



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 2nd JULY 2025

**IA(IBC)/42/GB/2025
In CP(IB)/7/GB/2023**

**Present: 1. Hon'ble Member (Judicial), Shri Rammurti Kushawaha
2. Hon'ble Member (Technical), Shri Yogendra Kumar Singh**

In the Matter of	M/s Jalan Sales Corporation (OC) Vs M/s Sree Bajrang Infracon Pvt. Ltd. (CD)
Under Section	U/s 9 of IBC, 2016

Appearances (via video conferencing/physically)

For Petitioner (s) : Mr. N. Goenka, Adv.

ORDER

IA(IBC)/42/GB/2025

Order pronounced in open court *vide* separate sheets.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)



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IA(IBC) No. 42/GB/2025

In

CP(IB)/7/GB/2023

*In the matter of Section 33 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of
National Company Law Tribunal Rules, 2016.*

In the matter of:

M/s Jalan Sales Corporation having registered office at 120, M.G. Road, Fancy Bazar,
Guwahati-781001, Kamrup (M), Assam

...Operational Creditor

-Versus-

Sree Bajrang Infracon Private Limited having registered office at Gyankonika Apartment
2nd Block, 4-C, Byelane-3, Basisthapur, 781028 Kamrup(M), Assam Guwahati

...Corporate Debtor

-And-

In the matter of:

Purshotam Gaggar, Liquidator of Sree Bajrang Infracon Private Limited, having his
address at Advika, 3rd Floor, M.G. Road, Opp. Sukreshwar Ghat Garden, Panbazar,
Guwahati 781001, Assam

...Applicant/Liquidator

Coram:

Shri Rammurti Kushawaha : Member (Judicial)

Shri Yogendra Kumar Singh : Member (Technical)

Appearances (through video conferencing/Physically)

For the Applicants : Mr. N. Goenka, Adv.

Order pronounced on: 02.07.2025



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In
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ORDER

1. The present Interlocutory Application has been filed by the Liquidator (“Applicant”) of Sree Bajrang Infracon Private Limited (“Corporate Debtor”) before this Tribunal under Section 33(5) of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with rule 11 of NCLT Rules, 2016, seeking the following reliefs:
 - a) *Permit the Applicant / Liquidator of the Corporate Debtor to initiate legal proceedings against the Kamakhya Biofuels Private Limited, for recovery of the outstanding dues of the Corporate Debtor.*
 - b) *Pass such further and other orders and directions as the nature and circumstances of the case may require and as this Hon'ble Tribunal may deem fit and proper.*
2. The relevant submissions of the Applicant made *vide* this Application is extracted hereunder:
 - 2.1. This Tribunal *vide* order dated 12.01.2024, in CP(IB)/7/GB/2023 initiated Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor. and further appointed Mr. Ujwal Kumar Kalita, as Interim Resolution Professional. In the 1st Meeting of the Committee of Creditors dated 14.02.2024, it was resolved to appoint Mr. Ujwal Kumar Kalita as Resolution Professional (RP) of Corporate Debtor. During the CIRP, it was revealed that an amount of Rs. 4,29,85,347/- is outstanding in name of Kamakhya Biofuels Private Limited (“KBPL”) (CIN: U24290AS2021PTC021901, having its Registered Office at Village Badiasisha, PO Khandajan, Darrang, Sipajhar, Assam, India, 784145) in respect of services provided by Corporate Debtor.
 - 2.2. The Resolution Professional, Mr. Ujwal Kumar Kalita, issued a demand notice dated 25.10.2024 to KBPL. KBPL neither cleared the outstanding dues nor replied to the demand notice. Thereafter, this Tribunal *vide* order dated 20.12.2024, initiated liquidation proceedings of the Corporate Debtor and appointed the Applicant as the Liquidator. The Liquidator *vide* letter dated 31.12.2024, again requested KBPL to clear the dues of the Corporate Debtor.



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2.3. However, KBPL filed a claim of ₹2,61,05,984/- in Form C dated 13.01.2025, while refusing to clear the dues *via* letter dated 14.01.2025. The Applicant rejected KBPL's claim *vide* email and letter dated 27.01.2025.

2.4. The Applicant *vide* email dated 16.01.2025 had also sought response of the Suspended Board of the Corporate Debtor on the said issue. The Suspended Board *vide* emails dated 26.03.2025 and 05.05.2025, replied to the queries. The relevant portion of the email dated 26.03.2025 is being reproduced herein below:

"Deliberating on your email dated 16.01.2025, regarding the matter of Kamakhya Biofuels Pvt. Ltd, I have observed in the documents of the said company that they have resorted to sheer lie and have forged or manipulated facts & documents to avoid their liability and to set out their counter claim."

2.5. The Hon'ble NCLAT in ***Slimline Realty Pvt. Ltd. v. Jigar Bhatt, 2024 SCC OnLine NCLAT 685***, held that:

"6. On submission of learned counsel for the parties following issues arise for consideration in these appeals:

(1) Whether the statutory requirement under Section 33 Sub- section (5) proviso to obtain prior approval of the Adjudicating Authority by the Liquidator to institute a suit or proceeding on behalf of the Corporate Debtor is a mandatory requirement or only a directory requirement?

(2)

(3).....

(4) Whether before approval under Section 33(5) to the Liquidator to institute proceeding on behalf of the Corporate Debtor, the party against whom proceedings are to be instituted has to be given an opportunity?

(5).....

26. We, thus, looking to the statutory scheme, in use of the prohibitory word in Section 33(5), are satisfied that the requirement of prior approval by the Adjudicating Authority for instituting any suit or proceeding is mandatory and



cannot be held to be directory. The mere fact that no consequences has been provided in the provision, cannot be a ground to treat the requirement as directory. We have noticed the judgments of Hon'ble Supreme Court as above that every word used in a statute has to be given its proper and effective meaning, as the legislature does not use any word without any purpose and object. Use of prohibitory and negative language, even if no consequences are provided, is treated as mandatory requirement. We, thus, agree with the submission of learned counsel for the Appellant that the requirement as contemplated in Section 33(5) proviso of obtaining prior approval by the Liquidator is a mandatory requirement. We, thus, answer the Question No.1 in following manner:

Answer No.1: The statutory requirement under Section 33 Sub- section (5) proviso to obtain prior approval of the Adjudicating Authority by the Liquidator to institute a suit or proceeding on behalf of the Corporate Debtor is a mandatory requirement."

45. *The scheme delineated under Section 33(5) does not indicate that the Liquidator has to give any opportunity or notice to the party against whom approval is sought to initiate proceedings. The provision of Section 33(5) is that the Adjudicating Authority should keep control over estate in the liquidation proceeding so that no proceeding can be initiated by the Liquidator so as to expose the Corporate Debtor to unnecessary expenses. Hence, the approval of the Adjudicating Authority is required to institute proceeding. For approval by the Adjudicating Authority, the legislative scheme does not indicate any notice or opportunity to the party against whom proceedings are to be instituted. Question No.4 is answered in following words:*

Answer No. 4: Before granting approval under Section 33(5) proviso to institute proceedings by the Liquidator on behalf of the Corporate Debtor, the party against whom proceedings are to be instituted is not to be given a notice or hearing necessarily."

- 2.6. Accordingly, in view of the settled law and facts on record, the Liquidator seeks permission to initiate proceedings against KBPL.



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3. This Tribunal has perused the present application filed by the Liquidator under Section 33(5) of the Code, read with Rule 11 of the NCLT Rules, 2016, seeking permission to initiate legal proceedings against **Kamakhya Biofuels Private Limited** (CIN: U24290AS2021PTC021901), for recovery of outstanding dues amounting to ₹4,29,85,347/- owed to the Corporate Debtor.
 4. The Liquidator has placed on record sufficient material indicating that an amount of ₹4,29,85,347/- is outstanding against Kamakhya Biofuels Private Limited towards services rendered by the Corporate Debtor. Despite issuance of demand notices during CIRP and issuance of letter requesting clearing of dues after initiation of liquidation, dated 25.10.2024 and 31.12.2024 respectively, the dues remain unpaid. It is further noted that KBPL has, on the contrary, filed a claim in the liquidation which was rejected by the Liquidator.
 5. The Liquidator also sought clarifications from the Suspended Board of the Corporate Debtor. The Suspended Board in its communications dated 26.03.2025 and 05.05.2025, alleged that KBPL had manipulated documents to deny liability.
 6. Having considered the factual matrix and in view of the judgment of the Hon'ble NCLAT in *Slimline Realty Pvt. Ltd. v. Jigar Bhatt (2024 SCC OnLine NCLAT 685)*, this Tribunal holds that prior approval under Section 33(5) of the Code is mandatory, and that no notice or opportunity of hearing is required to be given to the party against whom the proceedings are sought to be initiated.
 7. In light of the abovementioned discussion, we **ALLOW** the instant application subject to the following directions in the exercise of the powers conferred on this tribunal under Section 33(5) of the Code, 2016 read with Rule 11 of NCLT Rules, 2016:
 - i. The Applicant, in his capacity as the Liquidator, is granted leave to initiate appropriate legal proceedings against *Kamakhya Biofuels Private Limited* for recovery of dues.
 - ii. The Liquidator shall keep this Tribunal informed of the developments and outcome of the proceedings so initiated.



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8. Accordingly, the application, IA(IBC)/42/GB/2025, stands disposed of.
9. The Registry is directed to send e-mail copies of the Order forthwith to all the Applicants and their Authorised Representatives for information and for taking necessary steps.
10. Certified Copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.
11. File be consigned to record.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Signed this on 2nd day of July, 2025