

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

**CP(IB)/380(PB)/2022**

**In the matter of:**

**Shilpi Cables Private  
Limited**

**...Applicant/Respondent Company**

**Versus**

**M/s Jhunsons Chemicals Private Limited**

**...Corporate Debtor**

**Under Rule 154 r/w Rule 11 of NCLT Rules, 2016**

**CORAM:**

**JUSTICE RAMALINGAM SUDHAKAR  
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA  
HON'BLE MEMBER (TECHNICAL)**

**CORRIGENDUM**

**Date: 10.05.2024**

1. This Adjudicating Authority admitted the CD into CIRP vide order dated **02.05.2024**. There is an inadvertent clerical mistake namely "**Order pronounced on: 02.05\$2023**" on Page 1 of the order in CP (IB) 380(PB)/2022 pronounced on **02.05.2024**.

It was a clerical mistake which can be corrected under Rule 154 of NCLT Rules, 2016 which provides as under:

*"(1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be*

As



*corrected by the Tribunal on its own motion or on application of any party by way of rectification."*  
.."

2. Exercising the *Suo moto* power of this Tribunal to rectify the clerical mistake, "**Order pronounced on: 02.05.2023**" stands rectified as **Order pronounced on 02.05.2024** in page no.1 of the Order in CP (IB) 380(PB)/2022 pronounced in court on **02.05.2024**.

This corrigendum shall form part of the Order.



**RAMALINGAM SUDHAKAR**  
**(PRESIDENT)**



**AVINASH K. SRIVASTAVA**  
**MEMBER, (TECHNICAL)**



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

**CP(IB)/380(PB)/2022**

**In the matter of:**

**Shilpi Cables Private  
Company Limited**

through its Liquidator:

**Mr. Sukhdev Madnani**

A-19/B-1 Extension, Mohan Co-operative  
Industrial Estate P.O. Badarpur  
Mathura Road  
New Delhi-110044

**...Applicant/Respondent**

**Versus**

**M/s Jhunsons Chemicals Private Limited  
having registered office at:**

House No. G-115, Ashok Vihar,  
Ph-I, New Delhi-110052  
Email: goyal.nar@gmail.com

**Also at:**

E-446, Chopanki Industrial Area  
Near Biwadi, PO Tapukara  
Rajasthan- 301707

**...Corporate Debtor**

**Order pronounced on: 02.05\$  
.2023**

**Under section 7 of the Insolvency and Bankruptcy Code,  
2016 read with Rule 4 of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority) Rules, 2016.**

**CORAM:**

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR**

**SHRI AVINASH K. SRIVASTAVA**  
**HON'BLE MEMBER (TECHNICAL)**

***Appearances***

**For the Applicant/Financial Creditor** : Adv. Milan Negi, Mr. Nikhil Kumar, Adv. along with Mr. Sukhdev Madnani, Liquidator in person  
**For the Corporate Debtor** : Mr. Abhishek Anand, Adv. Navneet Thakran

**ORDER**

1. This is an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Applicant **M/s Shilpi Cables Private Limited (FC)** against Corporate Debtor (CD) M/s Jhunsons Chemicals Private Limited for an amount of **Rs. 2,21,53,531/- as on 20.08.2019**. CIRP against the Applicant in **IB 461/2017, M/s BDR Builders versus M/s Shilpi Cables Private Limited** was initiated vide order dated **01.08.2018, which is currently undergoing liquidation process pursuant to order dated 20.08.2019**. This Adjudicating Authority vide Order dated **19.01.2022** allowed the Liquidator to initiate appropriate legal proceedings against CD. Relevant part of the order is extracted below:

**IA-4672/2020**

This is an application filed by the Liquidator under Section 33(5) of IBC, 2016 seeking permission of the Adjudicating Authority to initiate legal proceedings against M/s. Jhunsons Chemicals Pvt. Ltd., who are liable to pay certain amounts. The Corporate Debtor

had advanced Rs. 1.57 cr., at an interest @ 9% p.a., thus amounting to Rs. 2.28 cr. as on 14.10.2019. This is also reflected in the Balance Sheet of the Corporate Debtor of the year 31.03.2016.

Ld. Counsel for the Liquidator states that he has issued demand notices, vide email on 16.10.2019 (Annexure 3), through speedpost on 07.11.2019 and on 10.02.2020 to M/s. Jhunsons Chemicals Pvt. Ltd. It is also stated that despite sending repeated notices, M/s. Jhunsons Chemicals Pvt. Ltd has chosen not to respond and therefore, appropriate legal proceedings are required to be initiated, to secure the amount due to the Corporate Debtor, which is under liquidation.

In view of the submissions, we are inclined to **allow** this application.

At request of Ld. Counsels, list all other pending application on 02.03.2022.

2. The Corporate Debtor ('CD) was incorporated under the Companies Act, 1956 on **07.09.1992** having CIN: **U74899DL1992PTC050228**. Its registered office is at House No. G-115, Ashok Vihar, Ph-I, New Delhi-110052. The Authorized Share capital of CD is Rs 5,00,00,000/- and its paid-up share capital is Rs. 5,00,00,000/-. The CD is engaged in the business of Gamma Irradiation and Sterilization facility.

**BRIEF SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR THE APPLICANT COMPANY ARE AS FOLLOWS:**

3. Applicant submitted that the CD approached the Applicant Company for loan facility for meeting its day to day working and business purposes. Acceding to the request made by the CD, the Applicant extended loan unsecured/inter corporate deposits forming part of

long-term borrowings amounting to **Rs. 1,57,00,000/-** to the CD. Disbursal of the said loan was made in the following manner:

Date of Disbursement	Amount Disbursed (In Rs.)
17.09.2014	30,00,000/-
19.09.2014	15,00,000/-
07.10.2014	10,00,000/-
30.10.2014	20,00,000/-
14.02.2015	10,00,000/-
14.02.2015	15,00,000/-
07.04.2015	10,00,000/-
07.04.2015	10,00,000/-
21.05.2015	37,00,000/-
<b>TOTAL</b>	<b>1,57,00,000/-</b>

4. Applicant further submitted that the said loan facility was extended by Applicant to the CD in the year 2014-15 and 2015-16 and the same is duly reflected in the balance sheet of the Applicant for the financial year ending 31.03.2016 and the balance sheet thereafter i.e. up to the financial year 31st March 2018 and up to the liquidation commencement date i.e. **20.08.2019**. Copies of the balance sheets of the Applicant for the relevant financial years are annexed as **Annexure A-6 (colly)**. Applicant submitted that the date of default is **16.10.2019**, when the demand notice for repayment of the entire loan alongwith interest was issued by the Applicant upon the Corporae Debtor.

5. It is further submitted by the Applicant that CD has duly acknowledged the said financial debt due and payable to Applicant in CD's balance sheet for the years ending 31.03.2015, 31.03.2016, 31.03.2017, 31.03.2018, 31.03.2019 and 31.03.2020 under the head of *unsecured loan*. Copies of balance sheets of the CD for the relevant period are annexed as **A7 (colly)**. It is submitted by the Applicant that CD has also acknowledged the payment of interest to the Applicant as the CD has been deducting TDS for the interest amount payable to the Applicant under the said loan, which is duly substantiated from FORM 26AS of the Applicant which is annexed as **Annexure A8**.
6. It is the submission of the Applicant that Liquidator is duty bound to preserve the assets of the Applicant and amount paid by the Applicant to the CD is the asset which belong to the Applicant (under liquidation) which forms part of the liquidation estate of the Applicant.
7. Thereafter, Liquidator issued the demand notice vide email on 16.10.2019 calling upon the CD to pay the total outstanding amount to the tune of Rs. 2,28,98,058/- which included interest at the rate of 9% per annum. However, no response was received from the CD and the liquidator issued demand notice dated **7.11.2019** upon the CD and its directors. Despite the above referred notice neither any payment nor any response was received by the Applicant. Thereafter, legal demand notice dated 10th February 2020 was issued by the liquidator demanding from the CD the total outstanding amount.
8. It is further submitted by the Applicant that the last disbursement was made by the Applicant on 21 May 2015 which was duly acknowledged by CD in its subsequent balance sheet up till 31 March 2020. This substantiates that the instant application is very well within the period of limitation. Applicant also cited the judgement passed by the Honorable Supreme Court in *IN RE COGNIZANCE FOR EXTENSION OF*

*LIMITATION WP(C) 3 of 2020* whereby the period of lockdown from 15 March 2020 till 28 Feb 2022 is to be excluded for the purpose of computing the time period of limitation.

9. Applicant further submitted that the transaction of the payment of loan amount in question was also opined to be a fraudulent transaction by the liquidator on which the Liquidator pursuant to a transaction audit report, made a determination and filed an Application under section 66 being **IA 2086 of 2020 in CP(IB) 461/2017 M/s. BDR Builders vs. M/s Shilpi Cables Private Limited** for appropriate relief and the said application is pending adjudication before this Adjudicating Authority. The said application is premised on a different legal proposition and essentially seeks contribution to the assets of the Applicant by the ex-directors of the Applicant Company as well as by M/s Jhunsons Chemicals Private Limited which is the CD in this Application and its directors/management. Further, the premise of the said Application IA 2086 of 2020 in CP(IB) 461/2017 M/s. BDR Builders vs. /s Shilpi Cables Private Limited is entirely different as it arises from determination made by the liquidator in ongoing liquidation process of Applicant and relief being sought therein is entirely different from the one being sought herein which is initiation of CIRP against CD.

**BRIEF SUBMISSIONS ON BEHALF OF THE CORPORATE DEBTOR  
ARE AS FOLLOWS:**

10. The Corporate Debtor submits that on **25.08.2014**, for the expansion of the business, the Applicant herein and one other company namely **M/s Shree Radhey Kunj Dairy and Milk Products Private Limited** (hereinafter referred as SKD) had executed a Memorandum of Understanding (hereinafter referred as MOU) with the Respondent Company whereby the Applicant had agreed to invest a sum of Rs.



5,00,00,000.00 in the Respondent Company/CD. As per the MOU, the Applicant Company had to provide the sum of Rs. 2.50 Crores within a period of six months from the date of the execution of the MOU to the Respondent Company/CD and the remaining balance amount of Rs. 2.5 Crores within a period of next six months. A copy of the Memorandum of Understanding is annexed and marked as Annexure R-2 in the reply dated **21.03.2023** filed by CD.

11. CD further submits that it was agreed between the parties that in case the Applicant fails to provide the funds as agreed under the said MOU, the Respondent will be entitled to terminate the said MOU and, in such case, any amount which might be provided by the Applicant Company to the Respondent will not be refundable and will stand forfeited. The relevant part of the memorandum is extracted below:

*“3.2 In case the SCPL makes the default in providing the funds as agreed in this MOU, JCPL shall be fully and unconditionally entitled to terminate this MOU and in such case, any amount already provided to JCPL stands forfeited. It is agreed by SCPL that the forfeiture of such amount would not be sufficient to compensate the losses that JCPL would suffer due to the default of SCPL. JCPL shall be entitled to take any other legal action against SCPL for their default of this MOU.”*

**Note: SCPL stands for Shilpi Cables Private Limited; JCPL stands for Jhunsons Chemicals Private Limited;**

12. Thereafter, as per the terms of MOU to which the parties herein had agreed, the Applicant Company had to provide/ invest an amount of Rs. 5 Crore till 31.08.2015 but CD had only received an investment of Rs. 1.57 Crores on behalf of the Applicant. CD contended that it had sent various letters to Applicant Company to make payment of the agreed funds as per terms of the MOU to which Applicant Company assured the CD that the amount will be disbursed shortly. Copy of letters by CD and response by Applicant Company are annexed as **Annexure A-4, A-5, A-6, A-7, A-8, A-9, A-10, A-11, A-12 & A-13** to

the Reply dated **21.03.2023** filed by CD.

**13.** CD stated in its reply that Applicant Company on **05.07.2016** had replied that the Applicant company is not in a position to honour its commitment under the MOU due to liquidity crisis. CD further submitted that on 07.03.2017, the parties had executed an Addendum #1 to MOU. The terms of the said addendum are reproduced herein below:

- a. SCPL being not able to invest full amount of Rs. 5.0 crores as stipulated in Original MOU. As per clause 3.2 the Original MOU, any amount so invested by SCPL need to forfeited.
- b. As it was agreed in the Original MOU under clause 2.2, to provide financial comfort to SCPL, an amount equal to 10% per annum for the FY 2014-15 and @ 9% per annum thereafter shall accrue to the account of SCPL. However, it shall be due only after the total committed amount of Rs. 5,00 crores are paid by SCPL to JCPL.
- c. SKD, being guarantor for execution and repayment for SCPL, in original MOU, for investment along with profit share, if any, shall take over the investment of Rs. 1.57 Crores made by SCPL in JCPL and the said amount so invested by SCPL, may be adjusted against the loan given by SKD to SCPL.
- d. By SKD taking over the SCPL Investment in JCPL, SCPL will adjust its Loan payment to SKD by Rs. 1.57 Crores so invested by SCPL in JCPL.

- e. By the act of Investment Takeover by SKD in pursuance to this addendum #1 to Original MOU, any liability, duty, representation and warranties with respect to JCPL towards SCPL shall stand transferred to SKD and SCPL shall have no right what so ever arise towards JCPL in pursuant to original MOU, in respect to recovery of Investment so made, neither any profit so arisen due to such investment nor any interest on amount so invested.

Therefore, CD submitted that all the rights of the Applicant for recovery of amount invested in Respondent Company stand transferred to SKD and the Respondent Company (CD) is not liable to pay any debt to the Applicant/FC. Further, it is submitted that the documents placed on record, the balance sheets relied upon by the Applicant only records and reflect principal amount and not any amount towards interest. It is further submitted that the Applicant never debited interest in its own account. That the Applicant company is required to debit interest in the account of Respondent/CD maintained with the Applicant and accordingly treat the same as income. It is submitted that there is no contract or agreement produced on record which would show when the default has taken place.

- 14.** It is submitted by the CD that Applicant company has failed to show on record that the money was payable on 'Demand' and even assuming without admitting that the 'Default' took place in 'payment of interest' which is allegedly due and payable from 2015, the claim on the face of it, is barred by limitation.

**ANALYSIS AND FINDINGS**

**15.** We heard the learned Counsels appearing for the Applicant and the Corporate Debtor and perused the Application filed by the Applicant, reply filed by the Corporate Debtor, written submissions made by the parties and documents on record. Applicant in its original application did not mention the purported MOU which has been entered between the Applicant, CD and one SKD but in its rejoinder, Applicant submitted that MOU is a fabricated document prepared by the CD to mislead this Tribunal. It further submitted that as on date of MoU viz. **18 August 2014** there was no loan amount due or payable by FC/Applicant to SKD for which he has relied upon the bank statement (extracted below) showing the payment made by SKD to Applicant during **07.03.2015 to 30.03.2016** which is annexed on page 6 of the written submissions dated **16.01.2024** filed by the Applicant/FC.

**ENCLOSURE B**

**6**

SHILPI CABLES PVT. LTD.



DETAIL OF ENTRIES IN PNB IN RESPECT OF TRANSACTIONS WITH SKD  
Shree Radhey (Kun) Dalry and Milk Products Pvt.Ltd.  
Period: 1-Apr-2014 to 31-Mar-2016

Date	Amount Paid	Amount Recd.	Cumulative Balance
07/03/2015		3000000.00	3000000.00
30/03/2015		9100000.00	9100000.00
30/03/2015		2200000.00	11300000.00
06/04/2015		200000.00	11500000.00
21/05/2015		370000.00	11870000.00
18/06/2015	250000.00		11620000.00
23/03/2016		2625000.00	14245000.00
30/03/2016	1245000.00		13000000.00
	1485000.00	14495000.00	
Closing Balance	1300000.00		
14495000.00	14495000.00	14495000.00	

After SKD having made payments to Applicant, Applicant paid only 57 lakhs to CD, however Rs 1 crore was already paid. Applicant further submitted that if there was no loan amount due as on date of MOU

there was no occasion for SKD to have become the guarantor for execution of alleged MOU.

16. Also, it has been contended by the Applicant that the documents submitted by the CD are nothing but sham documents which seem to have been created/manufactured by directors of CD in connivance with ex-directors of Applicant and Directors of SKD. It is also the contention of the Applicant that all the three parties are related parties and have remained functional under the same management.
17. It is the contention of the CD that there is no contract or agreement produced on record which would show when the default has taken place. To this, we would find it pertinent to mention here that FC did not produce any financial contract between FC and CD but the entries in the books of accounts of CD as well as in the balance sheets of FC prima facie indicate the existence of debt due from CD to FC. On **page 163 i.e. Additional documents attached with the Balance Sheet ending as on 31.03.2018 (Annexure A-7, Copy of Relevant Balance sheets of the CD)** of the paperbook/Application filed by the Applicant under the heading of ***detail of unsecured Loan***, a relevant entry (extracted below) is found in the name of 'Shilpi Cables Private Limited showing the existence of unsecured loan from Shilpi Cables Private Limited.



<u>DETAIL OF UNSECURED LOAN</u>	
<u>PARTICULARS</u>	<u>AMOUNT</u>
1. AKANSHA GOYAL	12,70,790.00
2. CHETAN GOYAL	11,23,943.00
3. Naresh Kumar Goyal HUF	60,58,525.00
4. Naresh Kumar Loan Account	8,35,175.00
5. Rajesh Goyal HUF	12,72,252.00
6. Rajesh Kumar Goel	31,94,220.00
7. Rakhee Goyal	3,71,159.00
8. Satyanarain Goyal HUF	40,68,118.00
9. Sudha Devi Goyal	49,72,243.00
10. Sunil Agarwal	2,42,022.00
	<b>2,34,08,445.00</b>
<u>From Corporates</u>	
1. ELECTRO CABLETRONICS	42,42,218.00
2. TATA Capital Financial Services Ltd	1,15,531.00
3. Shilpi Cables Pvt Ltd	1,96,37,993.00
4. Shilpi Communication Pvt Ltd	1,09,80,000.00
	<b>3,48,95,762.00</b>

For Jhunsons Chemicals Pvt Ltd  
Vishal Goyal  
Director

For Jhunsons Chemicals Pvt Ltd  
Anshu Kumar Goyal  
Director

Relevant portion of the balance sheet of the CD signed by the directors of CD as on 31.03.2018 is also extracted below:

IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

CP(IB)/380PB/2022

Shilpi Cables Private Limited vs Jhunsons Chemicals Private Limited

	As at 31st March, 2018	As at 31st March, 2017
<b>3 LONG TERM BORROWINGS</b>		
<b>Secured</b>		
Kotak Mahindra Bank		11,89,015.00
		<u>11,89,015.00</u>
<b>Unsecured</b>		
From Directors & Their Relatives	2,34,08,445.00	1,74,99,044.00
Inter-Corporate Loans	3,48,95,762.00	3,41,69,703.00
	<u>5,83,04,207.00</u>	<u>5,16,68,747.00</u>
<b>TOTAL</b>	<b><u>5,83,04,207.00</u></b>	<b><u>5,28,57,767.00</u></b>

Further on page 172, **statement of loans and deposits taken or accepted and repaid** for Financial Year 2017-2018 and Assessment year 2018-2019 (as mentioned on the document) is annexed. The relevant entry is reproduced below:

ANNEXURE 'F'  
A.Y. 2018-19

STATEMENT OF LOANS AND DEPOSITS TAKEN OR ACCEPTED AND REPAID (REF. CLAUSE 24(a) & (b))

S. NO.	Name, Address & PAN of the Lender/ Depositor	Opening Balance	Amount Accepted	Inst. Credited	* Amount Repaid	TDS Deducted	** Closing Balance	Maximum Balance	Whether Loan/ Deposit was squared off	
13.	Shilpi Cables Pvt. Ltd. A 19-B1 Extn. NCIE, Badapur, Distt. - 110044 PAN - aamr0294h	1,81,86,506.00		10,24,985.56	NA	1,63,098.96	NA	1,96,37,393.00	1,96,37,393.00	NO

**Note 1:** Above extracted entry is of the CD's documents attached with its balance sheet.

**Note 2:** In the true typed copy, the figure against the 'installment credited' written as Rs. 10,24,985.56/- seems to be clerically incorrect, it must be 15,24,985.56/-

**18.** It is also relevant to mention that it is the liquidator who has filed the instant application for initiation of CIRP against the CD unlike the financial creditor himself. We cannot be oblivious to the situation where



Liquidator does not get the full co-operation in the form of documents from the ex-management to carry forward the liquidation process. Hence, his inability to produce financial contract between FC and CD to further buttress its case. Infact, Applicant in its rejoinder dated **24.04.2023** submitted that MOU and addendum to the MOU surfaced for the first time as these documents have never been provided by the ex-directors of the Applicant. Infact Hon'ble NCLAT in its Judgement dated **12 Jan 2023 in Company Appeal (AT) (Insolvency) No. 950 of 2022** in the matter of Pradeep Tayal vs. M/s Essbert Fashion Private Limited and Ors. Has held that financial contract is not necessary and a financial debt can be evidenced from other documents viz. balance sheet, Form 16- A (TDS) and demand notices." Relevant extract of the judgement is reproduced below:

*23. This Tribunal in the above case referring to documents and correspondences between the parties concluded that financial debt was there despite there being no MoU formerly executed between the parties containing the terms and conditions of transaction. Further, when we look into the definition of transaction as contained in Section 3(33) of the Code as extracted above, the definition is an inclusive definition and the provision does not lead to the conclusion that unless there is written transaction between the parties incorporating the terms and conditions of the loan, no transaction can come within the meaning of Section 5(8) of the Code. Financial Debt can be proved from other documents as contemplated in Column 8 of Part-V of Form 1 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as noted above.*

- 19.** Further, CD contended that the cause of action accrued in 2015 and hence the present application is barred by limitation. To counter this, we find it relevant to mention here that the above extracted entries in **para 17** are from the additional documents attached to the financial statements of the CD i.e. **Statement of Loans and Deposits taken or accepted and repaid**



of the Assessment year 2018-2019 (i.e. year ending on 31.03.2018),  
**Details of Unsecured Loan and Balance sheet of CD as on 31.03.2018.**

Further, the date of default as mentioned in the Application filed by the Liquidator of Applicant Company is **16.10.2019** i.e. when the demand notice for payment was issued to CD. The application was filed in the year of August 2022 and on perusal of the various entries in the books of accounts of CD which is a valid acknowledgement in accordance to law and considering the averment of Applicant regarding the exclusion of COVID period for computing the limitation period, we find that present application is very well within the limitation excluding the COVID period.

- 20.** We find it relevant to mention that MOU was executed in the year 2014 and at that time Mr. Gaurav Singhal as director of SKD signed the MOU and a year after, same Mr. Gaurav Singhal signed the replies on behalf of M/s Shilpi Cables Private Limited acknowledging the liability for the disbursement of balance money. **Relevant part of the reply is extracted below:**

IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

CP(IB)/380PB/2022

Shilpi Cables Private Limited vs Jhunsons Chemicals Private Limited

Annexure K-6



**SHILPI CABLES PVT. LTD.**

Date: 03-10-2015

To,  
Jhunsons Chemicals Private Limited  
A-19 / B-1 Extension, Mohan Co Operative Ind  
Est P.O. Badarpur, Mathura Road  
New Delhi South Delhi DL 110044

Dear Sir,

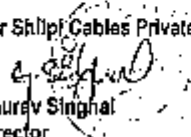
Subject: Reply to letter dt 31/08/2015 & 30/09/2015  
Reg: Request for payment in terms of MOU dated August 18, 2014

We acknowledge the receipt of your letter(s) dated 31/08/2015 & 30/09/2015 where in you had requested the disbursement of funds as per MOU dt 18/08/2014.

We are in process of arranging the funds for the disbursement. Due to liquidity crisis there may be delay in disbursement of amount as per the terms of the MOU.

We will disburse the amount on priority basis.

For Shilpi Cables Private Limited

  
Gaurev Singh  
Director

Also, on perusal of the **Avoidance Application IA 2086/ 2021** in **CP (IB) 461/2017 M/s BDR Builders vs. M/s Shilpi Cables Private Limited**, it is found that all the ex-Directors of the Applicant, and ex- directors of SKD, and directors of CD are party to it and arrayed as Respondents in the Application. Respondent Directors have not filed any reply till date. Similarly, in avoidance application as well, the same amount of Rs. 1,57,00,000/- is alleged to be misappropriated. Further, on perusal of MCA data for the year 2014 to 2017 of the three companies namely M/s Shilpi Cables Private Limited, M/s Jhunsons Chemicals Private Limited and M/s Shri Radhe Kunj Dairy and Milk Products Private Limited, it seems that few directors are interchangeably director of one company and then in the next year for the other company. This fact creates a doubt as to the genuineness of the letters

IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

CP(IB)/380PB/2022

Shilpi Cables Private Limited vs Jhunsons Chemicals Private Limited

exchanged between the parties. This fact is not denied by the parties that all three companies are related parties. The extract for the details of the ex-directors and former directors of all three companies are reproduced below:

DIN/PAN	Name	Current Desi	Date of appointment	Date of Cessation
00163044	MUKESH KUMAR GUPTA	Director	05.07.2011	21.08.2014
00163044	MUKESH KUMAR GUPTA	Additional Direc	11.06.2011	05.07.2011
00163105	MANISH GOEL	Director	04.12.2006	21.08.2014
01484319	GAURAV SINGHAL	Director	30.09.2014	
01484319	GAURAV SINGHAL	Additional Direc	21.08.2014	30.09.2014
02436372	VISHAL GOEL	Director	04.12.2006	11.06.2011
02436372	VISHAL GOEL	Director	30.09.2014	05.03.2015
02436372	VISHAL GOEL	Additional Direc	21.08.2014	30.09.2014
03608113	PRATEEK SINGHAL	Director	30.09.2015	04.01.2016
03608113	PRATEEK SINGHAL	Additional Direc	05.03.2015	30.09.2015
06437109	ROHIT KUMAR	Director	24.08.2016	
06437109	ROHIT KUMAR	Additional Direc	04.01.2016	24.08.2016
07352128	SHREYANSH GUPTA	Nominee Direct	04.01.2016	19.05.2017
AWOPN6704E	SANCHIT NIGAM	Company Secret	05.10.2015	10.08.2016
AWOPN6704E	SANCHIT NIGAM	Company Secret	02.03.2017	30.06.2017

**DIRECTORS DETAILS FOR M/s SHILPI CABLES PRIVATE LIMITED**

DIN/PAN	Name	Current Designation	Date of appointment at current designation	Date of Cessation
00218905	NAVIN KUMAR GUPTA	Director	01.02.2008	01.06.2011
00218958	RAKESH GOYAL	Director	01.02.2008	01.06.2011
00328771	NARESH KUMAR GOYAL	Director	01.02.2008	
01415178	RAJ KUMAR TULSIAN	Director	07.09.1992	23.12.2010
01415188	ARUN KUMAR TULSIAN	Director	07.09.1992	23.12.2010
01415194	ABHITAB KUMAR TULSIAN	Director	07.09.1992	23.12.2010
02048336	SATYA NARAIN GOYAL	Director	01.03.2008	01.06.2011
02059325	SANJIV MITTAL	Director	01.03.2008	31.08.2010
02277016	ANUJ NARAYAN MITTAL	Director	17.11.2008	31.08.2010
02436372	VISHAL GOEL	Director	30.09.2011	25.01.2021
02436372	VISHAL GOEL	Additional Director	01.06.2011	30.09.2011
03517656	RAKHEE GOYAL	Additional Director	29.03.2012	31.03.2012
03517656	RAKHEE GOYAL	Additional Director	20.06.2020	21.07.2020
05161354	ANUKRITI GOEL	Director	29.09.2012	12.12.2014
05161354	ANUKRITI GOEL	Additional Director	01.04.2012	29.09.2012
05161354	ANUKRITI GOEL	Additional Director	25.01.2021	
09280459	SANGEETA GOYAL	Director	29.09.2012	12.12.2014
09280459	SANGEETA GOYAL	Additional Director	29.03.2012	29.09.2012

**DIRECTORS DETAILS FOR M/s JHUNSONS CHEMICALS PRIVATE LIMITED**

DIN/PAN	Name	Current Designation	Date of appointment at current designation	Date of Cessation
00014416	ASHISH GUPTA	Director	24.04.2008	27.11.2010
00025848	SAMBHAV HARJAI	Additional Director	25.10.2017	08.02.2018
01055812	ANIRUDH GOEL	Director	24.04.2008	05.04.2011
01484319	GAURAV SINGHAL	Director	30.09.2011	23.03.2015
01484319	GAURAV SINGHAL	Additional Director	01.04.2011	30.09.2011
01724587	SHYAM GOEL	Director	24.04.2008	05.04.2011
01900722	ANGAD SINGH	Director	30.09.2015	25.10.2017
01900722	ANGAD SINGH	Additional Director	23.03.2015	30.09.2015
02436372	VISHAL GOEL	Director	30.09.2014	23.03.2015
02436372	VISHAL GOEL	Director	30.07.2020	
02436372	VISHAL GOEL	Additional Director	21.04.2014	30.09.2014
03280676	RAKESH SINGH	Director	30.09.2015	28.06.2017
03280676	RAKESH SINGH	Additional Director	23.03.2015	30.09.2015
05161354	ANUKRITI GOEL	Director	30.09.2011	23.03.2015
05161354	ANUKRITI GOEL	Additional Director	01.04.2011	30.09.2011
07863417	SANDEEP SINGH	Director	29.09.2017	
07863417	SANDEEP SINGH	Additional Director	28.06.2017	29.09.2017
08066812	SHRI BHAGWAN	Additional Director	08.02.2018	
08806125	MUKESH CHAUDHARY	Additional Director	29.08.2020	
08806963	GAISU BHASIN GOEL	Director	30.07.2020	29.08.2020

**DIRECTORS DETAILS FOR M/s SHREE RADHEY KUNJ MILK AND DAIRY PRODUCTS PRIVATE LIMITED**

21. Also, another important point to be mentioned here which is also raised by the Applicant as well that the MOU was neither stamped nor notarized, nor there are any witnesses to it. Usually, as an act of caution, such transactions and agreements and MOUs are entered upon in such corporate setting with all the legal formalities and due diligence and paper work because at the time of dispute, the documentary evidence plays a crucial role in establishing the claim. But in the instant case, this is not so.
22. Further, on perusal of various clauses of the alleged MOU executed between the parties, the terms of the MOU give the impression that the contract is unilateral and on the face of it seems to be unconscionable. The MoU entered upon is totally one-sided, unilateral, and causes significant changes in the rights of the Applicant. It is the settled law of land that whenever any transaction on the face of it seems to be unconscionable which is the present case before us, then the onus of proof is on the opposite party to prove otherwise. In our opinion, the

burden of proof has not been discharged by the Respondent/CD.  
Relevant clauses of the MOU are extracted below:

*“..And whereas after discussion, the Parties has agreed that SCPL shall invest a sum to a tune of Rs. 5 Crores in JCPL, which shall be secured against the Loan taken by SCPL from SKD, to augment the long-term financial requirements of JCPL, to put the Company at desired growth path.”*

*1. Financial Contribution by SCPL*

*1.1 SCPL agrees to invest a sum of Rs. 5.00 Crores in JCPL for the purpose of expansion of the existing business and diversification in other related segments/ Services.*

*1.2 It is agreed that SCPL shall provide the above said funds to JCPL on priority basis and within an agreed time frame of Twelve months from the date of this MOU in the following manner:*

*Rs. 2.50 Crores within a period of Six months,*

*and Balance Rs. 2.50 Crores within a period of next six months.*

*SCPL acknowledges that time is the essence for this MOU, as the growth prospects and future business plan of JCPL is heavily dependent on the timely availability of funds at the disposal of JCPL...*

*..*

***1.5 It is agreed that, till the SCPL provided the 1st tranche of the agreed funds (i.e. Rs. 2.50 Crores), the amount provided by SCPL to JCPL shall remain and treated as non-refundable and non - adjustable fund lying to the credit of SCPL in the books of Accounts of JCPL. Till SCPL fulfils its financial commitments as agreed under this MOU, SCPL would not be entitled to have any claim over the part payment made.***

***1.6 The repayment of sum invested along with the profit sharing, by JCPL to SCPL is guaranteed against the loan given by SKD to SCPL. In case any default by JCPL in***

***repayment of sum invested along with the profit sharing, SCPL shall first settle the dues against the loan repayment to SKD before any recovery is initiated against JCPL.***

## 2. PROFIT SHARING

*2.1 Subject to SCPL providing the committed funds to JCPL in a timely manner, it is agreed that between the Parties ..*

..

..

*However, till the date SCPL entirely fulfill its obligation of providing the agreed fund of Rs. 5.00 Crores, SCPL shall not be entitled to any profit sharing or interest or any other return on its funds to be provided to JCPL. However, it is agreed that to provide financial comfort to SCPL, an amount equal to 10% per annum for the FY 2014-15 and @ 9% per annum thereafter shall accrue to the account of SCPL. However, it shall be due only after the total committed amount of Rs. 5,00 crores are paid by SCPL to JCPL.*

*It is again clarified that SCPL shall not have any claim on the amount provided by it to JCPL or any claim over the profit sharing/return etc., unless and until SCPL has provided the agreed fund of Rs. 5.00 crores to JCPL, within the stipulated time frame mentioned in clause 1.2 above.*

*“3.2 In case the SCPL makes the default in providing the funds as agreed in this MOU, JCPL shall be fully and unconditionally entitled to terminate this MOU and in such case, any amount already provided to JCPL stands forfeited. It is agreed by SCPL that the forfeiture of such amount would not be sufficient to compensate the losses that JCPL would suffer due to the default of SCPL. JCPL shall be entitled to take any other legal action against SCPL for their default of this MOU.”*

- 23.** The stipulation in para 2.1 above that unless Applicant disburse a certain amount, it shall not receive any amount sounds strange. There is nothing on record that Applicant has ever got any profit from such a contract. In addition to this, Applicant has annexed the balance sheet of the relevant years which shows that an amount of INR 1.57



crore has been disbursed and the same is reflected as *long term borrowing* in the books of Applicant. Applicant has also annexed the balance sheet of the CD (year ending on **31.03.2018**) (**extracted in para 17 @page 13 (supra)**) which shows the amount due under the head of '*unsecured loan*' which prima facie establishes the existence of *debt*. **Apart from this, Applicant also submitted Additional Affidavit dated 8 July 2023 annexing the record of financial information (Form C) which indicates primarily towards existence of default. Further Applicant in its written submissions attached the copy of the latest update of NeSL website regarding the default of the financial debt. The status of the Authentication is shown as '*deemed to be authenticated*'.**

- 24.** Therefore, we hold that the requirements of 'Debt and Default" envisaged under the Code has been fulfilled. Accordingly, this is a fit case to admit CD into CIRP.

## **ORDER**

- 1.** In light of the above facts and circumstances, it is hereby ordered as follows: -
  - i.** The Application bearing **(IB)-380(PB)/2022** filed by the Applicant under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating CIRP against the Corporate debtor i.e. **M/s Jhunsons Chemicals Private Limited** is **ADMITTED**.
  - ii.** As a consequence of the Application being admitted in terms of Section 7 of the Code, the moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

- iii.** The Financial Creditor has proposed the name of **Mr. Ajay Gupta**, registration number IBBI/IPA-001/IP-P00140/2017-2018/10304, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 which is annexed as **Annexure-A-3** of the paper book. Accordingly, **Mr. Ajay Gupta**, Registration number IBBI/IPA-001/IP-P00140/2017-2018/10304; Address: 7-A, Sidhartha Extension, Pocket- B, New Delhi, NCT of Delhi- 110014; Emailid [ajaygupta1969@gmail.com](mailto:ajaygupta1969@gmail.com) is appointed as the Interim Resolution Professional (“IRP”). The appointed IRP is directed to submit his Authorization for Assignment (AFA) to this Adjudicating Authority within 5 working days.
- iv.** In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v.** During the CIRP period, the management of the CD shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no further opportunity given in this regard.
- vi.** The IRP is expected to take full charge of the CD’s assets, and documents without any delay whatsoever. He is also free to take



police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- vii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the CD.
  - viii.** The FC shall deposit a sum of Rs 5,00,000/- (Rupees Five Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (“CoC”).
  - ix.** The Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today, and upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the status of the CD and specific mention regarding admission of this petition must be notified.
- 2.** The Registry is further directed to send the copy of the order to the IBBI also for their record.
  - 3.** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**-Sd/-**

**(RAMALINGAM SUDHAKAR)**

**PRESIDENT**

**-Sd/-**

**(AVINASH K. SRIVASTAVA)**

**MEMBER (TECHNICAL)**