IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 3178/2019 in CP(IB)2987(MB)/2018

(Under Section 19(2) of the IBC, 2016)

Gaurav Ashok Adukia
…Applicant/Resolution Professional

In the matter of

Edelweiss Asset Reconstruction Co Ltd

…Financial Creditor

Vs
Octaga Green Power and Sugar Co. Ltd
… Corporate Debtor

Order delivered on 30.9.2019

Coram:

Hon'ble Member (Judicial) Shri V.P. Singh

Hon'ble Member (Technical)Shri Rajesh Sharma

For the Applicant: Adv. Shanex Mukri, a/w Adv. Abdullah Qureshi, i/b Indian Law LLP and Mr Gaurav Adukia, RP

Per: Hon'ble Member(Judicial) Shri V.P. Singh

ORDER

1. MA 3178/2019 has been filed under Section 19(2) of the Insolvency and Bankruptcy Code, 2016, seeking directions against the Directors of the Corporate Debtor, i.e. to direct the Directors and all the personnel of the Corporate Debtor, to provide all the information, documents and records about the Corporate Debtor.

2. It is contended by the applicant that the Petition filed under Section 7 of the IBC, 2016 was admitted by order of this Bench dated 2.7.2019 and he was appointed as the Interim Resolution Professional.

3. The applicant contends that the public announcement in Form A was made on 5.7.2019 in newspaper. As per the public announcement, the last date of receiving the claims was 17.7.2019.

4. The applicant further contends that since the Section 7 petition was admitted against the Corporate Debtor, the applicant vide email dated 4.7.2019 communicated to the suspended promoter and directors of the Corporate Debtor about the commencement of the CIRP proceedings, his appointment as IRP and for handing over the affairs of the company to him. Vide the email mentioned above, the suspended Board of Directors were asked to furnish necessary information/documents/details including but not limited to Tally back up data, disclosure of all the assets and liabilities about the Corporate Debtor. Since the said information/documents were not received by the RP, follow up emails were sent to the Respondents on 15.7.2019, 25.7.2019, 26.7.2019 and 29.7.2019.

5. The applicant contends that in spite of continuously follow up with the suspended Board of Directors of the Corporate Debtor for handing over the information/documents to the RP, the same are still not provided by them to him. Copies of the emails dated 4.7.2019, 15.7.2019, 25.7.2019 and 26.7.2019 are attached with the application as Annexure C.

6. The applicant further contends that he visited the factory office situated at Kolhapur on 7.7.2019 and met Mr G. S. Lamba, Plant Head and other staff engaged in production and security, wherein manager informed that only physical records of invoices, bill raised, excise licenses, permits, etc. are maintained at the factory and copies are sent to Mumbai office for records. The manager also mentioned that overall production, sale, etc. data and all financial information, records are kept at Mumbai office.

7. The applicant further submits that as per the Public Announcement dated 5.7.2019, the last date of submission of claims with proof was 17.7.2019 and accordingly claims were received from the creditors and verified to the extent of information available to him and based on which the list of creditors was prepared, and committee of creditors (CoC) was constituted.

8. The applicant further submits that Mr Basab Paul, Managing Director of the Corporate Debtor filed an appeal before the Hon'ble NCLAT

challenging the admission order dated 2.7.2019. The Applicant further submits that the Counsel of the Financial Creditor and the counsel of Mr Basab Paul, vide their email dated 31.7.2019, informed the RP that Hon'ble NCLAT had ordered a stay on the constitution of Committee of Creditors of the Corporate Debtor till the next date of hearing, i.e. 21.8.2019. Given the said order, the scheduled first meeting of CoC on 1.8.2019 was not convened, and the same was also intimated to the members of CoC and the suspended Board of Directors of the Corporate Debtor.

9. The applicant further contends that on perusal of the said order dated 31.7.2019 of the Hon'ble NCLAT, it was observed that Hon'ble NCLAT had passed the following order:

"*to give one opportunity to the Appellant to amicable settle the matter with 1st Respondent, we direct the 'Resolution Professional' not to constitute the 'Committee of Creditors', if not yet constituted, till the next date.*

On perusal of the above order, it appears that no stay was ordered on the CIRP proceedings and furthermore on 14.8.2019, Hon'ble NCLAT did not grant any stay on the CIRP.

10. The applicant further contends that the CoC was already constituted before the order dated 31.7.2019 of the Hon'ble NCLAT and the report certifying constitution of CoC was filed before this Bench on 26.7.2019. Further the notice dated 27.7.2019 for conducting the first CoC meeting proposed to be held on 1.8.2019 was also circulated to the members of CoC and the members of suspended Board of Directors of the Corporate Debtor.

11. Since the CoC was already constituted before the above mentioned Hon'ble NCLAT's hearing of the said appeal, the first CoC meeting was held on 13.8.2019 wherein it was apprised to CoC that the information and details concerning the Corporate Debtor were being received in parts and pieces.

12. The applicant further contends that after various follow-ups and requests the R1 vide email dated 17.8.2019 given a vague reply stating that the office situated at Hill Road, Mumbai is not owned/leased or rented by the Corporate Debtor and the operations functioned in the factory premises in Kolhapur and due to flood disasters in Kolhapur all

the backups such as computers, hard disk, labels have been damaged and destroyed and because of which they were unable to give any access to the same.

13. The applicant further contends that despite various emails and reminders, the erstwhile Directors have failed to disclose all the information to the RP to ensure smooth functioning of the CIRP.

14. It is stated in the application that the Respondents failed to provide the relevant record, information and documents. It is further submitted by the applicant that due to such non-cooperation the CIRP has come to a standstill and may not reach its logical end.

15. In the circumstances, applicant has filed this MA 3178/2019 seeking direction against the Respondents.

16. Admittedly, Octaga Green Power and Sugar Co Ltd are under CIRP, and the applicant is the RP, and as per the order of this Bench dated 2.7.2019, applicant is duty-bound to perform duties of the RP by the duties assigned to him as per the provisions of IBC, 2016.

17. By applying, RP has sought direction against the Respondents to handover the possession of the records, documents and affairs of the Corporate Debtor to the applicant to enable the smooth commencement of the insolvency proceedings. RP has further sought direction against the respondents to extend co-operation to the applicant in terms of Section 19 of the Code .

18. Section 19(2) of the IBC provides that *"where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions"* and Section 19(3) of the Code provides that "*the Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor".*

19. Since the RP reported that the Respondents are co-operating with the RP, in the circumstances, **we at this moment allow MA 3178/2019 and direct the Respondents to provide all the information, books**

of accounts and disclose all the assets and liabilities about the Corporate Debtor to the RP. We further direct the Respondents to give full co-operation to the RP for smooth running of the CIRP

20. It is pertinent to mention that RP while discharging his duties as RP is an officer of the court and the Respondents must fully co-operate the RP in discharging his duties so that he can conclude the CIRP within the time stipulated under the Code.

21. MA 3178/2019 is as a result of this allowed and disposed of accordingly.

Sd/-

RAJESH SHARMA
Member (Technical)

Sd/-

V. P. SINGH
Member (Judicial)