

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

Cont. A/5/2021  
&  
I.A (IBC) No. 1430/KB/2020  
In  
C.P. (IB) No. 978/KB/2019

In the Matter of:

*An application Under section 70 of the Insolvency and Bankruptcy Code, 2016.*

And

**In the Matter of:**

Indian Overseas Bank

**....Financial Creditor**

Versus

Shree Ram Saw Mill Private Limited

**.... Corporate Debtor**

And

**In the Matter of:**

Kanchan Dutta, the Resolution Professional of Shree Ram Saw Mill Private Limited

**... Applicant**

-Versus-

1. Om Prakash Pandey, residing at 67/21, Strand Road, Kolkata 700006, West Bengal.
2. Shree Prakash Pandey, residing at 67/22, Strand Road, Kolkata-700006

**....Respondents**

**Date of Hearing : 07/04/2022  
Date of pronouncing the order: 18/07/2022**

**Coram:**

**Mr. Rohit Kapoor, Member (Judicial)**

**Mr. Harish Chander Suri, Member (Technical)**

**Counsel appeared physically/through video conference :**

For Liquidator	: Mr. Rishav Banerjee, Adv. : Mr. Rahul Auddy, Adv. Mr.Mohit Sharma, Adv. Mr.Aditya Gooptu, Adv. Mr.Kanchan Dutta, Liq. In person
For contemnor	: Mr. Kuldeep Mallik, Adv. Ms. Jayati Chowdhury, Adv.
For Suspended of Members of CD	: Mr.Om Prakash Pandey in person, Mr. Shree Prakash Pandey in peron
Special Officer	: Mr. Rohit Kumar Keshri, Special Officer in person Adv.

**ORDER**

**PER: Harish Chander Suri, Member (Technical):**

1. This Court convened through video conferencing.
2. By way of this Interlocutory Application (IBC)/ 1430 (KB) 2020 has been filed by the Applicant under section *Under Section 70 of the Insolvency and Bankruptcy Code, 2016*, The RP of Shree Ram Saw Mill Private Limited submitted that the Financial Creditor had filed a petition under section 7 of the IBC against the Corporate Debtor, which was heard and admitted on 16<sup>th</sup> March, 2020. It is further submitted that vide the said order, the Applicant was appointed as the Interim Resolution Professional. Public Announcement was made by the applicant under section 15 of the IBC,2016 via publication in an English Newspaper 'Business Standard' and a 'Bengali Newspaper 'Aajkal' on 18<sup>th</sup> March, 2020.

3. It is submitted that the applicant vide emails dated 18<sup>th</sup> March, 2020, 12<sup>th</sup> May 2020, 12<sup>th</sup> May 2020, 23<sup>rd</sup> May 2020, 9<sup>th</sup> June, 2020, 18<sup>th</sup> June, 2020, 30<sup>th</sup> June 2020, 8<sup>th</sup> July, 2020 and 14<sup>th</sup> July 2020 intimated the Directors of the Corporate Debtor about the initiation of CIRP against the Corporate Debtor; appointment of the Applicant as the IRP; the complete procedure and consequences of the CIRP; and sought for all the necessary information and documents relating to the assets, finances, and operations of the Corporate Debtor, all detailed information about accounts, tally software, bank account details, statements of bank accounts etc.

4. It is submitted that the RP visited the Factory Office and Registered Office on 18<sup>th</sup> March, 2020 and 13<sup>th</sup> July 2020 and asked for all the detailed information and cooperation of the respondent directors. Though the same was assured by the directors, none was provided. The meeting of 13<sup>th</sup> July 2020 was specifically fixed for getting access to the Tally Software. When the RP and his team were present, the computer did not function at all. It is further submitted that Bank account statement, statutory registers, financial statements, books of accounts (last available as per MCA is 2013) sought for from the directors have not been provided.

5. It is submitted that the Directors were not at all cooperating with the Applicant in the CIRP of the Corporate Debtor and hence the Applicant was compelled to file an application under Section 19 seeking necessary directions upon the directors of the Corporate Debtor to provide all the information and documents as sought for by the Applicant. It is submitted that the said application under section 19 was heard by this Hon'ble Tribunal on 7<sup>th</sup> October, 2020 when directions were passed on the Respondents for rendering all necessary support to the Applicant and to provide all documents.

6. It is submitted that the applicant communicated the order dated 7<sup>th</sup> October 2020 to the Respondents and sought for detailed information in terms of the directions given by this Adjudicating Authority on 7<sup>th</sup> October, 2020, but however, there was no response from the Respondents.

7. It is further submitted that even after repeated requests of the RP to the Directors, the Directors of the Corporate Debtor did not cooperate with the RP and even violated the order of this Adjudicating Authority issued on 7<sup>th</sup> October, 2020.

8. It is further submitted that after exchanging few mails between the RP and Directors of the Corporate Debtor, the representative of the RP visited the office of the Corporate Debtor on 20<sup>th</sup> October and met Mr. O.P. Pandey (Respondent No.1) who was present at that time and learnt that the documents were not ready, and yet promised to submit the documents by next day. But no documents were received by the RP until 2<sup>nd</sup> November, 2020 save and except audited accounts for the Financial Years 2013-14 to 2016-17 & 2018-18, PAN Card, Name and Address of the Directors, Name of the Banks and List of Shareholders as on 31.03.2017.

9. It is further submitted that the matter was again listed before this Adjudicating Authority on 5<sup>th</sup> November, 2020 when the RP submitted about the non compliance of the order dated 7<sup>th</sup> October, 2020 by the Respondents and this Adjudicating Authority after considering the said order and submission of the RP, directed the Respondents to be present at the hearing scheduled on 30<sup>th</sup> December, 2020. The RP states that this deliberate act is a clear violation of section 70 of the Code and hence the Applicant is filing the instant application for punitive actions against the Respondents for blatant violation of the Code and not rendering any cooperation to the RP.

10. The applicant has sought the following reliefs:-

“ a. Necessary punishment of the Respondents as contained in Section 70 of the Code in the form of imprisonment of the Respondents for a term which shall not be less than three years but may also extend to five years or with fine which shall not be less than one lakh rupees, but may extend to 1 crore rupees or both, for deliberate non cooperation and blatant disregard of the orders of this Hon'ble Tribunal.

b. Such further and/or other order or orders as this Hon'ble Court may deem fit and proper".

11. **In reply to the petition**, the respondents filed affidavit and submitted that all the allegations made in the application are categorically denied. It is submitted that the application is not maintainable. The respondents submit that on 16/03/2020, this Adjudicating Authority has passed order of moratorium. It is submitted that once the board is suspended only RP deals with the Bank and the Bank constitutes itself as CoC or joins as a member of the COC, hence the contention is incorrect and liable to be rejected in limine.

3. It is submitted that as per the admitted position of the applicant in para 30 of the application, he has already received audited accounts for the Financial Years 2013-14, 2014-15, 2015-16, 2016-17 and 2018-1, PAN Card and other details and as such the contentions are incorrect and liable to be dismissed. It is stated that the Financial Years 2018-2019 was also submitted and in any case audited Balance sheet of Financial Year 2018-19 also have details of Financial Year Financial Year 2017-18. It is submitted that the contentions of the applicant are frivolous inasmuch as the Bank is part of the CoC and the management of the Corporate Debtor has been vested with RP and hence the details of Bank may be procured by him. Further, audited Balance Sheets have all the details of fixed assets and stocks and as such the contentions are mere harassing design rather than any constructive purpose for the CIRP.

4. The defiant attitude of the Respondents is clearly visible from the in action and delaying tactics adopted by the respondents just to by a further time. The Respondents have time and again been directed to hand over the documents, Bank account statements statutory register financial statements, the books of accounts last available as per the MCA and all other information about accounts in tally software but none of the directions of this Adjudicating Authority have been followed by the Respondents, which is a

very serious matter and may lead to frustrate the basic object desired to be achieved by the Code.

5. There is no doubt that these two Respondents had the intentions from the very beginning not to obey and comply with the directions of this Adjudicating Authority. Their inaction and disobedience amounts to misconduct as defined under Section 70 of the IBC. Prima-facie they appear to have committed contempt of this Court. However, before proceeding further, we deem it appropriate to issue notice to these Respondents, namely, Om Prakash Pandey and Shri Prakash Pandey and direct their personal appearance, on 31.08.2022.

6. Let a notice be sent to the Respondents for the said date.

**Cont. A/5/2021**

1. This application filed under section 425 of the Companies Act, 2013 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules, 2016.

2. It is submitted that there was continuous non co-operation from the Directors of the Corporate Debtor and the Directors failed to submit all the relevant documents/information as required by the Interim Resolution Professional/Resolution Professional required for CIRP of the Corporate Debtor of the Corporate Debtor.

3. It is submitted that the RP had filed an application under section 19 of the Code praying for directions upon the Contemnors to cooperate with the Resolution Professional and when the matter was heard on 7<sup>th</sup> October, 2020, directions were passed upon the contemnors to handover all necessary documents and books of accounts to the RP(Presently Liquidator). It is further submitted that thereafter a series of emails were exchanged with the Directors/ Contemnors but all the documents as sought for was not provided.

The matter was listed before this Adjudicating Authority on 5<sup>th</sup> November, 2020 when the RP informed this Adjudicating Authority about the non compliance of order dated 7<sup>th</sup> October, 2020 by the Directors of the suspended board of the Corporate Debtor and this Adjudicating Authority directed the Directors/contemnors to remain present at the hearing on 30<sup>th</sup> December, 2020 and report compliance. It is further submitted that Directors in spite of having knowledge of the order dated 5<sup>th</sup> November, 2020 failed to provide any information to the RP.

4. It is submitted that due to the continuous, intentional, deliberate non-cooperation, was compelled to file an application under section 70 of the IBC. The said application was heard on 18<sup>th</sup> March, 2021 and this Adjudicating Authority directed that a joint meeting will be held on 20<sup>th</sup> March 2021 when all the documents will be handed over by the contemnors.

5. It is submitted that the joint meeting was held on 20<sup>th</sup> March, 2021 which was attended by the Liquidator, the Contemnor no.1 (Director), Advocate of the Liquidator and Advocate of Contemnor no.1 and 2 and members from the liquidator team. It was agreed that the Respondent Directors/ Contemnors would provide the information without fail within a period of 7 days from the date of the meeting.

6. It is further submitted that Liquidator vide its email dated 26<sup>th</sup> March, 2021 informed the Contemnors as well as the Advocate of the Contemnors that he will send his representatives on 27<sup>th</sup> March, 2021 at 11 am at the Registered Office of the Corporate Debtor to collect the documents as per the letter dated 19<sup>th</sup> March, 2021. The RP vide his email dated 27<sup>th</sup> March, 2021 placed on record that there was no response to his email of 26<sup>th</sup> March, 2021 and no documents were handed over.

7. It is submitted that section 70 application was listed on 5<sup>th</sup> April, 2021 when the contemnors were directed to be present vide e-hearing on the next

date which was fixed on 7<sup>th</sup> April, 2021. In the e-hearing on 7<sup>th</sup> April, 2021, the contemnors/Directors appeared before this Adjudicating Authority, and agreed and undertook to cooperate and provide all documents sought for by the Liquidator within 15 days. The 15<sup>th</sup> day expired on 22<sup>nd</sup> April, 2021 but no information was provided.

8. It is submitted that pursuant to the directions of this Adjudicating Authority and the assurances given by the Contemnors, the Liquidator vide its letters dated 3<sup>rd</sup> May, 2021, 21<sup>st</sup> May 2021, 16<sup>th</sup> June 2021 and 28<sup>th</sup> July, 2021 called upon the Contemnors to provide all the documents but no document or information has been provided. The Applicant stated that there is clear violation of the order dated 7<sup>th</sup> October, 2020, 18<sup>th</sup> March, 2021 and 7<sup>th</sup> April, 2021. Such violation is intentional and deliberate. The RP/applicant has thus prayed for initiation of contempt proceeding against the contemnors/ Respondents for willfully and deliberately disobeying the aforesaid orders of this Adjudicating Authority passed in IA No. 703 of 2020 and IA No. 1430 of 2020 and Issuance of appropriate rule against the contemnors; and in case of dissatisfactory explanation or insufficient cause being shown, such rule be made absolute with appropriate penal sanction as this Adjudicating Authority may deem fit and proper; It is further prayed that Contemnors be directed to comply with orders dated 7<sup>th</sup> October, 2020 (in IA No. 703 of 2020), 18<sup>th</sup> March, 2021 and 7<sup>th</sup> April, 2021 (in IA No. 1430 of 2020) of this Adjudicating Authority within a period of 7 days in the interest of justice; Initiate inspection of the books of the Corporate Debtor under Section 210 of the Companies Act, 2013.

9. For the purpose of dealing with the issues involved, this Adjudicating Authority will have to first ascertain whether the contemnors named in this application have actually intended to commit contempt of this Adjudicating Authority by willfully or deliberately disobeying the orders passed by this Adjudicating Authority from time to time. For this purpose, the relevant extract of the orders passed by this bench are reproduced as under:-

**07<sup>th</sup> October, 2020**

- “ 1. Heard the Ld. RP. Perused the records.
2. It is submitted by the RP that suspended Directors of the Board of Directors of the Corporate Debtor are not cooperating with him by providing books of account and other necessary documents.
3. We are directing the respondents to hand over all necessary documents and books of account to the RP within 7 days from today without fail. This order has been passed without considering any allegations against them. IA stands disposed of accordingly.
4. Main matter to appear on 05/11/2020.
5. The Registry is directed to send e-mail copy of the order forthwith to all the parties inclusive of the counsel”.

**18<sup>th</sup> March,2021**

**“IA/1430(KB)/2020**

- (a) This is an application filed by the RP u/s 70 of the Insolvency and Bankruptcy Code, 2016 against the respondents praying for necessary directions for deliberate non-cooperation and blatant disregard of the orders of this Adjudicating Authority.
- (b) After hearing both sides following directions are passed:
- (i) RP shall immediately write to the bankers of the Corporate Debtor and take charge of the bank accounts of the Corporate Debtor;
  - (ii) Members of the suspended Board of Directors of the Corporate Debtor shall extend all cooperation to the RP. RP and the members of the suspended Board of Directors of the Corporate Debtor shall remain present at the Registered Office of the Company on Saturday, the 20/03/2021 at 11 A.M. wherein the members of the suspended Board of Directors shall identify and handover the documents listed at page 53 of the application, to the RP;
  - (iii) The computer of the Corporate Debtor where the accounts are stored shall be made immediately operational and physical access to the computer shall be handed over to the RP without fail;

- (iv) *A meeting to be held at the Registered Office on 20/03/2021 and a list of Documents that are required to be handed over to the RP and separately to the Transaction and Forensic Auditor and Valuer appointed for the purpose shall be drawn up and handed over to the members of the suspended Board of Directors, who shall take steps to ensure that the documents in question reach the persons concerned within a period of 10 days thereafter, i.e. on or before 31/03/2021 positively, failing which adverse consequences follow.*
- (v) *List this matter on 05/04/2021 for reporting compliance”.*

**7<sup>th</sup> April,2021**

**ORDER**

*“ The Ld. Counsel for the Liquidator is present. The Liquidator is present. The Ld. Counsel for the members of the suspended Board is present.*

*Shri Om Prakash Pandey and Shri Sri Prakash Pandey, Members of the suspended Board are present, in compliance of the Order dated 5<sup>th</sup> April, 2021.Both Shri Om Prakash Pandey and Shri Sri Prakash Pandey have assured to extend fullest possible cooperation to the Liquidator in the liquidation process of the Corporate Debtor. They have specifically assured the Bench that the documents and clarifications sought for by the Liquidator vide letter dated 19<sup>th</sup> March, 2021, shall be made available to the Liquidator within 15 days positively.*

*List the matter for further consideration on 7<sup>th</sup> May, 2021. On that date also the members of the suspended Board shall be made present”*

9. On 25<sup>th</sup> November, 2021 while referring to the previous orders whereby these two suspended members of the Board of Directors of the Corporate Debtor Mr. Om Prakash Pandey and Mr. Shree Prakash Pandey has been directed to comply with the orders, which was informed by the Ld. Counsel for the Liquidator that they had not turned up or handover any documents or information to the Liquidator as directed on 7<sup>th</sup> April, 2021. Therefore, in the order dated 25<sup>th</sup> November, 2021, it was recorded as under:-

**25<sup>th</sup> November, 2021**

“ (a).....

(b) *The violation of the orders of this Bench is a serious matter. The Liquidator is an officer of the Court, who was entrusted with the Liquidation Process of the Corporate Debtor by this Adjudicating Authority and any non-cooperation by the ex-director would entail action under the Contempt of Court Act. Therefore, suspended members of the Board are once again directed to comply with the order dated 07.04.2021 within 10 days from today to avoid any adverse order from this Adjudicating Authority, and they have directed to be present in person on the next date of hearing.*

(c) *RP is directed to serve a copy of this order personally on the suspended members of the Board.”*

10. On 15<sup>th</sup> February, 2022, when this Contempt Application was listed before this Adjudicating Authority, the Ld. Counsel for the respondent sought 10 days' time to file reply and the matter was posted for hearing on 2<sup>nd</sup> March, 2022. On 2<sup>nd</sup> March, 2022, it was recorded by this Bench that the respondents had handover some documents relating to the Corporate Debtor to the Liquidator and that these documents shall be examined by the Liquidator by the Liquidator and if any other documents are required from the respondents, the Liquidator will send an e-mail to the respondents for such handing over those documents to the Liquidator.

11. The matter was then listed on 22<sup>nd</sup> March, 2022, the Respondents was present in court and they were directed to meet the Liquidator in the evening at 5 P.M. at his office and give an information required by the Liquidator and if there are any documents to be handed over to the Liquidator, the same can be handed over within two day.

12. Finally the matter was posted on 28<sup>th</sup> March, 2022 both the aforesaid suspended Directors were present when the Liquidator informed this Adjudicating Authority that the information given by the Respondents was not to the satisfaction of the Liquidator and that there is much more required to be given by the Contemnors.

13. Before taking any further action, this Bench thought it proper to give another chance to provide all the information to the Liquidators within three days. Therefore, we directed the respondents to go to the office of the Liquidator, the next date and handover whatever information they have to the Liquidator in the supervision of one independent person Mr. Rohit Kumar Keshari, Advocate who was appointed as Special Officer. The matter was thereafter posted for 7<sup>th</sup> April, 2022

14. The Special Officer in its report dated 6<sup>th</sup> April, 2022 has submitted his report. The relevant extract of the Report is mentioned as under:-

“ 4. During the meeting Ld. Liquidator clarified that he had received following List of documents from the Suspended Board of Directors which are detailed herein below:-

- a. Hard disk Containing Tally Data
- b. A Copy of Audited Balance sheet till 31.03.2019
- c. Information and custody of Registered Office.
- d. Information regarding the warehouse of the stock.
- e. Incomplete details of the Debtors List.

5. On Receipt of the aforesaid documents the Liquidator informed that the Following documents and details further needed in addition to the documents / details provided above for Liquidation and for Creditors Value enhancement which are detailed herein below:-

- a. Clarification for Journal/Ledger entries passed in the tally along with the sales/Purchase invoices, supporting narrations since 16.03.2020.
- b. Full Particulars of Debtors along with the PAN, Address and Phone Numbers.
- c. Invoices / status and details of amount paid in Advance.
- d. Clarification for Under Valued Transactions.

- e. Details and handover of Custody of the Vehicle and Machines.
- f. Handover of cash in hand as per ledger.
- g. Identification of stock available in the Rented Godown.

6. Thereafter, around 4 pm on 31.03.2022, I met Mr. Om Prakash Pandey on behalf of the Suspended Board of Directors at my Office and after discussion at length he assured the following documents/ details will be provided by 01.04.2022:-

- a. Copies of Sales and Purchase Invoices of the transactions detailed in the Journal and ledger, which are self explanatory and going to clarify Query detailed in Paragraph 5(a), (c) and (d) of the aforesaid query of the Liquidator.
- b. Full Particulars of Debtors along with PAN and Contact details as per Para 5(b).
- c. Details of the Vehicle and Machines as per para 5(e) will be provided by 01.04.2022 and handover the Custody of the Vehicle and Machinery by 04.04.2022.
- d. Cash as per Ledger will be hand over to the Liquidator before 04.04.2022.
- e. The Identification of stock of the Company lying at the Rented Godown will be done by 04.04.2022 accompanying Mr. Dutta.

7. Thereafter, on a Conference Call with both the parties it was agreed, that the aforesaid Documents will be handed over by Mr. Om Prakash Pandey on behalf of the Suspended Board of Directors to the Ld. Liquidator Mr. Kanchan Dutta in my presence at my office on 01.04.2022.

8. As agreed the meeting with Mr. Om Prakash Pandey, representing the Suspended Board of Director and the Ld. Liquidator held on 01.04.2022 in my presence and following documents handed over by the Suspended Board of Directors:-

- a. Sale Bill (14-15)- File-1,2,and 3
- b. Purchase Bill( 14-15) File-1
- c. Purchase Bill (15-16) –File 1 and 2
- d. Purchase Bill (1-17)-file 1and 2
- e. Sale Bill (16-17)-file 1,2,and 3
- f. Purchase Bill (17-18) File No.1

- g. Sale Bill (17-18) File No. 1
- h. Purchase Bill (18-19) File No. 1
- i. Sale Bill (18-19) File No. 1 & 2
- j. Purchase Bill (19-20) File No.1
- k. Sale Bill (19-20) File No.1 and 2

15. Mr. O.P. Pandey representing the Suspended Board of Directors assured that in furtherance to the aforesaid documents already handed over further following documents/ Details he will provided:-

1. Sale Bill ( for the period 2015-2016)- Due not submitted by 04.04.2022
2. Custody of the Vehicle and Machines by 04.04.2022,
3. Cash as per Ledger ( approximately Rs. 29,000) will be hand over to the Liquidator on 05.04.2022 by 10 am.
4. The Identification of stock of the Company will be done by Mr. Pandey to Mr. Dutta on 04.04.2022.

Copies of the email Communication between the parties since 29.03.2022 to 05.03.2022 is annexed as Annexure "A-1".

16. But Mr. Om Prakash Pandey unable to hand over any documents/ information as per the aforesaid Query/details in paragraph 9 of this Report and in place of the same he send an email on 05.04.2022 around 3.45 P.M. which itself self explanatory. A Copy of the instant email is annexed as Annexure- "A-2".

17. In furtherance to the aforesaid facts, it is stated that the other member of the suspended Board never turned up a single day, but his Legal representative stated that has recently got operated so unable to come physically"

18. From the report of the Special Officer, it would be revealed that the Respondents have failed to provide the following items:-

- "a. Hard disk Containing Tally Data
- b. A Copy of Audited Balance sheet till 31.03.2019
- c. Information and custody of Registered Office.
- d. Information regarding the warehouse of the stock.
- e. Incomplete details of the Debtors List".

19. In view of the commitment of Mr. O.P.Pandey, one of the suspended Directors, was directed to hand over the aforesaid items, which he had assured to give but not given so far.

20. In spite of the aforesaid assurance of the Respondent Mr. O.P.Pandey, the aforesaid items have not been handed over thereby violating the orders of this Adjudicating Authority.

21. We, therefore, issue notice to the Respondents, namely, Om Prakash Pandey and Shri Prakash Pandey to appear before this Adjudicating Authority personally on **31/08/2022**.

22. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (Technical)**

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

Order signed on this, the 18<sup>th</sup> day of July, 2022

PJ.