NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

Company Appeal(AT)(Insolvency) No. 173 of 2021

IN THE MATTER OF:

1. Mr. Venugopal Dhoot
Individual Indian Inhabitant,
171 C-wing, Mittal Court,
16th Floor, Maker Chambers, Nariman Point,
Mumbai, Maharashtra – 400 021 ...Appellant No.1

2.Mr. Deepak Anant Pednekar,
Suspended Director – VOVL Ltd
Rashmi Agency 2, 3 wing, Flat No. 403
4th Floor New Link road, Vasai Link
Road, Nalasopara (East) Thane – 401 209 ...Appellant No.2

Vs

1.Mr. Pravin R. Navandar
Resolution Professional – VOVL LTD
D 519/520, Neelkanth business park,
Old Nathani Road, Vidyavihar (W),
Mumbai, Maharashtra – 400 086 ...Respondent No.1

2.Keserlal Nensukhlal Gandhi
Suspended Director – VOVL Ltd
Bk Complex, Dhangar Galli Anandi Bajar,
Ahmednagar, Maharashtra – 414 001 ...Respondent No.2

3.Sarita Sanjay Surve,
Suspended Director – VOVL Ltd
Videocon Apartment, Pratapnagar,
Osmanpura, Flat No.10 Jalachrya Bhikshu,
B-wing, Kranti Chowk Aurangabad – 431 005 ...Respondent No.3

4.U.S Kadam
Kadam & Co. Chartered Accountants,
Statutory Auditors – VOVL Ltd
8/9 Viraj Estate, OPP. Tarakpur Bus Stand,
Ahmednagar – 414003 ...Respondent No.4

5.Pradipkumar Nandlal Dhoot
171-C Wing, Mittal Court
16th floor, Makers Chambers
Nariman Point, Mumbai – 400 021 ...Respondent No.5

Present:

For Appellants: Mr. Amir Arsiwala, Advocates

For Respondents: Mr. Shyam Kapadia, Mr. Vishnu Shriram, Mr. Aditya V Singh, Mr. Ashwij Ramaiah, Advocates for Respondent No. 1

Mr. Kesarlal Gandhi, Advocate for Respondent No. 2

Ms. Sarita Surve, Respondent No. 3 in person

Mr. US Kadam, Respondent No. 4 in person

Mr. Pradipkumar N. Dhoot, Respondent No. 5 in person

J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The present appeal is filed under Section 61 of the 'Insolvency and Bankruptcy Code, 2016' (in short 'Code') against the order dated 15th December, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Special Bench, Court No.II, in IA/1018/ 2020 in CP(IB) No. 2742/2019.

2. The Adjudicating Authority has directed the Promoters, Directors and the persons associated with the management of Corporate Debtor - 'VOVL Limited' to extend full cooperation and handover all the Books of Accounts/ Bank Accounts etc., to the Resolution Professional of the Corporate Debtor. It has also been directed to the Resolution Professional to seek the information from the MCA website available in the public domain. The impugned order has also stated that in case of violation of this order under Section 70 of the Code provides for punishment for misconduct in course of 'Corporate Insolvency Resolution Process' (CIRP). In the observation, it has also been

observed that the Resolution Professional has insisted for urgent relief during the lockdown period and the Adjudicating Authority has stated in para 45 of the impugned order that the statement of the Resolution Professional is not correct and IBBI (Insolvency Resolution Process for Corporate Person) (3rd Amendment) Regulation 2020 vide Regulation 40C has already covered such eventuality. In para 48 of the impugned order, the Adjudicating Authority has also stated the Resolution Professional is seeking hearing and disposal of the present application in such haste and has also observed that Respondents were given less than a week to file their affidavits in reply which is insufficient while working from homes and cannot make frequent trips to other places out of fear for their safety.

3. The Appellants have prayed for the following reliefs:

I. To set aside the order dated 15.12.2020 passed in IA/1018/ 2020 in CP(IB) No. 2742/2019.

II. For costs and for such further and other reliefs etc.

4. The Appellants have also filed two 'Interlocutory Application' (IA) No. 397 of 2021 for exemption from filing certified copy of impugned order and IA No. 296 of 2021 for stay.

5. The Appeal was heard on various dates i.e. 09.03.2021 15.03.2021, 07.04.2021, 03.06.2021, 10.06.2021 and 22.06.2021.

6. The 'Corporate Debtor' (CD) is a company by the name of 'VOVL Ltd' for which the Respondent No.1 is the Resolution Professional (RP). CD is a wholly owned subsidiary of 'Videocon Industries Limited' (VIL). Both CD and its

holding company VIL are undergoing CIRP at the relevant time. It was submitted that CIRP of CD was initiated on 08.11.2019 and on 20.01.2020, Respondent No.1 was appointed as RP. The Appellants have submitted that they were providing documents in their possession even upto 18.03.2020 and from 23.03.2020 Covid-19 pandemic led to a nation wise lockdown. Around 15.06.2020, the Appellants were served with the copy of the above stated IAs and on 22. 06.2020 listed for hearing for the first time, before the Adjudicating Authority and on the request of the appellant only 3 days' time was allowed to file their counter affidavit. On 25.06.2020, the Appellants have filed their reply. It was conveyed by the counsel of the Appellant that on the date of hearing on 26.06.2020, the RP gave a different written note for the list of document what was earlier asked for. The RP also came up with a completely different case for funding requirement of the CD. The Appellants submitted on 26.06.2020 that whatever documents in their possession have already handed over to the RP and no other documents with them. The Appellants have also submitted that they have repeated pointed out to the RP that the CD was only a 'SPV' which have no staffs of its own but was completely managed by its holding company 'VIL' and requested RP to get it touch with the RP of 'VIL' to obtain additional information. It was also submitted that RP is seeking documents pertaining to the subsidiary of CD and the same is not permitted as per explanation to Section 18(1) of the Code and hence this is outside scope of Section18 & 19 of the Code. The Appellants have raised the issue of harassment by RP. The disposal of the Petition by the Adjudicating Authority was in haste and as a result such order has been passed by the

Adjudicating Authority. The Appellants have also stated that threatening to invoke Section 70 of the Code is not correct as the same is a criminal offence and the Adjudicating Authority is barred by virtue of Section 236 of the Code.

7. The Respondent No. 1- RP has submitted that the CD was participating in Oil and Gas blocks (Assets) in the Brazil through its overseas subsidiary. The Brazil business of the CD was done through an entity incorporated in Brazil and a step down subsidiary of CD through Videocon Hydrocarbon holdings limited, a wholly owned subsidiary of the Corporate Debtor incorporated in the CAYMAN Islands, total financial, debt involved is Rs. 30,654 Crores. The RP has stated that originally they asked for some lists as per *Exhibit –W* and later on has submitted revised list of documents and information required in term of the Adjudicating Authority order dated 26.06.2020. The RP has also accepted the fact that they are asking for the documents of the subsidiary to link up the transactions. He has also stated that Section 19 and 20 of the Code has appropriate provision to ask for such documents from erstwhile Promoters, Directors etc. The R1 has insisted for the documents of the foreign subsidiaries. He also insisted that the documents are required to examine if the CD has entered into avoidance transactions in terms of section 43, 45, 49 and 66 of the Code apart from closing of books of accounts and statutory compliances and finalisation of Information memorandum.

8. This Appellate Tribunal was repeatedly asking the parties the requirement of various documents and sources from where the documents can be obtained. Based on these observations on 10.06.2021 both the parties

agreed the suggestions for a list of requisite documents and from where the documents can be obtained by the RP

9. There are 21 list of statements/contact details / books of account/ bank statements etc., has been asked by Resolution Professional. The same is at reproduced hereunder:

ANNEXURE-A **4**

EXHIBIT "W"

ORIGINAL S.NO	SR. NO	DOCUMENT	REMARKS	REQUIRED FOR
1	1.	Financial Statements of VOVL Limited for the year ended 31.03.2019.The financial statements of all it's subsidiaries for preceeding five years.	BS of subsidiaries is yet to be received for YE 2015, YE 2016 & YE 2019	Transaction and Audit
2	2.	Tally data including user name and password.		Closing of books of accounts for the purpose of Audit
7	3.	Secretarial Data about company for last five years		Statutory compliances
8	4.	Name and contact details of various consultants like Income Tax, Company secretary, auditor, GST Consultant	Details of Income Tax consultant, GST Consultant and Company Secretary not provided	Preparation of information memorandum
9	5.	Please provide us with books of accounts, including detailed trial balance and bank statements of VOVL group and statutory registers and contact persons	Detailed trial balance and groupings in excel sheet are required.	Finalising books of accounts for audit purpose Transaction audit & valuation
10	6.	Details of other Creditors & also help us with the latest position on liabilities of VOVL group along with details	Details provided are as on 31 March 2019. Details as on the present date are required	Transaction Audit
14	7.	Bank Statements Copy for last 5 years (in soft copy format – in excel / pdf) for VOVL.	Bank statements for accounts in Bank of Baroda, Bank of Maharashtra, Corporation Bank, Exim Bank, ICICI Bank (2 . accounts) and IDBI Bank not yet received.	Transaction Audit
15	8.	List of all Directors of last 3 years in subsidiaries, associates and joint ventures of VOVL Limited and its subsidiaries including details of their directors – name. contact		Transaction Audit

16	9.	List of employees of all the subsidiaries of VOVL Limited		Transaction Audit
17	10.	Books of accounts of all the subsidiaries, associated and joint ventures of VOVL and its subsidiaries		Transaction Audit
19	11.	List of Bank accounts of all the subsidiaries of VOVL along with details of authorized signatories		Transaction Audit
33	12.	Provisional Balance Sheet alongwith all the Schedules, List of Debtors, List of Creditors, Fixed Assets, List of all Investments, etc. as on 8th November, 2019.	We have data till 31 March 2020	Statutory Compliances
41	13.	Details of day to day cash flow management, mode of payments at various locations.		Transaction Audit
48	14.	Details of all payments & receipts above Rs. 50,000/- in last 2 years – along with voucher, narrations – in soft copy (in Excel File, if possible).		
52	15.	Details of any Contingent Liability – list of all of the contingent liabilities.		Preparation of Information Memorandum
53	16.	Details of Suits filed by the Company / against the company (also of its subsidiary companies) – alongwith date of next hearings, legal counsel/advocate involved and their contact details, etc. i.e. Details of all the litigations where company is involved in any manner directly or indirectly.		Preparation of Information Memorandum
61	17.	How the Data of company is stored or saved securely and its back-up procedure and status of the back-up done and upto which date back-up is taken and the persons responsible for the same.		Resolution Process
65	18.	List of Outstanding (Pending) Returns (ROC, IT, VAT, GST, etc.) to be filed.		Statutory Compliances
66	19.	Details of MCA Compliance (ROC), Tax Assessments – IT,		Statutory Compliances

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67	20.	Any Order by Tax/Govt. Authorities against the Company in the last three years & how the same is complied with or defended.		Preparation of Information Memorandum
70	21.	List of all Creditors – Operational, Financial & Others – from the side of Company as on 31.03.2019 & 20.11.2019.	We have been provided with unsigned/unattested pdf versions of the trial balances on 17 June 2020. To be confirmed if the same figures have been relied upon in preparation of the financials	Information Memorandum

Against which the Appellants have provided the following details:

4. As per the directions issued, the Appellants are providing the details of the person(s) from whom information can be sought as below:

S.No.	Document / Information	Remarks	From whom information may be sought
(1)	Financial Statements of VOVL Limited for the year ended 31.03.2019. The financial statements of all it's subsidiaries for preceding five years.	Balance Sheet of CD received; Balance Sheet of subsidiaries is yet to be received for YE 2015, YE 2016 & YE 2019	The Respondent No. 1 is seeking information pertaining to the foreign subsidiary VHHL. The same cannot be obtained through section 19 of the IBC.

(2)	Tally Data including user-name and password.	As stated in the Counter-Affidavit, the affairs of the Corporate Debtor were completely managed by its Holding Company, VIL. This included the accounting and secretarial department.	VIL entered into CIRP on 11.06.2018 upon admission of an application under section 7 of the IBC. Through that order Mr. Anuj Jain was appointed as IRP. Subsequently, Mr. Abhijit Guhathakurta was appointed as RP for consolidated CIRP. Upon taking charge, the IRP Mr. Anuj Jain had taken over the books of accounts of VIL as well as VOVL and changed the passwords. Necessary information would have to be

			obtained from the RP of VIL.
(3)	Secretarial Data about company for last five years.	Same as above	Same as above
(4)	Name and contact details of various consultants like Income Tax, Company secretary, auditor, GST Consultant.	Same as above	Same as above. Since 11.06.2018, the Appellants have not had access to the records of VIL, which is the holding company managing the affairs of VOVL.
(5)	Please provide us with books of accounts, including detailed trial balance and bank statements of VOVL group and statutory registers and contact persons.	Provisional Balance Sheet and accounts til 31.03.2020 are admittedly already with the Respondent No. 1.	Since 11.06.2018, the Appellants have not had access to the records of VIL, which is the holding company managing the affairs of VOVL. Further information, if required, can be

			taken from the RP of VIL. With respect to VHHL, data relating to the same cannot be obtained through section 19 of the IBC.
(6)	Details of other Creditors & also help us with the latest position on liabilities of VOVL group along with details.	Same as above.	Same as above.
(7)	Bank Statements Copy for last 5 years (in soft copy format – in excel / pdf) for VOVL.	As stated in the Counter-Affidavit, the affairs of the Corporate Debtor were completely managed by its Holding Company, VIL. This included the accounting and secretarial department.	The bank statements can be obtained from the banks where the Corporate Debtor maintains accounts. All the banks where the Corporate Debtor maintains accounts are also

			members of the COC.
(8)	List of all Directors of last 3 years in subsidiaries, associates and joint ventures of VOVL Limited and its subsidiaries including details of their directors – name, contact details, address etc.	The details of directorship of the Corporate Debtor can be found from the website of the Ministry of Corporate Affairs and is a public document.	The Respondent No. 1 is seeking information pertaining to the foreign subsidiary VHHL. The same cannot be obtained through section 19 of the IBC.
(9)	List of employees of all the subsidiaries of VOVL Limited		The Respondent No. 1 is seeking information pertaining to the foreign subsidiary VHHL. The same cannot be obtained through section 19 of the IBC.

(10)	Books of accounts of all the subsidiaries, associated and joint ventures of VOVL and its subsidiaries.		Same as above
(11)	List of Bank accounts of all the subsidiaries of VOVL along with details of authorized signatories.		Same as above
(12)	Provisional Balance Sheet alongwith all the Schedules, List of Debtors, List of Creditors, Fixed Assets, List of all Investments, etc. as on 8th November, 2019	Admittedly, the Respondent No. 1 has this information up to 31.03.2020.	In case any further information is required, the same may be obtained from the RP of VIL, who has been managing its affairs since 11.06.2018.
(13)	Details of day-to-day cash flow	Accounts pertaining to the	Further details may be obtained

	management, mode of payments at various locations.	Corporate Debtor were maintained by its holding company, VIL.	from the RP of VIL, as well as the bank statements of the Corporate Debtor.
(14)	Details of all payments & receipts above Rs. 50,000/- in last 2 years – along with voucher, narrations – in soft copy (in Excel File, if possible).	Same as above	Same as above
(15)	Details of any Contingent Liability – list of all of the contingent liabilities.	Same as above.	Same as above.
(16)	Details of Suits filed by the Company / against the	The affairs of the Corporate Debtor were always managed by its	To the best of the knowledge of the Appellants, there are no such legal

	company (also of its subsidiary companies) – alongwith date of next hearings, legal counsel/advocate involved and their contact details, etc. i.e. Details of all the litigations where company is involved in any manner directly or indirectly.	holding company, VIL	proceedings save and except those pending before the Adjudicating Authority and this Appellate Tribunal, and proceedings relating to / arising out of the CIRP of the Corporate Debtor.
(17)	How the Data of company is stored or saved securely and its back-up procedure and status of the back- up done and upto which date back- up is taken and the persons	The data of the Corporate Debtor has been managed and stored by its holding company, VIL. All documents, records and information about the same have always been with VIL.	The holding company of the Corporate Debtor has been in CIRP since 11.06.2018, and from that time the RP of VIL has been in control of the affairs and management. Further information can

	responsible for the same.		be sought from him.
(18)	List of Outstanding (Pending) Returns (ROC, IT, VAT, GST, etc.) to be filed.	As stated in the Counter-Affidavit, the affairs of the Corporate Debtor were completely managed by its Holding Company, VIL. This included the accounting and secretarial department.	The holding company of the Corporate Debtor has been in CIRP since 11.06.2018, and from that time the RP of VIL has been in control of the affairs and management. Further information can be sought from him. Further information can be sought from the concerned statutory authorities.
(19)	Details of MCA Compliance (ROC), Tax Assessments – IT, VAT, GST, Excise, Customs,	Same as above.	Same as above.

	Labour, FEMA, etc.		
(20)	Any Order by Tax/Govt. Authorities against the Company in the last three years & how the same is complied with or defended.	Same as above.	To the best of the knowledge of the Appellants, there are no such orders.
(21)	List of all Creditors – Operational, Financial & Others – from the side of Company as on 31.03.2019 & 20.11.2019.	Admittedly, the Respondent No. 1 already has been provided with unsigned/unattested pdf versions of the trial balances on 17 June 2020. The Respondent No. 1 seeks confirmation whether the same figures have been relied upon in preparation of the financials.	This has repeatedly been confirmed to the Respondent No.1, including in the Counter Affidavit filed before the Adjudicating Authority.

10. The sum and substance of both the submissions of Appellant and Respondents reveals that the Financial Statement of the CD is available with RP. What he is seeking is the details of the assets of the subsidiaries which is governed by the explanation to Section 18 of the Code and the same is stated as below:

> "Section 18- *Duties of interim resolution professional. -The interim resolution professional shall perform the following duties, namely: -*
>
> *(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to –*
>
> > *(i) business operations for the previous two years;*
> >
> > *(ii) financial and operational payments for the previous two years;*
> >
> > *(iii) list of assets and liabilities as on the initiation date; and*
> >
> > *(iv) such other matters as may be specified;*
>
> *(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;*
>
> *(c) constitute a committee of creditors;*
>
> *(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;*
>
> *(e) file information collected with the information utility, if necessary; and*

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –

> *(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
>
> *(ii) assets that may or may not be in possession of the corporate debtor;*
>
> *(iii) tangible assets, whether movable or immovable;*
>
> *(iv) intangible assets including intellectual property;*
>
> *(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*
>
> *(vi) assets subject to the determination of ownership by a court or authority;*

(g) to perform such other duties as may be specified by the Board.

Explanation. – For the purposes of this 1 [section], the term "assets" shall not include the following, namely: -

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator."

11. The most important thing is the tally data of the CD which has to be obtained from Resolution Professional of VIL i.e. its holdings Company of CD. The bank accounts details for the last five years can be obtained by the Respondent No.1 from the Bank which are under his control at the moment and details of the Directors can be obtained from the MCA website. It would not be out of point to mention here that parties have provided various citations which are not of relevance to the facts of this case.

12. On a specific query by the Bench, why RP for more than one year could not get the books reconstructed with the assistance of expert IT Professional from outside to ascertain avoidable transactions of the Code, if he suspects something based on inputs available with him. The bench could not get a clarity on the issue. What we find basically that a culture has come were Accounts people wants to do the job of Auditor, Auditor wants to do the job of Vigilance and Vigilance wants to do the job of CBI. The RP being a competent professional and bankers within his charge, he should have reconstructed a book showing cash flow for the specified period as per the Code and by this time could have detected that whether any preliminary finding is for avoidance transactions and then the other party could have proved either way by this time. The RP can take the assistance of concerned Registrar of Company / MCA website and could have obtained financial statements /annual return and his apprehension could have been proved either way. We cannot enter into a domain where Section 18 vide its explanation the term, assets, shall not include asset of any Indian or foreign subsidiary of the CD. It is also unfortunate to observe that the CD should have been under group insolvency

the law yet to be formed on 'group insolvency' or should have common Resolution Professional but there is no specific provision to force this action. Hence, we are unable to confirm that Appellants are fully responsible for non-availability of the documents with whatever data what has been provided to us. Hence, we are unable to sustain the Adjudicating Authority order at this juncture which has been passed in haste.

13. Accordingly, we are setting aside the impugned order dated 15th December, 2020 passed in IA/1018/2020 in CP(IB) No. 2742/2019 and remanding back to the Adjudicating Authority to decide the application afresh in the light of aforesaid observations. Pending IAs, if any, stands disposed off. No order as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member(Technical)

5th July, 2021

New Delhi

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