IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

I.A. No. 420 of 2023

In

CP (IB) No. 527 of 2022

Under section 19(2) r/w Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF

Mr. Vijaykumar V. Iyer

(Resolution Professional for Future Retail Limited)

Deloitte India Insolvency Professional LLP, One International Center, Tower 3, 32nd Floor, Senapati Bapat Marg, Elphinstone Road (West) Mumbai - 400013.

… Applicant

V/s.

NGS & Co. LLP

B-46, Pravasi Estate, V. N. Road, Goregaon (East), Mumbai - 400063.

… Respondent

IN THE MATTER OF

Bank of India

… Financial Creditor

V/s.

Future Retail Limited

… Corporate Debtor

Order delivered on :- 15.01.2024

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Applicant/RP	: Adv. Rishabh Jaisani
For the Respondent	: Adv. Piyush Raheja

ORDER

Per: - Anil Raj Chellan, Member (Technical)

1. The present Application is filed by the Resolution Professional ('RP'/ 'Applicant') of Future Retail Limited ('Corporate Debtor') u/s 19 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') seeking direction/orders against the Respondent to co-operate and provide/grant access to all information/documents/data relating to the Corporate Debtor available with them including the documents listed as Annexure G to the Application.

Facts of the case: -

2. The Corporate Debtor was admitted to the Corporate Insolvency Resolution Process ('CIRP') by order of this Tribunal and the Applicant was appointed as the Interim Resolution Professional ('IRP') (Subsequently confirmed as Resolution Professional ('RP').

3. Immediately upon the commencement of CIRP, the Applicant to understand the financial statements, assets and liabilities etc. of the Corporate Debtor well and to take effective control and custody of the Corporate Debtor, had a virtual meeting with the partner of the

Respondent and sought for disclosure of the data and information pertaining to the Corporate Debtor. The above request was followed up by reminder emails dated 03.08.2022, 25.08.2022, 29.08.2022, 03.09.2022, 15.09.2022, 06.10.2022, 01.11.2022, 04.11.2022 and 08.11.2022. However, despite the above reminders and virtual meetings held on 27.07.2022 and 13.09.2022, the Respondent had not provided the critically required details/information of the Corporate Debtor. Hence, the present Application.

Submission of the Applicant: -

4. The Applicant submitted that the information/data sought by the RP is very important for the success of the CIRP of the Corporate Debtor and the absence/lack of such critical information/data is likely to jeopardise the CIRP of the Corporate Debtor.

5. The Respondent being the statutory auditor of the Corporate Debtor w.e.f. 01.04.2016 and continuing as such on the date of commencement of CIRP, the Respondent ought to have the complete information/documents sought for by the Applicant in the Application.

6. It is further submitted that the Respondent has failed to provide adequate support to the Applicant and the documents as are provided by the Respondent were already available with the Applicant such as balance sheet, profit and loss, cash flow statements and notes to accounts. The Applicant requires the working/break-up of each component of the balance sheet, profit and loss statement, cash flow statements, schedules, and sub-schedules as per financial statements with respect to the trial balance and its ledgers. The aforesaid break-up/working is sought in excel format so that the Applicant and his team would then be able to link the financial statements with the break-up/working to the relevant

item in the financial statements. The Applicant further submitted that break-up/working are required for a proper/detailed reading and understanding of the items appearing in the financial statements and such workings should ordinarily be part of the working papers and documents in the possessions of the statutory auditor.

7. On another application bearing IA No. 3463 of 2022 filed by the Applicant against the erstwhile management of the Corporate Debtor under Section 19 of the Code, Sap India Private Limited provided access/credentials to download SAP application to the Applicant to access the purported data that was stored on the two data tapes handed over by the erstwhile management. The steps taken by the Applicant to retrieve data, with the assistance of an IT consultant (Techflese Solutions Private Limited) was not successful as it was informed that the data contained in the media tapes cannot be restored as the data files are corrupt. In the circumstances, the Applicant submitted that he does not have the complete information/documents/data of the Corporate Debtor which is extremely critical for the CIRP.

8. In the circumstances, the Applicant requested for issuing directions to the Respondent to make disclosure by way of affidavit on oath, of the entire information, documents, data and material relating to the Corporate Debtor, including its assets and liabilities, in their knowledge/possession/control as on the date of initiation of CIRP.

<u>Submissions of the Respondent:</u> -

9. The Respondent submitted that it acted as the audit firm for conducting audit of the Corporate Debtor and has always maintained the records as followed by all auditing firms. Though the Respondent has always maintained an audit file of the Corporate Debtor, the same contains only

limited information/sample agreements/sample invoices of the past audits conducted by the Respondent. Further it was submitted that the Respondent was not provided with the financial accounts for the FY 2021-22 and therefore, the same was not reviewed by the Respondent and hence no information/data/documents was available with the Respondent pertaining to the said financial year.

10. As far as the specific information sought in the Application in terms of Annexure G to the Application, it is submitted that the Respondent has been providing data in compliance of the information being sought by the Applicant to the extent available. The Respondent further submitted that it can only provide the Applicant with what is available with it and what is maintained in the auditor file of the Corporate Debtor. The Respondent is not obliged to retain all the ledgers and data of the Corporate Debtor in physical or digital format. No data was ever retained by the Respondent in their office/computer systems pertaining to the Corporate Debtor.

11. With respect to the request to provide the working/break-up of each component of balance sheet, profit and loss account, cash flow statements, schedules and sub-schedules as per the financial statements with respect to the trial balance and its ledgers in excel format, the Respondent submitted that the Respondent is in the practice of retaining PDF versions of the files such as financial statements, Limited Review Statements etc. and wherever the break-up was available, it has been provided by the Respondent.

12. The Respondent submitted that the Application is liable to be rejected on the ground that the information as are available with the Respondent has been provided to the Applicant and the Respondent has been extending

support and co-operation to the Applicant as and when called upon to do so.

Analysis and Decision: -

13. We have heard the learned counsels for the parties and perused the documents on record.

14. It is observed that the Applicant immediately upon commencement of CIRP sought, through multiple emails and virtual meetings, information/documents/data relating to the Corporate Debtor from the Respondent who acted as auditor of the Corporate Debtor w.e.f. 01.04.2016. In support thereof, the Applicant has referred to section 17(2)(d) of the Code read with Regulation 4 of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (CIRP Regulations) which authorizes the IRP to access the books of accounts, records and other relevant documents of the Corporate Debtor available inter alia with the statutory and other auditors of the Corporate Debtor. The Applicant also relied upon Section 19 of the Code, to state that the Respondent is required to extend all assistance and co-operation to the IRP in managing the affairs of the Corporate Debtor. It is observed that the Respondent has not disputed the authority of the IRP/RP to seek the information and co-operation from the Respondent who acted as auditor of the Corporate Debtor.

15. It is also not in dispute that the information/document/data sought by the Applicant is relevant for the purpose of preparation of Information Memorandum and running the CIRP process in an efficient manner and also for finalizing various statutory returns and claims of creditors. It is also on record that the Applicant has taken various steps including approaching this Tribunal seeking directions against the erstwhile

management of the Corporate Debtor for extending co-operation for CIRP and the steps taken for collecting information relating to the financial position of the Corporate Debtor and also for detecting any fraud/errors. It is also on record that the efforts to retrieve the data stored on the two data tapes handed over by the erstwhile management was not successful as the data files are corrupt. This establishes that the data/document sought by the Applicant is critical for the Insolvency Resolution of the Corporate Debtor.

16. The point of contention between the parties appears to be whether the information/data/document sought by the Applicant is required to be preserved by the Respondent while acting as auditor of the Corporate Debtor and if such information is available to/retrievable by the Respondent from the documents and systems maintained by the Respondent as auditor of the Corporate Debtor. The Applicant contended in the Application that the information sought by the Applicant, particularly the working/break-up of each component of the balance sheet, profit and loss account, cash flow statements and schedules and sub-schedules as per financial statements with respect to the trial balance and its ledgers should ordinarily be part of the working papers and documents in the possession of the auditor. At the same time, the Respondent contended that it has always maintained the records as followed by all auditing firms; and the audit file of the Corporate Debtor maintained by the Respondent contains only limited information/sample agreements/sample invoices of the past audits conducted by the Respondent. The Respondent further submitted that it has provided data/documents in compliance of the information being sought by the Applicant to the extent available and it can provide the Applicant only with what is available with it. The parties during

submissions submitted various lists/items to contest the fact as regards the information available and the information provided by the Respondent. However, we do not consider necessary, at this stage, to look into each item of information sought for or stated to be given by Respondent to ascertain whether all information required to be maintained by the Respondent as auditor and the information available with the Respondent has already been given and this aspect, if required, can be requested to be examined/scrutinized by the concerned authorities regulating the audit functions of an auditor, at an appropriate time.

17. The facts of the present case reveal that the Applicant is not getting the required information from the systems and records maintained by the Corporate Debtor which is crucial for efficiently running the CIRP process. It is also observed from the Auditing and Assurance Standard (AAS) 3 referred by the Applicant that the working papers required to be retained by the auditor should be sufficiently complete and detailed for an auditor to obtain an overall understanding of the audit and a permanent audit file should normally include, inter alia, questionnaires or flow charts, copies of audited financial statements for previous years, analysis of significant ratios and trends etc. SA 230 (published in January, 2009 issue of the journal) on audit documentation also states that the audit documentation (the record of audit procedures performed, relevant audit evidence obtained and conclusions the auditor reached) may be recorded on paper or on electronic or other media. The examples of such audit documentation include audit programmes, analyses, issues memoranda, summaries of significant matters, letters of confirmations and representation, check lists, correspondence (including email concerning significant matters).

18. Having regard to the above, we are of the considered view that many information/data/documents are required to be retained and preserved by the auditor as per the Assurance and Auditing Standard and Audit Documentation prescribed. We, therefore, consider it appropriate to direct the Respondent to make available all information/data/documents in whatever form it is available which includes, the record of audit procedure performed, relevant audit evidence obtained, the conclusions the auditor reached, analyses, letters of confirmations and representation obtained, correspondences (including mail) concerning significant matters, etc., to the Applicant within a period of 10 days from the date of this order and to confirm by way of an affidavit on oath to state that each and every information as are available in the knowledge, possession or control of the Respondent is made available to the Applicant. In case any of the items required to be maintained under the guidelines/circulars/practice is not available, the Respondent may state the reasons thereof.

19. Accordingly, **IA 420 of 2023** is **allowed as prayed for.**

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)

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