



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, COURT-I, CHANDIGARH**

**I.A. No. 427/2024
in
CP (IB) No. 90/Chd/Chd/2018
(Admitted)**

**Application under Rule 11 of the
National Company Law Tribunal Rules,
2016**

IN THE MATTER OF I.A. No. 427 of 2024:

Kamal Kant Dewan

S/o Late Sh. Naraian Dewan,
H. No. 115, Sector-2, Panchkula, Haryana.
Email: kamalkdewan@gmail.com

M/s Bharat Food and Agro Products

Having Works and office at Afzulapur Road,
Village Dhamot, Tehsil Payal, Ludhiana, Punjab
Through its Partner Sh. Kamal Kant Dewan

...Applicants

Vs.

White Water Hospitality Private Limited

SCO No. 2437, Sector 22C, Chandigarh-160022.
Email:co.secretaries@gmail.com

...Respondent No. 1

VIR Foods Ltd.

Cabin No. 111, SCO No. 35, 2nd Floor, Sector 7C, Chandigarh
Through Sh. Anup Sood, Resolution Professional
IBBI/IPA-003/IP-N000114/2017-2018/11218.
Email: as022208virfoods@gmail.com, anupsood1954@gmail.com

...Proforma Respondent No.2



IN THE MAIN MATTER OF:

V.I.R. Foods Ltd.

... Petitioner/Financial Creditor

Vs.

White Water Hospitality Private Limited

...Respondent/Corporate Debtor

Order delivered on: 09.04.2026

**Coram: MR. KHETRABASI BISWAL, MEMBER (JUDICIAL)
MR. SHISHIR AGARWAL, MEMBER (TECHNICAL)**

Present:

For the Respondent No.1/ erstwhile CD: Ms. Munisha Gandhi, Senior Advocate
Ms. Salina Chalana, Advocate
Ms. Sonal Alagh, Advocate
Mr. Rajat Singh, Advocate
For the Applicants : Mr. Aditya Grover, Advocate

**PER: SH. KHETRABASI BISWAL, MEMBER (JUDICIAL)
SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)**

ORDER

The present Application is filed on behalf of the Applicants under **Rule 11 of the National Company Law Tribunal Rules, 2016** (hereinafter referred to as the **NCLT Rules**) for, inter alia, seeking direction to allow the Application and restrain the Corporate Debtor (hereinafter referred to as **the CD**) in the main matter and Respondent No. 1 in the instant Application - M/s White Water Hospitality Pvt. Limited from alienating /creating third party rights in



the only immovable asset of the Respondent No.1 i.e land measuring 816 Kanal and 12 Marlas (102 Acres) approximately situated at village Billa, District Panchkula, Haryana

2. The facts of the case, as stated in the Application, are summarized as under:

(a) The Proforma Respondent No.2 i.e. V.I.R Foods Ltd initiated CIRP against the Respondent No.1 which was admitted by this Tribunal vide Order dated 21.11.2019, wherein the Applicants being the financial Creditor, submitted their claims with the Resolution Professional (hereinafter referred to as **the RP**).

(b) The Applicants stood as the members of CoC under the CIRP carried out with regard to Respondent No.1 vide the admission Order dated 21.11.2019. Against the said Order, an Appeal was filed by the directors of Respondent No.1 before the Hon'ble NCLAT, wherein vide Order dated 17.08.2023, the admission Order dated 21.11.2019 was set aside by Hon'ble NCLAT.

(c) A Civil Appeal was filed by the Applicants and the proforma Respondent No.2 before the Hon'ble Supreme Court against the setting aside Order of the Hon'ble NCLAT. Before the Hon'ble Supreme Court, the Respondent No.1 admitted to pay the financial debt to Proforma Respondent No.2 of Rs.52,64,161.64/- as claimed due on 31.12.2017 along with interest and the matter was remitted back to this Tribunal to decide certain other issues. The Applicants have submitted that the Order dated 12.12.2023 passed by the Hon'ble Supreme Court of India is conditional in nature, requiring compliance by the Respondent No.1, including settlement of claims subject to approval by



this Tribunal, thereby directly affecting the substantial rights and interests of the Applicants as qualified Financial Creditors. It is further submitted that the Respondent No.1 is a non-operational entity possessing only one immovable asset, being land admeasuring 816 Kanal 12 Marlas (approximately 102 acres) situated at Village Billa, District Panchkula, Haryana, and the Applicants have learnt that the said land has been put up for sale in the absence of any restraining Order.

(d) The Applicants submitted that in case the Respondent No.1 does not comply with the conditions mentioned in the order dated 12.12.2023 passed by the Hon'ble Supreme Court, in such eventuality, the CIRP would have to be revived and in absence of the only asset of the CD, carrying out CIRP would be of no meaningful purpose. Therefore, until the entire matter attains finality, especially with regards to claims of the Applicants, the Respondent No.1 may not be permitted to sell its only asset.

3. Reply of Respondent No. 1:

(a) The Respondent No.1 in its Reply has submitted that there is no subsisting Corporate Insolvency Resolution Process against it. The CIRP initiated by this Tribunal's Order dated 21.11.2019 was set aside by the Hon'ble NCLAT on 17.08.2023. This reversal was subsequently upheld by the Hon'ble Supreme Court by its Order dated 12.12.2023. In compliance with the directions of the Hon'ble Supreme Court, the Respondent has already paid Rs.52,64,161.64 to RP of Proforma Respondent No.2 and the same has been recorded in the Order dated 09.01.2024 passed by this Tribunal. Consequently, the Respondent is no longer under the rigours of IBC, and no



application under Section 7 or Section 9 is currently pending. The Respondent No.1 further contends that in the absence of a moratorium under Section 14, the Applicants cannot seek injunctive relief that indirectly achieves what is only permissible during an active CIRP.

(b) The Respondent No.1 denies that the Applicants qualify as "Financial Creditors" under Section 5(8) of the Code. It is argued that the alleged "loans" were, in fact, investments made towards a joint venture for the purchase of land, as evidenced by the Share Purchase Agreement (SPA) dated 26.06.2012 attached as Annexure A-4. The Respondent asserts that under Clause 8 of the SPA, repayment is contingent upon the generation of "Cash Flows" from the commercialization of the subject land. As no such commercialization has occurred and no cash flows have been generated, the debt is neither due nor payable.

© The Respondent No.1 has further submitted that any reliance by the Applicants on the prior acceptance of their claims by the "Erstwhile CoC" is misplaced. The CoC has been disbanded following the setting aside of the CIRP by the Hon'ble Supreme Court, and its past actions are legally void and without effect.

(d) The Respondent No.1 has highlighted that the Applicants have failed to produce documentary evidence to substantiate their claims despite being directed by this Tribunal to do so. Furthermore, the Respondent No.1 asserts that the value of its land far exceeds the alleged claims of Rs. 2,52,79,630/-. Notwithstanding its objections, the Respondent No.1 has offered an



undertaking to set aside the claimed amount of Rs. 2,52,79,630/- in the event of a sale, pending final adjudication of the Applicants' claims.

(e) The Respondent No.1 has further submitted that the present Application is a mala fide attempt to use the Code as a "recovery mechanism" for what is essentially a shareholder dispute. It is alleged that Applicants and his entities have a history of filing vexatious litigations that have consistently been dismissed by higher courts. The Respondent No.1 further submitted that the Application lacks a sustainable legal basis and represents an abuse of the process of law. The Respondent No.1 has further submitted that there exists no Company Petition seeking initiation of CIRP against the Respondent No.1. It is submitted that in the present situation, this Application is devoid of a sustainable legal basis, failing to meet the threshold requirements for maintainability of any interlocutory application before this Hon'ble Tribunal.

ANALYSIS AND FINDINGS

4. We have heard the submissions made by the parties and perused the material available on records.

5. The issue before this Tribunal is whether Respondent No.1 can be restrained from alienating its assets when the admission Order of CIRP has finally been set aside by the Hon'ble Supreme Court.

6. It is an admitted fact that the admission Order dated 21.11.2019, which initiated the CIRP, was **set aside** by the Hon'ble NCLAT vide Order dated 17.08.2023. The Hon'ble Supreme Court vide its Order dated 12.12.2023 in Civil Appeal filed by the Applicants, pursuant to settlement between the Respondent No.1 and the Proforma Respondent No.2 in present Application,



has set aside both the NCLT admission Order and the Hon'ble NCLAT Order dated 17.08.2023. The Order of Hon'ble Supreme Court is reproduced below for the reference:

"Delay condoned.

Permission to file the appeal is granted.

During the hearing, the learned Senior Advocate appearing for respondent no. 1 - White Water Hospitality Private Limited states that the said company is willing to pay Rs. 52, 64,161.64 (rupees fifty-two lakhs sixty-four thousand one hundred sixty-one and sixty-four paisa only), the amount as claimed as due on 31.12.2017, to Mis. V. I. R. Foods Limited within three weeks from today. The payment will be made to the Resolution Professional appointed in the case of V.I.R. Foods Limited .

White Water Hospitality Private Limited agrees that they will also pay the interest, as calculated by the adjudicating authority, to the RP of V.I.R. Foods Limited.

During the pendency of the Corporate Insolvency Resolution Process, claims have also been made by appellant no. 1- Kamal Kant Dewan and appellant no. 2 - Bharat Food and Agro Products. White Water Hospitality Private Limited has issues regarding these claims.

Kamal Kant Dewan and Bharat Food and Agro Products have submitted their claims before the Committee of Creditors³, which Committee stands disbanded in view of the impugned judgment, and may not be revived in case payments to RP of V.I.R. Foods Ltd. is made. The pleas and contentions of Kamal Kant Dewan and Bharat Food and Agro Products, as well as the contentions of White Water Hospitality Private Limited, will be examined by the adjudicating authority.

Recording the aforesaid, we set aside the impugned judgment dated 17.08.2023 passed by the National Company Law Appellate Tribunal,



Principal Bench, New Delhi in Company Appeal (AT) (Ins) no. 1489/2019, as well as the order dated 21.11.2019 passed by the NCLT, at Chandigarh, in CP(IB) no. 90/Chd./CHD/2018. An order of remit is passed for the adjudicating authority to examine the issues and questions keeping in view the directions already issued in this order.

The adjudicating authority will also examine the question of the fee/cost of RP”.

7. Vide Order dated 09.01.2024 of this Tribunal, it is recorded that a draft amounting to Rs. 52,64,161.64/- bearing DD No. 531405 dated 05.01.2024 has been handed over to the learned counsel for the RP of VIR Foods Pvt Ltd (Proforma Respondent No.2) and the same has been accepted in compliance of the Order of Hon’ble Supreme Court. Since, the payment has been made to Respondent No.1, therefore in view of Order passed by the Hon’ble Supreme Court, the CIRP of Respondent No.1 cannot be revived. Therefore, the contention of the Applicants that the Order of Hon’ble Supreme Court is conditional in nature and the CIRP can be revived till the claims of the Applicants are not decided, is not maintainable as the main condition according to the Order of the Supreme Court was regarding payment of amount to VIR Foods Pvt Ltd **which stands duly paid**. Therefore, at this stage, there is no revival of CIRP against the Respondent No.1.

8. The power of this Tribunal to restrain a Corporate Debtor from dealing with its assets is a statutory power derived from the imposition of a Moratorium under Section 14. Such a moratorium is a mandatory consequence



of an **active** admission Order under Section 7, 9, or 10 of the Code. In this regard, Section 14 of the Code reads as under:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for **prohibiting all of the following**, namely:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) **transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;**

(c)

(d) ...

[*Explanation.-.....*]

(2)...

(3)

(4) **The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:**

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

9. In the present case, since the admission Order has been set aside, the Respondent No.1 is no longer under the rigors of the IBC and there is no imposition of moratorium. The management of Respondent No.1 has been restored to the Board of Directors, and the company has regained its status as a going concern outside the insolvency framework. In such a situation, the



Tribunal cannot pass the order of injunction against the Respondent No.1 as prayed for.

10. The Applicants' reliance on their status as members of the "Erstwhile CoC" is legally untenable. Once the CIRP is set aside and gets terminated, the CoC stands disbanded and becomes functus officio. Any recognition of claims during a period of CIRP that has since been declared void or set aside, cannot form the basis for an interlocutory restraint on a solvent company's assets. It does not provide a ground for this Tribunal to interfere with the commercial autonomy of a Respondent No.1 against which no insolvency proceeding is currently pending. Moreover, the claims of the Applicants in I.A. No. 713 of 2025 and I.A. No. 714 of 2025 is rejected, therefore the Applicants have no right to injunct/restrain the Respondent No.1 from disposing of its Properties.

11. In view of the above, this Application is found to be devoid of merit and sustainable legal basis, hence, this Application is not maintainable.

12. Accordingly, **I.A. (I.B.C) No. 427 of 2024** is **dismissed and disposed of.**

Sd/-

SHISHIR AGARWAL
MEMBER (TECHNICAL)

Sudesh

Sd/-

KHETRABASI BISWAL
MEMBER (JUDICIAL)