THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

IA No.711/2020
in
CP (IB) No.97/Chd/Pb/2019
(admitted)

Under Section 19(2) of the Insolvency & Bankruptcy Code, 2016

<u>In the matter of:</u>

Nilkamal Limited ….Petitioner-Operational Creditor

Versus

U I Beverages Private Limited ….Respondent-Corporate Debtor

And in the matter of:
<u>IA No.711/2021</u>
Rajeev Bhambri, Resolution Professional of
U I Beverages Private Limited
office at : SCO 9, 2nd Floor, Jandu Tower,
Miller Ganj, Ludhiana - 141003 ….Applicant

Versus

1. **Rajnishpal Singh Dhaliwal**
   Promoter/Director of Suspended Board of Directors
   of M/s U I Beverages Private Limited
   resident of : House No.7, Lodhi Enclave,
   Near Ferozpur Road Octroi,
   Barewal Awana, Rajguru Nagar, Ludhiana - 141012

   ….Respondent No.1
2. **Shivrajpal Singh Dhaliwal**
   of M/s U I Beverages Private Limited
   resident of : House No.7, Lodhi Enclave,
   Near Ferozpur Road Octroi,
   Barewal Awana, Rajguru Nagar, Ludhiana - 141012

   ….Respondent No.2

Order delivered on: 16.08.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through video-conferencing:

For the Applicant : Mr. Karanveer Jindal, Advocate

For the Respondent Nos.1 and 2 : Mr. Jatin Singhal, Practising Company Secretary

Per: Subrata Kumar Dash, Member (Technical)

ORDER

CIRP proceedings were initiated against M/s U I Beverages Private Limited, the corporate debtor, when CP (IB) No. 97/Chd/Pb/2019 was admitted by this Adjudicating Authority vide order dated 02.03.2020. The instant IA has been filed by the Resolution Professional of M/s U I Beverages Private Limited under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 seeking directions to Respondents No.1 and 2 to provide the accounting data record of the Corporate Debtor in soft data and physical record from 01.04.2014 till 31.03.2017.

2. The brief facts of the case are as follows:-

2.1 It is submitted by the applicant that he was appointed as Interim Resolution Professional vide order dated 02.03.2020 and subsequently was appointed as a Resolution Professional.

2.2 Respondents No.1 and 2 are the promoter directors of the Corporate Debtor and were responsible for day-to-day management of the Corporate Debtor prior to the insolvency commencement date i.e. 02.03.2020.

2.3 That the Resolution professional formed an opinion that the corporate debtor is subjected to various transactions covered under sections 43, 45, 50, and 66, in terms of Regulation 35A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Accordingly, a detailed audit of such transactions was carried out by the Resolution Professional.

2.4 That Respondents No.1 and Respondents No.2, being directors of the suspended Board of the Corporate Debtor, were responsible for the keeping and maintenance of all the records of the previous years including the accounting data for the last 6 years.

2.5 That all the records of the previous years including the accounting data for the last 6 years was demanded from Respondents No. 1.

2.6 That the Applicant could get only the accounting data from the Tally software in the computer lying in the registered office of the Corporate Debtor for the year 01.04.2017 to 01.03.2020.

2.7 That the Resolution Professional could do the audit of the transactions only for the period from 01.04.2017 to 01.03.2020 and on the basis of the said Audit, Resolution Professional has finalized his Report.

2.8 That during the meeting of the Committee of Creditors held on 28.08.2020, the said issue was again raised and the extract of the relevant matter is reproduced herein below:

> *"It was further informed that the directors and employees has not provided the accounting data and records pertaining to the period of 2014 to 2017, in spite of repeated requests and*

Resolution Professional has not been able to do the audit for the said period. Mr. Rajnishpal Singh Dhaliwal, director of the suspended Board of the CD, informed that there was some problem in the past, hence the data is no longer available with him. After discussion, Resolution Professional was authorized to file Application with the Hon'ble Chandigarh Bench of the NCLT under Section 19(2) and other applicable provisions of the Insolvency & Bankruptcy Code, 2016, asking for the necessary relief and instructions to the Directors of the suspended Board of the CD, as already approved in the meeting of COC on 10.07.2020."

2.9 That despite various requests, the Respondents No. 1 and 2 have deliberately not given the accounting data from 01.04.2014 to 31.03.2017. It is understood that the Respondents are hiding the said record to conceal their illegal acts. The true copy of the e-mails dated 27.06.2020, 02.07.2020 & 30.07.2020 issued by the Applicant Resolution Professional to the Respondents seeking accounting data are annexed hereto and marked as ANNEXURE A-1, ANNEXURE A-2 & ANNEXURE A-3 respectively.

2.10 That thereafter, the said matter of non-cooperation was placed before the COC of the Corporate Debtor by the Applicant Resolution Professional in its 4th meeting held on 10.07.2020 and its relevant extracts are as follows:

"It was further informed that the audit of transactions is going on and the audit is not completed yet as the Directors of the suspended Board of the Corporate Debtor (CD) in connivance of their employee Mr.Yuvraj has removed the accounting data, for the period prior to April 2017, from the Computer in which all the accounting of CD was being maintained. Members were informed that the recent data of CD comprising of purchase and sales bills have also been removed from the Registered Office of the Company by Mr.RPS Dhaliwal."

The true copy of the resolution passed by the COC in its 4th meeting held on 10.07.2020 is annexed hereto and marked as ANNEXURE A-4.

2.11 That in view of the said resolution dated 10.07.2020, the Resolution Applicant is filing the present application under Section 19(2) of the IBC, 2016 seeking directions to Respondents No. 1 and 2 to provide the accounting data from 01.04.2014 till 31.03.2017.

3. It is submitted by the respondent Nos.1 and 2 by Diary No.01306/2 and 01306/3 both dated 10.02.2022, respectively that he has got the data which was available with the respondents being directors of the corporate debtor. The applicant was provided with the data beginning from 01.04.2017 and regarding look-back period of two years preceding the date of commencement of CIRP for transactions with a related party and one year for transactions with non-related parties, reliances placed on ***Mr. Anuj Jain, IRP of JP Infratech Limited Vs. Axis Bank Limited***. It is also submitted that the non-availability of data was recorded in the minutes of the meeting of CoC held on 28.08.2020. One of the computers containing the accounting data got corrupted and data was not recovered due to which the respondent was unable to provide the required data by the Resolution Professional.

4. In rejoinder filed by Diary No.01306/4 dated 28.03.2022 to the reply of respondents No.1 and 2 wherein it is submitted that there are many transactions, outstanding as on date of commencement of Insolvency, which is continuing from the period before 01.04.2017,

hence its origin is required for a detailed audit of transactions in an effective manner and the operation of clause (4) of Section 43 does not restrict the audit of transactions for the look-back period before the period of one or two years, as applicable, which are still outstanding in the look-back period of one or two years, as applicable. That the contention of Respondents explained in para 8 of their reply that, the data in computer was corrupted, is an afterthought to hide their misdeeds. They have replied only regarding soft data, however, they are silent about the non-delivery of physical accounting records and documents, which can be considered as their admission of failure to provide the same to the Applicant.

5. We have heard the learned counsel for the applicant as well as learned counsel for the respondents No.1 and 2 and perused the material available on record. Even if the contention of the respondents that the accounting data has been corrupted is accepted, the hard copies of the same must be with the suspended management of the Corporate Debtor as it is required to be maintained for audit purposed. As per Section 19(1) of the Code, the suspended management is under obligation to extend all assistance and cooperation to the RP as required in managing the affairs of the company.

6. In view of the above discussion, we direct the Mr. Rajnishpal Singh Dhaliwal - respondent No.1 and Mr. Shivrajpal Singh Dhaliwal - respondent No.2, Suspended Directors of erstwhile Management of Corporate Debtor to handover accounting data record of the Corporate

Debtor in soft data and physical record from 01.04.2014 till 31.03.2017 to the RP and provide assistance as required by the RP within fifteen days from the date of this order, failing which the RP is at liberty to approach local police on the basis of this order and local police to render all necessary assistance to RP. In case of non-compliance, the RP is at I in liberty to move an appropriate application before this Adjudicating Authority.

7. Accordingly, IA No.711/2020 is allowed and disposed of.

8. Copy of this order be supplied to the parties by the Registry.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

August 16, 2022
AV/ TB