

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1526 of 2025

[Arising out of Order dated 24.09.2025 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – IV), in I.A. No.5208/2024 & Restored Company Petition (IBC)/15/ND/2024 (Old Case C.P. (IB)/2405/ND/2019)]

IN THE MATTER OF:

**Mohd. Zaheer,
(Ex-Promoter of
AL-Dua Food Processing Pvt. Ltd)**

...Appellant

Versus

Ashu Agencies & Anr.

...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Shivam Shukla, Ms. Heena Kochar, Mr. Aridaman, Ms. Anjali Upadhyay and Mr. Syed Saud, Advocates.

For Respondents : Mr. Abhinav Prakash, Mr. Himanshu Singh and Ms. Srishti Kher, Advocates for R-1.

Mr. Rishi Singhal, Advocate for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by a suspended director of the corporate debtor has been filed challenging the order dated 24.09.2025 passed by the adjudicating authority (National Company Law Tribunal, New Delhi Bench, Court – IV), by which order, an application under Section 9 filed by the respondent herein has been admitted.

2. Brief facts of the case necessary to be noticed for deciding this appeal are:

- i. The corporate debtor M/s. Al-Dua Food Processing Pvt. Ltd. issued purchase orders to the operational creditor M/s. Ashu Agencies, a proprietorship firm for purchasing the kraft paper reels.
- ii. Operational creditor after receiving oral purchase order from the corporate debtor forwarded the same to manufacturer company and as per directions of the corporate debtor got material directly supplied to the corporate debtor in the Financial Year 2017-18 & 2018-19.
- iii. Various transactions took place. Part payments were made by the corporate debtor towards the goods received. A demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016, (for short the Code or the IBC) was issued on 25.07.2019 claiming a debt of Rs.2,48,46,299/-.
- iv. Corporate debtor after receiving the demand notice sent a reply dated 05.08.2019 stating that liability and debt has been transferred to M/s. MK Overseas Pvt. Ltd. New management has been taken over on 07.07.2018. The company is not liable to pay any amount to the operational creditor and operational creditor was advised to approach M/s. MK Overseas Pvt. Ltd. for payment of amount. The liability of company was disputed. The operational creditor filed a Section 9 application in August 2019 claiming an amount of Rs.2,48,46,299.76/-.
- v. Notices were issued by the adjudicating authority. Reply to Section 9 application was filed by the corporate debtor. Corporate debtor in the

reply to Section 9 application denied the claim. It was pleaded that from July 2018, corporate debtor was owned and completely controlled by M.K. Overseas Pvt. Ltd. The present promoters of the corporate debtor bought the corporate debtor from M.K. Overseas Pvt. Ltd. and their promoters and as part of the acquisition and takeover, liabilities of the corporate debtor were to be paid by M.K. Overseas Pvt. Ltd. as they have retained the responsibilities of making payments. In books of the accounts of the corporate debtor from 01.04.2018 to 07.07.2018, the name of the operational creditor is also in the list of sundry creditors which has been transferred to M/s. M.K. Overseas Pvt. Ltd. Letter dated 30.06.2018 was claimed to have been sent by the operational creditor to the effect that it has no objection if the debt balance of Rs.2,47,69,431/- is transferred to M/s. M.K. Overseas Pvt. Ltd. Reference of the agreement and arrangement between the corporate debtor and M/s. M.K. Overseas Pvt. Ltd. dated 07.07.2018 was mentioned. It was pleaded that it is M.K. Overseas Pvt. Ltd. which is liable to pay the amount to the operational creditor.

- vi. Adjudicating authority heard the parties and by impugned order held that plea of corporate debtor for novation of the contract is unsupported by any Tripartite Agreement. No objection letter dated 30.06.2018 is disputed and cannot be itself extinguish liability of the corporate debtor.
- vii. The Share Purchase Agreement between the corporate debtor and M/s. M.K. Overseas Pvt. Ltd. is nothing but sham and collusive document

devised with sole objective of defrauding creditors. So-called dispute raised by the corporate debtor has *mala fide* attempt to create a moonshine dispute.

- viii. Adjudicating authority after recording aforesaid findings had admitted Section 9 application and appointed the respondent No. 2 as Interim Resolution Professional (IRP).
- ix. This appeal was heard on 07.10.2025, on which date, notices were issued and interim order was passed that “*let the IRP receive and collate the claims but shall not take any further steps.*” Reply has been filed in the appeal to which the rejoinder has also been filed.

3. We have heard learned Sr. counsel Mr. Abhijeet Sinha appearing for the appellant and learned counsel Mr. Abhinav Prakash appearing for the respondent No.1. Learned counsel Mr. Rishi Singhal has appeared for respondent No. 2.

4. Learned counsel for the appellant challenging the order impugned submits that there was no operational debt payable to the operational creditor under Section 41 of the Contract Act, 1872 when promisee has accepted to receive its debt from M.K. Overseas Pvt. it cannot proceed against the corporate debtor. Learned counsel for the appellant has relied on Section 41 of the Contract Act 1872 for discharge of the liability. It is further submitted that contract between the parties stood novated under which the corporate debtor is discharged from its liabilities to pay debt and liability to pay debt was on M.K. Overseas Pvt. Ltd. It is submitted that no objection letter dated

30.06.2018 was relied by the corporate debtor in its reply but no rejoinder was filed disputing the letter. Operational creditor having accepted to receive its balance amount from MK Overseas Pvt. Ltd, it could not have filed any application under Section 9 against the corporate debtor. It is submitted that operational creditor had received payment from MK Overseas Pvt. Ltd. of Rs.35 lakh by banking channel and Rs.85,000/- in cash, which clearly prove that operational creditor has accepted to receive its entire dues from MK Overseas Pvt. Ltd. Appellant, operational creditor in Section 9 application has not disclosed the payment received from MK Overseas Pvt. Ltd. of Rs.35,85,000/-. Rs. 35 lakh amount was received from banking channel which cannot be denied by the appellant. Corporate debtor having disputed the claim of the appellant, adjudicating authority could not have proceeded to exercise any jurisdiction in the summary jurisdiction under the IBC. Impugned order admitting Section 9 application is unsustainable. Learned counsel for the appellant in support of his submission placed reliance on various judgments of Hon'ble Supreme Court and High Courts and this Tribunal which we shall refer to while considering the submission in detail.

5. Learned counsel appearing for the respondent refuting the submissions of the appellant submits that the operational creditor having made supplies to the corporate debtor which was accepted, it was obligation of the corporate debtor to make the payment. Letter dated 30.06.2018 relied by the corporate debtor is not admitted and even if the letter is looked into, the same claims to be issued as no objection which was issued one by Jagveer Singh. There was outstanding debt of ₹2,48,46,299.76/-, it was obligation of the corporate

debtor to clear the debt. No objection letter dated 30.06.2018 cannot by itself extinguish liability of the corporate debtor. Defence raised by the corporate debtor does not qualify as a pre-existing dispute. The plea of novation of the contract is bald defence unsupported by any Tripartite Agreement, releasing the corporate debtor from its liability. Mere internal arrangement between groups companies cannot absolve the corporate debtor of its obligation towards third-party creditors. Appellant in the appeal is introducing new facts. No such plea was placed before the adjudicating authority regarding any payment. The above payment in any manner is not relevant in the case. Learned counsel for the respondent relying on the judgement of this Tribunal in '**Chetan Sharma' Vs. 'Jai Lakshmi Solvents Pvt. Ltd. & Ors.'** in [Comp. App. (AT) (Ins.) No.66/2017] submitted that corporate debtor by entering into any agreement cannot transfer its liability of debt to third-party. Share Purchase Agreement between the MK Overseas Private Limited and new promoters of the corporate debtor cannot transfer the liability of debt. The operational creditor was not part of the Share Purchase Agreement. Adjudicating authority has rightly come to the conclusion and finding that it was the corporate debtor in connivance with MK Overseas Pvt. Ltd. attempted to extinguish its liabilities, which was nothing but a collusive arrangement with the objective of defrauding creditors, including the operational creditor.

6. We have considered the submissions of the counsel for the parties and perused the records.

7. From the pleadings of both the parties, following facts are not disputed between the parties:

- I. In pursuance of the purchase order issued by the corporate debtor, appellant has supplied kraft paper reels to the corporate debtor in the Financial Year 2017–18 and 2018–19. The corporate debtor has made part payments against the supplies, which were received by the corporate debtor and utilised.
- II. A Share Purchase Agreement was entered between the MK Overseas Private Limited, Mohammed Kamil and Ms. Naseera Begum as a seller with AL Hamid Agro Food Private Ltd and AL-Dua Food Processing Private Ltd. AL Ahmed Agro Food Private Limited and three individuals as purchasers and AL-Dua Food Processing Private Limited Company. In the Share Purchase Agreement, apart from above, no other person was party including the operational creditor.
- III. According to the corporate debtor in the statement of account from 01.04.218 to 07.07.2018, amount of ₹2,47,69,431/- is shown to be due to the operational creditor.

8. According to the case set up by the corporate debtor by virtue of Share Purchase Agreement entered on 30.07.2018 (transaction date 07.07.2018), the liability of corporate debtors stood transferred to MK Overseas Private Limited, which liabilities have also been reflected in the Financial Statement of MK Overseas Private Limited. The name of the operational creditor apart from other creditors is mentioned in the Financial Statement of MK Overseas Private Limited with respect to appellant the dues of ₹2,47,69,431/- are reflected. The submission which has been pressed by the counsel for the appellant is that in view of the transfer of the debts of creditors to MK

Overseas Private Limited, corporate debtor is no longer liable for any outstanding of the operational creditor.

9. The entire case of the appellant is based on a letter dated 30.06.2018, written on behalf of the Ashu Agencies to management of AL-Dua Food Processing Private Limited. The said letter has been brought on record as Annexure A-2, which is as follows:

“Dt. 30 June 2018

To

The Management

Al Dua Food Processing Pvt. Ltd.

16-Fire Brigade Lane, Connaught Place New Delhi-110001

Sub:-Amount Transfer Confirmation

Dear Sir,

We have confirm that we do not have any objection to transfer our debit balance of Rs. 2,47,69,431.00 (Two Crore forty seven lac sixty nine thousand four hundred thirty one only) of Al Dua Food Processing Pvt. Ltd. to MK Overseas Pvt. Ltd.

Therefore after 30th of June 2018 we will receive our balance amount from MK overseas Pvt. Ltd. And as on 30 June 2018 we don't have any liability on Al Dua Food Processing Pvt. Ltd.

For Ashu Agencies

(Authorised Signatory)”

10. In the reply which was filed by the corporate debtor to Section 9 application, the said letter has also been mentioned. It is useful to notice paragraphs 4 and 5 of the reply, which is as follows:

“4. That the management of the corporate debtor was taken over by its present management from its earlier management w.e.f. 08.07.2018 and it was tagreed by its earlier nmanagement that the liability of its certain

sundry creditors including the present operational creditor be transferred to their holding company M/s MK Overseas Pvt. Ltd. and the said transferred liability shall be borne and paid by their holding company M/s MK Overseas Pvt. Ltd.

M/s MK Overseas Pvt. Ltd. has shown the above said credit balance of the operational creditor in its ledger account being maintained by it in the name of the corporate debtor and a copy of the Statement of Account of Al Dua Food Processing Pvt. Ltd. (TRF) i.e. the corporate debtor for the period upto 01.04.2018 to 07.07.2018 is annexed as Annexure 3.

5. That the operational creditor sent a letter dated 30.06.2018, to the earlier management of the corporate debtor to the effect that it has no objection if the debit balance of Rs.2,47,69,431/- is transferred to M/s M.K. Overseas Pvt. Ltd. and original of the said letter given to the present management by the earlier management of the corporate debtor is Annexure 4.

In addition to this the earlier management of the corporate debtor also gave the photocopy of the letter dated 31.03.2018 sent by Maa Gauri Land Developers and letter dated 30.06.2018 sent by Maa Gauri Corrogator to the current management of the corporate debtor wherein they gave their no objection if their debit balance of Rs.15,62,583/- and Rs. 8,34,843/- is transferred to M/s M.K. Overseas Pvt. Ltd. and the photocopy of the said two letters are Annexure-5 (Colly).

The corporate debtor, on enquiry has been informed by the earlier management that the said letters are signed by Shri Jagveer Singh, father of Shri Ashu Chaudhary, the sole proprietor of the operational creditor in the present case.”

11. Adjudicating authority in the impugned order has noted that said letter 30.06.2018 is disputed. Adjudicating authority further held that the letter itself cannot extinguish liability of the corporate debtor. No rejoinder was filed by the operational creditor before the adjudicating authority. We thus for the purposes of this case, proceed on premise that no objection letter dated 30.06.2018, signed by one Jagveer Singh was sent to the management of the

corporate debtor. Submission of the appellant as noticed above is that operational creditor having accepted and having given no objection for transfer of its debit balance to MK Overseas Private Limited, liability of the corporate debtor stood extinguished and the operational creditor's claim if any was only against MK Overseas Private Limited. Learned counsel for the appellant in support of his submissions has relied on Section 41 of the Contract Act, 1872. Section 41 of the Contract Act, 1872 deals with the effect of accepting performance from third-party. Section 41 of the Contract Act, 1872 provides as follows:

“41. Effect of accepting performance from third person.—When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.”

12. Learned counsel for the appellant in support of his submissions under Section 41 of the Contract Act, 1872 has relied on the judgement of the Hon'ble Supreme Court in '**Lala Kapurchand Godha & Ors.' Vs. 'Mir Nawab Himayatalikhan Azamjah'**, reported in [1962 SCC OnLine SC 412], '**Citibank N.A.' Vs. 'Standard Chartered Bank'** reported in [(2004) 6 SCC 1], and Madras High Court judgement in '**Chegamull Suganmull Sowcar' Vs. 'V. Govindaswami Chetty & Ors.'** reported in [1928 SCC OnLine MAD 260]. Judgement of the Hon'ble Supreme Court in '**Lala Kapurchand Godha & Ors.' (supra)**, where suit was filed for recovery of ₹9,99,940/- towards amount due with regard to certain jewellery sold to the defendant. A payment of ₹20,00,000/- was made towards full satisfaction of the claim. Receipt was also issued mentioning the receipt of amount in full

and final payment of the balance. In the above context, Hon'ble Supreme Court in paragraph 5 of the judgement laid down following:

“5. Then there was an appeal by the respondent which was heard by the appellate court (Chagla, C.J. and Mody, J.). By its judgment dated 15-4-1958 the appellate court came to a contrary conclusion and held that on the evidence, oral and documentary, given in the case it was clearly established that the appellants accepted the sum of Rs 20 lakhs in full satisfaction of their claim and duly discharged the promissory notes by endorsing full satisfaction thereon; therefore, Section 63 of the Indian Contract Act, 1872 applied and the suit of the appellants was liable to be dismissed. It accordingly allowed the appeal and dismissed the suit with costs.”

13. In the above case relying on Section 63, Hon'ble Supreme Court held that the suit was liable to be dismissed. Section 63 of the Contract Act, 1872 provides as follows:

“63. Promisee may dispense with or remit performance of promisee.—*Every promisee may dispense with or remit, wholly or in part, the performance of the promisee made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.*

Illustrations

(a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim².

(d) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees.

This is a discharge of the whole debt, whatever may be its amount.

(e) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a [composition] of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand."

14. The present is not a case where Section 63 can be held to be applicable. The operational creditor has neither remitted wholly or in part the performance of the promise made to him nor it has extended time for such performance or have accepted any satisfaction. The judgement of the Hon'ble Supreme Court, thus in the above case does not help the appellant. The next judgement relied by the appellant is judgement of the Hon'ble Supreme Court, in '**Citibank N.A.**' (*supra*), relying on Section 41 of the Contract Act, 1872. Section 41 has been interpreted by the Hon'ble Supreme Court in the said judgement. It was held that when a promisee has accepted satisfaction from third-party it cannot insist on satisfaction of its claim of the promisor as well. It was held that Section 41 applies where a contract has in fact been performed by some person other than person bound, thereby. In paragraph 46 of the judgement of the Hon'ble Supreme Court, following was laid down:

"46. The Special Court fell in error in applying Section 41 of the Indian Contract Act to the facts of the present case. Attempt on the part of Scb to place reliance on Section 41 of the Contract Act is completely misplaced in the facts of the case as has been held by this Court in Citi Bank [(2004) 1 SCC 12] . Section 41 of the Contract Act only provides that the promisee cannot have double satisfaction of its claim i.e. from the promisor as well as a third party. It does not give a cause of action to the promisee, but, to the promisor, to contend that the promisee who has accepted satisfaction from the third party cannot insist on the satisfaction of its claim from the promisor as well. The

case of Citibank would squarely fall under Section 63 of the Indian Contract Act, as was held in Citi Bank [(2004) 1 SCC 12] . It was observed in paras 50 to 52 as follows: (SCC pp. 35-36)

“50. Under Section 63, unlike Section 62, a promisee can act unilaterally and may

(i) dispense with wholly or in part, or

(ii) remit wholly or in part, the performance of the promise made to him, or

(iii) may extend the time for such performance, or

(iv) may accept instead of it any satisfaction which he thinks fit.

51. It is Citibank's case that Scb on its own asked for and voluntarily accepted two SGLs from Citibank as satisfaction which it deemed fit in exchange for Citibank's obligation to deliver GOI Bonds of the face value of Rs 50 crores under the two BRs. Such a plea would fall under Section 63. The Special Court concluded that provisions of Section 41 of the Contract Act would be applicable to the facts of the case because CMF had failed to deliver the GOI Bonds to Scb and, therefore, Scb could claim them from Citibank. In our opinion, the Special Court fell in error in applying Section 41 of the Indian Contract Act to the facts of the case. Section 41 of the Indian Contract Act only provides that the promisee cannot have double satisfaction of its claim i.e. from the promisor as well as a third party. It does not give a cause of action to the promisee, but, to the promisor, to contend that the promisee who has accepted satisfaction from the third party cannot insist on the satisfaction of its claim from the promisor as well. No case under Section 41 of the Contract Act has been pleaded by Citibank. It nowhere pleaded that CMF had delivered the bonds to Scb and, therefore, Scb cannot enforce its demand for delivery of bonds against Citibank. The Privy Council in *Har Chandi Lal v. Sheoraj Singh* [AIR 1916 PC 68 : 44 IA 60] held that Section 41 of the Contract Act applies only where a contract has in fact been performed by some person other than the person bound thereby. What is required by Section 41 is actual performance of the original promise and not a substituted promise.

In Chegammull Suganmull Sowcar v. V. Govindaswami Chetty [AIR 1928 Mad 972] it was held that actual performance has to be there for importing the applicability of Section 41. It was held: (AIR p. 974)

‘Much more than a bare promise is necessary under the section. What it contemplates is actual performance of the original promise. According to the section, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.’

52. The learned Special Court fell in error in holding that Section 41 of the Contract Act would be more appropriately applicable. Section 41, for the reasons set out above, would not be applicable to the facts of the present case. It also fell in error in holding that Citibank did not plead complete discharge from performing its obligation in terms of Section 63. In our opinion, Citibank has specifically pleaded that it stood discharged from the performance of the original obligation on the delivery of SGLs to Scb, which were asked for and accepted by Scb for reasons best known to it. Scb instead of the original satisfaction accepted another satisfaction, deemed fit by it, in terms of Section 63 of the Indian Contract Act.”

15. Learned counsel for the appellant has relied on the judgement of the Madras High Court in **‘Chegamull Suganmull Sowcar’ (supra)**, in which case Madras High Court had occasion to consider Section 41 of the Contract Act, 1872. Madras High Court has held that what is contemplated under Section 41 is much more than a bare promise what is contemplated is actual performance of the original promise and according to the performance by a stranger accepted by promisee produced the result discharging the promisor. In paragraph 6 of the judgement, following has been laid down:

“6. This contention is obviously untenable. In the first place, Lingayya cannot be regarded as “a third person” within the meaning of this section. The plaintiff

accepted the signature of Lingayya, not on the footing that he was a stranger, but that he represented the estate of Chengayya. That was a mutual mistake, which vitiated the transaction and which frustrated the intention of the parties. There is another answer to this contention. The section does not say that the original obligation comes to an end, merely because the promisee accepts from a stranger a fresh promise in the place of the old one. Much more than a bare promise is necessary under the section. What it contemplates is actual performance of the original promise. According to the section, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorized nor ratified the act of the rd party. There is not much authority on the point, but the view I have taken receives support from the opinions expressed in the two standard works on the subject (Shepherd and Cunningham's Commentaries and Pollock and Mulla's Contract Act).”

16. The above judgement of the Hon'ble Madras High Court has been quoted with approval by the Hon'ble Supreme Court in '**Citibank N.A.**' (*supra*), thus, applicability of Section 41 is when actual performance of the original promise has been made by a stranger, which results discharge of the promissor. Present is not a case where the debt which was claimed by the operational creditor and is the admitted dues on the corporate debtor, which according to the corporate debtor has been discharged by MK Overseas Private Limited. Thus, Section 41 cannot come to any aid of the appellant in the facts of the present case. Learned counsel for the appellant has submitted that operational creditor has received an amount of ₹35,00,000/- from MK Overseas Private Limited and an amount of ₹85,000/- in cash. The facts of payment of ₹35,00,000/- and ₹85,000/- by the MK Overseas Private Limited were not before the adjudicating authority nor had been pleaded. The operational creditor in its reply in the appeal has disputed the nature of

transaction with MK Overseas Private Limited. Be that as it may, even if submission of the appellant is accepted that amount of the ₹35,00,000/- and ₹85,000/- has been paid by the MK Overseas Private Limited, that cannot be held to be discharge of promise which was made by the corporate debtor by third-party i.e., MK Overseas Private Limited, so as to discharge the corporate debtor. Thus, present is a case where corporate debtor cannot be held to be discharged by virtue of Section 41 of Contract Act, 1872.

17. We also need to notice the submission of the appellant based on Section 62 of the contract that is a novation of the Contract Act, 1872. Section 62 of the Contract Act, 1872 provides as follows:

“62. Effect of novation, rescission, and alteration of contract.—*If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.*

Illustrations

(a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an arrangement with B and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.”

18. Section 62 begins with the expression “if the parties to the contract agreed to substitute a new contract for it or to rescind or alter it, the original contract need not to be performed”. In the present case, no contract is

claimed by operational creditor with the corporate debtor which can be treated to be a novated contract. What is relied by the appellant is letter dated 30.06.2018 as noticed above. The said letter appears to be unilaterally written on behalf of the operational creditor. No contract between the parties even is alleged or placed on record. There is one more aspect with respect to the letter dated 30.06.2018. Letter dated 30.06.2018 is an unenforceable letter and is void. We may refer to Section 25 of the Contract Act, 1872 which makes the agreement made without consideration as void. Thus, even if it is accepted that letter dated 30.06.2018, written on behalf of the operational creditor is treated as an agreement, agreement being without consideration is void. Letter does not refer to any consideration for which operational creditor has agreed to accept the debit balance of ₹2,47,69,431/- from MK Overseas Private Limited. It is settled law that novated contract which is relied for the purposes of applicability of Section 62 of the Contract Act, 1872 has to be enforceable contract.

19. Privy Counsel in ***'Har Chandi Lal & Ors.' Vs. 'Sheoraj Singh & Ors.'*** reported in **[AIR 2016 P.C. 68]** had held that substituted contract must be valid and enforceable contract to be effective as a novation. When letter dated 30.06.2018, even if it is accepted as contract novated as claimed by the appellant, it being clearly void within meaning of Section 25(3) of the Contract Act, 1872 is unenforceable. Thus, submission on behalf of the corporate debtor that corporate debtor was entitled for benefit of Section 62 of the Contract Act, 1872 does not commend us.

20. The present is a case where goods were supplied which has been received and utilised. It was not even pleaded on behalf of the corporate debtor that amount is not due, rather corporate debtor itself in his pleading has claimed that amount of ₹2,47,69,431/- was due on the corporate debtor, which according to the appellant has been transferred to MK Overseas Private Limited. We may also notice the reply to the demand notice which was issued by the corporate debtor after receipt of the demand notice dated 25.07.2019. The reply to demand notice dated 05.08.2019 is as follows:

“Dated: 05.08.2019

1. Shri Ashu Chaudhary

M/s Ashu Agencies

Reg. Office at:

Jain Mandir Wali Gali,

Bima Nagar Soor Mill.

G.T Road, Aligarh (U.P). 202001

And also at:

Shaura No. 25, Nangla Murari Sarcol,

G.T. Road, Aligarh (UP) 202001

2. Mr. Tarun Aggarwal.

Advocate,

Chamber No.533, 1 Floor,

Western Wing, Tis Hazari Court

Delhi-110054

Subject:

Reply to your demand notice dated 25.07.2019 issued in the name of Al Dua Food Processing Pvt. Ltd. having its office at 114. Babar Road, Near World Trade Centre, Connaught Place, New Delhi-110001

Sirs.

From the contents of your legal notice it appears that you have issued the same in our name with malafide intention and ulterior motive to intimidate us to pay the money which we are not liable to pay.

All the allegations made by you for you said legal notice are denied by us unless specifically admitted by us.

1. We are not admitting the liability being claimed by you in your legal notice and the same is strongly and vehemently opposed and denied by us.

2. As you are well aware that the management of the company has been taken over by its present management from its earlier management w.ef. 07.07.2018 and it was agreed by the earlier management that the liability of the certain creditors shall be borne and paid by them and the amount payable to them be transferred to their company, M/s MK Overseas Pvt. Ltd. having its office at B-64, Site IV, Sahibabad Industrial Area, Ghaziabad, U.P.

3. As per the audited accounts as on 07.07.2018, the company is not liable to pay any amount to your firm. Hence the Company is not liable to pay amount which is not reflected in the audited amounts submitted to the new management by the previous management.

In view of the submissions made above, we are not liable to pay the amount demanded by you in your abovesaid notice and you are advised to approach Mis M.K Overseas Pvt. Ltd, for the payment of your amount, if any.

In view of the above facts and submissions and in terms of the Code to dispute the existence of debt itself, our company is not liable to pay any amount se you and hence you are once again advised to withdraw your present legal notice under reply under intimation in writing to us within three days from the date of receipt of this reply to your notice to avoid the unwanted and unwarranted multiplicity of the litigation.

In case you would initiate any uncalled for and unjustified litigation against us instead of M/s MK Overseas Pvt. Load., who is liable so pay the said amount, the same shall be contested by the company entirely at your cost, risk and consequences

Copy kept.

Yours truly,
For Al Due Food Processing Pvt. Ltd.
Authorized Signatory”

21. Thus, what was pleaded in reply to the demand notice is that the amount is payable by MK Overseas Private Limited, neither the amount was disputed nor supplied goods were disputed. We may in this context also refer to the judgement of this Tribunal relied by the counsel for the respondent in **‘Chetan Sharma’ (supra)**, in which case appeal was filed by the corporate debtor against the order admitting Section 9 application. The claim of novation of contract was also pleaded on behalf of the corporate debtor. In the above case, also there was Memorandum of Understanding (MoU) to which the operational creditor was not party. This Tribunal in the above case held that unilateral transfer of liability does not constitute a dispute. The creditor can always transfer its asset to an assignee but borrower cannot transfer its liability of debt to a third-party. In paragraph 15, 17 and 18, following was held:

“15. It is a settled law that unilateral ‘transfer’ of liability does not constitute a ‘dispute’ within the meaning of Section 5(6) of the ‘I&B Code’. The ‘dispute’ under Section 5(6) of the ‘I&B Code’ has to be between the ‘Corporate Debtor’ and the ‘Operational Creditors’ and an inter-se dispute between two groups of shareholders of the ‘Corporate Debtor’ does not constitute a ‘dispute’ in reference to ‘Operational Creditors’.

17. An outstanding in the account of a borrower (customer), is a debt due and payable by the borrower to the Creditor. The Creditor is the owner of such debt. Such debt is an asset in the hands of a Creditor, whether ‘Secured Creditor’ or ‘Unsecured Creditor’ or ‘Operational Creditor’ or ‘Financial Creditor’. The creditor can always transfer its assets (debt) to an assignee but the borrower cannot transfer its liability

of debt to a third party. Therefore, the Appellant cannot take advantage of agreement of transfer of liability of debt of 'Corporate Debtor' to Mr. Dinesh Arora.

18. The alleged Memorandum of Understanding was never signed by the 'Operational Creditors'. It is not the case of the Appellant that the Memorandum of Understanding was signed on behalf of the 'Corporate Debtor'; in fact, the Memorandum of Understanding relied upon was signed as an inter-se agreement between shareholders of the 'Corporate Debtor' with Mr. Dinesh Arora, which has no binding effect on the 'Operational Creditors'."

22. The above judgement, thus support the claim of the respondent. Adjudicating Authority in the impugned order has considered all aspects of the matter and has rejected the plea of novation raised by the corporate debtor. In paragraph 13 and 14, following was held:

"13. It was submitted that the said 'Operational Creditors' received the balance confirmation letter dated 30th November, 2015 from the 'Corporate Debtor' signed by the authorised Director of the 'Corporate Debtor', wherein they confirmed that as per their books of accounts, there is a credit balance of Rs. 5,08,43,252/- in the ledger account of the said 'Operational Creditors' as on 30th November, 2015.

14. It was also submitted by the learned Senior Counsel for the 'Operational Creditors' that there was no pre-existing dispute between the parties."

23. Adjudicating authority, thus clearly held that the defence raised by the corporate debtor is not acceptable that there was any dispute. Learned counsel for the appellant submitted that observations have been made in the impugned order that corporate debtor and MK Overseas Private Limited are liable to be proceeded under appropriate criminal provisions. When we look into the operative portion of the order, there are no directions to forward the copy of the order to the IBBI for considering/initiating any proceedings for proceeding in criminal proceeding against the corporate debtor and the MK

Overseas Private Limited. We thus are of the view that apprehension of the appellant is misconceived, the impugned order cannot be read as issuing any direction for initiating any criminal proceeding or any proceeding under appropriate criminal provisions. The observation in the paragraph 16 of the order that both the corporate debtor and MK Overseas Private Limited are therefore liable to be proceeded under criminal provisions need to be deleted.

24. Learned counsel for the appellant during his submissions submitted that corporate debtor is a company with a turnover of 1700 crore earning foreign exchange of 1500 crore and employees over 1200 persons. In the synopsis in paragraph J following has been pleaded:

“J. The Corporate Debtor is a company with a turnover exceeding Rs 1700 crores, earning foreign exchange of about Rs 1500 crores, and employing over 1200 persons. Admission into CIRP on a disputed operational debt of around 2 crores already assumed and partly discharged by a third party results in grave prejudice and jurisdictional error.”

25. In view of the above discussion and our conclusion, we are of the view that the plea of the corporate debtor that liability to pay debt of the operational creditor was of MK Overseas Private Limited has rightly not been accepted by the adjudicating authority. The corporate debtor is neither entitled to benefit of the Section 41 of the Contract Act, 1872 nor the contract under which the corporate debtor has liability to pay for outstanding dues of the operational creditor can be said to have been novated within meaning of Section 62 of the Contract Act, 1872. We, thus are of the view that there being debt and default committed by the corporate debtor, adjudicating authority has rightly admitted Section 9 application. However, looking to the pleadings of the

appellant that appellant is a company with turn over exceeding ₹1700 crore, we are of the view that an opportunity need to be given to the appellant to make the payment of amount claimed in Part IV by the operational creditor, i.e., amount of ₹2,48,46,299.76/- within a period of 30 days from passing of the order. On such payments being made, operational creditor has to file an application under Section 12A for withdrawal of the CIRP, which can be proceeded and decided by the adjudicating authority in accordance with law as laid down by the Hon'ble Supreme Court in '**GLAS Trust Company LLC**' Vs. '**BYJU Raveendran & Ors.**' reported in **[(2025) 3 SCC 625]**.

26. In result of the forgoing discussions, we dispose of the appeal in following manner:

- i. The impugned order of the adjudicating authority dated 24.09.2025, admitting Section 9 application is upheld.
- ii. The observations in paragraph 16 of the order to the effect "the directors of both the corporate debtor and MK Overseas Private Limited are therefore liable to be proceeded against under appropriate criminal provisions" are deleted.
- iii. Appellant is given opportunity to make the payment to the operational creditor of the amount of ₹2,48,46,299.76/- within 30 days from today, either by bank transfer or a bank draft to the operational creditor.
- iv. On receipt of payment of the aforesaid amount, operational creditor to file an application under Section 12A through IRP for withdrawal of the CIRP under Section 12A read with Regulation 30A of the CIRP

Regulations, 2016. Adjudicating authority to decide 12A application in accordance with law expeditiously.

- v. The Section 12A application is to be filed as indicated above within 30 days from the payment of the amount to operational creditor, the interim protection granted in this appeal shall continue till the disposal of the application.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

12th March, 2026

himanshu