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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6031/2026

MR MUKESH JALAN
SON OF LATE SHREE CHAND JALAN, AGED ABOUT 52 YEARS, RESIDING AT B.K. KAKOTY ROAD, ULUBARI, GUWAHATI-781007, ASSAM.

VERSUS

SHRI RAIN TAYO
FORMERLY KNOWN AS SHRI TAYO LUMMAR, PROPRIETOR OF M/S LUMMAR ENTERPRISE, AT E-141, RENDING COMPLEX, NEAR LAGUN BRIDGE, BARAPANI BAZAR, NAHARLAGUN, PAPUM PARE, ARUNACHAL PRADESH-791110.

2:NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
THROUGH ITS REGISTRAR
1ST FLOOR
BSNL BHAWAN BUILDING
ANANDA RAM BARUAH ROAD
PAN BAZAR
GUWAHATI-781001
ASSAM.

3:SHRI AMIT PAREEK
INTERIM RESOLUTION PROFESSIONAL OF SADGURU ENGINEERS AND ALLIED SERVICES PRIVATE LIMITED
REGISTRATION NO. IBBI/IPA002/IP-N00413/2017-18/11205
4TH FLOOR
RAM PRASAD COMPLEX
CHATTRIBARI
GUWAHATI-781001
ASSAM.

4:UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
SHASTRI BHAWAN
DR. RAJENDRA PRASAD ROAD
NEW DELHI-110001

Advocate for the Petitioner : DR. ASHOK SARAF, MR P K BORA,MR S J SAIKIA,MR. N N DUTTA,MR P BARUAH

Advocate for the Respondent : DY.S.G.I., MR. K SARMA(C.G.C.)

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

04.11.2026

Heard Dr. Ashok Saraf, learned Senior counsel assisted by Mr. A Kaushik, learned counsel for the petitioner.

2. The petitioner before this court is aggrieved by the initiation of proceedings by the NCLT at the instance of the operational creditor namely private respondent No. 1. The private respondent No. 1 had carried out certain supplies of Stone chips and stone dust for an amount of ₹3,96,96,415.00 to the petitioner. According to Respondent No. 1, the present petitioner defaulted in releasing the payments for the supplies made by the respondent No. 1. Being aggrieved, the private respondent No. 1 initiated proceedings under Section 9 under the IBC before the NCLT, Guwahati.

3. The learned senior counsel for the petitioner submits that in terms of the prescribed procedure, prior to invocation of Section 9, notice(s) are to be issued by the operational creditor, namely the private respondent No. 1. The learned senior counsel for the petitioner submits that from a perusal of the pleadings enclosed, it is clear that the notices as contemplated under section 8 was issued

by the power of attorney holder and not by the operational creditor. He further submits by referring to the relevant documents enclosed to the petition it is clear that this power of attorney holder had issued the notice dated 15/7/2025, which is enclosed as Annexure VI to the writ petition. The further submission of the learned senior counsel for the petitioner is that this notice was issued by the power of attorney holder well prior to the power of attorney holder being conferred with such powers by due execution of a notary affidavit. Referring to the notary affidavit enclosed to the writ petition, which is available at page 242 of the petition, it is submitted by the learned senior counsel that the notary affidavit was executed on 14/9/2025. It is therefore submitted that on the date when the notice on 15/7/2025 was issued purportedly by the power of attorney holder on behalf of the private respondent No. 1, there was no power conferred by the respondent No. 1 on the said power of attorney holder. The Notary affidavit was executed on 14.09.2026. The learned senior counsel therefore submits that without issuance of the mandatory notice as provided for in the scheme of the IBC, the proceedings were initiated under Section 9 before the NCLT.

4. The learned senior counsel for the petitioner submits that upon initiation of the proceedings before the NCLT and upon receipt of the notice, the petitioner had approached the authorities by filing an application seeking disclosure of all documents including the vouchers and bills, which came to be rejected by order dated 28th of October 2026. This application was filed in the company petition filed by the Operational Director under Section 9, which has already been admitted by the Tribunal. It is submitted by the learned senior counsel that a bare reading of the orders passed by the NCLT, it is clear that the respondent No. 1 is a student and the proprietorship firm is run by his father Mr. Tayo

Taloom and the power of attorney holder Mr. Sonjib Gogoi. The learned senior counsel therefore submits that the impugned order dated 28.10.2026 as well as the order dated 28/10/2026, passed in CP (IB)/25/GB/2025, whereby the company petition filed by the respondent no. 1 stood admitted and the initiation of Corporate Insolvency Resolution Proceedings were ordered against the petitioner under Section 9 of the Code, read with Rule 6 of the Insolvency and Bankruptcy Rule 2016 is with utter disregard to the mandatory provisions of the statute. It is submitted that where the very initiation of the proceedings is contrary to the provisions prescribed under IBC, the NCLT Guwahati ought to have taken into account the objections raised by the petitioner calling for the complete documents to be placed before the Court and instead the proceedings were admitted and thereafter the IA filed by the petitioner had also been rejected.

5. On a pointed query by the Court with regard to the availability of adequate alternative remedy as specified under the code itself by filing an appropriate appeal before the NCLAT, the learned senior counsel for the petitioner submits that where the very initiation of the proceedings are contrary to the enshrined provisions of the IBC and thereby a question of law arises, the powers of a constitutional Court are not curtailed in examining matters of this nature where the Tribunal has failed to take into account the relevant provisions of the statute particularly the fact that the proper notice as required under the IBC, had not been issued and also in view of the fact that the relevant documents, the vouchers on which the claims are made, are not submitted to the petitioner under the notice nor placed before the tribunal and notwithstanding that the tribunal proceeded to initiate the CIRP and had appointed the resolution professional against the respondent No. 3.

6. It is also submitted by the learned senior counsel for the petitioner that the name of the private respondent stood altered subsequently by filing necessary affidavit whereas the application before the NCLT was filed in the erstwhile name of the respondent. He has referred to the judgment of Union of India Vs. Parashtom Dass, reported in (2025) 5 SCC 786 wherein the apex court has held that availability of alternative remedy is not a complete bar for entertaining proceedings under the IBC Code under 226, where question of law is required to be decided.

7. Having heard the counsel for the parties, learned proxy counsel has entered appearance on behalf of Mr. K. Sharma, learned CGC has submitted before the court that he is indisposed and is not available.

8. Considering the urgency expressed by the counsel to the petitioner and upon due consideration of the submissions of the counsel for the petitioner that the initiation of proceedings as contemplated under the IBC is hit because of non-fulfillment of the mandatory provisions prescribed under Sections 7, 8, 9 and also in view of the fact that the production of documents as sought for by the petitioner by filing an IA stood rejected after the company petition stood admitted, prima facie it appears to the court that the NCLT ought to have duly considered the IA prior to admitting the company petition and ordering the CIRP and appointment of the interim resolution professional. In addition to the defence projected by the petitioner as a party before the NCLT that the procedure prescribed including issuance of proper notice under the IBC proceedings had not been adhered to by the applicant before the NCLT.

9. Having heard the learned senior counsel for the petitioner and upon perusal of the writ petition before this court and also upon carefully noting the law relied upon, this court is of the view that at this stage the matter requires

examination, keeping the question of maintainability is open to be decided at the time of admission.

10. Let Notice be issued, returnable in four weeks.

11. The learned counsel appearing for the respondent No. 4 accepts notice, therefore, notices are waived. However, extra copies be furnished within one week from today.

12. Steps be taken by Speed post on respondents No. 1 to 3 within one week from today.

13. Matter be listed for admissions on 11.12.2026. Issue notice on the interim prayer, returnable on the same date.

14. The proceedings before the NCLT initiated under company petition and the orders dated 28.10.2026 passed in CP (IB)/25/GB/2025 and IA(IBC)225/GB/2026 shall remain stayed till the next date of listing.

JUDGE

Comparing Assistant