

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 5208 OF 2024

&

Restored Company Petition (IBC) /15/ND/2024
(Old Case C.P. (IB)/2405/ND/2019)

IN THE MATTER OF:

ASHU AGENCIES
THROUGH IT'S PROPRIETOR SH. ASHU CHAUDHARY
JAIN MANDIR WALI GALI, BIMA NAGAR SOOT MILL,
G.T. ROAD, ALIGARH, U.P.

ADMINISTRATIVE OFFICE:
KHASRA NO.85, NGLA MURARI SARSOL,
G.T. ROAD, ALIGARH, U.P.

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

AL-DUA FOOD PROCESSING PVT. LTD.
THROUGH ITS DIRECTOR
REGISTERED ADDRESS: 114, BABER ROAD, NEW DELHI -110001
...RESPONDENT/CORPORATE DEBTOR

ORDER DELIVERED ON: 24.09.2025

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Abhinav Prakash, Mr. Himanshu Singh,
Adv.

For the Respondent : Mr. S. A. Saud, Mr. Mohd. Shohib, Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This instant application was filed by Ashu Agencies (hereinafter referred as 'Applicant'/ 'Operational Creditor'), having office at Jain Mandir Wali



Gali, Bima Nagar Soot Mill, G.T. Road, Aligarh, U.P., under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s AL-Dua Food Processing Pvt. Ltd., (hereinafter referred as 'Respondent Company' or 'Corporate Debtor').

2. The Respondent Company **M/s AL-Dua Food Processing Pvt. Ltd.**, having CIN: U15111DL2005PTC143959 was incorporated on 22.12.2005 under the provisions of the Companies Act, 1956 having its registered office situated at 114, Baber Road, New Delhi -110001. The Corporate Debtor is involved in the production, processing and preservation of meat and meat products.
3. The total amount of default alleged in Part-IV of the application preferred under Section is Rs. 2,48,46,299.76/- (Rupees Two Crores Forty Eight Lac Forty-Six Thousand Two Hundred Ninety-Nine and Seventy-Six Paise Only) from the date of Sale Invoice amount due till actual realization.
4. **Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.**
 - i. The Operational Creditor is engaged in the business of Trading Kraft Paper Reels and is not a manufacturer in this field. The Corporate Debtor had placed an oral purchase order for the supply of Kraft paper reels with the Operational Creditor. In turn, the Operational Creditor as per the specification provided by the Corporate Debtor, forwarded the said orders to various manufacturer companies, namely, Ashoka Pulp and Paper Pvt Ltd., Disha Industries Pvt. Ltd., Rama Shyam Paper, Suchi Paper



Mills Ltd., Multiwal Pulp and Board Mills, Shree Sidhballi Paper Mills.

- ii. Pursuant to the directions and instructions of the Operational Creditor, the manufacturer companies supplied the Kraft paper reels directly to the Corporate Debtor and further issued a payment authority letter to the Corporate Debtor directing it to deposit the payment with the Operational Creditor. Thereafter, upon the commencement of GST, the Operational Creditor raised direct sale invoices against the Corporate Debtor for the goods/material supplied.
- iii. The Corporate Debtor had placed oral purchase orders with the Operational Creditor for supply of Kraft Paper reels. During the financial year 2017-2018, the Corporate Debtor purchased Kraft Paper Reels worth Rs. 4,62,92,809/-, against which part payment of Rs. 2,18,09,383/- was made towards discharge of its liability.
- iv. In the financial year 2018-2019, the Corporate Debtor further purchased Kraft Paper Reels worth Rs. 50,96,977.96/-, against which part payment of Rs. 46,01,894/- was made.
- v. After adjusting the said part payments, the account of the Corporate Debtor reflects an outstanding debit balance of Rs 2,48,46,299.76/- (Rupees Two Crores Forty-Eight Lakhs Forty-Six Thousand Two Hundred Ninety-Nine and Seventy-Six Paise Only) payable to the Corporate Debtor.
- vi. The Corporate Debtor had given account confirmation to the Operational Creditor, which confirm the debit amount & liability against the Corporate Debtor.
- vii. The Corporate Debtor is legally liable to pay a sum of Rs. 2,48,46,299.76 (Rupees Two Crores Forty-Eight Lakhs Forty-Six Thousand Two Hundred Ninety-Nine and Seventy-Six Paise Only) to the Operational Creditor.



- viii. Despite repeated requests and personal visits, the Corporate Debtor failed to make payment to the Operational Creditor. Consequently, the Operational Creditor issued a demand notice dated 25.07.2019 under Section 8(1) of the Insolvency and Bankruptcy Code, 2016, through speed post calling upon the Corporate Debtor to pay a sum of Rs. 2,48,46,299.76/-. The Corporate Debtor duly replied to the Demand Notice.
- ix. The certificate issued by the chartered accountant in respect of the balance payment towards the corporate debtor is annexed with the application.

5. **REPLY BY THE CORPORATE DEBTOR**

- i. The Corporate Debtor was a subsidiary of its holding company M/s M.K. Overseas Private Limited. Earlier the day to day working, conduct and business affairs of the corporate debtor and the holding company M/s M.K. Overseas Pvt. Ltd. was being looked after, controlled and managed by its earlier directors namely Mr. Mohammed Kamil and Ms. Nasira Begum both resident of 20, Fire Brigade Lane, Connaught Place, New Delhi-110001. Mr. Mohammad Kamamil, Mrs. Nasira Begum and the said company M/s M.K. Overseas Pvt. Ltd. have sold their entire equity shares to Al Hamd Agro Foods Products Pvt. Ltd. and Mr. Mohd. Zaheer.
- ii. The management of the corporate debtor was taken over by its present management from its earlier management w.e.f. 08.07.2018 and it was agreed by its earlier management that the liability of its certain sundry creditors including the present operational creditor be transferred to the holding company M/s MK Overseas Pvt. Ltd. and the said transferred liability shall be borne and paid by their holding company M/s M.K. Overseas Pvt. Ltd.
- iii. The Operational Creditor sent a letter dated 30.06.2018 to the earlier management of the Corporate Debtor to the effect that it



has no objection if the debit balance of Rs.2,47,69,431/- is transferred to M/s M.K. Overseas Pvt. Ltd., and original of the said letter was given to the present management by the earlier management of the corporate debtor.

- iv. The Corporate Debtor, on enquiry was informed by the earlier management that the said letters are signed by Shri Jagveer Singh, father of Shri Ashu Chaudhary, the sole proprietor of the operational creditor in the present case.
- v. As per the agreement and arrangement between the Corporate Debtor and M/s. M.K. Overseas Pvt Ltd on 07.07.2018 the amount of Rs. 2,47,69,431/- was payable by M/s M.K. Overseas Pvt. Ltd. and not by the Corporate Debtor and it was strongly advised by the corporate debtor in its reply dated 05.08.2019 to the legal notice dated 25.07.2019 sent by the operational creditor. The Corporate Debtor once again requested to the Operational Creditor to take legal proceeding against M/s M.K. Overseas Pvt. Ltd. for the recovery of its amount due, presently if any and withdraw the present application/proceedings filed against the corporate debtor.
- vi. Moreover, the Corporate Debtor received the copies of two notices sent by email by M/s SPJ Cargo Pvt. Ltd. and M/s SJ Cargo Movers wherein they have sent legal notice U/s 8 of the I.B. Code, 2016 to M/s M.K. Overseas Pvt. Ltd. demanding their money from M/s M.K. Overseas Pvt. Ltd. earlier payable by the corporate debtor.
- vii. It is submitted that there is difference in the amount claimed in the application and the letter dated 30.06.2018 sent by the operational creditor. In the application under reply the operational creditor has demanded a sum of Rs. 2,48,46,299.76 whereas in the said no objection letter dated 30.06.2018 the amount agreed to be transferred to the account of M/s M.K. Overseas Pvt. Ltd. is Rs.2,47,69,431/-.



viii. The Corporate Debtor is not liable to pay any interest at the rate of 24% per annum as alleged/ being demanded by the operational creditor or any other interest for the simple reason that it is not liable to pay any amount to the Operational Creditor.

6. The Corporate Debtor has also filed an application bearing **I.A. NO. 5208 of 2024** under Rule 52 of the National Company Law Tribunal Rules, 2016 to issue summons for appearance of the Resolution Professional of M.K. Overseas Private Limited asking to produce the relevant financial statements of M.K. Overseas Private Limited including Ledgers, Books of Accounts and such other documents pertaining to 2017-18, 2018-19 and 2019-2020, which would show the details of assets and liabilities retained by M.K. Overseas Private Limited for the relevant period. The Corporate Debtor submitted that fully owned companies along with their parent company should be treated as a single economic entity as the said principle has been recognized in the case of DHN Food Distributors Ltd. Vs London Borough of 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 Limited (2011) SCC OnLineDel482. It is also submitted that the liability of the corporate debtor is the liability of the erstwhile holding company M K Overseas Pvt. Ltd. and their directors. It has also been evidenced from the share purchase agreement, executed by the Corporate Debtor that the liabilities due towards the applicant were to remain with MK Overseas Pvt Ltd where entire control of the corporate debtor got transferred to the new holding company namely, AL Hamid 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 RP of MK Overseas that he was required to appeal before the bench to comply with order dated 05.11.2019.



7. On 22.05.2025, the RP of M.K. Overseas Pvt. Ltd. filed its report in terms of order dated 26.03.2025 and 01.05.2025 and stated the following:-
- i. This Adjudicating Authority vide order dated 19.09.2019 initiated CIRP against M.K. Overseas Private Limited under section 7 of the IBC and appointed Mr. Suresh Kumar Jain as IRP who was confirmed as RP vide 2nd CoC meeting dated 30.10.2019.
 - ii. Erstwhile RP conducted the CIRP wherein a Resolution Plan was approved by the CoC and the same was put before the Adjudicating Authority.
 - iii. The Hon'ble NCLAT vide its order dated 09.02.2023 appointed Sapan Mohan Garg, as the Resolution Professional for M.K. Overseas Pvt. Ltd.
 - iv. Further, vide order dated 08.07.2024, the Adjudicating Authority sent the matter back to the CoC for reconsideration which was received on 09.07.2024.
 - v. The CoC in its commercial wisdom rejected the revised Resolution Plan and approved the agenda for sale of Corporate Debtor as going concern in liquidation and the same is pending for adjudication.
 - vi. The RP has placed on record the audited balance sheets for FY 2017-18, 2018-19 and 2019-20 of M.K. Overseas Pvt. Ltd.

ANALYSIS AND FINDINGS

8. We have heard both the parties and perused the averments made in the application, reply filed by the Corporate Debtor and written submission presented by Operational Creditor and Corporate Debtor. Since, the registered office of the Respondent/Corporate Debtor is in Delhi, this Adjudicating Authority is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate



Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.

9. In order to determine the admissibility of petition for initiating CIRP under section 9 of the Code, the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353***, is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:

- a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (Rs. 1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
- b) Whether the documentary evidence furnished with the application Shows that the aforesaid debt is due and payable and has not yet been paid?
- c) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

10. In the first instance, to determine whether the said amount claimed by the Operational Creditor would fall under the ambit of Operational Debt, it is pertinent to analyze the definition of 'Operational Debt' as mentioned under Section 5(21) of the Insolvency and Bankruptcy Code, 2016. Under the said section, 'Operational Debt' is defined as:

"A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority".

11. While analyzing the present facts in the light of the abovementioned provision, it is pertinent to keep in mind that the Operational Creditor was approached by the Corporate Debtor for supply of Kraft Paper reels. During the financial year 2017-2018, the Corporate Debtor



purchased Kraft Paper Reels worth Rs. 4,62,92,809/- against which part payment of Rs. 2,18,09,383/- was made towards discharge of its liability. Further, in 2018-2019 the Corporate Debtor further purchased Kraft Paper Reels worth Rs. 50,96,977.96/-, against which part payment of Rs. 46,01,894/- was made. Therefore, the outstanding debt which is due and payable to the Operational Creditor would fall under the ambit of 'Operational Debt' and hence, the said Creditor would be termed as the 'Operational Creditor' within the meaning of Section 5(20) of the Code.

12. It is contended by the Corporate Debtor in its reply that the amount was payable by M/s M.K. Overseas Pvt. Ltd. and not by the corporate debtor and the Operational Creditor was requested to take legal proceeding against M/s M.K. Overseas Pvt. Ltd. for the recovery of its amount due, presently if any and withdraw the present application/proceedings filed against the corporate debtor. This itself amounts to an admission that the debt exists, only the liability is being shifted. Therefore, the Corporate Debtor has, in fact, acknowledged the existence of debt.

13. The Corporate Debtor has opposed the petition primarily on the ground that the liability was novated and transferred to its erstwhile holding company, M.K. Overseas Pvt. Ltd., on the basis of certain audit reports and an alleged consent letter dated 30.06.2018.

14. It is noted that the Corporate Debtor has itself received goods, invoices were raised in its name, GST returns reflect supplies made to the



Corporate Debtor, and part payments were also made by the Corporate Debtor. The plea of novation is bald defence unsupported by any tripartite agreement releasing the Corporate Debtor from its liability. Mere internal arrangements between group companies cannot absolve the Corporate Debtor of its obligations towards third-party creditors. These instances collectively support the conclusion that the Corporate Debtor had in connivance with M.K. Overseas Pvt Ltd created a situation to defeat claims of creditors of Corporate Debtor and mechanized documents to defraud the creditors of Corporate Debtor.

15. The defence taken by the Corporate Debtor is that the applicant had given consent letter for transfer of debt, this contention 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 Private Limited. The applicant was not privy of the said contract hence the agreement is not binding on the applicant. Therefore, the alleged “no objection” letter dated 30.06.2018 is disputed and cannot, by itself, extinguish liability of the Corporate Debtor. The defense raised does not qualify as a pre-existing dispute under the test laid down by the Hon’ble Supreme Court in Mobilox Innovations Pvt Ltd v. Kirusa Software Pvt. Ltd (2018) 1 SCC 353.

16. We are of considered view that M.K. Overseas Pvt. Ltd. and the Corporate Debtor, in connivance with each other, have acted in a mala fide manner with the intent to defraud its creditors. The directors of



both the corporate debtor and M.K. Overseas Pvt. Ltd. are, therefore, liable to be proceeded against under appropriate criminal provisions. The corporate debtor has sought to explain that its shareholding was transferred to Al Hamd Agro Foods Pvt Ltd. pursuant to a registered Share Purchase Agreement, duly stamped. However, while 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 Pvt. Ltd which was already a sinking ship. It is important to mention that Liquidation application against M. K. Overseas Pvt. Ltd. is pending. In these circumstances, this adjudicating authority have no doubt in holding that Corporate Debtor remains liable to discharge the dues of the applicant and the share purchase agreement is nothing but sham and collusive document, devised with the sole objective of defrauding 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 Innovations 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 mere bluster.”

17. 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. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

- i. The application bearing Restored Company Petition (IBC)/15/ND/2024 (Old Case C.P. (IB)/2405/ND/2019) filed by M/s Ashu Agencies through it's Proprietor Sh. Ashu Chaudhary, the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Al Dua Food Processing Private Limited, the Corporate Debtor, is hereby admitted.
- ii. The Applicant has not proposed any name of the Interim Resolution Professional (IRP) and requested this Adjudicating Authority to appoint the IRP. Therefore, this Adjudicating Authority hereby appoint Mr. Pawan Kumar Goyal from the panel



of Insolvency Professional via reference letter IP-12011/1/2020-IBBI/171/958 Dated 30.06.2025 received from Insolvency and Bankruptcy Board of India valid for the period July 01-December 31, 2025. Mr. Pawan Kumar Goyal, having Registration Number IBBI/IPA-001/IP-P00875/2017-2018/11473 email: ca.pawangoyal@gmail.com . Mr. Pawan Kumar Goyal is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three working days (3) of pronouncement of this order.

- iii. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Pawan Kumar Goyal, to meet out the expenses 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.
- iv. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows



from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code.

Thus, the following prohibitions are imposed:

(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Adjudicating Authority, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

- v. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.



- vi. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
- vii. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make passing an appropriate order.
- viii. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
- ix. 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.

- x. 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.
- xi. Accordingly, the instant application filed under Section 9 of the Code, 2016 bearing **Restored Company Petition (IBC)/15/ND/2024 (Old Case C.P. (IB)/2405/ND/2019) stands admitted** and **IA-5208/ND/2024 stands allowed and taken on record the documents filed and disposed of.**

Sd/-
ATUL CHATURVEDI
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)