IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

I.A No. 903 of 2020

In

CP (IB) 1284 (KB) 2019

Application under Section 19(2) And 19(3) of Insolvency and Bankruptcy Code, 2016 for seeking direction against the respondents.

In the matter of

State Bank of India

… Petitioner

Versus

Ess Dee Aluminium Limited

… Respondent

And

In the matter of

Deepika, Bhugra Prasad,

Resolution Professional,

Ess Dee Aluminium Limited

…Applicant

Versus

Sudip Bijoy Dutta &Ors.

…Respondents

Date of hearing: 04.05.2022.

Date of pronouncement: 16.06.2022

O R D E R

Per: Rohit Kapoor, Member (Judicial)

1. This is an application filed by the Resolution Professional of Ess Dee Aluminium Limited ('Applicant') under section 19 (2) of the Insolvency nd Bankruptcy Code, 2016 against Sudip Bijoy Dutta (Respondent No.1) and Debdeep Samaresh Bhattacharya (Respondent No. 2), erstwhile directors of the Corporate Debtor and Shah & Taparia, Chartered Accountants (Respondent No.3) *inter alia,* praying for as follows;

a. To direct the respondents to provide the contact details of the other suspended board of directors.

b. To direct the respondents to provide the following information & documents;

i. Bank account details maintained by the Corporate Debtor

ii. Complete details of all loans availed by the Corporate Debtor as on 14 February, 2020

iii. Complete financial and operational payments for the previous two years

iv. Complete details of the KMP of the Corporate Debtor.

v. Copy of the audited Financial Statement for the year ended on 2016-17 , 2017-18 & 2018 -19 and provisional financial statements for the period 1st April, 2019 to 14th February, 2020

vi. Complete list of all assets and liabilities as on 14 February, 2020, complete list of Creditors, Debtors, debt due or receivable.

vii. Name and addresses of the members holding at least 10% in CD, number of Workmen and Employees of the CD and liabilities of the CD, copy of the fixed assets registered with the MCA.

viii. List and location of the movable properties in the name of the CD including vehicles along with registration number, Plant & machinery along with their purchase invoices.

ix. Three year accounting software, PAN Number & GSTIN

2. Ess Dee Aluminium Limited ('the Corporate Debtor') was admitted into CIRP on 14 February, 2020. Thereafter, on 18 February, 2020 emails were sent to all the Respondents apprising them of the initiation of the CIRP against the Corporate Debtor and also requesting them to provide the documents of the Corporate Debtor.

3. Subsequently, on 21 February, 2020, a letter of intimation was against sent to all the Respondents along with the list of documents sought by the Applicant nut no reply was received from the erstwhile directors i.e., Respondent No.1 and Respondent No.2. An email was also sent to the Respondent No.3 i.e., the statutory auditors of the Corporate Debtor to provide the information but no reply was received either. But no cooperation was extended by either of the Respondents.

Rebuttal by the Respondents No.1& 2 i.e., the erstwhile directors of the CD .

4. It is submitted that the Respondent No. 1 is one of the Ex Directors of the Corporate Debtor, and had been appointed on 10.02.2004. The Respondent No. 1 has provided all the necessary details vide email dated 29.01.2021 and has cooperated with the Resolution Professional in his capacity of the Promoter and suspended director of the CD.

5. The Respondent No.2 is currently residing in Singapore and was unable to travel to India in light of the restrictions on travel which were in place to curb the COVID-l9 pandemic, however, the Respondent No.2 has participated in various COC meetings either personally or through his legal representatives

6. It is submitted that vide the present application the RP has sought the following details from the Answering Respondent herein.

a. Complete details pertaining to all the bank accounts being maintained by the Corporate Debtor.

b. Complete details of all the loans availed by the Corporate Debtor on 14.02.2020
c. Complete financial and operational payments for the previous two years
d. Complete details of the key managerial personnel of the Corporate Debtor
e. copy of the audited financial statement for FY 2016-17, FY 2017-18, FY 2018-19 [Sec 18(1)(a) of the code] and the provisional financial statements for the period 01 .04.2019 to 14.02.2020.
f. Complete list of assets and liabilities as on 14.02.2020 classified into appropriate categories for easy identification, with estimated values assigned to each category.
g. Complete list of creditors containing the names of the creditors, email address and contact nos. of the creditor and amount payable by Corporate Debtor as on 14.02.2020
h. Complete list of debtors containing the names of debtor, address of the debtor, email address and contact nos. of the debtor and amount receivable payable by the Corporate Debtor as on 14.02.2020
i. Particulars of a debt due from or t0 Corporate Debtor with respect to related parties with list of related parties of the Corporate Debtor.
j. Details of guarantees that have been given in relation to the debts of the Corporate Debtor by other persons, speciffing which of the guarantors is a related party
k. The names and addresses of the members holding at least one percent stake in Corporate Debtor along with the size of stake
l. Complete details of all material litigation and an ongoing investigation or proceedings initiated by the Government and statutory authorities.
m. The number of workmen and employees of the Corporate Debtor towards them as on 14.02.2020-
n. True copy of the fixed asset register of the company.

o. Copies of the title document of the properties including building plans etc.

p. List and locations of movable properties in the name of the Corporate Debtor, including vehicles along with their registration number, plant and machinery along with their purchase invoices.

q. 3 years backup of accounting software

   i. PAN Number & GSTIN

7. It is submitted that most of the said documents and details sought has already been provided to the RP vide email dated 29.01.202. Furthermore, it is submitted that these documents had also been provided by the Statutory Auditor of the Corporate Debtor to the Resolution Professional as had been indicated by the legal representatives of the Answering Respondent to the Resolution Professional.

8. Additional affidavit dated 25.02.2022 has been filed by one Jayant Kumar Singh who claims to be the Authorized Representative of the respondent. The stand taken in this affidavit is;

i. The respondent is a foreign citizen having citizenship of Singapore.

ii. Respondent guarantor has ceased to be Indian Citizen since 18th of June, 2018: Resolution Professional has failed to bring on record that the respondent is a foreign National of Singapore now and therefore, no Insolvency proceedings can be initiated against him under the Code.

iii. The Code does not *ipso facto* apply to a foreign citizen and the mandate of Section 234 and 235 of the Code would be required to be fulfilled to allow the Adjudicating Authority under this Code to enforce any provisions of the Code against foreign citizens.

iv. The Ministry of Home Affairs has issued a notification dated 22nd of July, 2022 wherein Clause 5 clearly states that with respect to all economic, financial and educational field or the rights and privileges of family has no rights or liabilities unless it has been laid down under specific policy.

10. The identical plea taken in the affidavit above has already been considered and rejected in CP(IB) 54/KB/2021. Therefore, this pleas in the present application is also rejected for the reasons recorded in our order dated 16.06.2022 passed in CP(IB) 54/KB/2021.

11. In view of the rejection of the plea of respondent No. 1, we observe, the liquidator is well within its powers to seek the information sought by him and respondent No. 1 is under lawful obligation to furnish the same to the liquidator.

12. A certified copy of this may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri — **Rohit Kapoor**
Member (Technical) — **Member (Judicial)**

This order is pronounced on 16th day of June, 2022

Zia/SA