

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

IA. 1678/2021
In
C.P. No. -921(ND)/2020

In the matter of:

RBL Bank Ltd.

...Financial Creditors

Versus

M/s Gem Batteries Pvt. Ltd.

...Corporate Debtor

Memo Of Parties:

Chandra Prakash
R/o 812, Indraprakash Building
Barakhamba Road
Delhi-110001

...Applicant/IRP (now Liquidator)

Versus

1. Mr Rahul Gupta,
1-6, 1st & 2nd Floor,
Lajpat Nagar, Delhi-110024

2. Ms. Divya Gupta,
1-6, 1st & 2nd Floor,
Lajpat Nagar, Delhi-110024

3. Mr. Mahesh Aggarwal
602, Rohit House,
Barakhamba Road,
Cannaught Place
Delhi-110001

Respondents

1

RD

Order delivered on 07.06.2022

Coram:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Shri Narender Kumar Bhola
Hon'ble Member (Technical)

Applicant

Adv. Sandeep Jha with Mr. Chandra Prakash
(IRP).

For respondents

Adv Avtaar Singh

ORDER

Per: NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

&

**Per: BACHU VENKAT BALARAM DAS, MEMBER
(JUDICIAL)**

1. The present application has been filed by the Applicant u/s 19(2) r/w 19(3) of the Insolvency and Bankruptcy Code, 2016 and rule 11 of NCLT Rules, 2016 for issuance of necessary directions to the directors/personnel/statutory auditors of the respondents to comply with the instructions of the applicant and/or to provide the requisite information to the applicant in discharging his duties as an interim resolution professional under the code. Respondent No. 1 and 2 are the ex-directors of the company under liquidation and Respondent No. 3 is the auditor of the company. However, no relief is claimed as against Respondent No. 3.
2. The facts that led to the filing of the present contempt application are as follows:
 - a. It is submitted that the CIRP of corporate debtor was initiated by this authority vide order dated 01.12.2020 and applicant was appointed as IRP vide same order. It is stated that as per the



2

provisions of IBC, 2016, the applicant made the public announcement on 09.12.2020 and the order dated 01.12.2020 was also intimated to the suspended director via e-mail and vide email dated 21.12.2020, the applicant also sent another email to the suspended board which contained the checklist of documents that were urgently required by the applicant for CIR Process. Furthermore, the reminder was sent on 12.01.2021 and 24.03.2021, however, despite the repeated reminder, the respondents has not provided the required information.

- b. It is further stated that following documents were not provided by the respondents till the date of filing of the present application:
- i. List of all litigation cases pending in different courts of India including original files, contact details of advocates etc.
 - ii. List with contact details of all the debtors.
 - iii. Details of all security receipts from Govt. Departments.
 - iv. Signed minute book of all meetings since incorporation Board of Director/AGM/EGM etc.
 - v. All Statutory registers required under the Companies act including but not limited to the following--Fixed asset register, Register of Members, share transfer register, Register of Contracts, Register of Investments etc.
 - vi. Annexure V of form 20B/ All Original Share Certificate/All Original Share Transfer Deeds
 - vii. Original Challans/Receipts of all documents filed with ROC
 - viii Common Seal and common seal register.



- ix. Printout of Book of Accounts since incorporation duly signed and authenticated.
 - x. Inventory register
 - xi. Related party transactions
 - xii. Details of any place where books of accounts are kept, other than Registered office of the company, along with necessary information to the ROC/MCA
 - xiii. All documents pertaining to income tax of the company including details of demands raised by IT, Original PAN and Original TAN of the company.
 - xiv. All documents pertaining to Sales Tax/CSTNAT/Service tax/Central Excise/Custom/Any other department including original registration certificates, original challans since inception, details and status of pending assessments, penalties imposed, all statutory registers/records required to be maintained under the act
 - xv. List of all agreements, original copies of agreements. Agreements against ICD, investments or any other legal agreement.
 - xvi. Contracts executed with any agency/service provider
 - xvii. Details of all government approvals
 - xviii. Details of All bank accounts/FDRs and Lockers.
- c. It is averred that 1st CoC meeting was called on 04.01.2021 and same was intimated suspended directors and CoC was also apprised by the applicant regarding the conduct of erstwhile management and it was decided in the same CoC to seek the appropriate directions from Hon'ble NCLT u/s 19(2) and 19(3)



of IBC, 2016 against the suspended directors and other personnel. Therefore, the present application.

3. The Respondent nos. 1 & 2 has filed the reply to the present application and raised the question regarding maintainability of present application and further submitted that the applicant nowhere disclosed the documents/information provided by the answering respondent through email. It is stated that the information is provided from time to time and detail of the same is discussed below:

i. List of all litigation cases pending in different courts of India including original files, contact details of advocates etc: The said information was provided by the answering Respondent to the Applicant/Resolution Professional vide their emails dated 21.01.2021, 25.03.2021 and 02.07.2021.

ii. List with contact details of all the debtors: The said information was provided by the answering Respondents No. 1 & 2 vide their email dated 02.07.2021.

iii. Details of all security receipts from Govt Departments: The said information was provided by the answering Respondent vide their email dated 2.03.2021. However, the said information can also be obtained from the respective government authorities.

iv. Signed minute book of all meetings since incorporation Board of Director/AGM/EGM etc: It is submitted that the signed minutes book of the Corporate Debtor were lying in the Factory premises at Baddi, which has been closed since the last 4 years.

The said information was informed by the answering



Respondents No. 1 & 2 to the Applicant/Resolution Professional vide their email dated 25.03.2021

v. All Statutory registers required under the Companies act including but not limited to the following--Fixed asset register, Register of Members, Share transfer register, Register of Contracts, Register of Investments etc: It is submitted that these documents are lying in the Factory premises at Baddi, which has been closed since the last 4 years. The said information was provided by the answering Respondents No. 1 & 2 to the Applicant/Resolution Professional vide their email dated 25.03.2021.

vi. Annexure V of form 20B/All Original Share Certificate/All Original Share Transfer Deeds g) Original Challans/Receipts of all documents filed with ROC h) Common Seal and common seal register: It is submitted that these documents are lying in the Factory premises at Baddi, which has been closed since the last 4 years. The said information was informed by the answering respondents to the applicant vide email dated 25.03.2021. As regards the original share certificates, the same being the property of the individual shareholders, cannot be asked/availed by the applicant.

vii. Original challan/receipts of all documents filed with RoC: The answering Respondents No. 1 & 2 have already provided various forms which have so far been filed with the ROC i.e. Form No. 20B, Form 8, Form 32, Form 23AC, Form AOC. The said forms were again downloaded by the answering Respondents No. 1 & 2 and provided to the



Applicant/Resolution Professional vide their email dated 27.01.2021.

viii. Common Seal and Common Seal register: It is submitted that the common seal and common seal register of the Corporate Debtor are lying in the Factory premises at Baddi which has been closed since the last 4 years.

ix. Printout of Book of Accounts since incorporation duly signed and authenticated: It is submitted that the Printed books of accounts were lost in Transit when operations in Baddi unit was closed and documents were sent to registered address in Delhi. The soft copy of the Books maintained in tally software have been shared by the answering respondents to the applicants vide their email dated 25.05.2021.

x. Inventory register: These documents were lying in the Factory in Baddi, which has been closed since last 4 years. The said information was given by the answering Respondents No. I & 2 to the Applicant/Resolution Professional vide their email dated 25.03.2021.

xi. Related party transactions: The information with respect to the Related Party Transactions, the same were disclosed in Audit Report and Audited Financial Statements along with Reports of last 5 years. The aforesaid documents were duly shared by the answering Respondents No. I & 2 to the Applicant/Resolution Professional vide their email dated 27.01.2021. However, the Audit Reports are public documents and can be obtained. The same reply was also sent by the answering respondents to applicants vide email dated 25.03.2021.



xii. Details of any place where books of accounts are kept, other than Registered office of the company, along with necessary information to the ROC/MCA : There is no other place other than the registered office where the books of accounts of the corporate debtor are kept.

xiii. All documents pertaining to income tax of the company including details of demands raised by IT, Original PAN and Original TAN of the company: The answering Respondents No. 1 & 2 have already provided the Income Tax Returns & Acknowledgements of last 3 years to the Applicant/Resolution Professional. It is submitted that there is only one outstanding demand of Rs. 5,94,503/- for AY 2007-08. The said information was provided by the answering Respondents No. 1 & 2 to the Applicant/Resolution Professional vide their email dated 25.03.2021

xiv. All documents pertaining to Sales Tax/CST/NAT/Service tax/Central Excise/Custom/Any other department including original registration certificates, original challans since inception, details and status of pending assessments, penalties imposed, All statutory registers/records required to be maintained under the act: These documents were lying in the Factory in Baddi which has been closed since last 4 years. The said information was provided by the answering Respondents No. 1 & 2 to the Applicant/Resolution Professional vide their email dated 25.03.2021.

xv. List of all agreements, original copies of agreements. Agreements against ICD, investments or any other legal



agreement: These documents were lying in the Factory in Baddi which has been closed since last 4 years. The said information was provided by the answering Respondents No. 1 & 2 to the Applicant/Resolution Professional vide their email dated 25.03.2021.

xvi. Contracts executed with any agency/service provider: All the contracts executed with the agency/services provider are lying in the Factory premises at Baddi which has been closed since the last 4 years. The said information was provided by the answering Respondents No. 1 & 2 to the Applicant/Resolution Professional vide their email dated 25.03.2021.

xvii. Details of all government approvals: These documents are lying in the Factory premises at Baddi which has been closed since the last 4 years. The said information was provided by the answering Respondents No. 1 & 2 to the Applicant/Resolution Professional vide their email dated 25.03.2021

xviii. Details of All bank accounts/FDR's and Lockers: The details of all Bank accounts, were already shared by the answering Respondents No. 1 & 2 to the Applicant/Resolution Professional. The answering Respondents No. 1 & 2 were having check book of only one account which was physically handed over by the answering Respondent to the Applicant/Resolution Professional. The said information was provided by the answering Respondents No, 1 & 2 to the Applicant/Resolution Professional vide their email dated 25.03.2021



At the end it is submitted that since all the information as sought by the applicant has been provided by the answering respondents, therefore, the application is not maintainable.

4. The Respondent has relied on email dated 21.01.2021, which it sent to IRP with an attachment regarding List of all litigation cases pending in different courts of India and the information furnished by the respondent is extracted below:

**Details of pending cases/decided cases u/s 138 N.I. Act/
Consumer courts**

Decided cases:

1. Gem batteries versus Fateh Batteries Matter settled in Sep, 2016 Settlement amount: Rs. 1,88,281/-.
2. Gem batteries versus B.B.S Matter settled in Oct, 2016 Settlement amount: Rs. 1,94,164/-.
3. Gem batteries versus Savitri Sales Matter settled in Nov, 2016 Settlement amount: Rs. 1,49,152/-.
4. Gem batteries versus Preet Enterprises Matter settled in Feb, 2017 Settlement amount: Rs. 1,75,000/-.
5. Gem Batteries versus Suresh Electricals. Matter settled in Sep, 2017. Withdrawn on 24-11-2017 in Court.
6. Gem Batteries versus DD enterprises Matter settled in Dec.2017. Settlement amount Rs. 90,000/- case withdrawn.
7. Gem batteries versus Mandhani batteries Matter settled in March, 2018. Settlement amount Rs. 1,00,000/-.
8. Gem batteries versus Asian batteries Matter settled in April, 2018. Settlement amount Rs.2,61,022/-.



10

9. Gem batteries versus Bhatia battery Matter settled in March, 2018. Settlement amount Rs.1,71,833/-.
10. Gem batteries versus Garg Light House Matter settled in July, 2018. Settlement amount Rs.2,60,000/-.
11. Gem batteries versus Royal traders. Matter settled in January, 2019.
12. Gem Batteries versus Arun Garg Matter settled in April, 2019.
13. Gem Batteries versus S.R. Enterprises matter settled in April, 2019.
14. Gem Batteries versus Jaiswal Enterprises. Matter settled in Aug, 2019.
15. Gem Batteries versus Ahinsa Trade. Matter settled in Aug, 2019.

ALL ABOVE CASES ARE U/S 138 N.I. ACT

PENDING CASES:-

16. Gem Batteries versus Deep Power system
17. Gem Batteries versus Invertor Plaza.
18. Gem Batteries versus New National Batteries.
19. Gem Batteries versus Maa Rukhmani Electronics.
20. Gem Batteries versus India Associates.
21. State Verus Suhbeer.
22. State versus Derby Overseas & ors. (FIR NO. 0003/2020);
P.S. BARAKHAMBHA ROAD
23. Gem Batteries versus Sidhivinak.
24. Gem Batteries versus Shiva Electricals
25. Gem Batteries versus Jaiswal Battery Center.

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26. Gem Batteries versus Light House.
27. Gem Batteries versus Maanik.
28. Gem Batteries versus Sumit Enterprises.
29. Gem Batteries versus Binnary.
30. Gem Batteries versus Metro
31. Gem Batteries versus Shreeshyam.
32. Gem Batteries versus Samrat.
33. Gem Batteries versus Gee Emm.
34. Gem Versus Varun Gupta.
35. Gem Batteries versus Sushil (Mudki)
36. Gem Batteries versus Ranjan Kumar Singh.
37. Gem Batteries versus Eden
38. Gem Batteries versus P.K Batteries
39. Gem Batteries versus Shiv Gupta.
40. Gem Batteries versus Preet Mohinder Singh.
41. Gem Batteries versus Raj Kumar Khattar.
42. Gem Batteries versus Pawan Jain.
43. Gem Batteries versus India Associates.
44. Gem Batteries versus Singh Batteries.
45. Gem Batteries versus India Associates
46. Gem Batteries versus Dikmo Enterprises.

CASES FILED AGAINST GEM BATTERIES

47. Brijprasad versus Gem Batteries. (Civil Appeal).

CONSUMER COURT CASES BARELLEY:-

48. Yaseen Verus Gem Batteries
49. Promod Kumar Verus Gem Batteries
50. Yashpal Verus Gem Batteries



51. Ramnath Verus Gem Batteries
52. Ravinder Verus Gem Batteries
53. Bhanupratap Verus Gem Batteries
54. Satyapal Verus Gem Batteries
55. Ramkanojia Verus Gem Batteries
56. Saras Kumar Verus Gem Batteries
57. Lakhpal Verus Gem Batteries
58. Narenderpal Verus Gem Batteries
59. Munish Verus Gem Batteries
60. Saurabh Sharma Verus Gem Batteries
61. Anmol Verus Gem Batteries
62. Anoop Verus Gem Batteries
63. Devender Verus Gem Batteries
64. Sunil kumar Verus Gem Batteries
65. Chatte lal Verus Gem Batteries
66. Jasbir Ansari Verus Gem Batteries

Note:- cases no. 62-64 were already decided before June, 2018. These three are execution petitions.

STATE COMMISSION LUCKNOW:-

67. Gem Batteries Versus Amit Saxena.
68. Gem Batteries Versus Ashotosh Tyagi.
69. Gem Batteries Versus Varsha Tyagi.
70. Gem Batteries Versus Vibhuti Tyagi.
71. Gem Batteries Versus Amit Mathur.
72. Gem Batteries Versus Naresh Pal.
73. Gem Batteries Versus Ali Ahmad.
74. Gem Batteries Versus Vedpal.



UPDATED TILL SEPTEMBER, 2020

The answering respondents also relied on Annexure R-1 and submitted that they have provided the information from time to time, for instance, the details of the debtors are as follows as evident from email exchanged:

- i. Krishan Enterprises.
- ii. Servotech Power Systems Pvt. Ltd.
- iii. Krishna Kripa Trading Co.
- iv. Swami Associates.
- v. R K. INTERNATIONAL
- vi. Maha Shakti Enterprises.
- vii. Naviya Technologies.
- viii. Aryan Distributors.
- ix. Deep Power Systems.
- x. Shakti Stabilizer & Inverter.
- xi. Binary Electricals Pvt Ltd.
- xii. S.K. Refrigeration & Electricals.
- xiii. Ganga Traders.
- xiv. Shree Shyam Traders
- xv. Jaiswal Battery Center
- xvi. DIKMO ENTERPRISES
- xvii. Siddhi Vinayak Enterprises
- xviii. Payal Enterprises
- xix. Maa Durga Electrical
- xx. Dudwa Power Industries
- xxi. Shiva Electricals
- xxii. Varanasi Electronics



- xxiii. Vincent Solar Energy
- xxiv. Balaji Metal Industries
- xxv. Hariom Power Solution

5. The applicant also filed rejoinder and submitted that despite categorical direction to provide all information/documents as listed in ANNEXURE 6 of the Application, the Respondents have not only failed to provide the requisite information but also trying to evade the legal duty cast upon the Respondents. It is stated that the Respondent No. 1 & 2 are trying to mislead this Hon'ble Tribunal by citing the reason of not sharing most of the information as closure of their factory premises at Baddi. Whereas, it is an admitted fact by the Respondents in reply to query at S. No. (xii) under para 6 where the same Respondents have stated that books of accounts of the Corporate Debtor were kept at the registered office only. It is submitted that registered office of the Corporate Debtor was different from the factory premises. This demonstrates the mala-fide of Respondent No.1 & 2 in creating obstruction in Insolvency process of Corporate Debtor. It is further argued that the respondent no.1 and 2 have created a fresh excuse to wriggle out of legal duty and in order to hide their wrongdoing and during CIRP the respondent has submitted the he is trying to collate the information and it is being delayed because of death of accountant and non-cooperation of chartered accountant. The respondents have taken a new ground of factory being locked for 4 years in reply. Such conduct is



violative of process and respondents no.1 and 2 have already been declared defaulters as per RBI norms.

6. It is pertinent to mention that this adjudicating authority vide order dated 25.11.2021 directed respondent no.1 and 2 to provide the information/documents as listed in email marked as annexure-6 within 15 days from the date of this order and shall also file the affidavit in respect to the same. The respondent no.1 and 2 have filed the affidavit in compliance to the said direction of this adjudicating authority.
7. This Adjudicating Authority after going through the pleadings vide order dated 14.03.2022 sought certain clarification, the extract of the said order is reproduced below:

“The matter was listed for seeking certain clarification from the Liquidator in the matter who is present in person. He has been asked to give the list of the most essential records and documents relating to the Corporate Debtor under liquidation which according to him are essential for proceeding towards the recovery of the assets of the Company and the said documents/records have not been provided by the ex-Director. Let this be done within 10 days. The Liquidator is directed to file the list and documents within the said time with a copy to be given to Counsel for ex-Directors for their information.”

8. In compliance of above order, the applicant filed an additional affidavit and sought for following documents:
 1. List of all litigation cases pending in different courts of India including original files, contact details of advocates etc.
 2. List with contact details of all the debtors.
 3. Details of all security receipts from Government Departments.



4. Signed minutes book of all meetings since incorporation (Board of Director/AGM/EGM etc.) along with common seal and common seal register.
5. All statutory register required under the Companies Act including but not limited to the following—Fixed Asset Register, Register of Members, Share Transfer Register, Registrar of Contracts, Register of Investments etc.
6. Annexure V of Form 20B/All Original Share Certificate/All Original Share Transfer Deeds.
7. Original challan/receipts of all documents filed with ROC
8. Printout of Books of Accounts since incorporation duly signed and authenticated.
9. Inventory Register
10. Related Party Transactions
11. All documents pertaining to income tax of the company including details of demands raised by IT, original TAN of the Company
12. All document pertaining to sales Tax/SCT/VAT/Services Tax/Central Excise/Custom/Any other department including original registration certificates, original challans since inception, details and status of pending assessments, penalties imposed, all statutory registers/records required to be maintained under the Act.
13. List of all agreements, original copies of agreements, agreements against ICD, investments or any other legal agreement.
14. Details of all Bank Accounts/FDRs and Lockers.



9. The Respondent no.1 and 2 also filed counter to the above said Affidavit and provided item wise reply which are as follows:

1. **List of all litigation cases pending in different courts of India including original files, contact details of advocates etc.:**

List already provided to the Applicant as annexed to the Rejoinder of the Applicant as Annexure A-2 (from page 18 to page 24). Further, the Applicant could have approached the Advocate from onwards 21.01.2021 (email-date for sharing of list as well as contact details of the Advocate) for seeking original files of all said cases from the said Advocate, which being the duty of the Applicant himself under the Code, the Respondent believe, has still not been done by the Applicant himself.

2. **List with contact details of all the debtors.:** Complete List of debtors was provided by the Respondents to the Applicant, out of which, again names of 25 debtors was asked by the Applicant for seeking their complete addresses along with case-status (as mentioned at point 9 of email dated 02.06.2021 at page 32 & 33 of Reply filed by Respondents), to which, the Respondents further replied vide email dated 02.07.2021 along with complete list 25 debtors (as stated in email dated 02.07.2021 at page 31 of the Reply filed by the respondents).

3. **Details of all security receipts from Government Departments.** It has already been informed to the Liquidator that there are no security receipts of the corporate debtor and are therefore not available with the respondents.

4. **Signed minutes book of all meetings since incorporation (Board of Director/AGM/EGM etc.) along with common seal**



18

and common seal register. As regards the requirement of signed Minutes Book of all meetings since incorporation, the Respondents humbly state that the same are neither available since inception, nor may form part of the most essential record for conducting liquidation as specifically stated in the Order dated 14.03.2022 of the Hon'ble Tribunal. Further, regarding the requirement of Common Seal and its register, it is to apprise that the mandatory requirement of having a common seal and its usage has already been done away with by virtue of the amendments under the Companies (Amendment) Act, 2015 w.e.f. 29.05.2015 (proviso to sub-section (2) of section 22 of Companies Act, 2013)

5. **All statutory register required under the Companies Act including but not limited to the following— Fixed Asset Register, Register of Members, Share Transfer Register, Registrar of Contracts, Register of Investments etc.**

6. **Annexure V of Form 20B/All Original Share Certificate/All Original Share Transfer Deeds**. As regards the requirement of Annexure - V of Form 20B, the respondents state that all such Form-20B have already been provided to the Applicant (as stated in email dated 27.01.2021 at Page 44 of the Reply filed by the Respondents). Further, as regards Original Share Certificates, the Respondents humbly states that the original share certificates are the property of the shareholders only, and no person under the authority of any law, can ask to surrender the original share certificates from the shareholders of a company. Furthermore, as regards the said requirement of Form 20B and original share transfer deeds, the Respondents humbly states that the same may



19

not form part of the most essential record for conducting liquidation as specifically stated in the order dated 14.03.2022 of the Hon'ble Tribunal.

7. Original challan/receipts of all documents filed with ROC:

As regards the said requirement of original challan/receipts of all documents filed with the ROC, the respondents humbly states that the same may not form part of the most essential record for conducting liquidation as specifically stated in the order dated 14.03.2022 of the Hon'ble Tribunal

8. Printout of Books of Account since incorporation duly signed and authenticated.: The Respondents state that all the financial data including the books of accounts have been provided to the Applicant by way of tally data along with the branch-wise passwords through several emails (as attached from page 45 to 48 of the Reply of the Respondents). The said fact is even acknowledged and evidenced by the email of the Transaction Auditor (as stated by him in the first line of point no. 10 of the email dated 02.06.2021 at Page no. 32 & 33 of the Reply filed by the Respondents) Further, it is pertinent to note that, basis only the said data so provided by the Respondents, the Applicant has got the transaction audit conducted, and pursuant to which, the Applicant has filed another application for alleged fraudulent transaction against the respondents bearing no. IA-5984/2021, which is pending adjudicating before this Hon'ble Court.

9. Inventory Register. Since the Corporate Debtor Company is already closed from last 3-4 years, therefore, there has been no inventory register so made by the company for the last few years.

10. **Related Party Transactions.** It has been informed to the Applicant that the related party transactions are limited to salary to Directors only and the same can also be checked from the Tax Audit reports of Corporate Debtor company as already submitted to the Applicant (as specifically stated at point no. 11 of the email dated 25.03.2021 at Page 24 of the Reply filed by the Respondents).

11. **All documents pertaining to income tax of the company including details of demands raised by IT, original TAN of the Company:** As regards the documents pertaining to income tax of the company, the Respondents humbly states that they have already provided all the Tax Audit Reports, Income Tax Returns and Financial Statements to the Applicant (as specifically stated at point no. 11 & 13 of the email dated 25.03.2021 at Page 24 and also through email dated 27.01.2021 at page 38 of the of the reply filed by the respondents. As regards the details of demands raise by IT, the respondents humbly states that they have also provided the details of a one outstanding demand of Rs. 5,94,503/- for AY 2007-2008 along with its IT Notice, as being only remaining outstanding against the Corporate Debtor company (as specifically stated at point no. 13 of the email dated 25.03.2021 at Page 24 of the Reply field by the Respondents). As regards the Original PAN & TAN, the Respondents humbly state that the same are not available with them, however, the said PAN and TAN numbers have already been provided to the Applicant, thereby, causing no impediment or detriment to him for conducting the liquidation process smoothly.



21

12. All document pertaining to sales Tax/SCT/VAT/Services Tax/Central Excise/Custom/Any other department including original registration certificates, original challans since inception, details and status of pending assessments, penalties imposed, all statutory registers/records required to be maintained under the Act. The said requirement of the Applicant is too general, seeking all documents since inception, without even mentioning the name of the governing Act, and rather many of which requirements are already provided by the Respondents as mentioned in their foregoing reply-paras. Also, the respondents humbly states that the same may not form part of the most essential record for conducting the liquidation as specifically stated in the order dated 14.03.2022 of the Hon'ble Tribunal.

13. List of all agreements, original copies of agreements, agreements against ICD, investments or any other legal agreement.

14. Details of all Bank Accounts/FCR's and Lockers. The Respondents humbly states that the details of all the bank accounts have already been provided to the Applicant as is evident from the email of the Respondents (reply to point no. 18 of the email dated 25.03.2021 at Page 25 of the Reply field by the Respondents) wherein even the handover of the cheque book has also been mentioned. Further, the said providing of all Bank Accounts can also be evidenced and reflected from the email of the Transaction Auditor (at Point no. 7 the email dated 02.06.2021 at Page 32 as well as point no. 1 & 2 of the last para of the said



email at Page no. 33 of the Reply filed by the Respondents) wherein the Transaction Auditor is only asking for the bank statements of the said Bank Accounts for a specific period only, which being the duty of the Applicant himself under the Code, the Respondent believe, has still not been done by the Applicant himself.

10. We have perused the application and other pleadings and also the affidavit filed by the respondents no. 1 and 2. This adjudicating authority has sought the clarification from liquidator vide order dated 14.03.2022, in compliance of which the liquidator filed the list of most essential records and documents through additional documents and the suspended board of directors were also given opportunity to revert the same. The liquidator was given opportunity vide order dated 17.05.2022 to go through the reply filed to the additional affidavit by the suspended board of directors and submit his view on the next date of hearing. When the matter came up for final hearing on 26.05.2022, the liquidator submitted that suspended board of directors have still not provided any further information, rather they have reiterated all the facts as already discussed in the reply to the application and no useful purpose could be served from the reply to additional affidavit in the liquidation process. The Suspended Board of directors relied on the email dated 02.06.2021 and submitted that the names of the debtors were provided to the liquidator and also placed reliance on 21.01.2021 and submitted that details of the cases were given to the liquidator.



11. Here, it is important to analyse the emails dated 21.01.2021 and 02.06.2021. The details of the debtors and pending legal cases as provided by the Suspended Board of Directors are already reproduced in para 4 of this order. On careful perusal of the said contents, we are of the considered opinion that through the details provided by the suspended board of directors, it is not possible for liquidator to trace the debtors and pursue recovery against them. As regards cases pending in the different courts and tribunals, we are not convinced with the arguments of the counsel on behalf of suspended board of directors that the Applicant could have approached the Advocates representing the corporate debtor in different cases. Such arguments on behalf of suspended board of directors are not at all tenable as they are expected to act as facilitator in the liquidation process by providing valuable assistance to the liquidator and not hinder the said process as done in the present case. Further it is hard to believe that the promoters/directors of the company who were in full control of the affairs of corporate debtor do not know the exact address of the debtors from whom some dues are recoverable by it on account of credit sales etc.
12. The conduct of the respondents no.1 and 2 clearly shows their malafide intention and indicate their will not to cooperate with the liquidator in liquidation process. Therefore, we are forced to take the stringent action against the respondents no.1 and 2 for taking this tribunal for granted and we hereby invoke section 70 of the IBC, 2016, which is as follows:



“Section 70. Punishment for misconduct in course of corporate insolvency resolution process.

(1) On or after the insolvency commencement date, where an officer of the corporate debtor

(a) does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or

(b) does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver; or

(c) does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver; or

(d) fails to inform the resolution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process; or

(e) prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or

(f) accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date,

he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to do so in relation to the state of affairs of the corporate debtor.”

13. Further, needless to mention here that ex-directors of the company are duty bound to maintain books of account and all vouchers/papers concerning business dealings of the company and in case of default they are liable to be prosecuted in terms of sub-section (6) of Section 128 of the Companies Act, 2013. The said

provision of Section 128 of Companies Act, 2013 is reproduced below:

“(6) If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.”

14. The conduct of the respondents clearly shows that they have no intention to provide their assistance to the liquidator in the liquidation process which falls within the purview of Section 70 of IBC, 2016, hence, we are inclined to take penal action against the respondents and hereby punish the respondent No. 1 and 2 with fine of Rs. 10,00,000/- (Rs. Ten Lakhs only) on each of the said respondents and same shall be deposited to the credit of Pay & Accounts Officer, Ministry of Corporate Affairs, New Delhi in two weeks from the date of this order. It is further directed to suspended board of directors to provide all the information as sought by the applicant in paragraph 8 within one months.
15. The order is pronounced by this adjudicating authority through virtual mode.

-Sd-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

-sd-

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)