

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH (Court- I)  
KOLKATA**

IA(IB)No.1502/KB/2023

IN

C.P (IB) No.145/KB/2018

***In the matter of***

*An application under section 70 and section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.*

And

**In the matter of:**

Mr. Suman Kumar Agarwal, Liquidator of Kolkata Conductor & Cable Pvt.Ltd. (In Liquidation) having its office at 20B, British India Street, 5<sup>th</sup> Floor, Kolkata- 700089

*... Applicant/Liquidator*

Versus

Mr. Manoj Kumar Singh, one of the Directors of erstwhile management of Kolkata Conductor & Cable Pvt. Ltd. (In Liquidation) having its address at 60/1, Ballygunge Circular Road, 12<sup>th</sup> Floor, Kolkata-700019.

*... Respondent*

Order Pronounced on : 08/12 /2023

**Coram:**

**Mr.Rohit Kapoor** : **Member (Judicial)**  
**Mr.Balraj Joshi** : **Member (Technical)**

**Counsels appeared through Physically/ Video Conference**

**For Liquidator:**

Ms. Tanvi Luhariwala, Adv.

Ms. Madhuja Barman, Adv.

**ORDER**

***Per: Balraj Joshi, Member (Technical)***

1. Heard Ld. Counsel for the parties.
2. This is an application has been filed by Mr. Suman Kumar Agarwal, Liquidator of Kolkata Conductor& Cable Pvt. Ltd. (In Liquidation).It has been stated that the subject Corporate Debtor (“CD”) was placed under liquidation *vide* order dated 12<sup>th</sup> March 2019 by this Adjudicating Authority under section 33 of the Code. Pursuant to the appointment of the applicant as a Liquidator, the applicant has conducted the liquidation process in terms of the Code and its underlying regulations.
3. The applicant had all material times had approached directors of the erstwhile management for extending assistance and cooperation to the applicant for completing the liquidation process expeditiously. However, no cooperation was extended.
4. Therefore, after persistent efforts made by the Liquidator and the lack of the assistance and cooperation from the directors, an application being MA no. 1444/KB/2019 was filed under section 19(2) read with section 34(3) of the Code and Regulation 9 of the IBBI (Liquidation Process) Regulations, 2016 seeking directions from this Adjudicating Authority upon the erstwhile management to extend the cooperation to the applicant.
5. The notices were sent to the respondent, and the matter was taken up by the Tribunal on number of occasions, however, no representation was made by the erstwhile directors of the company.
6. Vide order dated 17<sup>th</sup> December, 2021, this Adjudicating Authority granted one last opportunity to members of the suspended board to hand over all the documents to the liquidator with direction to Dy. Commissioner of Police to provide assistance to the Liquidator for taking over the properties. Accordingly, the Liquidator sought help of

police and was successful in taking possession of property at Pagladanga Road. However, as still no documents/data could be received from the erstwhile management and on 9<sup>th</sup> Feb.2022, this Adjudicating Authority issued bailable warrants to cause production of two directors before the Adjudicating Authority .

7. In order to secure the presence of the said Sh. Manoj Kumar Singh , as to get as much as data/detail from him which was an absolute necessity for maximising the value of the Corporate Debtor, bailable warrants were again issued on 28<sup>th</sup> March, 2022 to securing appearance of both the directors namely Pankaj Kumar Singh and Manoj Kumar Singh. On 6<sup>th</sup> May 2022 , Mr. Pankaj Kumar Singh was produced by the Police before this Adjudicating Authority, however he pleaded complete innocence in the matter and submitted that his elder brother namely Mr. Manoj Kumar Singh was the prime mover of the company and he controlled the company for all intents and purposes.
8. Vide order dated 10<sup>th</sup> June, 2022, this Adjudicating Authority also summoned Mr. Sudeep Sarkar, IPS Deputy Commissioner of Police, South East Division to be present before this Court on the next date of hearing in case Mr. Manoj Kumar Singh is not traced and not present in the court.
9. On the next date i.e. on 13<sup>th</sup> July 2022 Mr. Manoj Kumar Singh was infact produced before this Adjudicating Authority along with his advocates, who assured that he will extend all the cooperation to the liquidator.
10. List of documents required by the liquidator were also shared with him, however Mr. Manoj Kumar Singh did not cooperate and started raising vague contentions/ excuses. He was given time to fish out the data/documents.
11. The matter was again fixed on 20<sup>th</sup> July, 2022 and Mr. Manoj Kumar Singh was again not present in the court whereupon an order was passed on 20<sup>th</sup> July, 2022 that requesting the Deputy Commissioner of Police, South East Division Kolkata police to secure the presence of Mr. Manoj Kumar Singh again.
12. On 18<sup>th</sup> October, 2022 i.e. date when Mr. Manoj Kumar Singh was supposed to be brought by the Local Police, the Sub Inspector of Local Police had requested another date as the Manoj Kumar Singh could not be located. Continuing with the efforts of this

Authority to seek requisite data, documents detail required from the Liquidator from the suspended director. Finally Deputy Commissioner of Police, South East Division, Kolkata was brought in who stated that non bailable warrant issued as the person appears to have gone out of State which was done and finally Manoj Kumar Singh was produced on 26 April 2023 .

13. Nevertheless, no cooperation came forward and he continued to said that does not have anything with him. It must be stated that this Tribunal had decided to utilise the power conferred upon this Adjudicating Authority by section 19(2).
14. However, unfortunately the requisite cooperation could not be obtained from the suspended director, therefore this application has been filed by the Liquidator under section 70 of the code.
15. Section 70 reads as follows:-

*“ (1) On or after the insolvency commencement date, where an officer of the corporate debtor-*

- (a) does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or*
- (b) does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver; or*
- (c) does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver; or*
- (d) fails to inform their solution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process; or*
- (e) prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or*
- (f) accounts for any part of the property of the corporate debtor by fictitious losses or expenses, of if he has so attempted at any meeting of the*

*creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both”.*

16. In view of the forgoing text and the provision of the statute, we hold that the subject Ex. Director namely M.K.Singh liable to be punished under section 70( e) and under section 70(1) ( e), we are mindful of the fact that Hon’ble NCLAT in the matter of **Vivek Prakash (Suspended Director & MD) Vs. Dinesh Kr.Gupta,Liquidator of M/s Jarvis Infratech Pvt.Ltd. & Anr** has held para 8 which is as follows ;

*“ Thus, prosecution under Section 70 has to be on complaint filed by the Board or Central Government or person authorized by the Central Government. The submission of the Learned Counsel for the Appellant that Resolution Professional is not empowered to initiate the prosecution is correct. Learned Counsel for the Resolution-Resolution Professional has however, explained that no prosecution has been initiated under Section 70 by the Resolution Professional and he has only sent the information to the Board and it is for the Board to take appropriate action.We, thus, clarify that any prosecution under Section 70 can be initiated only in accordance with the procedure as provided under Section 236(2) and not by the Resolution Professional. However, with regard to any other offences including the offences under Indian Penal Code, if any complaint is filed by the Resolution Professional before that is separate issue and has no concern with the offences under Section 70 and the order impugned shall have no bearing on such proceedings by a Police Station and they are independent proceedings which has to be considered and decided in accordance with law” .*

17. Whereby it has been categorically stated that this Adjudicating Authority doesn't have jurisdiction to levy penalty in the light of the above and also in the light of the provisions of section 236 of IBC , which read as follows ;

**“ Trial of offences by Special Court –**

- (1) *Notwithstanding anything in the Code of Criminal Procedure,1973(2 of 1974), offences under of this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013 (18 of 2013).*
- (2) *No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.*
- (3) *The provisions of the Code of Criminal Procedure,1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.*
- (4) *Notwithstanding anything contained in the Code of Criminal Procedure,1973 in case of a complaint under sub-section (2), the presence of the person authorised by the Central Government or the Board before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial”.*

18. It has been seen in number of cases that the erstwhile management does not wilfully cooperate with the RP of the Liquidator allowing them to discharge his duty faithfully and productively and that despite issuance a series of orders under section 19(2), no cooperation is rendered by them, which leads to an avoidable delay in the resolution/liquidation process. Therefore, it became necessary for us to invoke provisions of section 70 of the Code which would help in the matter at hand and also shall act a deterrent to others. Therefore in line with the judgement of Hon'ble NCLAT, while we are not levying any penalty on the individual concerned ourselves, but

recommend to IBBI and the Government of India that the matter be referred to a Special Court to be established under chapter XXVIII of the Companies Act, 2013.

19. IA(IB)No.1502KB/2023 is disposed of with the above directions.
20. Certified copy of this order may be had from the registry of this Adjudicating Authority subject to fulfilling of the codal formalities.
21. Post the matter for further consideration on **20.12.2023**

**(Balraj Joshi)**  
**Member (Technical)**

**(Rohit Kapoor )**  
**Member (Judicial)**

Order signed on this, the 8<sup>th</sup> day of December, 2023

PJ