



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

IA 5215 of 2024

Under Section 65 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016

In the matter of

Aussee Oats India Limited

....Applicant/Corporate Debtor

Versus

Future Consumer Limited & Anr.

....Respondents/Financial Creditor

IN

CP (IB)/538 (MB)/2024

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Future Consumer Limited

[CIN L52602MH1996PLC192090]

...Financial Creditor/Applicant

Versus

Aussee Oats India Limited

[CIN U15122MH2011PLC223036]



...Corporate Debtor/Respondent

Order Pronounced on 01.05.2025

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Financial Creditor : Mr. Shyam Kapadia, Ld.
Counsel
For the Corporate Debtor : Mr. Kunal Kanungo, Ld.
Counsel

ORDER

Brief Facts:

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Future Consumer Limited** ("hereinafter referred to as the Financial Creditor/Applicant/FCL"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Aussee Oats India Limited** ("hereinafter referred to as the Corporate Debtor/Respondent/AOIL").
2. The Applicant is registered under the Companies Act, 1956 and incorporated on 10.07.1996, bearing CIN L52602MH1996PLC192090. Its registered office is at Knowledge House, Shyam Nagar, Off Jogeshwari Vikhroli Link Road, Jogeshwari (East), Mumbai-400060. The present Application has been filed through Mr. Karan Asrani, authorized representative of the Applicant. It is engaged in operating food and fast-moving consumer goods outlets and distribution in urban and rural areas with its own branded products in addition to third-party brands and products.



3. The Respondent is incorporated under the Companies Act, 1956 on 14.10.2011 bearing CIN U15122MH2011PLC223036 with its registered office at 162, Mittal Tower, C Wing, Nariman Point, Mumbai-400021, Maharashtra. It is a Limited Company having authorized share capital Rs.2,50,00,000/- and Paid up share Capital Rs. 1,00,00,000/-. It is involved in the business of export, manufacture, supply and trade of cereals, breakfast cereals and other products.
4. The total amount of default as stated in Part IV of the Application is Rs.1,00,12,157/- (Rupees One Crore Twelve Thousand One Hundred Fifty Seven Only), and the date of default is stated to be 18.02.2020.

Submissions of the Applicant:

5. In and around February, 2019, the Corporate Debtor approached the Financial Creditor for grant of a short term, interest bearing loan to the extent of Rs. 2,00,00,000/- (Rupees Two Crores Only) in the form of an Inter Corporate Deposit ("ICD") and the Financial Creditor agreed to provide the same.
6. The Corporate Debtor and the Financial Creditor thereafter, entered into a Term Sheet dated 18th February, 2019 ("Term Sheet") for recording the terms and conditions of the said ICD.
7. In addition to the execution of the Term Sheet, the Corporate Debtor, as a security, also executed a demand promissory note dated 18th February 2019 ("Promissory Note"), promising to pay to either the Financial Creditor or its order, the amount under the said ICD by 18th February 2020. Accordingly, pursuant to the execution of the Term Sheet and the Promissory Note, an amount of Rs. 2,00,00,000/- (Rupees Two Crores Only) ("ICD Amount") was disbursed to the Corporate Debtor on 18th February, 2019 ("Date of Disbursement").



8. As per the Term Sheet, the ICD Amount was payable within a period of 365 days i.e. on 18th February, 2020 and also carried an interest of 12.5% per annum payable at the end of the tenure of the ICD i.e. on 18th February, 2020. Further, the interest was to be levied from the date of disbursement by the Financial Creditor till the repayment of the entire sum.
9. As per the terms and conditions as recorded in the Term Sheet, the Corporate Debtor also had the option to repay the amount under the ICD before the expiry of the term without any prepayment penalty or charges. Accordingly, the Corporate Debtor exercised such an option and made part repayments to the Corporate Debtor on various occasions during the tenure of the ICD, finally leaving an outstanding principal amount of Rs.75,00,000/- (Rupees Sixty Five Lakhs Only) as on 18th February, 2020.
10. Thereafter, the Financial Creditor, on various occasions attempted to reach out to the Corporate Debtor seeking repayment of the outstanding principal amount of Rs. 75,00,000/- along with interest on the entire ICD Amount, as the Financial Creditor itself was facing financial difficulties in lieu of the Covid 19 pandemic induced lockdowns and the consequent financial slowdown.
11. On 31st May, 2020, the Corporate Debtor, after repeated requests, made the last repayment of Rs. 10,00,000, thereby leaving an outstanding principal amount of Rs. 65,00,000/- along with interest on the entire ICD Amount at the rate of 12.5% p.a.
12. The balance ICD amount was not set off against any alleged pending outstanding amount since the Term Sheet specifically provides that the Corporate Debtor's obligation to "repay" the outstanding amount of the ICD and interest thereon to the Financial Creditor is "*absolute and unconditional and is not dependent or linked to any other transaction (past, present or future as may be)*". The contention that the ICD amount was set off is contrary to the ICD terms itself.



13. Although the default under the Term Sheet on part of the Corporate Debtor occurred on 18th February, 2020, the period from 15th March, 2020 to 28th February, 2022 shall stand excluded from the calculation for the period of limitation by virtue of the orders passed by the Hon'ble Supreme Court in *Suo Moto Writ Petition No. 3 of 2020* wherein the limitation in respect of all judicial proceedings was suspended on account of the Covid 19 pandemic.
14. The Financial Creditor on 9th May, 2024 addressed a Demand Notice to the Corporate Debtor demanding repayment of Rs. 1,00,12,157/- which included the outstanding principal amount of Rs. 65,00,000/- along with interest of Rs. 35,12,157/- on the ICD Amount within 7 (seven) working days. However, the computation of the amounts (Schedule I of the Demand Notice) inadvertently did not form a part of the Demand Notice. The Corporate Debtor on 25th May, 2024 sent a limited reply seeking a copy of the computation of amounts. However, there is no dispute raised or any indication of any repayment by the Corporate Debtor. Even after a lapse of 7 (seven) working days, the Corporate Debtor has not made any payments whatsoever, and the Principal amount of Rs. 65,00,000/- along with interest on the ICD Amount continues to remain outstanding, which the Corporate Debtor is liable to make payment towards the outstanding amount of Rs. 1,00,12,157/- as on 7th May, 2024.
15. The Financial Creditor vide their letter dated 29th May, 2024 provided a copy of the computation of the amounts and again sought repayment of the amount of Rs. 1,00,12,157/- from the Corporate Debtor.
16. With respect to the ongoing litigations between the parties, this Petition is the only ongoing litigation between the Financial Creditor and the Corporate Debtor. Any other litigations which may be pending between other companies belonging to Future Group and SVA Group, do not have any bearing on the present Petition.




17. Mr. Kedawat had signed the Annual Accounts of the Corporate Debtor, subject to further reconciliation.

Submissions of the Respondent:


18. The Respondent has contested the present application on the following grounds:

- i. The Petitioner Company, through its associate company FCL Tradevest Private Limited, holds 50% + 1 shares of the Respondent company and the remaining shares are held by SVA owned by Gupta group, accordingly, the Respondent company is essentially a joint venture between the Future Group (Mr. Kishore Biyani) & the Gupta Group. Hence, the Petitioner is ultimately controlled by Mr. Kishore Biyani and his family members. There are various litigations and legal proceedings pending between both the groups.
- ii. SVA India Limited (“SVA”) is a public limited listed company incorporated under the guidance of Late Shri Mahabir Prasad Gupta engaged in the business of imports and exports. Mr. Kishore Biyani and Mr. Vinod Gupta (Director of the Respondent) being friends decided that Future Group and SVA Group shall enter into a Joint Venture Agreement (“JVA”) for oats manufacturing which would enhance the production capacity by 3 times than what it was originally anticipated. Given the excellent commercial opportunity to curtail costs and manufacture in Sri Lanka, a project was formed under the name of Aussee Oats Milling Private Limited (“AOM”).
- iii. The Respondent Group was providing technical knowledge, setting up parameters and specifications, choice of vendors, etc and Petitioner Group was responsible for debt funding and marketing. Hence, both the Groups entered into a Joint Venture and Shareholders Agreement dated 25.04.2014 (“JVA”) and incorporated



a company viz. Aussee Oats Milling Pvt. Ltd. in Sri Lanka with an aim to operate the business of manufacture, marketing and exporting of breakfast cereals and other products.

- iv. The people of the Petitioner company were appointed as the Nominee Directors in the Respondent company and were not only authorized to act and take decisions in the interest of the Petitioner Group but were also aware of the financial position of the Respondent company.
- v. The signature of Mr. Raghav Gupta on the Term Sheet and the Demand Promissory Note are disputed as forged. Further, the term Sheet could not have been executed by the person signing on behalf of Corporate Debtor as he was not in India during the relevant time as evidenced from immigration stamps on his passport.
- vi. The Respondent is not denying that an amount of Rs. 2,00,00,000/- was in fact paid as financial assistance from the Petitioner to the Respondent, but the same has been repaid completely to the knowledge of the Petitioner, by adjusting the balance towards the pending outstanding amount which was due and payable by the Petitioner to the Respondent against the goods supplied by the Respondent under the name Kosh as well as loss on unutilized packaging materials ordered for the Petitioner. In the balance sheet for the F.Y. 2020-2021, no amount is reflected as receivable from the Respondent towards ICD loan in the section of related party transactions.
- vii. Vide email dated 25.08.2021, the Petitioner through Mr. Shailesh Kedawat had requested for repayment of overdue ICD. In response to the same, vide email dated 26.08.2021, it was informed by the Respondent i.e., Mr. Vinod Mahabir Gupta to the Petitioner that no such ICD amount was outstanding in the books of the Respondent



company which was also within the knowledge of the Petitioner. Accordingly, the Petitioner was requested to share its ledger account. However, only the ICD ledger account of the Respondent was shared by the Petitioner. Despite requesting to share all the ledger accounts of the Petitioner, the Petitioner deliberately chose not to share the ledger of all the accounts of Petitioner with the Respondent. The Respondent had also informed that there is no loan outstanding in the books of the Respondent as on date.

- viii. Mr. Shailesh Kedawat who was appointed as the Nominee Director in the Respondent company and acted in the interest of the Petitioner group had himself acknowledged and signed the audited balance sheet of the Respondent for the year ending 31st March 2021 wherein no such amount towards ICD loan is recorded/shown as due and payable from the Respondent to the Petitioner.
- ix. The Respondent vide its response to the Demand Notice had categorically stated that there is an outstanding receivable of Rs. 9,38,060/- as on 31.03.2024 primarily for goods supplied to the Petitioner was due and payable by the Petitioner to the Respondent. An amount of Rs. 7,51,131/- was receivable from Petitioner as on 31.03.2021 as per the audited financials of the Respondent which was signed by Mr. Shailesh Kedawat, then CFO of the Petitioner and Nominee Director on the board of directors of the Respondent.
- x. The Petitioner has not only stopped attending the board meetings for 3 years but also has failed to appoint their nominees on the Board of the Respondent Company. Further, the Petitioner Group has even failed to attend AGMs for last 3 years.
- xi. As far as the record of NeSL is concerned, the Respondent promptly responded to the said email sent by NeSL-IU and disputed the very said date of default by categorically stating that "Debt availed but

already closed, Remarks - There is no outstanding debt, same was settled in FY 2020-2021 as per the financials of both companies. There is an outstanding amount due and payable from Future Consumer Limited to Aussee Oats India Limited."

- xii. Multiple proceedings i.e., arbitration proceedings in relation to JV Agreement dated 25.04.2014 and criminal proceedings in relation to forgery and false claim of the Petitioner in relation to Aussee Oats Milling Pvt. Ltd are going on between SVA and Future Group.
- xiii. An Affidavit under Section 63 of Bharatiya Sakshya Adhiniyam, 2023 has not been filed making the electronic record inadmissible. Also, certified copies as prescribed under clause (3) of section 2 of the Bankers Book Evidence Act, 1891 have not been filed.
- xiv. The captioned petition is filed fraudulently and/or maliciously and for purposes other than for resolution of insolvency of the corporate debtor. The Respondent has relied upon the decision given by Hon'ble Supreme Court in the case of *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*, (2022) 8 SCC 352, judgment of Hon'ble NCLAT in *Anita Jindal Vs. Jindal Buildtech Pvt. Ltd. [Company Appeal (AT) (Ins.) No. 512 of 2012]*.
- xv. Adjustment is a right available to Respondent in law – the Respondent has relied upon the judgment passed by Hon'ble Madhya Pradesh High Court in the matter of *State of Madhya Pradesh vs Raja Balbhadra Singh*, AIR 1964 MP 231 to substantiate the same.
- xvi. Further, no ledger has been produced by the Financial Creditor even after filing 3 pleadings. The Respondent has relied upon the decision given the Hon'ble National Company Law Appellate Tribunal, New Delhi in the matter of *M/s Ravinder Construction Company versus Kalinga Sponge Iron Limited Company Appeal (AT)(Insolvency) No. 201 of 2022*.



Findings and analysis

19. It is undisputed fact that the Financial Creditor has disbursed a sum of Rs. 2 crores to the Corporate Debtor, out of which a sum of Rs. 1.35 Crore has already been returned by the Corporate Debtor.
20. It is case of the Financial Creditor that the balance amount of Rs. 65 Lakh along with interest payable thereon in terms of Term Sheet dated 18.02.2020 is payable by the Corporate Debtor and the same is in default. Per contra, the Corporate Debtor has challenged the genuineness of the term sheet, which stipulates payment of interest 12.5% on the said amount and the repayment thereof within 365 days. The Corporate Debtor has also challenged the existence of any debt payable on the ground that the principal amount payable was set off against other amount recoverable from the Corporate Debtor and this fact is evidenced from the audited financial statement of the Corporate Debtor as on 31.03.2021, which reflects the net receivable from the Financial Creditor after such adjustment and which has been duly signed by Mr. Shailesh Kedawat (CFO of Financial Creditor) on 24.06.2021, the Director on the board of the Corporate Debtor representing the Financial Creditor.
21. Though the Corporate Debtor has challenged the genuineness of Term Sheet, however, the receipt of Rs. 2 Crores as an advance is not disputed. The Term Sheet has been relied upon by the Corporate Debtor to evidence the repayment obligation, liability of interest and the absolute obligation to repay the loan dehors any other transaction. There is no dispute that the said amount to the extent of Rs. 1.35 Crore was repaid and the balance amount is claimed to have been adjusted against the amount receivable from the Financial Creditor under other ledger accounts. The Corporate Debtor has accounted for any interest on the amount received from the Financial Creditor and this fact is clearly discernible from the note no.23 of its audited financial statements for the Financial Year ended on 31.03.2021 wherein an



interest expense amounting to Rs.20,548/- is stated to be paid to the Financial Creditor. Accordingly, the fact whether the Term Sheet is genuine or not is relevant only for determination of right of Corporate Debtor to set off the amount of loan or any part thereof against the amount receivable from the Financial Creditor under any other transaction.

22. Note no.9 – “Borrowings” of the audited financial statement for the Financial Year ended on 31.03.2021 reflects NIL amount due to related party on account of loan as on 31.03.2021 and a sum of Rs. 76,28,296/- due to related party as on 31.03.2020. Further, note 23 of the said Financial Statement provides the related party transaction and disclosures therein, wherein an amount of Rs. 7,51,131/- is stated to be receivable from the Financial Creditor as on 31.03.2021 and the said further states that a sum Rs. 76,28,296/- was repaid to the Financial Creditor during the relevant year. These Financial accounts are duly audited and approved by the shareholders, one of whom is the Financial Creditor’s associate company holding majority shares therein. This clearly indicates that no debt is due and payable to the Financial Creditor as on 31.03.2021 and this fact is within the knowledge of Mr. Shailesh Kedawat, being one of the signatories to the said audited financial statement in the capacity of director who was then CFO of the Financial Creditor as well.

23. The Financial Creditor has canvassed that Corporate Debtor's obligation to "repay" the outstanding amount of the ICD and interest thereon to the Financial Creditor is "*absolute and unconditional and is not dependent or linked to any other transaction (past, present or future as may be)*" and it could not have claimed set off of amount payable under the transaction of loan with any amount receivable under any other transaction. However, in our considered view, this averment in the term sheet does not take away the right of Corporate Debtor to claim appropriation of the amounts receivable from the Financial Creditor against the amount payable under the alleged term sheet. It would be unequitable to seek insolvency of a debtor alleging default



in payment of a financial debt when such creditor owes more than the amount claimed to be in default to such debtor, more particularly when the Debtor has appropriated the receivables from the creditors against amount payable to such creditor and disclosed such appropriation in its audited financial statements which is signed by Mr. Shailesh Kedawat, the Nominee Director of the Financial Creditor. It is also relevant to note that the Financial Creditor, despite a specific requisition by the Corporate Debtor to provide ledger statements of all accounts in their books had not provided the same even though the Corporate Debtor vide its email dated 09.09.2021 had clearly communicated that there is no loan outstanding in their books as on date in response to email dated 07.09.2021 sent by Mr. Shailesh Kedawat on behalf of the Corporate Debtor. The defence taken by the Financial Creditor that the financial statements were signed subject to further reconciliation has no substance as the Financial Creditor has not placed on record any details of disagreement on the amounts claimed to be receivable by the Corporate Debtor from the Financial Creditor, except challenging the right of set off as exercised by the Corporate Debtor.

24. It is also relevant to note that majority of the shares of the Corporate Debtor are owned by Financial Creditors affiliate concerns and there are litigations going on between the Financial Creditor group and the Corporate Debtor group in relation to their Joint Venture Projects in Sri Lanka. Though these may not be relevant factors in the present case on standalone basis, however, these factors indicate towards the existence of hostility between two groups and this may be the reason for disputing the set off as accounted for by the Corporate Debtor, which in our considered view would not have been objected by the parties on equitable consideration in normal course of circumstances. Accordingly, we are of considered view that there does not exist any debt payable to the Financial Creditor and even if such debt is accepted to be in existence after de-recognizing the set off, the present petition cannot said to be for the purpose of resolution of the Corporate



Debtor only in the facts and circumstances of the case in totality. Accordingly, **CP 538 of 2024 is dismissed and disposed of.**

25. The Corporate Debtor has also filed an IA 5215 of 2024 seeking directions against the Financial Creditor for fraudulent initiation of CIRP against the Corporate Debtor and for making perjurious statements on oath. The allegation in relation to term sheet require further investigation & evidence and cannot be decided in a summary proceeding. Accordingly, we do not find any merit in the prayer for action on ground of perjury. As regards prayer in terms of Section 65 of the Code for malicious initiation of CIRP, we are of the considered view that the present petition has been filed on basis of existence of financial debt contesting the right of setoff of other debt and cannot said to be case of malicious initiation. Accordingly, no order is called for in terms of Section 65 of the Code. **IA 5215 of 2024 is dismissed and disposed of.**

26. Therefore, the Petition bearing CP (IB) 538/MB/2024 filed by **Future Consumer Limited** [CIN L52602MH1996PLC192090], the Financial Creditor, under section 7 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Aussee Oats India Limited** [CIN U15122MH2011PLC223036], the Corporate Debtor, is **dismissed.**

27. Ordered accordingly.

Sd/-
Prabhat Kumar
Member (Technical)
MK

Sd/-
Justice V. G. Bisht (Retd.)
Member (Judicial)