

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH BENGALURU**
*(Exercising powers of Adjudicating Authority under
The Insolvency & Bankruptcy Code, 2016)*
(Through web-based video conferencing platform)

I.A No. 150 of 2022

U/s 19(2) r/w section 60(5) and 70
of I& B Code,, 2016

in

C.P (IB) No. 12/BB/2021

U/s 7 of the IBC Code
r/w Rule 4 of Insolvency and Bankruptcy
(AAA) Rules, 2016

In the matter of

Mr. Ahsan Ahmad

C-108,3rd Floor,KMSR Building
Noida Sector-2,
Uttar Pradesh - 201301

- Applicant/Resolution Professional

Versus

1. Mr. Sunit Suri

N-237, Second Floor, Greater Kailash-1
Delhi-110048

- Respondent No.1

2. Mr. Hemant Golchha

P-23/24,Radha Bazaar Street,Kolkata
West Bengal-700001

- Respondent No.2

3. Mr.Sanjay Bhakta Mathema

112,Baluwatar,04 Kathmandu
Nepal

- Respondent No.3

Order delivered on:24th August 2023

Coram: 1. Hon^{ble} Justice (Retd) T.Krishnavalli Member (Judicial)
2. Hon^{ble} Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant : Ahsan Ahmed
For the Respondent No 1 : Shri Vijay Narayan
For Respondent No 2 & 3 : Shri.Theerthesh B.S

I.A No. 150 of 2022

In CP (IB) No. 12/BB/2021

ORDER**Per: T .Krishnavalli,Member (Judicial)**

1. The instant application has been filed by Resolution Professional (herein after 'applicant') under Section 19(2) read with 60(5) and Section 70 of the I & B Code,2016 *inter alia* seeking directions to Respondents i.e., Suspended Board of Directors to hand over the requisite documents as mentioned Para 10 to the Applicant for the Completion of the CIRP of the Corporate Debtor; to extend all sort of co operation with the Interim Resolution Professional/Resolution Professional in discharge of his statutory duties and also in CIRP, issue order under Section 70 of the Code and prosecute Respondents i.e., Suspended Board of Directors for the misconduct in the CIRP of Corporate Debtor by not providing /Concealing information required for the conducting CIRP and preparation of Information Memorandum, pass such other orders/ directions as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.
2. Brief facts of the case, as mentioned in the application which are relevant to the issue in question, are as follows:
 - i) That the applicant states, corporate debtor is going through the Corporate Insolvency Resolution Process by orders of this Adjudicating Authority dated 6.01.2021 and Mr.Anurag Sharma was appointed as an Interim Resolution Professional.
 - ii) It is stated that pursuant to the Order dated 03.02.2022, the Applicant has taken charge of the management of the Corporate Debtor and the applicant sent an email dated 13.02.2022 to the respondents intimating them about the initiation of CIRP and requested to co operate in the CIRP and to handover/ provide all the files, documents and record related to the Corporate Debtor.
 - iii) On 28.02.2022, the Applicant received an email from the respondent No 2 agreeing to provide only legal related documents. The Applicant has made repeated remainder to the respondents vide emails dated 25.03.2022, 26.03.2022, 28.03.2022 ,

05.4.2022 provided a list of documents/ records to be furnished by them.

iv) Therefore, the Applicant is being forced to approach this Tribunal to direct the respondents to start co operating with the Applicant.

3. The Respondent No 1 has filed the reply for the application vide Diary No. 4190 dated 04.10.2022 *inter alia* contending as follows:

- 1)** The Respondent No.1 was appointed as Chief Executive Officer with effect from 09.11.2010 of the Corporate Debtor. Thereafter he was appointed as Director with effect from 05.12.2012 and held position of Director till 22.04.2019.
- 2)** By virtue of Share Holder Agreement dated 22.02.2012, the Respondent No 1 is also a shareholder of the Corporate Debtor. On 22.04.2019, respondent No.1 vide an email submitted his resignation with immediate effect to the then existing Board of Directors of Corporate Debtor, including Mr.Umesh Hingorani, Respondent No. 2& 3 citing personal reasons.
- 3)** The respondent no 1 submits that post his resignation from the Corporate Debtor in 2019, he does not have access to any documents/ records pertaining to the Corporate Debtor and cannot be designated as the member of suspended board of Directors.
- 4)** It is stated that the applicant had sent certain emails to sunitksuri@hotmail.com, said email neither belongs to Respondent No 1 nor he has any access to the said email.
- 5)** It is stated that the Financials of the Corporate Debtor for the year 2020-2021 have been filed with the Registrar of Companies by Respondents No.2 & 3.

4. The Respondent No 2 & 3 have filed the reply for the application vide Diary No. 1209 dated 01.03.2023 *inter alia* contending as follows:

- a) It is stated that respondent no 1 is the single largest shareholder and erstwhile Managing Director and CEO of the Corporate Debtor. Further it is stated that the business of the company was being conducted from its erstwhile corporate office in New Delhi where respondent no 1 is resident and was operating from.

- b) It is submitted that the shareholders and board of directors of the company, found serious acts of mismanagement, misappropriation and misuse of funds and assets against respondent no 1, same documented in a report of independent auditors including a report published in April, 2019.
- c) It is stated that the respondent no 1 chose not to respond with the findings of the report and evade all responsibility in March /April 2019 due to personal reasons. But his resignation was not accepted by the board and in fact, he continues to be the single largest shareholder till date.
- d) The dispute and differences between the company, the other shareholders and respondent no 1 has been subject to various proceedings including before various courts, tribunals and authorities.
- 5.** The Resolution Professional has filed an Affidavit vide diary no 2681 dated 25.05.2023. The Respondents 2 & 3 have filed reply vide diary no 2811 & 2812 dated 31.05.2023 , same are taken on record.
- 6.** Heard the Learned Counsel for the applicant and respondents. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Regulations made there under.
- 7.** The relevant extract of the Section 19 IBC is as under:
- (1) 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 interim resolution professional as may be required by him in managing the affairs of the corporate debtor.'*
- (2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.*
- (3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to co operate with him in collection of information and management of the corporate debtor.*
- 8.** We have observed that, the respondent no 1, 2 and 3 to extent co operation and to ensure that IRP/RP function and conducts CIRP in terms of the provisions of Insolvency and Bankruptcy Code,2016. Accordingly, as per Section 19 of IBC, this Adjudicating Authority hereby directs the

respondent no 1,2 and 3 to provide all the requisite documents as mentioned in the Prayer in the application, as and when required till the completion of CIRP period.

9. Moreover, this Adjudicating Authority is of the view that the suspended directors /management collectively and independently, must furnish complete information and extend full co operation to the RP for completing the required compliances to various statutes and a successful completion of corporate insolvency resolution process of the Corporate Debtor. The person who is liable to co operate with RP in respect to supply the documents cannot escape their obligation. Therefore this Adjudicating Authority in order to implement the intention of the Code directs the suspended Directors/management to extent full co operation and simultaneously furnishes all the documents related to corporate debtor till the completion of CIRP process.A compliance affidavit to these directions is required to be filed by the Respondents within 30 days from the date of this Order, giving specific details regarding furnishing of each of the documents/ information requested by the Resolution Professional.
10. In the result the application is allowed with above directions. Accordingly **IA No 150 of 2022 is disposed of.**

-Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd/-
(T.KRISHNAVALLI)
MEMBER (JUDICIAL)