



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. NO. 5037/ND/2020

IN

Company Petition No. (IB)-1091(ND)/2018

IN THE MATTER OF:

Pro Sportify Private Limited

... Applicant/Operational Creditor

Versus

Vivid IT Solutions Private Limited

... Respondent

AND IN THE MATTER OF IA. No. 5037/ND/2020:

Mr. Bimal Kumar Sharma

Liquidator of

Vivid IT Solutions Private Limited

Address at :

152-D, DDA Flats, Satyam Enclave,

Vivek Vihar, New Delhi – 110095

... Applicant

VERSUS

1. Mr. Ravi Jain

Director (Power Suspended)

M/s. Vivid IT Solutions Private Limited,

R/o SFS Flats, BF-130

East Shalimar Bagh, Delhi - 110088

... Respondent No. 1

2. Mrs. Lavita Jain

Director (Power Suspended)

M/s. Vivid IT Solutions Private Limited,

R/o SFS Flats, BF-130

East Shalimar Bagh, Delhi – 110088

... Respondent No. 2

2. Mr. Sameer Jain

R/o 32/3, Gardenia Street

Vatika City, Sohna Road,

Sector – 49, Gurgaon - 122001

... Respondent No. 3

Order Delivered on: 28.02.2023



SECTION: Section 66 of IBC 2016

CORAM :

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Advocate Rajat Chaudhary

For the Liquidator : Mr. Bimal Kumar Sharma, Adv. Aman
Sharma, Adv. Arpit Sharma

ORDER

PER: SHRI. ASHOK KUMAR BHARDWAJ, MEMBER (J)

By way of the present IA, originally filed under Section 43, 66, 67, 68, 70 and 74, but subsequently confined only to Section 66 of the IBC, 2016, the Liquidator namely, Mr. Bimal Kumar Sharma (hereinafter referred to as 'Applicant') has brought to forth: - the Respondent No. 1 and 2 had made debit transactions amounting to Rs. 11,44,000/- from the account of the Corporate Debtor maintained by the IndusInd Bank bearing account no. 259818922004 and an amount of Rs. 9,42,473/- from the account of the Corporate Debtor maintained by Kotak Mahindra Bank i.e., account no. 02012180000512, after the date of commencement of CIRP i.e., 17.10.2018; on examination of the report of auditor and balance sheet of the CD, it could transpire, the fixed assets consisting of air conditioner and cooler purchased by the CD during the F.Y. 2018-19 were not given in possession of the RP/Liquidator; as could



be seen from the tally data as on 17.10.2018, there was cash in hand with CD, amounting to Rs. 7,36,303/-, which was not handed over by the Respondent No. 1 and 2 to the CD; from the Tally record of the Corporate Debtor as on 17.10.2018 i.e., the date of commencement of CIRP, it could also surface that an amount of Rs. 1,05,40,800/- was due and payable by the Respondent No. 3 to the Corporate Debtor and despite the letter dated 25.07.2019 sent by the Corporate Debtor to the Respondent No. 3, calling upon him to pay the amount within 10 days of receipt of letter, he did not pay the amount, but espoused that the amount was paid to him on account of consultancy service rendered by him to CD, for setting up of Corporate Entity in Estonia (outside India), for which the invoice of Rs.1,29,27,150/- was raised by Right Avenue LLC, 425, Washington Blvd, Jersey City, NJ 07310, U.S.A upon Corporate Debtor, with the endorsement that the payment might be made to Mr. Sameer Jain (Respondent No. 3).

2. Regarding the plea, put forth on behalf of the Respondent No. 3 i.e., he received the amount of Rs. 1,05,40,800/- on behalf of Right Avenue LLC, 425, Washington Blvd, Jersey City, NJ 07310, U.S.A, the Applicant has canvassed that on verification, he received the mail from Right Avenue LLC that the invoice presented to the Applicant was forged and fraudulent one.

3. Having taken note of the fact that as the Affidavit of service of notice, initially issued to the Respondents in IA. No. 5037/2020 upon them had been uploaded on DMS, irrespective of the fact that there was



no affidavit qua subsequent service upon them could be filed, this Adjudicating Authority passed order dated 11.10.2021, proceeding ex-parte against the Respondents. In the wake of the prayer made by the Applicant, this Adjudicating Authority passed order dated 16.11.2021, restricting the plea in the IA qua Section 66 of the Code only. On 05.04.2022, this Tribunal made it clear again that the Respondents were to be proceeded ex-parte. As can be seen from order dated 02.03.2022, the Respondent No. 1 had entered appearance in the IA on 16.11.2021, thus apparently, the Applicant had taken steps to serve notice upon the Respondents, successfully. We heard the counsels for the Liquidator and perused the record. The various amounts/value of the assets, removed by the Respondents from the assets of the CD, captioned in the IA reads thus:

Particulars	Amount (In Rs.)
Withdrawals/debt from the account of the Corporate Debtor maintained by IndusInd Bank bearing A/c no. 259818922004	11,44,000
Withdrawals/debt from the account of the Corporate Debtor maintained by Kotak Mahindra Bank bearing A/c no. 02012180000512	9,42,273
Fixed Assets comprising of Air Conditioner and Cooler purchased by Corporate Debtor Rs. 29,138/- during F.Y 2018-19 not handed over to the Applicant	29,138
Cash in hand as per tally data	7,36,303
Amount transferred to Respondent No. 3	1,05,40,800
Total	1,33,92,514

4. The Application under Section 7 of IBC, 2016 was filed qua M/s. Vivid IT Solution Private Limited, for initiation of CIRP -. This Adjudication Authority passed order dated 17.10.2018, admitting the application. Mr. Akash Singhal, IP was appointed as IRP, ergo the CIRP



commenced. The IRP made public announcement calling upon the creditors of the CD to submit their claims. After collation and verification of claims, the IRP constituted CoC. In the second meeting of the CoC held on 21.01.2019, a resolution was passed for appointment of Applicant as RP. Since no resolution plan was received, in its 6th meeting held on 12.04.2019, the CoC resolved to appoint the Applicant as Liquidator. In the wake, the Applicant filed IA. 482 of 2019, seeking the initiation of Liquidation Proceedings against the Corporate Debtor and his appointment as Liquidator. In terms of the order dated 22.04.2019, the IA was allowed.

5. Apparently, the Respondent Nos. 2 and 3 never entered appearance to oppose the IA and the Respondent No. 1 though entered appearance but neither filed any reply to IA nor ever produced any material to rebut the pleas espoused by the Applicant in the IA. In any case, as can be seen from Annexure 2 of the IA, Mr. Ravi Jain i.e., the Respondent No. 1 had operated the account of Vivid IT Solutions Pvt. Ltd., maintained at IndusInd Bank (Account No. 259818922004), 43, 4th Floor, Deepak Building, 13, Nehru Place, New Delhi, after 17.10.2018. But, after checking and rechecking, we are unable to find any such transactions as alleged by the Applicant in respect of the account of CD maintained in IndusInd Bank (ibid) after 17.10.2018, at least from the account sheets/ foils placed on record by the Applicant. Nevertheless, a perusal of the account maintained by the CD in Kotak Mahindra Bank, Nehru Place reveals that after 17.10.2018, the Respondent No. 1 had



withdrawn money from the said account. It is not so that the amount, as has been alleged in the application was withdrawn in one go, in fact, the same was withdrawn on different dates during CIRP. Such withdrawal does not let the role of IRP above board and beyond doubt. Regarding the amount received by the Respondent No. 3, the Applicant has placed on record the purported invoice dated 01.12.2019 from Right Avenue LLC and the email dated 13.08.2019 from avenues@right-avenues.com stating that the Right Avenue LLC had no business dealing/association with Vivid IT Solutions Private Limited or the persons referred to in the invoice. We also find from letter dated 20.07.2020 written by the Applicant to Mr. Sameer Jain pointing out the forgery committed by him. Also, from the tenor of the stand of the Respondent No. 3, reflected in the IA, it can be seen that the said Respondent had not denied the receipt of amount of Rs. 1,05,40,800/- from the CD. Apparently, the invoice relied upon by him to show that the amount paid was on account of consultancy service was disowned by the Right Avenue LLC i.e., the alleged claimant of the invoice. When Section 43, 44, 45, 46, 47, 48, 49 and 50 of the Code provides for remedies against preferential, undervalued and extortionate credit transactions, it is Section 66 which envisages that how the fraudulent or wrongful trading can be dealt with. Indubitably the transaction of withdrawing the amount of Rs. 9,42,273/- from the account of Corporate Debtor maintained by Kotak Mahindra Bank bearing account no. 259818922004 and the payment of Rs. 1,05,40,800/- fall in the category of fraudulent transactions. The Respondents never came forward to rebut the same, even by filing any



Affidavit before this Adjudicating Authority ergo, the present IA is disposed of with a direction to the Respondents to contribute Rs. 1,05,40,800/- and Rs. 9,42,273/- with interest @ Rs. 12% p.a. from the dates of receiving or withdrawing the said amount, to the assets of Corporate Debtor jointly and severally. We also deem it appropriate to direct that the Applicant would take up the cause to initiate action against the Respondents, in terms of the provisions of Section 236 of the IBC.

6. As far as the amount of Rs. 11,44,000/- is concerned, the Applicant would be at liberty to avail appropriate remedy by disclosing the concrete proof and evidence regarding the avoidance of the same from the assets of the CD. Regarding non-handing over of air conditioner and cooler/ cash amounting to Rs. 7,36,303/- to Liquidator/RP, we are of the view that the remedy available to RP, for the purpose was to move an appropriate application under Section 19 of the IBC. The non-handing over the possession of articles/ cash in hand to RP or Liquidator does not amount to fraudulent trading/transaction in any manner. IA stands disposed of accordingly without any order to cost.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)