

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)**

COMPANY PETITION NO. IB 1803/ND/2018

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

M/s. Supreme Packaging Industries

...Applicant/Operational Creditor

VERSUS

M/s. Al-Dua Food Processing Private Limited

...Respondent/ Corporate Debtor

ORDER PRONOUNCED ON: 07.09.2021

CORAM:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)**

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M/s. Supreme Packaging Industries

Vs.

M/s. Al Dua Food Processing Pvt. Ltd.

MEMO OF PARTIES

IN THE MATTER OF:

M/s. Supreme Packaging Industries

A Partnership Firm [Regn. No. MBD-4293]

Having registered office at:

Khasra No. 55 Village Sadullapur,

Gajraula (Amroha)

Uttar Pradesh – 244235

...Applicant/Operational Creditor

VERSUS

M/s. Al-Dua Food Processing Private Limited

Having registered office at:

114, Baber Road

New Delhi - 110001

...Respondent/ Corporate Debtor

FOR THE APPLICANT : Ms. Namrata Ranga, (Proxy-Counsel)

FOR THE RESPONDENT : Mr. Gaurav Mitra, Adv.

FOR THE RP : Mr. Awasthi

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ORDER**Per-Dr. Deepti Mukesh, Member (Judicial)**

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') through Mr. Shariq being the Partner of M/S. Supreme Packaging Industries (for brevity 'Applicant'), authorized vide Authorization letter dated 15.11.2018 with a prayer to initiate the Corporate Insolvency process against M/s Al- Dua Food Processing Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Applicant is a partnership firm having registration no. MBD-4293, incorporated on 19.10.2015, under the provisions of Indian Partnership Act, 1932, having its registered office at Plot No. 55, Village Sudallapur, Gajraula, District Amroha, Uttar Pradesh. The applicant is involved in the business of Manufacturing, Trading and supplying all types of wooden industrial packaging Wooden Pallets, Wooden Crates, Wooden Boxes, Plywood Boxes, Plywood Crates, etc.

3. The Corporate Debtor is a private company limited by shares incorporated on 22.12.2005, under the provisions of Companies Act, 1956 bearing CIN No. U15111DL2005PTC143959 and having its registered office at 114 Baber Road, New Delhi North Delhi - 110001. The corporate debtor is involved in the production, processing and preservation of meat, fish, fruit vegetables, oils and fats.

4. The applicant states that the debt arose from the transactions pertaining to the supply of plastic packaging material by applicant to corporate debtor in terms of purchase order dated 11.12.2017. As per the purchase order, the

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corporate debtor agreed to make payment within 45 days of delivery of goods, failing which the corporate debtor shall pay penal interest @ 18% p.a. Accordingly, on the said terms materials were duly supplied and delivered on 17.12.2017 and invoices of Rs.1,92,045/- and Rs.7,14,357/- were raised. The applicant stated that no complaint was raised by the corporate debtor with regard to quality of services and time bound service of applicant.

5. The applicant states in January 2018 the corporate debtor placed another purchase order for 2000 shrink bags, which was delivered to corporate debtor at Aligarh on 13th January 2018. Accordingly, an invoice was raised for a value of Rs.2,49,806/-.The applicant submits that they started to follow up with the office of corporate debtor for clearance of dues, but the corporate debtor failed to pay off the outstanding dues and gave only false assurances. The corporate debtor raised another purchase order for poly bags with the same payment condition of clearing the payments within 45 days from the date of delivery. The goods were delivered on 13th Feb 2018 and invoice of Rs. 10,27,253/- was raised. Thereafter in terms of another purchase order the goods were delivered on 24th Feb 2018 and invoice of Rs. 4,85,911/-. The total accumulated debt aggregated to Rs. 26,69,373/-.

6. The applicant stated that an email was sent by them on 14.07.2018, requesting for release of payment on urgent basis, in response the corporate debtor sent a certificate dated 20.07.2018, wherein the corporate debtor duly acknowledged the outstanding credit amount of Rs. 26, 63,587/-. It is further stated that, to escape liability the corporate debtor transferred the debt to another company namely M/s MK Overseas Private Limited, without showing any basis or documentary evidence of such transfer. Thereafter, the applicant again via email dated 04.10.2018 & 08.10.2018, wrote an email to

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M/s MK overseas to clear of its dues, but no response was received from them. Hence debt is still due and payable, by corporate debtor as the same is not discharged.

7. The applicant issued a demand notice dated 19.11.2018, under Section 8 of the code calling upon the corporate debtor to pay the total outstanding amount of Rs.26,69,372.72/-along with interest @ 18% per annum from 31.01.2018. The notice was sent at the registered office of the corporate debtor and also at the addresses of the directors as per the MCA master data, via speed post. The said notice was returned with the remark "door locked" from the registered office of the corporate debtor and duly delivered at the addresses of the directors. The demand notice was also sent via email at the registered email address as per the MCA records, but the same also returned with the remark "address not found." The copies of proof of delivery and tracking report have been annexed. The applicant vide affidavit filed on 29.01.2019, stated that as per the tracking report the notice was duly delivered at the registered office as well as the addresses of the directors. The copy of affidavit along with tracking report is filed. The corporate debtor neither replied to the said demand notice nor made payment.

8. The applicant filed the present application under section 9 of IBC, 2016 and served the copy of this application, which was duly delivered by registered AD and Dasti to the Corporate Debtor as per service affidavit filed on 29.01.2019. As per Form V, the total debt outstanding is Rs.26,69,373/- along with interest calculated @18% from the first date of default i.e., 31.01.2018 till date.

9. The Corporate debtor filed reply denying the averments made by the applicant and raised the following objections:

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a) That the corporate debtor was taken over by M/s MK Overseas w.e.f. 07.07.2018 and the erstwhile management of the corporate debtor prepared two balance sheets stating the dues of both the companies respectively.

Further also stated that the applicant via letter dated 30.06.2018 to the management of corporate debtor (now taken over by MK overseas) stated that:

"We have confirm that we do not have any objection to transfer our debit balance of Rs. 26,63,587.00 (Rupees Twenty-Six Lac Sixty-Three Thousand Five Hundred Eighty-Seven Only) of Al Dua Processing Pvt. Ltd. to M.K. Overseas Pvt. Ltd. Therefore after 30th of June 2018 we don't have any liability on Al Dua Food Processing Pvt. Ltd."

The copy of letter is annexed.

A letter dated 20.07.2018 addressed by the corporate debtor has also been relied upon wherein it is mentioned that the outstanding amount of the applicant is being transferred in the account of M/s MK overseas and shall be payable to applicant from 01.04.2018 onwards. The debit balance of applicant is also reflected in the books of account of M/s MK Overseas Pvt. Ltd. The copy of letter dated 20.07.2018 and account statements are annexed. Accordingly, the dues are not recoverable from the corporate debtor and MK Overseas Pvt. Ltd should have been impleaded as a party.

b) There are no dues against the corporate debtor as the liability to pay has been accepted by MK overseas Pvt. Ltd. and the applicant vide its letter dated 30.06.2018 has also, acknowledged and admitted the same. It is also evident from its letters dated 04.08.2018 and 08.08.2018, wherein the applicant has requested M/s MK Overseas Pvt. Ltd. to clear

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its dues. The copies of email dated 04.08.2018 and 08.08.2018 is annexed.

10. The applicant filed a rejoinder disputing the averments made in the reply and reiterating the facts of the application and stated that:

- a) The debt owned by the corporate debtor towards the applicant was due much before the corporate debtor was taken over by MK Overseas Pvt. Ltd. and no such arrangement or change of management was intimidated to the applicant.
- b) An objection was raised with regards the letter dated 30.06.2018, as the corporate debtor relying upon the said letter stated that the consent was granted by the applicant, for transferring the debt to the management of MK Overseas Pvt. Ltd. It is the contention of the applicant that the said letter is forged and no such letter was sent by the applicant. The said letter was also not on the letter head of the applicant.
- c) That the corporate debtor has not provided any statutory basis for M/s MK Overseas taking over the claims due to the applicant. Further, the applicant has disputed the unaddressed letter dated 20.07.2018 and stated that the liability was never transferred to M/s M.K. Overseas Pvt. Ltd.
- d) Also, stated that no notice of dispute with regards the Section 8 notice has been sent by the corporate debtor nor any payment has been made till date.

11. The applicant filed an application bearing No. CA /251/2019 under Section 340 of Criminal Procedure Code, 1973 praying the Hon'ble Tribunal to initiate proceedings against the corporate debtor for:

- Filing of false and fabricated ledger account of M/s M.K. overseas
- Forged letter dated 30.06.2018.

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- Filing of false affidavits and certificates under Section 65 of the India Evidence Act, 1872.
- Suppressing material facts in the application and for obstructing the justice.

The applicant further stated the following:

- a) That M/s M.K. overseas purchased packaging materials from them and defaulted in making payments in December 2017. Therefore, an application under Section 9, IBC 2016 bearing no. IB/1727/ND/2018 titled "Supreme Packaging Vs. M/s M.K. Overseas Pvt. Ltd." for a total debt of Rs. 12,59,556/- was filed. In reply to the said application, M.K. Overseas provided its ledger from 02.04.2018 till 09.01.2019 (Financial year 2018-19), which reflected a debit amount of Rs. 12,59,556/- due towards the applicant. The said dues were settled among the parties and vide order dated 16.01.2019 of this bench the application IB-1727/ND/2018, was withdrawn on 16.01.2019. The copy of order dated 16.01.2019 is annexed.
- b) It is stated that the letter dated 30.06.2018, wherein the applicant had agreed to the arrangement, of M/s MK Overseas taking over the management and pending dues of corporate debtor is a forged document and the signatures have also been forged. The letter has also not been sent on the letter head of the applicant.
- c) The applicant states that the corporate debtor is punishable u/s 193 of IPC, 1860 and an enquiry u/s 341(1) Cr.P.C. must be initiated against the corporate debtor. The authorized representative of the corporate debtor must be held guilty of false affirming on oath.

The corporate debtor filed reply to the said application and stated the following:

- a) That letter dated 30.06.2018 was handed over to corporate debtor by M/s. M.K. Overseas Pvt. Ltd.

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- b) The corporate debtor has relied upon the case of Hon'ble High Court of Delhi in the case of 'Sushil Kumar & Ors. V/s State of Haryana AIR 1988 SC 419' and 'Dr. V.K. Bindal V/s State (Delhi), 2008(3) JCC1706 (Delhi), wherein it has been ruled that for invoking Section 195/340 Cr.P.C. 1973 original documents has to be placed on record before the concerned court and an enquiry initiated on the basis of a copy of a document would not be sustainable. Hence the present application is not maintainable.
- c) The corporate debtor stated that a payment of Rs. 15,00,00/- was received by the applicant from M/K Overseas Pvt. Ltd. The applicant in emails dated 04.08.2018 and 08.08.2018, has demanded a sum of Rs. 39,23,143/- from M/s M.K. Overseas Pvt. Ltd. The said amount includes Rs.12,59,556/- to be paid by M.K. Overseas and an outstanding amount of Rs. 26,63,587/-, due from corporate debtor.
- d) The share purchase agreement enumerates the equity holding ratio of the company and its directors. Thereafter the new management took over the control of the corporate debtor. The corporate debtor has filed an Interim audit report which depicts that the certain assignments of debt & advance were being managed by M/s M.K. Overseas Pvt. Ltd. The registered share purchase agreement and the audit report have been annexed.
- e) It is sated that the two account statements of the applicant is with respect to the transaction held by MK Overseas one ledger of that are transferred from of the Al- Dua Foods and is maintained in the name of Supreme Packaging industries (ADF) and the other is the ledger accounts for the transactions entered into by applicant with M.K. Overseas. It is further submitted that transaction in both the accounts are not same and are distinct from each other. The certificate under Section 65 is filed for ledger accounts. Hence is not false and fabricated.

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f) It is submitted that one Mr. Shakeel Ahmed, a director of M/s MK Overseas Pvt. Ltd. has issued a certificate dated 25.07.2019 certifying a payment of Rs.15,00,000/- made to the applicant for account of the corporate debtor which has been denied that payments were received from MK Overseas, neither given any other reason for which this payment was made. The certificate dated 25.07.2019 is annexed. Hence the book of accounts of the MK overseas relied by the corporate debtor cannot be held as forged and fabricated.

12. The applicant states that vide order dated 05.11.2019, the bench directed the corporate debtor to file balance sheets of both the companies, being the corporate debtor and M.K.Overseas Pvt. Ltd. In compliance of the said order the corporate debtor filed its balance sheets of financial Year 2017-18 and 2018-19. However, the statement of accounts of MK Overseas could not be filed as the same was not retrieved from the "Public Documents" portal maintained by the Ministry of Corporate Affairs. The CIRP of MK Overseas was initiated by this bench on 19.09.2019, in the case of Manyoga Investments Limited Vs. M.K. Overseas Pvt. Limited (C.P. No. IB/1731/(ND)/2019) and Mr. Suresh Kumar Jain was appointed as the IRP, who was later confirmed as RP by the CoC.

13. Thereafter the corporate debtor filed an application bearing no. CA/586/2019 under Section 52 of the National Company Law Tribunal Rules, 2016 to issue summons for appearance of Mr. Suresh Kumar Jain, the resolution professional of M.K. Overseas Private Limited asking him to produce the relevant financial statements of M.K. Overseas Private Limited and also to Mr. Ashoo Katyal, the Auditor of M.K. Overseas. The corporate debtor submitted that fully owned companies along with their parent company should be treated as a single entity, the said principle has been recognized in the case of *DHN Food Distributors Ltd. Vs. London Borough of*

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Tower Hamlets [1967] 3 ALL ER 462, the said ratio was also confirmed by the Hon'ble Delhi High Court in the case of *Pankaj Aluminum Industries Pvt. Limited Vs. Bharat Aluminum Company Ltd. (2011) SCC OnLineDel1482*. It got concluded that the liability of the corporate debtor is the liability of the erstwhile holding company M K Overseas Pvt. Ltd. and their directors. Further stated that it is also evidenced from the share purchase agreement, executed by the corporate debtor, as per the said agreement the liabilities due towards the applicant were to remain with MK overseas but entire control of the corporate debtor got transferred to the new holding company namely, Al Hamd Agro Foods Products Pvt. Ltd. and Mr. Mohd. Zaheer.

The corporate debtor further submitted that applicant had sent a letter dated 27.11.2019 intimating the auditor that he was required to appear before the bench to comply with order dated 05.11.2019. The said letter was sent by speed post as well as email and has been annexed with the application.

vide order dated 04.12.2019 summons were issued for appearance to Mr. Suresh Kumar Jain and Mr. Ashoo Katyal. On 15.01.2020 Mr. Suresh Kumar Jain (being the Resolution Professional of M/s M.K. Overseas Pvt. Ltd.), appeared before the bench and stated that email has been sent to the ex-directors of M/s M. K. Overseas having no response an application under Section 19(2) is still pending consideration.

14. The corporate debtor filed an application bearing no. 1029/2020 under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking to place on record the following additional documents in support of their contentions.
- a) The share certificates, which depicts that the transaction between the parties were pursuant to the conditions laid down in the SPA.
 - b) Copy of bank account statements of Al Hamd Agro Foods Pvt. Ltd. and its promoters was filed to show the record of transaction undertaken pursuant to SPA.

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- c) The copy of GST registration certificates dated 28.07.2018 and 02.10.2018 to show, the change in management of the applicant pursuant to the execution of the SPA.
- d) The copy of valuation report dated 30.07.2018, is filed to show that the valuation of the company undertaken prior to execution of the SPA.
- e) Copy of letter dated 10.08.2018, sent by the applicant to HDFC bank is filed to show that the parties undertook to discharge their respective obligations under the SPA and as per this letter the applicant requested to release the property which had been mortgaged by the old management.
- f) The annual returns along with certificate of the company secretary dated 30.09.2019 clearly depicts that the management of the company had been replaced.
- g) Letters addressed to Export Credit Guarantee Corporation of India, for change of name pursuant to change in management along with reply of the ECGC limited.

The application was allowed, taking on record the documents filed and disposed off vide order dated 11.02.2020.

15. On 31.01.2020, the RP of M.K. overseas Pvt. Ltd. filed its report in terms of order dated 21.01.2020 and stated the following

- a) That Al Dua Food Processing Pvt. Ltd. was subsidiary of M/s M K overseas Pvt Ltd. holding 95.39% shares of Al Dua Processing Pvt. Ltd. before execution of Share Purchase Agreement. That the share purchase Agreement was executed by M.K. Overseas, Mr. Mohommad Kamil, Mrs. Nasira Begum as shareholders of Corporate Debtor with Mr. Mohammad Zaheer, Mr. Mohd. Tauqeer, Mr. Mohd. Tauseef of Al Hamd Agro Foods Pvt. Ltd. and in share Purchase Agreement it has nowhere been mentioned that liabilities of Al Dua processing Pvt. Ltd.

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shall be retained. However, in terms of Audit report dated 23.07.2018 of from Mr. Ashoo Katyal & Co. in respect of Al Dua Food Processing Pvt. Ltd., it is stated that as on 07.07.2018, the Creditors and Sundry advances of the corporate debtor were retained by M. K. Overseas Pvt. Ltd.

b) That no board resolutions or any documents for transfer of Al Dua Food Processing to M K Overseas Pvt. Ltd. during June- July 2018 has been filed.

16. As per Form V, the debt first fell due on 31.10.2018, i.e., after the expiry of the date of issue of invoices and the default continued to occur till date. The present application is filed on 10.12.2018. Hence the application is not time barred and filed within the period of limitation.

17. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

18. The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete.

19. Considering the documents on records and submissions made, it is observed that the corporate debtor has raised dispute with respect to non-joinder of parties, as the applicant failed to implead M K Overseas as a party to the said application, to whom the debts have been transferred. This objection is not sustainable as the invoices and delivery of goods to corporate debtor is admitted and no cogent proof is on record to show that debt to applicant is paid/is not due by corporate debtor. The defence taken by the corporate debtor is that the applicant had given consent letter for

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transfer of debt, this contention is rejected as the corporate debtor has failed to corroborate the signatures on the said letter being that of the applicant with respect to consent for transfer. Further it has been stated that a share purchase agreement had been executed between shareholders of the corporate debtor and Al Hamd Agro Foods Pvt. Ltd. Ltd. The applicant was not privy to the said contract hence the agreement is not binding on the applicant. Moreover, as per the report filed by the RP of MK overseas, the debt of corporate debtor is claimed to have been transferred, which reveals that the liabilities of certain creditors of corporate debtor (list annexed) was admitted by MK Overseas but that list does not include the name of the applicant. However, there is no proof to show that M.K Overseas has admitted the claim of creditors of corporate debtor as, this contention was rejected by RP of MK Overseas for lack of proof and insufficient documentary evidence while considering claims of the said creditors of corporate debtor. Further, information has been provided, about the creditors of corporate debtor whose names are not included in the list of creditors allegedly transferred from corporate debtor to MK Overseas. The balance sheet of MK overseas along with Share Purchase Agreement is annexed. The claim of applicant does not reflect as creditor in balance sheet of M.K. Overseas on ground of non-inclusion in list of creditors detailed in Share Purchase Agreement. On the other hand, the corporate debtor pleads that the claim of applicant stands transferred in the name of MK Overseas. It is also stated by the applicant that the invoices were raised to corporate debtor, not disputing any defect with regards to the service. For the conduct of RP some financial creditors from M.K.Overseas's Committee of creditors have filed for replacement of RP with allegation of improper conduct. All these instances lead to confirming view that Al dua had in connivance with MK Overseas created a situation to defeat claims of creditors of corporate debtor and mechanized documents to defraud the creditors of corporate debtor.

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20. The corporate debtor has not raised any dispute or replied to the notice under Section 8, raising any existence of dispute, hence the objections raised by the corporate debtor are creation of afterthought with intent to ward off creditors. For first time the corporate debtor raised dispute in reply to application u/9 on 06.03.2019 stating that the applicant had consented to the taking over of its debt due to corporate debtor by M K Overseas by letter dated 30.06.2018. Corporate debtor admits that on 07/07/2018, MK overseas took over corporate debtor when revenue from operation of corporate debtor was 77.58 crores.

Admittedly, M.K.Overseas & corporate Debtor has common directors and corporate debtor is the subsidiary of MK Overseas, wherein MK Overseas is holding 95% shares. The present application was filed at the time when already no. of insolvency applications against MK Overseas filed by various creditors was pending. It was also stated that MK Overseas has large no. of creditors being banks and other operational creditors, wherein the order of CIRP, was passed vide order dated 19.09.2019 in IB/1731/2019. Even in the reply filed by Corporate Debtor there is no whisper of Share Purchase Agreement. The only objection was raised relying on the letter dated 30.06.2018 allegedly written and signed by partner of Applicant Company, giving consent for receiving all due amount from MK Overseas. Thus, it is evident that a sham defence is raised by the corporate debtor. The applicant filed an application under Section 340 Cr.P.C. for forgery and fabrication of document on 19.07.2019. The bench had called for the documents to show signatures of all partners of applicant. Copy of registered deed of partnership dated 09.09.2015 was shown to bench where there are only two partners being Mr. Mohd. Shariq and Smt. Sana, none of the signatures matches with sign on letter dated 30.06.2018 solely relied upon by the corporate debtor. The corporate debtor in the reply on 23.08.2019 to the said application, has first time revealed about the share Purchase

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Agreement and claimed that the said debt of applicant is payable by M K Overseas. It is important to note that order was reserved in application to initiate CIRP against MK Overseas on 06.09.2019. The applicant filed another application on 31.01.2020 to call upon the RP of MK Overseas to file a detailed report with respect to claims filed and list of creditors. The application was allowed & RP filed report. The observations of RP of MK Overseas are reproduced here under:

“Since no scheme of arrangements for transfer of certain liabilities of Al Dua Food Processing Pvt. Ltd. to M/S. M K Overseas Pvt. Ltd. is submitted, claims admitted earlier stands rejected and information to the OC’s given”

21. We are of confirmed inference that the MK Overseas & corporate debtor in connivance with each other to defraud its creditors have acted malafidely and the directors of the corporate debtor and MK Overseas should be made liable for criminal proceedings. The corporate Debtor had tried to explain, that its shareholding has been transferred to Al Hamd Agro Foods Pvt. Ltd. in terms of registered Share Purchase Agreement by duly paying stamp duty on such agreement. Though, the assets and receivables from the creditors are transferred to Al Hamd Agro Foods Pvt. Ltd. but the liability of certain creditors was transferred to M K Overseas which was already a sinking ship. It is important to mention that in CIRP of M.K. Overseas there are multiple applications pending, including one for changing RP wherein various creditors have raised allegations against conduct of RP. We have no doubt in holding that corporate debtor is liable to pay the dues of the applicant and the share purchase agreement is nothing but sham document created to defraud its creditors. In terms of above observations, we are of the view that the default has occurred for the payment of the operational debt to the applicant and the so-called dispute raised by the corporate debtor is malafide attempt to create a moonshine dispute, as laid down in “**Mobilox**

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Innovative Private Limited vs. Kirusa Software Private Limited, the Hon'ble Supreme Court observed:

"It is clear, therefore that once the Operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility . It is clear that such notice must bring to the notice of operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster."

Therefore, in the given facts and circumstances, it can be concluded that the applicant has established its claim which is due and payable by the corporate debtor. In the light of above facts and records, the present application is admitted.

22. The applicant has proposed the name of Mr. Nishant Gaurav Gupta, to be appointed as an IRP, who is be and hereby appointed as IRP of Corporate debtor, having registration no. IBBI/IPA-002/IP-N00572/2017-18/11739 and email id: nishantgaurav@outlook.in The IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The consent in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been filed. We further direct the IRP/RP to take serious cognizance of the act of the Ex- Directors of the corporate debtor and initiate appropriate proceedings against them.

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23. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Nishant Gaurav Gupta to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
24. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
25. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-

SUMITA PURKAYSATHA
MEMBER (T)

SD/-

DR. DEEPTI MUKESH
MEMBER (J)

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