

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

I.A. NO. 1239/2020

I.A. NO. 484/2021

I.A. 1628/2021

IN

CP/(IB) 2640/2019

Ratan India Finance Pvt. Ltd.

5th Floor, Tower-B, Workmark 1, Aerocity,
New Delhi- 110037

...Financial Creditor

versus

M/s Cox & Kings Ltd.

1st floor, Turner Morrison Building, 16
Bank Street, Mumbai 400 023

...Corporate Debtor

Order Pronounced on: 29.10.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:

For the Applicant: Mr. Rohit K. Gupta, Advocate

For the Resolution Professional: Mr. Nirman Sharma,
Advocate

Per: Shri. Chandra Bhan Singh, Member (T)

ORDER

1. I.A. 1239/2020 and I.A. 484/2021 have been filed by the Resolution Professional under Section 60(5) of the Insolvency and Bankruptcy Code against the Respondent, Writer Information Management Services Private Limited. The Respondent Company was providing Record Management Services and Record Retrieval Services to the Corporate Debtor Company.

2. I.A. 1628/2021 has been filed by the Writer Business Services Private Limited (Respondent in the I.A. 484/2021 and IA 1239/2020) against the Resolution Professional. Facts in the I.A. as mentioned by the Applicant itself is the same as filed by the Applicant as a Respondent in I.A. 1239/2020 and I.A. 484/2021.
3. The Corporate Debtor M/s Cox & Kings Limited is an International Leisure Travel Company which had operations in 23 countries. The Corporate Debtor distributed its products and services through 241 points of presence covering 131 cities across 24 States comprising of 12 branch sales offices, franchisee sales shops and agents. The Corporate Debtor used the data-management software including ERP and had integrated its computer reservation systems (CRS).
4. The Respondent, M/s Writer Information Management Services Private Limited has provided: (i) Management of the Records and documents of the Corporate Debtor (Record Management Services) and (ii) Retrieving the records and documents of the Corporate Debtor (Record Retrieval Services). The data available with the respondent is critical for the Corporate Debtor Company as well as the RP for their functioning and also to assess the true Financial position of the Corporate Debtor Company.
5. The RP mentions that the Respondent Company has blocked the access of the RP to the Record Management Services by refusing to provide the RP the list of business records and information of the Company that are stored by it. Further, the Respondent has refused to provide Record Retrieval Services until the Corporate Debtor Company makes payment as 100% advance. The above arrangement of Corporate Debtor and the Respondent is as a result of Agreement dated 15.01.2007 where at annexure-3 to the Agreement, the

payment procedure has been prescribed. As per the payment procedure prescribed under the Agreement the invoices for services rendered by the Respondent in a calendar month for each location would have to be submitted to the Corporate Debtor before the 7th day of the next calendar month and the Corporate Debtor was liable to make payment of the invoices within 15 days of their receipt by a crossed cheque payable at Mumbai.

6. The CIRP of the Corporate Debtor Company commenced on 22.10.2019 and IRP of the Corporate Debtor invited claim under the IBC. On 06.11.2019, the Respondent Company submitted its claim in Form 'B' under Regulation 7 of the Corporate Insolvency Resolution Process of Corporate Person raising a claim of about Rs. 24.60 lakhs against the Corporate Debtor.
7. The RP mentions that since February 2020, the Respondent had not provided to RP the access to the business record of the Company even though payment of about Rs. 12.29 lakhs has been made for the period from 22.10.2019 i.e. the CIRP Commencement date to 31.01.2020 for the Record Management Services. Contrary to this the RP mentions that the Respondent has put up unilateral payment terms that only when 100% advanced payment to be has made by the Respondent, it will provide to RP the access to the business record of the Company.
8. The Bench notes that the prayer sought by the RP in I.A. 1239/2020 and I.A. 484/2021 mainly are as under:
 - i. To direct the Respondent, M/s Writer Information Management Services Private Limited to continue providing its services to Corporate Debtor in terms of the Agreement dated 15.01.2007 executed between the Respondent and Corporate Debtor;

- ii. To declare the non-providing of the services with regard to Record Management Services and Record Retrieval Services by the Respondent as violated Section 14(2)(a) of the IBC.
 - iii. The Respondent entitled to any payment in terms of agreement after commencement of CIRP of the Corporate Debtor from 22.10.2019 onwards and;
 - iv. An order directing the respondent to compensate an amount of about Rs. 6.22 crores towards losses suffered by the Corporate Debtor on account of the refusal of the Respondent to provide uninterrupted critical services in terms of the agreement.
9. The Bench notes that the Respondent Company demand for 100% advanced payment for providing services is contrary to the payment terms under the Agreement dated 15.01.2007. As per the agreement the relevant clause of the agreement reads as under:
- “...Clause 13.2. Bills for services rendered in a calendar month for each location would be submitted before 7th day of the next calendar month. Cox & Kings would pay within 15 days of receipt by a crossed cheque payable at Mumbai after verifying the bills...”*
10. The Bench notes that in the month of February 2020 all the invoices of the Respondent up to January 2020 were fully paid. Therefore, the Respondent’s refusal to provide its Record Retrieval Services to the RP when the payment has been fully made as per the terms of the Agreement, is totally violation of Section 14(2)(a) of the Code wherein it was incumbent upon the Respondent to provide this critical service of Record Management and Record Retrieval to the RP/Corporate Debtor for the CIRP period when payment to that effect

has been made in full as per the terms of the Agreement. In this regard, this Bench would like to draw the attention to Section 14 (2)(A) of the Code which reads as under:

Section 14(2)(A)

“...14 (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified...”

11. It is therefore clear to the Bench that the Respondent Company was fully aware that the services provided by it are critical in nature. The Bench finds it clear in the averments made by the Respondent in their reply/application bearing I.A. No. 1628/2021 that the Respondent has **made a wrong and fallacious** interpretation of section 14(2A) when it says that this section is not applicable to the present case.
12. The Bench also found that the refusal of the Respondent to deny access to the RP to the Business record of the Corporate Debtor is in contrary to Section 18 and 25 of the Code. The relevant Section 18 and 25 of the Code reads as under:

“...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;

(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;
...*

“25. Duties of resolution professional.-

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:—

(a) take immediate custody and control of all the assets of the corporate debtor, **including the business records of the corporate debtor;**

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

13. The Bench notes that the business record of the Company is an indelible right of the Resolution Professional and a contractual duty of the Respondent which it has failed to perform. In view of this the Bench, the Bench is of the views and as pleaded by the Corporate Debtor that the Corporate is entitled for cost incurred by the Respondent under Section 235A of the Code. The relevant portion of the Section 235A of the code reads as under:

“235A. Punishment where no specific penalty or punishment is provided:-

If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not

be less than one lakh rupees but which may extend to two crore rupees...”

14. The Corporate Debtor pleaded that it had to continue to render establishment cost in several cities during the Covid period because of non-availability of data from the Respondents because of which it could not take a decision regarding release of properties taken on rent. Thus, as per the Corporate Debtor has resulted into an additional cost of about Rs. 6.22 crores.
15. In view of above, the Bench passes the following orders:
 - A. The Respondent is directed to continue providing its services to the Corporate Debtor as per the terms of the Agreement dated 15.01.2007 executed between the Respondent and the Corporate Debtor.
 - B. Since the Respondent has not provided any services from the commencement of CIRP dated 22.10.2019 till the present date, the Respondent is not entitled to any payment in terms of the agreement towards Record Management Services and Record Retrieval Services for this period. It is also directed to refund payments, if any, back to the RP/Corporate Debtor as refund for the period between commencement of the CIRP on 22.10.2019 till present.
 - C. For refusing to provide Record Management Services and Record Retrieval Services, the Bench holds the Respondent to have violated Section 14(2A) of the Code and thus, inter alia, ruined the functioning of the Corporate Debtor Company because of non-availability of Record Management Services and Record Retrieval Services. The Bench imposes a fine of Rs. 20 lakhs on the Respondent with a direction to pay the same in the Bank account

of the Corporate Debtor within two weeks from pronouncement of this order.

D. The I.A. 1628/2021 filed by the Writer Business Services Private Limited against the Corporate Debtor Company is 'Dismissed'. I.A. 1239/2020 and I.A. 484/2021 are 'Allowed' to the extent of Relief given by the Bench at Para 15(A), 15(B) and 15 (C) above.

Sd/-

CHANDRA BHAN SINGH
Member (Technical)

Sd/-

H.V. SUBBA RAO
Member (Judicial)