

**NATIONAL COMPANY LAW TRIBUNAL  
COURT NO. V, MUMBAI BENCH**

**IA No. 606 of 2022  
IN  
C.P. (IB) 1807 (MB) of 2019**

Application filed under Section 19 (2) of  
Insolvency & Bankruptcy Code, 2016 and the  
Petition filed under Section 8 and 9 of Insolvency  
& Bankruptcy Code, 2016

*In the matter of*

**Pooja Piyush Kabra,**

Resolution Professional of the Corporate Debtor

Having registered office at:

Unit No. A-305, 3<sup>rd</sup> Floor, Western Edge II,  
Village Magathane, Western Express Highway,  
Borivali (East), Mumbai-400066.

**...Applicant/Liquidator**

Versus

**1. Larsen and Toubro Limited**

**...Respondent**

**2. Urban Transit Private Limited**

**...Corporate Debtor**

IN THE MATTER BETWEEN:

**Godrej & Boyce Mfg. Co. Ltd.**

having its registered office at:

Pirojshanagar, Vikroli, Mumbai-400079.

..... Operational Creditor

Versus

**Urban Transit Private Limited**

having its registered office at:

Unit No. A-305, 3<sup>rd</sup> Floor, Western Edge II,  
Village Magathane, Western Express Highway,  
Borivali (East), Mumbai-400066.

...Corporate Debtor

**Order Pronounced on: 30.06.2023**

**Coram:**

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

***Appearance (through video conferencing):***

For the Applicant: Mr. Mahalakshmi Ganapathy, Counsel.

For the Respondent: Mr. Abhinav Sharma, Counsel.

***Per: Kuldip Kumar Kareer, Member (Judicial)***

**ORDER**

1. The present instant Application No. 606 of 2022 has been filed by **Ms. Pooja Piyush Kabra, Resolution Professional of the Corporate Debtor** under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "**Code**") seeking following prayers:
  - a. *that the Hon'ble Tribunal be pleased to consider present application under section 19(2) of the Insolvency and Bankruptcy Code, 2016 and direct the Respondents to co-operate with the applicant/liquidator by providing the information/records as mentioned in the Application.*
  - b. *that the Hon'ble Tribunal be pleased to direct the Respondents to co-operate in collection of information and provide complete co-operation and assistance in conducting Liquidation in respect of the Corporate Debtor.*
  - c. *that Hon'ble Tribunal be pleased to, issue such other orders as the Hon'ble Tribunal may deem fit.*

2. The Applicant submits that the instant application has been preferred in order to seek necessary directions against the Respondents for their non-cooperation in providing necessary information, and assisting the Applicant in conducting the Liquidation, as mandated under section 19 of IBC, 2016.
3. The captioned matter was filed by Godrej & Boyce Mfg. company limited in its capacity as the "Operational Creditor" under Section 8 and Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. The aforesaid matter was heard by the Hon'ble Tribunal and upon the said hearing, the Hon'ble Bench was pleased to pass an order dated 25.10.2019 admitting the Petition and appointing Mrs. Pooja Piyush Kabra as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned and prescribed under the Code.
4. The Applicant, at the time of conducting due inspection and upon enquiring further was informed that the Corporate Debtor had entered into a 'Subcontract Agreement' dated 29th March, 2010 which was subsequently amended on 25th July, 2011 (hereinafter referred to as '**Agreement**'). The said sub contract agreement was entered into between the Corporate Debtor and a consortium namely Larsen & Toubro Limited -Scomi Engg. BHD, consortium (LTSE) Consortium (hereinafter referred as "**Contractor**"). The Respondent and the said Contractor are the consortium partners of the said consortium. Further, the said LTSE consortium had entered into a contract with the Mumbai Metropolitan Region Development Authority (MMRDA) (Hereinafter referred as "**Employer**") under a main contract dated 9th January 2009 to provide the 'Design, Development, Construction, Manufacture, Supply, Testing and Commissioning including Operation and Maintenance of Monorail Systems in Mumbai Metropolitan Region'.
5. The Applicant states that the subcontractor i.e. the Corporate Debtor had entered into the Agreement with the main contractor (consortium of Respondent and Scomi Engg. BHD) to provide the necessary Goods and

Services to the Employer in the name of Mumbai Metropolitan Region Development Authority (MMRDA). The Applicant also states that the Corporate Debtor was appointed as a 'Sub Contractor' under the terms of the Agreement between the Corporate Debtor and the LTSE Consortium for the Scope of Work defined in the said Agreement to undertake the project for Employer (MMRDA) as referred to in the said Agreement.

6. The Applicant states that it is also observed from the books of accounts of the Corporate Debtor that the said LTSE Consortium has substantial amounts due and payable to the corporate debtor against the services rendered and the goods provided by the Corporate Debtor. The said contention of the applicant is further seconded based on the information received from the then statutory auditors of the corporate debtor. Further, the services rendered and goods supplied by the applicant, corporate debtor were ultimately utilized by MMRDA who is principal employer and project owner. There could be absolutely no denial to the said fact that the MMRDA was ultimately responsible for the payments required to be made for the supplies made for the project completion /work in progress by the contractor and sub-contractor including the corporate debtor. Furthermore, the Applicant observed that in the Sub Contract agreement dated 29<sup>th</sup> March, 2019, it has been mentioned that "Benefits or Claims arising out of claims allowed by the employer (MMRDA) or Arbitral Tribunal/ Court shall be passed to the sub-contractor and the Contractor shall not be separately liable for such Claims.
7. The Applicant states that after having been appointed as the Interim Resolution Professional of the Corporate Debtor, the Applicant issued various email/letters intimating all the Respondent about the ongoing CIRP. Vide the said emails/letters the Applicant sought the details as follows:
  - a. To provide complete information regarding the Agreement with SCOMI group
  - b. To provide original Sub-contract Copy of UTPL and LTSE Consortium along with any addendum;

- c. To provide periodical financial statements and all the backup documents.
  - d. Amount due and payable in the books of LTSE Consortium to UTPL for the work done including unbilled amount for Work in Progress
  - e. To provide information relating to financial and operational payments related to the project
  - f. Any other details/information.
  - g. To provide contact details of all the concerned person involved in the said transaction
  - h. To provide complete information relating to the assets, finances and operations of the company, along with the copies of audited annual statements for the immediately preceding two financial years and the fixed asset register if any maintained by the Corporate Debtor.
8. Prior to filing the Application for liquidation, the Applicant i.e. the Resolution Professional then addressed several communications/ correspondences to the promoters of the Corporate Debtor, the Respondents and other related parties seeking information about the Corporate Debtor. However, the Respondent refused to provide any information sought for by the Corporate Debtor.
9. Being aggrieved by the refusal of the Respondent to provide the information sought for, the Applicant filed an Application under Section 19 against the Respondent amongst others. However, since the Application for liquidation came to be allowed, the Application filed by the Applicant became infructuous.
10. The Applicant also learnt that the Holding Company of the Corporate Debtor was already into liquidation. Since there was no information available of the Corporate Debtor, an application was filed seeking liquidation of the Corporate Debtor. Accordingly, the application was approved by 100% COC by e-voting.

11. Thereafter, on 16-04.2021, the Hon'ble National Company Law Tribunal, passed an order under sections Sec 33(1) (b)(i) to (iii) r/w Sec33(3), SEC 9 of the Code and was pleased to direct the Liquidator appointed in the said case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Even after the Corporate Debtor was under liquidation, the Applicant addressed communications to the Respondents requesting them to provide the information sought.
  12. Despite repeated requests and reminders, the respondent provided vague replies on 14th June, 2021 and 3rd August, 2021 and refused to divulge any information sought for by the Applicant on the following grounds:
    - That the information sought for regarding the Arbitration proceedings are confidential in nature
    - That there is no amounts due and payable by the LTSE to the Corporate Debtor in view of the triparte agreement between the Corporate Debtor and LTSE.
- Thus, applicant was unable to get any satisfactory response from the Respondent.
13. Aggrieved by the non-co-operative conduct of the Respondent, the Applicant again addressed a legal notice on 17th December, 2021, to explain them the factual matrix and further requesting the Respondent herein to provide the Applicant with the documents in order to enable the Applicant to comply with her responsibilities as a liquidator.
  14. Thereafter, on 8<sup>th</sup> January, 2022, the Applicant herein received a letter whereby the Respondent denied every liability on their part and refused to cooperate with the Applicant herein and once again refused to provide the information sought for. The Applicant states that the Applicant has time and again requested the Respondents to provide the information sought by her in her letters only in order to comply with the duty cast upon her.

15. The applicant has time and again collected information from various sources including the financial creditors, the respondents, current or ex-employees and its own independent resources and have arrived at the following factual matrix with regards to the transactions between the corporate debtor and the respondents: -

- a) There existed an Agreement entered between MMRDA and LTSE consortium dated January 09th, 2009 being the Main Agreement for providing the design, development, Construction, Manufacture, Supply, Testing and commissioning including Operation and Maintenance of monorail system in Mumbai Metropolitan Region.
- b) There existed an Agreement entered between LTSE and the Corporate Debtor dated March 29, 2010 for supply of goods such as Depot Equipment i.e. supply of Light Maintenance and external works equipment, supply of telecommunication system equipment i.e. supply of fiber optic cables and transmission system, master clock system, CCTV, telephone cables and associated accessories etc. the detail scope of work set out in annexure 2 of the sub contract.
- c) MMRDA awarded the contract to LTSE consortium which was supposed to be a three years project, commencing from November 2008 and was supposed to be completed by the year 2011. The project was supposed to be completed in phased manner and the phase-2 were planned after the completion of the phase-1. However, the project faced various difficulties and project got standstill for substantially longer period compared to the contingency period projected at the beginning of the period largely due to lack of approvals in place which was the responsibility of the Principal Employer. Consequently, MMRDA continued to give extension for the project completion each time it neared the deadline. It was officially recorded in their correspondences that the Phase-1 was completed in the year February, 2014.
- d) MMRDA, through its contactor i.e. LTSE Consortium had awarded the Operation and Maintenance Contract to the Corporate Debtor. As per the information provided to the applicant, MMRDA faced difficulties in

running the monorails and therefore insisted that the Scomi Engg. BHD and the Corporate Debtor herein to perform the operations of the said project. However, the Applicant was further informed that as per the information provided by Scomi Engg BHD, the Corporate Debtor had incurred substantial costs towards rendering the Services which were due and payable by MMRDA to the Corporate Debtor with respect to the project and that MMRDA had at all times promised the Corporate Debtor that the said costs shall be paid in future. The Corporate Debtor continued to work on the project for three years.

- e) On multiple request, in the year 2016-17, MMRDA revised rates of the project without considering the fact that lot of work was already done by UTPL on assurance of revision and compensation for the losses incurred. The Phase - 2. post extensions, were expected to be completed in 2018. However, due to lower revision in rates and non-compensation for the losses, UTPL and Scomi raised objections to MMRDA for continuation of work in absence of acceptance of rates demanded by them. The Consortium demanded an additional compensation for cost overruns arising out of delays related to the right of way, environmental and other permissions, and rehabilitation of project affected persons (PAPs).
- f) That the prolonged delay in the completion of the project despite several extension and considering the large public interest affected, MMRDA internally decided to take over the full control including the operation and maintenance of the Monorail then operating in the Mumbai. MMRDA then issued a show cause notice dated 7th of December 2018 to the LTSE Consortium. The intent was to give just 7 days' notice as per the agreement to the contractor to comply with all the default and delay in the project citing default on scope mentioned in the GCC clause 15.2 and its respective sub clauses.
- g) MMRDA then issued a final notice to LTSE consortium dated 14<sup>th</sup> December 2018 under GCC clause 15.2 for termination of the main contract which was mentioned in the show cause noticed issued with 7 days' notice period. MMRDA did not consider the reply given by the

LTSE consortium dated 13th December 2018. The letter demanded the contractor to leave the site along with all the contract document and design documents with in 15 clear days from the date of the notice i.e., 14th December 2018.

16. Further, on account of the differences, the Applicant is informed that arbitration was invoked and that there were ongoing arbitration proceedings between MMRDA and LTSE. It is pertinent to note that under the Tripartite Agreement, MMRDA was not directly responsible to make any payments to the Corporate Debtor and that the benefit, if any, was to be passed on by the LTSE to the Corporate Debtor. Thus, the Applicant has time and again sought the details of the Arbitration Proceedings, as the outcome of the same will have a bearing on the Corporate Debtor.
17. Further, the copy of the arbitration award, if any, has not been provided to the Applicant.
18. The Applicant states that perusal of the sub contract Agreement/ Tripartite Agreement it has been noticed that "Benefits or Claims arising out of claims allowed by the employer (MMRDA) or Arbitral Tribunal/ Court shall be passed to the sub contractor and the Contractor shall not be separately liable for such Claims." It appears upon perusal of the limited information available with the Applicant and the records of the corporate debtor, there are amounts that are due and receivable by the corporate debtor from LTSE. Further, the Applicant also attempted to seek information about the receivables from the parent company being SCOMI. However, she was informed that the company was already under liquidation before the Malaya Courts. The Applicant has in her bonafide attempts also filed the claims before the concerned Court. Thus, in absence of receipt of information from the parent company, the Applicant communicated with the respondents requesting them to provide with the details more particularly mentioned in her correspondence. However, the Respondent has blatantly refused to provide the information sought by the Applicant.

19. It is submitted that in the absence of the information sought by the Applicant, she will be rendered helpless in assessing the nature of claims which are receivable by the Corporate Debtor herein, and a grave loss will be caused to the creditors of the Corporate Debtor herein.
20. The list of the details sought by the Applicant from the Respondent is as follows:-
  - a) Ledger account of UTPL in the books of LTSE/L&T since the commencement of the project transactions till date.
  - b) Documents with relation to the arbitration proceedings pertaining to LTSE, if any including any orders thereof.
  - c) Payment details including the evidences of the last payments made by LTSE to UTPL for the work undertaken by it.

**Affidavit in reply on behalf of the Respondent:**

21. The Respondent in their reply has denied all the allegations contained in the Application.
22. The Respondent submits that the Liquidator by demanding information from the Respondent, which is admittedly neither a director nor a person involved in the management of the Corporate Debtor, is exceeding the mandate prescribed under Section 19 of IBC. It is stated that the Liquidator cannot conduct a roving inquiry against third parties as the same is not permissible under the scheme of the Code.
23. It is further submitted that the present application is not maintainable and is bad for misjoinder/nonjoinder of parties as there is no privity of contract between the Corporate Debtor and the Respondent. It is an admitted position that Corporate Debtor had entered into sub-contract dated 29.03.2010 ("Sub-Contract) with the unincorporated consortium of its holding company Scomi Engineering BHD ("SCOMI") and Larsen & Toubro Limited (the Respondent herein), referred to as LTSE, and not the Respondent in its individual capacity.

24. It is further stated that the Sub-Contract provides that a part of SCOMI's scope of work under the LTSE Consortium Agreement for the implementation of the Monorail Contract between LTSE and Mumbai Metropolitan Region Development Authority ("MMRDA") would be performed by the Corporate Debtor (a wholly owned subsidiary of SCOMI).
25. The Corporate Debtor, Respondent and SCOMI had entered into a Tripartite Agreement dated 29.03.2010 ("Tripartite Agreement"). The said agreement in the recital C records that the SCOMI had requested that a part of the work agreed to be performed by it be contracted by LTSE to the present Corporate Debtor. Accordingly, LTSE appointed the Corporate Debtor as a subcontractor on the terms and conditions contained in the Sub-Contract dated 29.03.2020. Therefore, the Corporate Debtor has no privity of contract with the Respondent.
26. The Tripartite Agreement in clause 1a. records that SCOMI shall continue to be responsible for the scope of work subcontracted to the Corporate Debtor. More pertinently, clause 1b. provides that all rights and liabilities of each of the parties as contained in the Subcontract shall be settled between SCOMI and the Corporate Debtor. Therefore, the parties were ad idem that all rights and liabilities shall be settled between SCOMI and the Corporate Debtor. Accordingly, clause 2a. of the Tripartite Agreement states as follows:
- "a. UTPL hereby unequivocally confirms that it shall at no point in time make any claims against L&T in respect to the UTPL Subcontract and all claims, demands etc. it may have at any time whatsoever it will make the claims, demands etc. only against SCOMI. It is agreed between all the parties that in the event any claim, demand or, action is made by UTPL at any time under the UTPL Subcontract, the same shall be settled and/or defended by SCOMI at its own cost and responsibility and at no time shall L&T be required to settle and or defend any claims made by UTPL made under the UTPL Subcontract, which SCOMI will be entitled to claim in line with the Consortium Agreement and the Main Contract. It is further agreed*

*that L&T shall be entitled to have itself substituted by SCOMI in any claim, action and I or proceeding taken out by UTPL at any time. Notwithstanding anything to the contrary, it is agreed between the Parties that nothing contained herein shall diminish any claim, demands etc. of SCOMI against L&T that SCOMI was entitled to make under the Consortium Agreement irrespective of the UTPL Subcontract."*

The said agreement, thus, clearly records that the Corporate Debtor shall not have or make any claims against the Respondent in respect to the Subcontract and all liabilities will be discharged by SCOMI.

27. As stated above, the Corporate Debtor has no privity of contract with the Respondent, hence, there cannot exist any debt due and payable by the Respondent to the Corporate Debtor. It is further stated that the Respondent has already clarified that no debt is due and payable to the Corporate Debtor under the books of accounts of LTSE. Therefore, there exists no occasion for provision of any information including any schedule of payment or financial statements of LTSE.
28. It is relevant to note that the agreement between LTSE and the Corporate Debtor was in relation to SCOMI's scope of work. It is further submitted SCOMI, the holding company of the Corporate Debtor, is under liquidation in Malaysia, and all claims of the Corporate Debtor against its holding company (SCOMI) have to be filed before the liquidator in Malaysia.
29. In so far as the Corporate Debtor's unjust request for information relating to the arbitration between LTSE and MMRDA is concerned, it is submitted that under Section 42A of the Arbitration and Conciliation Act, 1996, arbitral proceedings are confidential and cannot be disclosed to third parties. It is stated that the present Corporate Debtor is not a party to any of the arbitration proceedings pending between LTSE and MMRDA and is therefore, not entitled to any information relating to such arbitration.

## **FINDINGS**

30. Section 19(1) of the Code requires the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor to extend all assistance and cooperation to the Interim Resolution Professional.
31. In the present case, the application has been filed by the Resolution Professional seeking directions against the Respondent, who is a member of a consortium i.e. Larsen & Toubro Limited- Scomi Engg. BHD consortium (LTSE). The said consortium was awarded a contract by MMRDA and part of jobs under this contract were sub contracted to the Corporate Debtor under sub-contracted agreement dated 29.03.2010 further amended on 25.07.2011. The Applicant has required documents enumerated at para 20 of this order from the Respondents.
32. The Respondents have submitted that in terms of tripartite agreement amongst the Corporate Debtor, the Respondent and Scomi, the part of the work to be performed by Scomi was sub-contracted to the Corporate Debtor and rights and obligations in that relation were to be settled between the Scomi and Corporate Debtor only. The Respondents have also put on record that no debt is due under the books and accounts of LTSE.
33. On a plane reading of Section 19(1) of the Code, this Bench finds that the word “any other person” used in the said Section refers to only those persons who were associated with the management of the Corporate Debtor and to nobody else. This Bench finds that the said words “any other person” follows the words “the personnel”, and “its promoters”. The rule of interpretation contained ejusdem generis states that when particular words pertaining to a class, category or genus and followed by general words, the general words are construed as limited to things of the same kind as those specified. In the case of ***Amar Chandra v. Collector of Excise, Tripura, AIR 1972 SC 1863, p. 1868***, it was stated that this rule applies when (1) the statute contains an enumeration of specific words; (2) the subjects of

enumeration constitute a class or category, (3) that class or category is not exhausted by the enumeration: (4) the general terms follow the enumeration, and (5) there is no indication of a different legislative intent. Accordingly, the words “any other person” is to be read as persons who were participating in the affairs of the Corporate Debtor, as the personnel of the Corporate Debtor and its promoters do. Since the Respondents are merely a partner of the Consortium, which had sub-contracted the obligations of other consortium partner, it cannot be said that the Respondents were associated with the management of the Corporate Debtor. Accordingly, this Bench is of the considered view that directions under Section 19(2) cannot be issued to the respondents for extending cooperation or assisting the Resolution Professional.

34. Accordingly, the IA. No. 606 of 2022 is **dismissed** and **disposed of**

Sd/-

**PRABHAT KUMAR**  
**Member (Technical)**

Sd/-

**KULDIP KUMAR KAREER**  
**Member (Judicial)**