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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, CHENNAI**

IA/1269/IB/2020 in CP/600/IB/2018

*(filed under Section 60(5) of the Insolvency & Bankruptcy Code,
2016)*

*In the matter of **Galaxy Cosmetics Private Limited***

Mathur Sabhapathy Viswanathan,
Liquidator of Galaxy Cosmetics Private Limited,
15/35, Musafar Jung Bahadur Street,
Triplicane, Chennai – 600 005.

.... Applicant/Liquidator

-Vs-

Indusspray,
65, IV Phase,
Off Jigani Link Road,
Bommasandra Industrial Area,
Bangalore – 560 099.

... Respondent

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

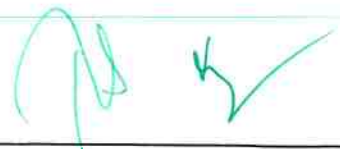
*For Applicant : M.S. Viswanathan, Liquidator
For Respondent : Karthikeyan, Advocate*

*Order pronounced on **28th April 2022***

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA/1269/IB/2020 is an application which has been filed by the
Applicant Mr. Mathur Sabhapathy Viswanathan vide SR.No.1286
dated 23.11.2020.



2. The CIRP in respect of **Galaxy Cosmetics Pvt. Ltd** in was initiated by this Tribunal on 30.08.2018 and the Applicant herein was appointed as IRP. Later, he was continued as RP which was confirmed by the 1st CoC meeting held on 01.10.2018.

3. It is submitted that the Corporate Debtor did not submit the books of accounts of the Corporate Debtor. Only on 12.11.2018 it has produced the balance sheet. Finally, on 12.01.2019 the Corporate Debtor gave its books of accounts to the RP. While going through the books the RP came across that the Respondent owes a sum of Rs.12,31,308.78 to the Corporate Debtor. Copy of the ledger balance is enclosed as Annexure-2. Thereafter, the RP approached the Respondent supplier for refund of the money.\

4. It was submitted that vide order dated 15.04.2019 passed in MA/285/2019 liquidation was ordered in the matter and the Applicant was appointed as the Liquidator. Ld. Liquidator submits that the counter was filed in the earlier MA on the same topic by the Respondent. However, since the same was filed against multiple Respondents, it was withdrawn after obtaining liberty from this Tribunal.

5. Ld. Liquidator submits that the Respondent had produced the Manufacturing Agreement entered into between the Corporate

Debtor and the Respondent. As per agreement the Respondent is supposed to purchase raw and packaging materials on behalf of the Corporate Debtor. The Corporate Debtor has issued the purchase order in writing and irrevocable letter of credit in favour of the Respondent.

6. The Respondent has filed Counter vide SR.No.4108 on 17.09.2021. The Respondent states that in para No.7 of IA/1269 it is stated by the Applicant as under:

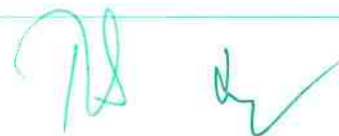
"It is stated that the Director of the Corporate Debtor, Mr. Deepak Bafna, has informed that the supplier had already purchased the stocks hence recovery of money is not possible."

The Respondent further states that "this is also borne by the stock register maintained by the Respondent. The stock of the Corporate Debtor shown in the ledger account is under a contractual arrangement which do not stipulate transfer of title but only use of the assets, and is not included in the definition of Liquidation Estate assets as defined in the IB Code and cannot be used for recovery in the liquidation as provided under Section 36(4)(iv) of the Insolvency & Bankruptcy Code, 2016. When this is so and also when the stock lying with the Respondent is not shown as an asset in the balance sheet of the Corporate Debtor and admitted by the Corporate Debtor as not recoverable this petition showing the Respondent as a creditor is not maintainable on the facts, and also in law."

7. The Respondent submits that it hold beneficiary license for manufacturing of Cosmetics issued by the Drugs Control Department, Government of Karnataka. As per the Manufacturing

Agreement dated 14.03.2012 the Respondent has purchased certain Cosmetics products. The technical knowhow for the products and the manufacturing license for the products were held by the Respondent. The products manufactured by the Respondent for the Corporate Debtor were under the name and style of Zeva Deodrant Bodyspray, etc. As per the terms of agreement these products were manufactured as per the specifications of the Corporate Debtor which were packed and bottled as per requirement of the Corporate Debtor on the packaging material procured. The relationship between them was from 2013 and continued till 2016. A considerable amount of raw material stocks, packing material were in the custody of the Respondent. The statement of account of raw material stocks, packing material was filed with the Counter statement.

8. Since 2018 no orders were received from the Corporate Debtor. Considerable amount of raw material packing material were lying in the godown of the Respondent occupying huge space. Since 2015 the Respondent contacted the Corporate Debtor several times as the material was occupying the considerable space. The Corporate Debtor has undertaken to remove the material from the Respondent in the past on or before 20.01.2015.



9. The Respondent has charged rent on account of the Corporate Debtor for occupying space for storing the raw material and packing material. The Respondent further states that he is ready and willing to hand over the custody of the raw material and packaging material available with the Respondent.

10. Heard both the parties. The dispute emerges out of the business contract and manufacturing it is seen that certain raw material and packing material were procured by the Respondent for manufacturing certain cosmetics for the Corporate Debtor.

11. We direct the Liquidator to collect from the Respondent the raw material and packing material lying with the Respondent immediately and take the same under liquidation asset. The Liquidator is further at liberty to sell the repossessed material. The Respondent has clearly shown that goods were procured by him based on the orders by the Corporate Debtor, hence at this stage ordering payment of the amount sought will be unjust. Accordingly, IA/1269/2020 stands **disposed of**.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond