

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-III**

**I.A. No. 2089/(ND)/2020
Connected with IB-1443/(PB)/2019**

Application under Section 19(2) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016.

In The Matter Of:

Elite Steel Pvt. Ltd.

... Applicant

versus

Growthways Trading Pvt Ltd.

... Respondent

In The Matter Of:

Sunil Kumar Agarwal (Interim Resolution Professional)

IBBI/IPA-002/IP-NOOO81/2017-18/10222

For Growthways Trading Private Limited (Under CIRP)

At-E-29, South Extension-II,

New Delhi- 110049

... Applicant

versus

Sandeep Mehta & Another

Suspended Directors of Growthways Trading Private Limited

Residence of House Number 19, Road Number 20,

East Punjabi Bagh, New Delhi-110026

.... Respondent

CORAM:

Mr. P.S.N. Prasad, MEMBER (JUDICIAL)

Mr. Narender Kumar Bhola, MEMBER (TECHNICAL)

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Present:

For the Resolution Professional: Mr. Manoj Kumar Garg (Advocate)

For the Ex-Management : Mr. Mohit Nandwani (Advocate)

ORDER

Per P.S.N. Prasad, Member (J)

Delivered On- 21.09.2021

1. This is an application filed by the Resolution Professional (RP) under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 (Code) for issuance of directions to the suspended Board of Directors (Respondents) to co-operate the RP in smooth functioning of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor (CD).
2. It is pertinent to note here that the RP vide order dated 16.02.2021 was directed to file an affidavit showing details in Part A and Part B, about list of documents provided to the applicant by respondents.
3. In compliance of aforementioned direction, the RP has filed a supplementary affidavit dated 23.02.2021 and submitted that RP has sent various emails to the respondents. It is submitted that the forensic auditors have sought some clarifications about written off assets of the company, regarding loans from NBFCs details of sundry debtors etc.

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which the respondents have failed to provide yet. The RP/applicant has attached list of documents provided by the respondent at page 10 of the affidavit. It is stated that still various information as detailed in affidavit is yet to be provided by respondents.

4. Thereafter, the respondents were directed vide order dated 19.03.2021 to provide details of the cases pending before the High Court and documents related to those cases and file affidavit of compliance in respect of affidavit filed by the applicant/RP after taking steps on best efforts.
5. In compliance of above, the respondents have filed affidavit dated 23.03.2021 submitted as follows:

“That with respect to the point 1 (A) it is submitted that as per the knowledge of the deponents there are no pending cases before the High court. However, the deponents have already instructed their legal team to trace out the cases, if any before the Hon’ble High Court and Hon’ble District court. It is further stated that the legal team is in the process of carrying out a detailed search, using online resources to trace out the cases filed against the Corporate Debtor. At present there are no documents available with the Deponents as no summons or documents have been served upon them. It is undertaken that a detailed report to the pending cases, if any shall be provided to the Resolution Professional by 27.03.2021.



3. *It is further submitted that the deponents are fully co-operating with Resolution Professional and there is no willful disobedience that can be attributed to the deponents.*

4. *The deponents have already put-on record materials to show case that they are fully co-operating in the process and providing all the details and documents as desired by the Resolution Professional. Thus, the conduct of the Deponents has been cooperative all throughout the process.*

5. *That the Deponent's wish to draw the attention of this Hon'ble Tribunal to the minutes of the Seventh meetings of the COC held on 05.03.2021 wherein most of the pending issues as enshrined in Annexure-2 have been addressed. A copy of the said minutes is enclosed as Annexure-1.*

6. *That with respect to item no.1 of the Annexure-2, i.e., "List of Inventory" attention is drawn to Item No 8 of the minutes I.e.*

"To take note of the appointment of Agency for the physical verification of Inventory at Godown, Kabulpur, Ballabgarh".

It is submitted that M/S Amit Ishwar Singh & Company has been appointed for the physical verification of Inventory at Godown Village Kabulpur, Faridabad as per the agreed terms and

conditions by the COC. The Deponents undertake to provide any further assistance, if so required. It is further stated that the Deponents have provided a List of Inventory of 54700 items from the Directors with location through email on dated 13.02.2021. A Copy of the said e-mails enclosed as Annexure-2.

7. That with respect to item no.2 of Annexure-2 i.e. "List of Debtor" it is submitted that the list of Debtors as available with the Deponents has already been provided and in fact the Resolution Professional and COC have already appointed M/S A.Mittal Business Management Consulting Pvt. Ltd. and M/S Share Samadhan Private Limited for Remittance of Outstanding dues from the Debtors. Attention is drawn to item no.3 of the minutes, which also records that list of debtors is annexed along with the minutes.

8. That with respects to item no.4 of the Annexure-2 i.e. "Godown/Shops" it is submitted that the deponents have already provided a detailed excel sheet enlisting that exact address and status of the godowns and shops vide email dated 18.02.2020. A Copy of the said email along with the excel sheet is enclosed as Annexure-3.



9. That with respect to item no.5 of the Annexure2 i.e. " Cheque Books" it is submitted that the Deponents addressed an email dated 12.03.2020 to the Resolution Professional the operative part of which is reproduced as under:

Dear Sir,

With regard to cheque books we have already written to your goodself via e-mail dated 25.01.2020 and 29.01.2020 that we the suspended directors do not possess any cheque neither have we signed any cheque post insolvency commencement date and furthermore, we have requested your good self to ask all the bankers to stop payment of all cheques received by the bank for realization post closure of all the business operations.

Kind Regards,

Sandeep

For & on behalf of GTPL

The Deponents have time and again informed the Applicant that they do not possess any cheque books for the Corporate Debtor, neither have they signed any cheque post the insolvency commencement date. A copy of the emails dated 25.01.2020, 29.01.2020 and 12.03.2020 are already on record.

10. That with respect to item no.6 of the Annexure-2 i.e., "Details of Post office" attention is drawn to item no 1 and 2 of the minutes which categorically record that necessary help in terms of manpower was duly provided to the RP team, who accompanied

the RP team to the concerned post office. Further, the COC has already decided to take legal action against the post offices by issuing legal notices. It is humbly submitted that this Hon'ble Tribunal may direct the Resolution Professional to implead the concerned Post Offices in the present application such that necessary concerned Post Offices in the present application such that necessary cooperation can be sought from them. Further all details as required by the Applicant regarding post-office amount have already been shared vide emails dated 08.06.2020 and 01.08.2020 which emails are already on record.

11. That information sought by Applicant on Books of Accounts- Deponents vide email dated 29.01.2020 informed the Applicant about the address of office (Basement, Ground Floor and First Floor of K-618, Rangpuri Extension, A Block, opposite Varuna Transport, Near Telco Bus Service Station, New Delhi 110037) where all the books of accounts and supporting documents of the Corporate Debtor were kept. They also informed the Applicant that due to dispute in payment of lease rent, the owner of the said property took over the possession of the office and hence the documents can be sought from the owner of that property. Attempts



have been made to retrieve the same even visiting the site with the IRP Team but in vain.

12. That pursuant to the directors of the Hon'ble Adjudicating Authority the landlord of the aforesaid premises has filed an affidavit which categorically records the following:

1. Landlord is a neurological disorder patient.

2. That, he suffered a paralytic attack which rendered him immobile and his ailing Mother was also a kidney disease patient and Diabetic.

3. That his brother also co-owner of the said premises has to manage all medical treatment of his and their mother's and is still taking care of the same.

4. That as he was bed ridden and was undergoing treatment for his severe health condition at the relevant time, he is not aware about the contents of Corporate Debtor kept at said premise and accordingly cannot prepare any inventory list as per the order dated 05.01.2021 of the Ld. Adjudicating Authority.

5. That the Corporate Debtor vanished from the site leaving behind some documents, materials etc which were thrown in garbage by the Landlord.

13. The Landlord categorically admits that he has thrown away documents in garbage. Thus, the said act is beyond the control of the Deponents and they are trying their best to provide a digital copy of all the records available with them. The Deponents are unable to provide physical copies owing to illegal destruction done by the landlord. It is pertinent to mention a civil suit bearing

no. CS No. 758/2020 has already been filed against the landlord by Mr. Sandeep Mehta, Deponent herein.

14. That, as far as Sale of Goods at lower price i.e., item No.11 of Annexure-2 is concerned- The Corporate Debtor was engaged in fashion goods which were seasonal and the left- over stock of the previous season lost its value and the Corporate Debtor had to sometimes sell the inventory at lower prices to restrict the losses. It was a standard practice being followed by all industry players which fact can be verified from any market player. A mountain is being made out of a mole hill, whereas in reality there exists no hill at all.

15. That with respect to Item No. 13 to 15 which pertain to the forensic auditor and the detail sought, it is submitted that in the Eighth COC meeting held on 22.03.2021, the Deponents have sought 1 week's time to reply all the queries of the forensic auditors and the said time has been granted to the Deponents by the Resolution Professional. The Deponents undertake to provide the necessary cooperation in this regard.

6. Consequent to the notice issued by the tribunal vide order dated 10.07.2020, the Respondent has filed its reply and submitted that



- a. The suspended directors have attended all the meetings of the Committee of Creditors (COC) and supported in every possible way the smooth running of the Corporate Insolvency Resolution Process of the Corporate Debtor.
- b. A copy of the email documents kept at the Rangpuri office along with the address is annexed as annexure-1 with the present application.
- c. After the appointment of the IRP on 27.12.2019, the answering respondents provided the details of the banks of the Corporate Debtor and the Directors to the IRP vide email dated 28.12.2019. A copy of the same email dated 28.12.2019 is marked and annexed as Annexure-2.
- d. The respondent vide emails dated 03.01.2020 and 07.01.2020 also provided the applicant with the GST details of the Corporate Debtor. Further the respondent also provided the applicant with the TAN number of the Corporate Debtor. The copy of the emails dated 03.01.2020 & 07.01.2020 sent by the answering respondents and marked Annexure 3.
- e. On 16.01.2020 the respondent through email addressed to the applicant provided him with the borrowing details of the Corporate Debtor as on 31.03.2019, the details of all the agreements executed with parties by the Corporate Debtor and the list of all the 19 premises used by the Corporate Debtor along with their addresses and contact details. A copy of the email dated 16.1.2020 is annexed herewith and marked as Annexure-4.
- f. List of documents was provided to the applicant through email dated 20.01.20220 enclosing all the details of the Corporate Debtor including the bank balance and the copy of form of memorandum



of appeal. A copy of the same email dated 20.01.2020 annexed as Annexure-5.

- g. Copy of financial statements asked from the respondent but he could not arrange it because they are barred from any transaction with the bank. Further they were asked for cheque books to handover to the applicant. Copy of the same is annexed as annexure-6.
- h. Respondent told them about where all the books of accounts and supporting documents of the Corporate Debtor were kept. They informed the applicant that due to the dispute in payment of lease rent, the owner of the said property took over the possession of the office and hence the documents can be sought from the owner of the concerned property.
- i. Applicant was informed that with the respect to the inventory, the Corporate Debtor leased a warehouse at Faridabad from the Financial Creditor and the same was given under agreement dated 01.04.2017 to Banyan Warehousing and Logistics LLP for a period of 6 years. The respondents further provided the lease agreement and the management agreement executed by the Corporate Debtor.
- j. The respondents through email dated 12.02.2020 replied to the queries of the applicant. Further the respondent through email dated 13.02.2020, furnished the details of loans and advances as on 31.02.2019. A copy of the same is annexed as Annexure-10.
- k. The respondent also supplied the letters submitted to Post office for pending receivables and the contact details of the person in post office. Vide another email dated 18.02.2020, the answering respondents provided the addresses of the Corporate Debtor along with other information. A copy of emails dated 18.02.2020 is marked as annexure-11.



- l. Respondents, provided list of the Corporate Debtor as on 31.03.2019 provided to the IRP, through email dated 21.02.2020. A copy of the emails dated 19.02.2020 and 21.02.2020 is marked and annexure-12.
- m. The respondents supplied copy of the cheque which was collected from the post office amounting to Rs 8,37,162. A copy of the same is annexed as Annexure-13.
- n. The respondent submitted that the online id password is working for only one bank and to finalise the update balance sheet the bank statements would be required. In the said email the respondents attached details of all the bank accounts and their login details of the Corporate Debtor. A copy email dated 25.02.2-020 is annexed as Annexure-14.
- o. The respondents provided the invoice number and tracking number of all the assignments for perusal before the post office authorities, as required by the applicant.
- p. Respondents provided the copy of the rent agreements as per the addresses of the offices, vide email dated 02.03.2020. A copy of the email dated 03.03.2020 and annexed as annexure-17.
- q. The list of inventories available with the Corporate Debtor shared with the IRP. The said email shared that the respondents have been pro-active in sharing all the agreements and documents as required by the IRP.
- r. Respondents furnished the notices received from the creditors to the applicant and on 6.3.2020, the respondent shared the provisional financial statement as on 24.12.2019.
- s. Respondents provided details of post office consignments. The respondents enclosed financial statements of March 2019 and of



24.12.2019 of the Corporate Debtor along with the notes of accounting policies. It is marked as Annexure 24.

- t. Respondents given shareholders and the auditor's report, directors report, the annual returns extracts, the copy of consent of annual general meeting as required by the IRP.
- u. The respondents have provided all the necessary documents which are enclosed herewith the applications as Annexure 28 to Annexure 32 comprising of the relevant information enquired by the IRP.

7. Heard the Ld. Counsels for both the parties; for RP and for respondents.

Sec. 19 (1) of the Code cast a duty upon to the ex-management and other personnel of the CD to furnish information and all assistance to the RP in managing the affairs of the CD. In the absence of cooperation, powers have been conferred on Adjudicating Authority to direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the Corporate Debtor. The provisions of Sec.19 suggests that directions must be issued to the defaulting personnel of the ex-management to comply with the directions of the RP and to cooperate with him. The provisions of Sec. 19 are mandatory in nature so as to facilitate the RP to complete the CIRP expeditiously and manage the affairs of the CD as a going concern. Therefore, there is no escape from the conclusion that non-applicant respondents are under legal and moral obligation to co-operate with RP for smooth functioning of the CIRP.

8. The affidavit filed by the respondent makes it clear that they are participating and co-operating in the CIR Process of Corporate Debtor. The respondent even undertook to co-operate with Resolution Professional.



9. Therefore, since the respondents have undertaken on affidavit to co-operate with the applicant and provide information and documents, available with them the present **I.A No. 2089 of 2020 in C.P. NO. (IB)-1443 (ND)/2019 stands disposed.**

10. Further the liberty has been granted to the IRP or Resolution Professional to move appropriate application in case the Corporate Debtor fails in extending the cooperation to more appropriate application or not.

— Sd—

(Narender Kumar BHOLA)
MEMBER (Technical)

— Sd—

(P.S.N. PRASAD)
MEMBER (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.302
IA-2685/2021
In
IB-1443(ND)/2019

IN THE MATTER OF:

M/s. Elite Steels Pvt. Ltd.

....APPLICANT / PETITIONER

Vs.

M/s. Growthways Trading Pvt. Ltd.

....RESPONDENT

SECTION

U/s 7 IBC Code 2016

Order delivered on 21.09.2021

CORAM:

SHRI P.S.N PRASAD

MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA

MEMBER (TECHNICAL)

PRESENT:

For the RP

: Manoj Kumar Garg, Advocate for RP Sunil Kumar Aggarwal

For the Suspended Board

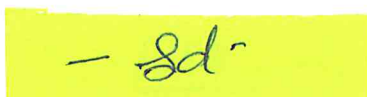
: Mr. Mohit Nandwani Adv

ORDER

IA-2685/2021:-

Heard the submissions made by the Counsel for the Applicant as well as Counsel for the Non-Applicant. Counsel for the Applicant has prayed for grant of one week time for filing rejoinder. Time prayed for is granted. Let this matter be posted after two weeks.

List the matter on 08.10.2021.



(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)



(P.S.N PRASAD)
MEMBER (JUDICIAL)