IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

IA NO.190/2026 IN CP (IB) NO.89/ALD/2022

(Application filed under Section 65 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

SUDHANSHU CHAUDHARY & ORS
Office at: 40/55, FF. C.R. Park, New Delhi -110019
Email: sudhir@pamsassociates.com

.........Applicant/Suspended Board of Directors

Versus

M/S. GLOBAL NEW ENERGIES & TECHNOLOGIES
Registered Office:
A-902, Saraswati Riverview Apartments
Gomati Nagar Extension, Gomati Nagar
Lucknow (U.P.) India-226010
Mob: 9532925430
Email: globalgnetmails@gmail.com

..........OC/Respondent No.1

ANKIT AGARWAL
Interim Resolution Professional
of Diversification Agriculture Producer Company Ltd.
3/26216, Janakpur Nagar, Khanalampura
Sharanpur, Utter Pradesh-247001
Mob: 9456600033
Email ID: ankitagarwalcs@gmail.com

...........IRP/Respondent No.2

AND IN THE MATTER OF:

GLOBAL NEW ENERGIES & TECHNOLOGIES
Working Office:
3/12,1st Floor, Raj Kutir, 1/12, Vijay Khand,
Near Mithaiwala Crossing, Gomati Nagar,
Lucknow(U.P.) India-226010
Phone: 0522-3144503

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Registered Office:
A-902, Saraswati Riverview Apartments,
Gomati Nagar Extension, Gomati Nagar,
Lucknow (UP), India-226010

...........Operational Creditor

Versus

DIVERSIFICATION AGRICULTURE PRODUCER COMPANY LTD.
3/26216, Janakpur Nagar,
Khanalampura, Saharanpur-247001

………. Corporate Debtor

Order pronounced on: 22.07.2026

Coram:

Sh. Praveen Gupta	:	Member (Judicial)
Sh. Ashish Verma	:	Member (Technical)

Appearances:

Sh. Sudhir Kumar Dash CA with Ms. Udipti Chopra	:	*For the Applicant in IA No.190/2026*
Ms. Surabhi Bhaskar, Advs. Sh. Rohit Dubey, Adv.	:	*For the Res./ SCC in IA No.190/2026*
Sh. Krishna Dev Vyas, Adv.	:	*For the IRP/Respondent No.2 in IA No.190/2026*

ORDER

1. This present application has been filed on 05.03.2026 under Section 65 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "*Code*"/"*IBC*"), by Sudhanshu Choudhary & Ors. (hereinafter referred to as the "*Applicant*"), being the suspended management of M/s Diversification Agriculture Producers Company Limited (hereinafter referred to as the "*Corporate Debtor*"), against Global New Energies and

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Technologies (hereinafter referred to as "*Respondent No. 1*"/"*Operational Creditor*") and Mr. Ankit Aggarwal, who was the Interim Resolution Professional of the Corporate Debtor (hereinafter referred to as "*Respondent No. 2*"/"*IRP*"), seeking, inter alia, the following reliefs:

> *"a. Pass an order Initiating Proceedings under section 65 of the IBC Code against the responsible persons.*
> *b. Pass an order recalling/setting aside the order dated 6th October 2023 against the Corporate Debtor, and/or with direction to the Resolution Professional to hand over the Company to the Suspended Board of Directors.*
> *c. Pass an order for initiating disciplinary proceedings against the Interim Resolution professional under the regulations of IBBI.*
> *d. Pass any other/further order (s) which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the matter."*

2. It is noted that, the main petition filed by the Respondent No. 1, in its capacity as the Operational Creditor, under Section 9 of the Code against the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process (CIRP) vide order dated 06.10.2023, passed by this Tribunal. At the time of proceeding before this Tribunal under Section 9, neither any reply/counter was filed nor any representation was made by the Corporate Debtor. Therefore, the order dated 06.10.2023 admitting the Corporate Debtor under CIRP was passed after setting it ex-parte. In view of the above, while admitting the Corporate Debtor under CIRP, no

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clarification/ explanation of the Corporate Debtor on the charges levelled against it in main petition under section 9 could be considered in absence of its representation at that stage. Since the CIRP could not be completed within the time prescribed under Section 12 of this Code, this Tribunal passed an order for liquidation on 10.06.2025. It is in the backdrop of these facts that the present application has been filed, alleging as under.

3. The Applicant, being ex-director of the Corporate Debtor, submits that the Corporate Debtor was affiliated with the Uttar Pradesh Diversification Agriculture Support Project ('UPDASP') for the purposes of knowledge dissemination, technological assistance and promotion of solar agriculture sprayers and other agricultural products in the State of Uttar Pradesh. It is submitted that, pursuant to a proposal dated 01.11.2017, the Corporate Debtor entered into an arrangement with UPDASP and other stakeholders possessing technological expertise from Japan, including Miyachi Co. Ltd. (a Japanese company), for making available agricultural technology in India.

4. The Applicant further submits that Respondent No. 1 was engaged with the said Japanese company for facilitating implementation of the project and for receiving payments from the Corporate Debtor on behalf of the Japanese company upon successful sale of the products by the Corporate Debtor to farmers. However, vide legal notice dated 29.08.2019, the legal counsel of

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the Japanese company allegedly highlighted the conduct of Respondent No. 1, i.e., the Operational Creditor in main petition, in **siphoning** the funds and requested that no payments be remitted to Respondent No. 1.

5. The Applicant avers that Respondent No. 1 fraudulently received an amount of Rs. 27,56,947/- from the Japanese company towards project expenses allegedly incurred by the Corporate Debtor and appropriated the same for his personal benefit without remitting it to the Corporate Debtor. It is further alleged that Respondent No. 1 was engaged in selling low-quality Chinese products under the label of Hakuto products, resulting in several quality-related complaints from farmers.

6. The Applicant further submits that Respondent No. 1/Operational Creditor had entered into a tripartite arrangement with M/s Capital Trade Links Limited, a Non-Banking Financial Company (NBFC), for financing farmers for the purchase of products and machines manufactured by the Japanese company and supplied through Respondent No. 1 with the involvement of the Corporate Debtor.

7. The Applicant submits that Respondent No. 1/Operational Creditor had dispatched 30 laser land levellers and issued five other invoices for supply of sprayer machines. However, the substantial quantity of such machines remained unsold on account of quality and pricing issues. It is submitted that the Corporate Debtor paid Respondent No. 1 an amount of Rs.

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45,78,900/- and a further amount of Rs. 27,40,000/- to JD Eco India Private Limited on behalf of Respondent No. 1 under its instructions. Thus, an amount aggregating to approximately Rs. 65 lakhs stood paid by the Corporate Debtor against the sale of 18 land levellers.

8. The Applicant further avers that under the relevant MoUs and agreements, Respondent No. 1 was acting as an agent of the Japanese company, whereas the Corporate Debtor was acting as an agent of the farmers and as a facilitator connecting farmers with Respondent No. 1. The Corporate Debtor also allegedly assisted in storage, upkeep and maintenance of products and was entitled to commission, warehousing charges, engineers' fees, painting charges and other service-related payments. It is submitted that the Corporate Debtor was selling laser land levellers on behalf of Respondent No. 1, which transactions were financed through the NBFC. Hence, it is contended that supplies made by Respondent No. 1/Operational Creditor to the Corporate Debtor under the invoices did not confer any immediate right of recovery until the products were ultimately sold to farmers and/or financed by the NBFC.

9. The Applicant submits that the machines supplied to farmers were subsequently found to be of inferior quality and not of Japanese origin as represented. Consequently, an independent enquiry conducted by the Corporate Debtor revealed that certain components, including transmitters,

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controllers and receivers, were imported from China and that other components were assembled domestically. The Applicant further submits that information available in the public domain disclosed allegations of cheating and fraud against Respondent No. 1, in respect of which an FIR had been registered in Varanasi and an application seeking quashing thereof had been rejected by the Hon'ble High Court of Allahabad.

10. The Applicant submits that it has also initiated proceedings under Section 156(3) of the Code of Criminal Procedure against Respondent No. 1 in relation to the aforesaid acts. It is further contended that, contrary to the claims made by Respondent No. 1, it was Respondent No. 1 who was liable towards the Corporate Debtor on account of unpaid rent, commission on sales, unloading charges, painting costs and engineers' salaries incurred towards installation and servicing of the products.

11. The Applicant further submits that the demand notice dated 08.08.2019, whereby Respondent No. 1/Operational Creditor claimed an amount of Rs. 80,04,600/-, was duly replied to by the Corporate Debtor vide letter dated 26.08.2019. The said reply specifically raised disputes relating to quality, quantity and pricing of the products supplied and also set out the Corporate Debtor's own claims against Respondent No. 1.

12. The Applicant submits that, despite being aware of the aforesaid disputes, Respondent No. 1 showing itself as the Operational Creditor initiated

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proceedings under Section 9 of the Code against the Corporate Debtor and obtained an ex parte order dated 06.10.2023. It is alleged that Respondent No. 1 resorted to forgery, suppression of material facts, concealment of documents and misrepresentation before this Tribunal in order to secure admission of the petition filed by it under Section 9. In this regard, the Applicant has, inter alia, alleged concealment of various agreements and arrangements relating to the project, non-service of the petition at the known operational address of the Corporate Debtor, fabrication of invoices for inflating the claim shown as operational debt to meet the requirement of default amount coming to beyond the statutory threshold, and suppression of the pre-existing disputes as informed by the Corporate Debtor in response to the demand notice.

13. The Applicant therefore contends that Respondent No. 1 as the Operational Creditor committed fraud upon this Tribunal by suppressing the existence of disputes between the parties, misrepresenting the amount allegedly due and payable, relying upon fabricated invoices and thereby obtaining admission of the Section 9 petition fraudulently on the basis of a claim of operational debt which was non-existent. It is further alleged that Respondent No. 1 deliberately abstained from effecting proper service of notice upon the Corporate Debtor herein, issued by this Tribunal on filing of its the main petition under Section 9, despite being aware of its

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operational office and business address of the Corporate Debtor, thereby ensuring the absence of representation on behalf of the Corporate Debtor during the adjudication proceedings of section 9 petition.

14. The Applicant, being ex-director of the Corporate Debtor further submits that Respondent No. 2/IRP acted in a unilateral manner by failing to properly verify the claim of Respondent No. 1, failing to place complete information before the Committee of Creditors ("CoC"), freezing the accounts of the Corporate Debtor and publishing allegedly misleading and defamatory material against the office bearers of the Corporate Debtor. It is submitted that IA No. 545 of 2023 had also highlighted the conduct of Respondent No. 1 and the IRP; however, since the relevant information was allegedly not brought on record, the application seeking recall of the admission order came to be rejected. The Applicant lastly submits that the subsequent rejection of the claim of Respondent No. 1 by Respondent No. 2, as recorded in the CoC minutes placed on record as Annexure-M, conclusively establishes that no operational debt was due and payable by the Corporate Debtor.

15. On the basis of these facts as enumerated in the present application and discussed above, it is emphasized by the Applicant, that the Section 9 proceedings were initiated on the basis of a non-existent claim, and therefore the provisions of Section 65 of the Code is attracted. The

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Applicant further submits that both Respondent No. 1 and Respondent No. 2 are liable under Section 65 of the Code for having initiated and conducted the CIRP for purposes other than insolvency resolution. It is also alleged that, on account of the CIRP, inventory comprising agricultural produce remained locked in warehouses for more than three years and consequently perished, causing substantial losses to the Corporate Debtor, which losses are stated to be attributable to the actions of Respondent No. 1 and Respondent No. 2.

16. During the course of hearing of this application, we also note that, despite service of notice, there has been no appearance on behalf of the Respondent No. 1, i.e., the Operational Creditor, who had originally initiated the proceedings under Section 9 of the Code against the Corporate Debtor. Further, vide order dated 09.04.2026, the Ld. Counsel on behalf of the sole Stakeholders' Consultation Committee ("SCC") member made appearance and submitted that the SCC of the Corporate Debtor supports the present application filed under Section 65 of the Code.

17. In compliance with the order dated 05.06.2026, the Applicant filed written submissions on 08.06.2026, wherein the same facts and circumstances were reiterated. The said written submissions have been taken on record and are not reproduced herein for the sake of brevity. However, the relevant

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judgments relied upon by the Applicant in support of its contentions are noted herein below:

- The Applicant has placed reliance upon the judgment of the Hon'ble NCLAT, New Delhi in Bharto Goyal & Ors. v. Hector Realty Venture Private Limited & Ors., *[Company Appeal (AT) No. 1545 of 2024 along with IA No. 5594 of 2024]*; Union Bank of India (Erstwhile Corporation Bank) v. Dinkar T. Venkatasubramanian & Ors., [*rendered in the reference made by the Three-Member Bench in IA No. 3961 of 2022 in Company Appeal (AT) (Ins.) No. 729 of 2020*]; Expert Realty Professionals Pvt. Ltd. v. Logix Infrastructure Pvt. Ltd. [*Company Appeal (AT) (Insolvency) No. 383 of 2025*] and Rakesh Kumar Gupta v. Straight Edge Contracts Pvt. Ltd. & Ors., [*Company Appeal (AT) (Insolvency) No. 444 of 2022*].

- The Applicant has further relied upon the judgments of the Hon'ble Supreme Court in Indian Bank v. Satyam Fibres (India) Pvt. Ltd., *[(1996) 5 SCC 550*]; S.P. Chengalvaraya Naidu v. Jagannath, [*AIR 1994 SC 853*] ; M/s Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors., [*Civil Appeal No. 9170 of 2019*]; and Greater Noida Industrial Development Authority v. Prabhjit Singh Soni & Anr., [*Civil Appeal Nos. 7590–7591 of 2023*] .

- With regard to the bearing of CIRP and other incidental costs, the Applicant has further relied upon Gopal Trading Company v. Ravindra Kumar Goyal, Resolution Professional of Matrushri Fibres Private Limited, [*Company Appeal (AT) (Ins.) No. 222 of 2026*] passed by Hon'ble NCLAT vide order dated 17.03.2026, to contend that where CIRP has been initiated fraudulently or maliciously, the

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Respondent No.1/ Operational Creditor must bear the consequences and costs arising therefrom.

18. Further, in compliance with the said order, the SCC member [earlier the sole member of CoC] also filed its written submissions on 08.06.2026. It has submitted that, during the conduct of CIRP, serious concerns arose regarding the very initiation of insolvency proceedings against the Corporate Debtor. Upon examination of the records and material available during CIRP, the CoC formed a prima facie opinion that the insolvency process appeared to have been initiated on the basis of facts warranting investigation under Section 65 of the Code.

19. The SCC member has further submitted that the minutes of the 5th CoC meeting demonstrate that the sole Financial Creditor deliberated upon the issue of fraudulent commencement of CIRP and specifically advised the RP to take appropriate steps for termination of the CIRP and for seeking recall of the admission order in light of the fraudulent facts that had emerged. Pursuant to such deliberations and directions of the CoC, the RP filed IA No. 242 of 2024 before this Tribunal seeking, inter alia, termination of the CIRP and initiation of proceedings under Section 65 of the Code against the persons responsible for the alleged fraudulent and malicious initiation of the CIRP. This RP named Mr. Pawan Kumar Agrawal was appointed subsequently by the CoC, after its approval in the 1st CoC meeting,

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resulting in removal of the IRP appointed earlier i.e., Mr. Ankit Aggarwal, Respondent No.2, herein.

20. It has also been submitted that, where proceedings are initiated fraudulently or with malicious intent, this Tribunal possesses ample jurisdiction to recall the admission order and issue consequential directions so as to restore the parties to the position they would have occupied had such proceedings not been initiated. The SCC member further contends that continuation of liquidation proceedings founded upon a fraudulently initiated CIRP would amount to perpetuation of an illegality and would cause grave prejudice not only to the Corporate Debtor and its stakeholders but also to the sanctity and objectives of the Code. In support of these submissions, reliance has been placed on the matter of ***Gopal Trading Company v. Ravindra Kumar Goyal, Resolution Professional of Matrushri Fibres Private Limited [Company Appeal (AT) (Ins.) No. 222 of 2026] passed by Hon'ble NCLAT vide order dated 17.03.2026.***

21. We have heard the Ld. Counsels of all the parties and perused the documents and material submitted on record. The issues arising for consideration are:

i. Whether the present application under Section 65 of the Code is maintainable at this stage?

ii. Whether the CIRP initiated against the Corporate Debtor was commenced fraudulently or with malicious intent for a purpose other

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than the resolution of insolvency and, therefore, attracts Section 65 of the Code?

Issue No. 1: Maintainability of the application under Section 65.

22. With respect to the first issue, as it has already been discussed that the CIRP of the Corporate Debtor was commenced vide order dated 06.10.2023. During the course of CIRP, the suspended management filed IA No. 545 of 2023 seeking recall of the admission order primarily on the ground of non-representation of the Corporate Debtor owing to alleged non-service of the demand notice. The said application came to be dismissed vide order dated 07.11.2023, as this Tribunal did not find sufficient material warranting recall of the admission order on the grounds urged therein. Subsequently, the suspended management filed IA No. 109 of 2024 and thereafter the present application invoking the provisions of Section 65 of the Code and alleging that the CIRP had been initiated fraudulently and with malicious intent.

23. A perusal of the material available on record demonstrates that the allegations pertaining to fraudulent initiation of CIRP did not remain confined to the suspended management alone. During the conduct of the CIRP, the erstwhile RP examined the claims submitted by Respondent No. 1 and, upon such examination, rejected the claim. The issue was deliberated upon in the meetings of the CoC, which, upon consideration of the material placed before it, formed a prima facie opinion that the initiation of CIRP

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against the Corporate Debtor required examination under Section 65 of the Code. Consequently, with the approval of the CoC, the erstwhile RP filed IA No. 242 of 2024 seeking termination of the CIRP on the grounds of Section 65 of the Code. Though the said application subsequently came to be dismissed as withdrawn vide order dated 10.01.2025, the fact remains that concerns regarding the legitimacy of the very initiation of CIRP had arisen during the subsistence of the CIRP itself and had been thereafter, formally brought before this Tribunal by filing of the present application.

24. The record further reveals that, owing to the pendency of issues relating to the alleged fraudulent initiation of CIRP, the CoC did not proceed in the ordinary course either towards publication of Form-G or towards taking a commercial decision on liquidation. However, since the CIRP had remained pending beyond the prescribed timelines and no further progress had been achieved, this Tribunal ultimately passed an order, dated 10.06.2025, directing liquidation of the Corporate Debtor. Thus, the order of liquidation was not preceded by any adjudication on the merits of the allegations raised under Section 65 of the Code.

25. Accordingly, in our considered view, the legislative intent underlying Section 65 is to deter abuse of the insolvency framework and to empower the Adjudicating Authority to examine whether insolvency proceedings have been initiated fraudulently or with malicious intent for purposes other

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than insolvency resolution. Significantly, Section 65(1) employs the expression "insolvency resolution process or liquidation proceedings", thereby indicating that the jurisdiction of the Adjudicating Authority under the said provision is not confined to a particular stage of the insolvency process.

26. The Hon'ble NCLAT in ***Expert Realty Professionals Pvt. Ltd. v. Logix Infrastructure Pvt. Ltd. & Ors. [(2025) ibclaw.in 724]*** observed that the stage of CIRP is inconsequential, while considering the Section 65 application. Similarly, in ***Ashmeet Singh Bhatia v. Pragati Impex India Private Limited & Anr., [CA (AT) (Ins) No. 1413 of 2023],*** the Hon'ble NCLAT categorically held that an application under Section 65 is maintainable even after initiation of proceedings under Sections 7, 9 or 10 of the Code and that the Adjudicating Authority is duty-bound to examine allegations of fraud or malicious intent whenever such allegations are substantiated by material on record. Hence, the ratio emerging from the aforesaid judgments is that the stage of the proceedings is inconsequential while considering an application under Section 65, provided the allegations raised go to the root of the insolvency process and require judicial scrutiny.

27. Considering the foregoing facts and judicial as well as legislative view, we are of the considered opinion that in the present case, the allegations under Section 65 were raised during the subsistence of the CIRP itself; they were

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deliberated upon by the CoC; they formed the basis of proceedings initiated by the erstwhile RP; and they remained unresolved at the time when liquidation came to be ordered. In such circumstances, the subsequent liquidation of the Corporate Debtor cannot operate as a bar to the adjudication of the present application. To hold otherwise would defeat the very object of Section 65 and would render the allegations meaningless resulting into striking at the legitimacy of the insolvency process itself. Hence, the present application is very much maintainable to identify the ingredients of Section 65 of the Code.

Issue No. (ii): Application whether meets the requirement of Section 65.

28. We now proceed to examine whether the ingredients of Section 65 stand established on the facts of the present case, as framed in Issue No. (ii). Upon perusal of the material available on record, it emerges that the relationship between the Corporate Debtor and Respondent No. 1 was not founded upon a conventional buyer-seller arrangement giving rise to a straightforward operational debt.

29. The record reveals that the Corporate Debtor was functioning under a larger project framework involving UPDASP and Japanese entities for promotion and dissemination of agricultural technology amongst farmers in the State of Uttar Pradesh. The Tripartite Memorandum of Understanding (MoU) executed between UPDASP, Miyachi Co. Ltd. and the Corporate Debtor,

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read with Circular No. 141 dated 01.11.2017, demonstrates that the Corporate Debtor was merely entrusted with distribution of the technology and equipment manufactured by the Japanese entities in accordance with the directions and requirements of UPDASP. The relevant excerpts of the said agreement are reproduced below for ready reference:

> *"WHEREAS the UPDASP is engaged in promotion of various Government schemes and policies in Uttar Pradesh and thereby to promote economic opportunities for marginal communities and to coordinate scientific and policy level interventions needed thereto*
>
> *WHEREAS the MIYACHI is involved in the business of manufacturing and marketing of Diversified Agriculture Products, Solar projects and utilities and processes exclusively with their Technical Partner, Japan Development Co., Ltd, Japan and Business Implementation Partner Global New Energies and Technologies, Lucknow, India*
>
> *WHEREAS FPO is a non-governmental organization working for a range of community welfare programs including but not limited to, livelihood development through community based agricultural activities and for this purpose it works to carryout training and capacity building programs in different parts of India including the states of Uttar Pradesh.*
>
> *WHREAS FPO and MIYACHI have identified opportunities for collaboration in supply of Solar Agriculture Sprayer and Agriculture Sprayers and thereby cater to mutual interests and in the context approached the UPDASP for support and such other*

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support as may be needed Interalia and submitted a project proposal to UPDASP

WHEREAS the UPDASP has considered the proposal and agreed to rerider needful support with an objective to enhance economic returri to the dependent communities.

AND WHEREAS all the three parties have arrived at the modalities and agree to document operative modalities, mutual responsibilities and obligations for this activity through this Memorandum of Understanding:"

30. Further, under the distributorship arrangement entered into with JD Eco India Pvt. Ltd., on 01.01.2017, the Corporate Debtor was functioning as a distributor and facilitator for various agricultural products and technologies manufactured by the Japanese entities.

" *Distributorship Agreement*

This Agreement made on 01 day of January, 2017, by and between J. D. Eco India Private Limited Flat No. SR 1103 Block C Sec 4 Saraswati Apartment Gomti Nagar Extn Lucknow UP 226010 (hereinafter referred as "Seller") and Diversification Agriculture Producer Company Limited Horticulture Campus, Nawabganj Chowk, Saharanpur (hereafter referred to as "Distributor"). This agreement is valid for 4 years from the date of agreement.

a) Exclusive Appointment: Subject to the terms and conditions of this Distributor Agreement, Company hereby appoints and grants Distributor the exclusive right to sell and distribute the Products to customers located in the Territory. Distributor shall limit its activities with respect to the Products to Customers located within

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the Territory and refrain from selling or otherwise transferring, directly or indirectly, the Products to any person outside the Territory, without the express written consent of Company.

b) Territory: The rights granted Distributor hereunder are granted for the following geographical areas and markets:

Uttar Pradesh	*Uttarakhand*
Haryana	*Himachal Pradesh*

c) Products: The Products manufactured and sold by Company to Distributor for distribution hereunder are as follows:

Solar and Power Sprayer Fuji Battery	*Agriculture Weather and Soil Health Sensor*
GPS- Laser land leveler	*Supplier for Mango to japan"*

31. The contractual framework placed on record further establishes that Hakuto Co. Ltd., another Japanese entity, had entered into an Implementation Agreement dated 01.11.2017 with Respondent No. 1. The relevant clauses of the said agreement are reproduced below for ready reference:

"***2. Services***

2.1 In accordance with the terms and conditions in this Agreement, GNET shall provide following services (the "Service(s)") to Hakuto:

(1) <u>Various support in relation to the sales of the Products to UPDASP by Hakuto</u>

(2) Various supports in relation to the custom clearance procedure necessary for the importation of the Products into India

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(3) Coordination of to the provision of after maintenance service to the Products

(4) Coordination of the discussion in relation to the Services listed above among the parties including Hakuto, UPDASP, Farmer Producer Organization in Uttar Pradesh state, and JAPAN DEVELOPMENT Co., Ltd.. a business partner of Hakuto.

(5) Arrange for the payment from UPDASP to Hakuto

2.2 The detailed description of the Service stipulated above shall be discussed and determined between the parties, on a case by case basis.

2.3 GNET shall provide Hakuto with monthly report on result of Services and activities of GNET hereunder. Besides, Hakuto may, from time to time, request GNET to provide a report with regard to the Services.

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Appendix: Service Fee and Payment Terms

1. Amount and Payment Terms of Service Fees

(a) One percent (1%) of the sales price to UPDASP of each set of Products for business support in relation to such Products:

• Preparation of "Request for Proposal"

• Arrangement of Performance test of the Products by government approved laboratory

• Submission of all required documents to UPDASP on behalf of Hakuto

• Dunning and confirmation of letter, "Purchase Order" to UPDASP

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GNET shall send an invoice upon Hakuto's confirmation of the completion of all the business support as designated in this Section 1(a). Hakuto shall pay the invoiced Service Fees within two (2) weeks from the date of its receipt of the invoice.

(b) Two point five percent (2.5%) of the sales price to UPDASP of each set of Products for import and logistics support in relation to such Products:

• Import of Products to India with GNET's IEC.

• Transportation of Products to Lucknow from Indian Port or Airport.

• Assembling and Adjustment of Products.

• Rent work space and warehouse for Products.

• Arrangement of Engineers and Staffs.

GNET shall send an invoice upon shipment of each Products. Hakuto shall pay the invoiced Service Fees within two (2) weeks from the date of receipt of the invoice.

(c) Two point five percent (2.5%) of the sales price to UPDASP of each set of Products (invoiced Amount) for after maintenance service in relation to such Products, at first installation the Products at customer's locations:

• Respond to any complaints raised by the customers within 48 hours.

• Repair and Maintenance of defects and failure in the Products.

• Report the complaints to Hakuto for maker's responsibility failure.

GNET will send an invoice upon acceptance of the Products by customer with applicable evidence and payment shall be due within

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thirty (30) days from the end of the month in which the invoice was issued."

32. A perusal of the obligations undertaken by Respondent No. 1 under the said agreement demonstrates that Respondent No. 1 was primarily engaged as a coordinating and implementation agency for Hakuto. The services assigned to Respondent No. 1 included facilitation of sales, customs clearance, logistics, warehousing, maintenance support, coordination amongst stakeholders and arrangement of payments on behalf of the Japanese company. The payment structure extracted hereinabove also evidences that Respondent No. 1 was compensated through service fees linked to the execution of these obligations. The aforesaid arrangement materially alters the nature of the relationship between the parties and clearly demonstrates that the Corporate Debtor was not buying any goods from the Respondent No. 1/ Operational Creditor but only working as distributor and facilitator in supplying various agricultural products and technologies manufactured by Japanese Company, Hakuto, for which Respondent No. 1/ Operational Creditor was appointed as the agent for coordination with the Corporate Debtor to collect the funds on sale of the product to farmers through the Corporate Debtor under a project framework involving UPDASP and the Japanese Company, Hakuto.

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33. The position becomes even more evident from the Tripartite Agreement dated 20.03.2019 executed amongst Respondent No. 1, the NBFC i.e., M/s Capital Trade Links Limited and the Corporate Debtor. The relevant excerpts of the said agreement is reproduced below for ready reference:

> "*NOW THEREFORE THIS AGREEEMENT IS WITNESSETH AS FOLLOWS:*
>
> *1. The Parties hereby agree that this Agreement will be in force for an initial period of 24 months commencing from or till such period as the dues of CAPITAL TRADE in relation to the Finance Facility is repaid in full (whichever is later) for the purpose of assisting each other by performing duties and obligation mentioned herein.*
>
> *2. CAPITAL TRADE has agreed to extend the Finance Facility to the prospective buyers as recommended by the Distributor/FPO and from time to time on an uncommitted basis as per the format laid down in Schedule or as may be acceptable to CAPITAL TRADE, separately signed by the Distributor/FPO and given to CAPITAL TRADE (hereinafter referred to as the "Form"). The terms and conditions of each such form shall be deemed to be a part of this Agreement. The FPO/ Distributor hereby agrees that if required by CAPITAL TRADE, the Vendor shall forthwith get the details mentioned in the Forms confirmed by CAPITAL TRADE.*
>
> *3. The Finance Facility shall be based on the purchase made by the Farmers from the FPO/Distributors of the products manufactured and marketed by the Manufacturer/Distributor i.e., the Second Party to be effected to different locations as per*

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purchase made by the buyers and shall be made available to the them on the sole and absolute discretion of CAPITAL TRADE and upon such terms and conditions as may be stipulated by CAPITAL TRADE from time to time."

34. Under the said arrangement, the NBFC was to provide financing facilities to prospective purchasers i.e., farmers approaching the Corporate Debtor for procurement of equipment manufactured by the Japanese entities. The transaction structure thus contemplated ultimate sale to farmers coupled with institutional financing. Thus, the material on record supports the submission of the Applicant that the supplies were intrinsically linked with onward sale and financing arrangements and were not transactions giving rise to an immediate and unconditional right of recovery from the Corporate Debtor in favour of Respondent No. 1. Significantly, none of these foundational arrangements were disclosed before this Tribunal when the Section 9 proceedings came to be instituted.

35. We are of the view that the non-disclosure of the aforesaid contractual structure in the Section 9 petition assumes considerable significance while examining the intent behind initiation of CIRP. Had the true nature of the relationship between the parties been disclosed, it would have become apparent that there existed multiple reciprocal obligations amongst the parties and that the transactions were part of a larger implementation framework involving UPDASP, Japanese entities, financing institutions and

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farmers. The omission to place these material facts before us at the time of initiation of proceedings deprived this Tribunal of the complete factual matrix necessary for determining whether an operational debt, free from dispute, actually existed.

36. The record further establishes that, prior to initiation of the Section 9 proceedings, the Corporate Debtor had issued a detailed reply dated 26.08.2019 filed in response to the demand notice dated 08.08.2019. The said reply, which has been placed on record by the Applicant, specifically highlighted that out of the 30 laser land levellers received, only 18 had been sold and that remaining 12 machines remained unsold owing to defects and operational deficiencies. Further the said concern was duly addressed to the Respondent No.1/ Operational Creditor, however despite such requests remained unresolved. The Corporate Debtor further asserted that substantial amount of Rs. 29,66,300/- had already been paid and that Respondent No. 1 itself remained liable towards cargo rent, navigation expenses, unloading charges, commission, painting charges and other expenditures incurred by the Corporate Debtor. The existence of such disputes, claims and counterclaims was therefore well within the knowledge of Respondent No. 1 much prior to initiation of the insolvency proceedings.

37. The materials placed on record also lend substantial support to the allegations regarding the quality and origin of the products supplied. The

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invoices and bills of entry, annexed as Annexure F with present IA, relied upon by the Applicant indicate that the equipment supplied was imported from China, despite the goods being of Japanese origin, as decided in terms of the Tripartite MoU read along with the Implementation agreement. The record further contains communications dated 31.07.2019, 29.08.2019 and 29.11.2019 (annexed as Annexure F and G respectively with the present IA) emanating from Hakuto itself, wherein the Corporate Debtor was expressly advised not to make payments to Respondent No. 1 on account of Respondent No. 1's failure to remit amounts received and its breach of obligations under the Implementation Agreement. These communications not only corroborate the existence of serious disputes inter se the parties but also demonstrate that the commercial relationship had substantially deteriorated much prior to invocation of the insolvency jurisdiction.

38. It is also a matter of record that the Corporate Debtor initiated criminal proceedings against Respondent No. 1 by filing a complaint under Section 156(3) Cr.P.C. before the competent court alleging acts of cheating and fraud in relation to the transactions forming the subject matter of the present proceedings, a copy whereof has been placed on record as Annexure-I. Though the pendency of such proceedings is not determinative of the allegations levelled therein, it nevertheless reinforces the existence of a

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long-standing and serious dispute between the parties prior to the initiation of CIRP.

39. The most significant piece of evidence emerges from the verification exercise undertaken by the erstwhile RP himself, as recorded in the minutes of the 5th CoC Meeting held on 28.03.2024. The observation recorded therein reveal that there was no corresponding trade payable reflected in the audited financial statements of the Corporate Debtor; that the equipment in question belonged to a Chinese manufacturer and not to the Japanese entity as represented; that the inventories supplied were lying unsold owing to quality and pricing issues; that the amount claimed by Respondent No. 1 exceeded the purchase figures reflected in the GST records of the Corporate Debtor; and, most importantly, that duplicate and fabricated invoices had allegedly been relied upon for inflating the claim amount beyond the statutory threshold prescribed under the Code. The erstwhile RP further recorded that several invoices forming the basis of the claim were either unsupported or fabricated. These observation strike at the very foundation of the debt and default asserted by Respondent No. 1 in the Section 9 proceedings. The relevant excerpts of the minutes of the 5th CoC meeting held on 28.03.2024 are reproduced below:

> "*As per observation of RP, the following points has been observed and monetized on Forth COC Mintes: -*

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1) Trade Payables as per audited financials as on 31 March 2023 is NIL

2) Trade Payables as per audited financials as on 31st March 2022 is 2,54,510/-

3) The total list of OC shows duplicate invoices having same invoice number and same date that has inflated their claim by 13.25 Lakh without interest.

4) As per my physical verification of the Land Leveler Machines, the CB-808-P machine belongs to a Chinese company named SunNav and not belong to Japanese company Hakuto Co. Limited

5) As per details & bill of entry provided by suspended Board of Directors, the Land Leveler Machines were imported from china.

6) As per my physical verification of the inventories supplied by OC, the Sprayer machines supplied by OC are lying as unsaleable due to Quality and Price issues. The solar panel attached on the sprayer machine are not in working conditions.

Considering the above facts, the claim of OC is disputed as well as exaggerated to the extent possible."

40. As per further submissions of the Ld. Counsel representing the Applicant during the course of hearing, attention has been drawn on the invoices annexed as well as relied upon by Respondent No. 1 in support of its alleged operational debt during the Section 9 petition. It is submitted that a single underlying invoice was duplicated and presented as two or more separate invoices bearing the same invoice number and value, thereby artificially inflating the quantum of the alleged debt, as it is evident looking from the

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detailed chart of outstanding invoices tabulated in the Section 9 admission order dated 06.10.2023 made on the basis of the false information provided by the Operational Creditor/ Respondent No. 1 in its Section 9 application filed on 20.05.2022. This assertion finds prima facie support from the observations recorded by the erstwhile RP during the verification process.

41. The aforesaid finding that emerged during the hearing of the present application was earlier detected by the RP also and was subsequently deliberated upon by the CoC, which, upon consideration of the material placed before it, formed a prima facie opinion that the initiation of CIRP against the Corporate Debtor required examination under Section 65 of the Code. The said position has remained consistent and has continued to be supported by the sole SCC member even after the commencement of liquidation proceedings.

42. Therefore, the materials placed before us reveal a consistent chain of circumstances indicating suppression of material facts, existence of pre-existing disputes, reliance upon disputed and allegedly fabricated invoices, inflation of the claim amount for crossing the statutory threshold and non-disclosure of the true business arrangement between the parties. The cumulative effect of these circumstances leaves little room for doubt that the insolvency process was not invoked as a genuine remedy for resolution of insolvency but as a means to pressurize the Corporate Debtor in relation

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to make recovery of amount claimed out of a seriously disputed commercial relationship by resorting to initiation of CIRP fraudulently as well as with malicious intent.

43. Section 65 (1) of the Code is attracted where insolvency resolution process or liquidation proceedings are initiated fraudulently or with malicious intent for any purpose other than the resolution of insolvency. The expression "fraudulently" necessarily encompasses suppression of material facts, misrepresentation of the true factual position and reliance upon documents known to be inaccurate or misleading, while the expression "malicious intent" contemplates use of the insolvency process for purposes unrelated to insolvency resolution.

44. In the present case, the evidence discussed hereinabove clearly establishes that Respondent No. 1 was fully aware of the pre-existing disputes, reciprocal obligations, quality-related complaints, communications issued by the Japanese entities, and the contested nature of the alleged debt. Despite such knowledge, material facts were withheld from this Tribunal and insolvency proceedings were pursued on the basis of claims which were subsequently found by the erstwhile RP himself to be unsupported and inflated.

45. What further weighs with this Tribunal is that the material placed on record does not indicate any genuine effort on the part of Respondent No. 1 to

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invoke the insolvency process for resolution of insolvency of the Corporate Debtor. Rather, the sequence of events demonstrates that the provisions of Section 9 were employed as a recovery mechanism in relation to a disputed commercial transaction. Such conduct strikes at the very foundation of the Code, which is not intended to be a substitute for debt recovery or a tool for exerting commercial pressure in disputed transactions. Therefore, the conduct of Respondent No. 1, falls squarely within the mischief sought to be prevented by Section 65 of the Code, making it liable for taking penal action as envisaged in this section.

46. In view of the foregoing discussion and the documentary evidence placed on record, we are satisfied that the CIRP initiated against the Corporate Debtor was commenced fraudulently and with malicious intent for a purpose other than the resolution of insolvency of the Corporate Debtor. The ingredients of Section 65 of the Code stand fully established. Accordingly, Issue No. (ii) is answered in favour of the Applicant and against Respondent No. 1.

47. Insofar as prayer (c) of the present application is concerned, we are of the view that the erstwhile IRP/Respondent No. 2 i.e., Mr. Ankit Agarwal was appointed by this Tribunal pursuant to the admission of the CIRP against the Corporate Debtor and has discharged the duties entrusted to him under the provisions of the Code. The Applicant has failed to place any material

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on record demonstrating any misconduct/ involvement in the fraudulent transactions carried out by the Respondent No.1/ Operational Creditor, dereliction of duty, or violation of the provisions of the Code or the regulations warranting initiation of disciplinary proceedings against him. In the absence of any such material, we find no justification to invoke disciplinary action against the erstwhile IRP/Respondent No. 2. Accordingly, prayer (c) is rejected.

48. Therefore, in view of the foregoing facts and circumstances, this present IA deserves to be partly allowed. We are also of the considered opinion that the subsequent liquidation of the Corporate Debtor vide order dated 10.06.2025, cannot operate to validate or perpetuate a process whose very initiation has been found to be fraudulent and actuated by malicious intent within the meaning of Section 65 of the Code. Accordingly, the same is allowed as below:

i. The order dated 06.10.2023 in CP (IB) No. 89/ALD/2022 directing initiation of CIRP against the Corporate Debtor i.e., M/s Diversified Agriculture Producer Company Limited, on the Petition filed under section 9 of the Code, is hereby recalled and is set aside. Further the order dated 10.06.2025 directing initiation of the liquidation process against the Corporate Debtor is also is hereby recalled and is set aside. Hence, the CP (IB) No. 89/ALD/2022 stands dismissed.

ii. Consequently, the moratorium imposed under section 33(5), of the Code, 2016 comes to an end and the appointment of Liquidator and

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all the actions taken by Liquidator consequent to his appointment are brought to nullity.

iii. The Liquidator is directed to hand over the management of the affairs of the corporate debtor to the suspended management.

iv. The Respondent No.1/ Operational Creditor is hereby directed to pay all CIRP costs, fees and expenses of Liquidator within a week and Liquidator to file memo of compliance in this regard to the Tribunal within a week from the date of this order.

v. No disciplinary action to be taken against the erstwhile IRP/Respondent No. 2 i.e., Mr Ankit Agarwal.

49. Hence, I.A. 190 of 2026 stands allowed as per the aforesaid terms.

50. The Petitioner, M/s Global New Energies & Technologies as being Operational Creditor to have fraudulently initiated proceedings under Section 9 with malicious intent, is also imposed a penalty of Rs. 5,00,000/- and the same shall be deposited in Prime Minister Relief Fund, within a period of one month from the date of this order, and file compliance memo to this effect.

51. Ordered Accordingly.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Date: 22.07.2026