

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.22 - Rest App./12(AHM)2024
In
CP(IB) 239 of 2020

Proceedings under Section 9 IBC

IN THE MATTER OF:

Dnyaneshwar Shankar Unde Proprietor of Swadarshan DairyApplicant
Products
V/sRespondent
Shukla Dairy Pvt Ltd

Order delivered on: 10/05/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant : Mr. Heet Jhaveri, Advocate
For the Respondent :

ORDER

Rest App./12(AHM)2024

This is application filed under rule 11 of the National Company Law Tribunal Rules, 2016 seeking restoration/revival of Company Petition (I.B.) No.239 of 2020.

It is stated that on 06.11.2020, a Memorandum of Understanding (the 'MOU') was executed between the Applicant and Respondent for settling outstanding dues.

Clause I of the MOU expressly delineates that the Respondent acknowledges and assumes liability amounting to Rs.1,49,62,721/-, which represents the principal sum asserted in the Main Application. Furthermore, the Respondent undertook to discharge this liability/dues through fifteen (15) instalments. The first fourteen (14) instalments are set at Rs.10,00,000/- each, with the fifteenth and final instalment amounting to Rs.9,62,721/-.

The payment schedule was slated to commence in November 2020, with the Respondent undertaking to pay the entire liability of Rs.149,62,721/- by the 5th of January, 2022.

Notably, in the event of failure to adhere to the payment schedule, the entire liability of Rs.1,49,62,721/- is subject to interest, as per the provisions stipulated in the Micro, Small and Medium Enterprises Act, 2006 (the 'MSME Act, 2006'), calculated from the date of the Respondent's default.

However, the Respondent started default from the beginning and paid only Rs.39,40,000/- and Rs.1,10,22,721/- is still to be paid as per MOU.

On perusal of MOU and repayment schedule which reflects that Respondent committed default from the beginning and paid only Rs.39,40,000/-. As per clause 4, in case of non-payment of three or more instalments the Applicant get relived from the Clause-3. But there was no clause agreed to get Company Petition (I.B.) No.239 of 2020 revived/restored.

Hence, no ground for restoration of Company Petition is made out.

Accordingly, **Rest. App./12(AHM) 2024** is dismissed.

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SAMEER KAKAR
MEMBER (TECHNICAL)

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SHAMMI KHAN
MEMBER (JUDICIAL)