



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

**IA No. 295/2021  
In  
CP (IB) No.19/Chd/Hry/2019  
(Admitted Matter)**

**Under Sections 19(2) of the  
Insolvency & Bankruptcy Code,  
2016**

**In the matter of:**

A O Smith India Water Products Private Limited ...Operational Creditor

Vs.

Dawar International Electronics Private Limited ....Corporate Debtor

And in the matter of:

**IA No.295/2021**

Mr. Ajay Kumar Siwach  
Interim Resolution Professional  
Having office at : Flat No.504, Rama Krishna  
Society, Sector-2,  
Faridabad-121004 ....Applicant/IRP

Versus

Shri Virender Dawar (Director of Suspended Board of Corporate Debtor)  
R/o SCO-28, Sector-14, Vypar Sadan, Opposite Government College  
Gurgaon 122001.

....Respondent No.1

Ramtej Maurya ( Suspended Board of Corporate Debtor)  
10/5, Jacobpura, Opposite Kanya Vadik School, Gurgaon-122001.

....Respondent No.2

Mr. Ajay Juneja  
C/o : Ajay Trading Co.5/5 Jacobpura, Gurgaon-122001

....Respondent No.3

**Order delivered on: 28.02.2023**



**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present :**

For the Applicant : Mr. Balwinder S. Kalsi, Advocate  
For the respondent No.3 : Mr. Vaibhav Sahni, Advocate  
For the respondent No.1 & 2 : proceeded ex-parte vide order dated  
25.09.2022

**Per: Harnam Singh Thakur, Member (Judicial)**

**ORDER**

**IA No. 295/2021**

The present application has been filed by Mr. Ajay Kumar Siwach, the Interim Resolution Professional of Dawar International Electronics Private Limited under Section 19(2) of the Insolvency and Bankruptcy Code, 2016.

2. It is prayed by the applicant to issue necessary directions to all the Directors of the Suspended Board of the corporate debtor to extend assistance and to cooperate with the Interim Resolution Professional/ Resolution Professional with all the information and documents sought by him vide his email communications mentioned along with the custody of the assets of the Corporate Debtor. It is further prayed that necessary directions may be issued to Mr. Ajay Kumar Juneja who is in possession of the Land & Building and Stocks assets of the Corporate Debtor to extend assistance and hand over the possession of the assets of the Corporate Debtor and to cooperate with the Interim Resolution Professional/ Resolution Professional.

3. The brief facts of the case as stated in the application are that the CIRP was initiated against the corporate debtor on 10.02.2021, and the applicant is appointed as Interim Resolution Professional. After the initiation of CIRP, the



IRP/RP sent an intimation letter dated 15.02.2021 through speed post at the registered address of the corporate debtor and the email address available on the Master Date of MCA Website. The Speed post was returned with the remark “no information” & “left the place”. The email was also bounced back with remarks “delivery incomplete”. When the Interim Resolution Professional visited the property of the corporate debtor situated at 5/5 Jacubpura, Gurgaon – 122001, it is found that same is possessed by Mr. Ajay Kumar Juneja. The applicant came to know that the corporate debtor had an agreement to sale for the property and sale could not be completed for various reasons. The Interim Resolution Professional has requested Mr. Ajay Kumar Juneja (Respondent No 3) vide email dated 26-03-2021, 02-04-2021 & 05-04-2021 (Annexure-5 of the application) to to share the documents and to hand over the possession of the properties of the Corporate Debtor but till date no information has been provided to the applicant.

4. It is further submitted by the applicant that after an extensive search, the applicant had found a contact of respondent No. 1 i.e., Mr. Virender Dawar and has sent emails dated 26-03-2021, 30-03-2021, 02-04-2021 & 05-04-2021 requesting him to co-operate by sharing the details and locations of assets, documents and information but till date no documents and information has also been shared by Mr Virender Dawar.

5. Notice was served on the respondents, and the affidavit of service in response to the order dated 22.03.2022 has been filed by Diary No. 00573/2 dated 13.04.2022. It is seen in the affidavit of service that the petitioner has made publications in two daily newspapers i.e. Business Standard (English & Hindi) on



15.02.2022. Thus, Respondents No.1 and 2 proceeded against ex-parte by order dated 25.05.2022.

6. The Respondent No.3-Mr. Ajay Kumar Janeja has filed his reply by Diary No.00573/3 dated 20.05.2022 stating that the answering respondent is the bonafide owner of the properties situated at 3/5, 4/5 portion of 5/5 of Jacobpura Gurgaon as he has purchased the property by agreement to sale dated 10.02.2016 (Annexure-R1 of the application). As per the agreement to sale, the respondent paid a total amount of Rs.2,42,00,000/- to the loan account of the corporate debtor on 30.04.2016, 06.5.2016, 09.05.2016 & 20.05.2016. vide RTGS transfers. The actual possession of the property was also delivered to the respondent while executing the agreement to sale dated 10.02.2016. Moreover, the bank has also issued a revised sanction letter (Addendum Letter) bearing No. IBL/BBG/2016-17/223 dated 27.04.2016, after de-mortgaging the concerned property and by revising the sanction of credit facilities i.e. reducing the CC Limit from 1350 Lakhs to 850 Lakhs. The aforementioned revised Sanction Letter dated 27.04.2016 has been attached as Annexure-R2 of the application. The respondent has also filed a suit for specific performance and permanent injunction in the jurisdictional Civil Court situated at Gurugram. Later on, the parties entered into a settlement wherein the suit of the plaintiff (respondent No.3) was decreed in his favour. The copy of the compromise decree in CS/4266/2018 passed by the Civil Judge (Senior Division) Gurugram is attached as Annexure-R3 of the reply.

7. It is also averred by respondent No.3 that after receiving the payment in full and executing the revised addendum letter, the bank had not released the original documents regarding the concerned property. The bank had issued the



aforesaid sanction letter after completing all the documentation and the same was signed by the competent authority. Thereafter, the answering respondent filed a suit for mandatory injunction for releasing of the titled documents of the concerned properties and an interim stay by order dated 12.07.2018 (Annexure-R4 of the reply) has also been granted by Civil Court against the IndusInd Bank not to interfere in the peaceful possession. Subsequently, the debt was assigned by IndusInd Bank to M/s CFM Asset Reconstruction Pvt. Ltd. Ms CFM Asset Reconstruction Pvt Ltd. filed a petition u/s 14 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) before the Ld. Court of District Magistrate, Gurgaon, Haryana wherein they sought possession of property No. 203/5 (Old No. 174/14) Jacubpura Gurgaon 122001 which is already de-mortgage by IndusInd bank by letter no IBL/BBG/2016-17/223 dated 27.04.2016.

8. It is further contented by Respondent No. 3 that the Insolvency proceedings have been initiated against the corporate debtor on 10.02.2021 and a moratorium under Section 14 was declared by the corporate debtor. The concerned properties are owned by respondent No.3 and the insolvency process has nothing to do with the rights of respondent No.3. Resolution Professional claims that a forensic audit has been done concerning the corporate debtor/firm but he has failed or intentionally didn't detect the high-value transaction of an amount of Rs. 2,22,75,000/- from the respondent No. 3 to the CC limit account of respondent no. 1/corporate debtor of IndusInd bank against the full sale consideration amount concerning the concerned property in 2016. It is submitted that the alleged forensic audit done by the IRP lacks credibility as the forensic



audit was done without proper auditing of the bank statements and the completing of the books of accounts/ledgers concerning the Corporate debtor.

9. The applicant has filed a rejoinder by dairy No.00573/4 dated 12.09.2022 stating that the respondent has not brought true, actual and factual facts and the Agreement to sell relied upon by the respondent is a Sham document which has been created later on just to defraud the creditors of the Corporate Debtor. The Respondent No. 3 is not the bonafide purchaser/owner in possession of the properties situated at 3/5, 4/5 portion of 5/5 Jacobpura, Gurgaon as Mrs. Rashmi Dawar wife of Mr. Virender Dawar (Director of the suspended Board), the Respondent Nos. 1 and the Corporate Debtor had in connivance with the Respondent No. 3 entered into an agreement to sell the property. The property for which the agreement to sell was entered into between the parties had been mortgaged to the IndusInd Bank by way of deposit of the title deeds to secure the credit facilities and the property was never de-mortgaged and the documents of the title were never released to the mortgagor i.e. the Respondent No. 1. It is submitted that the request for the reduction of CC Limit was declined by the IndusInd Bank and the aforesaid letter dated 27.04.2016 was withdrawn by the bank by their email dated 10.08.2016. The applicant is alleging the connivance of respondent No.3 with the Directors of the corporate debtor in order to grab the properties and defraud the creditors. The Bank has never given consent to the agreement to sell or the payment of sale consideration directed to the bank account.

10. We have heard the learned counsel for the applicant and perused the material available on record.



11. The issue for consideration before this adjudicating authority is whether IRP/RP can seek possession of the property from Respondent No. 3 in presence of consent decree passed by the Civil Court in favour of Respondent No. 3.

12. From the perusal of the facts narrated above, it is evident that respondent No. 3 had entered into an agreement to sell dated 10.02.2016 with the Suspended Board of Directors and a suit had also been filed by respondent No. 3. Thereafter, a compromise/consent decree was passed by the Civil Judge, Senior Division, Gurugram on 06.07.2018. It is noted from the letter dated 27.04.2016 issued by the IndusInd Bank to the corporate debtors and its guarantor that the concerned property was de-mortgaged by the Bank. The sanction letter dated 27.04.2016 has been addressed to the corporate debtor wherein revised terms and conditions were laid down by the Bank and the same is signed by Mr Siddhant-Relationship Manager on behalf of the Bank along with other guarantors. It can be inferred from the sanction letter that the revised terms and conditions with regard to the mortgage of properties were duly sanctioned by the Bank. It is pleaded by the applicant that the bank had withdrawn the sanction letter by email dated 10.08.2016. However, from the perusal of the aforesaid e-mail (Annexure VIII of the rejoinder), it is seen that the date of the sanction letter is mentioned as 27.06.2016 which casts heavy doubt on the email attached by the applicant. Additionally, a consent decree is also passed by the Civil Court (Senior Division), Gurgaon dated 06.07.2018 which is way before the commencement of insolvency proceedings. It is settled law that a consent decree is as good as contested decree. In this context, a reliance is placed on the judgement of Supreme Court in the matter of "**Sneh Gupta Vs. Devi Sarup and Ors**" (2009) 6 SCC 194 wherein it has been held that :-



“47. xxxxxx

A consent decree, as is well known, is as good as a contested decree. Such a decree must be set aside if it has been passed in violation of law.

(Emphasis Supplied)

xxxxx”

13. In the present case, no evidence is coming forth to show that if the consent decree is challenged by the Bank or its assignee before the appropriate forum. The present application is filed under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 to pass necessary directions to respondents to cooperate with the IRP which is not maintainable against Respondent No. 3 as this adjudicating authority cannot adjudicate upon the dispute between the parties.

14. It is also seen that respondent No. 1 and 2 have failed to discharge the responsibility under the Code with regard to sharing information with the Resolution Professional. As per Section 19(1) of the Code, the Respondent is under obligation to extend all assistance and cooperation to the RP as required in managing the affairs of the company. By not responding to the notices issued during the present proceedings, the respondents have only lent strength to the contention of the Resolution Professional that such non-compliant behaviour is intentional and premeditated.

15. In view of the above discussion, we direct respondent No. 1 and 2, to cooperate and give access to all documents/details as sought by the applicant. They are further directed to assist the applicant-RP in completing the statutory compliances as required to complete the audit. Respondent No. 1 and 2 are further directed to provide pending information required by IRP. All the aforementioned compliances be made within two weeks from the date of this



order. In view of the above discussion, respondent No. 1 and 2 are hereby directed to share all the information, documents etc, with the Resolution Professional within 10 days of this order.

16. Consequently, IA No. 295/2021 is partly allowed qua Respondent No. 1 & 2 and dismissed qua Respondent No. 3. Thus, the present application is disposed of, accordingly.

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

February 28, 2023  
sd /SA