

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
SPECIAL BENCH (Court I)
KOLKATA**

C. P. No. 03/KB/2024

*A petition under sections 271 and 272 of the Companies Act, 2013 read with section 273
read with Rule 11 of the National Company Law Tribunal Rules, 2016 and the Companies
(Winding Up) Rules 2020.*

In the Matter of:

Union of India through Serious Fraud Investigation Office (SFIO)

...Petitioner

-Versus-

1. **Amrit Foods Private Limited**(CIN: U15139WB2009PTC195909);
2. **Harish Bagla** (DIN: 37512);
3. **Archana Bagla** (DIN: 1066643);
4. **Gauri Prasad Bagla** (DIN: 120965);
5. **Anurag Kedia** (DIN: 3330980).

...Respondents/ Company

CORAM:

Smt Bidisha Banerjee: Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Date of Hearing: 23.01.2024

Date of pronouncing the order: 10.05.2024

Appearances (Physically/ via video conference)

For Petitioner:

- 1) Mr. Vipul Kundalia, Adv.

- 2) Ms. Oindrila Ghosal, Adv.
- 3) Mr. Soumava Ghosh, Adv.
- 4) Ms. Isabella Pal, Adv.
- 5) Mr. Swagata Roy, Adv.
- 6) Ms. Srijeeta Gupto, Adv.
- 7) Mr. Bappaditya Nag, Sr. Prosecutor

For Amrit Foods Pvt. Ltd.:

- 1) Mr. Ratnanko Banerjee, Sr. Adv.
- 2) Mr. D N Sharma, Adv.
- 3) Mr. Nirmalya Dasgupta, Adv.
- 4) Ms. Patrali Ganguli, Adv.

ORDER

Per: Balraj Joshi, Member (Technical)

1. The instant Petition has been filed by **Union of India through Serious Fraud Investigation Office (SFIO)** (“petitioner”) to initiate winding up proceedings under sections 271 and 272 of the Companies Act 2013 against **Amrit Foods Private Limited**, an existing company within the meaning of The Companies Act, 2013.
2. The Petitioner therein has prayed for the following ex parte, ad interim orders during the pendency of the petition:
 - (i) *That the AMRIT FOODS PRIVATE LIMITED (AFPL) [CIN: U15139WB2009PTC19 5909] be restrained from disposing its assets and properties till the final disposal of the instant case.;*
 - (ii) *To appoint a Provisional Liquidator over AMRIT FOODS PRIVATE LIMITED (AFPL) [CIN: U15139WB2009PTC19 5909] till the final order of the present petition.;*
 - (iii) *The Provisional Liquidator be directed to take possession of all assets and*

properties of the AMRIT FOODS PRIVATE LIMITED (AFPL) [CIN: U15139WB2009PTC19 5909]

(iv) Any other order or orders, as the Hon'ble Tribunal may deem fit and proper, in the interest of justice.

3. The petition has been filed on the grounds that the affairs of the company have been conducted for fraudulent and unlawful purpose under sections 271(c) and 271(e) of the Companies Act, 2013.

Facts in Brief:

4. The Regional Director, Eastern Region of Ministry of Corporate Affairs directed Registrar of Companies (RoC) to examine the complaint made by Shri Pankaj Kajatia in the PMO PG portal vide PMOPG/E/2018/0342386 dated 15.07.2018 and also another complaint filed by Natural Remedies Private Ltd. in Serious Complaint form vide SRN J00006764 dated 10.02.2017 being a creditor intimating non-payment by Amrit Feeds Ltd. td. Based on the direction of Regional Director (Eastern Region), ROC West Bengal examined the matter and submitted the report to the Regional Director, Eastern Region. On the basis of the ROC report submitted by the Regional Director, Eastern Region vide its letter dated 24.10.2018 to the Central Government recommending investigation into the affairs of Amrit Feeds Ltd., the same was assigned to the Serious Fraud Investigation Office.
5. The Ministry of Corporate Affairs, Government of India (MCA) in exercise of its powers under Section 212(1)(c) of the Companies Act, 2013, assigned the investigation into the affairs of Amrit Feeds Ltd. (AFL) to Serious Fraud Investigation Office (SFIO) vide its Order¹ being File No. 3/540/2017/CI-II(ER) dated 10.12.2018.
6. In pursuance of the above order, Director of SFIO, vide order² No. SFIO/Inv/AOI/2017-18 dated 26.12.2018 appointed the officers of SFIO as Inspectors & Investigating Officer to carry out the investigation under section 212(1) r/w 212(4) of the Companies Act,

¹Annexure P-3

²Annexure P-4, for orders dated 26.12.2018, 30.06.2021 and 31.10.2022

2013. Subsequently by order No. SFIO/Inv./AO1/2020-21 dated 30.06.2021, in partial modification of earlier Order an Inspector cum Investigating Officer was appointed in place of existing Inspectors/Investigating Officer. Furthermore, vide order No. SFIO/Inv./AOI/2022-23 dated 31.10.2022, new inspectors were added to the existing team to complete the investigation under the order of the Director, SFIO.

7. The investigation into the affairs of Amrit Feeds Limited wherein the respondent company, Amrit Foods Pvt. Ltd. is one of the group companies, was completed by SFIO and in terms of provision of section 212(12) of the Act of 2013 the investigation report³ dated 29.03.2023 was submitted to the MCA.
8. Thereafter, Ministry vide its letter No. F. No. 35/10/2023-Legal dated 04.08.2023 issued necessary direction to the office of the Petitioner to initiate proceedings before various Courts/Forums against the accused entities and persons concerned including the present winding up petition against the respondent company.

Submissions on behalf of the Petitioner:

9. The Respondent Company is the group company of Amrit Feeds Limited (company under liquidation). The investigation conducted by the Petitioner reveals that the Respondent Company is one of the group companies that Amrit Feeds Ltd. used to divert and siphon off funds from its loans and cash credit accounts instead of using it for the intended purpose. The Respondent Company, as a beneficiary of the siphoned-off bank funds, reaped undue financial gains.
10. The Respondent Company and Amrit Feeds Ltd. shared a common set of directors. This commonality of directors enabled Amrit Feeds Ltd. to exert control over the Respondent Company through ownership and directorship.
11. A working capital consortium agreement dated 21.09.2012 and Consortium Term Loan Agreement dated 28.06.2014 was entered into among Amrit Feeds Limited (borrower)

³Annexure P-5

with a consortium of banks including Punjab National Bank, Bank of India, Axis Bank and HDFC Bank. Amrit Feeds Limited availed both term loan as well as cash credit facilities from the aforesaid banks. Amrit Feeds Limited has received a total of Rs. 12941.18 lakhs as term loan and Rs. 6605 lakhs as working capital facilities from banks. Therefore, the total amount disbursed by the banks to Amrit Feeds Limited is Rs. 19546.18 Lakhs.

12. A substantial amount of term loans availed by Amrit Feeds Ltd. were diverted and siphoned off to group companies including the Respondent Company herein and related parties instead of being used for the project purpose for which they were availed. As part of the modus operandi adopted by the Amrit Feeds Ltd, it was seen that the promoter and Managing Director of Amrit Feeds Ltd. formed a web of shell companies to siphon the money directly disbursed from term loans and cash credit account and purchased various immovable properties and diverted the money to its group concerns including the respondent herein.
13. Similarly, the cash credit facilities which were meant for working capital needs of Amrit Feeds Ltd. in its various projects and manufacturing units were diverted and siphoned off to related parties and group companies instead of using for the intended purpose.
14. Further investigation revealed that directors of various shell companies were under control of Amrit Feeds Ltd and its directors / key managerial persons and these shell companies were used to divert and siphon off the funds to the group companies and related parties of the Amrit Feeds Ltd. The money was used to purchase immovable properties and invest in group concerns and the money was routed through shell companies to defraud the lenders.
15. Amrit Feeds Limited failed to repay loans (term loans and cash credit loans) to banks as per the agreed-upon terms and conditions. In the Financial Year 2015-16, five banks namely, Punjab National Bank, ICICI Bank, Bank of India, Axis Bank, and HDFC Bank declared the accounts of Amrit Feeds Limited as non-performing assets (NPAs). Punjab

National Bank, ICICI Bank, Axis Bank, and HDFC Bank also categorized Amrit Feeds Limited as a fraudulent account and filed Fraud Monitoring Reports with the Reserve Bank of India (RBI). Axis Bank went further and declared Amrit Feeds Limited a wilful defaulter.

16. The balance of term loan not repaid by Amrit Feeds Limited to banks was Rs. 9361.95 lakhs (as on date of NPA) and balance of cash credit facility availed from banks was Rs 5106.13 lakhs (as on date of NPA). Therefore, the total amount outstanding is Rs. 14468.08 lakhs.

Analysis and Findings:

17. Heard the Ld. Counsel on behalf of the Petitioner and the Ld. Sr. Counsel on behalf of the Respondent and perused the record.
18. It is noted that vide order dated 23.01.2024, this Adjudicating Authority had reserved the matter for orders on the point of interim reliefs. It is further noted that during the said hearing, Mr. Ratnanko Banerji, Sr. Counsel on behalf of the Respondent had cited the judgment passed by Hon'ble Supreme Court in **State Bank of India & Ors. vs. Rajesh Agarwal & Ors.**⁴
19. Section 273 of the Companies Act, 2013 provides for interim orders as well as for the appointment of provisional liquidator upon receipt of a petition under section 272. For reference, Section 273(1) is reproduced hereinafter:

(1) The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:—

(a) dismiss it, with or without costs;

(b) make any interim order as it thinks fit;

(c) appoint a provisional liquidator of the company till the making of a winding up order;

⁴(2023) 6 Supreme Court cases 1

*(d) make an order for the winding up of the company with or without costs;
or*

(e) any other order as it thinks fit:

Provided that an order under this sub-section shall be made within ninety days from the date of presentation of the petition:

Provided further that before appointing a provisional liquidator under clause (c), the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice:

Provided also that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

20. It is thus clear from the aforesaid provision that the Tribunal shall appoint a provisional liquidator only after giving *notice to the company and affording a reasonable opportunity to it to make its representations, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice.*
21. In the instant matter, the Respondent company has not been heard or given opportunity to make representations before the matter was reserved for orders on 23.01.2024. the same is against the principal of *audi alteram partem* as was contended by the Ld. Sr. Counsel on behalf of the Respondent. In this regard, Ld. Sr. Counsel on behalf of the Respondent also referred to paragraph 36 of **Rakesh Agarwal** (*supra*) which is reproduced hereinafter:

“We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two

fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) nemo judex in causa sua, which means that no person should be a judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi- judicial action must be heard before a decision is taken. The courts generally favor interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.”

22. At the same time, it is seen that the SFIO’s investigation report⁵ dated 29.03.2023 clearly indicates to a case of siphoning of funds and other fraudulent activities on part of the Respondent. As a matter of abundant precaution, therefore, we are of the considered opinion that while it is premature to appoint a provisional liquidator at the current stage in the instant matter, the Respondent should be restrained from disposing its assets and properties till further orders from this court in order to prevent further siphoning of, if at all.
23. It is accordingly hereby ordered as follows:
 - i. clause (i) of the interim reliefs sought by the Petitioner in CP 03/KB/2024 is allowed till further orders;
 - ii. clauses (ii) to (iv) of the interim reliefs sought by the Petitioner herein are not granted for the moment..
24. List the **Company Petition 03/KB/2024** on **18.06.2024**, for further hearing.
25. Copy of the order be sent to the parties, the, Registrar of Companies, West Bengal and the

⁵Anenxure P-5

Authorised Representative for the Petitioner and also to the Official Liquidator, within seven days through email and registered post.

26. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this on the 10th day of May, 2024.