

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**KOLKATA BENCH**  
**(Court No. II)**  
**KOLKATA**

**IA (IB) No.779/KB/2022**  
**in**  
**CP (IB) No.1304/KB/2019**

*In the matter of*

*An application under Rule 154 of the National Company Law Tribunal Rules, 2016.*

*And*

*In the matter of*

Nitesh Kumar More

...Applicant

*Versus*

Pradipta Sarkar & Anr

...Respondents

**CP (IB) No.1304/KB/2019**

Kamar Infrastructure Private Limited

...Operational Creditor

*Versus*

Sensitive Infra Private Limited

...Corporate Debtor

***Coram:***

Shri Rohit Kapoor

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

***Appearances (via video conferencing/physical hearing):***

For the Applicant

: Mr. Shaunak Mitra, Advocate

: Mr. Saurav Jain, Advocate

**Date of hearing: 05 August, 2022**  
**Order pronounced on: 01 November, 2022**

**ORDER**

*Per Rohit Kapoor, Member (Judicial)*

1. This court convened *via* hybrid mode.
2. This is an Interlocutory Application filed under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) by Mr Nitesh Kumar More, Resolution Professional (*'Applicant'*) against the Pradipta Sarkar and Amitava Bose, directors of Sensitive Infra Private Limited (*'Corporate Debtor'*) seeking the following reliefs:-
  - a. The Adjudicating Authority may be pleased to allow the application; or
  - b. The order dated 21.06.2022 may be modified by expunging the observations set out in paragraph 2 of the said impugned order; or
  - c. The Adjudicating Authority may be pleased to modify the order and pass appropriate direction; or
  - d. The Adjudicating Authority may be pleased to rectify/ delete the paragraph 2 of the order dated 21.06.2022 passed by this Adjudicating Authority upon considering the facts and circumstances; or
  - e. The Adjudicating Authority may be pleased to direct the communication of the rectified order to IBBI;
3. ***The Ld. Counsel appearing on behalf of the Applicant submits as follows:***
  - 3.1 Kamar Infrastructure Private Limited (*'the Operational Creditor'*) had filed an application for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) under Section 9 of the the Insolvency and Bankruptcy Code 2016 (*'Code'*) against Sensitive Infra Private Limited.
  - 3.2 *Vide* order dated 18.02.2020, the Adjudicating Authority had admitted the Corporate Debtor into CIRP and appointed CA Nitesh Kumar More, i.e., the Applicant as an IP having Registration No 11. IBBI/IPA-001/IP-P01087/2017-2018/11785 to conduct the CIRP in a time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016.

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- 3.3 Immediately after getting appointed as an IRP, the applicant has started performing his duties as enumerated under the provision of the Insolvency and Bankruptcy Code 2016 and regulations framed. The applicant made a Public Announcement in Form A on 24.02.2020 and started corresponding with the respondents herein to collate all information and documents with respect to the corporate debtor.
- 3.4 The applicant had first visited the registered office of the Corporate Debtor, which was the residential address of the respondent no 1 Pradipta Sarkar at Bamangachhi, North 24 Pargana, West Bengal on 25.02.2020, however the lady (wife of Pradipta Sarkar) who was present at the residence cum registered office of the premises had denied access to the applicant to the premises. The lady who was present at the said premises had denied to receive any order nor provided the current residential address of the other director.
- 3.5 Further, while contacting the respondent no 2 over the phone, the applicant was informed that he is very ill and informed the applicant, that Mr. Pradipta Sarkar the had all the records and respondent no 2 will not be provide anything and he did not even provide his current address.
- 3.6 However, while contacting, Mr. Pradipta Sarkar, the respondent no 1 over the phone (9830336494), he said that the business is closed and there is no staff. He further informed that he is out of Kolkata and will return after 15-20 days and further assured to provide all information & records after he returns to Kolkata.
- 3.7 Thereafter, the applicant again tried to contact to the respondents and visited the registered office of the corporate debtor with the hope of cooperation on 09.03.2020, however again the lady (wife of Pradipta Sarkar) in the said premises did not allow the undersigned to enter into the said premises. However, over phone, Mr. Pradipta Sarkar, director of Corporate Debtor said that he is out of Kolkata and he will return after 10-12 days and further assured to provide all information records after he returns to Kolkata.
- 3.8 The applicant again visited the registered office of the corporate debtor with the hope of cooperation on 20.03.2020 also & again same thing happened and

immediately thereafter the nationwide lockdown due to the COVID-19 was imposed across the Country.

- 3.9 Thereafter the applicant had made several efforts to track the auditor of the Corporate Debtor in order to get the relevant information pertaining to the records of the Corporate Debtor. Thereafter, it could be found out that the said auditor CA Debashis Roy had demised on 15.09.2019. Subsequently, the Applicant had taken steps to collect the death certificate of the aforementioned auditor.
- 3.10 Upon considering the facts of noncooperation, the applicant had first filed an application under section 19(2) of the Insolvency and kruptcy Code, 2016 on 15 June, 2020 before the Adjudicating Authority , however, it could not be listed due to Covid 19 situation prevailing in the country, inspite of mentioning on 16 June, 2020.
- 3.11 After e-filing system had taken place, the instant application under section 19(2) of the Insolvency and Bankruptcy Code, 2016, being numbered as IA (I.B) NO 1077/KB/2020 in C.P (IB) No. 1304/KB/2019 was filed before this Adjudicating Authority on 11.10.2020. The application under Section 19(2) was listed before the Adjudicating Authority from time to time, however the respondents have not appeared for a single time, which can be evident from the record of the orders passed by the Adjudicating Authority. The applicant further states that copy of the application under Section 19(2) was also being served to all the respondents and further the applicant had also updated the respondents about the hearing. However, none of them have ever represented either before the Adjudicating Authority or before the applicant.
- 3.12 The Applicant had also called the COC meeting to discuss the important agendas, however the only COC member/OC of main petition had not approved any agenda and with no other option, the undersigned had to move the Liquidation application before the Adjudicating Authority. The detailed progress of the CIRP had been updated to the only member of the COC/OC, wherein the COC/OC never raised any issue regarding the physical visit of the registered office of the corporate debtor.

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- 3.13 The applicant further states that he had visited the registered office of the Corporate Debtor on several occasions viz, 25.02.2020, 09.03.2020, 20.03.2020, 30.09.2020, 09.10.2020, 30.10.2020, 02.11.2020, 02.12.2020, 24.04.2021, 01.07.2021. The details of each and every progress have been reported to the Adjudicating Authority by filing progress reports and also through the application made from time to time and further the said fact was also even recorded in the minutes of the Committee of Creditor.
- 3.14 The Applicant further states that during the meeting of the COC held on 16th August 2021, the applicant had declined to act as a liquidator. The statement made by the applicant regarding the decline to act as the liquidator is mentioned in agenda no. 12 of the COC minutes under the head of 'Estimated Liquidation Cost'. Thereafter the applicant had filed an application under section 33(1)(a) of the Insolvency & Bankruptcy Code, 2016 to initiate liquidation on the corporate debtor, being numbered as I.A (I.B) NO 893/KB/2021 in C.P (IB) No. 1304/KB/2019 on 01.10.2021.
- 3.15 The application filed by the applicant has been admitted and the Adjudicating Authority was pleased to pass an order on 15.06.2022 directing to initiate the Liquidation proceeding against the corporate debtor. However, the Adjudicating Authority has appointed the applicant as liquidator inspite of his refusal to give consent for appointment as the liquidator. With due respect of the order passed by Adjudicating Authority, the applicant had made public announcement in Form B.
- 3.16 The main company petition along with the application under Section 19(2) was listed for hearing on 21st June, 2022, it was on that date hearing also the respondents were not present and accordingly Ld. counsel for the applicant has argued the matter.
- 3.17 However, in between the Ld. Counsel of the Operational creditor has interfered into the matter wherein he was not even a party and thus he had no locus standi in the application under section 19(2). The Ld. Counsel of OC had argued that the applicant has failed to comply with the provision of the Code and further failed to contact and visit the registered office address of the

corporate debtor without even -producing any documentary evidence. And after hearing, the Adjudicating Authority was pleased to record the submission:

- 3.18 The applicant states that Ld. Counsel for the applicant has opposed the alleged fact submitted by the Ld. counsel of the OC and therefore the Adjudicating Authority was of view and pronounced that the applicant will visit the registered office of the corporate debtor again and will submit his report before the Adjudicating Authority.
- 3.19 The applicant with the intention to comply with the order passed in open court has immediately tried to contact the respondents by sending an email on 21.06.2022 and thereafter visited the registered office of the corporate debtor on 23.06.2022. However, following the old tactics and habitual practice, the applicant was not allowed to enter into the premises and therefore the applicant again wrote a strict email on 24.06.2022 to them to either comply with directions
- 3.20 The applicant was also informed that there had been a settlement between the suspended board of directors and Kamar Infrastructure Private limited. Moreover, this fact had never been communicated by the Operational creditor/CoC to the applicant.
- 3.21 In contrary to the said pronouncement of the final order dated 21.06.2022 in the open court, the applicant has duly received a different order vide email dated 28.06.2022 received from the registry of the Adjudicating Authority. The applicant was shocked to receive such an order because he was under impression of revisit to the registered office address of the corporate debtor and to submit a report before the Adjudicating Authority. The applicant has duly complied with direction of revisit as stated supra and was in the process to submit the report.
- 3.22 The applicant is aggrieved by the Order dated 21st June, 2022 passed by the Adjudicating Authority as the contents of the order is recorded incorrectly than what was actually pronounced in the open court.

***Analysis and Findings***

4. We have heard the Ld. Counsel appearing in the matter and perused the record. Upon perusal it is apparent that the Application being **IA (IB) No.779/KB/2022** is in the guise of a review application for an order dated 21 June, 2022 passed by this Adjudicating Authority.
5. In view of the Judgement by Hon'ble National Company Law Appellate Tribunal in ***Adish Jain v. Sumit Bansal and Ors.***<sup>1</sup> it has been held that;  

***“5. This Tribunal has no inherent power to review its own Order. We have heard this Review Applicant at length considering the directions of the Hon'ble Supreme Court. Question is, whether it is otherwise permissible in law for this Tribunal to "Review" its Judgment passed in Appeal.”***
6. Hence, in view of the above, the **IA (IB) No.779/KB/2022** stands ***dismissed***. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

The order is pronounced on 01<sup>st</sup> day of November, 2022

S/[LRA]

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<sup>1</sup> MANU/NL/0028/2021 decided on 03 February, 2021