

**THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-VI**

**CP-846/ND/2018**

**IN**

**CA No. 215 of 2020**

**IN THE MATTER OF:**  
**BARUMAL VINOD KUMAR**

**..... Operational Creditor**

**VERSUS**

**AMIRA PURE FOODS PVT.LTD**

**.....Corporate Debtor**

**AND IN THE MATTER OF:**  
**GURUDEO EXPORTS CORPORATION PVT.LD**

**..... Petitioner**

**VERSUS**

**AKASH SHINGHAL**  
**LIQUIDATOR**  
**AMIRA PURE FOODS PRIVATE LIMITED**

**.....Respondents**

**CORAM:**

**MR. P.S.N PRASAD, MEMBER (JUDICIAL)**

**DR. V.K SUBBURAJ, MEMBER (TECHNICAL)**

**Order Delivered on-11.03.2021**



**ORDER**

**PER DR. V.K SUBBURAJ, MEMBER (T)**

1. The present application is being filed jointly on behalf of the four applicants under Section 60(5)(c) of Insolvency and Bankruptcy Code, 2016, each of whom have a common grievance against the Resolution Professional of Amira Pure Foods Private Limited ("RP") and each of whom have similar transactions with the corporate debtor. In addition to having similar transactions, each of the present applicant individually petitioned RP in order to clear their grievances. Moreover the RP has rejected the claims of each of the Applicants vide a common email dated 06.11.2019.
2. The Applicant No.1, 2 and 4 have their registered offices at Indore, Madhya Pradesh while Applicant No.3 has its registered office at Chennai.
3. The present application is being filed seeking return of the stock of Rice from the Corporate Debtor. It is stated that the Applicants, pursuant to the oral business agreement have purchased Clean and Sortexed Rice from suppliers across the Country and delivered, Clean and Sortexed Rice i.e stock directly from their supplier's to the Corporate Debtor's Manufacturing Unit located at 21<sup>st</sup> Mile Stone, Pataudi Road, Village Harsaru, Distt Gurugram, Haryana, 123504, with the understanding after carrying out job



work the Corporate Debtor would retain 97% of the stock delivered. However, the RP has illegally retained the stock belonging to the Applicants and failed to return it to the Applicants.

4. It is submitted in the application that rice which they have supplied to corporate debtor was for the purpose of carrying out packing and job work. In consideration of this packing job works, the Corporate Debtor is entitled to retain 3% of the total quantity of the rice packed.
5. It is also stated that the applicants would then arrange to export the domestic sale of packed rice directly from the factory premises of the Corporate Debtor. These applicants have approached the Resolution Professional for return of the material. The applicants have further alleged that the Resolution Professional is on one pretext or another, continued to dodge and avoid the return of material (Rice). The applicants have also admitted that there was no written agreement between the parties for the aforesaid arrangement.
6. It is claimed in the application that the applicants submitted to the RP following documents:



- Consignment notes showing delivery at the Corporate Debtors office, generated when the applicants purchased rice from their suppliers.
- Job receipts and emails from the Corporate Debtor showing the inward of the material to the Corporate Debtor.
- Export/shipping bills and consignments notes, showing the export and domestic sale of the material from the office of the Corporate Debtor respectively.
- Reimport bond, showing that returned export material was delivered at the factory premises of the Corporate Debtor.
- Details of all bills and consignment notes.

7. It is stated by the applicants that the RP has admitted the existence of Rice stock in the factory premises of Corporate Debtor as it is evident from the report of expert, Brijesh Kumar Gupta & Associates, Chartered Accountants. Further, accordingly an inspection report was submitted by Brijesh Kumar Gupta and Associates dated 15.10.2019 wherein following conclusion in its inspection report with respect to all the four Applicants are as follows:-

***“ TLS Mercantile Pvt. Ltd.(Applicant No.4)***



**Observations:** The provided documents showing movement of goods along-with copies of Invoices and transporters challans, ledgers with related parties up to 31.03.2018 & emails confirmations of exports and export returns to APFPL have been share by claimant with the RP office.

We have verified the given documents and observed that:

- Job work Agreement between the parties i.e APFPL and SKG has not been made available to us. Therefore, we cannot comment on whether there is any commercial arrangement between them, and other terms and conditions for the job work, if any.
- In many cases, retail invoice of the suppliers of SKG are not available in records given to us, only the concerned Challan is available. The ownership is not relatable with SKF for the supply of stocks. The details of suppliers are not matching with an the MRNs in some cases.
- On the retail invoices/challans, there is no shipping address and the name of APFPL to substantiate that the deliveries have been made to APFPL factory for job work for the claimed stocks.
- In many cases, MRNs are not attached with the invoices.
- The purchase orders between TMPL and its suppliers i.e. Golden Orchid International, SKG and MamarajChunnilal & Sons for the supply for Rice by them to TMPL at the premises of APFPL have also not been available.



- *The GST records and detailed monthly returns with the reconciliations have not been made available for further justification of the rice stocks retained by APFPL as claimed.*

**Conclusion:** *After the scrutinizing the documents provided by TMPL, we conclude the following:*

*-The stock of 16.939 MT as claimed by the TMPL cannot be established considering major discrepancies in documents submitted by TMPL and in the absence of any agreement among the parties, which can ascertain ownership of stock stored in.*

*APFPL premises belongs to TMPL.*

*- There is no specific/separate identification on claimed stock stored in factory or warehouses of APFPL that could ascertain that such stock belongs to TMPL.*

*- Considering the various discrepancies in the documents provided by the TMPL like missing transporters bills, mismatch between invoice number/quantity with Material Receipt Notes, missing stamp impressions of APFPL on Material Receipt Notes, required GST bills from the applicable date of GST regime etc. therefore cannot be relied upon.*

*- The export return stocks of 42 MT as claimed by TMPL cannot be identified in the absence of any 'specific marking' to substantiate that the material belongs to TMPL.*



However, on the physical verification we have found 77 MT (Appx.) stocks of "Imperial Grain" Basmati Rice stored at factory/warehouse. It is pertinent to mention that other claimants also claimed for export returned stocks of Imperial brand.

**Shree Kalka Global (SKG) (Applicant No.2)**

**Observations:** The provided documents showing movement of goods along-with copies of Invoices and transporters challans, ledgers with related parties up to 31.03.2018 & emails confirmations of exports and export returns to APFPL have been shared by claimant with the RP office. We have verified the given documents and observed that:

- Job work Agreement between the parties i.e. APFPL and SKG has not been made available to us. Therefore, we cannot comment on whether there is any commercial arrangement between them, and other terms and conditions for the job work, if any.
- In many cases, retail invoice of the suppliers of SKG are not available in records given to us, only the concerned Challan is available. The ownership is not relatable with SKG for the supply of stocks. The details of suppliers are not matching with on the MRNs in some cases.
- On the retail invoices/ challans, there is not shipping address and the name of APFPL to substantiate that the deliveries have been made to APFPL factory for job work for the claimed stocks.
- In many cases, APFPL MRNs are not attached with SKG's suppliers bills.

- *The purchase orders between SKG and its suppliers i.e. MamrajChunnilal & Sons, Balaji Agro Foods, Shri Hanuman Overeas, Star Agro Impex etc. for the supply of Rice by them at the premises of APFPL have also not been available to us.*
- *No agreement has been made available for the supply of Rice between SKG and Neon International Traders (NIT).*
- *The GST records and detailed monthly returns with the reconciliations have not been made available for further justification of the rice stocks retained by APFPL as claimed.*
- *No Unique Identification marking have been given b claimant in the documents produced to us to locate the claimed Rice stock.*

**Conclusion:** *After the scrutinizing the documents given by the claimant, we conclude the following:*

- *The stock of 219.232MT as claimed by the SKG cannot be established considering major discrepancies in documents submitted by SKG and in the absence of any agreement among the parties, which can ascertain ownership of stock stored i.*

*APFPL Premises belongs to SKG.*

- *There is no specifi/ separate identification on claimed stock stored in factory or warehouses of APFPL that could ascertained that such stock belongs to SKG.*
- *Considering the various discrepancies in the documents provided by the SKG like missing transporters bills, mismatch between invoice*

number/quantity with Material Receipt Notes, missing stamp impressions of APFPL ON Material Receipt Notes, required GST bills from the applicable date of GST regime etc., therefore cannot be relied upon.

- We have observed that 50 Kg Bags stocks lying at factory warehouse covered under the blue tarpaulin cover, which have been pasted a paper marking that "This goods belongs to Shree Kalka Global Indore and hypothecated by Saraswat Bank Ltd".

However, no identification over the bags for the ownership of SKG could be linked to the stocks.

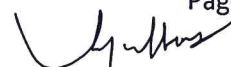
**Gurudeo Exports Corporation Pvt. Ltd**

**(Applicant No.1)**

**Observations:** The provided documents showing movement of goods along-with copies of Invoices and transporters challans, ledgers with related parties up to 31-3-2018 & emails confirmations of exports and export returns to APFPL have been shared by claimant with the RP office. We have verified the given documents and observed that:

-Job work Agreement between the parties i.e.; APFPL and GECPL has not been made available to us. Therefore, we cannot comment on whether there is any commercial arrangement between them, and on other terms and conditions for the job work, if any.

-Most of the Invoices issued after dated 1 July 2017 i.e. effective date of GST applicable, whereas the invoices have not been generated according to the



*GST laws. Only GST number is available on the invoice which does not comply with the GST rules.*

*-From the retail invoices, there is no shipping address and the name of APFPL to substantiate that the deliveries have been made to APFPL factory for job work for the claimed stocks.*

**Conclusion:** *After the scrutinizing the documents given by the claimant, we conclude the following:*

*-The major documents provided by the claimants are not sufficient for the proof of their claimed ownerships of rice stocks like no commercial agreement among the parties mentioned in the workings and invoices.*

*-In the documents provided by the claimants for movements of goods, various documents are missing like transporters bills, stamps impressions of APFPL on Material Receipt Notes, GST/VAT records etc.*

*- We have found the 50 Kg Bags stocks lying at factory warehouse covered under the blue tarpaulin covers, which have been pasted a paper marking that "This goods belongs to Shree Kalka Global Indore and hypothecated by Saraswat Bank Ltd". However, no identification over the bags of the ownership of GECPL could be linked with the stocks.*

*- The purchase orders between GECPL and its suppliers i.e. MamrajChunnilal&Sons, Shri Balaji Agro Foods, Shri Hanuman Overseas, Shree Swami Chitrath Rice mills, Baba Bhuman Shah Ji Rice mills etc. for the supply of Rice by them to GECPL at the premises of APFPL have also not been available.*

-The GST records and detailed monthly returns with the reconciliations have not been made available for further justification of the rice stocks retained by APFPL acclaimed.

**Conclusion:** *After the scrutinizing the documents provided by GECPL, we conclude the following:*

- *The stock of 249.33 MT as claimed by the GECPL cannot be established considering major discrepancies in documents submitted by GECPL and in the absence of any agreement among the parties, which can ascertain ownership of stock stored in APFPL premises belongs to CECPL.*
- *There is no specific/ separate identification on claimed stock stored in factory or warehouses of APFPL that could ascertain that such stock belongs to GECPL.*
- *Considering the various discrepancies in the documents provided by the GECPL like missing transporters bills, mismatch between invoice number/quantity with Material Receipt Notes, missing stamp impressions of APFPL on Material Receipt Notes, required GST bills from the applicable date of GST regime etc, therefore cannot be relied upon.*
- *The export return stocks of 42 MT as claimed by GECPL cannot be identified in the absence of any 'specific marking' to substantiate that the material belongs to GECPL.*


*However, on the physical verification we have found 77 MT (Appx.) stocks of "Imperial Grain" Basmati Rice stored at factory/warehouse. It is pertinent*

to mention that other claimants also claimed for export returned stocks of Imperial brand.

**NEON International Traders (Applicant No.3)**

**Observations:** The provided documents showing copies of Invoices to NIT for APFPL supplies have been shared by claimant with the RP office. We have verified the given documents and observed that:

- Job work Agreement between the parties i.e. APFPL and NIT has not been made available to us. Therefore, we cannot comment on whether there is any commercial arrangement between them, and other terms and conditions for the job work, if any.
- Only Invoice copies have been provided of the suppliers to NIT and there is no APFPL Material Received Note or Transporter challan to substantiate the receipt of materials for job work.
- The purchase orders between NIT and its suppliers Shree Kalka Global etc. for the supply of Rice by them to NIT at the premises of APFPL have also not been available.
- The GST records and detailed monthly returns with the reconciliations have not been made available for further justification of the rice stocks retained by APFPL as claimed.
- The documents have been provided for the returns of 84 MT exported Rice stocks to APFPL, however, No further records from APFPL could be found



*that the Rice Stocks have not been moved to NIT, Chennai from the APFPL premises.*

**Conclusion:** *After the scrutinizing the documents provided by NIT, we conclude the following:*

- *Considering the various discrepancies in the documents provided by the NIT like missing transporters bills, mismatch between invoice number/quantity with Material Receipt Notes, missing stamp impressions of APFPL on Material Receipt Notes, required GST bills from the applicable date of GST regime etc., therefore cannot be relied upon.*
- *For the export returned stocks of 84 MT as claimed by NIT, it is difficult to substantiate that any such material belongs to NIT in the absence of any 'specific marking' on the stocks/bags.*

8. Further, the document expert has stated under the heading "conclusion" and thus admit that 'although purchase and export invoices have been provided by these vendors but there are so many anomalies including non-compliance of applicable laws, non-recording of transactions with the Amira Pure Foods Private Limited in books of accounts of these 4 Vendors'.

9. It is pertinent to mention that the independent expert appointed by the Resolution Professional finally concluded its report as under:-

**“Conclusion:**

*After the physical verification of factory and godowns (2 locations) for the stocks claims of claimants, we conclude the following points:*

- *The rice stock (Amira brand/Imperial Grain Brand/ no brand) is stored in the factory warehouse and godowns in 10 Kg, 50 Kg Bags and 1 Kg pouch packaging.*

*However, there is no specified area for storage of claimed Rice stocks, which could be directly related to any claimant party, other than APFPL.*

- *We could not find any unique identification mark on the rice stocks bags/purchases for proof of ownership for any of the four claimants.*

10. The report of the expert was placed before the Committee of Creditors in the 10<sup>th</sup> of the corporate debtor, wherein after a thorough discussion on the summary of the report the claim of the Applicants was declined due to below mentioned reasons:

- a. *Discrepancies in the documents related to raw material and stock.*
- b. *No identification for any stock/raw material applicants has claimed.*
- c. *Claim made by them is not sustainable on the basis of documents provided by them.*



11. It is stated that despite submitting to the RP all the relevant documents as well as the necessary information, the RP incorrectly and mechanically came to the decision that there was not an adequate amount of proof, and did not deliver back the material illegally retained by the Corporate Debtor.
12. It is submitted that the applicants are not mere Operational Creditors to the Corporate Debtor. Operational Creditors are only those that have a claim, which is defined as a “right to payment”. In the present case, the applicants have not prayed for payment but have merely prayed of return of material that rightfully belongs to them.
13. Further, it is submitted that, in terms of the explanation to section 18(f) of the Insolvency and Bankruptcy Code, 2016 the RP is obliged to not take control of assets in which the Corporate Debtor has no ownership. It is submitted the stocks, the return of which is prayed for by the Applicants are precisely such an asset and therefore there can be no question of a moratorium on the return of the said asset.
14. The respondent RP has claimed that the present application filed by the applicants has become infructuous in view of the order dated



17.02.2020 passed by this Tribunal wherein liquidation proceedings of the Corporate Debtor was initiated. Since, the Corporate Debtor is now under liquidation the present application is not maintainable as all the prayers and reliefs sought are against the Resolution Professional and the office of Resolution Professional has ceased to exist.

15. It is submitted that the as per Section 33(5) of the Code, no suit or other legal proceedings against the corporate debtor shall be instituted.

Relevant extract of Section 33(5) of the Code is as under: -

*“33. Initiation of Liquidation.*

.....

*(5) Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:*

*PROVIDED that a suit or other legal proceedings may be instituted by the liquidator, on behalf of the corporate debtor, with-the prior approval of the Adjudicating Authority”*

16. The RP also stated that the present application is filed under section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 with the



contentions of the Liquidator that the present application is liable to be dismissed as without authorization and further submitted that the present application is filed by four applicants namely:-

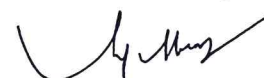
- a. Gurudeo Exports Corporation Private Limited
- b. Shree Kalka Global
- c. Neon International Traders and
- d. TLS Mercantile Private Limited

17. It is submitted that the Applicant No.1 and Applicant No.4 are companies duly incorporated under the provisions of the Companies Act, 2013. Applicant No.1 and 4 being juristic persons and governed by the provisions of Companies Act, 2013 have to act as per the board resolution as provided under Section 179 of the Companies Act, 2013. It is a matter of record that there is no board resolution on record authorizing the person who has signed the petition to sign it on behalf of the Applicant No.1 and 4.

18. The RP has relied upon the order passed by Hon'ble Supreme Court in the matter of *State Bank of Travancore Vs Kingston Computers (I) Pvt. Limited, (2005) 5 SCC 30*, in which it was held that for a Company to file a

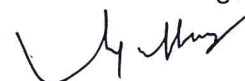
case, the person who is filing the case on behalf of the company has to be duly authorized to file the case on behalf of the company.

19. It is also alleged that the ledger accounts of Corporate-Debtor in the books of Gurudeo Exports Corporation Private Limited do not support the claim of payment of job work charges in the form 3% retention of rice.
20. The RP has also pointed out that the document expert shows at Page 867 in para (b) 'as claimed by the vendors, no accounting entries in books of accounts and non-compliance of various provisions of GST and Income Tax', meaning thereby the applicant themselves have not debited the job-work expense in their own audited financial statements/books, did not deduct TDS and or comply with GST provision.
21. It is also pointed out that the column of 'identification mark' in the report are mostly blank or written as 'loose in gunny bags'. The claim of Gurudeo Exports that 42 MT of rice is identified as 'Imperial Brand' whereas in case of Shree Kalka Global Indore it is stated as 96 MT 'Agrino Greece', but during the arguments the applicants could not demonstrate that 'Imperial Brand' and 'Agrino Greece' brand is owned by Gurudeo Exports and Shree Kalka Global against the Neon International table, Amira Premium brand cannot relate to Neon International as Amira is



brand of Corporate-debtor, lose in gunny bags cannot be considered as identified as stated in identification column in case of Neon International and TLS Mercantile.

22. The RP also stated that the claim of the applicants that report of Brijesh Kumar Gupta & Associates report where it is clearly mentioned 'we have scrutinized the documents submitted by the claimants for stock claims against APFPL. We have not verified stock lying in APFPL factory and warehouse location'. The Brijesh Gupta report state 'most of the invoices issued after dated 01.07.2017 i.e., effective date of GST applicable, whereas the invoices have been generated not according to the GST laws. Only GST is mentioned on the invoices which are not valid invoices.
23. It is contended that the documents on record do not prove delivery of goods by the applicants to corporate debtor for job work. Further the report of document expert also does not support the claims of the applicants.
24. The RP in its arguments have raised objection against the claim of the applicant. It is reiterated that admittedly there is no written document



to prove the ownership of the applicants over rice/stock lying in the godown of the Corporate Debtor.

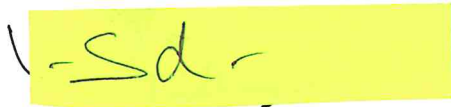
25. Heard the parties and perused the case records.
26. That no material or cogent evidence is placed by the applicants to show that the stock lying in the factory of the Corporate Debtor is hypothecated to Saraswat Bank with any letter either with the Bankers of Corporate Debtor or Saraswat Bank. Further, the stock lying in the godown of the corporate debtor stated to have displayed the Board which says that the 'Stocks hypothecated with Bank'.
27. It is pertinent to mention here that the banks are secured creditors in the records of ROC for a loan of Rs.2000 crores plus as contemplated in Regulation 21 of LP Process Regulations.
28. The claim of applicant about ownership of rice is admittedly not supported by any material evidence. The applicant had failed to prove that the stock lying in the godown of the corporate debtor is legally returnable to them. There is no agreement regarding alleged job work of packaging by corporate debtor and consideration is to paid thereafter.
29. The said reports of experts are neither supporting the claim of the applicant about ownership over rice nor established the entitlement of the



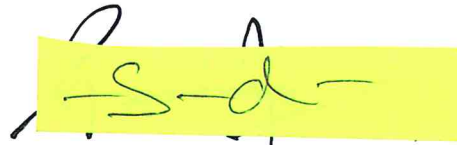
applicant beyond doubt. In order to recover rice from the possession of the Corporate Debtor the applicant must have proved its authority to receive rice. However, there is nothing on record to suggest that the applicants are the rightful owner of the rice lying in the premises of the Corporate debtor.

30. In that view of the matter, the applicants failed to prove their claim.

The application IA- 215 of 2019 is dismissed.

A handwritten signature in black ink, appearing to read 'V-Sd-', is written over a yellow rectangular redaction box.

**(DR. V.K.SUBBURAJ)**  
**MEMBER (TECHNICAL)**

A handwritten signature in black ink, appearing to read 'P-Sd-', is written over a yellow rectangular redaction box.

**(P.S.N PRASAD)**  
**MEMBER (JUDICIAL)**