

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 24.04.2024 AT 10:30 AM**

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|---|---|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | IA(IBC)/18/2021 in CP(IB) No.172/10/HDB/2017 |
| NAME OF THE COMPANY | Super Agri Seeds Pvt Ltd |
| NAME OF THE PETITIONER(S) | |
| NAME OF THE RESPONDENT(S) | |
| UNDER SECTION | 10 of IBC |

ORDER

IA (IBC)/18/2021

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II**

**IA No.18 of 2021 in
CP (IB) No.172/10/HDB/2017**

*Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of NCLT Rules*

**In the matter of M/s.Super Agri Seeds Private Limited
(Corporate Debtor under Liquidation).**

Between:

Dr.K.V.Srinivas,

Liquidator for the Corporate Debtor,
Kamala Towers, 4th Floor,
1-8-304 to 307, Patigadda Road,
Begumpet, Hyderabad.

... Applicant

A n d

1. **Mr.Kiran Gubba, Director,**
M/s.Gubba Cold Storage Private Limited,
Plot No.25, Tirumulghery,
Near RTA, Secunderabad – 500 015.

2. **Mr.Ravi Srinivas,**
Plot No.118/A, Road No.70,
Journalist Colony, Jubilee Hills,
Hyderabad – 501 333.

...Respondents

Date of Order: 24.04.2024

CORAM :

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present :

For the Applicant : Mr.Y.Suryanarayana, Advocate

For the Respondent No.1 : Mr.Rakesh Sanghi, Mr.Pankaj Kumar,
Ms.C.Urmila, Mr.Anuj Raj & Mr.D.Sai
Prudhvi, Advocates

For the Respondent No.2 : M/s.Vankin, Mr.Allu & Partners, Advocates

Per: [Rajeev Bhadrwaj, Member (Judicial)]

ORDER

1. This Application is filed by the Applicant/Liquidator of M/s.Super Agri Seeds Private Limited (Corporate Debtor) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 directing the Respondents No.1 & 2 to pay an amount of Rs.74,53,130/- and Rs.87,26,642/- respectively to the Applicant so as to enable him to discharge his duties effectively in accordance with the provisions of the Code.

2. **Applicant's Case :**

2.1 M/s.Super Agri Seeds Private Limited (Hereinafter referred as Corporate Debtor/CD) was put in Corporate Insolvency Resolution Process (CIRP) vide Order dated 06.09.2017. Initially, Mr.Kari Venkateswarlu was appointed as the Interim Resolution Professional

(IRP) by an Order dated 18.09.2017. Subsequently, Dr.K.V.Srinivas (Hereinafter referred as Applicant) was appointed as the Resolution Professional (RP) vide Order dated 28.11.2017.

- 2.2 Throughout the CIRP, the Respondents showed extreme hostility towards the Resolution Professional by withholding original records, data and information related to the Corporate Debtor. They also didn't provide essential documents like up-to-date books of accounts, usernames, and passwords necessary for filing statutory returns.
- 2.3 Subsequently, an application No.CA No. 56/2018 in 2018 was filed by the Resolution Professional under Section 19 of the IBC, 2016 seeking directions to the Respondent No. 1 and other suspended directors. This application was disposed of on March 21, 2018, along with the liquidation order. The Committee of Creditors (CoC) decided not to extend the CIRP period and no resolution plan was received. Consequently, Order of Liquidation was passed vide order dated March 21, 2018 and the Applicant was appointed as the Liquidator. During the liquidation proceedings, the respondents continued their hostile behaviour, refusing to cooperate with the Applicant.
- 2.4 An application (IA No. 494/2018) was filed by the Respondent No.1, alleging false allegations against the Liquidator for the e-Auction of Corporate Debtor's assets. The application was dismissed vide an order dated 09.08.2019 and Respondent No. 1 was directed to

compensate for the loss caused by disposing of Germ Plasm /Parent seed. The appeal of Respondent No.2 against this decision was dismissed by the Hon'ble Appellate Authority on 20.11.2019.

- 2.5 In compliance with the directions dated 09.08.2019, the applicant made several requests to Respondents No.1 & 2 seeking cooperation in submitting details of inventories dumped in GHMC dump-yard, but no co-operation was extended. Further, the applicant based on limited information from Respondent No.1 and by tallying backup (books of account) from Respondent No.2, collated relevant information for valuation of inventories allegedly dumped in GHMC municipal dump-yard. Notably, the information provided by Respondent No.1 does not match with the Audited Financial Statements.
- 2.6 Upon reviewing stock movement reports/log books from Respondent No. 1, the applicant noted a significant volume of inventories were moved out of the warehouse by ex-management/ suspended directors on 29.09.2018, immediately after the commencement of CIRP.
- 2.7 The Liquidator appointed Mr. Kranthi Kumar Kedari, a Registered Valuer (Regn.No.IBBI/RV/02/2019/11532), to value inventories allegedly dumped by Respondent No.1 and stock fraudulently removed by Respondent No.2. Mr.Kranti Kumari Kedari determined the average value of inventory allegedly dumped into GHMC dump-yard by Respondent No.1 as Rs.74,53,130/- and the average value of

inventory fraudulently removed by Respondent No.2 as Rs.87,26,642/-.

3. **Case of Respondent No.1 :**

3.1 The Respondent No.1 has admitted that the entire stock of around 34 tonnes comprising of Maize, Jowar, Paddy, Bitter Gourd and some vegetable seeds, foundation seeds etc., were stored in the Cold Storage Godown of M/s.Gubba Cold Storage Private Limited, Respondent No.1. However, it is submitted that the quality of the said seeds has not been certified under the Seeds Act and it is not clear whether the seeds constituted Foundation Seeds or germ-plasm seeds, therefore, the quality and value of the seeds cannot be determined. It is alleged that the Applicant has intentionally kept low quality seeds in connivance with the financial institutions, so as to usurp the money.

3.2 M/s.Gubba Cold Storage Private Limited also issued legal notice dated 14.04.2018 to the Applicant to remove the entire stock of M/s.Super Agri Seeds Private Limited from M/s.Gubba Cold Storage Private Limited. Despite this, the Applicant never visited M/s.Gubba Cold Storage Private Limited to take inventory of the stocks and correspondence was also exchanged between the Respondent No.1 and the Applicant, which has been filed alongwith the memo dated 16.05.2018 in CP No.172 of 2017.

- 3.3 On account of the inaction on the part of the Applicant, the replying Respondent removed and dumped the entire seed stock around 18.09.2018. It is also submitted that the lease rentals has also been paid by the Applicant.
- 3.4 The Applicant has also appointed some incompetent person as the Surveyor and his report is not based upon scientific analysis. It is alleged that the Applicant is devising ways and means to escape from his duties and shift the burden on the Respondent.
4. **Case of Respondent No.2 :**
- 4.1 It is alleged that the present Application is a counter blast to the filing of Writ Petition No.20156 of 2019 before the Hon'ble High Court of Telangana for initiating investigation by Central Bureau of Investigation (CBI) against the Applicant and the Members of the Committee of Creditors (CoC) for corrupt and criminal actions.
- 4.2 It is submitted that before holding anyone liable, this Authority has to determine whether any loss/damage has been caused and then such loss needs to be scientifically and reasonably assessed. The real intention of the Applicant is to prolong the liquidation process, so as to unduly enrich himself.
- 4.3 The Applicant clandestinely got the valuation done of the loss, so as to avoid proper pricing of the goods. Even the lease rentals of M/s.Gubba Cold Storage Private Limited has not been paid. The

malafide intention of the Applicant also appears from the fact that from 2019 till September, 2020, he has not taken any steps to get the valuation of the loss caused to the Corporate Debtor by a competent Valuer. The valuation has been done by incompetent Valuer and even the Germ Plasm/Parent seed does not find mention in the Valuation Report. The Valuer also does not have any basic knowledge of seeds. As per the replying Respondent, the valuation of Germ Plasm/Parent seed of the Corporate Debtor is worth Rs.85 crores today. Thus, it shows that the Applicant is interested in getting undue benefit from the entire process.

5. We have heard both the Learned Counsels for both the parties and have gone through the entire records including the written arguments.
6. The CP No.172/10/HDB/2017 filed by M/s.Super Agri Seeds Private Limited, Corporate Debtor under Section 10 of the IBC was admitted vide Order dated 06.09.2017. The Liquidation Order was passed on 21.03.2018. Prior to the CIRP, the Corporate Debtor kept Germ Plasm/Parent seed in cold storage, namely, M/s.Gubba Cold Storage Private Limited, of which Respondent No.1 is the Director. In between the CIRP and the Liquidation process, the agricultural seeds were removed from the cold storage and were either taken away by the suspended Director of the Corporate Debtor or dumped in GHMC dump-yard. Both the parties were also involved in intense litigation by filing cases against each other. The Respondent No.1 has gone to the extent of filing Writ Petition No.20156 of 2019 before the

Hon'ble High Court of Telangana seeking directions to the CBI for registering criminal case against the Applicant for alleged corrupt practices. The Applicant has also filed many IAs against the Respondents, but the relevant one is the Application filed under Section 19 of IBC for issuing appropriate directions to the Respondent No.2 and other suspended Directors, which were disposed of on 21.03.2018. The present IA is the result of the direction given in IA 484 of 2018 filed by the present Respondent No.2 which was disposed of vide Order dated 09.08.2019 and one of the directions given below :

“R6 is hereby directed to make good the loss caused to the Corporate Debtor by dumping Germ Plasm/Parent seed by paying the value of the same which is to be estimated by a competent valuer to be appointed by the R2/Liquidator. However, from the liquidation value so arrived, amounts due to R6 by way of lease rentals from R1 shall be paid by R2.”

7. Against the Order dated 09.08.2019, the present Respondent No.2 filed Company Appeal No.1200 of 2019 and the relevant order relating to the present controversy as mentioned in the Order under appeal is given in Para 12 (page No.20 of the Application), which is reproduced below:

“The 6th Respondent Mr.Kiran Gubba has been rightly directed to make good the loss caused to the Corporate Debtor by dumping Germ Plasm/Parent seed by paying the value of the same.”

8. Therefore, the present Respondent No.1 who was impleaded as Respondent No.6 in IA No.494 of 2018 was directed to compensate the Corporate Debtor for the loss caused to it.

9. On account of the dismissal of the Appeal against the order passed in IA No.494 of 2018, it has become final that the Corporate Debtor is to be compensated for illegal transfer or dumping of the agricultural seeds. Consequently, the Applicant appointed Mr.Kranti Kumar Kedari, Registered Valuer with Registration No.IBBI/RV/02/2019 /11532 to carry out evaluation of inventories and he gave Report **(page No.38 of the Application)** in which he relied upon the following records:

- a) **Log Book of M/s.Gubba Cold Storage Private Limited**
- b) **Tally extract of the M/s.Super Agri Seeds Private Limited**
- c) **Stock Summary from 01.04.2016 to 31.07.2016**
- d) **Audited Financial Statements for the years ending 31.03.2016 and 31.03.2017.**
- e) **Copy of e-mails exchanged between him and M/s.Gubba Cold Storage Accounts Manager.**

The Respondent No.1 has provided the Log Book about the movement of the stock from the cold storage and this record alongwith the audited financial statements are at Annexure 1 of the Rejoinder. The stock kept with the Respondent No.1 cannot be disputed as it is clear from the Log Book and there is only the question of pricing of the stock.

10. The Respondent No.1 has not denied about the removal of the stock from the cold storage and in Para 17 of the Counter, it is admitted that the entire seed stock of M/s.Super Agri Seeds Private Limited was removed in between September, 2018 to December, 2018. However, he took a plea that for removal of the stock, the Applicant

was given Legal Notice dated 04.02.2018 and a Memo was also filed on 16.05.2018, but no action was taken by the Applicant. This plea was also taken in IA No.494 of 2018 and it is recorded in Para No.8 of the Order. However, this stand was rejected in the said IA and accordingly the Applicant can't take up the same plea in the present IA.

11. Both the Respondents have also questioned the competence of Mr.Kranti Kumar Kedari who assessed the value of the agricultural seeds. The Respondent No.1 is so obsessed with his position that he went on to state in Para Nos.12 & 13 of the Counter that the said Valuer is a "Joker". This type of conduct on the part of the Respondent No.1 is to be deprecated and it goes on to show how much averse the Respondent No.1 is towards the Applicant and the Valuer.
12. As already observed, Sri Kranti Kumar Kedari, Valuer has taken note of every relevant documents which were available. The Applicant was not given the entire records of the Corporate Debtor and that is why he filed an IA under Section 19 of IBC. When the assessment was made by him, the relevant documents were the Log Book, Financial Statements etc., for the purpose of determining the price of the goods. He took into account broad category of seeds and its quantities, date on which stock was removed/dumped out of M/s.Gubba Cold Storage Private Limited etc. The price information was obtained from the Stock Reports. The total stock of seeds

weighed 67,655 Kgs, which was removed in 1353 bags. Similarly, 31,903 Kgs seeds were dumped in 826 bags from M/s.Gubba Cold Storage.

13. The varieties of the seeds have been mentioned at Page No.50 of the Report and it is also recorded that the Minimum, Maximum & Average rates were taken from the Stock Report, which is based on the basis of goods purchased by the Company between the period from 01.04.2016 to 31.07.2016. The details of the stocks which have been removed by the Ex-Management of the Corporate Debtor have been given in **Annexure 1(a) - (Page No.52 of the Application)** and the stocks dumped in GHMC dump-yard is at **Annexure I(b) (Page No.53 of the Application)**.
14. Therefore, it is crystal clear that the Valuer has assessed the value of the agricultural seeds in a scientific and analytical way, despite the fact that there was no co-operation on the part of the Respondents. It is interesting to note that the Respondent No.2 in Para No.26 of the Counter has valued the Germ Plasm/Parent seed of the Corporate Debtor to be worth about Rs.35 crores as on the date of dumping the material and the present worth of which is mentioned as Rs.85 crores. This admission on the part of the Respondent No.2 also goes on to support the Report of the Valuer that the assessment was made properly without any bias. No doubt can be raised on the competence of the Valuer and he is an expert as per Section 45 of the Evidence Act.

15. For the reasons discussed above, this **IA No.18 of 2021 in CP(IB) No.172/10/HDB/2017 is allowed with the following directions :**
- i) The Respondent No.1 is to pay an amount of Rs.74,53,130/-.
 - ii) The Respondent No.2 is to pay an amount of Rs.87,26,642/-.
 - iii) The aforesaid amount is directed to be paid along with interest @ 6 per cent per annum from the date of filing of the present Application and if it is not paid within 30 days, the Respondents will be liable to pay interest @ 12 per cent till the realisation of the entire amount.

Sd/-
SANJAY PURI
MEMBER (TECHNICAL)

Sd/-
RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Vinod