

OCD -10

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/587/2025
NATURALS DAIRY PRIVATE LIMITED & ORS.
VS
AAWKINS TRACOM PRIVATE LIMITED AND ANR

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 19th August, 2025.

Appearance:

Mr. Debnath Ghosh, *Sr. Adv.*
Mr. Kumarjit Banerjee, *Adv.*
Ms. Sanchari Chakraborty, *Adv.*
Mr. Samriddha Saha, *Adv.*
.... *for the petitioners*
Ms. Noelle Dey, *Adv.*
Ms. Joyshree Ghosh, *Adv.*
Ms. Priyanshi Bainwala, *Adv.*
Ms. Priyabhi Jajoo, *Adv.*
... *for the respondents*

The Court: This is an application for interim injunction, restraining the respondents from giving effect to the letters dated March 21, 2025 and May 9, 2025. Prayers for stay of operation of the aforementioned letters and also an injunction upon the respondents restraining them from recalling the agreement, have been made.

Mr. Ghosh, learned senior advocate submits that the respondent no. 1 could not have terminated and/or recalled the agreement. In the absence of any breach by the respondents, recall of the agreement is violative of the terms of the agreement. It is further submitted that there had been no default on the part of the petitioner. The loan/money invested by the respondent no. 1 in the

petitioner company, was to be repaid on and from 31st March, 2025. It is next contended that the letter which was issued by the respondent no. 1, was in collusion with the respondent no. 2, to create pressure for transfer of 39% of the paid up share capital in favour of the respondent no. 2. According to Mr. Ghosh, the application by the respondent no. 1 before the National Company Law Tribunal, Kolkata in the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 would cause irreparable loss and injury to the petitioner company. The said application has been filed on the plea that the subject agreement has been terminated/recalled and the petitioner owes substantial money to the respondent no. 1.

Clause 7 of the agreement provides that the agreement may be terminated upon mutual written agreement of the parties. In the absence of mutual written agreement between the parties, the termination is invalid.

Ms. Banerjee submits that clause 4.4 deals with the representations and warranties by the borrower. The borrower and the shareholders cannot issue any share of the borrower to any person whatsoever and cannot change the composition of shareholding of the borrower, without prior consent of the lender. Admittedly, such shareholding has been changed and clause 5(c) provides that in case the borrower is in breach or commits default of performance of any covenant or warranty or undertaking, the lender can demand repayment of the inter-corporate deposit along with interest that may be accrued. Reference has been made to clauses 4.4, 5(c) and 5.2 of the agreement, which are quoted below:-

“4.4. The Borrower and the Shareholders further warrants and undertakes not to issue any shares of the Borrower to any person whatsoever and not to change the composition of shareholding of the Borrower without prior written consent of the tender.

5(c). The Borrower is in breach or default of performance of any covenant, undertaking, conditions or any representation or warranty contained in the Agreement.

5.2. On the occurrence of an Event of Default, the Lender shall by written notice to the Borrower and/or the Shareholders demanding repayment of the Inter Corporate Deposit along with interest that may have accrued and is due, payable, and outstanding by the Borrower to the Lender within 30(Thirty) days from the date of issuance of the written notice.”

In my prima facie view, at this stage it would not be proper for this Court to stay the termination as the same will amount to granting the final relief. This issue has to be decided upon affidavits. Moreover, if the termination is found to be invalid, the petitioners can be compensated in damages.

The Court does not make any observation with regard to the proceeding before the NCLT, which is an independent proceeding.

Let affidavit-in-opposition be filed within two weeks from date; reply thereto, if any, within a week thereafter. Let this matter appear immediately after expiry of the aforementioned period. The period is peremptory.

(SHAMPA SARKAR, J.)