

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH

NCLT/GB/1(38)/2017

CP (IBC)/03/GB/2017

M/s. Kapilesh Stock Holding Pvt.Ltd and Another

- Petitioners

-Versus-

M/s. Himatsingka Resorts Pvt. Ltd.

- Respondent

**PRESENT**

Hon'ble Mr. Justice P K Saikia, Member (Judicial)

**Date: 28.02.2017**

Name of the Company	
Under Section	7 of the I.B.C ,2016

Sl. No.	Name & Designation of Authorized Representative.(in Capital Letters).	Appearing on behalf of	Signature with date
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**ORDER**

Case record is put up today on receipt of the order dated 20.02.2017, passed by the Hon'ble Gauhati High Court in WP(C) No. 1003/2017. It may be stated here that the WP(C) No. 1003/2017 was initiated to question the legality, propriety and correctness of the order dated 13.02.2017, rendered by this Tribunal in CP (IBC) /03 /GB/2017 (a proceeding under Section 7 of the Insolvency and Bankruptcy Code, 2016(in short, IBC) read with Rule 4 / 9 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule 2016 'in short 'Rule of 2016').

Under the order dated 13.02.2017, the petition under Section 7 of IBC read with Rule 4 / 9 (1) of Rule of 2016 was admitted. After admitting the proceeding, this Court was also pleased to pass, amongst other, the following order:





*"That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority, transferring, encumbering alternating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

*(ii) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.*

*(iii) That the provisions of subsection (1) shall not apply to such transactions as may be notified by the Central Government to consultation with any financial sector regulator,*

*(iv) That the order of moratorium shall have effect from 13.02.2017 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.*

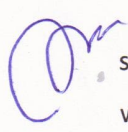
*(v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.*

*(vi) That this Bench hereby appoints Mrs. Mamata Binani, Room No.6, 4<sup>th</sup> Floor, Commerce House, 2A Ganesh Chandra Avenue , Kolkata 700013, Email address. Mamtabinani @ gmail.com (Registration No. IBBI/IPA--02/2016 – 17/01 as interim resolution professional (IPR) to carry the functions as mentioned under Insolvency & Bankruptcy Code.*

*(vii) That, in view of provision of Section 17 of the IBC, henceforth interim resolution professional shall manage the affairs of the M/s. Himatsingka Resorts (P) Ltd and powers of the Board of Directors of the corporate debtor shall stand suspended and be exercised by the interim resolution professional and the officers and managers shall report to the interim ,resolution professional and provide access to such documents and records of M/s. Himatsingka Resorts (P) Ltd as may be required by the interim resolution professional.*

*(viii) Let this order be communicated to the applicants and corporate debtor within 7 days from today.*

*Accordingly, this application is disposed of".*

 As stated above, the aforesaid order has been challenged alleging, amongst other things, that such order was passed in violation of principles of natural justice since such an order was passed without giving the corporate debtor an opportunity of hearing which offends the principles of natural justice which demands that nobody should be punished without he being heard.



On hearing the learned counsel for the writ petitioner, Hon'ble High Court was pleased to stay the operation of the order dated 13.02.2017 as an interim measure. The relevant parts of the order is reproduced below: -

*" It appears from the papers that the petitioner No.2 has taken over the M/s. Himatsingka Resorts Private Limited, under an agreement dated 15.12.2014 (Annexure-A), executed with the respondent No.7 and under Clause 8 thereof, the petitioner No.2 is expected to invest funds and also pay back the unsecured loan to the creditors/applicants. This aspect could have been reflected before the Company Law Tribunal, but because the admission and the interim order were passed on the same date, which is not contemplated by the Insolvency Code, 2016, the unwarranted declaration of moratorium and appointment of the IRP was ordered. This appears to be without due process and thus beyond the jurisdiction of the Company Law Tribunal".*

*" While Section 61 of the Insolvency Code, 2016 provides for redressal before the Appellate Forum, in the present case, the impugned order was passed without hearing the affected party and de-hors the procedure prescribed by the Insolvency Code, 2016.*

*" Therefore, let notice returnable in 6 weeks be issued. Mr. S.C.Keyal, the learned Asstt. Solicitor General of India accepts notice for respondent Nos. 1 & 2. Necessary extra copies be furnished to him. Petitioners to ensure service on the remaining respondents by Regd. Post.*

*" In the interim, having regard to the clearance of debts to the two applicants (respondent Nos. 3 & 4), as acknowledged by the Companies' Director Om Prakash Rath (respondent No.5), in the affidavit(s) sworn on 17.02.2017, we order stay of the impugned order of the Company Law Tribunal, dated 13.2.2017 (page 117)".*

In view of the above, this proceeding stands stayed until further orders from the Hon'ble High Court.

The learned counsel for the petitioner has submitted that the order dated 20.02.2017, so rendered in WP© No. 1003/2017, had already been conveyed to Ms. Mamata Binani, IRP, by the learned counsel for the writ petitioner for her information and for needful.

Registry is directed to communicate this order to all concerned.



Member (Judicial)  
National Company Law Tribunal,  
Guwahati Bench, Guwahati.

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