

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CA No.3/2019
IN
CP (IB) No. 70/Chd/Hry/2018**

**Under Section 19(2) of Insolvency
and Bankruptcy Code, 2016.**

In the matter of :

M/s Ashapura Perfoclay Ltd.

... Operational Creditor

Versus

Mahabir Techno Limited

...Corporate Debtor

And in the matter of :

CA No.3/2019

**Vinod Kumar Mahajan,
Resolution Professional/Applicant
Mahabir Techno Limited.**

...Applicant-Resolution Professional

Versus

1. Om Parkash Khurana
S/o Sh. Bhagwan Dass,
R/o H.No.30, Sector-13,
Urban Estate,
Kurukshetra (Haryana)-136118.
2. Rakesh Khurana
S/o Sh. Om Prakash,
R/o H.No.30, Sector-13,
Urban Estate,
Kurukshetra (Haryana)-136118.
3. Rama Khurana
W/o Sh. Om Prakash,
R/o H.No.30, Sector-13,
Urban Estate,
Kurukshetra (Haryana)-136118.
4. Sailesh Chawla

5. Ranjan Sharma
6. Dinesh Manchanda,
Chartered Accountant,
C/o Avinash Sharma & Associates,
SCO 47, 2nd Floor, Sector 20C,
Dakshin Marg,
Chandigarh-160020.

Judgement delivered on: 18.05.2020

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the Applicant : Mr. V.K. Mahajan, Resolution Professional
in person.

For the respondents: 1. Mr. M.S. Khillan, Advocate.
2. Mr. Tarun Dhingra, Advocate for respondents
No.4 & 5.

Per: Pradeep R. Sethi, Member (Technical)

ORDER

Petition under Section 9 of the Insolvency & Bankruptcy Code, 2016 (**Code**) was filed by Ashapura Perfoclay Limited and was admitted vide order dated 30.10.2018 for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the matter of Mahabir Techno Ltd. (**Mahabir Techno**). The applicant Shri Vinod Kumar Mahajan was appointed as Interim Resolution Professional (**IRP**) and subsequently as Resolution Professional (**RP**) in the first meeting of the Committee of Creditors (**CoC**) convened on 29.11.2018.

Vide order dated 22.02.2019, the liquidation of Mahabir Techno was directed and the applicant Shri Vinod Kumar Mahajan was appointed as the Liquidator.

2. CA No.3/2019 was filed on 14.12.2018 by Shri Vinod Kumar Mahajan, Resolution Professional (**RP**) praying that the members of suspended board of directors of Mahabir Techno and their associates be directed to submit/hand over all the requisite books, financial data, information, returns and assets to the RP immediately and also provide necessary assistance/cooperation in smooth conduct of CIRP.

3. The addresses of respondents No. 4 & 5 were not given in the application. Therefore, vide order dated 08.01.2019, notice of the application was only issued to the respondents No.1 to 3 and 6 for filing reply. The respondents No. 1 to 3 were also directed to file an affidavit disclosing the complete addresses of respondents No.4 & 5. Respondents No. 4 & 5 were present in person on 19.09.2019.

4. Vide order dated 04.10.2019, a last opportunity was given through direction to the RP to issue a fresh notice immediately to respondents No. 1 to 5 specifically indicating what information/books/assets are still to be furnished by the respondents.

5. In terms of the order dated 04.10.2019, the RP/Liquidator filed compliance affidavit vide Diary 6301 dated 13.11.2019 stating that in spite of clear notice, the respondents have not furnished any of the documents/record as mentioned in para 4 of the affidavit except the balance sheets for the years 2014-15, 2015-16 and 2016-17. Vide order dated 20.12.2019, the respondents were granted last opportunity to furnish the information within three weeks and the CA was listed on 03.02.2020.

6. On 03.02.2020, the learned counsel for respondents No.1 to 5 submitted that whatever information they have, already the same have been submitted and more than that they cannot submit any further and that they have already intimated about this fact to the RP/Liquidator vide letter dated 04.11.2019 which is already on record.

7. In the circumstances and in view of the non-furnishing of the information by the respondents No. 1 to 5, it was directed in order dated 03.02.2020 that notice be issued to all the respondents to show cause as to why the matter shall not be referred to the Insolvency and Bankruptcy Board of India (**Board**) to enable the Board to act in terms of Section 236 read with Section 70 of the Code.

8. Reply on behalf of the respondents No. 1 to 3 has been filed vide Diary No.1777 dated 04.03.2020 and reply for respondents No. 4 & 5 have been filed vide Diary No.1765 dated 04.03.2020.

9. In the reply filed by respondents No. 1 to 3, it has been submitted that the answering respondents have been cooperating with the RP and whatever information/documents were available with the answering respondents have already been provided to the RP and rest of the documents are not in the custody of the respondents and therefore, the respondents are not in a position to provide the same. It is stated that the possession of the assets of Mahabir Techno were taken over by Union Bank of India on 05.10.2018 under the provisions of SARFAESI Act and that by then, the company was totally non-functional and the administrative office of Mahabir Techno was within the premises which were taken over by the Bank and hence, the answering respondents were left with nothing much to hand over

to the RP. It is stated that the server/electronic data of Mahabir Techno was stored in a "Dell laptop" being used by the Accountant of Mahabir Techno which was lost on 03.10.2018 and a missing complaint lodged with the concerned police station vide GDD No.11 dated 07.12.2018.

10. In their reply to show cause notice, the respondents No. 4 & 5 have submitted that they are not the Managing Director or the Executive Directors of Mahabir Techno and that they have already filed affidavit stating that respondent No.1 Sh. O.P. Khurana was the Chairman-cum-Managing Director and was running the show solely and the remaining directors including respondents No. 4 & 5 were merely sleeping Directors.

11. We will first state that as regards respondent No.6 Shri Avnish Sharma, Chartered Accountant, vide order dated 30.01.2019, directions were given to the Registry for correction in the Memo of Parties to describe respondent No. 6 as Mr. Dinesh Manchanda. We find that in the subsequent reply/affidavits filed by respondents No. 1 to 5, there is no averment that any of the information desired by the RP/Liquidator and not furnished is in the custody of Shri Dinesh Manchanda. Therefore, the show cause notice issued by order dated 03.02.2020 was restricted to respondents No. 1 to 5.

12. Section 19(2) of the Code provides that the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as may be required by him in managing the affairs of the corporate debtor. Section 23(2) of the Code states that the RP shall exercise powers and perform duties as are vested or conferred on the IRP under Chapter II of Part II of the Code.

13. The default of the respondents No.1 to 5 in complying with the provisions of Section 19 of the Code is clearly evident from the affidavit filed by the applicant vide Diary No.6301 dated 13.11.2019 *supra* and the failure of the respondents to furnish the documents/records as mentioned in para 4 of the said affidavit except the balance sheets for the years 2014-15, 2015-16 and 2016-17. The default is accepted in the replies filed by the respondents to show cause notice. However, the respondents No. 1 to 3 have submitted that they are not in a position to provide the information required by the RP since the administrative office of the Mahabir Techno was taken over by the Union Bank of India. Respondents No.1 to 3 have not proved that the required information was lying in the administrative office. Moreover, it was the duty and the obligation of the directors to ensure that before possession is handed over/taken by Union Bank of India, the account books and other documents relevant to the Mahabir Techno are taken out and kept in the custody of the directors of Mahabir Techno. As regards the soft data, the filing of the FIR of loss of "Dell laptop" on 07.12.2018 i.e. much after the commencement of CIRP on 30.10.2018 can only be said to be self serving evidence and the later proceedings by the police and their report is not brought on record.

14. The plea of respondents No. 4 & 5 is that they were merely sleeping directors. The plea is not proved by any evidence. Moreover, the extension of cooperation under Section 19 of the Code is not restricted to only Managing Directors/Executive Directors. The plea raised cannot be accepted.

15. We are therefore, of the *prima facie* view that the respondents No. 1 to 5 have not delivered to the RP all books and papers in their control or

custody and belonging to Mahabir Techno and which they were required to deliver.

16. The Registry is directed to send a copy of this order to the Board for consideration for initiation of prosecution under Section 70 read with Section 236 of the Code.

17. Copy of this order be also sent to the applicant and the respondents.

18. CA No.3/2019 is disposed of.

Sd/-

(Ajay Kumar Vatsavayi)
Member(Judicial)

Sd/-

(Pradeep R. Sethi)
Member (Technical)

May 18th, 2020
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