

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

I.A. 3392 OF 2022

IN

CP (IB) NO.1023 OF 2021

Under Section 19(2) r/w 65 of the
Insolvency & Bankruptcy Code, 2016 read
with Rule 11 of the National Company Law
Tribunal Rules, 2016

Filed by

Mr. Vijendra Kumar Jain

**...APPLICANT/RESOLUTION
PROFESSIONAL**

vs.

Mr. Nitin Ramchandra Jadhav & Ors.

...RESPONDENT

In the matter of:

State Bank of India

...FINANCIAL CREDITOR

vs.

Gajanan Solvex Limited

...CORPORATE DEBTOR

Order Dated: 28.06.2024

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Sh. Sanjiv Dutt, Member (Technical)

Appearance:

For the Applicant: Adv. Mily Ghoshal

For the Respondent: Adv. Ranjeet Agashe

ORDER

1. The present application bearing I.A. No. 3392 of 2022 is filed by the Resolution Professional of the Corporate Debtor, Mr. Vijendra Kumar Jain (hereinafter referred to as the “**Applicant**”) seeking direction against the suspended board of directors, namely, 1) Mr. Nitin Ramchandra Jadhav, 2) Mr. Amol Jadhav and 3) Mr. Bhavrao RamKrishna Gore (hereinafter referred to as the “**Respondents**”) under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “**the Code**”) praying for following reliefs:-

“..this Hon'ble Tribunal be pleased to:-

- a. That this Hon'ble Tribunal be pleased to allow the present Application;*
- b. That this Hon'ble Tribunal be pleased to consider present application under Section 19(2) of the Insolvency and Bankruptcy Code 2016 and direct the Respondents to co-operate with the Applicant throughout the CIRP process by providing the necessary information/records;*
- c. That this Hon'ble Tribunal be pleased to pass appropriate orders and directions penalizing the Respondent for not providing necessary assistance, co-operation to the Applicant, in terms of the provisions of Section 70 of the code;*

*d. Any other order that this Hon'ble Tribunal may deem fit
in the facts and circumstances of this case;*

BRIEF FACTS OF THE CASE:

2. The present Application is filed by the Applicant under Section 19 read with Section 60(5) of the Code on being aggrieved by the conduct and non-cooperation of the suspended management/director of the Corporate Debtor. The Applicant submitted that the instant Application is preferred in order to seek necessary directions against the Respondent/Suspended Directors of the Corporate Debtor on account of non-co-operation in providing necessary information of the Corporate Debtor even after repeated request.
3. The Corporate Debtor was admitted under Corporate Insolvency Resolution Process (**CIRP**) by this Tribunal vide order dated 20.07.2022 in CP/1023/IBC(MB)/2021 wherein Mr. Vijendra Kumar Jain was appointed as the Interim Resolution Professional (**IRP**). The IRP issued the Public Announcement on 22.07.2022 as per the provisions of Sections 13 and 15 of the Code. Thereafter, the Committee of Creditors (**CoC**) was constituted on 12.08.2022. The CoC in the First meeting held on 18.08.2022 appointed Mr. Vijendra Kumar Jain as Resolution Professional (**RP**) of the Corporate Debtor.
4. It is submitted that while CIRP was ongoing the Applicant exercised all efforts to bring a suitable/early Resolution Plan in the spirit of the Code, however the Suspended Board of Directors of the Corporate Debtor were not co-operating with disbursing vital information thus defeating the efforts of the Applicant and the intention of the Code.

5. In the Second CoC meeting dated 03.09.2022, the COC appointed Mr. Parekh Shah & Lodha as the Forensic Auditor to carry out the transaction audit of the books of account of the Corporate Debtor for the last 5 years. However, in the Third CoC meeting dated 29.09.2022, the CoC noted that the suspended directors have failed to furnish the Audited Financials and Tally Back-up of Accounts of the Corporate Debtor for financial years 2017-18 to 2021-22 and for the broken period from 01.04.2022 to 20.07.2022 along with certain other documents and details as sought by the Resolution Professional and the Forensic Auditor. Multiple reminders were sent by the Applicant vide email dated 22.07.2022, 05.08.2022, 22.08.2022, 25.08.2022, 30.08.2022, 05.09.2022, 08.09.2022, 16.09.2022, 20.09.2022, 22.09.2022, 27.09.2022, 10.10.2022 and 11.10.2022. After multiple reminders the Respondents on 19.10.2022 handed over the scanned copy of the audited Financials and Tally data. However, the Tally data failed to match with the audited financials. Thereafter the Applicant requested the Respondents to provide supporting documents/working papers of the financials provided and the hard copy of the original signed financials. However, the Respondents failed to provide the requested documents.

6. The Applicant submitted that as per the books of the CD there is an investment of Rs. 8.85 cr in its subsidiary company namely, M/s. Rio Resources Pte Ltd. a Singapore based company. On enquiry with the respondents w.r.t. the shareholder pattern of the subsidiary company vide emails dated 29th October, 2022, 3rd November, 2022 and 8th November,2022, the Respondents failed to provide the details, because of which the valuers were unable to determine the valuation for the said asset.

7. The Applicant submitted that the Respondents were requested to provide all the required data and information requested by the Forensic Auditor in order to complete the forensic audit with in time. However, the Respondent did not pay any heed to the same.
8. The Applicant further submitted that the dilatory manoeuvres of the Suspended Board of the CD has critically delayed progress in the CIRP which has constrained the Applicant to file the present Application for seeking directions to the said suspended Directors of the CD for their co-operation with Applicant, otherwise the CIRP time would be lost and the CD may be pushed into liquidation.
9. In these circumstances, the Resolution Professional filed an interlocutory application bearing I.A. No.3392 of 2022 under Section 19(2) of the Code before this Tribunal on account of the non-cooperation of the management.

REPLY OF THE RESPONDENTS

10. The Learned Counsel for the Respondents has filed the affidavit-in-reply and submitted that on 26.07.2023 and 24.08.2023 the Liquidator has tendered a list of documents, required for concluding the Transaction Audit Report of the Corporate Debtor and the Respondents vide email dated 01.09.2023 have provided all the documents/information available with them. The list of annexures submitted to the Liquidator vide email dated 01.09.2023 is as under: -

Sr. No.	Particulars	Annexure (In Email)	Exhibit (In this Affidavit)
1.	Ledger Account of all the above-mentioned parties to whom the CD sold its inventory.	A	D
2.	Bank statements of the CD (For Inventory)	B	E
3.	Bank statement	C	F
4.	Tally data.	D	
5.	Ledger of all above parties for Purchase Transactions	E	G
6.	Ledger of all above parties for Sale Transactions.	F	H
7.	Receipt of the abovementioned hard copies submitted to Mr. V.K. Jain on 08.01.2023	G	I
8.	Provisional Financial statement for FY 2022-23	H	J
9.	List of contact details of all the parties mentioned in Annexure H of your queries.	I	K

FINDINGS

11. Heard the Ld. counsels of both the parties and perused the entire record with their able assistance.
12. From the perusal of records, it is revealed that the present Application is filed by the Resolution Professional, Mr. Vijendra Kumar Jain under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 against the Respondents i.e., the suspended board of directors of the Corporate Debtor.
13. However, this Bench observes that the CoC in its Sixth meeting held on 23.12.2022 has approved the Resolution for filing the Liquidation Application under Section 33 of the Code with 80.46%

voting. Accordingly, IA No.310 of 2023 was filed by the Resolution Professional seeking liquidation of the Corporate Debtor wherein Mr. Ram Sethia is proposed to be the Liquidator. The said application was allowed by this Hon'ble Tribunal on 01.03.2023 appointing Mr. Ram Sethia as the Liquidator.

14. The Respondents in its affidavit in reply has also admitted the fact that they have received a list of documents, required for concluding the Transaction Audit Report of the Corporate Debtor from the Liquidator on 26.07.2023 and 24.08.2023 and the Respondents vide email dated 01.09.2023 have provided the documents/information available with them. In view of the above facts and circumstances of the present case, this Bench is of the considered view that CD is not in CIRP and the Applicant i.e. the Resolution Professional has been discharged from its duties vide order dated 07.05.2024 in I.A. 677 of 2023 and as per the submission of the Respondent they have already provided the requisite information to the Liquidator. Therefore, the present Application filed by Resolution Professional held **infructuous and disposed of**.

Sd/-

Madhu Sinha
Member (Technical)

/Abhay/

Sd/-

Reeta Kohli
Member (Judicial)