



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER

IA No. 411/JPR/2022
In CP No. (IB)- 79/9/JPR/2020

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S PRIME IMPLEX

...Operational Creditor/Applicant

Versus

M/S SHALFEYO INDUSTRIES PVT. LTD.

...Corporate Debtor/Respondent

IA No. 411/JPR/2022:

MEMO OF PARTIES

Umang Jain,

Interim Resolution Professional of
M/s Shalfeyo Industries Private Limited

Having his office at:

380, Gayatri Nagar A, Maharani Farm,
Durgapura, Near IHITC,
Jaipur, Rajasthan - 302018

... Applicant

Versus

Mr. Ram Sharan Modi,

**Having DIN: 01076436**

Suspended Director of M/s Shalfeyo Industries Private Limited
Residing at (As per MCA Records): 17, 18-B, Talwandi,
Kota - 324005

... Respondent No. 1

Mr. Deepak Modi,**Having DIN: 07022214**

Suspended Director of M/s Shalfeyo Industries Private Limited
Residing at (as per MCA Records): 17, 18-B, Talwandi,
Kota- 324005 (Rajasthan)

Residing at (As per information available with IRP): 250/47, RHB,
Pratap Enclave Haldhighati Marg, Pratap Nagar, Sanganer,
Jaipur- 302017 (Rajasthan)

... Respondent No. 2

D Jain & Co.**Represented by CA Abhishek Garg**

Auditor of M/s Shalfeyo Industries Private Limited

Having its office at:

G-1, Ganesh Marg, Bapu Nagar,
Akshat Hari Niwas, B-47,
Jaipur – 302015 (Rajasthan)

... Respondent No. 3

For the Applicant : Nitesh Kumar Shrivastava, Adv.
Umang Jain, RP
For the Suspended Directors : Naresh Kumar Sejvani, Adv.

Order Pronounced On: 11.08.2023

ORDER**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Interim Application ('IA') has been filed by the Resolution Professional ('RP'), of M/s Shalfeyo Industries Private Limited ('Corporate Debtor') under Section 19 of Insolvency and Bankruptcy Code, 2016 (the 'Code'/ 'IBC'). The Adjudicating Authority *vide* Order



dated 16.08.2022 ('CIRP Order') admitted the application under Section 9 of the IBC, filed by the Operational Creditor against the Corporate Debtor in the above-mentioned matter and Mr. Umang Jain was appointed as Interim Resolution Professional ('IRP').

2. It has been submitted by the Applicant that a copy of the CIRP Order was sent *vide* an email and a letter dated 20.08.2022 intimating initiation of the CIRP and seeking requisite information regarding the affairs of the Corporate Debtor. A copy of the email and letter dated 20.08.2023 is annexed as Annexure – B (Colly) and C of the Application, respectively. The aforesaid email was responded to, by one of the suspended directors, Mr. Deepak Modi, *vide* an email dated 27.08.2022 ('Response Email') alleging the manner and conduct of the IRP while conveniently avoiding to provide the necessary documentation for a successful resolution of the Corporate Debtor. A copy of the Response Email is annexed as Annexure – D of the Application.
3. Subsequently, the IRP sent a reminder email dated 27.08.2022 ('Reminder Email') to hand over the entire assets including complete updated books of accounts as of date belonging to the Corporate Debtor. However, the suspended directors have not substantially complied with the same and have provided scrap stock along with previous years' vouchers and bank statements. Thus, such documents are inadequate and insufficient for the proper resolution of the Corporate Debtor. A copy of the Reminder Email



is annexed as Annexure – E of the Application. Further, the IRP has also informed and reminded, D Jain & Company, the auditor of the Corporate Debtor (‘Respondent No. 3’). Nevertheless, he received no response. A copy of the intimation and reminder emails dated 20.08.2022 and 27.08.2022 is annexed as Annexure – F (Colly) of the Application.

4. Furthermore, the sole Committee of Creditor(s) (‘CoC’) member, Axis Bank had withdrawn its claim *vide* an email dated 06.10.2022. Therefore, the CoC has not appointed the IRP as Resolution Professional (‘RP’). Hence, in accordance with Rule 17(3) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Rules, 2016 (‘CIRP Rules’), IRP Mr. Umang Jain is performing the functions of the RP.
5. In the present application, it is stated that the direction passed in the CP No. 79/9/JPR/2020 could not be complied with as the personnel of the Corporate Debtor are not extending their assistance and cooperation to the RP and prayed that directions enumerated in the application may be given to the respondents including the following:

- I. Kindly allow the present application and the respondent 1 & 2 be directed to provide all the details as sought by the humble applicant along with peaceful possession of entire assets belonging to the corporate debtor and necessary directions may kindly be issued to the respondents, suspended directors along with other key managerial personnel of the corporate debtor for cooperation as needed by the applicant herein for the better and efficient discharge*



of the duties as prescribed under the IBC, 2016 and rules/ regulations made thereunder

- II. *Issue directions to respondent no. 3 to provide access to all the documents and records pertaining to the corporate debtor 'Shalfeyo Industries Private Limited' lying at their office or in soft copy along with the co-operation as needed by the applicant herein for the better and efficient discharge of the duties as prescribed under the IBC, 2016 and rules/ regulations made thereunder*
- III. *Issue any other order which this Hon'ble Tribunal deem fit in the light of facts and circumstances of the case may also be passed in favour of the applicant in terms of Prayer Clause A & B*

6. Respondent Nos. 1 and 2, who are Suspended Directors of the Corporate Debtor were given numerous opportunities to file their reply to the present IA. However, they have not filed their reply. Hence, their right to file a reply was forfeited *vide* Order dated 13.06.2023.
7. The Applicant has relied on the judgment of *Manoj K. Daga v. ISGEC Heavy Engineering Limited & Ors.*, Company Appeal (AT)(Ins) No. 1113 of 2019 wherein the Hon'ble NCLAT observe and held that:

'We are of the opinion that the Appellant and Deepak Daga since beginning were aware of nature of the acts they were committing in the illegal withdrawals. They disobeyed Orders of Adjudicating Authority and this Tribunal wilfully and there is wilful non-compliance of undertakings given. IA. No. 1075 of 2020 to seek time to comply undertaking is not honest and appears to have been filed to create grounds of defence to further abuse process to kill time. ... The acts prima facie discloses serious Contempt, violating mandate of law of IBC applied by Orders of Adjudicating Authority and this Tribunal and breach of undertaking given on oath,



actionable as NCLT established under the Companies Act, 2013 acts as Adjudicating Authority and this Tribunal is empowered under Section 425 of Companies Act, 2013 read with enabling provisions to take action.’

8. Section 19(1) of the IBC provides that the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor.
9. The Adjudicating Authority on receiving an application under Sub-section (2), shall by an order, direct such personnel or other persons to comply with the instructions of the Resolution Professional and to cooperate with him in the collection of information and management of the Corporate Debtor.
10. Considering arguments advanced, submissions put forth and documents placed on the record, application of the Resolution Professional is allowed and Respondents are directed to extend their full cooperation and support to Resolution Professional in locating and handing over the assets along with providing all the documents and records enumerated in the application within fifteen days from the date of this order.
11. The RP shall be at liberty to move an appropriate application, in case of any breach of the direction given by this Adjudicating Authority. Furthermore, the non-compliance with the aforesaid direction would attract strict penalties and *Suspended Management* shall remain present in person



either physically or through virtual mode to explain their non-compliances with the aforesaid directions.

12. Needless to mention, any non-conformity, shall result in the issuance of either aailable warrant or a non-ailable warrant. The RP is directed to inform the *Suspended* Management. The Registry is directed to serve a copy of this Order to the *Suspended* Management.

Accordingly, IA No. 411/JPR/2022 stands disposed of.

**-Sd-
DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

**-Sd-
ATUL CHATURVEDI,
TECHNICAL MEMBER**