

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins) No. 1269 of 2024**

**IN THE MATTER OF:**

**Dnyaneshwar Shankar Unde,  
Proprietor of Swadarshan Dairy**

**...Appellant(s)**

**Versus**

**Shukla Dairy Pvt. Ltd.  
Present:**

**... Respondent(s)**

**For Appellant** : Mr. Malak Bhatt, Ms. Neeha Nagpal, Mr. Shreyansh Chopra, Advocates.  
**For Respondents** : Mr. Jha Amlendu Kumar, Ms. Disha Choudhary, Advocates.

**O R D E R**  
**(Hybrid Mode)**

**Per: -Justice Rakesh Kumar Jain (Oral)**

**22.09.2025:** This appeal is directed against the order dated 10.05.2024 by which application filed by the appellant bearing restoration application /12(AHM)2024 in CP (IB) 239 of 2020 has been dismissed on the ground that there was no clause for revival of the application/CP (IB) No. 239 of 2020 in case of a breach in the terms and conditions of the settlement by the Respondent.

2. In brief, the appellant filed an application under Section 9 of the IBC, 2016 for the resolution of its debt of Rs. 1 Crore 49 lakhs. During the pendency of the application and after the appearance of the Respondent, the Tribunal passed the order that the parties have decided to settle the dispute by way of a settlement agreement.

3. In this regard, the order was passed by the Tribunal on 16.02.2021, read as under:

*“No one appeared for the Operational Creditor.  
Ld. Counsel Ms. Vaibhavi Parikh appeared for the  
Corporate Debtor.  
An E-mail is produced before us that matter is settle and  
affidavit is also filed. It appears that matter is settled,  
hence, matter stands disposed of with liberty to get this  
application revived, in case, settlement fails.  
Accordingly, CP (IB) 239 of 2020 stands disposed of”.*

4. The parties entered into a Memorandum of Understanding (the ‘MoU’) on 06.11.2020. According to the appellant, the Respondent committed breach in the terms and conditions of the MoU, therefore, it filed the application bearing Restoration Application/12(AHM)2024 which has been dismissed by the Tribunal only on the ground that there was no clause in MoU that in case of breach of terms and conditions by the Respondent, the main petition bearing CP (IB) No. 239 of 2020 can be restored on an application filed by the appellant.

5. Counsel for the appellant has argued that the Tribunal had already recorded an order on 16.02.2021, referred to above, in which it had specifically observed that if the settlement fails then application for revival of the main petition can be filed.

6. Besides this, it is submitted by the appellant that it would be cheating on the part of the Respondent to enter into a MoU to wriggle out of the rigours of the application filed under Section 9 on the basis of which the Respondent could have been pushed into CIRP and then not honouring the terms and conditions and contesting the application filed for restoration on

the ground that there is no such clause in the MoU for revival of the application in case of breach on its part.

7. On the other hand, Counsel for the Respondent has argued that as a matter of fact the entire payment has been made, therefore, there is no need for revival of the application.

8. In rejoinder, Counsel for the appellant has submitted that the Respondent has paid only Rs. 39,40,000/- and Rs. 1,10,22,721/- is still to be paid under the MoU.

9. After hearing Ld. Counsel for the parties and examining the available record, we are of the considered opinion that the Tribunal has committed a patent error in dismissing the application of the appellant for restoration of the main petition on the ground that there was no clause in the MoU for revival of the application in case there is a breach of terms and conditions of the MoU by the Respondent, firstly, because the Tribunal itself had earlier passed an order on 16.02.2021, which we have already referred to in the earlier part of this order, as per which the Tribunal had given liberty to the appellant to file an application for revival of the main case, in case the settlement fails and secondly, the Respondent cannot be allowed to blow hot and cold in the same breath, as has happened in the present case, because the Respondent for avoiding the admission of the application filed under Section 9 by which it could have slipped into CIRP entered into MoU and agreed to pay the entire debt of the appellant but later on stopped making the payment which gave a cause of action to the appellant for revival of the application.

10. We do not appreciate this kind of action on the part of the Respondent as we have also dealt it in many cases earlier. One of such case is **‘Archangles Distributors Pvt. Ltd. vs. Ideal Financing Corporation Ltd.’, CA (AT) (Ins) No. 1143 of 2024** decided on 19.12.2024.

11. Thus in view of aforesaid facts and circumstances, the present appeal succeeds. The Impugned order dated 10.05.2024 is hereby set aside.

12. The Restoration Application No. 12(AHM)2024 is allowed and the main CP (IB) 239 of 2020 is hereby restored to its original number.

13. The parties may bear their own costs. Pending IA's if any are hereby closed.

14. Since the Respondent has submitted that the entire payment has been made, therefore, it shall be at liberty to raise this issue before the Tribunal in the main CP.

15. Parties to appear before the Tribunal on **27.10.2024**.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Justice Mohammad Faiz Alam Khan]**  
**Member (Judicial)**

**[Indevar Pandey]**  
**Member (Technical)**

sr/rr