

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

IA. NO. 668/ND/2021

IN

Company Petition No. (IB)-2516(ND)/2019

IN THE MATTER OF:

Mr. Anurag Rajpal

...Applicant/Operation Creditor

Versus

The American Swan Lifestyle Co. Private Limited

...Respondent

AND IN THE MATTER OF IA. NO. 668/ND/2021:

Mr. Bhim Sain Goyal

Resolution Professional

Address at :

M-215, Rear Ground Floor,

Greater Kailash-II, New Delhi - 110040

...Applicant

VERSUS

1. Mynta Designs Private Limited

Building Alyssa, Begonia & Clover,
Embassy Tech Village, Outer Ring Road,
Devarabeesanhalli Village
Bangalore, Karnataka – 560103

...Respondent No. 1

2. Jade E-services Private Limited

A-41, 2nd Floor, Mohan Co-Operative,
Industrial Estate, Main Mathura Road
New Delhi – 110044

...Respondent No. 2

Order Delivered on: 13.01.2023

SECTION: 19(2) of IBC, 2016

CORAM :

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

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

PRESENT:

For the RP

: Adv. P. K. Sachdeva



ORDER

The present IA No. 668 of 2021 is filed by Mr. Bhim Sain Goyal (hereinafter, referred to as the '**Applicants/Operational Creditors**') under Section 19(2) of IBC. 2016, seeking the following reliefs:

- “a) Pass the orders that the Respondent to provide complete details of the entries passed in the account of CD in their books and make payment of balance amount along with interest without any further delay.*
- b) Pass such other order(s) which the Hon’ble Tribunal may deem fit and proper in the facts of the case.”*

2. To put succinctly, facts of the case are that the Operational Creditor, Mr. Anurag Rajpal had filed an application bearing no (IB)-2516(ND)/2019 under Section 9 of IBC 2016 for initiation of CIR Process against the Corporate Debtor M/s. The American Swan Lifestyle Co. Private Limited. This Adjudicating Authority, vide order dated 13.02.2020, had initiated the CIR process against the Corporate Debtor and appointed Mr. Bhim Sain Goyal as an IRP. It is submitted by the applicant that the Interim Resolution Professional was appointed as Resolution Professional in the First Meeting of Committee of Creditors held on 12.03.2020.

3. It is further submitted that before closing its business abruptly, the Corporate Debtor was selling its products on the websites 'Myntra' (R-1) and 'Jabong' (R-2), which are owned by Myntra Designs Pvt. Ltd. and Jade E Services Private Limited respectively. Now both the 'Myntra' and the 'Jabong' are owned by Flipkart India Private Limited. The details of the same are given in memo of the parties.



4. It is stated by the Applicant that as per the data made available by Flipkart legal team to the Resolution Professional, the credit balance is Rs.1,67,25,436.81/- in the books of the R-1 (Myntra) as on 01.04.2016. Before abrupt closure of the business in September 2016, the Corporate Debtor had made additional sales of Rs.1,07,78,987/- after 01.04.2016 through the Myntra. In turn, the Myntra has transferred a sum of Rs.67,07,086/- only as the last payment on 15.11.2016. It is submitted by the Applicant that the Myntra still owes a huge sum of money to the Respondent after deduction of their commission as per agreement out of the balance Rs.2,07,97,337.81/-.

5. As per the detailed statement of transactions submitted to RP, Myntra owed a net amount of Rs.36,34,822.10/- to the Respondent. The RP requested them to pay the amount as per statement furnished by them, and give details how the amount had been reduced arbitrarily, to such a paltry sum of Rs.36,34,822.10/-.

6. The Flipkart legal team had a Zoom Meeting with the RP and informed that they have made further deductions and now, a sum of Rs.19,47,784.83/- only is due to be paid to the Respondent, which they finally paid.

7. The RP has been writing emails to the Flipkart legal team for clarifications about further reducing the amount from the one given in the original statement to him, but without any response.



8. Similarly, Jade E Services Private Limited (Jabong or R-2) intimated the RP that an amount of Rs.38,95,569.83/- is payable as on 03.07.2019, as per the statement furnished by them. However, the Respondent transferred only a sum of Rs.18,16,487.31/- in the CD's account.

9. Thus, even as per their submissions, the balance of Rs.20,79,082.62/- is still due from Jabong, which need to be paid to the CD with the interest at the rate of 18% per annum.

10. We have heard the Ld. Counsel appearing for the Applicant and perused the documents placed on record. Through the present application, which has been filed under Section 19(2) of the IBC, 2016, the RP is seeking recovery of the dues of the Corporate Debtor pertaining to pre-CIRP period.

11. Whereas, the objective of Section 19(2) of IBC, 2016 is to ensure necessary co-operation/information from the intended party, in the instant case the Applicant himself has admitted that the Respondents have provided him with the detailed statement of transactions. Hence, we find that there is no issue of seeking co-operation or information involved herein, rather it is the case of the Applicant/RP wherein he is seeking recovery of the Pre-CIRP dues from the third parties based on the information/statement already received by him. The Section 19(2) of IBC, 2016 does not provide for such recovery mechanism.

12. At this juncture, we would like to refer to the judgement of the Hon'ble Supreme Court in the matter **of M/s Embassy Property**



Developments Pvt. Ltd. vs. State of Karnataka & Ors. in Civil Appeal

No. 9170 of 2019 dated 03.12.2019, wherein the following is held:

*“39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, **subject to the determination of ownership by a court or other authority.** In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term “assets” under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word “assets”, while Section 20(1) uses the word “property” together with the word “value”. Sections 18 and 25 do not use the expression “property”. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in **judicial, quasi-judicial and arbitration proceedings.** Section 25(1) and 25(2)(b) reads as follows:*

“25. Duties of resolution professional –

*(1) It shall be the duty of the resolution **professional to preserve and protect the assets of the corporate debtor**, including the continued business operations of the corporate debtor.*



(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, **exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings.”**

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they **cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”**

(Emphasis supplied)

13. Hence, when there are specific remedies available to the RP/Corporate Debtor to recover the dues of the CD, he cannot short-circuit the same and bring a claim before this Adjudicating Authority taking advantage of Section 19(2) of the IBC, 2016. In our considered view, the recovery of the pre-CIRP dues can only be made, if Application is filed under Section 43,45,50 or Section 66 of IBC, 2016, as the facts of the case may be, as per the relevant criteria stipulated thereunder or if the claim is not falling under any of the above Sections, the Applicant/RP may approach the Civil Courts for recovery.



14. **In view of the above, the Application is Dismissed with a direction to the Applicant/RP to immediate necessary steps to seek appropriate remedy in accordance with law for recovery of the dues of the Corporate Debtor and file the status report by 15.02.2023.**

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

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