

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

**COURT-IV**

**I.A.(IBC)/294/2022**  
**IN**  
**C.P.(IB)No.2405/ND/2019**

**IN THE MATTER OF:**

**M/s. Ashu Agencies**  
**Through its Proprietor**

**... Applicant**

**Versus**

**M/s. Al-Dua Food Processing (P) Limited**

**... Respondent**

**AND IN THE MATTER OF:**

**M/s. Ashu Agencies**  
**Through its Proprietor**

**... Operational Creditor**

**Versus**

**M/s. Al-Dua Food Processing (P) Limited**

**... Corporate Debtor**

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,**  
**HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the Applicant :** Adv. Abhivan Prakash, Adv. Arvind Wishwabandhu

**For the Liquidator:** Adv. Mohd Moonis Abbasi,

**Order Delivered on:24.04.2024**

## **ORDER**

**PER: DR. SANJEEV RANJAN, MEMBER (T)**

The interlocutory application i.e. I.A.(IBC)/294/2022 is filed by Mr. Ashu Chaudhary, proprietor of M/s. Ashu Agencies ('applicant') suspended Director of under Section 60(5)(a) of Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') inter alia seeking to restore/revive the the application i.e., C.P(IB)No.2405/2019 , filed under Section 9 of the Insolvency and Bankruptcy Code, 2016

### **AVERMENTS OF THE APPLICANT**

2. Briefly stated the facts of the present case as averred by the applicant in the present application are that this Adjudicating Authority vide its order dated 07.09.2021 in CP(IB) No. 2405/2019 had disposed off the present application i.e., C.P(IB)No.2405/2019 in view of the fact that the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor in C.P.(IB)/1803/2018 along with the liberty granted to the applicant to take recourse under the law. Further, vide order dated 07.09.2021, this Hon'ble Adjudicating Authority was pleased to allow the Applicant to file its claim before the learned IRP in another matter against the same Corporate Debtor against which a case bearing CP(IB) No. 1803/ND/2018 was admitted by this Hon'ble Tribunal on 07.09.2021 and an order for initiating CIRP was passed.
3. The Applicant submitted that in terms of directions issued by this Hon'ble Tribunal, the Applicant filed. its claim before the learned IRP in case bearing CP(IB) No. 1803/ND/2018 wherein the applicant's claim was clubbed with 6-7 other applications, which were finally heard and admitted by the Hon'ble Tribunal. However, the Corporate Debtor in the said case bearing CP(IB) No. 1803/ND/2018 then approached the Hon'ble NCLAT and that stage, the Corporate Debtor settled the matter with the main Applicant in CP(IB) No. 1803/ND/2018 vide Settlement and Memorandum of Understanding dated 05.10.2021, without consulting or making party any of the other Applicants. Pursuant to which the Corporate

Debtor/Appellant withdrew its appeal case by invoking section 12A of IBC 2016 vide order dated 25.11.2021 passed by the Hon'ble NCLAT. Accordingly, the applicant prays for revival of in CP(IB) No. 2405/2019.

**REPLY FILED BY M/s. AL-DUA FOOD PROCESSING PRIVATE LIMITED**  
**('CORPORATE DEBTOR' / 'REPOUDENT')**

4. The Respondent had filed its reply and submitted that this Hon'ble Adjudicating Authority vide its order dated 07/09/2021 in CP(IB) No. 2405/2019 clearly holds that if CIRP is set aside, the present applicant shall be at liberty to take recourse under law. However, in the present case, the situation is rather different. The CIRP was not set aside, but was duly terminated by this Hon'ble Adjudicating Authority vide order dated 07.09.2021 after CoC with 100% voting power had voted in favour of withdrawing CIRP against the Corporate Debtor.
5. The Corporate Debtor further submitted that in catena of cases, Hon'ble NCLAT has held that IBC is not a recovery proceeding. To support the contention, the Respondent had placed reliance on **Hon'ble NCLAT's Judgement in Krishna Garg And Another Vs Pioneer Fabricators Pvt Ltd (Company Appeal (AT)(INS) No. 92 of 2021 (2021 SCC Online NCLAT 81)**; wherein Hon'ble NCLAT upheld the order of Adjudicating Authority which rejected the Revival application of the Appellant-Financial Creditor.

**ANALYSIS AND FINDING**

6. This Adjudicating Authority has carefully heard the arguments advanced by Learned Counsels for the parties and minutely perused the averments made in the application, reply and written submissions filed by the parties.
7. Adverting to the facts of the present case, this Adjudicating Authority vide order dated 07/09/2021 in another company petition i.e, CP. No. (IB)-1803/(ND)/2018 titled M/s Supreme Packaging Industries vs M/s Al-Dua Food Processing Private Limited had initiated Corporate Insolvency Resolution Process against M/s. Al-

Dua Food Processing Private Limited, who is the Corporate Debtor in the present Company Application i.e., CP(IB) No. 2405/2019 also. This Adjudicating Authority in view of the CIRP admission order passed in CP. No. (IB)-1803/(ND)/2018 against M/s. Al-Dua Food Processing Private Limited had disposed off the CP(IB) No. 2405/2019 along with the liberty granted to the applicant to take recourse under the law, if by any reason the order dated 07/09/2021 in CP. No. (IB)-1803/(ND)/2018 is set aside. The relevant extract of the order dated 07.09.2021 in CP(IB) No. 2405/2019 is reproduced herein below:-

“Against the said corporate debtor, M/s Al Dua Food Processing Pvt. Ltd. an application being CP. No. (IB)-1803/(ND)/201 8 is admitted on 07.09.2021 and the order initiating CIRP is passed. The applicant in the present application is at liberty to file its claim before the IRP which shall be considered in accordance with law.

***It is made clear that if by any reason the order initiating CIRP is set aside, the present applicant will be at liberty to take recourse under law.***

The present application stands disposed off in terms of above order.”

8. The order dated 7/09/2021 in CP. No. (IB)-1803/(ND)/2018 was challenged before Hon’ble NCLAT in Company Appeal (AT) Insolvency No. 796 of 2021 case titled Mohammad Zaheer vs Supreme Packaging Industries & Anr. However, during the pendency of the appeal proceedings before the Hon’ble NCLAT, a settlement outside the Court had arrived between the parties of CP. No. (IB)-1803/(ND)/2018. Further the Operational Creditor, in the aforesaid CP. No. (IB)- 1803/(ND)/2018, i.e. M/s Supreme Packaging Industries had filed an Application, I.A No. 5619/2021 before this Hon’ble Adjudicating Authority under Sec 12 A of the Code, 2016, after 100% of members of CoC had voted in favour of withdrawal of CIRP against the Corporate Debtor i.e. M/s Al-Dua Food Processing Pvt. Ltd. Resultantly, this Adjudicating Authority, vide its order dated 08/12/2021, had dismissed the petition CP. No. (IB)-1803/(ND)/2018 titled [M/s Supreme Packaging Industries vs M/s Al-Dua Food Processing Private Limited] as withdrawn and terminated the CIRP proceedings against the Corporate Debtor in the light of the aforesaid CoC decision.

9. On a perusal of the order dated 07.09.2021 in CP(IB) No. 2405/2019, it is evident that the liberty is granted to the Applicant to take recourse under law, in case CIRP against the Corporate Debtor is set aside. Moreover, the CIRP against the Corporate Debtor was terminated in view of the settlement between the applicant in CP. No. (IB)-1803/(ND)/2018 and the Corporate Debtor. Therefore, the contention of the Respondent that CIRP of the Corporate Debtor was not set aside, but was duly terminated by this Hon'ble Adjudicating Authority vide order dated 07.09.2021, therefore, the revival of present applicant cannot be allowed is unacceptable.

10. Accordingly, in view of the above discussions, **the present application (I.A.(IBC)/294/2022) stands allowed. Resultantly, CP (IB) No. 2405/ND/2019, application filed under Section 9 of the Coode, 2016 stands restored to its original position.**

Sd/-

**(DR. SANJEEV RANJAN)  
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)  
MEMBER (J)**