## IN THE NATIONAL COMPANY LAW TRIBUNAL JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER
SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

<u>Rest. A (IBC) No. 1/JPR/2024</u> In CP No. (IB)- 17/9/JPR/2022

### IN THE MATTER OF:

ANKIT TRADERS THR. ITS SOLE PROP. MR. ANKIT KUMAR GOEL

..... OPERATIONAL CREDITOR

**VERSUS** 

SUPER SHINE AGROFOODS PVT. LTD.

.....CORPORATE DEBTOR

#### MEMO OF PARTIES

ANKIT TRADERS THR. ITS SOLE PROP. MR. ANKIT KUMAR GOEL

251, Narkulaganj, Nai Basti, Bareilly, UP-246005

...Applicant/Operational Creditor

**VERSUS** 

SUPER SHINE AGROFOODS PVT. LTD.

R/o: F-55-56, Agrofood Park Matdhya Industrial Area, Alwar- Rajasthan- 301030

E-mail: alwarsugar@gmail.com

... Corporate Debtor





For Operational Creditor

Kunal Godwani, Adv.

For the Respondent

: Pulkit Mehrotra, Adv.

# Order Pronounced On: 13.08.2024 ORDER

#### Per: Shri Rajeev Mehrotra, Technical Member

- 1. The present Application has been filed on behalf of *M/s Ankit Traders* ('Applicant') through its sole proprietor *Mr. Ankit Kumar Goel* under Rule 11 of the NCLT Rules, 2016 in Company Petition No. (IB)-17/9/JPR/2022, to restore the captioned Petition and revive the Corporate Insolvency Resolution Process ('CIRP') against *M/s Super Shine Agrofoods Pvt. Ltd.* ('Corporate Debtor') on account of breach of the settlement arrived between the parties.
- 2. The Applicant submitted that the above-captioned Petition had been admitted against the Corporate Debtor by this Hon'ble Tribunal vide its order dated 01.06.2023. However, pursuant to the admission of the CIRP, the Corporate Debtor offered a settlement and executed a Memorandum of Understanding ('MoU') dated 07.07.2023 wherein the Corporate Debtor agreed to pay the outstanding dues of the Applicant to the tune of Rs. 1,85,00,000/- (Rupees One Crore Eighty-Five Lakh Only). Consequently, an Interlocutory Application bearing I.A. No. 458/JPR/2023 was been filed by the Interim Resolution Professional ('IRP') under Section 12A of the IBC read with regulation 30A of the CIRP Regulations, 2016 seeking withdrawal of the main



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Petition. The said Application bearing *IA No. 458/JPR/2023* was allowed by this Adjudicating Authority *vide* Order dated 21.08.2023. It was stated that in the Order dated 21.08.2023, this Adjudicating Authority did not grant the liberty to the Applicant to revive or restore the CIRP in the event of default of the MoU by the Corporate Debtor.

- 3. The Applicant preferred an Appeal bearing *Company Appeal (AT) (Ins)*No. 1490 of 2023 against the Order of this Adjudicating Authority dated
  21.08.2023 to the extent of refusal of revival/restoration of the CIRP in
  case of default of the MoU by the Corporate Debtor. The said Appeal
  was allowed by the Hon'ble NCLAT vide its Order dated 28.02.2024.
- 4. The present Application has been filed by the Operational Creditor to restore the Company Petition and revive the CIRP against the Corporate Debtor as the terms and conditions of the MoU dated 07.07.2023 have not been fulfilled by the Corporate Debtor. Copy of the MoU dated 07.07.2023 is attached as Annexure A3 of the present Application.
- 5. The details of the transactions leading to the filing of this Application as averred by the Applicant *vide* Diary No. 1299/2024 dated 20.05.2024 are as follows:
  - 5.1. The payment obligations of the Corporate Debtor as undertaken under the MoU on the basis of which the Company Petition was withdrawn is as follows:



- "1. That the Second Party has agreed to pay a total amount of Rs. 1,85,00,000/- (Rupees One Crores Eighty Five Lakhs Only) to the First Party towards full and final settlement of all its claims towards it. Against the claimed amount following payments have been made by the Second Party:
  - (a) Rs. 25,00,000/- (Rs. Twenty-Five Lakhs Only) on 30.06.2023 through RTGS vide ICICIR52023063000563570 by Mr. Ankit Khandelwal and
  - (b) Rs. 25,00,000/- (Rs. Twenty-Five Lakhs Only) on 30.06.2023 through RTGS vide ICICIR52023063000562585 by Mrs. Smriti Khandelwal wife of Mr. Ankit Khandelwal.
- (c) For the payment of remaining settlement amount of Rs. 1,35,00,000/- (Rupees One Crores Thirty-Five Lakhs Only) it was agreed between both the parties that either:-
  - Second party shall transfer their all rights in the property namely "Plot No. F-56, Agrofood Park, MIA, Alwar Tehsil, Rajasthan" by execution of sale deed in favour of first party against payment of remaining settlement subject to the receipt of NOC from State Bank of India, Alwar Branch & RIICO within 1 month of execution of this MOU.

OR

- Second Party will do payment of remaining settlement amount within 6 months along with interest thereon @12% per annum compounding monthly. Further, second party shall execute an agreement to sell pertaining to the property namely Plot No. F-57, Agrofood Park, MIA, Alwar Tehsil, Rajasthan" in favour of first party to secure the payment of remaining amount of first party."
- 5.2. As per the terms of Clause 1(a) and (b) of the MoU, the Corporate Debtor has paid a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) through RTGS. However, the remaining settlement amount





- i.e., Rs. 1,35,00,000/- (Rupees One Crore Thirty Five Lakhs Only) has not been paid by the Corporate Debtor.
- 5.3. As per Clause 1(c) of the MoU, the Corporate Debtor has neither transfer the rights in property situated at Plot No. F-56, Agrofood Park, Alwar, nor it has paid the remaining amount within the prescribed time period of six months. Thus, the Corporate Debtor has failed to adhere to the terms of the MoU and therefore, the Captioned Company Petition i.e., *CP (IB) No.- 17/9/JPR/2022* deserves to be restored.
- 6. The Applicant has also filed an Additional Affidavit *vide* Diary No. 1797/2024 dated 26.07.2024 wherein the Applicant has proposed the name of *Mr. Mohit Goyal* having Registration No. *IBBWPA-001/IP-P-02395/2021-2022/13636* to act as the Interim Resolution Professional of the Corporate Debtor. Further, the Applicant has also filed Form-2 of the proposed IRP along with a copy of authorization and certificate of Registration of the IRP.
- 7. It is relevant to mention here that this Adjudicating Authority granted various opportunities to the Corporate Debtor for filing its Reply. Despite, the opportunities granted by this Adjudicating Authority, the Corporate Debtor failed to file its reply and consequently, its right to file Reply to the Application was forfeited *vide* Order dated 30.07.2024.

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- 8. We have closely gone through the facts of the case, documents placed on record before us, submissions made and arguments advanced. We find that the Operational Creditor in this matter filed an Insolvency Petition under Section 9 of the Code against the Corporate Debtor which was admitted *vide* order dated 01.06.2023. Thereafter, an MoU dated 07.07.2023 was executed between the parties, wherein the Corporate Debtor agreed to pay a sum of Rs. 1,85,00,000/- (Rupees One Crore Eighty-Five Lakh Only) to the Applicant.
- 9. Pursuant to this arrangement between the parties an Application was filed through IRP U/s 12A of the IBC r/w Regulation 30A of the CIRP Regulations, 2016 seeking to withdraw the Insolvency Petition filed under Section 9 of the Code. The said Application was allowed *vide* order dated 21.08.2023. However, in the said order we notice that no liberty was given to the Petitioner to revive the Petition.
- 10. The Applicant preferred an Appeal bearing *Company Appeal (AT) (Ins)*No. 1490 of 2023 against the Order of this Adjudicating Authority dated
  21.08.2023 to the extent of refusal of revival/restoration of the CIRP in
  case of default of the MoU by the Corporate Debtor. The said Appeal
  was allowed by the Hon'ble NCLAT vide its Order dated 28.02.2024.
  The relevant extract of the order of the Hon'ble NCLAT is reproduced
  hereunder:-



- "14. In view of the foregoing discussions and our conclusions, we are of the view that order of the Adjudicating Authority insofar as it declines liberty to the Applicant to reapproach the Adjudicating Authority is set aside. The Appeal is partly allowed to the above extent, setting aside the direction of the Adjudicating Authority declining the liber. We grant liberty to the Operational Creditor to revive Section 9 Application before the Adjudicating Authority by filing an appropriate Application in accordance with law. The Appeal is disposed of accordingly. No order as to costs."
- 11. On perusal of the Application and the documents, it transpires that in terms of the settlement dated 07.07.2023, the Corporate Debtor had made the payment of Rs. 50,00,000/- (Rupees Fifty Lakh Only). However, the Corporate Debtor had failed to pay the remaining amount i.e., Rs. 1,35,00,000/- (Rupees One Crore Thirty Five Lakh Only) or to transfer the property situated at Plot No. F-56, Agrofood Park within the stipulated time-period as enumerated in the MoU.
- 12. Thus, this Adjudicating Authority is of the opinion that there is a breach of terms of the MoU dated 07.07.2023. Hence, in terms of the Order of the Hon'ble NCLAT dated 28.02.2024 wherein the Applicant was granted liberty to revive the main Company Petition in the event of breach of terms of the MoU, this Adjudicating Authority is inclined to revive/re-store the Corporate Insolvency Process of the Corporate Debtor i.e., *M/s Super Shine Agrofoods Pvt. Ltd.* Further, the Resolution Professional as proposed by the Applicant i.e., *Mr. Mohit Goyal*, having Registration No. *IBBWPA-001/IP-P-02395/2021-2022/13636* is



hereby appointed as the IRP to take over the affairs of the Corporate Debtor and execute the duties as required to be performed by him under the provisions of IBC, 2016.

- 13. In view of the aforementioned observations, the Company Petition (IB)No. 17/9/JPR/2022 is restored. Accordingly, Rest. A. (IB) No. 01/JPR/2024 is disposed off.
- 14. The Operational Creditor is directed to communicate this order to the RP and the Corporate Debtor with immediate effect.
- 15. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of the Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.



