

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 1511 OF 2022

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

M/s Akai Steels Private Limited

...Applicant

Vs.

SREI Equipment Finance Limited &
others

...Respondents

In the matter of

C.P.(IB) No. 494/MB/2019

SREI Equipment Finance Limited

Financial Creditor

Vs.

Shree Ram Urban Infrastructure Limited

Corporate Debtor

Order delivered on: 10.04.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Applicant : Mr. Nedumpara a/w Ms. Swati
Chinnaduarai, Advocate
For the Respondent : None

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Application I.A. 1151/2022 is filed by Akai Steels Private Limited (Applicant) on 01.06.2022 against SREI Equipment Finance Limited & three others in CP (IB) 494 of 2019 seeking following reliefs:
 - a. direct the Official Liquidator of Bombay High Court to handover the records of the Company ie. Shree Ram Urban Infrastructure Ltd. to the IRP Mr. Srigopal Choudhary.
 - b. direct the IRP to honor the claim of the instant applicant which is nothing but to include the name of the Applicant in the list of creditors.

2. An instant applicant who has obtained a decree for recovery of amount of Rs.33,99,657/- with interest by virtue of judgement and decree dated 10.10.2016 in Summary Suit No. 796 of 2015 filed before High Court of Bombay.
 - 2.1. The Applicants herein / Original Decree Holders in Summary Suit No.796 of 2015 thereafter addressed a letter to Respondent no. 3 i.e Mr. Srigopal Choudhary the Interim Resolution Professional, hereinafter referred to as IRP, in CA No.494 of

2019, for inclusion of the name of the Instant Applicant's name in the list of unsecured creditors which the IRP has prepared. After the inclusion of the Applicant's name, a request was also made to the IRP to further disbursement of the amount as per the calculations in the Order passed in the above company petition.

2.2. The Applicant was shocked to notice that the list of creditors dated 26.04.2021 prepared by IRP in CP No. 494 of 2019 does not figure the name of the applicant despite the clear communication by the Applicant to the IRP.

2.3. It is further stated that the Applicant had submitted their claim of Rs. 1,08,84,497/- to Respondent No.3 on dated 06/12/2019 & reminder letter dated 23/11/2020.

2.4. It is further stated that the Respondent no 3, the IRP, through an email dated 28th July 2021 informed the applicant that the records and the documents of the debtor are not available with him.

2.5. It was also further stated by the IRP, that the Official Liquidator appointed by the Hon'ble Court, Bombay is still withholding the properties and records of the company for the sole reason that the expenses which the official liquidator has incurred in the above matter (claims of the Official liquidator) is liable to be paid them as per directions of the Bombay High Court, which is still pending.

2.6. It is further stated by the IRP that the Official Liquidator has been wilfully withholding the records of the Applicant and only upon the receipt of letters and documents which is current in the custody of the Official Liquidator then only the IRP will be able to access and verify the claim of the applicant.

- 2.7. In short, the Official Liquidator of Bombay High Court is claiming a lien over the records and proceedings which are in his custody qua the amount due to hi
- 2.8. It is humbly submitted to this Hon'ble Tribunal, that Official Liquidator of Bombay High Court is a trustee of the affairs of the company under liquidation namely, M/s Shree Ram urban infrastructure Limited. The purpose he wing appointed as a liquidator of the company is to make the winding up i.e. the judicial process of closure of the company as smooth as possible.
- 2.9. The Official Liquidator of Bombay High Court is a servant of law, a facilitator / aid of the court. The documents and records of which he is in custody are not his properties. The title of which does not belong to him. He is vested of no right or he enjoys no lien on the records in his custody and his refusal to hand over the records to the IRP amounts gross dereliction of duty so to interference with the administration of justice. The actions of Official Liquidator of Bombay High Court as in as much delaying the process of Winding up of the company, which is contrary to the role assigned to him.
- 2.10. The Hon'ble High Court while acting as a Company Court is a tribunal of limited jurisdiction. The function it exercises is undoubtedly the sovereign power of we the people. The National Company Law Tribunal (NCLT) too exercises the very same sovereign power of the state. The Official Liquidator of Bombay High Court is certainly entitled to recover the monies he has spent / incurred acting as Official Liquidator for the Shriram Infrastructure (Company in Liquidation).

- 2.11. The Official Liquidator may have a priority over a claim over the assets and proceeds of the Company under liquidation. He is definitely entitled to manner known to law. If claim the same from the IRP in a the Hon'ble Bombay High Court has quantified the amount which the Official Liquidator could claim nay there is a direction that the Official Liquidator be paid a certain amount towards the expenses which he has incurred then his claim stands quantified. 18
- 2.12. It is an amount which the HC recovered from the company under resolution process. Based in the order of the high court in his favor the IRP can even move an application before NCLT in the evening of his claim not honored by the IP.
- 2.13. But the fact that he has obtained an order from HC quantified the order due to him invests in him no jurisdiction to withhold the records, documents, to the detriment of the creditors of the instant applicant. What he does is interference to the administration of justice.
- 2.14. Furthermore, Sec 299 of the Companies Act 2016 as amended from time to time, authorises the tribunal and also the IRP to call for records and proceedings from any person or organisation which is directly or indirectly connected with the Resolution Process. The IRP in this instance can invoke this Section for inspection in order to satisfy himself as to the authenticity of the claim of the applicant and hence include the same in the list of creditors.
- 2.15. The claim of the Applicants has been duly adjudicated by a competent authority and same has been decreed after following due process of law. It is further stated by the Applicant that this decree has attained finality as there is no

appeal admitted against the Order and Decree dated 16.03.2016 passed in Summary Suit no 626 of 2014 passed by Hon'ble Bombay High Court. This claim is a legitimate claim which ought to be admitted and the applicants be paid the entire amounts with interest by the IRP.

2.16. The instant petitioner has no reason to delay the right of the Official Liquidator and he is certainly does not wish to derail any process. But the Official Liquidator cannot hold the creditors to ransom by not handing out the records to the IRP, especially for a claim which has been adjudicated by the very same court the Official Liquidator is attached to. The Official Liquidator is available to the jurisdiction of this tribunal and in the interest of justice he be directed to make available the records and documents concerning the claim of the instant applicant to the IRP so as to properly adjudicate the genuine claim of the Applicant and further that the IRP disburse the monies with interest to the Applicant.

3. Heard learned Counsel and perused the material on record.
4. This application has been filed against non-consideration of claim of the Applicant, which is based on a decree issued by Hon'ble Mumbai High Court, on account of non-provision of records by the Official Liquidator, who was in charge of Corporate Debtor under the Companies Act, 2013 prior to initiation of CIRP process in case of Corporate Debtor. The Respondent IRP vide his email dated 28.07.2021 had communicated to the Applicant that "*The Official Liquidator, Bombay is still holding properties and records of the company pending reimbursement of expenses incurred by the Official Liquidator as per directions of the Hon'ble High Court. We shall be able to assess and verify your claim post receipt of the custody of the Records and documents*

from the Official Liquidator". On perusal of the minutes of the meeting of CoC held on 19.04.2021, the IRP had informed the CoC members also about this fact which is recorded in the minutes as "*Official Liquidator has not handed over Records/Documents or assets in his possession and shall hand over the custody of Assets of the CD after reimbursement of their dues as per the orders of Hon'ble High Court, Mumbai*" and is also stated to have "*appealed to all the Financial Creditors to provide necessary 'Funds' to enable the IRP team to continue with the Legal cases to protect mainly the Assets of the Corporate Debtor and also to maintain the 'Going Concern Status' of the Corporate Debtor*".

4.1. Section 18 of the Code mandates the IRP to collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor as well as to take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets. Further, IRP is duty bound to constitute the committee of creditors and verify the claims of creditors, which can be done only on the basis of records in possession of the IRP. The Scheme of Code requires all Creditors to file the claim with IRP and the Official Liquidator, a creditor in present case. Accordingly, we direct the Official Liquidator to handover the records and assets of the Corporate Debtor to IRP within 15 days, if not done so far, also file the claim before IRP, if their amount is still pending. It is clarified that the claim of the Official Liquidator shall form part of CIRP cost and treated accordingly.

- 4.2. After receipt of records and assets from the Official Liquidator, the IRP/RP shall verify the claim of the Applicant and deal with it in accordance with the provisions of this Code.
5. In view of the foregoing, I.A. 1511/2022 is allowed and disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)