

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH

Company Appeal (AT) (Insolvency) No. 301 of 2021
& IA No. 701, 702 & 703 of 2021

[Arising out of Order dated 11.03.2021 passed by the Adjudicating Authority/National Company Law Tribunal, New Delhi Bench - VI, in CP-846/ND/2018 in CA No. 215 of 2020]

IN THE MATTER OF:

1. Gurudeo Exports Corporation Private Limited (“GECPL”)

A Company having its registered office at
13, Shradhanand Marg, Chhawani,
Indore 452001 (Madhya Pradesh)

...Appellant No. 1

2. Shree Kalka Global (“SKG”)

A registered Partnership Firm,
Having its principal place of business at
215, 2nd Floor Pukhraj Corporate, Navlakha,
Indore 452001, Madhya Pradesh

...Appellant No. 2

3. Neon International Traders (“NIT”)

Sole Proprietorship Firm of Shri N. Dillip
Kumar,
Having its principal place of business at
No. 4 Mangappan Street, 2nd Floor,
Sowcarpet
Chennai – 600079.

...Appellant No. 3

4. TLS Mercantile Pvt. Ltd.

A company having its registered address at
213 Pukhraj Corporate, Opp Navlakha Bus
Stand
Indore- 452001 Madhya Pradesh.

...Appellant No. 4

Versus

1. Mr. Akash Singhal Liquidator of Amira Pure Foods Pvt. Ltd.

B-I/E-28, Mohan Cooperative Industrial
Estate,
New Delhi DL 110044 IN

...Respondent No.1

2. Amira Pure Foods Private Limited

B-I/ E-28, Mohan Cooperative Industrial
Estate,
New Delhi DL 110044 IN

...Respondent No.2

Present:

**For Appellants : Mr. Krishnendu Datta, Sr. Advocate along with
Mr. Rajat Sinha, Advocates.**

**For Respondents : Mr. R.K. Gupta & Ms. Swaralipi Deb Roy, for R-1
& 2.**

J U D G M E N T

(16.05.2023)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed under Section 61(1) of the Insolvency & Bankruptcy Code, 2016 (in short '**Code**') against the 'impugned order' dated 11.03.2021 in CP-846/ND/2018 in CA No. 215 of 2020 by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench-VI).

2. Heard the Counsel for Parties and perused the records made available including cited judgments.

3. The Counsel for Appellants stated that the present joint appeal has been filed on behalf of Gurudeo Exports Corporation Private Limited ("GECPL") - Appellant No. 1, Shree Kalka Global ("SKG") - Appellant No. 2, Neon International Traders ("NIT") - Appellant No. 3 and TLS Mercantile Pvt. Ltd. - Appellant No. 4, being aggrieved by the common 'impugned order' dated 11.03.2021 under Section 60(5)(c) of the Code, wherein by the

'Appellants' herein filed the joint application against the 'Resolution Professional' of 'Amira Pure Foods Private Limited' ('Corporate Debtor'). The 'Resolution Professional' had rejected the claims of all the four applicants, who have petitioned the 'Resolution Professional' to settle their claims, by a common e-mail dated 06.11.2019. The four Petitioners sought return of stock of their owned rice from the 'Corporate Debtor'.

4. The 'Appellants' submitted that pursuant to oral business agreements since 01.10.2016, the 'Appellants' used to purchase rice from various suppliers across the country and delivered rice directly from their suppliers to the 'Corporate Debtor's' manufacturing unit located at 21st Mile stone, Pataudi Road, Village Harsaru, Dist. Gurgaon, Haryana-123504. The 'Appellants' further submitted that it was broad understanding between the parties that after carrying out the job work, the 'Corporate Debtor' would retain 3% of rice delivered and return 97% of the processed rice to the 'Appellants'. As per the Counsel for Appellants, the supply of rice to the 'Corporate Debtor' was for the purpose of cleaning, sorting and packing the rice delivered by the 'Appellants' and to sell the rice packages directly from the premises of the 'Corporate Debtor'.

5. The 'Appellants' submitted that the 'Corporate Debtor' gave several documents to the 'Appellants' which support their claims including 'rice purchase invoices', 'material receipts', 'e-mails', 'affidavit provided by an ex-employee of the 'Corporate Debtor' about receipt of the materials', 'consignment notes', etc.

6. The 'Appellants' stated that the application bearing no. CP-846/ND/2018 in CA No. 215 of 2020 was filed before the 'Adjudicating Authority' seeking return of illegally retained stock of rice from the 'Corporate Debtor', which the 'Liquidator'/ 'Resolution Professional' failed to return to the 'Appellants' and finally the 'Resolution Professional' rejected the claims to return the stock to the 'Appellants' vide e-mail dated 06.11.2019. The 'Appellants' stated that they had several meetings with the 'Resolution Professional' and provided all the relevant documents to establish the arrangements between the 'Appellants' and the 'Corporate Debtor' but the 'Resolution Professional' rejected the claims without going into the merits of the cases. The 'Appellants' further stated that it is a settled law that the 'Respondent No. 1' was not entitled to retain the rice belonging to the 'Appellants' and the same could not be made part of liquidation estate of the 'Corporate Debtor'.

7. The 'Appellants' emphasised that it was standard business practice for the exporters/ sellers of the rice to get the job work done from such 'Corporate Debtor' who was entitled to retain certain percentage of packed rice (3% in the present case) and the rice used to be directly exported/ sold in domestic market from the premises of the 'Corporate Debtor' and similarly any return by the customer would also go back directly to the premises of the 'Corporate Debtor'. The 'Appellants' explained that this was a simple business model which involved purchases of rice by the exporters/ domestic seller (like the 'Appellants' herein) which was delivered to the

premises of the 'Corporate Debtor' for processing & packaging and finally export/ domestic sale from the 'Corporate Debtor's' premises itself. The 'Appellants' stated that all the parties used to honour this time-tested business arrangement and the arrangement was working smoothly in the present case also from October 2016 to August 2018. The 'Appellants' however, stated that from September 2018, this process was not honoured by the 'Corporate Debtor', who did not permit the 'Appellants' from taking back their own rice.

8. The 'Appellants' stated that on 11.12.2018, the 'Adjudicating Authority' passed an order initiating 'Corporate Insolvency Resolution Process' (in short '**CIRP**') against the 'Corporate Debtor' and appointed Mr. Akash Singhal as 'Interim Resolution Professional' (later confirmed as 'Resolution Professional', who finally became the 'Liquidator').

9. The 'Appellants' stated that at insolvency commencement date, large quantity of stock of the 'Appellants' was illegally retained by the 'Corporate Debtor' at its factory premises and retained 291.33 MT of Gurudeo Exports Corporation Pvt. Ltd- Appellant No. 1, 493.42 MT of Shree Kalka Global- Appellant No. 2, 84.00 MT of Neon International Traders- Appellant No. 3 and 58.94 MT TLS Mercantile P. Ltd. - Appellant No. 4, thus total rice involved which was illegally retained by the 'Corporate Debtor' was 927.69 MT of four 'Appellants' altogether.

10. The 'Appellants' stated that the Appellant No. 1 i.e. M/s Gurudeo Exports Corporation Pvt. Ltd. from 04.09.2017 to 21.08.2018 had

purchased and supplied to the 'Corporate Debtor' various varieties of rice aggregating to 1634.08 MT and received back rice except 291.33 MT which was illegally held by the 'Corporate Debtor'. The 'Appellants' further stated that they have written several letters/e-mails to the 'Resolution Professional' for their claims and received back replies vide letters/e-mails and the correspondence exchanged were dated 21.02.2019, 11.03.2019, 12.03.2019, 01.08.2019, 23.08.2019, 31.08.2019, 10.09.2019, 15.10.2019 and 01.11.2019.

The 'Appellant No. 1' clarified that on purchase of rice an invoice was issued by the supplier to the 'Appellant No. 1' and further consignment note was generated containing details of the rice. The 'Corporate Debtor' also confirmed receipt of the rice by way of various e-mails, however despite several correspondence with the 'Resolution Professional', the 'Resolution Professional' failed to give any response or seek additional clarifications and finally rejected the claims for return of rice to the 'Appellant No. 1' in violation of the oral agreement and against the spirit of the Code.

11. The 'Appellants' submitted that as regard 'Appellant No. 2' i.e. 'Shree Kalka Global' has also supplied various varieties of rice to the 'Corporate Debtor' from 01.10.2016 to 23.08.2018 aggregating to 6210.26 MT and received back rice except 493.42 MT which was illegally held by the 'Corporate Debtor'. The 'Appellants' further stated that they have written several letters/e-mails to the 'Resolution Professional' for their claims and received back replies vide letters/e-mails and the correspondence exchanged

were dated 18.02.2019, 11.03.2019, 12.03.2019, 01.08.2019, 02.08.2019, 03.08.2019, 25.08.2019, 31.08.2019, 10.09.2019 and 06.11.2019.

The 'Appellant No. 2' clarified that on purchase of rice an invoice was issued by the supplier to the 'Appellant No. 2' and further consignment note was generated containing details of the rice. The 'Corporate Debtor' also confirmed receipt of the rice by way of various e-mails, however despite several correspondence with the 'Resolution Professional', the 'Resolution Professional' failed to give any response or seek additional clarifications and finally rejected the claims for return of rice to the 'Appellant No. 2' in violation of the oral agreement and against the spirit of the Code.

12. The 'Appellant No. 3' i.e. Neon International Traders, from 03.05.2017 to 01.08.2018, had purchased and supplied to the 'Corporate Debtor' various varieties of rice aggregating to 811.03 MT and received back rice except 84 MT which was illegally held by the 'Corporate Debtor'. The 'Appellant No. 3' further stated that he has written several letters/e-mails to the 'Resolution Professional' for his claims and received back replies vide letters/e-mails and the correspondence exchanged were dated 18.02.2019, 11.03.2019, 29.07.2019, 25.08.2019, 31.08.2019 and 10.09.2019.

The 'Appellant No. 3' clarified that on purchase of rice an invoice was issued by the supplier to the 'Appellant No. 3' and further consignment note was generated containing details of the rice. The 'Corporate Debtor' also confirmed receipt of the rice by way of various e-mails, however despite several correspondence with the 'Resolution Professional', the 'Resolution

Professional' failed to give any response or seek additional clarifications and finally rejected the claims for return of rice to the 'Appellant No. 3' in violation of the oral agreement and against the spirit of the Code.

13. The 'Appellant No. 4' i.e. TLS Mercantile Pvt. Ltd. stated that from 27.08.2017 to 07.08.2018 they had purchased and supplied to the 'Corporate Debtor' various varieties of rice aggregating to 345.72 MT and received back rice except 58.94 MT which was illegally held by the 'Corporate Debtor'. The 'Appellants' further stated that they have written several letters/e-mails to the 'Resolution Professional' for their claims and received back replies vide letters/e-mails and the correspondence exchanged were dated 21.02.2019, 11.03.2019, 12.03.2019, 29.07.2019, 02.08.2019, 03.08.2019, 23.08.2019, 31.08.2019 and 13.09.2019.

The 'Appellant No. 4' clarified that on purchase of rice an invoice was issued by the supplier to the 'Appellant No. 4' and further consignment note was generated containing details of the rice despite. The 'Corporate Debtor' also confirmed receipt of the rice by way of various e-mails, however despite several correspondence with the 'Resolution Professional', the 'Resolution Professional' failed to give any response or seek additional clarifications and finally rejected the claims for return of rice to the 'Appellant No. 4' in violation of the oral agreement and against the spirit of the Code.

14. The 'Appellants' submitted that they filed a joint application before the 'Adjudication Authority' vide CP-846/ND/2018 in CA No. 215 of 2020 on 21.01.2019 and during the pendency of the said application the

'Adjudicating Authority' passed an order for liquidation of the 'Corporate Debtor' on 17.02.2020. The 'Adjudicating Authority' on 02.03.2020, on the request of the 'Appellants', directed appointment of two experts i.e. 'Rice Experts' (Mr. Om Prakash Garg) to report whether or not the rice stock claimed by the 'Appellants' could be identified amongst the stock available at the premise of the 'Corporate Debtor' and 'Document Experts' (M/s Lunawat & Co.) to ascertain whether or not the oral agreements between the parties could be referred to on the basis of documents available with the parties. The 'Appellants' stated that they have fully cooperated with both experts and gave all documents as required. Rice expert gave its report on 10.10.2020 and document expert gave its report on 12.10.2020 which were filed by the 'Appellants' before the 'Adjudicating Authority'.

15. The 'Appellants' stated that the rice expert gave its report in favour of the 'Appellants' but the document expert gave its report against the 'Appellants'. The 'Appellants' submitted that they had filed detailed objection to the document expert's report and subsequently after detailed hearing the 'Adjudicating Authority' passed finally the 'impugned order' dated 11.03.2020 dismissing the Company Petition bearing no. CP-846/ND/2018 in CA No. 215 of 2020.

16. The 'Appellants' assailed the 'impugned order' which ignored the report given by the rice expert and considered the document expert report which was without any basis. The 'Appellants' also assailed the 'impugned order' on the ground that various documents, submitted to the 'Resolution

Professional' establish their claims for return of rice, were rejected by the 'Resolution Professional' and the same was upheld in the 'impugned order'. The 'Appellants' stated that 'Liquidator' was not empowered to reject the lawful claims of the 'Appellants', which were in the nature of civil matters to be decided by the Civil Courts. The 'Liquidator' also failed to appreciate the business methodology between the parties and the claim of the 'Appellants' on the ownership of the rice which could not be put in the liquidation estate.

17. The 'Appellants' submitted that they conducted the business in good faith and as per usual business practices being followed in the unorganised sector. The 'Appellants' also submitted that oral agreement cannot be ignored which became the basis for the various transactions over the years between the parties. The 'Appellants' submitted that violation, if any, of any other law including for non-deduction of TDS under the Income Tax Act, or the Company Law etc. can be dealt with by the concerned authorities in due course and cannot be allowed to deny the 'Appellant's claim. Admittedly, the rice has already been disposed of and it is the request/ plea of the 'Appellants' that their money accrued on account of disposal of the rice by the 'Liquidator' of the 'Corporate Debtor' should be returned back to them.

18. Concluding the arguments, the 'Appellants' strongly pleaded that the 'impugned order' need to be set aside and 'Liquidator' need to be directed accordingly, upholding the appeal of the 'Appellants'.

19. Per- contra, the Counsel for Respondents, refuted all the averments made by the 'Appellants'. The 'Respondents' submitted that the

'Adjudicating Authority' had taken into account all the relevant facts into consideration before passing the 'impugned order' which is in accordance with the law/ Code.

20. The 'Respondents' submitted that the 'Appellants' on 13.02.2019 approached the 'Resolution Professional' with the claims that they had supplied the rice for the job work to the 'Corporate Debtor', which is lying in the godown of the 'Corporate Debtor' therefore the ownership of such rice belong to the 'Appellants' and same should be returned back to the 'Appellants'. The 'Respondents' stated that the claims could not be verified from various documents including material receipt notes, correspondence exchanged between the parties, acknowledgement by Mr. Himanshu Miglani (an ex-employee of the 'Corporate Debtor', who tried to act as a mediator for the 'Appellants' before the 'Resolution Professionals'), Reconciliation Statements prepared by the 'Appellants' showing the date of delivery, etc. The 'Respondents' mentioned that in the alleged Reconciliation Statements prepared by the 'Appellants', the 'Material Receipt Notes' (MRN Nos.) were mentioned to show the date of delivery, however the same were not complete and missed out several MRN Nos. in the Reconciliation Statement and for such cases the 'Appellants' did not mention the date of delivery, specific reference to any challan issued regarding return of material receipts etc. The 'Respondents' further alleged that the 'Appellants' submitted some of the unilaterally executed documents in support of the claims of delivery of rice which were not supported by any MRN or any material evidence.

21. The 'Respondents' submitted that the 'Appellants' had furnished 'Item Ledger (quantity)' of rice in their own stock registers provided to the 'Corporate Debtor' with admission that the 'Appellants' did not record the transaction of 3% rice given by them to the 'Corporate Debtor' as consideration of job work. As per the 'Respondents', the 'Appellants' also admitted that 3% rice claimed to be given during the relevant financial years has not been recorded as expenses in their Audited Financial Statement, as they did not receive any invoice of job work from the 'Corporate Debtor' from 01.10.2016.

22. The 'Respondents' further stated that the 'Appellants' suo-moto filed an additional affidavit before the 'Adjudicating Authority' with the affidavit of Mr. Himanshu Miglani, ex-employee of the 'Corporate Debtor' dated 03.11.2020 which did not prove the claims of the 'Appellants'. The 'Respondents' also stated that the 'Appellants' had submitted some of the MRNs with the alleged claims to have been issued by the 'Corporate Debtor' which, in fact were issued and signed by the same ex-employee Mr. Himanshu Miglani and not signed by 'Weigh Bridge/ Account Clerk' on such MRN and these MRNs were also not supported with 'Weigh Bridge Slips' in support of quantity supplied.

23. The 'Respondents' assailed the conduct of the ex-employee Mr. Himanshu Miglani, who sent an email dated 01.10.2019 to the 'Resolution Professional' enclosing the letter dated 01.10.2019 signed by Ex-Sr. Vice Senior President of the 'Corporate Debtor' wherein it was claimed

that the 'Appellants' were providing finance for purchase rice to ease the liquidity of the 'Corporate Debtor' in contrast with the claims made by the 'Appellants' for alleged job work. The 'Respondents' stated that this e-mail has not been withdrawn till date either by Mr. Himanshu Miglani or by Ex-Sr. Vice President of the 'Corporate Debtor'. The 'Respondents' further stated that Mr. Himanshu Miglani in affidavit dated 03.11.2019 has supported the claims of the 'Appellants' without withdrawing his e-mail dated 15.10.2019 and hence no document or affidavit bearing the signature of Mr. Himanshu Miglani can be treated as bonafide as his conduct is suspicious and questionable.

24. The 'Respondents' further stated that as a matter of fact none of the Suspended Director of the 'Corporate Debtor' or 'Senior Management Officials' came forward to handover the records of the 'Corporate Debtor' against which the 'Resolution Professional' had filed application under Section 19(2) of the Code before the 'Adjudicating Authority' in CA No. 163 of 2019 and based on the which, the directions were issued by the 'Adjudicating Authority' to the IBBI, who in turn, filed criminal case against the Suspended Director of the 'Corporate Debtor' before Session Court of Dwarka vide CC No. 1659 of 2019.

25. The 'Respondents' stated that initially, Brijesh Kumar Gupta and Associate, Chartered Accountants, were appointed to ascertain the claims of the 'Appellants' who submitted their Report on 21.02.2019 contesting the claims of the 'Appellants' regarding alleged agreements between the

'Appellants' and the 'Corporate Debtor' and found that no such agreements have been proved based on evidence and the documents submitted by the 'Appellants' which were not sufficient to prove the claims of the job work agreements between the 'Appellants' and the 'Corporate Debtor'.

26. The 'Respondents' emphasised that it was only on the request of the 'Appellants' that the 'Adjudicating Authority' appointed rice expert and document expert. The 'Respondents' submitted that the 'Report' of the rice expert did not identify seven items out of eight items claimed by the 'Appellant No. 1', and for eighth item- 42 MT of Imperial Brand was rejected by the document expert for want of relevant evidence and document. Similarly, as regards, claim of 'Appellant No. 2', rice expert identified 96 MT lying in 'Package in 50 kg marking Agrino Greece', however this claim was rejected by the document expert for want of evidence. The 'Respondents' submitted that as regard the claims of 'Appellant No. 3', although rice expert indicated 'Export Returned Goods' with two identification marks, however these were not supported by ownership of claims by the 'Appellant No. 3' and the document expert also did not support the claims. The 'Respondents' further submitted that the rice expert did not identify two items out of three items claimed by 'Appellant No. 4' and the third item identified by rice expert' as 'Loose in Gunny Bags', however the same was not supported by the 'Appellants' through evidence of delivery of such rice/ export returned goods and as such document expert rejected the claims.

27. The 'Respondents' stated that the document expert after detailed examination rejected the claims of the 'Appellants' on several grounds.

28. The 'Respondents' submitted that the affidavit provided by the ex-employee of the 'Corporate Debtor' showing rice inward to the premises of the 'Corporate Debtor', dated 03.11.2020 to the 'Appellants' is an after thought and issued much later i.e. after the submissions of the report by rice expert dated 10.10.2020 and document expert dated 12.10.2020. The 'Respondents' emphasised that the same Mr. Himanshu Miglani, who executed the affidavit supporting the claims of the 'Appellants', earlier informed the 'Resolution Professional' vide email dated 15.10.2019 stated that the 'Appellants' were only financiers to fund the stocks purchased to make the working capital available to the 'Corporate Debtor'. Whereas the affidavit dated 03.11.2019 of Shri Himanshu Miglani is completely contrary to his own earlier e-mail dated 15.10.2019 and therefore, it is clear that this affidavit has been obtained by the 'Appellants' from Mr. Himanshu Miglani to overcome the findings of the Documentation Expert.

29. The 'Respondents' submitted that out of 4 Appellants, 2 are the companies registered under the Companies Act and therefore these Company/ 'Appellants', cannot enter into any oral agreement with third party or without providing the authority in writing to do so as per the provisions of the Companies Act, 2013. The 'Respondents' stated that only authorised persons by the Board with specific-authority can enter into any specified agreement with third party which is absent in the present case and

therefore the arguments of the 'Appellants' of so-called business chain based on oral agreement is not legally tenable.

30. The 'Respondents' submitted that the 'Appellants' claims to have entered into agreement with the 'Corporate Debtor' from 01.10.2016 with the 'Corporate Debtor', has been raised for the first time in this appeal and no such claims was forming part of CA 215 of 2019 before the 'Adjudicating Authority'. The 'Respondents' submitted that even here the 'Appellants' failed to disclose the name of persons who entered into such agreement and their capacity and authority.

31. The 'Respondents' stated that the MRNs allegedly to have been issued by the 'Corporate Debtor' to the 'Appellants' do not support the claim of the rice of the 'Appellants'. The 'Appellants' have claimed that their ownership rice were lying in the premises of the 'Corporate Debtor', however, the large number of MRNs which have neither been referred nor in possession of the 'Appellants' as well as in the present appeal the 'Appellants' have not supported by all MRN or acknowledgements issued by the 'Corporate Debtor', as such the 'Appellants' claim of rice lying with the 'Corporate Debtor' and therefore their claims are unfounded and not supported by documentary evidence.

32. The 'Respondents' submitted that it is a matter of fact and record that the assets including stock lying in the godown is under registered charge under the Companies Act, 2013 with more than 10 Banks have claim of about Rs. 2,000 crores as Secured Creditors. There is no document on

record from bankers of the 'Corporate Debtor' to prove that goods supplied by the 'Appellants' would form the part of such claimed security/ charge.

33. The 'Respondents' submitted that the issue related to consignment note/ stuffing details for export in the invoice raised by the Appellants is their own document and not corroborated or confirmed with any other document on record. The delivery of reimported rice to the 'Corporate Debtor' is not proved with any cogent or material evidence and bond executed and submitted to the 'Custom Authorities'.

34. The 'Respondents' stated that the claim of the 'Appellant No. 2' on the basis of photograph in which some paper on top of it state that the goods hypothecated to the 'Saraswat Bank Limited' is not corroborated with any document issued by 'Saraswat Bank Limited' which permitted Appellant No. 2 to keep the hypothecated stock in the custody of the 'Corporate Debtor'.

35. The 'Respondents' submitted that the 'Appellants' failed to support their claims of oral agreements on the basis of document placed. The 'Respondents' re-emphasised that the 'Appellant Nos. 1 & 4' being corporate entities required specific power from the company in writing which has not filed and not available on records.

36. The 'Respondents' further submitted that similarly, the 'Appellant No. 2' has acclaimed itself as Partnership Firm and failed to mention in CA 215 of 2019 and/or in this appeal whether it is registered or not (as no document of registration is placed with CA 215 of 2019 and this appeal) and

whether the person filing CA 215 of 2019 and / or this appeal is duly authorised by the Partners or not.

37. The 'Respondents' emphasised that the alleged claim of industry practice is not proved by the 'Appellants' by way of any documentary or legally substantiable evidence and the alleged claim of oral agreement w.e.f. 01.10.2016 is also not proved by the 'Appellants'.

38. The 'Respondents' submitted that the alleged claims of the 'Appellants' regarding supply of rice for job work are not supported with the MRNs claimed to have been issued by the 'Corporate Debtor' for the reasons as explained hereinbefore. It is reiterated that the 'Appellants' claims for receiving back such processed goods from the 'Corporate Debtor' are not supported with any MRN or Delivery Challan. In addition to above, the document expert and rice expert report do not support such alleged claims of the 'Appellants'.

39. The 'Respondents' mentioned that the alleged stocks that are claimed by the 'Appellants' in CA 215 of 2019 were lying in the godown of the 'Corporate Debtor' where at number of places the board is displayed that contains 'Stock hypothecated to Banks', who disbursed more than Rs. 1,700 crore against stock and book debts to the 'Corporate Debtor', hence, the 'Appellants' cannot claim the ownership of such stock as owned by the 'Appellants'. It is also pertinent to mention here that as per the valuation carried out by the banks regarding, the possession of the 'Corporate Debtor' with local commissioner appointed by the 'Debt Recovery Appellate Tribunal'

by independent agencies/ professional (Shah Jindal and Associates, Chartered Accountants) on 09.01.2019 shows that the value of stock lying in the godown and factory warehouse of the 'Corporate Debtor' is Rs. 2.4658 crores, against total loan of approx. Rs. 1700 crores.

40. This 'Appellate Tribunal' noted the contention of the 'Appellants', being dealer in rice, had engaged the 'Corporate Debtor' for performing job work and mostly such business is in unorganised sector. We have taken into consideration that the 'Appellants' used to procure the rice from the various suppliers from the market who dispatched directly to the premises of the 'Corporate Debtor'. According to the 'Appellants', they used to export or domestic sale and as per their instructions the export/ domestic delivery used to take place directly from the premises of the 'Corporate Debtor', to the purchasers of such procured goods. The 'Appellants' explained that in exchange of these activities undertaken by the 'Corporate Debtor', the 'Corporate Debtor' was allowed to retain 3% of the rice as a consideration for his work and remaining 97% of the rice was to be dispatched as per instructions of the 'Appellants'.

41. This 'Appellate Tribunal' noted the averment of the 'Appellants' that this simple arrangement was continuing since 01.10.2016 to August 2018. The 'Appellants' have also claimed that this was based on 'Oral Agreements' as per business practice peculiar to such type of trade which is largely done by players in unorganised sector. The 'Appellants' amplified that law of the land does not make it necessary to enter into 'Written Agreement'. The

'Appellants' submitted that unfortunately from September 2018, things went in wrong direction and the 'Corporate Debtor' started blocking the access of the 'Appellants' to the rice available in the premises of the 'Corporate Debtor'. Subsequently, the CIRP was initiated against the 'Corporate Debtor' on 11.12.2018 and they had filed the Application for their claims on 21.11.2019 and subsequent to which the 'Adjudicating Authority' passed the order putting the 'Corporate Debtor' into liquidation on 17.02.2020. The 'Appellant' stated that on behalf of all four entities, which had different quantity of rice illegally retained by the 'Corporate Debtor', approached the 'Respondents' (the 'Resolution Professional'/ 'Liquidator') demanding return of the rice. It is further the case of the 'Appellants' since they made the payment of the rice and the role of the 'Corporate Debtor' was confined merely to the assigned activities in order to make the raw rice to the export quality and the 'Appellants' always remained the owners of the said rice. According to the 'Appellants', since the 'Corporate Debtor' did not have any ownership over the rice, the 'Resolution Professional' and subsequently the 'Liquidator' had no business or authority to deny the claims of the 'Appellants' to return the rice, in accordance with the law of the land/ the Code.

42. It is further the case of the 'Appellants' that although there were no written agreements between the parties, however, the facts of the case and the details of the transactions were available through series of documentary evidence including MRNs, invoices, details of trucks, Reconciliation

Statements prepared by the Appellants' and the acknowledgment by Mr. Himanshu Miglani who was an ex-employee of the 'Corporate Debtor'.

43. The 'Appellants' emphasised that the 'Liquidator' committed gross injustice in rejecting their claims on rice ownership and not taking any steps to return the rice and similarly the 'Adjudicating Authority' also gravely erred in dismissing their application before the 'Adjudicating Authority'. One of the main basis of the 'Appellants' claims seems to be the report of the rice expert which allegedly establishes the claims of the Appellants.

44. We observe that the 'Respondents'/ 'Liquidator', on the contrary, mentioned that he has taken all required steps to collate and verify the claims. In this directions, Brijesh Kumar Gupta and Associate, Chartered Accountants were appointed as experts to verify the claims of the 'Appellants'. This was done after approval of the CoC. However, the experts (Chartered Accountants) did not find the claims of the 'Appellants' to be genuine and tenable due to lack of documentary evidence to establish the claims of the 'Appellants'. The Chartered Accountants have submitted the Verification Report on 15.10.2019 stating that job work agreements have not been produced and many retail invoices have not been produced by the 'Appellants'. Similarly, Auditors also stated that the GST record and monthly returns were not provided by the 'Appellants' for verification of their claims.

This 'Appellate Tribunal' feels that Prima- facie, initial findings of Chartered Accountants cannot be faulted with.

45. We acknowledge the facts that the ‘Appellants’ who requested the ‘Adjudicating Authority’ for the appointment of two type of experts, namely, the rice expert and the document expert and the ‘Adjudicating Authority’ appointed Mr. Om Prakash Aggarwal as rice expert and M/s Lunawat & Co. (Chartered Accounts) as document expert. The document expert outrightly rejected the claims of the ‘Appellants’ and similarly the rice expert also did not establish the claims of the ‘Appellants’ in totality.

46. This ‘Appellate Tribunal’ notes that there were no written agreements or formal contracts to establish the relationship between the ‘Appellants’ and the ‘Corporate Debtor’, which could have been taken as the basis to determine genuineness of the alleged terms & conditions of alleged job work. This ‘Appellate Tribunal’ has also note that out of four ‘Appellants’, two are corporate entities registered under the Companies Act and whereas the third entity is a partnership firm. It is a matter of fact that a company registered under Companies Act has distinct legal identity and it conducts ‘Operation & Management’ of the company through its Board of Director, which in turn, through proper board resolutions, authorises to enter into the agreement and the contracts. The ‘Appellants’ herein failed to give any such details of legally enforceable agreement for contracts whether written or oral. It is also a standard norm that the corporate entity does business based on written binding contracts which are legally enforceable contracts to protect their rights.

47. The Indian Contract Act 1872, section 2(e), defines an agreements as "every promise and every set of promises, forming the consideration for each other is an agreement". It is important to note that all contracts are valid agreements but not all agreements qualify as valid contracts. An oral agreement is as equally valid, as a written one. The legality, of an oral agreement, cannot be questioned, if it falls under the ambit of the requirements stated in section 10 of the Indian Contract Act, 1872. A valid oral agreement is of value and can be enforced in the court of law. However, it is always difficult to prove the existence or the exact terms of the agreement, in case of dispute. Oral agreements are, therefore, permissible, but tricky to prove during dispute, as seen in the present case. It is based on several pieces of evidence.

This 'Appellate Tribunal' is conscious of the fact that the proceedings under I & B Code is summary proceeding and not like Civil Court, where the evidence are examined and cross examined, therefore, such examination/ cross examination of oral agreements do not strictly fall within the domain of the 'Adjudicating Authority'/ the 'Appellate Tribunal' in accordance with Code. As such, the oral agreements, although legally and may be also enforceable in normal cases, however this cannot be allowed in present case where different experts including two different sets of Chartered Accountants did not verify the veracity of the claims based on oral agreements for want of documentary evidence/ proof and who did not find the claims to be genuine.

48. This 'Appellate Tribunal' notes that the 'Respondents'/ 'Liquidator' has taken all steps to verify and establish the claims of the 'Appellants' by appointing the third party independent experts by engaging Chartered Accountants with the approval of CoC, however, the said expert Brijesh Kumar Gupta and Associate, Chartered Accountants did not accept the claims of the 'Appellants'.

Even M/s Lunawat & Co., who were appointed as document experts, later by the 'Adjudicating Authority' on the request of the 'Appellants' themselves, stated that the claims are not genuine. The relevant portion of the report of the rice expert who submitted their report on 12.10.2020 reads as under :-

"It is claimed by all these four vendors viz. SKG, TLS, NEON and GECPL that they had a job work arrangement with APFPL for packing of rice for onward sales and exports for which APFPL use to charge 3% of rice from the consignment received by it for job work, as consideration, and such consideration is paid to APFPL in the form of deduction in the quantity of rice itself towards its job work service charges. On detailed scrutiny of documents and claimed facts by the vendors, we observed and found number of the following shortcomings noted in the above transactions are as under:

a) That there is no written agreement between the vendors and Amira Pure Food Pvt Ltd (APFPL) as regards to the above stated job work and charges thereon, quantity sent for job work, the quantity deducted on account of 3%

charges and the fact that there is no agreement with either of 4 vendors (3 from Indore & 1 from Chennai) raises doubts.

b) That these four parties failed to provide any invoice raised by APFPL for the job work charges. informed, APFPL had not issued any invoice for the charges levied by it/ quantity deducted by it and amounts so paid in kind through BARTER system are covered as service charges in GST, but no GST liability was discharged at any point of time.

c) That all the 4 vendors have submitted that they have not accounted for these job work charges in the books of accounts as there was no financial transaction except deduction of 3% quantity of rice from consignment by APFPL which again raise doubts how the quantitative transactions are reconciled in financial books.

d) That since none of the vendors have accounted for these transactions in the books, TDS has also not been deducted as per provision of Income Tax on payments (in kind) to APFPL. In absence of any Invoice for job work and no deduction of tax at source, it is surprising how these transactions have been agreed to between vendors & APFPL.

e) That as per reconciliation statement of inward and outward stock statement submitted by vendors for our verification, it is observed that vendors have claimed that APFPL did not make any or partial supplies out of some of consignment sent for packing lying at APFPL premises. On

asking for further documents for substantiating their claims, we observe that:

I. There was no communication between any of the vendors with Amira Pure Food Pvt Ltd demanding the reason for holding up the stocks or not executing the job work or asking for return of consignment from APFPL

II. Despite the earlier consignment partial or full held by APFPL, the vendors kept on sending goods to APFPL for packing and export. On enquiring the same, no satisfactory response received.

III. The vendors have not provided any of the confirmation from APFPL at any point of time that APFPL is holding a specific quantity on behalf of any of the vendors to prove their claims. It is pertinent to mention here that all documents and papers are from vendors without any of the confirmations, papers or records from APFPL

IV. The vendors had not reflected separately quantity and value of closing stock lying with third party (APFPL) in their audited financial statements despite being requirement in Companies Act. This is applicable In 2 of the vendor case as their constitution is a Private Limited Company.

During the course of scrutiny of various documents and statements, vendor wise anomalies and observations are as below:

Neon International Traders: As claimed vide letter dated 28.09.2020, the vendor (NEON) has purchased rice from Shree Kalka Global during the period from 03.05.2017 to 01.08.2018 for export purpose tothe period from

21.05.2018 to 01.08.2018. These rice were to be delivered by SKG and exported from premises of Amira Pure Food Pvt Ltd Gurgaon. It is observed that the exports were made to same Importers to whom all other vendors were exporting Including SKG. Logic of transfer of ownership from SKG to NEON for stocks at APFPL Gurgaon premises and then exporting to same buyers overseas to whom SKG is already exporting has not been explained.

a) As submitted by the vendor in the captioned letter that he had no commercial transactions with APFPL except execution of export delivery from their premises by SKG which shows APFPL is not in picture so far as transactions of NEON is concerned as claimed.

b) All these supplies of 811.03 MT was exported to AMIRA, USA, Dubai, Germany and to TGG Australia. Out of this 64% of supplies were made to subsidiary/associate companies of APFPL which shows direct connection of APFPL with NEON

c) It is further claimed that 2 consignment of 42 MT each exported in March-April 2018 to TGG Australia were returned due to quality/brand issue by the importer and same were at APFPL Gurgaon. In our opinion, the NEON should have claim on SKG and not APFPL with regard to this 84 MT.

d) It is noted that there were 2 consignment of 42 MT each valued INR 66.23 Lac and were exported to AMIRA GMBH Germany on 15.05.2018 & 26.05.2018 which remained unpaid till 2019. On 11.12.2019 the vendor has reversed these transactions in books by passing an entry of re-

purchase for which no explanation provided. Status and accounting of these stocks in books has also not been explained....records also which is not in accordance with guidelines.

TLS Mercantile Pvt Ltd: As claimed by the vendor vide his letter dated 28.09.2020 that he had transaction with APFPL for job work & export from their premises from 27.08.2017 to 20.05.2018 for which 345.72 MT rice was delivered against which APFPL retained 10.13 MT as their job work charges @ 3% as agreed. They have claimed 58.94 MT of rice which comprises of 16.94 MT withheld by APFPL and 42 MT export returned rice

a) The vendor has submitted that there is no formal & written agreement for these services and job work charges thereon and also no financial transaction has been accounted for in the books including in inventory records and has contravened the provisions of GST & Income tax provision.

b) Out of consignments so delivered, APFPL withhold 16.94 MT of rice during February 2018 and in spite of this holding, the vendor continued to supply till 11.05.2018.

c) All these supplies of 318.65 MT was exported to AMIRA, USA, Germany and to TGG Australia. Out of this 44% of supplies Were made to subsidiary/associate companies of APFPL

d) It is further claimed that 1 consignment of 42 MT exported in April 2018 to TGG Australia was returned due to quality/brand issue by the importer and same was

returned at APFPL Gurgaon. The consignment returned In August and by that time there was no business activity going on at APFPL and old stock was also held by APFPL, reason for returning of shipment at Amira premises has not been properly explained with logical reason.

e) It is noted that there was 1 consignment of 21 MT valued |NR 17.68Lacs and exported to AMIRA GMBH Germany on 19.03.2018 had remained unpaid till 2019. On 11.12.2019 the vendor has reversed this transaction in books by passing an entry of re purchase for which no explanation provided. Status and accounting of these stocks in books has also not been explained. Similar transactions were also observed in other vendors records also which is not in accordance with guidelines.

Gurudeo Exports Corporation Private Limited: As claimed by the vendor vide his letter dated 28.09.2020 that he had transaction with APFPL for job work & export from their premises from 04.09.2017 to 21.08.2018 for which 1622.95 MT rice was delivered against which APFPL retained 41.40 MT as their job work charges @ 3% as agreed, The vendor has claimed 291..33 MT of rice which comprises of 249.33 MT withheld by APFPL and 42 MT export returned rice.

a) The vendor has submitted that there is no formal & written agreement for these services and job work charges thereon and also no financial transaction has been accounted for in the books including in inventory records in this regard which has resulted in contraventions of the

provisions of GST & Income tax. No satisfactory explanation provided by the vendor for these lapses

b) Out of some of consignments of March, April & May 2018 so delivered at the premises of APFPL Gurgaon for job work, APFPL withhold 249.33 MT of rice out of different consignments so delivered. In spite of this withholding of stocks, the vendor continued to supply the consignments till 21.08.2018. It is further observed that APFPL provided last job work on 24.06.2018 and 133.28 MT of rice in July 2018 till 21.08.2018. No explanation provided in this regard

c) All these supplies of 1373.62 MT was exported to AMIRA, USA, Dubai, Germany and to TGG Australia. Out of total exports by GECPL, 65% of supplies were made to subsidiary/associate companies of APFPL and balance to TGG Australia.

d) It is further claimed that 1 consignment of 42 MT exported in April 2018 to TGG Australia was returned due to quality/brand issue by the importer and same was returned at APFPL Gurgaon. It is observed that said consignment returned back in August 2018 and by that time there was no business activity going on at APFPL and old stock was also held by APFPL as explained above. The reason for returning of shipment at Amira premises in these circumstances where APFPL had no fault of consignment rejection has not been properly explained with logical reason.

e) It is noted that the vendor has exported 2 consignment of 42 MT each total valued at INR 67.17 Lacs and 4

consignment of 42 MT total valued INR 137.76 Lacs to AMIRA GMBH Germany on 21.03.2018 and 16/23.04.2018 which have remained unpaid. Out of this 2 consignment of 84MT for INR 67.07 Lacs were reversed on 03.07.2019 by passing an entry as export sales return for which no explanation provided. Status and accounting of these stocks In books has also not been explained. An amount of INR 137.85 Lacs is still outstanding as on 30th September 2020. There may have contravention of RBI guidelines in these transactions.

f) It is observed that in spite of 1622.95 MT of rice purchase and delivery at APFPL Gurgaon and 1373.22 MT of exports there from, there is no mention of these, in audited financial accounts for the above period in schedule for the above period, revenue has been shown from "Trading of Agri Commodities" where sales and purchase have. been shown from Madhya Pradesh, Maharashtra, Gujarat and Rajasthan and there is no mention of above transaction. No satisfactory reply received from the vendor.

Shree Kalka Global: As claimed by the vendor vide his letter dated 28.09.2020 that he had transaction with APFPL for job work & export from their premises since, 2016 till 21.08.2018 for which 5747.97 MT rice was delivered against which APFPL retained 166.03 MT as their job work charges @3% as agreed. The vendor has claimed that APFPL started withholding rice from time to time out of various consignment from 14.02.2018 and in total withheld 274.18 MT of rice till last consignment on 21.08.2018.

a) The vendor has further submitted that he had supplied 462.287 MT of rice to APFPL at Gurgaon for domestic supplies to various customer from 10.03.2018 till 22.05.2018 out of which 219.232 MT was withheld by APFPL. It is observed that APFPL has not provided any services for these consignment vendor has not mentioned any job work charges against these consignment. Since there is no job work or service charges against these consignment as per statements provided by the vendor, we are failed to understand the Logic of sending these consignment & then dispatching to other customer from APFPL Gurgaon premises without any charges. No explanation provided in this regard by the vendor.

b) The vendor has submitted that there is no formal & written agreement for these services and job work charges thereon and also no financial transaction have been accounted for in the books Including in inventory contraventions of the provisions of GST & Income tax Act. No satisfactory explanation provided by the vendor for these lapses.

c) It is observed that out of some of consignments from 14.02.2018 so delivered at the premises of APFPL Gurgaon for job work, APFPL withhold 274.18 MT of rice out of different consignments so delivered. In spite of this withholding of stocks, the vendor continued to supply the consignments till 23.08.2018. It is further observed that APFPL provided last job work on 11.08.2018 and in spite of this vendor supplied 3 consignment of 89.06 MT of rice on 21.08.2018. No explanation provided in this regard. We may add here that out of total holding of stock, 179.28 MT

of rice belonged to one supplier M/s Hanuman Overseas, Delhi and last 3 consignment as mentioned above are also from same supplier.

d) All these supplies of 4459.93 MT was exported to AMIRA, USA, Dubai, Germany and to TGG Australia and some other importers. Out of total exports by SKG, 64% of supplies were made to subsidiary/associate companies of APFPL only.

e) It is noted that the vendor has exported 8 consignment total valued at INR 439.07 Lacs to AMIRA GMBH Germany from 19.03.2018 to 21.07.2018 which have remained unpaid. Out of this 2 consignment valued for INR 67.07 Lacs were reversed on 03.07.2019 by passing an entry as export sales return for which no explanation provided. Status and accounting of these stocks in books has also not been explained. An amount of INR 327.16 Lacs s still outstanding as on 30th September 2020. There may have contravention of RBI guidelines in thesp transactions.

CONCLUSION:

In view of the above and on the basis of scrutiny, analysis, review of documents, statements, financial statements and disclosure by the vendors as per their letter dated 28.09.2020 may conclude that although purchase & 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 APFPL in books of accounts of these 4 vendors, non-deduction of applicable TDS and non-recognition of the ownership of their stocks in their own audited financial statements and

circumstances attached with the situations as explained above, we are of the opinion that these documents produced by these 4 vendors are not sufficient to substantiate their own claim and we have reached to this opinion and conclusion considering the following facts:

a) There is no written agreement of any of the vendor with APFPL towards these transactions and therefore, there is no evidence to prove that there existed any job work agreement between these 4 Vendors and APFPL.

b) As claimed by vendors, no accounting entries passed in books of accounts and non-compliance of various provisions of GST and Income Tax Act.

c) None of the 4 Vendor provided any document which shows that they were the owner of the stock of rice that they are claiming to be their own as these stocks are not forming part of their own books of accounts.

d) These four vendors have provided their own documents which we consider as single sided records and statements from vendors only. Not even a single confirmation from APFPL with regard to holding of stock by them or export returns and any financial transaction

e) There cannot be so many co-incidences in all these web of transactions as claimed by all the vendors and point towards circular and round tripping transactions viz:

I. All 4 vendors have claimed that there is no formal agreement for job work with APFPL;

II. All vendors had dealing tenure with APFPL from August-September 2017 till July-August 2018 except SKG who was dealing since 2016.

III. APFPL started withholding consignment of all vendors from March 2018 and all of them continued to supply consignments in spite of these withholding of stock by APFPL

IV. All vendors supply to TGG Australia during March 2018 with returned Issue end-April of Quality/Brand and all supplies were returned at AMIRA Gurgaon Premises in spite of the fact that activity had stopped and there was stocks which was already held by AMIRA.

V. All the vendors had exported rice to AMIRA, Germany from March 2018 to June-July 2018 and then reversed one or two consignments as export return/re-purchase in July-September 2019 which does not seems to be in order & may be against the provisions of RBI. Further very heavy amount is still outstanding in the books of two vendors for which no explanation received.

LIMITATIONS AND DISCLAIMER:

1. There are inherent limitations due to non - availability of certain crucial and relevant information from the vendors relating to specified scope of our work.

2. We have relied on the records and documents produced before us and representations as provided by the vendors and we do not certify the authenticity of such transactions.

3. In view of non-availability from Amira Pure Food P Limited of any of the document, confirmation, statement or records pertaining to commercial transaction entered between vendors & APFPL, we have relied only on the documents/ information provided by the vendors.”

(emphasis supplied)

49. From the averments and the above discussed report of the document expert, it transpires that the claims of the ‘Appellants’ were not accepted mainly on grounds :-

- (a) Absence of written agreements between the parties,
- (b) Non-submission of invoices by the ‘Appellants’ issued by the ‘Corporate Debtor’ for the job works for the relevant period,
- (c) No evidence of payment of service tax on job work before GST regime became applicable w.e.f 01.07.2017 and evidence regarding GST payment after 01.07.2017,
- (d) Non accounting of job work payment by the ‘Appellants’ in their own financial books.
- (e) No TDSs under Income Tax Act, 1961.
- (f) No challans and/or material issue notes issued by the ‘Corporate Debtor’.
- (g) The Reconciliation Statements prepared and submitted by the ‘Appellants’ mentioning the date of purchase and delivery, however, omitted to mention the date of delivery of processed rice.

(h) No documentary evidence explaining the efforts put in by the 'Appellants' in claiming the return of goods from the 'Corporate Debtor' prior to their approach to the 'Resolution Professional' vide letter dated 13.02.2019.

(i) No cogent reasons as to why, the 'Appellants' continued to supply the rice when even allegedly earlier rice were not returned.

(j) No confirmation of holding of stock for job work by the 'Corporate Debtor' over the period of alleged two years.

(k) No disclosures made by the 'Appellants' in their own financial record disclosing the fact that claimed stocks belongs to the 'Appellants' are lying with the 'Corporate Debtor' for job work.

50. This 'Appellate Tribunal' prima-facie do not find any fault in the report of the document expert. The report of the rice expert seems logical and based on all documentary evidence made available to experts.

51. This 'Appellate Tribunal' observe that the claims of the 'Appellants' need to be crystal clear and cannot be on the basis of assumptions and presumptions like Oral Agreements without any specific details, more so when the 'Corporate Debtor' and the Suspended Director/ Corporate Debtor were allegedly involved in fraud with Bank for over Rs. 1700 crores and who were investigated by the CBI and case seems to be still on.

52. Similarly, this 'Appellate Tribunal' has also taken note of the report of Mr. Om Prakash Garg, the rice expert who submitted the report on 10.10.2020. The relevant portion of the report of the rice expert reads as

under:

OM PRAKASH GARG
RICE EXPERTS
522/525 1ST FLOOR BHAWAN 2ND FLOOR
ROOM NO.209 LAHORI GATE NAYA BAZAR,
DELHI-110006
MOBILE NO:9899603396
EMAIL ADDRESS:omprakashrice@gmail.com

Dated: 10.10.2020

To,
M/s.Gurudeo Exports Corporation Pvt. Ltd., Indore
M/s.Shree Kalka Global, Indore
M/s.Neon International Traders, Chennai
M/s.TLS Mercantile Pvt. Ltd., Indore

Sub: Report on identification of quality/grades, varieties of Rice lying at the manufacturing facility of Amira Pure Foods Pvt, Ltd, situated at 21st Milestone, Pataudi Road, Harsaru, Distt.Gurgaon-123504 (Haryana)delivered.

Dear Sirs,

For reference in this report:

A. M/s.Gurudeo Exports Corporation Pvt. Ltd., Indore, would be referred as "GECPL"
B.M/s.Shree Kalka Global, Indore, would be referred as "SKG"
C.M/s.Neon International Traders, Chennai would be referred as "NIT"
D.M/s.TLS Mercantile Pvt. Ltd., Indore would be referred as "TLSMPL" and
E.M/s. Amira Pure Foods Pvt. Ltd.,Harsau, Gurgaon would be referred as "APFPL"

I have been appointed on 03.09.2020 by the Four entities, namely, GECPL, SKG, NIT and TLSMPL, in terms of order dated 24.08.2020 of Hon'ble NCLT Special Bench, Court VI, Delhi for identification of quality/grades and varieties of the Rice given on Job Work to APFPL, reportedly, related to above four entities. I have carried out identification/grades and varieties of Rice with APFPL, based on the Documents and information provided to me by the above parties concerned.

I have carried out the identification/grades and varieties of Rice with APFPL and visited the site along with representatives of the entities along with Liquidator & his staff and the document expert. Based, on my estimation/experience and long standing in the field of Rice only I report my findings as under:

Scope of Job: To identify/quality of Rice with APFPL claimed by above entities.

Location of visit for the Job: Amira Pure Foods Pvt. Ltd. situated at 21st Milestone, Pataudi Road, Harsaru, Distt.Gurgaon-123504 (Haryana)

Date of visit: 09.10.2020

Om Prakash Garg

OM PRAKASH GARG
RICE EXPERTS
522/525 PARAS BHAWAN 2ND FLOOR
ROOM NO.209 LAHORI GATE NAYA BAZAR,
DELHI-110006
MOBILE NO:9899603396
EMAIL ADDRESS:omprakashrice@gmail.com

Brief of the matter:

The above entities were dealing with APFPL and had been delivering various grades/quality and varieties of Clean and Sortex Rice directly to APFPL, purchased by them as per invoices of their suppliers in their name through directly from the place of suppliers to APFPL premises at Gurgaon, for job work.

Details of stock lying with APFPL:

The details regarding stock held by APFPL as given by the four entities as per documents are as under:

1.M/s. Gurudeo Exports Corporation Pvt.
Ltd., Indore

Details of stock with APFPL

	Variety of Rice	Qty. In MT	Identification Mark
1	SUGANDHA STEAM	90.02	
2	PARMAL STEAM	6.00	
3	TRADITIONAL RAW	19.92	
4	1121 STEAM	74.69	
5	1121 STEAM 2ND WAND	19.77	
6	1121 RAW	18.95	
7	PUSA RAW	19.97	
8	EXPORT RETURN STOCK	42.00	IMPERIAL BRANDING HAVING BATCH CODE 277104
	TOTAL	291.32	

2.M/s. SHREE KALKA GLOBAL, Indore

(A) Details of stock with APFPL

S.No	Variety of Rice	Qty. In MT	Identification Mark
1	SONA MASURI	89.94	
2	1121 STEAM	69.21	
3	1121 STEAM 2ND WAND	19.41	
4	PUSA RAW	96.00	PACKED IN 50 KG PP BAGS MARKING AGRINO GREECE
	TOTAL	274.56	

Om Prakash Garg

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 EMAIL ADDRESS:omprakashrice@gmail.com

(B) Rice stock for domestic sales lying with APFPL

S.No	Variety of Rice	Qty. In MT	Identification Mark
1	DAILY DUBAR	23.00	
2	MAJESTIC MOGRA 1	1.00	
3	STANDARD MOGRA 2	33.00	
4	STAR KINKI	40.00	
5	AMIRA GURU KINKI KINKI 2	69.00	
6	AGL UNIQUE GURU MOGRA	1.00	
7	DUBAR LOOSE	14.00	
8	BROKEN LOOSE	6.00	
9	TIBBAR LOOSE	4.00	
10	MIX BROKEN LOOSE	28.23	
	TOTAL	219.23	

3.M/s. NEON INTERNATIONAL TRADERS

Details of Rice lying at APFPL

S.No	Variety of Rice	Qty. In MT	Identification Mark
1	EXPORT RETURN STOCK	42.00	PACKED IN AMIRA PREMIUM BRAND BATCH 238028
2	EXPORT RETURN STOCK	42.00	LOOSE IN GUNNY BAGS
	TOTAL	84.00	

M/s. TLS Mercantile Pvt. Ltd., Indore

Details of Rice lying at APFPL

S.No	Variety of Rice	Qty. In MT	Identification Mark
1	1121 CREAMY SELLA	8.94	
2	MP PUSA SELLA	8.00	
3	EXPORT RETURN STOCK	42.00	LOOSE IN GUNNY BAGS
	TOTAL	58.94	

PROCEDURE FOLLOWED:

I have carried out identification based, on documents and information provided to me by the above entities and the document expert. My job was to identify the quality and grades and varieties of Rice lying with APFPL, which I have physically carried out as per prevailing methods by taking samples at the site from each and every lots lying at the factory of APFPL and my understanding based on my long

Om Prakash Garg

OM PRAKASH GARG
RICE EXPERTS
522/525 PARAS BHAWAN 2ND FLOOR
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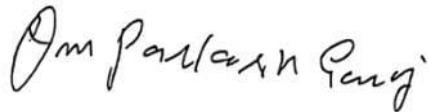
MOBILE NO:9899603396

EMAIL ADDRESS:omprakashrice@gmail.com

experience and estimations, procedure oriented approach to identify the quality |
am of the opinion that the Rice of the following varieties are found at the factory
of APFPL, as under:

S.No.	Details of various varieties/ grades of Rice
1	SONA MASOORI RAW
2	PUSA RAW
3	1121 STEAM
4	1121 STEAM 2nd WAND
5	SUGANDHA STEAM
6	PARMAL STEAM
7	TRADITIONAL RAW
8	1121 RAW
9	1121 CREAMY SELLA
10	MP PUSA SELLA
11	MP PUSA SELLA
12	IMPERIAL BRAND RETURN STOCK
13	DAILY / DUBAR
14	MAJESTIC / MOGRA 1
15	STANDARD / MOGRA 2
16	STAR / KINKI 1
17	AMIRA/ GURU/ KINKI / KINKI 2
18	AGL UNIQUE/ GURU UNIQUE / MOGRA 3
19	DUBAR LOOSE
20	BROKEN LOOSE
21	TIBAR LOOSE
22	MIX BROKEN LOOSE

It is further stated that out of total Rice of various qualities, grades and varieties, presently lying at the premises of the APFPL, the claim of the Rice by all four entities can be easily identified.



(Om Parkash)
Rice Expert
Place: New Delhi

53. This 'Appellate Tribunal' note that the 'Respondents' made averments during hearing that the one single visit was made by the rice expert on 09.10.2020 to the premises of the 'Corporate Debtor' and reported with partially identification of the rice belonging to the Appellant involving huge quantity of stock at the factory premises of the 'Corporate Debtor' including 291.33 MT of Gurudeo Exports Corporation Pvt. Ltd, 493.42 MT of Shree Kalka Global, 84.00 MT of Neon International Traders and 58.94 MT TLS Mercantile P. Ltd. and total rice claimed to have been identified by the rice expert was 927.69 MT of four 'Appellants' altogether in one single visit by rice expert.

We consciously note genuine concerns of the 'Respondents'/ 'Liquidator' that such task of identification in few hours of single days looks improbable, very difficult if not impossible and raises issues regarding seriousness and the acceptability of the report. Moreover, as per the 'Liquidator', the rice expert report did not prove the claims of the 'Appellants' in so much so, the 'identification mark' in Item No. 1 to 7 of Gurudeo Exports Corporation Ltd., identification mark in serial no. 1 to 3 (detail of stock with 'APFPL') and no serial no of rice stock for domestic sale lying with 'APFPL' of 'Shree Kalka Global', identification mark in serial no 1 and 2 of 'TLS', were not reported and explained in the report of the rice expert.

Similarly, other discrepancies of the report of rice expert were pointed out by the 'Liquidator' as noted in earlier paragraphs.

54. We tend to agree with the 'Resolution Professional'/'Liquidator' that the report of the rice expert perhaps has been prepared in hurry and can not be treated as conclusive and authentic and therefore cannot be fully relied upon in order to accept the claims of the 'Appellants'.

55. We note that the 'Appellants' have not disputed that the 'Corporate Debtor' never issued any invoice of job work to the 'Appellants' and the 'Appellants' also admitted that they have not recorded the payment of job work consideration in their own 'Audited Books of Accounts'.

56. This 'Appellate Tribunal' has also taken into consideration the fact that no evidence by way of tax paid either on account of service tax or GST or TDS under Income Tax Act, could be furnished by the 'Appellants' which could help us to establish the claims of the 'Appellants' as supporting documents. The absence of such tax documentation do not help in supporting the claims as an additional proof of such transactions.

57. Similarly, this 'Appellate Tribunal' also note that no records of such transactions have been reported by the 'Appellants' in their financial statements or stock registers, which also do not help the 'Appellants' herein in substantiating their claims and rights against the 'Corporate Debtor'.

58. This 'Appellate Tribunal' also note from the averment of the 'Respondents'/'Liquidators' that the 'Appellants' could not produce the material receipt notes issued by the 'Corporate Debtor' as per their own

reconciliation Statements and there is a huge gap of 383.67 MT of Appellant No. 1, 562.19 MT of Appellant No. 2 and 5.31 MT of Appellant No. 4. Absence of such vital records, based on which claims have been filed, again do not help the cause of the 'Appellants'.

59. This 'Appellate Tribunal' note with caution the contradictory stand taken by Mr. Himanshu Miglani and also the fact that the most of acknowledgment claimed by the 'Appellants' have also been signed by the same ex-employee Mr. Himanshu Miglani.

60. In a reference, the 'Liquidator' brought out the fact the CBI is already investigating the case against the 'Corporate Debtor' involving Rs. 1,700 crores of the claims of the several banks and the stock claimed by the 'Appellants' have not been proven belonging to them.

61. We feel that no concrete evidence or documentary proof are available to substantiate the claims of the 'Appellants'. It may be the case that earlier the 'Appellants' and the 'Corporate Debtor' were involved in such types of trade practices, even may be on the basis of oral agreements and sometimes in violation of relevant laws like Companies Act, 2013, GST or TDS under Income Tax Act, etc. but to accept the claims of the 'Appellants' at the stage of 'Resolution and now Liquidation' proceedings, the claims have to be real, based on solid documentary evidence and in accordance with law. These cannot be allowed on the basis of indirect or circumstantial or secondary evidence/ documents.

62. Based on above detailed analysis and after taking into account all the averments and records made available, we do not find any error in the 'impugned order'. The 'Appeal' devoid of any merit is dismissed. No costs. The Interlocutory Application, if any, are closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Naresh Salecha]
Member (Technical)**

Simran/RR