

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-2516(ND)2019

In the matter of

Mr. Anurag Rajpal
Address at:
Apartment 3B, Tower GH2,
Orchid Garden, Sun City
Sector 54, Gurgaon, Haryana

...Applicant/Operational Creditor

Versus

The American Swan Lifestyle Co. Pvt. Ltd.
1301B, Naurang House,
21 Kaustura Gandhi Marg,
New Delhi - 110001
Email: finance@taslc.com

...Respondent/ Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 13.02.2020

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SH. L. N. GUPTA, HON'BLE MEMBER (T)

Present for the Petitioner.:	Mr. Siddharth Sharma and Ms. Shruti Arora, Advocates
Present for the Respondent:	None

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ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

1. The Operational Creditor, an employee of the Corporate Debtor has filed the petition seeking initiation of the Corporate Insolvency Resolution Process of the Respondent/Corporate Debtor as his dues for the last two years have remained unpaid. Being aggrieved, he had invoked arbitration for his wrongful termination of services and for recovery of his dues, pursuant to which an award in his favour had been passed.

2. Based on certain claims adjudicated in his favour for non-payment of his entitled dues, including interest on the unpaid salary and other emoluments w.e.f. 1st October, 2015 till 8th December, 2015 @ 18% per annum, as well as salary for the notice period, an award for Rs. 17,24,23,188/- was passed in his favour. The respondent company was directed to pay Rs. 70,89,802/- as his salary in lieu of six months' notice period and other damages etc. It is submitted that till date the Corporate Debtor has failed to comply with the arbitral award. Initially, the Operational Creditor had filed an execution petition before the Hon'ble High Court of Delhi which took note of the fact that no payment had been received by the claimant. However, keeping in view that a number of other executions were also pending against the same respondent, it was

considered expedient by the Operational Creditor to invoke a resolution process.

3. The Corporate Debtor, which was in the business of online sale of garments does not have presence in India anymore. However, stock of goods amounting to a huge amount is still available for distribution towards its various creditors. The present petition has been filed in the required format. Demand notice under section 8 had been issued to the Corporate Debtor which was not replied to. Compliance of Section 9(3)(b) has been done. Ld. Counsel has also relied upon the observations of the Hon'ble High Court of Delhi in the execution petition noting that the Operational Creditor had not received any money pursuant to the passing of the award.

4. The Corporate Debtor on being served through the process of the Bench, failed to put in appearance or file a reply. They were therefore proceeded ex-parte.

5. Ld. counsel for the Operational Creditor has addressed his arguments and pointed out that there is nothing on record by way of a prior existence of prior dispute or any challenge to the Award. In view of the same, the prayer made by the Operational Creditor merits consideration. The petition therefore stands Admitted.

6. A moratorium in terms of Section 14 of the Code shall come into effect forthwith, staying: *“the institution of suits or continuation of any pending legal proceedings, transferring or disposing of any asset of the Corporate Debtor, foreclosure or enforcement of any security or recovery of any property by the owner or lessor of the property occupied or in possession of the Corporate Debtor.*

Further, in terms of Section 14 of the Code, the supply of essential goods or services shall not be terminated. The moratorium shall remain in effect till completion of the CIR Process.

7. The Operational Creditor has not proposed the name of any Interim Resolution Professional. Accordingly, we appoint Mr. Bhim Sain Goyal, Registration No. IBBI/IPA-002/IPN000726/2018-19/12216, E-mail Id:- bsgoyal1@gmail.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and file his report. The Operational Creditor shall deposit a sum of Rs. 2 lakhs with IRP to meet the immediate expenses, to be reimbursed by the COC and recovered as CIR costs. The IRP shall maintain an account to be submitted to the COC.


8. Vide our order dated 10.01.2020 this Bench had restrained the Corporate Debtor from transferring or creating any encumbrance of its



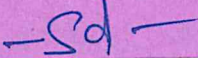
stock in trade lying at 40 Km warehouse, Delhi Jaipur Highway, Near Agarwal Packers and Movers Ltd. Gurgaon. The interim order is hereby confirmed. The IRP shall take immediate possession of the stock or any other asset of the Corporate Debtor which may be brought to his.

6. Copy of the order be communicated to both the parties as well as to the IRP. The IRP may file his consent on record prior to initiating the CIR steps.

7. Report be filed before this Bench on 18th March, 2020.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)