

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Arguments through web-based video conferencing platform)**

**IA No. 666/2021
in
CP (IB) No.269/Chd/HP/2019**

**Under Section 60(5) of the IBC, 2016
read with Rule 11 of the NCLT Rules
2016**

In the matter of:

Gulshan Trading Company ... Operational Creditor

Vs.

Bhandari Deepak
Industries Pvt. Ltd.

....Corporate Debtor

And in the matter of IA No. 666/2021:-

1. Deepak Bhandari
having its address at
771, Sector-12, Panchkula
2. Anita Bhandari, w/o Deepak Bhandari
having its address at
771, Sector-12, Panchkula

....Applicants/Board of Suspended Directors of corporate debtor

Vs.

Vivek Kumar Arora
Resolution Professional
M/s. Bhandari Deepak Pvt. Ltd.
having its address at
H.No. 629, Sector-16 D, Chandigarh

...Respondent/Resolution Professional

Order delivered on: 12.01.2023

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

Present:

For the Applicant in :Mr. Karan Kaushal, Advocate
IA No. 666/2021

For the respondent in : Mr. Arora Vishwas Kumar, Advocate
IA No. 666/2021

Per: Subrata Kumar Dash, Member (Technical)

ORDER

The present application has been filed by the Board of Suspended Directors of the corporate debtor seeking direction against the respondent-Resolution Professional to provide copies of the Resolution Plan, valuation report, Forensic Audit Report, and complete minutes of the 14th CoC meeting dated 23.04.2021 and placing on record the violation and anomalies in CIRP of the corporate debtor. Further, seeks directions that the resolution process may be kept in abeyance till the applicants are provided copies of the aforementioned documents.

2. It is submitted by the applicant that the CIRP of the corporate debtor was initiated vide order dated 19.11.2019. The Resolution Professional published Form G on 02.02.2020, and the last date for submission of an Expression of Interest to submit the Resolution Plan was fixed as 22.02.2020. It is further submitted that vide email dated 24.02.2020, the EOI submitted by the corporate debtor in the capacity of MSME was rejected by the Resolution Professional. The applicant's plea seeking a challenge of said rejection was dismissed by this Adjudicating Authority. The said order of dismissal of this Adjudicating Authority was upheld by the Hon'ble NCLAT and the Hon'ble Supreme Court.

3. It is averred by the applicant that the respondent-Resolution Professional has contravened Section 25 (i) of the Insolvency and Bankruptcy Code including Regulations 21 (3A) (iii), 24 (7) and 35(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016. Further, the Resolution Professional has not provided the documents as prayed in the instant application.

4. The respondent-Resolution Professional has filed its reply vide Diary No. 00765/01 dated 08.03.2022, wherein it is stated that by not providing copies of the Resolution Plan (Submitted by Dev Resins Private Limited), Valuation Report, and complete minutes of the 14th meeting of COC, the Resolution Professional has acted in a bonafide manner and in accordance with the provisions of Insolvency And Bankruptcy Code and Regulations framed therein, were done bona fide. The intention of the Resolution Professional and members of COC was to maintain the confidentiality of the resolution plan as the applicants were interested in submitting a competitive bid/resolution plan in order to revive the corporate debtor from Corporate Insolvency Resolution Process. It is further stated by respondent-Resolution Professional that a copy of the Resolution Plan submitted by Dev Resins Private Limited and detailed minutes of the 14th CoC meeting was duly provided to the applicants after obtaining due confidentiality undertaking.

5. The Resolution Professional has further stated that a copy of the valuation report cannot be shared with the applicants as they are not a member of the Committee of Creditor as defined under Section 21 of the Code read with Regulation 2 (i) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016. In this context, the respondent has

relied on the order of Hon'ble NCLT, New Delhi Bench III dated 26.08.2019; **Oriental Bank of Commerce vs. Shekhar Resorts**, CA 260-261/c-III/ND/2019 in IB-22 (ND)/2018.

6. The applicant has filed a rejoinder vide Diary No. 00765/2 dated 21.02.2022, wherein the averments made by the respondents have been denied, and the contents of the application are reiterated.

7. We have heard the learned counsel for the applicant and respondent-Resolution Professional. Also, perused the written submission and record available.

8. In this context, we are conscious of the decision of Hon'ble NCLT, Ahmedabad Bench in the order dated 30.03.2022 in IA No. 434 of 2020 in CP(IB) No. 602/2018 in the matter of **Hemant Shantilal Shah & Anr. vs. Care Office Ltd**, wherein the judgment dated 31.01.2019 of Hon'ble Supreme Court in case of **Vijay Kumar Jain V. Standard Chartered Bank & Ors.** (Civil Appeal No. 8430 of 2018) has been referred. The relevant para is extracted below for the sake of clarity:

"In present case it is the valuation report which is in question. Whether it can be shared by Resolution Professional with ex-directors specially when the ex-management alleges and apprehends that properties of corporate debtor are being valued and offered at throw away price. In our view, the ex-management is the appropriate concerned parties to comment on valuation of properties of corporate debtor. The corporate debtor is the body of Ex-management and they were in control and handling the same till CIRP initiation. It would be pre-judicial if they are not even allowed to view the valuation and point out the shortfalls in valuation, if any.

The intent of code being maximization of value while insolvency resolution process, all concerned should be given access to the document which will be crucial for deciding worth of corporate debtor which is intended to be given new lease of life. There is no specific provision to not to share copy of valuation report with ex-directors, we hold that in interest of justice the copy of valuation report needs to be supplied to ex-directors, as already directed by the Predecessor Bench.

Accordingly, we direct Resolution Professional to supply copy of valuation report to the applicants within 2 days of this order.

We are of the opinion that Resolution Professional shall provide a copy of the valuation report to the suspended management of the corporate debtor subject to an undertaking from members of the suspended management, to maintain confidentiality. The source of this power is Regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, read with paragraph 21 of the First Schedule thereto. This can be in the form of a non-disclosure agreement in which the resolution professional can be indemnified in case information is not kept strictly confidential”.

9. The applicant i.e., Members of the Suspended Board of Directors have the right to participate in the CoC meeting as per the provisions of Section 24 (3) (b) of the Insolvency and Bankruptcy Code. In order to ensure their effective participation, we direct the respondent-Resolution Professional to provide copies of valuation reports and Forensic Audit Report to the applicant after obtaining an undertaking from members of the Suspended Board of Directors to maintain confidentiality within seven days of this order.

10. Also, keeping in view the aforementioned decisions of a coordinate Bench, the applicant is directed to submit its opinion/suggestions in the meeting of the CoC to be held two weeks after the handing over of the above-mentioned documents.

11. The CoC is directed to consider the submissions made before it, if any, by the applicant pursuant to the instant order.

12. In view of the above, the present IA is allowed and disposed of accordingly.

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

January 12, 2023
PB/ASH

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