

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

I.A No.4581 of 2023

In

CP (IB) No.783/MB/2021

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

Shri. Gokul Anilkumar Agarwal

Member of the Suspended Board of
Director of the Corporate Debtor
residing at 601, Khatau Condominium,
J M Mehta Road, Off- Nepean Sea Road,
Malabar Hill, Mumbai -400 006

... Applicant/ Petitioner

V/s

Shri. Harshad Deshpande,

Resolution Professional of A A Estates
Pvt Ltd, 403,Kumar Millennium,
Shivatirath Nagar Kaman, Opp.
Krishana Hospital Paud Road,
Kothrud , Pune (Mah) 411 038

... Respondent

In the matter of

State Bank of India

...Financial Creditor

V/s

A A Estates Private Ltd

....Corporate Debtor

Order dated on:21.06.2024

Coram:

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member (Technical)

For the Applicant:

Mr. .Aniruth Purusothaman , Advocate

ORDER

1. The above application I.A. No. 4581 of 2023 is filed by Gokul Anilkumar Agarwal (A member of the suspended Board of Directors of the Corporate Debtor) (hereinafter referred to as the "**Applicant**") seeking direction against Harshad Deshpande (Resolution Professional of the Corporate Debtor) (hereinafter referred to as the "**Respondent**") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 And Rule 11 of NCLT Rules, 2016 (hereinafter called as "**the Code**"), praying for following reliefs:
 - a) *Direct the Respondent to allow the Applicant and any authorized person on behalf of the Applicant to inspect the Claim Forms filed by the Creditors of the Corporate Debtor;*
 - b) *Direct the Respondent to provide copies of the Claim Forms filed by the Creditors of the Corporate Debtor.*
 - c) *Pass ad-interim or interim orders in terms of Clause A and B;*
 - d) *Pass any order (s) as it may deem fit;*

Brief facts of the application

2. The Present Applicant bearing no. I.A. 4581 of 2023 is filed by Gokul Anilkumar Agarwal seeking order permitting the Applicant or any authorized person on behalf of the Applicant to inspect the Claim Forms filed by the Creditors of the Corporate Debtor.
3. The Corporate Debtor A A Estates was a Company Incorporated under the Companies Act, 1956 on 17.07.1996. The Corporate Debtor, A A Estates, had obtained Cash Credit Facilities from the State Bank of India in 2012, secured by various assets including flats, receivables, and land. Personal guarantees were provided by Mr. Anil Kumar Agarwal, Mrs. Saranga A. Agarwal, Mr. Anubhav A. Agarwal, and Mr. Gokul A. Agarwal, as per the Guarantee Agreement dated 18.02.2012 and a corporate guarantee by RNA Corp Pvt. Ltd. However, RNA Corp Pvt. Ltd. itself faced insolvency proceedings initiated by Bank of India in 2019, leading to the appointment of an Interim Resolution Professional and commencement of Corporate Insolvency Resolution Process (CIRP).
4. The Corporate Debtor had defaulted on repayments on 31.03.2014. SBI had issued a Legal Demand Notice on 02.03.2015 under SARFAESI to recall the outstanding liability. Despite this, the default had remained unresolved. SBI then issued a Possession Notice on July 01, 2015, informing the Corporate Debtor of seizing the Land and initiating its sale for debt recovery. However, no bids were received. Another Legal Demand Notice was issued on 05.04.2016. Subsequently, the Applicant filed an Original Application on 01.06.2016, seeking recovery of Rs. 75,22,70,867.51 plus interest before the Debts Recovery Tribunal-II at Mumbai under the Recovery of Debts due to Banks and Financial Institutions Act 1993.
5. The Corporate Debtor had admitted the outstanding principal amount via a compromise letter dated 31.01.2018, during the pending application before

the Debt Recovery Tribunal. However, the Applicant did not accept the compromise. Despite numerous exchanges, the Corporate Debtor failed to rectify the default and make timely repayments to the Applicant.

6. The Company Petition No. 783 of 2021 was filed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. A A Estates Pvt. Ltd under Section 7 of the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor was admitted to CIRP vide an order dated 06.12.2022 wherein Mr. Harshad Shamkant Despande(Respondent) was appointed as IRP. IRP was subsequently made a RP by the CoC for the CIRP of the Corporate Debtor.
7. In view of the, aforesaid order dated 06.12.2022, the IRP (Respondent) issued public announcement in Form A [Under Regulation 6 of the *Insolvency and Bankruptcy Board of India* (Insolvency Resolution Process for Corporate Persons), Regulation, 2016], calling upon the creditors of the Corporate Debtor to file their claims, along with proof, on or before 20.12.2022. Subsequently the Respondent issued Form G for Invitation of Expression of Interest on 28.07.2023 in two Newspapers i.e. *Financial Express* (English Language) and *Navakal* (Marathi Language) of Mumbai Edition and mention the last date for filling the EoI was 11.08.2023 and the same was uploaded on the *IBBI* website on 28.07.2023. The second time the EoI was published in *The Free Press Journal* (English Language) and *Nav Shakati* (Marathi Edition) of Mumbai edition on 29.08.2023 and the last date for submitting EoI was 13.09.2023 [Under Regulation 36A (1) of the *Insolvency and Bankruptcy Board of India* (Insolvency Resolution Process for Corporate Persons), Regulation,2016] in the matter of the Corporate Debtor.
8. It is also submitted that, the 3rd meeting of the Committee of Creditors (CoC) of the Corporate Debtor was held on 25.08.2023 and the minutes of the

same were sent to the Applicant as a member of the Suspended Board of Directors of the Corporate Debtor.

9. In view of the aforesaid minutes of 3rd CoC meeting, the Applicant encountered certain inconsistencies and thus vide email dated 16.09.2023, requested to inspect the documents/ claim forms filed by the Homebuyers, Financial Creditors, Operational Creditors and others. The Respondent vide email dated 18.09.2023, notified the Applicant that the Respondent cannot accept the request of the Applicant for inspection of the Claim Forms filed by the Homebuyers, Financial Creditors, Operational Creditors.
10. The Applicant further mentioned that the Respondent, i.e. Suraksha Asset Reconstruction Private Limited (**herein after Suraksha**), had submitted a claim of Rs.165.20 Crores in the CIRP of RNA Crop Private Limited, which was much lower than what it has claimed in the CIRP of the Corporate Debtor, amounting to Rs.394.93 Crores. The Applicant informed the Respondent that the interest amount stated in the claim for the Corporate Debtor seemed excessively high, and the same had to be notified to the CoC of the Corporate Debtor in the 4th CoC meeting, by the authorized representative of the Suspended Directors who had requested to allow the suspended Directors to check the Documents based on which the Respondent had admitted the claims.
11. The Applicant requested the Respondent to provide copies of the claim forms submitted by all the creditors of the Corporate Debtor as it appeared that the Creditors were being unjustly enriched at the cost of the Corporate Debtor. However, the Respondent did not revert on the request.
12. Hence this Application.

REPLY ON BEHALF OF RESPONDENT:

13. The Respondent RP has denied each and every averment, statement, submission and contention made by the Applicant in the Application except what is expressly admitted.
14. The Respondent submitted that the Applicant, despite being a Director with suspended powers of the Corporate Debtor, lacked the legal standing (locus) to challenge the claims made by a secured financial creditor in the insolvency process. The Respondent pointed out that there was no provision in the insolvency code allowing a director with suspended powers to challenge creditor's claims. Moreover, the Applicant failed to demonstrate how the creditor's claim and its handling by the Respondent adversely affected their interests. Consequently, the Respondent contended that the Applicant had no basis for filing their application.
15. The Respondent further submitted that the applicant had approached the Hon'ble Tribunal with unclean hands. The applicant, who was a director (with suspended powers) of a corporate debtor, was well aware of agreements made with Suraksha Asset Reconstruction Private Limited for credit facilities. Despite this knowledge, the applicant challenged Suraksha Asset Reconstruction Private Limited's claim on frivolous grounds. Additionally, the applicant and other directors did not cooperate with the respondent. Therefore, the respondent filed an application against them under Section 19(2) of the relevant legal code. This suggested that the applicant's actions were seen as contradictory and lacking good faith, given their awareness of the agreements and their dispute with Suraksha Asset Reconstruction Private Limited.
16. Furthermore, all documents pertaining to the credit facilities lent by Suraksha Asset Reconstruction Private Limited were in the custody and

control of the Applicant itself. Thus his raising the issue on the claims of Asset Reconstruction Private Limited raises question about the conduct of the Applicant itself. Despite all these facts and circumstances, the Applicant chose to approach this Hon'ble Bench with unclean hands, which may not be permissible under the law. This conclusion was supported by a precedent set by the **Hon'ble Supreme Court in the matter of S. P Chengalvaraya Naidu vs Jagannath 1994 1 SCC 1 wherein the Hon'ble Apex Court** held that the party approaching the Court shall approach with clean hands. The relevant para of the said Judgement is reproduced:

“One who comes to the Court, must come with clean hands. We are constrained to say that more often than not; process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the Court process a convenient liver to retained the illegal gains indefinitely. We have no hesitation to say that a person, who's Case is based on false hood, has no right to approach the Court He can be summarily thrown out at any stage of litigation.

17. The Respondent submitted that Section 18(2) of the Code mandated the Resolution Professional (RP) to verify and collate claims but did not grant them the authority to adjudicate them. Essentially, while the RP was required to organize submitted claims, they lacked the power to make final judgments on their validity or value. Due to the Resolution Professional (RP) lacking the authority to adjudicate claims, they could not delve into the specifics of agreements between the Corporate Debtor and its Creditors or determine the reasonableness of claimed interest amounts. Consequently, it could not be claimed that the RP admitted a claim without proper consideration, as they were not empowered to make such judgments.

18. The Respondent further submitted that the application was affected by non-joinder of a party because although the applicant has alleged that

Suraksha Asset Reconstruction Private Limited's claim involved exorbitant rates of interest, they have not arrayed Suraksha Asset Reconstruction Private Limited as a respondent in the application. Suraksha Asset Reconstruction Private Limited, being the necessary party directly involved in the claim, should have been included to properly defend its position regarding the alleged exorbitant rates of interest. Since the respondent did not have the authority to adjudicate Suraksha Asset Reconstruction Private Limited's claim and their duty was limited to verifying filed claims on the basis of supporting documents, he could not make a decision on whether Suraksha Asset Reconstruction Private Limited's rates of interest were indeed exorbitant without Suraksha Asset Reconstruction Private Limited having been made a Party. Therefore, it was necessary for Suraksha Asset Reconstruction Private Limited to be included as a party in the application for the respondent to properly adjudicate the matter. Due to Suraksha Asset Reconstruction Private Limited's absence as a party, the application was affected by non-joinder of a necessary party.

19. The Respondent further submitted that the Applicant lacked the legal standing (locus) to file the application. They claimed the application was flawed because it was based on misconceptions. Regarding the request for inspection of the claim filed by Suraksha Asset Reconstruction Private Limited, the Respondent stated that there was no provision in the relevant legal code or regulations that allowed them to share such details with the Directors (with Suspended Powers) of the Corporate Debtor. Hence, the Respondent is depending on the court to make the right decisions and issue appropriate orders.

FINDINGS:

20. The entire case of the applicant is, that claims were filed by the Suraksha Assets Reconstruction Limited as secured financial creditor. Claim

amounting Rs. 166,00,03,468/- was filed before the Resolution Professional of the Corporate Debtor RNA Crop Private Limited. Out of the said claim filed as on 22.06.2023, claim amounting to Rs.165,20,65,912/- had been admitted by the Resolution Professional and claim amounting to Rs.79,37,556/- was kept under verification. The counsel further drew our attention to the claim subsequently filed by the same Suraksha Assets Reconstruction Private Limited before the Resolution Professional of the present Corporate Debtor qua the same debt amounting Rs. 394,93,36,966/. This time the claim has been admitted 100 % by the Resolution Professional.

21. During the course of arguments, in order to justify his locus regarding the inspection of claim forms, the learned counsel for the promoter contended that, being a suspended director, he is justified to verify the claims as being an alleged proposed Resolution Applicant his interest is bound to be prejudiced.
22. The Learned counsel admitted that he is conscious of the confidentiality of the entire Insolvency Processes Even though there is no provision in the statute to provide him the documents with respect to the admitted claims of the creditors, but in the backdrop of the fact that an exorbitant amount has been claimed by the Suruksha Assets Reconstruction Private Limited without any basis and further in view of the fact that the applicant is considering resolution of the Corporate Debtor. Thus this admission of highly exaggerated claim is bound to be to his detriment. Hence the Applicant would like to look at the basis for the submission of the claims.
23. On the other hand, the Learned counsel, for the Resolution Professional has submitted that despite the fact that the Applicant is well aware of the fact that the claim of Suraksha Assets Reconstruction Company has been admitted, there has been, till date, no challenges to the claim admitted by

the Resolution Professional. The present application is only with respect to the inspection of the claim forms of third party who is not before the Hon'ble Court as a party in this Application.

24. It is further submitted that the Surakasha Assets Reconstruction Private Limited has not been impleaded as respondent in the present petition, and sharing their documents behind their back is bound to cause prejudice to their interest.

25. In response to the arguments advanced by the learned counsel for the respondent, and despite the oral request made by the counsel for the applicant to grant permission to include Surkasha Assets Reconstruction Private Limited as a party, we are not inclined to grant it at this stage. **Therefore, the oral request stands rejected.**

26. After having heard, the learned counsel for the parties and considering the judgment referred by the learned counsel for the applicant attempting to draw strength to his submissions stating that it's the discretion of the Adjudicating Authority "**Company Appeal (AT) (Insolvency) No. 74 & 75 of 2022 Acrow Construction Pvt. Ltd & Ors Vs. Punjab National Bank & Ors. ('2022 SCC NCLAT 237'). 10.03.2022**", The Hon'ble NCLAT has held as under:

"supporting his case that the Hon'ble NCLAT has affirmed that the Resolution Professional (RP) cannot independently share documents with members of the Committee of Creditors (CoC) unless the CoC decides to request specific documents under Section 21(9) of the Insolvency and Bankruptcy Code (IBC). However, if the Adjudicating Authority directs the RP to provide copies of claim documents to certain creditors, as in the present case based on an application by a respondent bank, it is within the authority's purview. This decision is specific to the case at hand and doesn't require interference from

appellate jurisdiction, as the Adjudicating Authority's directive aligns with the IBC's provisions”.

The Hon'ble NCLAT in this case has been pleased to grant liberty to provide the claim documents. Thus in view of the same the Ld. Counsel prays for the grant of same indulgence by the Hon'ble Court.

27. The learned counsel for the Respondent argued that the previous judgment cited by the opposing party isn't directly applicable to the current case. They pointed out a key difference in the cited case, it was the Committee of Creditors (CoC) members who represented before the Hon'ble National Company Law Appellate Tribunal (NCLAT), whereas in the present case, it is the suspended director who is representing. This crucial distinction, they argued, renders the previous case irrelevant to the present circumstances. Additionally, the counsel highlighted that the proceedings of the CoC meetings are confidential and cannot be summarized or disclosed outside of those meetings. This emphasizes the sensitivity and confidentiality surrounding such proceedings.

28. The director, whose powers are suspended in the context of the corporate debtor, does not possess the legal standing to contest the claim put forth by a secured financial creditor.

“The Insolvency and Bankruptcy Code, 2016 (IBC) and related regulations provide the framework for CIRP. Under these laws, the powers of the Board of Directors are usually suspended upon the initiation of CIRP, and the resolution professional (RP) appointed by the National Company Law Tribunal (NCLT) takes over the management of the company.”

The Ld. Counsel for the Respondent emphasized that there exists no provision within the Insolvency and Bankruptcy Code that confers jurisdiction upon a director with suspended powers to challenge a creditor's claim presented to the Resolution Professional.

29. The non-impleadment of Surkasha Assets Reconstruction Private Limited as a respondent in the application is bound to compromise the interest Suraksha Asset Reconstruction Private Limited behind their back. Given this omission and Surkasha Assets Reconstruction Private Limited's absence in the proceedings, we are unable to truly appreciate and adjudicate the interest rates levied by Surkasha Assets Reconstruction Private Limited. Consequently, the failure to implead Suraksha Asset Reconstruction Private Limited as a party in the application constitutes as non-joinder of a necessary party. In this regard, a reference can also be made to the law laid down by the

*Hon'ble Supreme Court in **Moreshar Yadaorao Mahajan Vs Vyankatesh Sitaram Bhedi 2022(SC) 802**, held that "that a suit is liable to be dismissed if a "necessary party" is not impleaded. For being a necessary party, according to the court, the twin test has to be satisfied (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) that no effective decree can be passed in the absence of such a party.*

30. In essence, transparency and fairness are crucial in legal proceedings, especially in time-sensitive matters like the CIRP. Allowing one party to gather evidence or documents behind the other party's back could disrupt the balance of the proceedings and potentially compromise the integrity of the process.

31. In addition, we also have taken note of the reply filed by the Resolution Professional wherein he has admitted that it is only on the basis of the documents submitted by the Suraksha Asset Reconstruction Private Limited, that their claim has been admitted. **In view of the submissions made by the parties. We deem it appropriate to reject the prayer of the applicant and dismiss the present Application.**

32. The above I.A. No. 4581 of 2023 is Dismissed and disposed of.

Sd/-

Madhu Sinha

Member (Technical)

/Priyanka/

Sd/-

Reeta Kohli

Member (Judicial)