

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT II

IA. No. 1100/2022

In  
CP(IB)No. 1111/MB/2019

*Application filed under section 60(5) of Insolvency and  
Bankruptcy Code, 2016 r/w Rule 11 of National  
Company Law Tribunals Rules, 2016.*

**Ramesh D. Shah**, *Successful Resolution Applicant of Etco  
Industries Private Limited*

Unit Nos. S13/S14, 2<sup>nd</sup> Floor, Pinnacle Business  
Park, Mahakali Caves Road, Andheri (East)  
Mumbai-400093

...Applicant

V/s

1. **Vijay Pitamber Lulla**, *Chairman of Steering Committee*

2038, Arcadia Building, 2<sup>nd</sup> Floor, NCPA Marg,  
Nariman Point, Mumbai- 400021

2. **Union Bank of India**,

Stressed Assets Management Branch (SAMB), Bharat  
House, Ground Floor, 104, Bombay Samachar Marg,  
Mumbai-400023.

3. **Omkara Assets Reconstruction Private Limited**

C/515, Kanakia Zillion, Junction of LBS Road &  
CST Road BKC Annexe, Kurla (W), Mumbai-  
400070.

... Respondents

*In the matter of*

**Aries Agro Private Limited**

**...Operational Creditor**

**V/s**

**ETCO Industries Private Limited**

**...Corporate Debtor**

**Order Pronounced on :- 12.08.2022**

***Coram:***

**Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)**

**Hon'ble Member (Technical) : Mr. Shyam Babu Gautam**

***Appearances (through video conferencing)***

**For the Applicant : Mr. Kunal Kanungo**

**For the Respondent : Mr. Deepak Saxena**

**ORDER**

***Per- Coram***

1. It is an application filed by Mr. Ramesh D. Shah (*Successful Resolution Applicant of ETCO Industries Private Limited*) under sections 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 against Vijay Pitamber Lulla, *Chairman of Steering Committee*; Union Bank of India and Omkara Assets Reconstruction Private Limited, seeking following reliefs:

- i.) To allow the present application.
  - ii.) To direct the Respondent No. 2 for allowing all normal operations in current account no. 059311010000010 for smooth implementation of the Resolution Plan.
  - iii.) To direct the Respondent No. 2 to change the asset classification of the company's accounts to "Standard".
  - iv.) To direct the Respondent No. 2 for realising the amount of Rs. 47.65 Lakhs belonging to the Corporate Debtor as the same is reimbursement of the interest amount which was already paid by the Corporate Debtor on its term loan to the Bank.
  - v.) To Pass such other and further directions as this Hon'ble Tribunal may deem fit.
2. On perusal of the Application, it reveals that the applicant has prayed for the appropriate directions against the Respondents for causing hinderance in the smooth implementation of the Resolution Plan by not allowing normal operations in the Current Account no. 059311010000010 opened by the Applicant for conducting transactions towards implementation of the Resolution Plan, by not upgrading the asset classification of the Company's account to "Standard" as per Reserve Bank of India norms and further by not releasing the FDR amount of Rs. 47.65 Lakhs belonging to the Corporate Debtor.

3. The Applicant submits that inspite of approval of the Resolution Plan by this Tribunal and having being given “clean slate” to start afresh, if the account of the Corporate Debtor is not given the “Standard Asset” classification then the same will appear in the CIBIL report, which will have a direct bearing on the Corporate Debtor’s business operations. Due to this, the Corporate Debtor will face difficulty in raising working capital from the market or any other Bank or Foreign Investors. Furthermore, Banks will refrain from opening any new accounts for the Corporate Debtor.

In relation to Current Account No. 059311010000010 of the Corporate Debtor in Union Bank of India, the Applicant has stated that after the approval of resolution plan, an amount of Rs. 9.25 Lakhs was infused by the Applicant in the said account for starting the unit. The Applicant further mentioned that apart from RTGS facility, the Applicant is not able to make use of other provisions. The Applicant had issued cheques to third parties which were returned with the remark “**Account is NPA**”.

4. The Applicant has further submitted that the Applicant vide email dated 14.03.2022 to Respondent no.2 requested for allowing operations in current account no. 059311010000010, upgrading the Corporate Debtor’s accounts to standard category, and further releasing FDR amount of Rs. 47.65 Lakhs belonging to the Corporate Debtor’s Company since the same is

a part reimbursement of the interest which was already paid by the Corporate Debtor on its term loan to the Bank. Further, vide email dated 21.03.2022, the Applicant again informed the Respondent no. 2 to allow the operations in the aforesaid account, as such obstacles would cause unnecessary delay in starting of the factory operations which will cause hindrance in repayments as per the timelines mentioned in the Resolution Plan. However, even after requesting multiple times for starting the operations of the accounts of the Corporate Debtor and processing the refund of FDR amount of Rs. 47.65 Lakhs into the account of the Corporate Debtor, Respondent no. 2 failed to do so.

5. Over which the argument of the Respondent no. 2 is that the present application is devoid of any merits, baseless, frivolous and without appreciating true facts of the case. The Respondent no. 2 submits that Applicant is very well aware about the fact that account cannot be upgraded to standard until unless the full settlement amount is discharged. The Respondent further submitted that the relief sought in Part F of Resolution Plan are procedural and if the relief sought are not granted then it will not jeopardize the implementation of the Resolution Plan and the Resolution Applicant shall remain responsible for such implementation.

Further, in relation to change the asset classification of the company's accounts to "Standard", the Respondent no. 2 has submitted that being a commercial bank is procedurally bound to follow the directions issued in Master Circular-Prudential norms on Income Recognition, Asset classification and provisioning pertaining to advances, no. RBI/2021-2022/104DOR.No.STR.REC.55/21.04.048/2021-22 dated 01.10.2021 wherein its directed that account can be upgraded as standard after the change in ownership is implemented. As in the present case there is no change in ownership so account can be upgraded to standard only on discharge of full settlement amount.

6. The Respondent no. 2 has further stated in relation to subsidy of Rs. 47.65 Lakhs that this amount was received from the Ministry of Textile under Technology Upgradation Fund Scheme (TUFS) and in information memorandum it was clearly mentioned at the footnote that *"The FD with Bank (Andhra Bank) was received from TUFS as Subsidy which is to be returned back, hence the same should not be considered as an Asset of the Company"*.
7. In response to this, the Applicant has filed rejoinder and submitted that on perusal of the RBI Circular dated 07.06.2019 and 01.10.2021, it clears that credit facilities of the concerned

borrowing entities may be continued/upgraded as 'standard' after the change in ownership is implemented, either under the Code or under the framework of the RBI. The Applicant submits that in case of an MSME Enterprise, the directors/promoters are permitted to give a Resolution Plan for their revival as these units are Medium, Small and Micro Enterprises and it is normally not easy to find buyers for the same and hence, to keep the units as a going concern. The objective of the Code is to provide a clean start to the unit/Corporate Debtor by not saddling it with extinguished claims and liabilities. If the asset classification of the Corporate Debtor is not changed into "Standard", great prejudice will be caused to the Applicant as it will only cause hindrance in running the business of the Corporate Debtor.

The Applicant further mentioned that TUFSS Subsidy is given on the interest component that is paid on the loan, the same caters to pre-CIRP period. It is an admitted position that the said subsidy, which belongs to the Corporate Debtor is in the possession of the Respondent no. 2 who after questioning has suggested that the same should be sent back to Central Government. This results in unjust enrichment and it is surprising that a public sector bank can take such a stand to be in possession of amount admittedly not belonging to it.

In relation to this, the Applicant submits that the said amount may be released into the account of the Corporate

Debtor and if the said amount is recalled by the Central Government then the Applicant along with the Corporate Debtor undertakes unconditionally to remit the same to appropriate authorities.

8. After looking into the averments, this bench is of the view that as per the Master Circular of RBI (*RBI/2021-2022/104DOR.No.STR.REC.55/21.04.048/2021-22*) dated 01.10.2021, the account can be upgraded as standard after the change in ownership is implemented. But this is a case of an MSME Enterprise, wherein the directors/promoters are permitted to give a Resolution Plan for the revival of the Corporate Debtor or in other words the existing management is allowed to revive the Company by giving a Resolution Plan. The objective of this is to provide a clean start to the unit/Corporate Debtor. Therefore, once the resolution plan is approved by the Adjudicating Authority, the management/ownership of the Corporate Debtor shall be considered as fresh, even if the directors/promoters of the Corporate Debtor (MSME) remain the same. In view of the above, this bench hereby, directs the Respondent no. 2 to allow all normal operations in current account no. 059311010000010 and also to change the asset classification of the company's accounts to "Standard".

In relation to subsidy of Rs. 47.65 Lakhs which was received from the Ministry of Textile under Technology Upgradation

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Fund Scheme, this bench is of view that the Respondent no. 2 should not hold the subsidy amount and further directs the Respondent no. 2 to release the abovementioned amount into the account of the Corporate Debtor as the Corporate Debtor has already undertaken that if the said amount is recalled by the Central Government, the applicant will remit the same to the appropriate authorities.

In view of the above, IA/1100/2022 is allowed and Registry is hereby directed to communicate this order to all the parties and to the Ministry of Textile immediately.

Sd/-

**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

Sd/-

**JUSTICE P.N. DESHMUKH**  
**(MEMBER JUDICIAL)**

*Arpan, LRA*