

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI,  
HON'BLE TECHNICAL MEMBER**

**IA No. 266/JPR/2023**  
**In CP No. (IB)- 35/7/JPR/2021**

**IN THE MATTER OF:**

**KEDIA FINANCIAL PRIVATE LIMITED**

**.... Financial Creditor/Applicant**

**Versus**

**AIREN METALS PRIVATE LIMITED**

**.... Corporate Debtor/Respondent**

**MEMO OF PARTIES**

**IA No. 266/JPR/2023:**

**Sudhir Kumar Agarwal**  
*(Erstwhile Director of  
M/s Airen Metals Pvt.  
Ltd.)*

**...Applicant**

**VERSUS**

**Satyendra Prasad Khorania**  
*(Chairman, Monitoring  
Committee, M/s Airen Metals  
Pvt. Ltd.)*

**... Respondent**

**FOR THE APPLICANT**  
**FOR THE RESPONDENT**

**:** Mr. Amol Vyas, Adv.  
**:** Mr. Archit Bohra, Adv.

**Order Pronounced On: 31.08.2023**

Sd

Sd

**ORDER****Per: Shri Deep Chandra Joshi, Judicial Member**

1. The present Interlocutory Application bearing the *IA No. 266/JPR/2023* is filed under Section 60(5) of the IBC, 2016 by *Mr. Sudhir Kumar Agarwal*, ('Applicant') who is the Erstwhile Director of *M/s Airen Metals Pvt. Ltd.* ('Corporate Debtor') seeking direction to the chairman of the Monitoring Committee to provide a copy of Forensic/Transaction Audit Report of *M/s Airen Metals Pvt. Ltd.* submitted by *M/s PIPARA and Company LLP, Chartered Accountants* together with Annexures and supporting papers.
2. The Applicant herein i.e. *Mr. Sudhir Kumar Agarwal* is the Erstwhile Director of the Corporate Debtor. An application under Section 7 of IBC, 2016 was filed by *M/s Kedia Financial Services Pvt. Ltd.* against the Corporate Debtor. The CIRP proceedings commenced against the Corporate Debtor vide Order dated 28.04.2022. The said CIRP concluded with the passing of the order dated 31.03.2023, whereby the Resolution Plan submitted by Resolution Applicant in respect to Corporate Debtor was approved.
3. The Committee of Creditors ('CoC') in its 4th meeting which was held on 05.09.2022, appointed *M/s Pipara & Company LLP, Chartered Accountants* as the Auditors to conduct the Forensic/Transaction Audit of the Corporate Debtor. The Minutes of Meeting were taken on record vide order dated 18.11.2022 by this Adjudicating Authority. The Forensic Auditor raised



certain queries from the Erstwhile Directors through Resolution Professional ('RP') which were replied by the Erstwhile Directors through reply letter dated 02.12.2022 submitted to the RP. The Auditors submitted their Final Report to the Resolution Professional which was taken for consideration in the meeting of 9<sup>th</sup> CoC dated 29.12.2022; apparent from the Minutes of Meeting sent over mail dated 31.12.2022. The Minutes of Meeting of 9<sup>th</sup> CoC which were taken on record by this Adjudicating Authority vide Order dated 01.03.2023.

4. It is submitted that the Erstwhile Directors of the Company have been facing litigation in different forms before different Courts, Tribunals and other Forums, hence they require a copy of the Forensic Audit Report, so that the same could be produced in such proceedings. For the same, the Applicant herein by writing an email dated 29.04.2023 together with a postal letter sent through Speed Post, requested the Chairman of Monitoring Committee of Corporate Debtor to make him available a complete set of Forensic/ Transaction Audit Report conducted by *M/s Pipara and Company LLP*, Chartered Accountants together with Annexures and supporting papers appended thereto, if any. This was a bona fide request to protect the suspended directors from the mala fide and untoward actions by different parties. The copy of the letter dated 29.04.2023 is annexed as Annexure-1.
5. Thereafter, the Applicant received a reply from the Chairman of Monitoring Committee dated 05.05.2023 whereby the request of the applicant to provide



the copy of Forensic Audit Report was declined for the reason that there is no provision under the IBC, 2016 which mandated sharing the copy of Forensic Audit report with the Applicant. The copy of reply given by Chairman of Monitoring Committee is submitted with this application as Annexure-2.

6. It is submitted by the Applicant that the Forensic Audit Report is a part of court proceedings and the Applicant herein is an Erstwhile Director of the company who was called upon to supply all the necessary information and documents to the auditors, thereby entitling them to get a copy of the Forensic Audit Report and to submit the same in any litigation that is continuing against them.
7. It is further submitted that CIRP of the Corporate Debtor stands concluded with the passing of Order dated 31.03.2023 by this Adjudicating Authority and the ownership of the company stands transferred to the Successful Resolution Applicant. Hence, the proceedings in the matter in no way are likely to be prejudiced or affected by providing the copy of the report. Therefore, the copy of the Forensic/Transaction Audit report together with the Annexures and supporting papers appended thereto deserves to be provided to the Applicant.
8. The Respondent has submitted in its Reply that the Respondent has fulfilled his professional duties, while being appointed as the Resolution Professional and being ratified by the CoC. When the Resolution Plan was approved

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vide order dated 30.03.2023, services of the Respondent to that extent stood extinguished. The RP operates under the discretion and direction of the CoC. The Applicant has failed to provide details of any such cases before other Tribunals and Courts where the Forensic Audit Report is required to be submitted. Moreover, the forensic audits are conducted by concerned parties as mandated by the statute and are not public documents. Furthermore, the statute does not explicitly empower the RP to disclose the Forensic Audit Report to any other party other than the CoC without the CoCs consent and even otherwise if the same is to be shared, it has to be for the purpose of reasonable use. Therefore, the Respondent has rightfully declined the request of the Applicant because being the Chairman of the Monitoring Committee he is not vested with such powers.

9. Also the Respondent submitted that it is a settled position of law that the RP during the course of CIRP can provide the necessary documents to participants including the Suspended Board of Management of the Corporate Debtor, however, the same requires a Non-Disclosure to be executed stating that the said information shall not be used anywhere else. It is also submitted that the prejudice or entitlement to certain information cannot be asserted as a matter of right unless specifically granted.
10. The Applicant has filed an Additional document along with Annexures vide Diary No. 1452/2023 dated 07.06.2023. The Applicant also relies upon the judgement of Hon'ble Supreme Court passed in the matter of *Vijay Kumar*



*Jain v/s Standard Chartered Bank and Ors. in Civil Appeal No. 8430 of 2018 and Writ Petition (Civil) No. 1266 of 2018.*

11. Learned Counsel for the RP has submitted that Copies of Valuation Audit of Forensic Report may be furnished to the Applicant only after obtaining an undertaking from the Applicant to maintain confidentiality with regard to the said report.
12. In view of the foregoing, the Applicant is directed to file an undertaking to maintain confidentiality with respect to the said report within a period of 7 days from the date of this order. After the said undertaking is filed and a copy is supplied to the Respondent, the Respondent shall provide a copy of Forensic/Transaction Audit Report of M/s Airen Metals Pvt. Ltd. submitted by *M/s PIPARA and Company LLP, Chartered Accountants* together with Annexures and supporting papers to the Applicant herein.
13. This Application stands allowed and disposed off accordingly with the aforementioned directions.



**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**



**ATUL CHATURVEDI,  
TECHNICAL MEMBER**