

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 452 of 2021

[Arising out of order dated 01.06.2021 in IA-2070(PB)/2021 CP No. (IB)-933(PB)/2019 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), New Delhi Principal Bench.]

IN THE MATTER OF:

1. **Mr. Mukund Choudhary**
First Floor, Padmini Enclave
Haus Khas, New Delhi-110016
2. **Mr. Kapil Choudhary**
6A Fem Hill, DLF Chattarpur Farms,
New Delhi-110074

..... Appellants.

Versus

Mr. Subhash Kumar Kundra
(Resolution Professional for
CLC Industries Ltd.)
C-4-E/135, Janak Puri,
New Delhi-110058.

..... Respondent

Present:

For Appellant: Ms. Henna George and Ms. Purti Gupta, Advocates

For Respondents: Ms. Honey Satpal, Mr. Gaurav Mitra and Ms. Shriya Raychandani, Advocates.

J U D G M E N T

[Per; Shreesha Merla, Member (T)]

Aggrieved by the order dated 01.06.2021 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench) in

IA-2070(PB)/2021 in CP No. (IB)-933(PB)/2019, Mr. Mukund Choudhary & Anr. preferred this Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'The Code'). By the impugned order, the Adjudicating Authority has disposed of I.A. No. 2070(PB)/2021 filed by the Resolution Professional under Section 19(2) of the Code seeking direction to the suspended directors / the Appellants herein to cooperate and provide signed copy of the financial statements for the Financial Year of 2019-2020, observing as follows:

“6. Since CIRP/Liquidation is to be completed in time bound manner, the AA cannot grant time to file Reply/Replies to various IAs filed by aggrieved parties during the process of CIRP. It is settled position of law that in terms of provisions of Section 19 of Code, the personnel of CD, its promoters or any other person associated with the management of CD shall extend all assistance and co-operation to IRP as may be required by him, in managing the affairs of CD. Therefore, in order to avoid further delay, it would be just and proper to direct the Respondents to extend the requisite co-operation to the Applicant in discharge of his functions including to provide signed copy of Financial Statements for the FY of 2019-20.

7. In the result, IA-2070(PB)/2021 in CP No. (IB)-933(PB)/2019 is hereby disposed by directing the Respondents to cooperate and provide signed copy of the financial statements for FY of 2019-2020, within a period two weeks from the date of receipt of copy of this order. And the Applicant is also directed to furnish the requisite documents, if any, asked for by the Respondents for the above purpose.”

2. It is the case of the Appellants that in view of the management being in control of the Respondent / Resolution Professional (RP), the balance sheet as on 31.03.2021 being prepared by him had some objectionable entries and therefore, the Appellants have serious objection to the various

entries in the Balance Sheet and accordingly had sought for clarification. It is submitted that the Appellant are not inclined to sign the financial statement as prepared by the RP without due justification and clarity.

3. It is further submitted that the Adjudicating Authority disposed of the Application without giving opportunity to the Appellants to file reply placing on record their objections, while directing the Appellants to cooperate and provide the signed copy of the Financial Statement for Year 2019-20 within a period of two weeks from the date of receipt of the impugned order copy. It is submitted that the RP acts and executes in the name and on behalf of the Corporate Debtor all deeds, receipts and other documents and hence the RP is competent to sign the Balance Sheet prepared by him and the Appellant should not be coerced to sign the Financial Statement as they are already suspended from the management by the Corporate Debtor company.

4. It is further contended that the draft Balance Sheet prepared by the RP had serious discrepancies and hence the Appellants sought clarification vide email dated 04.03.2021 but there was no reply. Learned Counsel appearing for the Appellants draw our attention to the General Circular No. 08/2020 dated 06.03.2020 relating to filing of Form in the Registry (MCA-21) by the IRP/RP/Liquidator appointed under the Insolvency and Bankruptcy Code, 2016, the relevant para of which is detailed as hereunder:

“(iii) The IRP/RP/Liquidator shall be responsible for filing all the eforms in the MCA portal and sign the form in the capacity of CEO in order to meet filing protocol in the existing forms architecture. However, this shall in no way affect his legal status as IRP/RP/Liquidator. All filings of

eforms including AOC-4 and MGT-7 shall be filed through e-form GNL-2 by way of attachments till the company is under CIRP. In the existing field no. 3 of form no. GNL-2, IRP/RP/Liquidator will choose radio button "Filings under IBC".

5. It is the case of the Appellants that in view of the circular, it is the RP who should sign the Form in the capacity of CEO in order to meet the filing protocol and further it is not the suspended director who has to sign the Financial Statement for the Year 2019-20.

6. Learned Counsel for the Respondent / RP strenuously contended that despite repeated requests, the Appellants did not co-operate in signing the Financial Statement and therefore, he was constrained to file I.A. No. 2070(PB)/2021 before the Adjudicating Authority seeking direction to them to co-operate. It is further submitted that the RP got Books of Accounts prepared for the Financial Year 2019-20 and accordingly M/s R.N. Marwah & Co. LLP, Charter Accountant were appointed as statutory auditor of the Corporate Debtor way back on 2017 itself and the same Auditor had prepared the statements. The draft Financial Statement and draft audit report for the financial year 2019-20 received from the auditor was sent to the Appellants vide email dated 12.02.2021, to review the accounts and signed the same in order to enable the RP to file it before the RoC in terms of the extant provisions of the Companies Act, 2013. All the requisite documents as required and requested by the Appellants was provided to them, but there was no response.

7. It is further contended that the Adjudicating Authority has rightly observed that the Appellants have to extend their co-operation to the RP in discharge of his functions including providing the signed copy of the Financial Statement for the Year 2019-20.

8. The facts in dispute are that CIRP commenced on 03.01.2020 and M/s R.N. Marwah & Co. LLP was appointed as Statutory Auditor for three consecutive years i.e. on 25.09.2017 and the same auditors continued for 2019-20. The material on record establishes that the 3rd quarter statement for financial year 2019-20 was audited by the same Auditor and signed by the Appellants. It is an admitted fact that the draft review report quarterly ending 2019-20 was already shared with the Appellants. Material on record establishes that the RP had sent repeated requests to the Appellant herein to sign the Financial Statements by emails on 22.01.2021, 15.02.2021, 19.02.2021, 20.02.2021 and 26.02.2021, but received no response. It is the case of the RP that after 20 days of receiving the drafts and report, the Appellants on 04.03.2021 declined that they are not in agreement of the financial statement and refused to sign. They had objected in the presence of the Statutory Auditor which is only to delay the proceedings and demanding for comparatives of the provisional directions and financial statements for the 3rd financial year 2019-20 and all the documents which were already available with them.

9. At the outset, we address to the contention of the Appellants that it is the RP who has to sign the Financial Statement and not the Appellants who are the suspended directors of the Corporate Debtor company. This Tribunal

is of the considered view that the Court does not release the directors of the Corporate Debtor company from their duties, but only suspends their power as directors and appoints a RP for managing the company. At this juncture, we find it pertinent to reproduce Sections 129 and 134 of the Companies Act, 2013 which read as hereunder:

“Section 129: Financial statement.

129. (1) *The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:*

Provided that the items contained in such financial statements shall be in accordance with the accounting standards:

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company:

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—

(a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;

(b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;

(c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;

(d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

(2) At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

(4) The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements referred to in sub-section (3).

(5) Without prejudice to sub-section (1), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.

(6) The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such

exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(7) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Explanation.—For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act.

Section 134. Financial statement, Board's report, etc

1. The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the Company Secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

(2) The auditors' report shall be attached to every financial statement.

(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;

(b) number of meetings of the Board;

(c) Directors' Responsibility Statement;

(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;

(d) a statement on declaration given by independent directors under sub-section (6) of section 149;

(e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;

(f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—

(i) by the auditor in his report; and

(ii) by the company secretary in practice in his secretarial audit report;

(g) particulars of loans, guarantees or investments under section 186;

(h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;

(i) the state of the company's affairs;

(j) the amounts, if any, which it proposes to carry to any reserves;

(k) the amount, if any, which it recommends should be paid by way of dividend;

(l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;

(m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;

(n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

(o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which

formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made;

(q) such other matters as may be prescribed.

Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report:

Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.

Provided that in case of a Specified IFSC public company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors.

Provided that in case of a Specified IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors.

(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.

(4) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

(5) The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that—

(a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(d) the directors had prepared the annual accounts on a going concern basis; and

(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation.—For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

(6) The Board's report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

(7) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—

(a) any notes annexed to or forming part of such financial statement;

(b) the auditor's report; and

(c) the Board's report referred to in sub-section (3).

(8) If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees."

10. The submissions of the Learned Counsel for the Appellants that it is the RP who has to sign Financial Statement is untenable, keeping in view the facts and circumstances of the attendant case as it is not disputed that the Appellants had signed the first three quarters of the Financial Year and are now objecting to sign the last quarter raising some clarifications which have already been addressed to by the RP and the Statutory Auditor (who is

the same auditor who had audited the Financial Statements/Accounts for the past three years of the Corporate Debtor company). Section 19(2) of the Code clearly specified that the personnel of the Corporate Debtor, as promoters or any other persons are required to assist the RP failing which an Application can be filed before the Adjudicating Authority seeking direction for co-operation. This Tribunal is of the considered view that the circular dated 06.03.2020 relied upon by the Appellants provides only for the *procedure* of filing the Forms. The circular does not anywhere specify that the Financial Statement are not to be signed by the Directors as required in the Companies Act, 2013. The emails and the communications on record evidence that the RP and the statutory auditor had prepared all the information as demanded time and again by the Appellants, requesting them to sign the Financial Statements in order to enable the RP to proceed in accordance with law. The impugned order dated 01.06.2021, whereby two weeks' time was granted to the Appellants herein to co-operate and sign the Financial Statements was not complied with causing further delay. We do not see any illegality in the well reasoned order of the Adjudicating Authority as we do not find it a fit case, in the interest of justice and to avoid any further delay in this time bound proceedings, in remitting the matter to the Adjudicating Authority. At the cost of repetition, we observe that it is the duty of the Appellants to cooperate and sign the Financial Statements which is in terms of the provisions of the Code as well as in compliance of the Companies Act, 2013.

For the above reasons, this Appeal fails and is accordingly dismissed.

11. The Registry is directed to upload the Judgment on the website of this Tribunal and send a copy of this Judgment to the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench, forthwith.

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Ms. Shreesha Merla]
Member (Technical)**

**New Delhi
18th April, 2022
R. Nath.**