NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Comp App(AT)(CH)(Ins) No. 190/2025
IA Nos. 532 & 533/2025

In the matter of:

M/s. SRI VETHAA DAIRY PRIVATE LIMITED
Represented by its Managing Director Mr. N. Ramesh
Having registered office at
No: 223/2 Chettiyar Agaram,
1st Street Vanagaram, Veeraraghavapuram, Tiruvallur,
Poonamallee, Tamil Nadu, India, 600077

…APPELLANT/SUCCESSFUL AUCTION PURCHASER

V

JAYASHREE S IYER
Liquidator of M/s. GHO Agro Private Limited
Reg.No.IBBI/IPA-002/IP-N00741/2018-19/12211,
C-15, Abhinav Kailash, 19A, Velachery Road,
Saidapet, Chennai 600015.

...1st RESPONDENT/LIQUIDATOR

PUNJAB NATIONAL BANK
Zonal Office, Sastra Centre,
4th Floor, PNB Towers, No.46-49, Royapettah High Road,
Mylapore, Chennai – 600014
Member of Stakeholders Consultation Committee of
Corporate Debtor viz. M/s. GHO Agro Private Limited

...2nd RESPONDENT / FINANCIAL CREDITOR

Present :

For Appellant : Mr. PH Arvindh Pandian, Senior Advocate
For Mr. K Pawan Jhabakh,
Mr. Vikram Veerasamy,
Mr. Vishnu Jayaram, Advocates

For Respondent : Mr. ML Ganesh, Advocate for R1 and R2

JUDGMENT
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

The instant company appeal as preferred by the Appellant, is by invoking the provisions contained under Section 61 of I & B Code, 2016, where the Appellant puts a challenge to the impugned order dated 06.01.2025, as it was passed in IA(IBC)/2452/CHE/2024 which was preferred in CP/481/IB/CB/2020. As a consequence of the said impugned order, which has been rendered by the Ld. Tribunal, prayer of the Appellant for, a clarification of the earlier order of the Ld. Tribunal, dated 02.09.2024 was rejected and the Applications was dismissed.

2. The appeal in question is accompanied with a Condone Delay Application being IA No. 532/2025, wherein, the Appellant has sought a Condonation of 14 days of delay, which has chanced in preferring the appeal, as it has been determined by the registry, upon e-filing of the company appeal on 22.03.2025. Having heard the Ld. Counsels for the Parties and after going through the reasons, as given in para 3 of the application for seeking condonation of delay of 14 days in filing the Appeal and being satisfied with the same and besides that, owing to the fact that the number of days of delay, which has been sought to be condoned is falling well within the ambit of the proviso to Section 61(2) of the I & B Code, 2016, the delay of 14 days in

filing the Appeal would stand condoned. Accordingly, **IA No. 532/2025** would stand 'disposed of'.

3. The Ld. Counsel for the parties are at a consensus that the appeal itself may be considered and decided on merits at this stage itself. In the application IA(IBC)/2452/CHE/2024 preferred before Ld. NCLT, Chennai the Appellant has prayed for, to clarify the order, as it was passed by the Tribunal in IA(IBC)/310/(CHE)/2024, on 02.09.2024, that it permits *the sale of the business of the Corporate Debtor*, instead of *sale of the Corporate Debtor as a going concern*, giving effect to the resolution as it was passed in the 10th Stakeholders Consultation Committee of the Corporate Debtor, i.e., M/s. GHO Agro Private Limited. The relief which was modulated by the Appellant in the IA, thus preferred is extracted hereunder: -

> ***(a)*** ***To clarify that the order of this Hon'ble Tribunal in IA/310/2024 dated 02.09.2024 permits the Sale of the Business of the Corporate Debtor instead of the sale of the Corporate Debtor as a Going Concern giving effect to the resolution in the 10th Stakeholders' Consultation Committee (SCC) of M/s. Gho Agro Private Limited (the 'Corporate Debtor') held on 18.03.2023***
>
> ***(b)*** ***To consequently permit the Respondent Liquidator to file necessary application for Dissolution of the Corporate Debtor with necessary forms;***
>
> ***(c)*** ***To pass such other orders as it deems fit in the above circumstances of the case and thus render justice.***

4. The said application, upon being considered by the Ld. Tribunal had been decided by the impugned order along with the other pending interlocutory applications. But since the challenge in the instant company appeal has been confined to the order passed on IA(IBC)/2452/CHE/2024, we would be refraining ourselves to deal with any of the observations, which relates to other IA's being IA/IB/1745/2023 and IA/IB/1744/2023. The prayer in the application IA(IBC)/2452/CHE/2024 was simpliciter limited to the clarification to be made to the order of 02.09.2024 as passed, by the Ld. Tribunal, to the effect that permission granted for the sale of the Corporate Debtor (CD) as a going concern would mean permission for the sale of business of the Corporate Debtor as a going concern owing to the implications flowing from the 10th Stakeholders Consultation Committee of the Corporate Debtor.

5. At this point it will be worthwhile to determine what was the date of 10th meeting of SCC. In the memo preferred by the Appellant before the Ld. Adjudicating Authority, the certified true copy of the minutes of the said meeting has been provided: in the said copy the date of meeting has been mentioned as 18.03.2023. However, the Appellant claims that it is a typographical error and it should be 18.03.2024. The claim appears to be correct as the date of 3rd SCC meeting was 16.05.2023, where decision was taken by SCC in the Resolution - 7 of the minutes to go ahead with issue of

e-auction notice for sale of the Corporate Debtor as a going concern. This being the case, 10th SCC meeting could not have possibly been held on 18.03.2023 and therefore correct date of 10th SCC meeting should be 18.03.2024 which Ld. NCLT has overlooked.

6. Decision taken on the said application has been based on the reasons assigned in para 24 - 30 of the impugned order, as to what implications would the decision of 10th Stakeholders Committee, would have. In para 24 it has been observed that in the 10th Stakeholders Consultation Committee on 18.03.2023, it was resolved give consent to the request of Successful Auction Purchaser/Appellant herein for changing the nature of sale, which has been concluded by the Liquidator, from 'sale of Corporate Debtor as a going concern' to 'sale of Business of the Corporate Debtor as a going concern' subject to approval of Ld. NCLT and any financial liability arising from this change to be borne by the Appellant. In para 25-29 Ld. NCLT records that sale of the Corporate Debtor as a going concern has been completed, that sale certificate has been issued and it is final and that there is no merit in the plea of the Appellant of facing certain difficulties for which the change is being requested. In para 30, Ld. Tribunal has cast a doubt over the genuineness of the 10th SCC meeting because of the apparent error in recording date of such meeting and has come to the emphatic conclusion that, merely a resolution of SCC as that taken in 10th SCC meeting would not have

a binding effect, on the sale of the Corporate Debtor as a going concern, and the subsequent issuance of the sale certificate.

7. In the subsequent paragraphs Ld. Adjudicating Authority has held that the request of conversion of 'sale of Corporate Debtor as a going concern under Regulation 32(e)' into a 'sale of business(s) of the Corporate Debtor as a going concern under Regulation 32(f)' of the IBBI (Liquidation Process) Regulations, 2016, was nothing but an afterthought of the Applicant, that since the Corporate Debtor had only one business, that is, dairy processing, there would be no material difference between the sale of Corporate Debtor, as a going concern and the sale of a business of the Corporate Debtor, as a going concern, that the relief relating to rights and title in the Business of the Corporate Debtor has already been given in its order dated 02.09.2024 in IA(IBC)/310(CHE)/2024, and that since in the order dated 02.09.2024 the liquidator has been directed to file necessary application for closure of the liquidation process of the Corporate Debtor, it is clear that the Corporate Debtor was ordered to be sold as a going concern by the order dated 02.09.2024 and there is no ambiguity which needs to be clarified and according rejected the application IA(IBC)/2452(CHE)/2024.

8. The Appellant has contended that order of 06.01.2025 runs contrary to the daily order passed on 16.04.2024 in IA/310/2024, that Ld. Adjudicating Authority has without reasons doubted the authenticity of 10th

SCC meeting Resolution when the said meeting was actually held on 18.03.2024, as supported by his request letter to liquidator dated 16.02.2024 and the signature of liquidator bearing the date 01.04.2024 on the said resolution of 10th SCC, that the SCC actually gave its consent to his proposal for change in the description of sale of the Corporate Debtor from "sale of Corporate Debtor as a going concern" to "Sale of Business of Corporate Debtor as a going concern", that the said resolution of SCC was in accordance with IBBI (Liquidation Process) Regulations, that Ld. Adjudicating Authority erred in holding his prayer as above as an afterthought, and in holding the resolution of 10th SCC as doubtful based on which he passed the impugned order, that the Ld. Adjudicating Authority in its orders dated 16.04.2024 & 02.09.2024 has recorded the transaction to be a sale of the Business of Corporate Debtor as a going concern under Rule 32(f) of the Regulations and the same has been filed with Income Tax department, Ministry of Corporate Affairs (MCA) & other statutory authorities, that he will be put into great difficulty if the impugned order is not set aside and that Ld. Adjudicating Authority has adequate power & jurisdiction to pass an order as prayed by him.

9. When the matter was taken up in the presence of the Ld. Counsel for the Respondents, they were at a consensus that if the relief as sought for in IA No. 2452/2024, to permit the sale of the business of the Corporate Debtor

as a going concern, on the basis of the decision of the 10th meeting of SCC, is granted, they would not have any objection as such, because such will be only a clarification of the order of 02.09.2024 of selling the Corporate Debtor as a going concern, the modification of, which was sought by filing the IA(IBC)/2452/CHE/2024, and it will not materially affect any legal right or liability of any of the parties to the proceedings.

10. The Appellant has contended that the order of 02.09.2024 is in variance with the daily order passed by the Ld. Adjudicating Authority on 16.04.2024. The said order is extracted below: -

> *"Ld. Counsel Mr. M.L. Ganesh for the Liquidator. Ld. Counsel Mr. M.S. Viswanathan for the Applicant.*
>
> *This is an Application to permit the Liquidator to sell the business of the Corporate Debtor as a going concern in accordance with Regulation 32(f) of the Liquidation Process Regulations, 2016.*
>
> *On this a memo has been filed by the Applicant on 05.04.2024 stating that Stakeholders Consultation Committee has permitted the sale as a going concern under Regulation 32(f) of the Liquidation Process Regulations, 2016 in the meeting held on 18.03.2023. Therefore the Liquidator has no objection to the prayer of the Applicant.*
>
> *Consequent to the issue of the order in this matter, the Liquidator may file dissolution Application.*
>
> ***Order Reserved."***

11. However, when the order was pronounced by Ld. Adjudicating

Authority on 02.09.2024 in the said application in IA(IBC)/310/(CHE)/2024, Ld. Adjudicating Authority, after recording the objection of Liquidator to the request for change in the nomenclature of sale on the ground that sale of Corporate Debtor as a going concern is already completed, had proceeded to grant certain reliefs to the Appellant herein as narrated in para 13 of the said order and directed the Liquidator to file necessary application for the closure of the liquidation process of the Corporate Debtor with necessary forms for closing the liquidation proceedings. The relevant Para 13 is extracted hereunder: -

> *"13. Further, the Liquidator is directed to file necessary application for the closure of the liquidation process of the Corporate Debtor with necessary forms."*

It is on this basis that Ld. Adjudicating Authority has rejected the prayer for clarification. It is also seen that there are certain contradictions in the above orders: in order dated 16.04.2024, Ld. Adjudicating Authority asked the liquidator to file a dissolution application, whereas the order dated 02.09.2024 of ordered closure of liquidation process.

12. The Appellant has contended further that the order of Ld. Adjudicating Authority for the sale of the Corporate Debtor as a going concern and for closure of the liquidation proceedings on the application filed by the liquidator in IA(IBC)/310/(CHE)/2024 will not restrict filing of an application and also will not restrict the exercise of inherent powers of Ld.

Adjudicating Authority under Section 60 (5) of the I & B Code for the purposes to give a substantial shape to the proceedings of the liquidation by insertion of the expression "the sale of the business of the 'Corporate Debtor as a going concern', in accordance with Regulation 32(f) of IBBI (Liquidation Process) Regulations 2016.

13. Owing to the aforesaid contention, the observation made in para 36 of the impugned order that "as the Corporate Debtor and its business are being sold as a going concern, the Liquidator is mandated to file an application for the closure of the liquidation process with required forms and documents" will not act as a bar to grant, the relief prayed for. Mere filing of an application by the Liquidator for closure of the liquidation proceedings will not curtail the right of exercise of inherent powers by the Tribunal for meeting the ends of justice particularly when it does not have any adverse bearing on the rights of any of the parties and when the Respondents are at a consensus that the relief of modification as prayed for, in IA(IBC)/2452/CHE/2024 deserves to be granted owing to the decision taken in the 10th Stakeholders Consultation Committee of the Corporate Debtor, M/s. GHO Agro Private Limited and that, if the said clarification to the order of 02.09.2024 is allowed, they may not have any grievances as such.

14. Exclusively, owing to the statement made by the Respondents, the instant company appeal would stand allowed. The impugned order so far as

it relates to IA(IBC)/2452/CHE/2024 is hereby stand quashed, and the application as preferred by the Appellant for seeking clarification of the order as per Regulation 32 (f) if IBBI (Liquidation Process) Regulation, 2016, on 02.09.2024 in IA(IBC)/310/(CHE)/2024, would stand allowed and the order dated 02.09.2024, would be treated to be modified to the extent that the Corporate Debtor has been sold as a going concern.

15. Owing to the above, the 'appeal' stands 'allowed', the 'impugned order' stands 'quashed', subject to the observation which has been made by this Appellate Tribunal in the preceding paragraphs.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

30/04/2025
SN/MS/RS