

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

IA-1360/2023  
In  
IB-559(ND)/2021

**IN THE MATTER OF IB-559(ND)/2021:**

YES BANK LIMITED

..... **Financial Creditor**

**Versus**

M/s. PRESIDIUM EDUCATIONAL INSTITUTION PRIVATE LIMITED

..... **Corporate Debtor**

**AND IN THE MATTER OF IA-1360/2023:**

Mr. GANGA RAM

..... **Applicant**

**Versus**

Mr. PRAVEEN KUMAR & Ors.

..... **Respondents**

**Order Pronounced On: 28.02.2024**

**CORAM:**

**SHRI ATUL CHATURVEDI  
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS  
MEMBER (JUDICIAL)**

**PRESENT:**

For the Applicant : Mr. Aman Vivek, Mr. Abhinav Tyagi, Advs.

For the Respondents : Mr. Mohit Chaudhary, Mr. Prakhar Mithal, Advs.

**ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The present Application has been filed by Mr. Ganga Ram, the Applicant on 24.02.2023 under Section 19(2) read with Section 70 of the Insolvency and Bankruptcy Code, 2016 for seeking the following reliefs:

*“a) Allow the present Application;*

*b) Direct the Respondents No. 1 to 3 to provide information and documents as sought by the Applicant under Para 13;*

*c) Pass appropriate Orders/ Directions to prosecute the Respondent under Section 70 of the Code;*

*d) Pass appropriate orders/direction to the police authorities to provide assistance in taking possession and getting access to the properties of the Corporate Debtor;*

*e) Pass any such order(s) as the Hon'ble Tribunal may deem fit in the interest of justice.”*

## **2. Brief Background of the Case:**

The facts which are relevant for the purposes of determination of the issues involved in this application are stated as under:

- i.** An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. Yes Bank Limited, against the Corporate Debtor i.e. M/s. Presidium Educational Institution Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 29.11.2022 and a moratorium was declared including the appointment of Mr. Ganga Ram Agarwal as an Interim Resolution Professional. Subsequently, Mr. Ganga Ram Agarwal was confirmed as Resolution Professional in terms of Section 22 of IBC.

## **3. Submissions of the Applicant:**

- i.** It is the case of the Applicant that in compliance to Sections 13, 15, the Applicant made a Public Announcement under Form- A on 06.12.2022 in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 inviting claims from Creditors of the Corporate Debtor. The last date of submission of claims was 17.12.2022.
- ii.** The Applicant vide email dated 07.12.2022 intimated the erstwhile Directors/ Respondents No. 1 & 2 on their registered email addresses of commencement of Corporate Insolvency Resolution Process of the

Corporate Debtor and further requested the Respondents to provide the requisite information/ documents to the Applicant in accordance with Section 17, 18 & 19 of the Code to carry out the CIRP of the Corporate Debtor.

- iii.** The Applicant herein had again sent reminder emails dated 12.12.2022, 14.12.2022, 21.12.2022 and 27.12.2022 to Respondent No. 1 & 2 requesting Documents/Information with respect to the Corporate Debtor. Subsequently another email requesting to reply on the intimation and documents sought was sent to email of one of the Directors. That last reminder email was sent dated 30.12.2022.
- iv.** The Applicant vide email dated 12.12.2022 intimated the Statutory Auditors, M Mahadev Associates (Respondent No. 3) of commencement of CIRP of the Corporate Debtor and accordingly in pursuance of the power conferred by Section 17 of the Code, requested the Statutory Auditor to provide information/ documents to carry out the CIRP of the Corporate Debtor and to further understand the nature, functioning and background of the Corporate Debtor. Afterwards, the Applicant again sent reminder emails to the Statutory Auditors dated 21.12.2022, 27.12.2022 and 30.12.2022.
- v.** The following information/documents has been requested by the Applicant from the Respondents herein:
  - a) Soft Copy of Bank Statements for the period under Audit (preceding 5 years)
  - b) Details of Asset of the Corporate Debtor
  - c) Audited Balance sheet/books of accounts of the Corporate Debtor for 5 years preceding the Insolvency Commencement Date.
  - d) Audit reports of the Corporate Debtor for 5 years preceding the Insolvency Commencement Date.
  - e) ITR of the Corporate debtor for 5 years preceding the Insolvency Commencement Date.

- f) Complete books of accounts for the past 5 years preceding Insolvency Commencement Date.
- g) Detail of transaction with subsidiary Companies / Group Companies/Related parties & Associates and their ledgers for the period under audit (preceding 5 years)
- h) Any charges created or satisfied during the period under audit (preceding 5 years)
- i) Details of loans settled/ OTS done / Loans repaid during the period under audit (preceding 5 years)
- j) New borrowing or loans raised during the period under audit (preceding 5 years), from any Banks, Financial Institutions, NBFCS & private parties.
- k) Sale of Assets during the period under audit (preceding 5 years)
- l) Balance Sheet of all promoters/ guarantors/ Associates / Firm / Sister Concern/ group companies for the period covered under audit
- m) Details of Promoters' funding including their Income Tax, Wealth Tax Returns.
- n) Stock Statement and book debt statement (certified by C.A.) submitted to the bank.
- o) Invoices of sales and purchases with all supporting documents like LR and Delivery Challan etc. to be kept ready
- p) Ledgers of sundry debtors and creditors for the period under audit (preceding 5 years)
- q) Sundry Debtors & Creditors confirmation.
- r) Details of Journal Voucher/Bad debts written off/ Debit-credit notes issued to customers or suppliers.
- s) Particulars of a debt due from or to the corporate debtor with respect to related parties.
- t) The number of workers and employees and liabilities of the corporate debtor towards them.

- u) Company overview including snapshot of business performance, key contracts, key investment highlights.
  - v) Provisional books till the Insolvency Commencement Date
  - w) Fixed Asset Register
  - x) Asset details and access to assets
  - y) Trial Balance till the ICD (11.10.2022)
  - z) Details of School and their current status.
  - aa) Details of Assets financed by the FC.
  - bb) Details of software like Tally, ERP or any other software used by the company.
  - cc) Access to the books of account for the period under audit (preceding 5 years)
  - dd) Stock Audit, Vat Audit, Income Tax Audit, Service Tax, Excise Audit, or any other special Audit.
  - ee) List of Sister Concerns/ Associate Concerns/Subsidiary Companies & Companies under the same Management with the audited financial statement of these concerns.
  - ff) Master Franchise Agreements.
- vi.** It is also submitted by the Applicant that in accordance with the provisions contained in Section 19 of the Code, all the personnel of the Corporate Debtor, its promoters or any other person associated with the management of Presidium Educational Institution Private Limited are required to extend all assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor.

#### **4. Submissions of the Respondents:**

- i.** The Respondent No. 1 and 2 has filed a reply affidavit denying the allegations made by the Applicant and stated that the suspended management has made all efforts to make the requisite documents

available to the resolution professional bonafidely. However, the data/ records/ assets which are lying in possession of third parties, cannot be produced by the suspended management.

- ii.** It is submitted that it is not the case that the answering respondents have deliberately not been cooperating in supplying the said documents. In fact, the COC minutes would reveal that the answering respondents attended every COC Meeting through themselves or through their representative, who has answered to every query by the Resolution Professional till the supply of documents. Due to the upheavals created by Mr. GS Matharoo, it was very difficult for the parties to find out the required information. It is however submitted that the answering Respondents have made genuine efforts to arrange the said documents, but could not be arranged.
- iii.** It is submitted that the answering respondents have provided all the information that is there in their knowledge, capacity and possession. It is relevant to submit that the present application has no bearing at this stage when Form-G has already been published by the Resolution Professional. The purpose of collecting all data with respect to the company is primarily to prepare the information memorandum to invite Resolution Plans.
- iv.** The present application is being filed at a stage when the prayers sought for cooperation, stand infructuous in the factual context of the matter. It is further submitted that answering respondents cannot be compelled to supply the documents which are not in possession of the respondents but are in possession of third parties.

## **5. Analysis and Findings:**

- i.** We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondents. We have also perused the records.

- ii.** Admittedly, the Statutory Auditor vide e-mail dated 30.12.2022 stated the following:

*"Dear Madam,*

*This is with regard to the captioned subject and trail mail asking for the details/data/documents for the said purpose.*

*We would like to inform you that we had conducted audit of the said company for the F.Y. 17-18 & latest FY 18-19 only and thereafter we had not conducted audit for any year after that, hence we are not in possession of any document/details after F.Y. 18-19 as required by your good self.*

*We can only provide you with the complete Audited Financials and other Documents as desired of the said company for the said two years and will provide you in next 3-4 days' time."*

- iii.** We find that the Statutory Auditor vide e-mail dated 30.12.2022 has clearly concurred to provide the details/data/documents in this regard. As far as the Respondent No. 1 and No. 2 are concerned, we direct them to provide the information/documents pertaining to the CIRP of the Corporate Debtor.
- iv.** We are of the considered view that it is incumbent on Respondents to extend cooperation and to ensure that the IRP/RP functions and conducts CIRP of the Corporate Debtor in terms of the provisions of the Insolvency and Bankruptcy Code, 2016. Therefore, the Respondents shall extend necessary cooperation and provide all information as sought by the Applicant and make available the documents as prayed for in the present Application within a period of 15 days from the date of this order. If, the Respondents fail to cooperate then this Adjudicating Authority would be constrained to take coercive action against the Respondents.
- v.** Accordingly, the personnel of the Corporate Debtor, its promoters or any other person associated with the earlier management of M/s.

Presidium Educational Institution Private Limited are directed to extend all assistance and cooperation to the Interim Resolution Professional/ Resolution Professional as required in managing the affairs of the Corporate Debtor.

**6.** In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

- i.** The Application bearing **IA-1360/2023** filed by the Applicant is **allowed** with aforesaid directions and **disposed of**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

Sd/-  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

Sd/-  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**