



**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

I.A (IB) No. 78/CB/2023

In

T.P No. 198/CTB/2019

(Earlier C.P (IB) No. 4686/MB/2018)

In the matter of:

An application under section 60 (5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

AAA Insolvency Professionals LLP, Through its Partner Mr. Sanjay Gupta, E-10A, LGF, Kailash Colony, Greater Kailash-I, New Delhi- 110 048;

...Applicant

-Versus-

1. Jagdish Kumar Parulkar, Liquidator of Tayal Foods Limited, R/o B-56, Walfort City Bhatangaon, Ring Road No.1;

2. Committee of Creditors, comprising of sole Financial Creditor through Union Bank of India, Mr. Mahendra Shrivastava, Deputy General Manager, Regional Office- LIC Investment Building, 3rd Floor, Phase-3, Jevan Beema Marg, Pandari, Raipur- 492 004;

...Respondents

-In-

In the matter of:

Union Bank of India,

...Financial Creditor

-Versus-

Tayal Foods Limited

...Corporate Debtor

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)



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Appearances:

For the Applicant : Mr. Dhananjay Sud, Adv.
Mr. Aditya Gauri, Adv.

For the Respondent : Mr. Umesh Ch. Sahoo, Adv.

Order reserved on: 17.04.2023
Order pronounced on: 09.05.2023

ORDER

Per P. Mohan Raj, Member, (Judicial)

Per: Satya Ranjan Prasad Member (Technical)

1. This is an application filed under section n 60(5) of IBC 2016 R/w Rule 11 of NCLT Rules 2016 by the applicant claiming itself as Insolvency Professional Entity for direction directing the erstwhile Liquidator/Respondent to pay the outstanding amount of Rs.48,11,545/-
2. Respondent side counsel appeared and opposed the petition on the point of maintainability and further stated that the respondent has already, even before filing of this application, left the partnership firm. No written counter filed. The point for consideration is:

Whether the application filed by the applicant Partnership firm against its erstwhile partner/ 1st respondent is maintainable?

3. The applicant filed this application invoking residuary provision Section 60 (5) of IBC 2016 and Inherent Power of Rule 11 under NCLT Rules 2016. The 1st respondent was appointed as IRP on 03.10.2019 in T.P. (IBC) No. 198/CB/2019 and subsequently appointed as Liquidator on 21.06.2022. As far as this CIRP/Liquidation proceeding is concerned the applicant is a third party. The existing dispute between the erstwhile Resolution professional and applicant as partners is outside the scope of this CIRP/Liquidation proceedings. Provision of Section 60(5) of IBC 2016 are reproduced as follows:



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(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code

4. Under section 60(5) of IBC, 2016 if any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person alone needs to be considered. The sharing of fee dispute between the partners does not fall under the scope of the *supra* section. Further, the Respondent resolution professional was appointed as IRP, then RP and subsequently as liquidator in his individual capacity by this Adjudicating Authority as suggested by the financial creditor, not as a member of the applicant firm.
5. The applicant side relies upon the Apex court citation '*Alok Kaushik vs Bhuvaneswari Ramanathan and Ors. AIR 2021 SC2216*'. This is the citation where the valuer appointed during the CIRP period filed an application for payment of fee, there the NCLT dismissed the application observing that after setting aside the CIRP order the NCLT became functus officio. The appeal preferred before the NCLAT also not considered the claim of the valuer. In the said case the Apex court held that since the valuer discharged his function as an incident of the CIRP, the NCLT have jurisdiction to entertain the application under



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section 60(5) of IBC 2016 and direction was given to the Adjudicating Authority to determine the amount payable to the registered valuer/applicant as an intrinsic part of the CIRP costs. There the claim is made by the registered valuer who was engaged during the CIRP period to value the property and his fee form the part of the CIRP cost hence, the issue was relating to the resolution process covered under section 60(5) of IBC 2016. But in the instant case, the applicant is not a part of resolution process, the applicant firm's service was not availed for any purpose during the resolution process. The applicant is also not claiming any dues towards CIRP cost instead he wants a share in the CIRP cost paid to the respondent. This is a dispute between the partners, but nothing to do with the resolution process.

6. The services of respondent were availed during the resolution process and fee was also paid to him. However, if there is any fee due and if the respondent files any application claiming such due then the application is maintainable, but not by this applicant/3rd Party.
7. The Apex court in **TATA Consultancy Services Limited v. Vishal Ghisulal Jain, Resolution Professional, (2021) ibclaw.in 167 SC** held as follows:

Thus, we are of the view that the NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of the Corporate Debtor. In the absence of jurisdiction over the dispute, the NCLT could not have imposed an ad-interim stay on the termination notice. The NCLAT has incorrectly upheld the interim order of the NCLT.

8. In this case the contention of the applicant is as per the agreement dated 01.12.2017 and MOU dated 19.05.2018 wherein the revenue shall be shared in the ratio of 30:70, further it is also admitted by the applicant that the respondent voluntarily resigned from the applicant firm on 01.12.2020. The applicant claims the amount in pursuance of supra-MOU, respondent side denies his



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liability, in such a situation this Adjudicating Authority cannot decide the contractual dispute between the parties.

9. The applicant claims share from the respondent in pursuance of separate agreements entered with the respondent outside the CIRP proceeding. If the respondent has not honored the agreement the remedy is through arbitration as provided in the agreement itself or before the civil court for recovery of the amount as a dispute between the partners, and definitely not before this Adjudicating Authority.
10. In these circumstances, the application is **Dismissed** as not maintainable.
11. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
12. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.05.09 15:21:03 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.05.09 14:41:33 +05'30'
RAJ

P. Mohan Raj
Member (Judicial)

Signed on this, 9th day of May, 2023

Supriya _P. s_