

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 1151 OF 2022**

Under Section 60 (5) of Insolvency &  
Bankruptcy Code, 2016 r/w Rule 11 of  
NCLT Rules, 2016

MFPL Commercial Private Limited

...Applicant

Vs.

Gopal Krishna Saraswat

...Respondent

In the matter of

C.P.(IB) No. 1003/MB/2019

Allahabad Bank

**Financial Creditor**

Vs.

Suman Agritech Limited

**Corporate Debtor**

*Order delivered on: 22.11.2023*

*Coram:*

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)  
*Appearances*

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

For the Applicant : Mr. P.S. Thakre, PCS  
For the Respondent : None

**ORDER**

*Per: V.G. Bisht, Member (Judicial)*

1. This IA 1151/2022 is filed in terms of Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (“Code”) by M/s MFPL Commercial Pvt. Ltd. (“Applicant”), who is successful purchaser of the Corporate Debtor as going concern under e-auction held on 26.7.2021 by Sh. Gopal Krishnaa Saraswat, the Liquidator (Respondent) of M/s Suman Agritech Limited (“Corporate Debtor”) for seeking Reliefs and Concessions pursuant to sale of the Corporate Debtor as a Going Concern.
2. The Corporate Insolvency Resolution Process (“CIRP”) commenced on 27.08.2019 in the case of Corporate Debtor, and thereafter, the Corporate Debtor was ordered to be liquidated on 13.1.2021, and the Respondent was appointed as Liquidator to carry out Liquidation Process in the matter of Corporate Debtor.
3. The Applicant was declared as the Successful Bidder by the Liquidator, and Letter of Intent dated 2.8.2021 was issued to Applicant by the Liquidator, whereby the Applicant paid the auction money by 30.10.2021. Finally, the Liquidator issued a Sale Certificate dated 8.11.2021 in favor of the Applicant, which is the date of acquisition of the Corporate Debtor by the Applicant, and in furtherance thereto, the custody/control/possession of the assets of the Corporate Debtor was handed over to the Applicant.
  - 3.1. It is the case of the Applicant that to ensure smooth running of the business of the Corporate Debtor, it is necessary that certain reliefs/

concessions/ relaxations/ and permissions be allowed, and unless such reliefs/ concessions/ relaxations/ and permissions are granted, the purpose of revival of the Corporate Debtor as a going concern under Liquidator Process will not be achieved. Thus, the Applicant vide letter dated 29.10.2021 requested the Liquidator to make the necessary application before this Tribunal for grant of such reliefs/ concessions/ relaxations/ and permissions to the Applicant. The Liquidator has given his No Objection through an email dated 2.1.2022 to the Applicant to file the present application to seek necessary reliefs/ concessions/ relaxations/ and permissions.

3.2. The Applicant has sought reliefs/ concessions/ relaxations/ and permissions, which are described in Schedule A to the Application.

4. We have perused these prayers stated in the Schedule to the Applications, and are of considered view that the following Prayer be allowed -

a) The sale of the Corporate Debtor as a going concern shall result in the transfer of the entire available assets of the Corporate Debtor, including all contracts, licenses, concessions, agreements, benefits, privileges, rights or interests to the Acquirer / Applicant. The Applicant shall be entitled to transfer / apply for transfer of all the licenses, approvals, concessions and benefits as may be applicable to the unit/(s) of the Corporate Debtor.

b) The Applicant shall retain the right for selling, transferring, merging, demerging, restructuring or encumbering, in any manner, any asset of the Corporate Debtor or any of its direct and indirect subsidiaries or affiliates, after all payments committed towards existing creditors are made. However, no waiver of transfer fees, if any, payable can be permitted, however exemption from the requirement of availing a prior consent / approval, if any, from any governmental or regulatory authorities with respect to lease hold / mortgaged

properties if approval of this Offer / Proposal arising from change in ownership of the Company pursuant to this sale shall be permissible.

- c) All known or unknown, claimed or unclaimed, crystallized or uncrystallised, disputed or undisputed, disclosed or undisclosed liabilities including contingent liabilities / obligations (including under any guarantee) including prior claims of all creditors whether secured, unsecured, workers, employees, statutory authorities on account of Income Tax, Sales Tax, GST, Service Tax, DGFT, Excise, Customs etc. (including but not limited to liabilities, interest and penalties, duties, taxes, etc.) and shareholders shall be dealt with as per Section 53 of the Insolvency and Bankruptcy Code, 2016 as full and final settlement / extinguishment of their dues / claims, resulting in transfer of the Corporate Debtor to the Applicant free from security interest, encumbrance, claim, counter claim or any demur or any liability (includes Tax. MAT, interest, fine, penalty etc') on Corporate Debtor / Applicant, however, no exemption in relation to dues arising from various actions proposed in the Offer / proposal including but not limited to liabilities, if any, under Sec 56, Sec 43, Sec 28, Sec 115JB and Sec 79 of the Income Tax Act, 1961 shall be available to extent and in the manner permissible under the respective Act.
- d) All inquiries, investigations, assessments, notices, causes of action, suits, claims, disputes, litigations, arbitration, or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor (other than against the erstwhile promoters or former members of the management of the Corporate Debtor). pending or threatened, present or future, in relation to any period prior to the Date of Acquisition or arising on account of the Acquisition shall be deemed to be settled, withdrawn or dismissed'

- e) Any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions prior to the Date of Acquisition shall be deemed to be extinguished.
- f) All the existing shares of the Corporate Debtor shall be extinguished without any consideration, and rights and liabilities arising out of the same shall also be extinguished. Corporate Debtor shall not be required to obtain any further approvals from the respective authorities and shareholders for compliance to provisions under' Companies Act and SEBI Regulations as also RBI guidelines, if applicable, in respect of any action including reduction of Existing Equity Share Capital, Issue of Fresh Equity Share Capital and / or for consolidation of face value of reduced share capital (if required) under the Officer / Proposal, however, the prescribed procedure shall be followed and necessary forms along with fees applicable thereto shall be filed with the respective authorities.
- g) On and from the Date of Acquisition, the status of the Corporate Debtor in the records of the Registrar of Companies should be reflected as 'active' from the status of 'liquidation'.
- h) From the Date of Acquisition, the Board of Directors of the Corporate Debtor be re-constituted as per the Companies Act, 2013 and that the following individuals be permitted to act as Directors of the Corporate Debtor duly appointed under the provisions of the Companies Act, 2013, and the Registrar of Companies shall do all such acts, deeds and things upon presentation of prescribed form in this respect in physical mode that are necessary to appoint the following individuals as directors of the Corporate Debtor, who are individuals recommended by the Applicant (and who are not debarred by any law in force), in order to enable the Corporate Debtor to file relevant returns required by applicable law:

THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I

I.A. 1151 OF 2022

| <b>Name of the Proposed Directors</b> | <b>DIN</b> |
|---------------------------------------|------------|
| 1. Rajneesh Tiwari                    | 00915458   |
| 2. Murari Krishna                     | 01986890   |

- i) All subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to shall, notwithstanding any provision to the contrary in their terms and irrespective of the commencement of the insolvency / liquidation proceedings under the Code, in relation to the Corporate Debtor be deemed to continue, subject to the consent of the other party/parties, without disruption, for the benefit of the Corporate Debtor and all additional licenses, registrations and consents required by the Corporate Debtor be made available immediately from the Date of the Acquisition after following the prescribed procedures and payment of applicable fees/charges/levy. However, the consent or renewal or grant shall not be unreasonably withheld for the reasons of prior conduct of the Corporate Debtor or its erstwhile management.
- j) Approval of the Offer / Proposal will be treated as Waiver Approval from past Liabilities, Payments of Fees and all Dues including any Penalties as well as any form of payment by way of Interest, Late Fees, Damages etc., related to all Government Authorities with regard to non-compliances of various Statutes to be adhered related to Consent, Fees, Certificate etc. by the Corporate Debtor prior to the Liquidation Commencement Date which is inclusive but not exhaustive of –
- Factories Act, 1948
  - Industrial Disputes Act, 1947
  - Payment of Wages Act, 1936

- The Minimum Wages Act, 1948
- The Employees State Insurance Act, 1948
- The Employees Provident Fund and Miscellaneous Provisions Act, 1952.
- The Bonus Act, 1965
- The Payment of Gratuity Act, 1972
- Legal Metrology Act, 2009
- Negotiable Instruments Act, 1881
- Environment (Protection) Act, 1986
- Water (Prevention and Control of Pollution) Act, 1981
- Air (Prevention and Control of Pollution) Act, 1974
- Hazardous Waste (Management and handling) Rules, 1989
- State Fire Safety Act
- The MSME Act
- Electricity Act, 2003
- Trademarks Act, 1999

The Waiver also includes any dues relating to Interest, Penal Interest, Penalty. Interest on Penalty, any kind of Late Fee as well as Damages.

- k) Outstanding dues, if any, with any of the DISTCOMS of the Corporate Debtor to be waived.
- l) To issue Consent to Operate by the respective pollution authorities to sustain the operations of the Corporate Debtor within 30 days of receipt of application from the Corporate Debtor after following the prescribed procedures and payment of applicable fees/charges/levy. However, the consent shall not be unreasonably withheld for the reasons of prior conduct of the Corporate Debtor or its erstwhile management.
- m) The Corporate Debtor shall have a right to review and terminate any contract that was entered into prior to the date of the Liquidation Order.

- n) The erstwhile promoters or any member, associate of the existing and erstwhile promoter groups shall be restrained from doing any business directly or indirectly in connection with the products and services presently offered by the Corporate Debtor and transferring any such IPR to any, other person whether related to them or not.
- o) On and from the Date of Acquisition, all the assets specified in the complete E- Auction Memorandum(s) shall continue to be the assets of the Corporate Debtor, towards which the Applicant has made payment by way of the Sale Consideration.
- p) The Liquidator to cooperate with and provide all necessary support and assistance to the Applicant, including but not limited to perfecting / amending / modifying / creating the land records in relation to all parcels of land, the immovable properties and assets, belonging to the Corporate Debtor in favour of the Corporate Debtor within 15 days from the Date of Acquisition.
- q) All the compliances for the period up to the Date of Acquisition including filing of necessary documents and returns with the Registrar of Companies, Income Tax Authorities any other Government Authorities shall be completed by the Liquidator. Necessary extension of time, if necessary for such filings to be granted by the concerned authorities, without charging interest / fines / penalties.
- r) The brought forward tax losses of the Corporate Debtor be permitted to be carried forward and set-off against future income, under the Income Tax Act, 1961, as change of shareholding of the Corporate Debtor is pursuant to the bid submitted by the Bidder under the E- Auction Process, to the extent and subject to the manner prescribed under the Income Tax Act, 1961.
- s) The Corporate Debtor shall be removed from any negative list / black list with any authority.

- t) Water supply arrangement to be provided by the respective water authorities to sustain the operations of the Corporate Debtor after following the prescribed procedures and payment of applicable fees/charges/levy. However, the reconnection shall not be unreasonably withheld for the reasons of prior conduct of the Corporate Debtor or its erstwhile management..
- u) 6 months grace period (from the date of approval) to be provided to the Corporate Debtor to comply with the provisions of the various Acts / Regulations to enable Corporate Debtor to ascertain the status of various compliances and take necessary steps to regularize the same. During grace period, no additional charges / fees etc. to be charged including on account of Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee or Damages.
- v) ) Issuance / Renewal of all kinds of Licenses / Permissions / Approvals required for operation of the Business / Factory Operations shall be granted after following the prescribed procedures and payment of applicable fees/charges/levy. However, the consent/renewal/permission shall not be unreasonably withheld for the reasons of prior conduct of the Corporate Debtor or its erstwhile management..
- w) The transfer of ownership of the Corporate Debtor shall take place by way of writing off the entire existing shareholding of Corporate Debtor and issuance of fresh equity shares to the Applicant.
- x) All creditors of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to claims, including without limitation to all criminal proceedings, proceedings under section 138 of the Negotiable Instruments Act, 1881 and proceedings under SARFAESI and RDDBFI, within 60 (sixty) days of the approval date and not undertake or omit to take any action which precipitates the proceedings against the Corporate Debtor.

THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I

I.A. 1151 OF 2022

- y) As on liquidation commencement date, all outstanding negotiable instruments, issued by Corporate Debtor or any other person on behalf of Corporate Debtor shall stand terminated and no liability shall arise on the same.
- z) All the ancillary processes shall be executed and implemented by the Liquidator and the bidder within 90 days from the entire payment of the sale consideration. These include but are not restricted to distribution of the sale consideration to the various stakeholders, extinguishment of shares of the Corporate Debtor, issuance of fresh equity shares to the bidder, execution of novation deeds with the relevant counter parties to novate the contracts executed by the Corporate Debtor, employee related agreements and contracts, etc.
- aa) The Applicant may be permitted to pay / adjust the Sale Consideration in the following manner (i) Rs. 3,00,00,000/- (Rupees Three Crore only) by way of investment into the equity shares of the Corporate Debtor; and (ii) the balance amount of Rs. 14, 12,31,000/- (Indian Rupees Fourteen Crore Twelve Lakh Thirty One Thousand only) in the form of unsecured debt.
5. In terms of our decision narrated above, this IA 1151/2022 is disposed of.

**Sd/-**

**Prabhat Kumar**  
Member (Technical)

**Sd/-**

**Justice V.G. Bisht**  
Member (Judicial)