR. A. SRIVASTAVA	Advocate	Respondents	
3.	MR. AKASH SHARMA	Advocate	Respondents	

Date of Order: 23.08.2021

This matter is taken up through Video Conferencing. In view of Order passed in the Main Petition, the matter is adjourned.

2. **List the matter on 20.09.2021.**

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)
/Deka-23.08.2021/

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

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

Name of the Company: Mrs. (Dr.) Nilufar Rahman
V/s
Rahman Properties Ltd. & others

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR. S. CHAMARIA	Advocate	Petitioner	Present in Video Conference
2.	MR. A. SRIVASTAVA	Advocate	Respondents	
3.	MR. AKASH SHARMA	Advocate	Respondents	

This matter is taken up through Video Conferencing. The Learned Counsel Mr. S. Chamaria is present for the Petitioner. Mr. A. Srivastava and Mr. Akash Sharma learned Counsels are present for the Respondents. Heard the Counsels of both sides at length. Parties have filed their written submissions. Hearing not concluded.

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)
/Deka-23.08.2021/

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

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**MA NO.5 OF 2021
IN
TP NO.13/397/398/GB/2016**

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 23.08.2021**

Name of the Company: Sharmila Shetty
Versus
B & A Ltd.

Section of the Companies Act: Under Rule 15 of NCLT Rules, 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR. M. K. CHAUDHURY	Sr. Advocate	Petitioner	Present in Video Conference
2.	MR.RATNAKO BANERJEE	Advocate	Respondents	
3.	MR. D. SHARMA	Advocate	Respondents	

ORDER
Date of Order: 23.08.2021

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

2. The Respondents are directed to file written submissions within 3 weeks from today. Copy of the same is to be given to the Petitioner. The Petitioner is at liberty to file reply/rejoinder, if any, within 7 days from the date of receipt of the written submissions from the Respondents.

3. **List the matter on 27.09.2021.**

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)

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

/Deka-23.08.2021/

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**RST. APPL. NO.2 OF 2021
IN
TP NO.13/397/398/GB/2016**

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 23.08.2021**

Name of the Company: Sharmila Shetty
Versus
B & A Ltd.

Section of the Companies Act: Under Rule 48 of NCLT Rules, 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR. M. K. CHAUDHURY	Sr. Advocate	Petitioner	Present in Video Conference
2.	MR. RATNAKO BANERJEE	Advocate	Respondent	
3.	MR. D. SHARMA	Advocate		

ORDER
Date of Order: 23.08.2021

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

2. The Respondents are directed to file written submissions within 3 weeks from today. Copy of the same is to be given to the Petitioner. The Petitioner is at liberty to file reply/rejoinder, if any, within 7 days from the date of receipt of the written submissions from the Respondents.

3. **List the matter on 27.09.2021.**

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)

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

/Deka-23.08.2021/

Coram:

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

Name of the Company: Grainspan Nutrients Pvt. Ltd.

 V/s

Aruna's Snack Foods Pvt. Ltd.

Section of the Companies Act: Under Section 9 of Insolvency and Bankruptcy Code, 2016

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

ORDER

Date of Order: 23.08.2021

This matter is taken up through Video Conferencing. The Learned Counsel for the Petitioner, Mr. Arnab Dutta is present. No one is present from the side of the Respondent.

2. It is submitted by the learned Counsel of the Petitioner that in compliance of the order of this Bench dated 05.08.2021, the Petitioner has sent the notice and copy of the Petition to the Respondents through e-mail of the Respondent Company. The Counsel has also informed that a name of a Resolution Professional has been suggested for this matter. He has prayed for admission of the Application.

3. Since the Respondent is yet to appear, in the interest of justice, once more opportunity is given to the Respondents. The Petitioner is directed to send the notice

and copy of the Petition to the Respondents once again by speed post. Copy of proof of delivery of the notice and copy of the Petition to the Respondents is to be filed before the Registry before 03.09.2021. The Petitioner is also directed to convey the next date of hearing to the Respondents through e-mail.

4. **List the matter on 03.09.2021.**

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority
/Deka-23.08.2021/

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

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

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

Coram:

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

Name of the Company: Arunachal Tea & Infrastructure Pvt. Ltd.
And
Jalannagar Tea Estate Pvt. Ltd.

Section of the Companies Act: Under Section 230 - 232 of the Companies Act, 2013

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

ORDER
Date of Order: 23.08.2021

This matter is taken up through Video Conferencing. Heard the learned Counsel appearing for the Petitioners. The learned Counsel for the Petitioners has submitted that consent has been given by the Shareholders and the Secured Creditors of both the Companies. So, he has prayed for arrangement of convening meeting of the Unsecured Creditors only and he may be allowed to publish notice in The Sentinel (in English) and "Agradoot" (in vernacular language) both published from Guwahati. The Petitioners are directed to file an Affidavit within 7 days in the light of the Judgement of the Hon'ble Supreme Court that the Petitioners are not ineligible under Section 29A of the IBC, 2016.

2. Order reserved.

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)

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

/Deka-23.08.2021/

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**TP NO.16/GB/2016
IN
CP NO.106 OF 2014**

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 23.08.2021**

Name of the Company: Shital Jain & others

V/s

Saroj Realtors & Developers Pvt. Ltd. & ors

Section of the Companies Act: Under Section 235, 210, 397, 398, 399, 402, 403, 406
& 407 of Companies Act, 2013.

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MS. M. KAKOTY	Advocate	Petitioners	Present in Video
2.	MR. SANTANU BORA	Advocate	Respondents	Conference

ORDER

Date of Order: 23.08.2021

This matter is taken up through Video Conferencing. Heard both the sides.

2. The learned Counsel appearing on behalf of the Respondents has prayed for 10 days' time to file reply to the Synopsis filed by the Petitioners. Ten days' time is granted to the Respondents to file reply as prayed for. Copy of the reply is to be sent to the Petitioners.

3. **List the matter on 08.09.2021.**

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)
/Deka-23.08.2021/

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

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA NO.15/GB/2019
IN
TP No.16/GB/2016
IN
CP NO.106 OF 2014**

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 23.08.2021**

Name of the Company: Saroj Realtors & Developers Pvt. Ltd. & ors
V/s
Shital Jain & others

Section of the Companies Act: Under Rule 11 of NCLT Rules, 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR. SANTANU BORA	Advocate	Petitioners	Present in Video Conference
2.	MS. M. KAKOTY	Advocate	Respondents	

ORDER

Date of Order: 23.08.2021

In view of the order passed in the Main Petition TP No.16/GB/2016, this matter is adjourned.

2. List the matter on 08.09.2021 along with the Main Petition.

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)
/Deka-23.08.2021/

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

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P No.14/66/GB/2020

Coram:

Hon'ble SHRI H. V SUBBA RAO, MEMBER (JUDICIAL) : Through
AND : Video
Hon'ble SHRI PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL): Conference

**ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW
TRIBUNAL, GUWAHATI BENCH ON 23rd August, 2021.**

Name of the Company: **Assambrook Limited**

Section: Section 66 of Companies Act

S.No.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. DHRUPAD DAS	Advocate	Petitioner	Through Video
2.	MS. MAITREYEE DAS	Advocate	Petitioner	Conference

ORDER

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

Prayers made in the Petition are rejected and the Petition is disposed of.

The Order is pronounced in the open court, vide separate sheet.

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)**

Sd/-

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

Dated this 23rd day of August, 2021

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P. No. 14/66/GB/2020

Coram:

Hon'ble SHRI H. V SUBBA RAO, MEMBER (JUDICIAL) : Through
AND : Video
Hon'ble SHRI PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL): Conference

ORDER

Date of Order: 23.08.2021

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

1. This application under Section 66 of the Companies Act, 2013 has been filed by the applicant Assambrook Limited (CIN: U70109AS1947PLC009386), having its registered office at Tinkharia Tea Estate, P.O Dhekiajuli-784110, Dist. Sonitpur, Assam for confirming its resolution for reduction of share capital.
2. The Petitioner Company was incorporated on 8th August, 1947 at Kolkata under the name and style **Brooke Bond Estates India Limited** under the Indian Companies Act, 1913. Thereafter, the name of the Company was initially changed to **Brooke Bond Estates Limited** and thereafter to **Assam Brooke Estates Limited** and ultimately to its present name **Assambrook Limited**.
4. That subsequently, on 23rd October, 2009 vide order passed by the Hon'ble Company Law Board, Kolkata, **the registered office of the Company was shifted from the State of West Bengal to the State of Assam**. Copies of the Certificate of Incorporation, change of name, Memorandum of Association and the amended Articles of the Association of the Company are attached herewith and marked as **Annexure-A, Annexure-B, Annexure-C** and **Annexure-D** respectively.
5. It is submitted that the object for which the Company was established was to, inter alia, acquire land, tea gardens and plantation and to carry on tea plantation business and other allied activities. Upon commencement of its business, the

Company acquired tea gardens and carried on the business of tea plantation. The Company, subsequently, **acquired two (2) tea gardens viz., Dhullie Tea Estate and Tinkharia Tea Estate both in the State of Assam**, however due to several intervening factors, **the Company has since sold the said assets and have taken steps to diversify its portfolio in other ventures as approved under its Memorandum of Articles.**

6. It is further submitted that at present the **authorized share capital of the Company is Rs.18,50,00,000/- (Rupees Eighteen Crores and Fifty Lacs)** divided into 1,85,00,000 equity shares of Rs.10/- each. **The issued, subscribed and paid up share capital of the Company is Rs.15,66,12,420/- (Rupees Fifteen Crores Sixty Six Lacs and Twelve Thousand Four Hundred Twenty)** divided into 1,56,61,242 equity shares of Rs.10/- each all fully paid up. That, as per Article 54 of the Articles of Association of the Company, the Company has been authorized to, from time to time, by a special resolution, reduce its capital in any manner permitted by law. True copies of the special resolution dated 4th September 2019 duly approved and circulated is annexed herewith and marked as **Annexure- E.**

7. It is also submitted that the final accounts for the financial year ending March, 2019 has been duly audited and approved by the Company. A copy of the audited Financial Statement of the Company as at 31 March, 2019 together with the report of the Auditors thereon is annexed herewith and marked as **Annexure- F.**

8. The Petitioner states that as against the paid up share capital of approximately Rs.1566 lacs, the audited financial statements reflect a debit balance of approx. Rs.3226 lacs in the Profit and Loss Accounts, of that relevant financial year. The Petitioner most humbly submits that the said debit balance in the Profit & Loss Accounts has been provisioned for due to cumulative losses suffered by the Company during last several years for the reasons stated hereinafter.

9. It is also submitted that the equity shares of the Company were listed in Bombay Stock Exchange. **In July 2018 the equity shares of the Company were compulsorily delisted from BSE Limited** and soon thereafter equity

shares of the Company **were also delisted from CSE**. Post delisting, the equity shares of the Company **are not currently tradable securities at the Stock Exchanges**. True copy of the master data available on the website of the Ministry of Corporate Affairs confirming that the Company is not listed is annexed herewith and marked as **Annexure-G**.

10. The rationale and purpose for reduction of share capital of the applicant company, as emerged from the application are that –

- i. From the year 2002-03 the Company started to incur losses in its tea business and till date it has accumulated a loss of approximately Rs.3226 lacs. That, over the years, in-spite of infusion of substantial funds both in the form of equity as well as debt, the Company could not revive its tea plantation business and continued to incur losses till date.
- ii. In view of mounting losses, vide separate Deed dated 31st March 2015 and 24th September 2014 respectively, the Company was constrained to sell all the assets and liabilities of the Company of the Tinkharia Tea Estate and the Dhullie tea Estate respectively. The Company has since received the full purchase consideration relating to sale of the said two tea estates. **The Company presently does not have any secured creditor as duly reported in the audited financial statement of the Company**. True copy of the Deed of Sale dated 31st March, 2015 and 24th September, 2014 are annexed herewith and marked as **Annexure-H** and **Annexure-I** respectively.
- iii. The latest audited Financial Statement of the Company has been prepared up to 31st March, 2019 and the same had been duly approved by the shareholders of the Company at the Annual General Meeting of the Company held on 4th September, 2019. True copy of the minutes of meeting is annexed herewith and marked as **Annexure-J**.
- iv. That the Petitioner Company, by way of abundant caution, submits that the Company has a paid up share capital of approx. Rs.1566 lacs and a security premium reserve of Rs.1270 lacs. That the Petitioner

has approached this Hon'ble Tribunal by way of the instant application to **reduce its share capital and not the security premium account**, i.e. in accordance with the special resolution approved by its shareholders.

- v. **The financial statement of the Company exhibiting huge accumulated losses does not reflect true and fair view of the state of affairs of the Company**, which can be prejudicial to its future operation and its ability to be able to infuse fresh capital for its business to survive. That given the current financial position, as exhibited by the last audited financial statements, **it is commercial challenge for the Company to raise further equity in view of huge accumulated losses.**
- vi. In view of the cumulative losses suffered by the company over the past several years together with the sale of assets, the Board of Directors of the Company keeping in-line with the best corporate management practices advised that it would be commercially prudent and in best interest of the Company to substantially reduce its share capital which had been permanently lost or is unrepresented by available assets.

11. It is submitted that by a special resolution of the Company duly passed in accordance with Section 66(1) of the Companies Act, 2013 at the Annual General Meeting of the Company held after due notice as provided in the Act on 4th day of September, 2019 it was resolved as follows: -

"RESOLVED THAT in supersession of the earlier resolution passed in the Annual General Meeting held on 29th Sept, 2018 and pursuant to Section 66 and other applicable provisions of the Companies Act, 2013, (including any statutory modification(s) or re-enactment thereof for the time being in force) and the rules made thereunder (the "Act"), read with Articles of Association of the Company; and the confirmation by the Hon'ble National Company Law Tribunal ("NCLT"); and as such other approvals as may be required, and subject to the terms and conditions and modifications, if any, as may be prescribed by the NCLT consent of the members of the Company be and is

hereby accorded, by way of a special resolution, to reduce the issued, subscribed and paid-up capital of the Company from Rs.15,66,12,420 (Rupees Fifteen Crores Sixty Six Lakhs Twelve Thousand four hundred and twenty) divided into 1,56,61,242 (One crore Fifty Six Lakh Sixty One Thousand Two Hundred Forty two) equity shares of Rs.10 (Rupees Ten) each all fully paid up to Rs.10,00,000 (Rupees Ten lacs) divided into 10000 (Ten Thousand) equity shares of Rs.100 (Rupees One hundred) each all fully paid up by cancelling and extinguishing, an amount of Rs.15,56,12,420 (Rupees Fifteen Crore Fifty six lacs twelve Thousand four hundred twenty only) which capital has been lost or is unrepresented by available assets (the "Capital Reduction")."

"RESOLVED FURTHER THAT immediately upon the Capital Reduction becoming effective and operative the authorized share capital of the Company shall stand consolidated and sub divided into 18,50,000 equity shares of Rs.100/- each and consequential amendment be made in the capital clause of the Memorandum of Association of the Company."

"RESOLVED FURTHER THAT upon the Capital Reduction being confirmed by the NCLT and becoming effective and operative the reduction will be carried out for the Shareholders of the Company, as on **the 'Record Date' to be determined by the Board** for the purposes of determining the names of the registered holders of the equity shares of the Company."

"RESOLVED FURTHER THAT consequent upon the Capital Reduction as aforesaid no member of the Company shall be entitled to hold fractional share of Rs.100/- each and all such fractional shares shall without any further action on behalf of the Company or the member entitled to such fractional shares, stand consolidated to the face value of Rs.100/- each and transferred to a Trust comprising of independent directors of the Company as Trustees who shall offer such fully paid up shares of Rs.100/- each to the existing shareholders of the Company. The decision of the Trustees as to the timing and method of offer to the existing shareholders of the Company shall be final and binding on all concerned. The Trustees after defraying all costs, charges and expenses of such sale shall distribute the net sale proceeds to the

shareholders of the Company in proportion to their fractional entitlement. The Company Secretary of the Company, if any, shall be the Secretary of such Trust and shall assist the Trustees in managing the affairs of the Trust."

"RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorized to do all acts, deeds, matters and things which may be required or necessary for effecting the Capital Reduction including obtaining confirmation of NCLT to such Capital Reduction and to delegate all or any of the powers conferred upon it by this resolution to any Committee of Directors or any other director or officer of the Company as it may think fit and proper."

12. It is submitted that the said Annual General Meeting of the Company for the year ended 31 March, 2019 was attended by thirty-four (34) shareholders of the Company and voting on 55,00,564 equity shares. At the said Annual General Meeting of the Company, the shareholders, present and voting, voted unanimously in favour of the said resolution for reduction of the share capital of the Company.

13. It is further stated that by the said resolution the issued, subscribed and paid up capital of the **Company is sought to be reduced from Rs.15,66,12,420/- (Rupees Fifteen Crores Sixty Six Lacs and Twelve Thousand Four Hundred Twenty) to Rs.10,00,000/- (Rupees Ten Lacs) by cancelling and extinguishing an amount of Rs.15,56,12,420/- which capital has been permanently lost and is unrepresented by available assets of the Company.**

14. It is again submitted that proposed reduction in the equity share capital **does not involve payment to any shareholders or members of the Company or in reduction of any unpaid calls.** In other words, the proposed reduction in share capital does not involve outgo of any cash and consequently does not affect the rights of the creditors of the Company in any manner whatsoever.

15. It is again submitted that presently the Company does not have any secured creditors. The petitioner further states that the total claim of the unsecured creditors of the Company as on 25th January, 2020 was only **Rs.24,77,205.12/-**. True copy of the list of the creditors of Company, duly verified by two Directors of the

Company and the certificate of the Auditors of the Company are annexed hereto and collectively marked as **Annexure-M**.

16. It is again submitted that reduction of the Share Capital of the Company will involve the following accounting treatment in the Books of Accounts of the company:

- a. The issued, subscribed and paid up share capital of the Company shall be reduced from Rs.15,66,12,420/- to Rs.10,00,000/- by cancelling and extinguishing an amount of Rs.15,56,12,420/- as aforesaid; and**
- b. The accumulated losses of the Company which is reflected in the form of debit balance in the Profit & Loss Account of the Company for the year ended 31st March, 2019 shall be reduced by the said sum of Rs.15,56,12,420/-, that is to say, from Rs.32,35,66,552.67 to Rs.16,59,54,132.67 by setting off such losses against reduction in the share capital.**

17. It is submitted that the form of the Minutes, which is required to be approved by the Hon'ble Tribunal under Section 66(5) of the Act is as follows: -

"The capital of Assambrook Limited is henceforth Rs.10,00,000/- divided into 10,000 equity shares of Rs.100/- each all fully paid up reduced from Rs.15,66,12,420/- by cancelling and extinguished as amount of Rs.15,56,12,420/-."

18. This Hon'ble Tribunal vide order dated 25th November, 2020 had directed the petitioner to clarify the below mentioned points in the form of an Affidavit under Rule 43 of NCLT Rules: -

- a. The Company was incorporated on 08.08.1947 and the Company started incurring loss from 2002-2003. Whether the Company has incurred loss after sale of reported two Tea Estates i.e. Dhullie Tea Estate and Tinkhara Tea Estate.
- b. As reported, the Share Capital shall be reduced from Rs.15,66,12,420.00 to Rs.10,00,000.00 by cancelling and extinguishing

an amount of Rs.15,56,12,420.00. Thereafter, the capital will be only Rs.10.00 lacs by way of 10,000 shares with the face value of Rs.100.00. Then whose shares will be cancelled and who will be holding these 10,000 shares.

- c. **There are Five entities holding shares of 79.39% including the shares of Allahabad Bank 42,50,800. Whether all the above entities participated in the Annual General Meeting in which the decision was taken to reduce the value and number of shares by 99.37%.**
- d. **Shares are held by the Allahabad Bank 42.50 lacs, Bank of India 12.00 lacs, whether these shares are conversion of loans given by these Financial Creditors. If so, the date of allotment of shares and the price at which these shares were allotted.**
- e. **As per the petition filed, the Dhullie Tea Estate Pvt. Ltd. is sold by the Company but one Dhullie Tea Plantations Pvt. Ltd is holding 26.50 lacs shares of the petitioner Company. Whether this Company is related to the Dhullie Tea Estate.**
- f. **The Company desires to cancel the shares without liquidating/ adjusting the share premium reserve amount of Rs.12.70 Crores lying in the balance sheet. The reason for cancelling 99.37% of total shares instead of adjusting the share premium held in the Books of the Company.**
- g. Whether the Company is in operation? If so, what is the sales figures and the number of employees are on roll.
- h. Details of the movable and immovable Assets of the Company and its worth as on 31.03.2019, if valued, as per valuer's report. If not valued within last three years, Desk Top valuation can be done by the Company itself and the same valuation Report is to be submitted.

19. The Petitioner pursuant to the order dated 25th November, 2020, filed its reply in the form of an affidavit dated 12.01.2021 submits point-wise clarifications to the queries as follows:

- a. That in response to the query no. (a), the deponent states that the Company has continued to incur losses even after the sale of the two tea estates, namely Tinkharia Tea Estate and Dhullie Tea Estate in the financial year 2014-15. The Petitioner craves leave to reproduce the details of year wise losses incurred by the Petitioner Company after the sale of the aforementioned tea estates in the table below for the convenience of this Hon'ble Tribunal.

Financial Year	Profit/ (Loss) after tax (Rs. In 100)
2014-15	(207950)
2015-16	(4265)
2016-17	(9113)
2017-18	(5537)
2018-19	(975)
2019-20	(954)

- b. That in response to the query no. (b), the deponent humbly reiterates that Petitioner Company filed this instant petition for reduction of shares capital seeking to reduce the equity share capital of the Petitioner Company from Rs.15,66,12,420/- to Rs.10,00,000/- by cancelling and extinguishing an amount of Rs.15,56,12,420/-.
- c. That as per the proposed scheme of reduction duly annexed with the Special Resolution dated 04.09.2019 filed along with the main Application, shareholders holding 10000 or more shares would be allotted shares in proportion to their shareholding as per the scheme and they will remain shareholders of the Petitioner Company after reduction of capital. That the shareholders holding less than 10000 shares would be entitled to fractional shares which will be transferred to a Trust to be formed for this purpose and the fractional shares will be consolidated to a face value of Rs.100 each. The trust shall offer the consolidated shares to the existing shareholders of the Petitioner

Company. It is pertinent to state that the aforementioned scheme for reduction of capital has been approved by a special resolution by the shareholders of the Petitioner Company in the Annual General Meeting held on 4th September, 2019.

- d. That in response to the query no. (c), the Deponent most humbly states that the Annual General Meeting held on 04.09.2019 was attended by thirty four (34) shareholders, present and voting, voted unanimously in favour of the special resolution approving the reduction of share capital of the Petitioner Company. The Petitioner begs to state that the notice for the aforesaid AGM was duly given, as per law, on 07.08.2019.
- e. The Deponent further begs to state that it is settled law that the question of reduction of share capital is treated as a matter of domestic concern and it is the decision of the shareholders which prevails. Furthermore, any objection to the proposed scheme of reduction can only be considered after the Hon'ble Tribunal issues notice in the instant petition and directs that such notice be published in accordance with Rule 3(3) of the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.
- f. That in response to the query no. (d), the Deponent most humbly states that the 42,50,000 shares held by the Allahabad Bank and the 12,00,000 shares held by the Bank of India were issued and allotted upon conversion of loans given by the respective banks to the Petitioner Company. The shares were issued to Bank of India at Rs.25 including a premium of Rs.15 per share on 29.05.2015 and the shares were issued to Allahabad Bank at par on 30.05.2016.**
- g. That in response to query no. (e), the deponent most humbly states that by a registered deed of sale dated 24.05.2014, Dhullie Tea Estate

was sold by the Petitioner Company to Dhullie Tea Plantations Private Limited. This deed of sale has been attached and marked as **Annexure-I** of the main petition filed by the Petitioner Company for reduction of share capital before this Hon'ble Tribunal.

- h. That in response to the query no. (f), the Deponent humbly states that it is a recognized position of law that a company is free or open to choose the mode or extent of reduction of its share capital. It is also a well-settled principle that the court must not sit in judgment over the commercial wisdom of the Directors of a Company. In the instant petition, the proposed mode of reduction of capital is by cancelling and extinguishing an amount of Rs.15,56,12,420/- in the paid up equity share capital of the company. The Petitioner begs to state that the proposed mode of reduction is in accordance with Section 66(1) (b) (i) of the Companies Act, 2013. The Petitioner further begs to reiterate that the reason for reduction of share capital is that in view of mounting losses and the sale of two tea estates of the Petitioner Company, the paid-up equity share capital as reflected in the Memorandum of Association is lost or unrepresented by the available assets of the Petitioner Company.
- i. That in response to the query no. (g), the Deponent most humbly states that the Petitioner Company is not in operation at present and is exploring new avenues of business. The Deponent most humbly submits that given the current state of accounts, it is imperative for the Company to reduce its share capital as prayed for to make the Company viable to seek fresh infusion of funding whether institutional or otherwise.
- j. That in response to the query no. (h), the Deponent most humbly states that the details of the movable and immovable assets of the Petitioner Company and its net worth are provided in the Annual

Report for the financial year ended 31.03.2020 and the same had been annexed and marked herewith as **Annexure-A**.

20. This Hon'ble Tribunal vide order dated 22nd February, 2021 had directed the petitioner to clarify the below mentioned points in the form of an Affidavit under Rule 43 of NCLT Rules: -

- a. There are Five entities holding shares of 79.39% including the shares of Allahabad Bank 42,50,800. Whether all the above entities participated in the Annual General Meeting in which the decision was taken to reduce the value and number of shares by 99.37%.
- b. Shares are held by the Allahabad Bank 42.50 lacs, Bank of India 12.00 lacs, whether these shares are conversion of loans given by these Financial Creditors. If so, the date of allotment of shares and the price at which these shares were allotted.
- c. As per the petition filed, the Dhullie Tea Estate Pvt. Ltd. is sold by the Company but one Dhullie Tea Plantations Pvt. Ltd is holding 26.50 lacs shares of the petitioner Company. Whether this Company is related to the Dhullie Tea Estate.

21. The Petitioner pursuant to the order dated 22nd February, 2021, filed its reply in the form of an affidavit dated 18.03.2021 submits point-wise clarifications to the queries as follows:

- a. That in response to the query, the Deponent humbly states that the Annual General Meeting held on 04.09.2019 was attended by thirty-four (34) shareholders and all shareholders, present and voting, voted unanimously in favour of the special resolution approving the reduction of the share capital of the Petitioner Company. The Petitioner begs to state that the notice for the aforesaid AGM was duly given, as per law, on 07.08.2019. That in support of the instant petition and to answer the Hon'ble Tribunal's query no. (b) in a comprehensive manner, a certified copy of the list of shareholders and their respective

shareholding in the Petitioner Company who were present and voting in the AGM dated 04.09.2019 has been annexed herewith and marked as **Annexure-A**.

- b. That the Deponent further, in response to the query (b) of the Orders dated 22.02.2021, states that Stressed Assets Fund ("**SASF**") has been restrained from exercising any voting rights pending adjudication of a dispute regarding its ownership over its shares in the Petitioner Company by the Ld. City Civil Court at Calcutta vide the court's interim order dated 22.12.2015. that subject to the dispute with respect to the ownership of shares of SASF (9.577% equity shares) in the Petitioner Company. The said Ld. City Civil Court, Calcutta vide its orders dated 18.02.2021 extended its interim orders till 19.03.2021 restraining the Defendants from exercising voting rights with the said equity shares.
- c. **It is submitted that it is important to note that till date, neither Bank of India nor SASF nor Allahabad bank have attended any General Meetings of the Company since becoming shareholders of the company despite notices being duly served upon them as per law. It is reiterated that all General Meetings of the company have been duly conducted as per the procedure prescribed under law. It is further reiterated that the special resolution for reduction of the paid-up equity share capital of the Petitioner Company was passed unanimously by the shareholders present and voting.**
- d. **That in response to the query no. (c), the Deponent humbly states that the query has already been answered in the affidavit filed by the Petitioner Company on 12.01.2021. For the convenience of this Hon'ble Tribunal, the Deponent reiterates that 42,50,000 shares held by the Allahabad bank and the 12,00,000 shares held by the Bank of India were issued and allotted upon conversion of loans given by the respective banks to the Petitioner Company. The shares were**

issued to Bank of India at Rs.25 including a premium of Rs.15 per share on 29.05.2015 and the shares were issued to Allahabad bank at par on 30.05.2016.

- e. That in response to the query no. (d), the Deponent humbly states that by a registered deed of sale dated 24.09.2014, Dhullie Tea Estate was sold by the Petitioner Company to Dhullie Tea Plantations Private Limited. This registered conveyance deed/ deed of sale has been attached and marked as **Annexure-I** of the main petition filed by the Petitioner Company for reduction of share capital before this Hon'ble Tribunal.

22. The Petitioner prays that the form of the Minutes, which is required to be approved by the Hon'ble Tribunal under Section 66(5) of the Act is as follows: -

"The capital of Assambrook Limited is henceforth Rs.10,00,000/- divided into 10,000 equity shares of Rs.100/- each all fully paid up reduced from Rs.15,66,12,420/- by cancelling and extinguishing an amount of Rs.15,56,12,420/-".

23. The Petitioner in his application has prayed before this Hon'ble Tribunal to allow the below mentioned prayers:

- a. To allow the Petitioner Company to reduce its share capital by confirming the resolution passed by way of a special resolution as submitted hereinabove;
- b. To issue all directions necessary and proper be made and given to effect the reduction of Share Capital as prayed for;
- c. To approve the proposed Minutes set out in paragraph 19 of the application;
- d. To give necessary directions for service of notice of this application upon the Central Government through the Regional Director, Ministry of Corporate Affairs, North Eastern Region, Guwahati; the Registrar of Companies, Assam; and to all the creditors of the Company;
- e. And to pass any such order(s) or further order(s) that this Hon'ble Tribunal be may deem fit and proper in the interest of justice.

ORDER

24. Heard the submissions of the learned Advocate appearing for the Petitioner at length and perused the documents, written submissions made available.

24.1 In our considered opinion, the prayer made by the Applicant for confirming its resolution passed for reduction of share capital by cancelling the shares to the extent of 99.37% i.e. from the value of Rs.15,66,12,420.00 to Rs.10,00,000.00 only, retaining the shares premium account untouched, with the continuous accumulated loss of the company for the last 18 years to the extent of approximately Rs.32.26 crores, is not to be confirmed in the interest of all Stake Holders, Public and Corporate Governances on account of the following:

24.2 The Company was incorporated on 08.08.1947 and started incurring loss for last 18 years from 2002-2003. The Two Estates, the Company was having, Dhullie Tea Estate and Tinkhara Estate have been sold in the year 2014 – 2015 to reduce the Loss but the position did not improve. There is no asset at all. There is no staff, company is not in operation and the loss is increasing every year mainly for payment of remuneration to the Managing Director of the company. The loss has gone up to Rs.32.26 crores in spite of sale of the two Tea Estates. When the company has been incurring loss for last 18 years, no assets, no operation, no staff, shares compulsorily delisted from the BSE Limited and the CSE Limited and the Management failed to keep the company in operation and earn profit, then the resolution passed to cancel and adjust 99.37% of share value with the loss is certainly in no way in the interest of the shareholders to sacrifice 99.37% of their share amount subscribed.

24.3 As per the balance sheet and submissions of the Counsel for the Petitioner, the three Financial Creditors ie Allahabad Bank, Bank of India and Stress Assets Stabilization Fund became shareholders of the Company on conversion of their Loans .They are holding 44.38% of the total shares of the

Company but they were not present when this resolution was passed. As per the resolution, these shareholders (FC) have to lose 99.37% of the worth of their shares.

24.4 As per the records available and submissions made, the Petitioner Company availed loans from Allahabad Bank and Bank of India and it could not repay the same. Subsequently these loans were converted into shares and even the company collected share premium of Rs.15.00 per share from the Bank of India. These shareholders are really Financial Creditors for practical purpose.

24.5 The company has been incurring loss for last 18 years. There is no operation and no staff. The management has failed to operate and earn profit. At this stage, the Company passes Resolution to cancel the shares including the shares of the Financial Creditors almost 100% with an intention to mobilize fresh funds / investment from new Financial Creditors / Investors showing a Rosy Balance Sheet to the Public.

It clearly shows the intention of the Company behind passing the resolution, when it is not able to do anything for last 18 years.

25. The Balance Sheet shows that the Company is having Reserve/ Security Premium Reserve of Rs 16.78 crores but the Company intends not to touch the Reserve / Security Premium Reserve but to wipe out almost the entire value of shares, when the company knows very well that the entire value of shares and the reserve lying are not sufficient to come out the mounting / increasing loss of Rs.32.20 crores.

It clearly shows that the company intends to do window dressing the balance sheet showing the balance sheet of share value of 10.00 lacs (only 10,000 shares of Rs.100/-each) with Reserve amount of Rs.16.78 lacs so that new lenders and investors are attracted to lend and invest when the existing Lenders and Shareholders are losing almost entire 100% amount invested.

This decision cannot be considered as Commercial Decision to Cancel the Shares/Wipe out the value of the Shares First to reduce the accumulated loss retaining the Share Premium amount lying intact.

But it may be considered as malafide one. It is a complete misuse of system and an attempt to get further loan/investment without paying the existing FC/OC/Shareholders.

26. As per the balance sheet and submissions, the company sold its Dhullie Tea Estate to Dhullie Tea Plantation Pvt. Ltd. Now Dhullie Tea Plantation holds 16.92% of shares of the Petitioner Company and the said company has filed a case in the City Civil Court, Kolkata against SASF with respect to the ownership of the shares of SASF.

27. The Hon'ble Supreme Court in ***Asian Resurfacing of Road Agency Pvt. Ltd. Vs. CBI*** dated 15.10.2020 held that –

"35. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced."

28. Section 430 of the Companies Act, 2013 reads as under:

"430. Civil court not to have jurisdiction.— No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal."

29. Rule 11 of the NCLT Rules reads as under:

"11. Inherent Powers. - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as

may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

30. This Company is considered to be a fit case for winding up so that further Lenders or Investors are not duped and attracted to the proposed Window Dressing Balance Sheet to sanction loan or invest. This is a company is of 73 years old and it may earn some amount by way of sale/transfer of Brand Value of Brook Bond Estates India Ltd./Assambrook Ltd on winding up or Resolution and distribute the proceeds among the Creditors and Shareholder.

31. Considering the points mentioned above and in the interest of Stakeholders, Lenders, Investors, Public, the Compliance of the guidelines of Companies Act & Corporate Management Practices, We hereby reject the prayer made by the Applicant to confirm the resolution passed.

32. However, the liberty is available with the Petitioner to pass a fresh resolution, if at all felt necessary, in compliances of the guidelines of the Companies Act giving clear 21 days’ notice to the shareholders by way of E-mail, Speed post, WhatsApp. The company must ensure that notice of the meeting of the shareholders reaches the shareholders especially the five entities holding 79.39 % shares, well in time and proof of delivery of the notice of the Meeting is to be enclosed along with the Petition, if at all filed before the NCLT.

33. The Petitioner is hereby directed to send the copy of this Order to all shareholders having shares of 5% and above as on 31.03.2020 including the SASF besides uploading the Order at the Company’s Website and file the proof of delivery of the Order to such shareholders with the Registry within 15 days from today.

Sd/-

(Prasanta Kumar Mohanty)
Member (Technical)
/ravina/Deka/ 23.08.2021//

Sd/-

(H. V. Subba Rao)
Member (Juicial)

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

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

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 23.08.2021**

Name of the Company: Damayanti Tea Industries
V/s
M/s. Bochapathar Tea Estate Pvt. Ltd.

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

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR. ANAND VARMA	Advocate	Petitioner	Present in Video
2.	MR. AMIT PAREEK	CS	Respondent	Conference

ORDER

Date of Order: 23rd August, 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. **C.P. (IB)No.05/GB/2021** is rejected.

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

/Deka - 23.08.2021/

**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**

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

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

CA (CAA)/8/2021
: Hearing through

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY
TRIBUNAL, GUWAHATI BENCH ON 23.08.2021**

Name of the Company

M/s Luit Valley Enterprises Pvt Ltd

And

M/s Nemcare Hospital Tezpur Pvt. Ltd

Section of the Companies Act: Under Section 230 to 232 of the Companies Act, 2013.

<u>S.No.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>
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1.	Mr. Biman Debnath	CS	Petitioners
			Present in Video Conference

ORDER

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The order is pronounced in the open court, vide separate sheet.

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)**

Dated this the, 23.08. 2021

Sd/-

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

ORDER
[Per se: Mr H. V. Subba Rao, Member (J)]

The Company Application has been filed jointly by both the Petitioners, Petitioner no 1 M/S Luit Valley Enterprises Pvt. being the Transferor Company and the Petitioner no 2 M/S Nemcare Hospital Tezpur Pvt. being the Transferee Company. It is submitted that the Board of Directors of the both the Companies, transferor as well as the transferee Company have at their respective Board meetings held on the 25/02/2021 by a resolution passed unanimously have approved a draft scheme of amalgamation for amalgamating the transferor Company with the Transferee Company **w.e.f. the 1st day of April, 2020, the appointed date. Copy of the resolution passed at the Board of Directors of both the Companies have been attached herewith as "Annexure-8".**

1. The rationale of the said Scheme of Arrangement are, as follows:-

- i) The Transferor Company is inoperative since last year and is not carrying on its hotel activities for some years because of which its fixed assets along with the land had remained unutilized and hence your petitioners have decided to amalgamate with each other so that the fixed assets and the resources of the transferor company can be properly utilized and the business activity of the transferee company can be carried on smoothly in the land of the transferor company.
- ii) The registered office of the Transferee Company is also situated in the land of the transferor Company as the building and the land of the Transferor Company were taken on lease by the transferee Company for carrying on the hospital business. Further at the time of availing of financial assistance from the bank by the transferee Company, the bank had insisted the transferee Company to mortgage the property of the transferor company which was taken on lease by the Transferee Company against the financial facilities and amalgamate both the Companies so that the ownership of the property solely comes under Transferee Company. Hence this amalgamation of both the petitioners had been proposed for.
- iii) As the Transferee Company has just started its operations and holds operating facilities and assets which cannot be transferred easily, the transferor Company does not have any such operating facilities or assets. In view, inter alia of the aforesaid, operationally it is considered more

convenient to merge the transferor Company with the Transferee Company than vice versa.

- iv) The amalgamation will enable appropriate consolidation of the undertakings of the Transferor Company and the transferee Company. The business of the amalgamated entity will be carried on more efficiently and economically as a result, inter alia, of pooling and more effective utilization of the combined resources of the said companies and substantial reduction in costs and expenses which will be facilitated by and follow the amalgamation.
- v) The merger will also result in the formation of a larger company having greater capacity to raise and access funds for growth and expansion of its business and marketing on more favorable terms.
- vi) The petitioners state that all the properties, rights and interest of 'Transferor Company' be transferred to and be vested without any further act or deed in Transferee Company and accordingly the same shall pursuant to Section 232 (1) of the Companies Act, 2013 be transferred to and vested in transferee Company for all the estate and interest of Transferor Company' subject never the less to all charges, now affecting the same.
- vii) The petitioners state that all the liabilities and duties of 'Transferor Company' be transferred without further act or deed and accordingly the same shall pursuant to Section 232(1) of the Companies Act, 2013 be transferred to and become the liabilities and duties of Transferee Company'.
- viii) The petitioner state that all the proceedings and/or appeals now pending by or against 'Transferor Company' be continued by or against the 'Transferee Company'.
- ix) The detailed scheme of merger has been enclosed herewith as **Annexure-7.**
- x) The board of directors of both the companies, transferor as well as the transferee Company have at their respective Board meetings held on the 25/02/2021 by a resolution passed unanimously have approved a draft scheme of amalgamation for amalgamating the Transferor Company with the Transferee Company w.e.f. the 1st day of April 2020, the appointed date.
- xi) There are no investigations or proceedings pending against any of the petitioner companies.

- xii) The exchange ratio of shares of the applicant companies have been fixed on fair and reasonable basis and on the basis of valuation report prepared by a registered valuer. The share exchange ratio has been fixed as 1:29 i.e. shareholders of the transferee Company against one share held by them in the transferor company.
- xiii) The Petitioner has submitted that the scheme does not prejudice the interest of any person.
- xiv) Unless orders as prayed for herein are made, the petitioner will suffer irreparable loss and injury and will be gravely prejudiced.
- xv) The instant petition is bona fide and made for the ends of justice.
- xvi) The aggregate assets of the applicant companies are sufficient to meet all the liabilities and the said scheme shall not adversely affect the rights of any creditors of the Applicant Companies in any manner whatsoever and due provision have been made for payment of liabilities as and when same fall due in usual course.
- xvii) At present the transferor company does not have any other significant business interest other than earning lease rentals on its property leased to the transferee Company i.e. the proposed Transferee Company in this scheme.
- xviii) The Amalgamation will enable appropriate Consolidation of the undertakings of the Transferor Company and the Transferee Company. The Business of the merged entity will be carried on more effective utilization of the combined resources of the said companies and substantial reduction in costs and expenses which will be facilitated by and follow the Amalgamation.
- xix) In consideration of the Amalgamation, the transferee Company will issue and allot to shareholders of the transferor company, Equity shares credited as fully paid up in the transferee company aggregating to Rs. 92,80,000.00 (Ninety Two Lakh Eighty Thousand Only). The existing equity shares of the Transferee Company held by the Transferor Company shall stand necessarily cancelled as a consequence of the Amalgamation, if any. The aforesaid will enable the shareholders of the transferor Company to hold shares directly in the operating Company, viz the Transferee Company. The same will unlock shareholders value.
- xx) The amalgamation will also result in the formation of a larger company having greater capacity to raise and access funds for growth and expansion of its business and marketing on more favorable terms.

2. The necessary particulars about the Applicants Companies submitted by the Applicant is being reproduced herein below:

Sr. No. A	TRANSFEROR COMPANY	M/S LUIT VALLEY ENTERPRISES PVT. LTD.
A1.	TRANSFEROR COMPANY	9 th day of September,1985
A2	Incorporation	U55101AS1985PTC002431
A3	CIN	AAACL4724B
A4	PAN	
A5.	Registered Office	Holding No 5/1288 Ward No 5, Ranu Singh Road, Tezpur- 784001, Sonitpur, Assam
A6.	Shares	<p>Authorized Share Capital is Rs.40,00,000/- and Issued, Subscribed and Paid-up Capital is Rs.32,00,000/-</p> <ul style="list-style-type: none"> • To establish and carry on business of hotels, restaurants, refreshment, rooms, tea, rooms, cafes,milk and snack bar. • To act as caterers and contractors as bakers, confectioners, tobacco, milk and butter seller, dairymen, grocers, farmers, Ice merchant etc. • To carry on the business of providing boarding and lodging houses, hotels, savers, bear houses and lincensed wine, beers and spirit Merchants. • To purchase or otherwise acquire any land, building or premises and to turn into accounts, develop, improve, alter, demolish or let out for the purpose of carrying on the business of Hotel.
Sl.no B	TRANSFeree COMPANY	M/S NEMCARE HOSPITAL TEZPUR PVT. LTD.
B1	Incorporation	23 rd day of May,2016
B2	CIN	U85300AS2016PTC017428
B3	PAN	AAFCN2839J

B4	Registered Office	Holding No 5/1288 Ward No 5, Ranu Singh Road, Tezpur- 784001, Sonitpur, Assam
B5	Shares	Authorized Share Capital of Rs.11,00,00,000/- and Issued, Subscribed and Paid-up Capital of Rs.10,24,67,200/-
B6	Objects of Company (In Brief)	<ul style="list-style-type: none"> To establish, construct, erect, maintain ,manage, develop ,own, acquire, purchase, undertake, improve, equip, promote, initiate , encourage, subsidies and organize, run hospitals, nursing homes, dispensaries, clinics, diagnostic center, polyclinics, pathology, laboratories centres, investigation centres, Paramedical Education Institution, Medical College, Postgraduate Education Institute ,Nursing Institutes and other similar establishment for providing treatment and medical relief in all its branched by all available means to public at large , hospitals, institutes and others and to carry on the business in India or elsewhere to manufacture, Produce, export ,import, buy, sell, fabricate, discover, develop, design, process, investigate, store, formulate, install, repair, maintain recondition, turn to account, exchange, sponsor, distribute or otherwise to deal in all sorts of medicines, pharmaceuticals, chemicals, injections, drugs, formulations, apparatus, instruments, accessories, natural and artificial human body parts and other allied goods and articles, to conduct genetical research, to set up project special purpose vehicles (SPVs) and to do all incidental acts and things necessary for the attainment of the objects under these

		presents.
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3. The Particulars of the directors of the Company are as follows:

TRANSFEROR COMPANY:

Name	DIN	Address
<u>Hiteswar Baruah</u>	01157669	Prabhu Nibash Sarumataria Hengerabri Guwahati-06 Assam, India
Mihir Kumar	01157562	CK Agarwal Road, Chenikuthi, Guwahati-03, Assam, India
Ranjan Kumar Deka	01157216	Narengi, Guwahati, Assam, India
Dharani Dhar Baruah	02094968	Nemcare Hospital, Bhangagarh, Guwahati- 781005, Assam ,India
Pallabi Saikia	07291622	Tezpur, Assam, India

TRANSFeree COMPANY

Name	DIN	Address
Hiteswar Baruah	01157669	House No : 28 Prabhu Nibash, Sarumataria, Hengerabari, Guwahati-05, Assam
Mihir Kumar Baruah	01157562	CK Agarwal Road, Chenikuthi, Guwahati-03, Assam, india
Ranjan Kumar Deka	01157216	Narengi, Guwahati, Assam, India
Dharani Dhar Baruah	02094968	Nemcare Hospital, Bhangagarh- Guwahati, 781005, Assam, India
Pallabi Saikia	07291622	Jyoti Agarwal Path, Murhateli, Tezpur, ezipur-784001, Assam India
Perbez Ahmed	03606834	H No 37, Dr B Baruah Road opp Royal Archade, Ulubari, Kamrup Metro, Guwahati
Rajmohan Pathak	08176394	C/O Bhabendra Natha Pathak, Landmark Apartment- K-2 B.R. Path, Bacpan School, Beltola-781028, Kamrup Metro, Assam, India

Bipul Chandra Kalita	08713721	Chandmari,Kuhiarbari,tezipur Sonitpur, Sibsagar-784001,Assam, India
Satyapran Deka	08713752	H/no-31 Nizarapar, Pension Para RD Chandmari Guwahati Kamrup(Metropolitan), Guwahati-781003, Assam. India
Utpal Jyoti Barman	08714013	G-203, Trillium, Magarpatta City. Hadapsar, Pune City, Hadapsar, Pune City Hadpsar i.e Maharashtra Magarpatta City Maharashtra India 411013

4. The Authorised, Issued and Subscribed Share Capital of the Transferor Company M/S Luit Valley Enterprises Pvt Ltd as on the date of meetings of the Board of Directors considering and approving this Scheme i.e. as on 31.03.2020 and present financial position are as follows:

Particulars	FY 2019-20(Rs.)	FY 2018-19(Rs.)
Authorized share capital	40,00,000.00	40,00,000.00
Paid up share capital	32,00,000.00	32,00,000.00
Total assets	8,831,689.00	88,37,689.00
Total Income / Revenue	0	0
Net Profit/ (Loss) After Tax	-33,900.00	89,599.00

5. The Authorized, Issued and Subscribed share Capital of the Transferee Company [M/s Nemcare Hospital Tezipur Private Limited] and the present financial position are as follows:

Particulars	FY 2019-20(Rs.)	FY 2018-19(Rs.)
Authorized share capital	11,00,00,000.00	6,00,00,000.00
Paid up share capital	10,07,67,200.00	5,92,10,000.00
Total assets	239,138,149.66	133,367,171.35
Total Income / Revenue	57,384.00	0.0
Net Profit/ (Loss) After Tax	-6,89,897	-7,65,585

6. Consequent to and as part of the Amalgamation of the transferor Company with the Transferee company herein, the authorized share capital of the Transferor Company shall stand merged into and combined with the authorized share capital of the transferee Company pursuant to the Scheme, without any further act of deed, and without payment of any registration or filing fee on such combined authorized share capital, the transferor company and the transferee Company having already paid such fees.

7. There are no proceedings pending under Section 210 -227 of the companies Act 2013 and/or sections 235 to 251 of the companies Act 1956 against the Transferor Company and the Transferee Company.

8. There is no reduction of share capital of the Companies proposed in the Scheme of Amalgamation and no scheme of corporate debt restructuring proposed to be entered by the companies pursuant to Amalgamation.

9. The Operation of the scheme Amalgamation of the Transferor Company with the Transferee Company in case of Transfer and vesting of the Undertaking:

- i. With effect from the appointed date, the transferor company provided in the scheme. Accordingly the said assets subject to the changes due to carrying on business by the Transferor Company up to the Effective Date, if any, shall without any further act or deed, be and shall stand transferred to and vested in the transferee Company, as an ongoing concern without any further act, deed, matter or thing so as to become on and from the Appointed date the undertaking of the Transferee Company.
- ii. It is expressly provided that the assets of the Transferor Company are immovable in nature or otherwise capable of being transferred by endorsement only, the same shall be so transferred by the Transferor Company and shall become the property of the Transferee Company accordingly with proper deed or instrument of conveyance for the same.

- iii. The transfer and vesting as shall be subject to any existing charges/hypothecations mortgages or other encumbrance (if any) over or in respect of the said assets or any part thereof.
- iv. Subject to the other provisions of the scheme, all licenses , permissions, approvals, consents, registrations, eligibility certificates, fiscal incentives and no objections certificates obtained by the Transferor Company is entitled to in terms of the various statutes and / or schemes of Union and state Governments, shall be available to the transferee Company, without any further act or deed and shall be appropriately mutated by the statutory authorities concerned therewith in favor of the Transferor Company will be transferred to the Transferee Company as a going concern without any break or interruption in the operations thereof, the transferee company shall be entitled to the benefit of all such licenses, permissions, approvals, consents, registrations, eligibility certificates ,fiscal incentives and no-objections certificates and to carry on and continue the operations of the undertaking of the Transferor Company on the basis of the same upon this scheme become effective .Further all benefits to which the transferor Company is entitled in terms of the various statutes and / or schemes of Union and State Governments, including credit for MAT, Advance Tax and Tax deducted at source and other benefits under Income Tax Act and Tax credits and benefit under Income Tax Act and Tax credits and benefit relating to Excise (including Modvat /Cenvat), Sales Tax , service Tax, etc. shall be available to the Transferee Company upon this scheme becoming effective.
- v. For the removal of the appointed date , it is hereby clarified that to the extent that there are inter-corporate loans, deposits, obligations, balances or other outstanding as between the Transferor Company and the Transferee Company , if any , the obligations in respect thereof shall come to an end and there shall be no liability in that behalf and corresponding effect shall be given in the books of account and records of the Transferee Company for reduction of assets or liabilities as the case may be and there would be no accrual of interest or any other charges in respect of such inter corporate loans , deposits s or balance, with effect from the appointed date .

- vi. The Transferee Company may, at any time after coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any law or otherwise, execute deeds of confirmation in favor of the secured creditors of the Transferor Company or in favor of any other party to any contract or agreement to which the Transferor Company is party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee Company shall under the provisions of the Scheme be deemed to be authorized to execute any such writing on behalf of the Transferor Company and to implement or carry out all such formalities or compliances referred to above on the part of the Transferor Company to be carried out or performed.
 - vii. For avoidance of doubt, all rights, title , interest and claims of the transferor Company in any leasehold properties , including all such leases, of the transferor Company shall, pursuant to section 232(4) of the Act, without any further act or deed, be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company
10. (a) It is submitted that as on 04th March, 2021, the Transferor Company had 6 equity shareholders. As on 4th March 2021, the Transferor Company had 11 Sundry Creditors (Trade Payables) and the company has taken unsecured loans from the director of the company Mr. Pratim Goswami, the sun of Rs.50,00,000.00 as per the book of account of the Company. The List of shareholder is annexed as '**Annexure A of the I.A at page 61**'. A list of the sundry Creditors (Trade payables) of the Transferor Company as certified by the Chartered Accountants are annexed hereto and marked as "**Annexure 3 of the I.A**".
- (b) It is further submitted that as on 04th March, 2021, the Transferee Company had 54 Shareholders, 2 Secured Creditors and 77 unsecured creditors. The List of shareholder is annexed as '**Annexure6 of the I.A at page no 105-108**'. A list of the Unsecured Creditors and Secured Creditors of the Transferee Company as certified by the Chartered Accountants are annexed hereto and marked as "**Annexure -6 of the I.A at page 98**".

11. It is submitted that all the shareholders of the Transferor Company, by affidavits given their consent to the said Scheme of Arrangement. The respective Affidavits, in original are annexed hereto and collectively marked **"Annexure 4 at page no 62-85 of the I.A"**.

12. It is submitted that the shareholders of the Transferee Company, by affidavits given their consent to the said Scheme of Arrangement. The respective affidavits, in original are annexed hereto and marked as **"Annexure 8 at page 233 -308 of the I.A"**.

13. It is submitted that all the creditors of the Transferor Company, by affidavits given their consent to the said Scheme of Arrangement. The respective affidavits, in original are annexed hereto and marked as **"Annexure 4 at page 62-85 of the I.A"**.

14. It is further submitted that all the creditors of the Transferee Company, by affidavits given their consent to the said Scheme of Arrangement. The respective affidavits, in original are annexed hereto and marked as **"Annexure 7 at Page 109-232 of the I.A"**.

15. **The respective auditors of the Transferor Company and the Transferee Company have also confirmed that the accounting treatment contained in the Scheme is in compliance with Accounting Standards prescribed under companies Act 2013 and other Generally accepted accounting Principles. A copy of each of the said certificates is enclosed and marked "Annexure 15 and 16 respectively."**

16. **Presently M/s Luit Valley enterprise Private Limited, the Transferor Company is having no business operations and the Transferee Company M/s Nemcare Hospital Tezpur Private Limited is also having no business operation and is in the stage of development.**

17. **It is submitted that the allotment of shares in Transferee Company to the equity shareholders of the Transferor Company in the following ratio (as per the statement on exchange ratio calculation for equity**

shareholders given in Annexure A) at the option of the equity shareholders of Transferor Company will be fair and reasonable subject to the rounding off to the nearer integer:

- i. 29(Twenty Nine) equity shares of Rs.10/- each in Nemcare Hospital Private Limited, Created as fully paid up, for every 1(one) equity shares of Rs.100/- fully paid up held in Luit Valley Enterprises Private Limited.

18. The statement on equity Exchange Ratio calculation is as follows:

Particulars	Amount (In Rs.)
A. Value per share of Nemcare Hospital Tezpur Private Limited (Rs)	97
B. Value per Share of Luit Valley enterprise Private Limited(Rs)	2824.1
C. Exchange Ratio (B/A) i.e 29equity shares of Nemcare hospital Private Limited Of Rs. 10/- Each to be issued to a shareholder holding 1 equity shares of Luit Valley enterprise Private Limited of Rs. 100/- each.	29

Statement of valuation of Equity Shares of m/S Nemcare Hospital Private Limited on the basis of Assets Approach (On the basis of Audited financial statements as at March 31,2020).

Sl. No	Particular	Amount (in Rs)
A	Assets	
	Capital WIP	19,78,18,921
	Long term loan & Advances	2,95,91,694.00
	Cash & Cash Equivalents	28,61,086.15
	Other Current Assets	7,61,090.66
	Total of A	23,10,32,791
B	Liabilities	
	Other Current Liabilities	2,91,454
	Long term Borrowing	12,67,18,869.01

	Trade Payables	49,83,481.00
	Total of B	13,19,93,804
C	Equity value (A-B)	9,90,38,987
D	No. of equity shares	10,24,672
F	Fair Value per share	97

Statement of valuation of Equity Shares of M/s Luit Valley Enterprise Private Limited on the basis of Assets Approach (On the basis of Audited financial statements as at March 31,2020)

Sl. No	Particular	Amount (in Rs.)
A	Assets	
	Tangible Assets	10,16,40,600
	Cash & Cash Equivalents	6,000
	Total of A	10,16,46,600
B	Liabilities	
	Trade Payable	62,09,810
	Other Current Liabilities	33,900
	Short Term Provision	31,481
	Long term Borrowing	50,00,000.00
	Total of B	1,12,75,191
C	Equity value (A-B)	9,03,71,409
D	No. of equity shares of Rs 100/- each	32,000
F	Fair Value per share	2,824

19. The Applicant companies have prayed for the following reliefs:

- a) Dispense with the meeting of the Equity shareholders of both the applicant companies in view of the written consent given by more than ninety percent of the shareholding value of the Applicant Companies (i.e the Transferor and Transferee Company) by way of an affidavit. Consent received of 100% of the shareholding value of the Petitioner No. 1 and 90.25% of shareholding value of Petitioner No II.

- b) Dispense with the meeting of the Creditors of both the applicant companies in view of the written consent given by more than 90% of the credit value of the Creditors of the Applicant Companies(i.e the Transferor Company and the Transferee Company) by way of an affidavit. Consent received of 100% of the credit value of Petitioner No. 1 and 99.72% of Credit value of Petitioner No II.**
- c) To provide necessary orders for issue of newspaper advertisement detailing petition pursuant to Rule 35 of National Company Law Tribunal Rules, 2016 in Form NCLT 3A.**
- d. The Sectoral/Statutory/ regulatory authority involved in this Scheme are i) Regional Director, North Eastern Region; ii) Registrar of Companies, Guwahati; iii) Official Liquidator, Guwahati; iv) Concerned Income Tax authorities; and the applicants are seeking orders to serve notice on such sectoral/ statutory/ regulatory authorities. The Transferor Company and Transferee Company are unlisted Companies and hence no notice is required to be sent to Stock Exchanges. The Competition Commission of India regulations are not applicable to the Applicant Companies in terms of total values of assets and/or turnover of the Applicant Companies. Hence, it is not necessary to serve the scheme of Arrangement on the said authority of any other sectoral authorities.**
- e. To pass such other order or orders or further order be made affording deem fit and proper. And for this act of kindness the applicant shall ever pray.**

20. In view of the aforesaid, it is submitted that this Hon'ble Tribunal be pleased to dispense with convening of meeting of equity shareholders, secured creditor and unsecured creditors of both the transferor Company and transferee Company.

21. The Sectoral/Statutory/ regulatory authority involved in this Scheme are i) Regional Director, North Eastern Region; ii) Registrar of Companies, Guwahati; iii) Official Liquidator, Guwahati; iv) Concerned Income Tax authorities; and the applicants are seeking orders to serve notice on such sectoral/ statutory/ regulatory authorities. The Transferor Company and Transferee Company are unlisted Companies and hence no notice is required to be send to Stock Exchanges. The

Competition Commission of India regulations are not applicable to the Applicant Companies in terms of total values of assets and/or turnover of the Applicant Companies. Hence, it is not necessary to serve the scheme of Arrangement on the said authority of any other sectoral authorities.

22. All the shareholders of the Transferor Company, by affidavits given their consent to the said Scheme of Arrangement. The respective Affidavits, in original are annexed hereto and collectively marked **"Annexure 4 at page no 62-85 of the I.A"**.

23. All The shareholders of the Transferee Company, by affidavits given their consent to the said Scheme of Arrangement. The respective affidavits, in original are annexed hereto and marked as **"Annexure 8 at page 233 -308 of the I.A"**.

24. All the creditors of the Transferor Company, by affidavits given their consent to the said Scheme of Arrangement. The respective affidavits, in original are annexed hereto and marked as **"Annexure 4 at page 62-85 of the I.A"**.

25. All the creditors of the Transferee Company, by affidavits given their consent to the said Scheme of Arrangement. The respective affidavits, in original are annexed hereto and marked as **"Annexure 7 at Page 109-232 of 'the I.A"**.

26. **The Applicant Companies have submitted the Audited Financial Statement, Directors Report and Auditor Report for the year ending 31/03/2020, the copies of these have been annexed with the applications and marked as "Annexure -1 and 3 respectively" The Auditor Report has been submitted by Mr. Champalal Maheswari,CA wherein it is stated :**

Report on other Legal and Regulatory Requirements:

- 1. The Companies (Auditor's report) Order,2016 issued by the Central Government of India in terms of sub-section (11) of section 143 of the Act, is not applicable for the Company.**
- 2. As required by Section 143 (3) of the Act, we report that:**

- a) We have sought and obtained all the information and explanations which to the best of our knowledge and belief were necessary for the purposes of our audit.**
- b) In our opinion, proper books of account as required by law have been kept by the Company so far as it appears from our examination of those books.**
- c) The Balance Sheet, the statement of Profit and Loss dealt with by this Report are in agreement with the books of account.**
- d) In our opinion, the aforesaid financial statements comply with the Accounting Standards specified under Section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014.**
- e) On the basis of the written representations received from the directors as on 31st December, 2020 taken on record by the Board of Directors, none of the Directors is disqualified as on 31st December, 2020 from being appointed as a director in terms of Section 164 (2) of the Act.**
- f) The company has adequate internal financial control system in place and they are operating effectively;**
- g) With respect to the other matters to be included in the Auditor's report in accordance with the Rule 11 of the Companies (Audit and Auditors) Rules, 2014, in our opinion and to the best of our information and according to the explanations given, it is reported that:**
 - i. The Company does not have any pending litigations which would impact its financial position.**
 - ii. The Company did not have any long-term contracts including derivative contracts for which there were any material foreseeable losses.**
 - iii. There were no amounts which were required to be transferred to the Investor Education and Protection Fund by the Company**

27. Having heard the learned counsel for the Applicant Companies and by perusal of the records, we feel that the prayer as being sought for by

the Applicant companies appear to be reasonable and bona fide. The present company Applications deserve to be allowed. Accordingly, it is allowed in terms of its prayer clause with following directions: -

- i. Meetings of the Creditors of M/s Luit Valley Enterprises, the applicant Transferor Company and the Transferee Company, M/s Nemcare Hospital Tezpur Private Limited are hereby dispensed with, in the light of the consent letters on affidavit, placed on record.
- ii. A meeting of Equity Shareholders of both the Applicant Companies are hereby dispensed with, in the light of the consent letters on affidavit, placed on record.
- iii. Direction is given for issue of newspaper advertisement detailing petition pursuant to Rule 35 of National Company Law Tribunal Rules, 2016 in Form NCLT.
- iv. **The Appointed date is 1st day of April, 2020, as resolved in the Board Meeting of both Applicant Companies.**

28. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, the Applicant Companies shall send a Notice of meeting in Form No. CAA 3 with a copy of the Scheme of Arrangement, the Explanatory Statement and the disclosures mentioned under Rule 6 (to the extent applicable) to:

- (a) The Central Government through the Regional Director, North Eastern Region,
- (b) the Registrar of Companies, Guwahati
- (c) the Income Tax Authorities of the concerned areas;
- (d) the Official Liquidator, North eastern Region

stating that representations, if any, to be made by them shall be made within a period of 30 (Thirty) days from the date of receipt of such notice, failing which it will be deemed that they have no objections to make on the proposed Scheme of Arrangement. The said notices shall be sent to the above Statutory authorities forthwith either by Registered Post or by Speed Post or by Courier or by Hand Delivery at the office of the authorities as required by sub-rule (2) of 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 this Tribunal with a copy of the same to

be sent to the Applicant Companies within a period of 30 (Thirty) days from the date of such service.

29. The Applicants or its Counsels on record shall along with copies of required documents and disclosures required under the provisions of Section 230(5) of the Companies Act, 2013 in Form NO.CAA.3 of the Companies (CAA) Rules, 2016 with necessary variations incorporating the directions therein, by sending the same by hand delivery or through special messenger or by registered post or speed post for filing their representation, if any, within 30 days from the date of receipt of the notice with a copy of such representation being sent simultaneously to the Applicant Companies and/or its Counsels. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement.

30. Issue advertisement detailing petition under Rule 35 of the NCLT Rules, 2016 not less than thirty days before the date fixed for hearing in two daily newspapers – one in “Sentinel” in English newspaper and the other in “Dainik Agradoot” in local vernacular newspaper to all the stakeholders for final disposal of the petition.

31. The authorized representative of the Applicant Companies or its Counsels shall furnish an affidavit of compliance before three weeks from the date of next hearing i.e. 27/10/2021.

32. All the aforesaid directions are to be complied in accordance with the applicable law including forms and formats contained in the Companies (CAA) Rules, 2016 as well as the provisions of the Companies Act, 2013. The undertaking of the authorized representative of the applicants to this effect is accordingly taken on record.

33. With the aforesaid directions/observations, **CA (CAA) No.8/GB/2021** is allowed and stands disposed of accordingly.

Sd/-

(Prasanta Kumar Mohanty)
Member (Technical)

k.y/deka/ 23.08.2021/

Sd/-

(H.V Subba Rao)
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

**CP (CAA) No. 1/GB/2021
IN
CA (CAA) No. 5/GB/2021**

Coram: Hon'ble Mr. H. V. SUBBA RAO, MEMBER (J)

Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL
COMPANY LAW TRIBUNAL, GUWAHATI BENCH ON 23/08/2021.**

Name of the Company: **1. Zonet Cable TV Private Limited (Demerged
Company)**

2. Zonet TV Private Limited (Resulting Company)

Section: Section 230-232 of Companies Act

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR D. N. SHARMA	Advocate	Petitioner	Through
2.	MR B. DEBNATH	PCS	Petitioner	Video Conference
3.	MR SAROJ KR. RAY	PCS	Petitioner	

ORDER

The Applicant is represented through respective Learned Counsel (s).

The case is fixed for pronouncement of order.

The Petition is allowed and disposed of.

The Order is pronounced in the open court, through Video Conferencing vide separate sheet.

Sd/-

**(PRASANTA KUMAR MOHANTY)
MEMBER (T)**

//Tanmay/Deka-23.08.2021//

Sd/-

**(H. V. SUBBA RAO)
MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**CP (CAA) No. 1/GB/2021
IN
CA (CAA) No. 5/GB/2021**

In the matter of:

ZONET CABLE TV PRIVATE LIMITED

(CIN: U92100MZ2011PTC008262),

A Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Zorum, 3rd Floor, Rev. Zairema Building, Zarkawt, Aizawl- 796001.

... Demerged Company

AND

ZONET TV PRIVATE LIMITED

(CIN: U74999MZ2020PTC013373),

A Company incorporated under the Provisions of the Companies Act, 2013 and having its registered office at Building No. B-58, 3rd Floor Zorun, Zairema Building, Zarkawt, Aizawl- 796007.

... Resulting Company

Order delivered on **23.08.2021**

Coram: Hon'ble Mr. H. V. SUBBA RAO, MEMBER (J)

Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (T)

ORDER

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

The Petitioner Companies have preferred the present joint application under Sections 230-232 of the Companies Act, 2013 seeking sanction of this Tribunal to a Composite Scheme of Arrangement of **Zonet Cable TV Private Limited** and **Zonet**

TV Private Limited and their respective Shareholders ["Scheme" for short] with effect from the Appointed Date as mentioned in the Scheme.

2. The Rational of the proposed company Scheme is stated as under:

i. The Demerged Company is engaged in 2 (two) distinct lines of business namely:

(a) Information, Communication and Broadcasting service and uplink of News and Current Affairs Channel in all languages throughout India (collectively referred to as the "**Broadcasting Business**"); and

(b) Distribution of Cable TV Network in the State of Mizoram (referred to as the "**Cable Distribution Business**").

ii. The nature of risk and competition involved in each of the Broadcasting Business and cable Distribution Business is distinct, necessitating different management approaches and focus. Moreover, the competitive dynamics of these businesses are also different.

iii. The separation of the Broadcasting Business, by way of this Scheme from the Demerged Company would lead to significant benefits for both businesses including:

(i) Enable a dedicated management focus and to accelerate growth of the Broadcasting and Cable Distribution Business unlocking significant value for the shareholders of Zonet Cable TV Private Limited;

And

(ii) Access to varied sources of funds for the rapid growth of broadcasting businesses.

- iv. With a view to achieve the aforesaid growth potential, the Demerged Company proposes to re-organize and segregate, by way of the Scheme, its business, undertaking and investments in the Cable Distribution Business.
- v. The separation of Broadcasting Business will draw the attention of investors from all over the country to invest in the Broadcasting Business.
- vi. The reduction in share capital of the Demerged Company is to enable the Demerged Company to have an equitable share capital in proportion to its size and requirements post demerger of the Cable Distribution Business of the Demerged Company.
- vii. The Scheme does not have any adverse effect on either the shareholders or the employees or the creditors of the Demerged Company.

3. This Company Petition was filed by Zonet Cable TV Private Limited (ZCTPL) the Demerged Company and Zonet TV Private Limited (ZTPL), the Resulting Company came up for hearing for sanction of Scheme of Arrangement between the Demerged and the Resulting Company and their respective shareholders.

4. The Petitioner Companies have submitted that the Board of Directors of the Demerged Company and the Resulting Company, have at their respective meetings, by resolutions passed unanimously, approved the said Scheme of Arrangement on 6th November, 2020. Copies of the said board resolutions of the Demerged Company and the Resulting Company are annexed to the Petition and collectively marked as **Annexure "I"**.

5. That the Demerged Company, Zonet Cable TV Private Limited (ZCTPL) as on 31st October, 2020 has 12 Equity shareholders and 1 Secured Creditor and 1 Unsecured Creditor. A list of the Equity Shareholders, Secured Creditor and Unsecured Creditor as

certified by the Statutory Auditors are annexed to the Petition and marked as **Annexure "L"**.

6. That the Resulting Company, Zonet TV Private Limited (ZTPL) as on 31st October, 2020 had 12 Equity Shareholders and 4 Unsecured Creditors and no secured Creditor. A list of the Equity Shareholders, Secured Creditor and Nil Secured Creditors as certified by the Statutory Auditors are annexed to the Petition and marked as **Annexure "M"**.

7. All the Equity Shareholders, Secured Creditor and Unsecured Creditors of the Demerged Company have, by affidavits given their consent to the said Scheme of Arrangement.

8. All the Equity Shareholders and Unsecured Creditors of the Resulting Company have, by affidavits given their consent to the said Scheme of Arrangement.

9. Pursuant to order dated 23rd February, 2021 passed by this Tribunal in C.A (CAA)/5/2021, convening the meetings of Equity Shareholders, Secured Creditor and Unsecured Creditors of the Demerged Company and Equity Shareholders and Unsecured Creditors of the Resulting Company were dispensed with.

10. Pursuant to the directions made dated 23rd February, 2021 by this Tribunal ,the Petitioners also served Notice for hearing of the Petition Under Section 230(5) of the Act on (i) Central Government, through the Regional Director, North Eastern Region, Guwahati (ii) Registrar of Companies, Guwahati (iii) Official Liquidator, Guwahati and (iv) Income Tax Authorities having jurisdiction over the Petitioner Companies and have filed an affidavit of compliance with this Tribunal on 12th March, 2021 in this regard being **Annexure "O"** to the Petition.

11. Pursuant to the directions made dated 21st June, 2021 by this Tribunal, Notice for hearing of the Petition was also advertised once in the "**The Sentinel**" in English in

the Guwahati Region, once in the "**Mizoram Post**" in English and once the in "**Vanglaini**" in Mizo where the Registered Office of the Petitioner Companies are situated in their respective issues dated the 30th day of June 2021. An Affidavit of Compliance with the copies of the News Papers published has been filed with this Tribunal on 22nd July, 2021.

12. That the Regional Director, North Eastern Region, Guwahati vide its Affidavit dated 18th June, 2021 has submitted his no objection to the proposed Scheme of the Petitioner Companies.

That the observations made by the Central Government on the Composite Scheme of Arrangement are as under:

a) It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a letter was forwarded to the Income Tax Department on 18.12.2020 with a request to forward their comments/observations/objections, if any, on the Scheme of Arrangement for Demerger between the Demerged Company and Resulting Company. However, the said authority has not forwarded their report to this Directorate till date.

b) That this Directorate vide letter dated 04.05.2021 requested respondent companies to provide proof of services of having served copy of notices to sectoral regulators. The demerged undertaking is stated to be Cable Distribution business in Clause C (iii) of the scheme whereas Para no. 5.2(iii) of the petition speaks about the demerger of "broadcasting business". Vide the said letter this Directorate requested to clarify the same. A copy of the letter dated 04.05.2021 is attached herewith and marked as 'Annexure- A'.

c) That the representative of demerged company vide email dated 01.06.2021 & 03.06.2021 attached the proof of service of notice to concerned regulatory authorities and submitted that due to typing error it was mentioned in

the application as "Broadcasting Business", which may be read as "Cable Distribution Business". A copy of the emails dated 01.06.2021 & 03.06.2021 are attached herewith and marked as 'Annexure-B'.

d) That it is submitted that vide letter dated 16.06.2021 of the Registrar of Companies, North-East Region, Ministry of Corporate Affairs, Guwahati, reported that no complaint/ prosecution/ Inspection/ Investigation/ Technical Scrutiny is carried out against the respondent companies.

3. It is further submitted that the proposed scheme, subject to the above observations, may be considered and the Hon'ble NCLT may pass such order(s) as deemed fit and proper.

4. The statement made in paragraph 2 are derived from the records of this office and the humble submissions made in paragraph 3 may be considered by the Hon'ble National Company Law Tribunal, Guwahati Bench for kind consideration and disposal of the case on its merits.

13. That despite the publication of notice of hearing in newspapers in Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016, no other person has filed any opposition or objection before this Tribunal in the instant matter. Hence, it is construed that they do not have any objections or submissions to this proposal / arrangement between the Demerged and the Resulting Company.

14. Considering the aforesaid factual position of the present case for sanctioning of the Scheme of Arrangement, it seems that all statutory compliances have been fulfilled. Therefore, the Petition filed is made absolute in terms of prayers made in the Petition. **We therefore pass orders, sanctioning the Scheme of Arrangement as annexed to the** Petition and pass orders in terms of prayers of the said petition, which are reproduced below:

(a) The Scheme of Arrangement being **Annexure "A"** to the Petition be sanctioned by this Hon'ble Tribunal so as to be binding **with effect from the 1st of November, 2020 on all the Petitioner Companies their shares and creditors and all concerned. The appointed date is 01/11/2020 as resolved in the board meeting of the Applicant Companies.**

(b) All the properties, rights, interests and powers of the Demerged Undertaking of the Demerged Company Zonet Cable TV Private Limited (ZCTPL), be transferred to and vest without further act or deed to the Resulting Company Zonet TV Private Limited (ZTPL) and the same shall pursuant to Section 230-232 of the Companies Act, 2013 be transferred to and vest in Company Zonet TV Private Limited (ZTPL), the Resulting Company for all the estates and interests of the Demerged Undertaking, but subject nevertheless to all charges now affecting the same;

(c) All the debts, liabilities, duties and obligations of the Demerged Undertaking of the Demerged Company Zonet Cable TV Private Limited (ZCTPL), be transferred without further act or deed to the Resulting Company Zonet TV Private Limited (ZTPL) and accordingly the same shall, pursuant to Section 230-232 of the Companies Act, 2013 be transferred to and become the debts, liabilities, duties and obligations of Zonet TV Private Limited (ZTPL), the Resulting Company;

(d) All legal proceedings and/or suits and/or appeals now pending by or against the Demerged Undertaking of the Demerged Company Zonet Cable TV Private Limited (ZCTPL) be continued by or against Zonet TV Private Limited (ZTPL), the Resulting Company;

(e) While Approving the Scheme, **we make clear that this order should not be construed as an order in any way granting exemption from payment of Stamp Duty, taxes or any other charges, if any, and payment in accordance with law.**

(f) The Whole of the property, rights, and powers of the Demerged Undertaking of the Demerged Company be transferred without further act or deed to the Resulting Company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Resulting Company for all the state and interest of the Demerged Company therein but subject nevertheless to all charges now affecting the same; and

(g) All liabilities including taxes and charges, if any and duties of the Demerged Undertaking of Demerged Company be transferred without further act or deed to the Resulting Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company without in any way obstructing compliance of depositing outstanding tax dues, if any; and

(h) All employees of the Demerged Undertaking of the Demerged Company will become employees of the Petitioner/Resulting Company without any break or interruption of service.

15. The legal fees and expenses of the office of the Regional Director are quantified at Rs.10,000.00 in respect of the Petitioner Companies. The said fees to the Regional Director shall be paid by the Resulting Company within four weeks from the date of issuance of certified copy of the Order by the Tribunal.

16. Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on a copy of this order along with the Scheme of Arrangement duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme of Arrangement immediately.

17. The petitioner companies are further directed to lodge a copy of this order, the schedule of immovable assets of the Demerged Undertaking of Demerged Company as on the date of this order and the Scheme duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, on the same within 60 days from the date of the order.

18. The Petitioner Companies are further directed to file a copy of this order along with the copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with Form INC-28 within 30 days from the date of issuance of the certified copy of the Order by the Tribunal in addition to physical copy as per relevant provisions of the Companies Act, 2013.

19. **With the aforesaid direction, the present joint Company Petition is allowed and accordingly stands disposed of.**

Sd/-

**(PRASANTA KUMAR MOHANTY)
MEMBER (T)**

Sd/-

**(H. V. SUBBA RAO)
MEMBER (J)**

/Tanmay/Deka-23.08.2021//