

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

IA No. 359/2020

In

**CP (IB) No. 238/Chd/Hry/2019
(Admitted Matter)**

**Under Section 19(2) of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

Sarthak Gupta & Dolly Gupta

....Petitioner/ Financial Creditor

Versus

MLP Developers and Promoters Pvt. Ltd.

... Respondent/ Corporate Debtor

And in the matter of IA No. 359/2020:-

Mr. Romesh Sawhney
Flat No. 850/GH-13, Paschim Vihar, New Delhi-110087

...Applicant/ Resolution Professional

Vs.

- 1) Mr. Rajesh Gupta, Director
MLP Developers and Promoters Private Limited
Villa No. F-1/6, Sector-3, Eldeco Estate One, Panipal, Haryana-132103
- 2) Mr. Sanjay Gupta, Director
MLP Developers and Promoters Private Limited
Villa No. F-1/6, Sector-3, Eldeco Estate One, Panipat, Haryana-132103
- 3) Mr. Navneet Arora, Auditor
MLP Developers and Promoters Private Limited
78-L, 2' Floor, Model Town, Near Gurudwara,
Oppo. HDFC Bank, Panipat, Haryana- 132103
- 4) Mr. Gaurav Gupta, Company Secretary
MLP Developers and Promoters Private Limited
Villa No. F-1/6, Sector-3, Eldeco Estate One,
Panipat, Haryana-132103
- 5) HDFC Bank Limited

For Current A/c no. 50200025066067 of
M/S MLP Developers and Promoters Pvt. Ltd.
Through Branch Manager
HDFC Bank Limited
Harmony Tower, GT Road, Panipat, Haryana

...Respondents

Order delivered on: 05.07.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Applicant : Ms. Akriti Mittal, Advocate

For the Respondent Nos.
1 to 4 : Mr. Gaurav Kumar, Practising Company Secretary

Per: Subrata Kumar Dash, Member (Technical)

ORDER

The present application is filed by Mr. Romesh Sawhney, Resolution Professional of the corporate debtor (herein referred to as '**Applicant**') under Section 19(2) read with Section 18 of the Insolvency and Bankruptcy Code, 2016, along with Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016 seeking directions to the Directors (other than the Financial Creditors) along with the statutory auditor(s) of the corporate debtor to assist and cooperate with the applicant-RP and to allow the applicant-RP to manage the affairs of the corporate debtor by providing the required information, documentation, and access.

2. The brief facts of the case are that the Corporate Insolvency Resolution Process was initiated vide order dated 27.01.2020, and the applicant was appointed as Resolution Professional, and a moratorium was imposed, and

the Resolution Professional took control over the business of the Corporate Debtor. In pursuant to the Public Announcement, RP received 2 claims till 09.02.2020 from Mr. Sarthak Gupta and Ms. Dolly Gupta-financial creditors, vide email dated 08.02.2020. The applicant visited the registered corporate office and branch of the Bank where the account of the corporate debtor is located but has had no success in obtaining any information or documents of the corporate debtor. The applicant vide numerous emails and letters dated 07.02.2020, 19.02.2020, 20.02.2020, and 21.02.2020 requested to provide the following details:

- (i) Business Operations of the company for the previous two years.*
- (ii) Financial & Operational Payments for the previous two years.*
- (iii) List of assets (Movable & Immovable) and liabilities of your company as on today.*
- (iv) Provisional Balance Sheet & Profit and Loss Account as on 31.12.2019*
- (v) Audited Financial Statement of M/s MLP Developers & Promoters Private Limited for the financial year ending on 31.03.2019 along with all annexures & Income Tax Return for A. Y. 2019-2020 and*
- (vi) Advances have made to the Creditors amounting to Rs. 3,25,36,000/- As per Balance Sheet as on 31.03.2018, let us know the nature of Advance given to the Creditor and also provide us the copy of agreement entered into with the said creditors.*
- (vii) List of employees.*

3. However, through an email dated 27.02.2022, a reply was received back from the corporate debtor in which only limited and incomplete information was provided along with the following explanation:

- “a. Audited Financial Statements of the MLP Developers & Promoters Private Limited is only for the F.Y. 2018-19.*
- b. Income Tax Return for A. Y. 2019-20 is not filed. Advance to creditors amounting to Rs. 3,25,36000 as shown in Audited Financials of 2017-18 are of the nature of the current assets.*
- d. The Company has no business operations for the previous two years.*
- e. Regarding the Financial & operational payment, it is unable to understand what exactly is asked by you. For resolving this, the tally data*

of the company from beginning to till and Bank Statements from beginning to till is already provided to you by mail on 31.01.2020 and attached herewith again.

f. The Company has no Fixed Assets.

g. The Company has no employees since there was no business operation in the Company.

h. The provisional balance sheet on 31.12.2019 will be provided to you in the next three days.”

4. It is submitted by the applicant that on perusal of the Bank statements and Tally Data provided by the corporate debtor, many discrepancies were reflected, and the said data needed proper verification through investigation. Furthermore, the applicant-RP requested the two financial creditors (who are also the directors of the corporate debtor) to provide all additional information and documentation, however, they pleaded that the daily affairs and management of the corporate debtor were solely with the other two directors.

5. The applicant-RP sent additional emails along with letters dated 18.03.2020 and 03.06.2020 to the corporate debtor and their statutory auditors requesting them to provide further documents, but no reply has been received against the above-said email/letters to date.

6. The affidavit of service was filed by Diary no. 00147/13 dated 25.11.2020. The reply was filed by respondent no. 1, Mr. Rajesh Gupta, via Diary No. 0472/04 dated 11.10.2022 and respondent no. 2, Mr. Sanjay Gupta, via Diary No. 0472/05 dated 11.10.2022 wherein similar contentions have been raised and it has been stated that the corporate debtor is a small company as per Section 2(85) of the Companies Act, 2013, therefore, the requirement to appoint a whole time company secretary does not apply. The management of a corporate debtor consists of four directors, out of which two are financial creditors and the other two are layman business persons who have no expertise in company law and other related rules. Moreover, it has

been stated that the corporate debtor has no employee. The basic business operation of the corporate debtor is to underwrite and promote real estate business which was not successful due to the non-fulfillment of commitment of two directors who are also the financial creditors in this application. Therefore, the business activities could not take off properly. Respondent no. 1 and Respondent no. 2 state that full cooperation and assistance have been provided in connection to the successful execution of CIRP of the corporate debtor, for which all the information was delivered to the applicant resolution professional via email on 31.01.2020. It has been stated that due to the social distancing measures due to COVID-19, the directors were unable to get the information asked by the applicant-RP. In addition, it is stated that the erstwhile management handed over the daily data of the corporate debtor, and the applicant-RP is acting biased by asking for the information only from the said respondents.

7. A reply was filed by respondent no. 3 via Dairy No. 472/02 dated 04.01.2021, wherein it has been stated that the appointment of respondent no. 3 as the statutory auditor of the corporate debtor was done in the Second Annual General meeting held on 31.12.2018 for a period of five years, i.e. from 01.04.2018 till 31.12.2023. (Annexure A-2 of the reply) Respondent no. 3 thereby takes reliance on provisions of Section 139(1) and Section 141 of the Companies Act, 2013, and states that he is neither an officer of the corporate debtor nor any employee to it. Further, it has been stated that as per the provisions of Section 143 and Section 144 of the Companies Act, 2013, which defines the powers and duties of a statutory auditor, a statutory auditor has no right to maintain the accounting data and other financial information of a company-corporate debtor with him. As per the interpretation of Section 5(23)

of the Insolvency and Bankruptcy Act, 2016, a statutory auditor is not a director, manager, key managerial personnel, designated partner, or employee of the corporate debtor. Therefore, the present application has been rebutted, which talks about the personnel of the corporate debtor to extend support to the resolution professional and hence seeks removal of the name from the memo of parties and dismissal of the application.

8. A reply was filed by respondent no. 4, via Dairy No. 472/03 dated 04.01.2021, wherein it has been stated that the notice of the said application and notice have been received by him via email, and the other details mentioned in this application are incorrect. Respondent no. 4 further contends that as per Section 5(23) of the Insolvency and Bankruptcy Code, 2016, he has no role in the management of the corporate debtor and hence is not a correct party to the application.

9. The applicant-liquidator has filed his short rejoinder via Dairy No. 472/06 dated 11.04.2023, in which all the objections raised by the respondents have been denied. It has been stated that respondent No. 1, respondent No. 2, and M/s TDI Infratech Limited failed to provide any clarification or ledger account details regarding the balance amount. Moreover, there has been no accountability as to the cash in hand, which was withdrawn by the corporate debtor without the consent of financial creditors. The applicant also mentioned that there have been no board resolution related to the loans which were returned to the directors during the financial year 2018-2019. It has also been alleged that respondent number one and two, also being the directors of the corporate debtor, handled the day-to-day affairs and management of the corporate debtor and withdrew all the money from the corporate debtor, misappropriate the funds, and made bogus entries in books of accounts and

transferred money in their personal accounts without the consent of the applicant illegally. It is also averred by the applicant that the respondents in connivance with each other, are delaying the adjudication of the petition.

10. We have heard the learned counsels for the applicant as well as the respondent and perused the material available on record.

11. On a perusal of the details requisitioned by the Applicant resolution professional, it is seen that certain specific accounting Statements have not been furnished by the respondents. However, the resolution professional has not denied the fact that he has received the tally data of the company from the beginning and bank Statement from the beginning as reflected in the email dated 27.02.2022. The resolution professional is directed to parallelly try to generate some of the required information from the said tally data. If required, by requisiting the services of a competent professional.

12. Respondent Nos. 1 and 2 are directed to share information as required by the resolution professional to the extent those are available with them. As regards the claims made by respondent No. 3, i.e., the statutory auditor, a reference is made to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI, which lays down the Audit Documentation to be maintained at various stages of the audit. It further prescribes the minimum period of retention of engagement documentation as seven years since, the provisions of the Chartered Accountants Act, 1949 and regulations made there under prescribe the minimum period of retention of working papers as seven years. Further, the reliance placed on Sections 143 and 144 of the Companies Act by respondent No. 3 is misplaced as these Sections do not deal with the preparation of audit trail/working papers and retention of the same.

13. In this connection, a further reference is made to Section 128(5) of the Companies Act 2013, which lays down that:-

'...the books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order...'

14. In view of the aforementioned discussion, respondent No. 3, i.e., the Statutory Auditor, is directed to share all the information requisitioned by the applicant-Resolution Professional to the extent the same are mandated to be maintained by him under the aforementioned provisions in the Companies Act and the Standard of Auditing (SA) prescribed by the ICAI.

15. We further direct that the necessary sharing of information be completed within two weeks of the date of this order and gives liberty to the Resolution Professional to approach this Bench in case of any non-compliance by the respondents.

16. Accordingly, IA No. 359/2020 is allowed as above and disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

July 05, 2023
JGS

Sd/-

(Harnam Singh Thakur)
Member (Judicial)