

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

**CA No.335/2018  
 In  
 CP (IB) No.10/Chd/Hry/2018  
 (Admitted matter)**

**Under Sections 19(2) & 19(3)  
 read with 17, 18 & 25 of the  
 Insolvency and Bankruptcy  
 Code, 2016.**

**In the matter of:**

M/s Educomp Infrastructure & School  
 Management Limited

....Petitioner-Corporate Debtor

**And in the matter of:**

Mr. Ashwini Mehra,  
 Resolution Professional

....Applicant/Resolution Professional

Versus

Mr. Vinod Kumar Dandona,  
 Suspended Director & Ors.

....Respondents

**Order delivered on 14.06.2019**

**Coram: Hon’ble Mr. M.K. Shrawat, Member (Judicial)  
 Hon’ble Mr. Pradeep R. Sethi, Member (Technical)**

**Present:** Mr. Akshay Bhan, Senior Advocate with Mr. Rohit Khanna, Ms. Anindita Roy Chowdhary, Ms. Vatsala Rai, Mr. Raghav Chadha & Mr. Aman Deep Singh Talwar, Advocates for Resolution Professional.  
 Ms. Munisha Gandhi, Senior Advocate with Mr. Nitin Kaushal & Mr. Siddhant Kant, Advocates for Committee of Creditors.  
 Mr. Anand Chhibbar, Senior Advocate with Mr. Surjeet Bhadu, and Mr. Gaurav Mankotia, Advocates for the Respondent No.1 to 3 & 5  
 Mr. Manish Joshi, Advocate for Respondent Nos.7, 21, 47 & 48  
 Mr. Sumesh Dhawan, Mr. Vatsala Kak & Mr. Ateer Raj Sandhu, Advocates for Respondent Nos.15, 19, 20, 22, 23, 24 & 34

Mr. Sunil Chadha, Senior Advocate with Mr. Jaiteshwar Bhandari & Mr. Himanshu Jain, Advocates for Respondent Nos.8, 9, 18 & 46  
Ms. Aameena Singh, Advocate for Respondent Nos.11, 12, 13, 14, 16, 17, 32, 37, 39, 40, 42 & 44  
Mr. Jaikar S. Virk, Advocate for Respondent Nos.36 & 38  
Mr. Munish Kumar Garg, Advocate for Respondent No.6  
Mr. Sahir Singh Virk, Advocate for Respondent No.10 & 45  
Mr. Abhinav Kansal, Advocate for Respondent No.5

**Per: M.K. Shrawat, Member (Judicial)**

### **ORDER**

#### **CA No.335/2018**

The process started by an application filed by Corporate Debtor under Section 10 of Insolvency & Bankruptcy Code, 2016 (for brevity, the 'Code') stood admitted by this Bench on 25.04.2018 wherein Mr. Manoj Maheshwari was appointed as Insolvency Resolution Professional. Mr. Manoj Maheshwari was substituted by Mr. Ashwani Mehra resolved vide Committee of Creditors meeting held on 01.06.2018 which was approved by this Bench on 15.06.2018. At present CA No.335/2018 is now filed by Insolvency Resolution Professional on 23.08.2018 vide Diary No.3108 under Section 19(2) and 19(3) read with Section 17, 18 and 25 of the Code.

2. It is submitted by the learned senior counsel for Resolution Professional that for the purpose of successfully carrying out the Insolvency Resolution Process and managing the affairs of the Corporate Debtor, the Resolution Professional expected the management of Corporate Debtor to extend and provide all assistance and co-operation. However, even after repeatedly requesting for details relating to assets of Corporate Debtor the management of Corporate Debtor formed a deaf ear and refused to grant access to Resolution Professional. A copy of the list of the assets and information sought by the Resolution Professional are at Annexure A-1 of the convenience compendium.

The Resolution Professional then filed CA No.294 of 2018 for seeking appropriate directions but now the Resolution Professional has prayed to withdraw CA No.294 of 2018 and allow him to refer and rely upon the contents and averments of CA No.335/2018.

3. The learned senior counsel for Resolution Professional submits that full access and control rights to ERP Software 'Navision', i.e., the software where the books of accounts of Corporate Debtor are recorded, saved and managed, be granted. Also, this software is currently being controlled by the parent company of Corporate Debtor i.e., Educomp Solutions Limited, which itself is undergoing Corporate Insolvency Resolution Process (for short to be referred hereinafter as the 'CIRP'). The learned senior counsel for Resolution Professional further submitted that the financial position showed by the erstwhile management of the Corporate Debtor has changed in the ERP Software 'Navision' without any instructions being given by the Resolution Professional and this may have a grave impact on the Resolution Process as well as the Expression of Interest ('EOI') received from multiple applicants.

4. Another example of the information being sought for by the Resolution Professional is access to agreements executed by the Corporate Debtor including lease deeds & license agreements executed between Corporate Debtor & schools/trusts as without these the valuers will not be able to ascertain the proper value of the Corporate Debtor. Annexure A-2 of CA No.335/2018 is the correspondence exchanged with the personnel of the Corporate Debtor including but not limited to its promoters, subsidiaries, auditors etc.

5. The following reliefs have been sought in the present application:-

*“(a) Allow the applicant to withdraw CA No.294 of 2018 and take the present application on record; and*

- (b) *Allow the present application; and*
- (c) *Direct the directors and other personnel of the corporate debtor as enumerated in the memo of parties to grant access to the documents and information sought in Annexure A-1 to the Resolution Professional; and*
- (d) *Direct the auditors of the corporate debtor as enumerated in the memo of parties to grant access to the documents and information sought in Annexure A-1 to the Resolution Professional; and*
- (e) *Direct the promoter(s) Mr. Shantanu Prakash and Resolution Professional/Interim Resolution Professional of Educomp Solutions Limited as enumerated in the memo of parties to grant access to the documents and information sought in Annexure A-1 to the Resolution Professional; and*
- (f) *Direct the subsidiaries of the corporate debtor to grant access to the documents and information sought in Annexure A-1 to the Resolution Professional; and*
- (g) *Direct the contractual counterparties being the schools and the trusts of the corporate debtor as enumerated in the memo of parties to grant access to the documents and information sought in Annexure A-1 to the Resolution Professional; and*
- (h) *Direct the personnel, which includes directors of the corporate debtor to extend and provide all assistance and co-operation as may be required by him in managing the affairs of the corporate debtor; and*
- (i) *Pass such further and other directions as this Hon'ble Tribunal may deem fit and expedient.*

6. When the matter was listed on 27.08.2018, the Resolution Professional was directed to file an affidavit by making reference to the specific e-mails sent to those respondents for seeking information and whether the response was sent by them and filed the copy of the responses.

7. The said affidavit was filed on 05.09.2018 vide Diary No.3329 wherein the correspondence issued to each respondent and the responses received, if any, are given. The above mentioned responses along with their replies are given in tabular form at page Nos.2-7 of the paper book.

8. It is stated in the affidavit that Mr. Shantanu Prakash who is the Promoter and erstwhile Director of Corporate Debtor is being sought to be impleaded as respondent No.5 in CA No.335/2018. Various e-mails exchanged between Mr. Shantanu Prakash, the erstwhile Interim Resolution Professional and the Resolution Professional are attached with the Additional Affidavit as Annexures 1A to 1J and 2A to 2F. It is further stated that The Millennium School, Noida and The Millennium Education Foundation which are sought to be impleaded as respondent Nos.7 and 47 respectively in CA No.335/2018 are contractual parties of the Corporate Debtor. The Applicant had sent a letter dated 08.08.2018, Annexure 38 of the Additional Affidavit by way of which he had sought copy of the financials of respondent No.7 for the period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. However, no response was received.

9. It is further stated that Shriram Millennium School, Noida which is sought to be impleaded as respondent No.8 in CA No.335/2018 is a contractual party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.8 for the period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. The respondent had responded by its letter dated 24.08.2018 stating therein that the accounts for the F.Y. 2017-18 are being finalized and upon finalization it will seek legal advice, if any, amount is payable or not. Copy of the letter along with the e-mail and response letter are at Annexures-3A, 3B and 3C respectively. Information of the same nature was sought for by The Millennium School, Meerut and The Millennium School, Noida which are sought to be

impleaded as respondent Nos.9 and 18 respectively. However, no response was received from respondent No.9. Respondent No.18 responded by its letter dated 24.08.2018 wherein it had explained the issue of rentals but did not address the information sought. A second response by way of e-mail dated 30.08.2018 was sent by the respondent regarding the issue of rentals but that e-mail also failed to provide the information regarding the financials. Copy of the above mentioned letters along with e-mails are at Annexures-13A, 13B, 13C and 13D. The applicant had also sent a letter to Richmond Education Society which is sought to be impleaded as respondent No.46 in the CA No.335/2018 wherein he had sought copy of the financials of respondent Nos.8, 9 and 18. However, no response was received.

10. It is further stated that Shriram Millennium School, Faridabad which is sought to be impleaded as respondent No.10 in CA No.335/2018 is a contractual party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.10 for the period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. The respondent responded vide its letter dated 24.08.2018 stating that since the school is not generating any surplus therefore, no amount is payable and the audited accounts will be furnished shortly. However, they have not yet been received. Copy of the letters along with the e-mail and response received thereafter are at Annexures-5A, 5B and 5C respectively. The applicant had also sent a letter to Surya Prabhat Trust which is sought to be impleaded as respondent No.45 in the CA No.335/2018 wherein he had sought copy of the financials of respondent No.10. However, no response was received. Copy of the letter is at Annexure-36.

11. It is further stated that The Millennium School, Amritsar which is sought to be impleaded as respondent No.11 in CA No.335/2018 is a contractual party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.11 for the period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. However, no response was received. Copy of the letter and e-mail are at Annexure Nos.6A & 6B. The applicant had also sent a letter to Shri Krishan Hare Educational Trust which is sought to be impleaded as respondent No.37 in the CA No.335/2018 wherein he had sought copy of the financials of respondent No.11. However, no response was received. Copy of the letter is at Annexure-28.

12. It is further stated that The Millennium School, Panipat which is sought to be impleaded as respondent No.12 in CA No.335/2018 is a contractual party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.12 for the period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. The respondent responded by its letter dated 22.08.2018 stating that the information will be provided as and when the school accounts are finalized by its Auditors for the F.Y. 2017-18. Further, the letter stated that in relation to the fee receipt for F.Y. 2018-19 may be provided for the 01.04.2018 to 30.06.2018, however, the audited financials have not been received till the date of filing of the Additional Affidavit. Copy of the letters and e-mail are at Annexure Nos.7A, 7B & 7C. The applicant had also sent a letter to Shri Radha Raman Educational Trust which is sought to be impleaded as respondent No.39 in the CA No.335/2018

wherein he had sought copy of the financials of respondent No.12. However, no response was received. Copy of the letter is at Annexure-30.

13. It is further stated that The Millennium School, Kurukshetra which is sought to be impleaded as respondent No.13 in CA No.335/2018 is a contractual party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.13 for the period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. However, no response was received. Copy of the letter and e-mail are at Annexure Nos.8A & 8B. The applicant had also sent a letter to Bal Shiksha Education Trust which is sought to be impleaded as respondent No.32 in the CA No.335/2018 wherein he had sought copy of the financials of respondent No.13. However, no response was received. Copy of the letter is at Annexure-24A.

14. It is further stated that The Millennium School, Patiala which is sought to be impleaded as respondent No.14 in CA No.335/2018 is a contractual party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.11 for the period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. However, no response was received. Copy of the letter and e-mail are at Annexure Nos.9A & 9B. The applicant had also sent a letter to Sri Satya Sai Educational Trust which is sought to be impleaded as respondent No.42 in the CA No.335/2018 wherein he had sought copy of the financials of respondent No.14. However, no response was received. Copy of the letter is at Annexure-33.

15. It is further stated that The Millennium School, Lucknow which is sought to be impleaded as respondent No.15 in CA No.335/2018 is a contractual

party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.15 for the period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. The respondent responded by its letter dated 25.08.2018 stating that the school is in the process of finalising and auditors have informed that the account shall be closed in the month of September. Copy of the letter is at Annexure Nos.10A, 10B & 10C. Information of the same nature was sought for by Padma Seshadri Bala Bhavan Group of Schools Millennium School, Porur, Chennai; Padma Seshadri Bala Bhavan Group of Schools Millennium School, Cuddalore; Padma Seshadri Bala Bhavan Group of Schools Millennium School, Bangalore; Padma Seshadri Bala Bhavan Group of Schools Millennium School, Coimbatore and Padma Seshadri Bala Bhavan Group of Schools Millennium School, OMR, Chennai, which are sought to be impleaded as respondent Nos.19, 20, 22, 23 and 24 respectively. Respondent No.19 responded by its letter dated 22.08.2018, however the said letter pertains to the issue of payable rent and does not provide the information sought. Copy of the letter, e-mail and the response sought is at Annexure-14A, 14B & 14C. Respondent No.20 responded by its letter dated 24.08.2018 however the said letter pertains to the issue of payable rent and does not provide the information sought. Copy of the letter, e-mail and the response sought is at Annexure-15A, 15B & 15C. Respondent No.22 responded by its letter dated 21.08.2018 inter alia, stating that the school is not in practice of preparing quarterly accounts as it serves no purpose in ascertaining the available surplus at the year end for computing variable fee. The said letter pertains to the issue of payable rent. Copy of the letter, e-mail and the response sought is at Annexure-16A, 16B & 16C. Respondent No.23 responded by its letter dated 24.08.2018,

however the said letter pertains to the issue of payable rent and does not provide the information sought. A second response by way of an e-mail dated 30.08.2018 was sent by the respondent regarding the issue of rentals, however, the said e-mail also fails to provide the information sought on the financials. Copy of the letter, e-mails and the response sought is at Annexure-17A, 17B, 17C & 17D. No response was received by respondent No.24. Copy of the letter and e-mail is at Annexure-18A & 18B. The applicant had also sent a letter to Learning Leadership Foundation which is sought to be impleaded as respondent No.34 in the CA No.335/2018 wherein he had sought copy of the financials of respondent Nos.15, 19, 20, 22, 23 and 24. However, no response was received. Copy of the letters are at Annexure Nos.-25A to 25F respectively.

16. It is further stated that The Millennium School, Indore which is sought to be impleaded as respondent No.16 in CA No.335/2018 is a contractual party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.16 for the period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. However, no response was received. Copy of the letter and e-mail are at Annexure Nos.11A & 11B. The applicant had also sent a letter to Surya Kiran Educational Trust which is sought to be impleaded as respondent No.44 in the CA No.335/2018 wherein he had sought copy of the financials of respondent No.16. However, no response was received. Copy of the letter is at Annexure-35.

17. It is further stated that The Millennium School, Bhatinda which is sought to be impleaded as respondent No.17 in CA No.335/2018 is a contractual party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.17 for the

period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. However, no response was received. Copy of the letter and e-mail are at Annexure Nos.12A & 12B. The applicant had also sent a letter to Shri Radhe Educational Trust which is sought to be impleaded as respondent No.40 in the CA No.335/2018 wherein he had sought copy of the financials of respondent No.17. However, no response was received. Copy of the letter is at Annexure-31.

18. It is further stated that The PSBB Learning Leadership Academy, Sarjapur, Bangalore which is sought to be impleaded as respondent No.21 in CA No.335/2018 is a contractual party of the Corporate Debtor. However, no correspondence has been sent to respondent No.21 and therefore, no reply has been received.

19. It is further stated that Takshila School, Ahmednagar which is sought to be impleaded as respondent No.25 in CA No.335/2018 is a contractual party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.25 for the period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. However, no response was received. Copy of the letter and e-mail are at Annexure Nos.19A & 19B. Information of the same nature was sought for by Takshila School, Sangli and Takshila School, Bodh Gaya which are sought to be impleaded as respondent Nos.26 and 31 respectively. However, no response was received from them. The applicant had also sent a letter to Maurya Educational Trust which is sought to be impleaded as respondent No.35 in the CA No.335/2018 wherein he had sought copy of the financials of respondent Nos.25,

26 and 31. However, no response was received. Therefore, no reply has been received from any of the above mentioned respondents.

20. It is further stated that Takshila School, Hoshiarpur which is sought to be impleaded as respondent No.27 in CA No.335/2018 is a contractual party of the Corporate Debtor. However, no correspondence has been sent to respondent No.27 and therefore, no reply has been received.

21. It is further stated that Takshila School, Begusarai which is sought to be impleaded as respondent No.28 in CA No.335/2018 is a contractual party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.28 for the period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. However, no response was received. Copy of the letter and e-mail are at Annexure Nos.21A & 21B. The applicant had also sent a letter to Sri Vasudev Educational Trust which is sought to be impleaded as respondent No.43 in the CA No.335/2018 wherein he had sought copy of the financials of respondent No.28. However, no response was received. Copy of the letter and e-mail are at Annexure No.34. Therefore, no reply has been received from any of the above mentioned respondents.

22. It is further stated that Takshila School, Barnala which is sought to be impleaded as respondent No.29 in CA No.335/2018 is a contractual party of the Corporate Debtor. However, no correspondence has been sent to respondent No.29 and therefore, no reply has been received.

23. It is further stated that Takshila School, Muzaffarpur which is sought to be impleaded as respondent No.30 in CA No.335/2018 is a contractual party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.30 for the period

ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. However, no response was received. Copy of the letter and e-mail are at Annexure Nos.22A & 22B. Therefore, no reply has been received. The applicant had also sent a letter to Siya Ram Educational Trust which is sought to be impleaded as respondent No.41 in the CA No.335/2018 wherein he had sought copy of the financials of respondent No.30. However, no response was received. Copy of the letter and e-mail are at Annexure No.32. Therefore, no reply has been received.

24. It is further stated that Bhakti Sagar School Trust which is sought to be impleaded as respondent No.33 in CA No.335/2018 is a contractual party of the Corporate Debtor. However, no correspondence has been sent to respondent No.33 and therefore, no reply has been received.

25. It is further stated that GA Shah English School which is sought to be impleaded as respondent No.36 in CA No.335/2018 is a contractual party of the Corporate Debtor. The Applicant sent a letter dated 08.08.2018 by way of which he had sought copy of the financials of respondent No.36 for the period ending 31.03.2018 on a quarterly basis and quarter ending 30.06.2018 together with details on the admission, tuition fees and other receipts of capital nature. However, no response was received. Copy of the letter and e-mail are at Annexure Nos.27A & 27B. Therefore, no reply has been received. The applicant had also sent a letter to Shri Nath Education Society, Sillod which is sought to be impleaded as respondent No.38 in the CA No.335/2018 wherein he had sought copy of the financials of respondent No.36. However, no response was received. Copy of the letter and e-mail are at Annexure No.29. Therefore, no reply has been received.

26. It is further stated that LLf Foundation which is sought to be impleaded as respondent No.48 in CA No.335/2018 is a contractual party of the Corporate Debtor. However, no correspondence has been sent to respondent No.48 and therefore, no reply has been received.

27. In addition to the above, it is also stated in the affidavit that the applicant had issued correspondence by way of letters dated 06.08.2018 to respondent Nos.7 to 31 & 36 and letters dated 08.08.2018 to respondent Nos.32 to 35 & 37 to 48 highlighting the details of the invoices raised, amount received and the outstanding dues. The applicant had further issued reminders by way of e-mails dated 25.08.2018 to respondent Nos.7 to 31 & 36. Copy of the above mentioned letters and e-mails are at Annexure Nos.39 & 40. The applicant had received responses from respondent Nos.8, 10, 12, 15, 18, 19, 20, 22 & 23 which have been annexed with the Additional Affidavit as Annexure Nos.37A, 36, 30, 25A, 37C, 25B, 25C, 25D & 25E respectively.

**Reply of R-1 - Mr. Vinod Kumar Dandona, Suspended Director:-**

28. Notice of the present application was issued to the respondents No.1 to 4 on 27.08.2018. Respondent No.1, Mr. Vinod Kumar Dandona, one of the suspended Directors of the Corporate Debtor filed his reply vide Diary No.3367 dated 07.09.2018 stating therein that the present application is a counter blast against CA No.226 of 2018 filed by the respondent regarding the blatant violation of the Code being allowed by the Resolution Professional. It is further stated that no proof of communication (such as e-mails) has been annexed with the present application by the applicant to show that the respondent did not render necessary assistance to the applicant. The e-mails exchanged between the personnel of the Corporate Debtor are attached as Annexure R-2 (Colly). It is averred by R-1 in his reply that some of the documents which the Resolution Professional has stated to

be not received by him have actually been received by him which is evident from the e-mails attached at Annexure R-2 of the reply. R-1 has also attached a counter list which is similar to the list prepared by the applicant. The list mentioning the details sought for by the Applicant along with the reply is at Annexure R-1 of the reply.

29. In reply to the prayer of the Resolution Professional to withdraw his earlier application being CA No.294 of 2018 it is stated that the applicant has included certain new facts which have already within his knowledge at the time of filing of CA No.294 of 2018. Therefore, the present application is nothing but an abuse of power. It is further stated that as per the explanation to Section 18 of the Code, the 'assets' of a Corporate Debtor do not include assets owned by any third party. Therefore, the information pertaining to the assets of any third party cannot in any way be important to the CIRP.

30. With respect to the software 'Navision' it is stated in the reply of R-1 that Navision is hosted on the server of the Promoter of Corporate Debtor i.e. Educomp Solutions Limited (for brevity 'ESL') and as such is an asset of ESL and that ESL is also undergoing CIRP therefore, unhindered access of the data can be obtained from the Resolution Professional of ESL, i.e., Mr. Mahendra Kumar Khandelwal. In order to enable the same, certain backend technical adjustments are being made so that unhindered access to the data belonging to the Corporate Debtor may be provided to the applicant.

**Rejoinder to reply filed by R-1**

31. The applicant filed rejoinder to the reply filed by Mr. Vinod Kumar Dandona, R-1, stating therein that the reply filed by R-1 is just a moonshine defense in order to avoid addressing the gravement of the matters and that the Applicant has either not received any documents or has only received it in part.

The applicant has given a detailed response to the counter list prepared by R-1 which is at Annexure R-1. The list contains 125 documents/information that the applicant has sought from the directors and/or employees of the Corporate Debtor, its promoter and the Resolution Professional of ESL and minimal effort was made by the respondent to close few points and mostly were answered as 'documentation/information does not exist'. Even after repeated requests for details relating to assets of Corporate Debtor, either no response has been received or incomplete information/documents were provided. It is further submitted that the e-mails which have been attached along with the reply pertains only to the period till June 2018 and post that the flow of information has been very slow. For instance, the Applicant is yet to be provided with some agreements that have been duly executed with the schools and trusts as highlighted in Annexure A-1 of the rejoinder. Revenue of the Corporate Debtor is generated based on these underlying agreements which are yet to be received. Exclusive and complete access of Navision software is still pending and partial accounting vouchers for past 2 years have been handed over on 21.08.2018 i.e. after filing the Section 19 application, which still does not include key information relating to all invoices, revenue vouchers for FY 2017 and some of invoices, revenue vouchers of FY 2018 have not been provided.

32. It is further submitted by the learned senior counsel for the Resolution Professional that all the data being sought by the applicant is to ascertain the valuation of the assets of the Corporate Debtor so as to have a fair estimate of the worth of the Corporate Debtor and its assets. Furthermore, the applicant is within the bounds of the Code while seeking information pertaining to third parties with whom the Corporate Debtor has entered into agreements and maintains contractual relationship.

33. As regards the access to data software 'Navision', it is stated in the reply that Applicant has repeatedly requested exclusive access to Navision to manage/monitor the financial data of the Corporate Debtor. However, no response was received. Further the Applicant's team reached out to the customer service team of Navision and after examining the situation, the Navision representative confirmed that the access provided to the Applicant is very limited and without the administrative rights, the Applicant and his team would not be able to use the complete system functions. It has been over four months since the CIRP was initiated and the Applicant has still not been provided the complete access rights establishes how the respondents are adversely impacting the CIRP. Copy of e-mails dated 28.08.2018 and 18.09.2018 received from Navision team are at Annexure A-2 (Colly) of the rejoinder.

**Reply of R-2 – Mr. Vijay Kumar Choudhary, Suspended Director and Mr. Krishna Pratap Babunandan Singh, Suspended Director:-**

34. The learned senior counsel filed joint reply vide Diary No.4121 dated 23.10.2018 on behalf of R-2 and R-3 who are the suspended Directors of Corporate Debtor wherein it is stated that the respondents were appointed as 'Non-Executive Independent Directors' and a such did not have active participation in the day-to-day affairs or management of the Corporate Debtor and therefore, are unable to comment on the actions/inactions of the personnel of the Corporate Debtor. Also R-1 who is the whole-time Director of Corporate Debtor has already filed reply hence, the R-2 and R-3 need not give any further reply.

**Reply of R-4 – Dinesh Kataria & Associates, Statutory Auditor:-**

35. The reply on behalf of R-3 was filed vide Diary No.4178 dated 26.10.2018 wherein it is stated that they have always extended co-operation to the

Resolution Professional which is clearly evident from the e-mails exchanged between R-4 and Resolution Professional as at Annexure R-1 of the reply. In reply to the list of information/documents sought for by the Resolution Professional it is stated that the respondent has given point wise reply in tabular form as at page 8 and 9 of the reply.

**Reply of R-5 – Mr. Shantanu Prakash, Promoter/Ex-Director:-**

36. It is represented by the learned counsel on behalf of R-5 that Mr. Shantanu Prakash resigned from the Board of Directors on 15.02.2018 i.e., even prior to the initiation of the CIRP of the Corporate Debtor. He had to resign from the board in view of the many legal proceedings that were threatened to be initiated against R-5 by the erstwhile employees of Corporate Debtor. The Banks had completely started the operations of the Corporate Debtor to the extent that despite money being available in the Banks, the Corporate Debtor could not pay the salaries to its employees. It is further represented that since the initiation of the CIRP, R-5 has no control over the affairs or management of the Corporate Debtor. As regards the documents and records of the Corporate Debtor is stated that the records continued to be with the employees when R-5 resigned and he has not taken any documents of Corporate Debtor with him.

37. It is mentioned in the reply that R-5 has received a complaint from a whistle-blower (Annexure-A of the reply) whereby he has revealed various illegal actions of the Resolution Professional. It is stated that Resolution Professional is conducting the Resolution Process to favour a particular prospective Resolution Applicant namely Delhi Public School, Ghaziabad. At page 16 of the complaint it is stated that the Resolution Professional has disclosed confidential information vis-à-vis the CIRP of the Corporate Debtor to Mr. Om Pathak, Chairman, DPSG Society (who was not even the Resolution Applicant at that stage) and their

decisions were being influenced by the suggestions and opinion of Mr. Pathak. It is also alleged that Mr. Pathak, Mr. Maheshwari (erstwhile Insolvency Resolution Professional of Corporate Debtor) and Duff & Phelps have hatched a conspiracy to hijack the entire process with a premeditated mind-set.

**Rejoinder to the reply filed by R-5:-**

38. The learned senior counsel for Resolution Professional filed rejoinder to the reply filed by R-5 denying therein all the allegations contained in the reply of R-5 and further stating that R-5 is attempting to scuttle his own responsibility. It is also alleged that R-5 has left no stone unturned to derail the CIRP and abuse the process of law and that the Applicant has been requesting to share vital information so that there is value maximisation of the assets of the Corporate Debtor. It is stated that in order to avoid obligations of extending co-operation to the Resolution Professional R-5 has resigned from the Corporate Debtor. Lastly, it is stated that the complaint on which R-5 is relying has not been filed along with a certificate under Section 65B of Indian Evidence Act, 1872 which is an integral part of establish the authenticity of the e-mails and contents thereof.

**Reply of R-6 – Mr. Mahender Kumar Khandelwal, Resolution Professional of Educomp Solutions Ltd. i.e., the parent company of Educomp Infrastructure & School Management Ltd.:-**

39. The respondent No.6 has replied only to para 6 of the additional affidavit which relates to the functions & duties of Insolvency Resolution Professional under the Code. With regard to the denial of full access and controlling rights of 'Navision' it is stated that the data of ESL & Corporate Debtor are hosted on the server common to both. Bifurcation of the two databases with separate security protocols is a complex technical issue and hence, it requires technical competence of personnel having expertise in handling Navision ERP. It is further submitted that the access of the said ERP software 'Navision' has

already been provided to the Applicant and his team, to the best extent possible. The employees appointed by the Applicant vide the resolution of the COC sitting in the office of the Corporate Debtor have also been given the access to Navision. In light of the CIRP of ESL, the entire technical staff aware of the operation and management of Navision ERP have left the job and therefore no technical assistance was available with R-6, hence, he was not in a position to provide solution to the complex issue as claimed by the Applicant. In order to enable the same, certain back-end technical adjustments are being made so that unhindered access to the data belonging to the Corporate Debtor may be provided to the Applicant. With regard to the second contention of the Applicant that the only computer having access to Navision ERP has been removed without informing the Applicant it is stated that the computer referred to cannot have the ERP data as the same is hosted on a server and hence, placing the same on a computer is not possible.

40. Also, the employee who was handling the computer has left the job and as per the provisions of the Code it is within the purview of the Resolution Professional to ensure that all the data relating to Corporate Debtor is duly transferred and handed over by the employee before leaving the company. Further, in terms of Section 18(a) of the Code, the Resolution Professional is required to procure information related to the affairs of the Corporate Debtor for the previous two years.

**Rejoinder to reply filed by R-6:-**

41. In reply to the access to Navision ERP it is stated in the rejoinder that the issue is not only with regard to the access of Navision ERP but also the data stored on that computer. Since, the erstwhile employee left without properly handing over the documents as well as without providing the access to accounting

software was not provided by the erstwhile employee of the Corporate Debtor to the Applicant, the respondent could not ascertain the extent of the data which could have been stored in that computer. It is also submitted that the respondent can have no say on the information that has to be sought as well as the nature of information to be sought especially when such information pertains to the Corporate Debtor. In fact, for the respondent to withhold any and all such information pertaining to the Corporate Debtor be it for a period of 2 years or beyond amounts to unauthorised possession of the financial information of the Corporate Debtor which results in hindering the process of CIRP of the Corporate Debtor.

**Reply of R-7, The Millennium School, Noida:-**

42. It is submitted that no allegations or averments have been made against R-7. Also, there is no specific instance(s) regarding non-cooperation or non-assistance by the respondent, therefore, in absence of any specific instance of non-cooperation or non-assistance the present application is liable to be dismissed. In the affidavit dated 03.09.2018 in Para 4 the Resolution Professional has stated that there has been 'no direct communication' with R-7 for want of any document, information or co-operation, the correspondence between the Resolution Professional and R-7 is at Annexure R-7/1 (Colly) of the reply. Also, the Resolution Professional has stated himself in paragraph 7 of the affidavit that he has demanded certain information about R-7 from R-47 (Millennium Education Foundation), therefore, in absence of any communication or correspondence for want of any information, documentation or any assistance from R-7, no cause of action is made out in order to initiate under Section 19(2) & (3) of the Code. Therefore, it is prayed that the present application liable to be dismissed.

**Rejoinder to reply of R-7:-**

43. It is submitted in the rejoinder to the reply filed R-7 that even though no information is sought from R-7 yet it is a necessary party as the schools and trusts are contractual parties of the Corporate Debtor and the information regarding the schools financials had been sought from the corresponding trust by various correspondences and thereafter from R-7 dated 27.11.2018. R-7 and Corporate Debtor had entered into a Lease Deed under which it is entitled for a fixed lease rent. The Corporate Debtor has entered into a Collaboration Agreement with Millennium Education Foundation i.e., R-47 which stipulates license fee which is based on percentage of share of tuition fees and admission fee for R-7.

44. After the filing of the Additional Affidavit by Resolution Professional in pursuance of the order dated 27.08.2018, R-7 had sent an e-mail dated 15.11.2018 stating that rental charges and license fees for the period from April 2018 to September 2018 on 14.11.2018 has been paid and the calculation was provided in the e-mail. Another e-mail was sent by Applicant to R-7 making demand for payment of the outstanding invoices and requesting for the auditor certificate stating the fee income of R-7 for the period of 01.04.2018 to 30.09.2018. However, the applicant has not received the Auditor's certificate. Copy of both the above mentioned e-mails are at Annexure-1 of the rejoinder. The Applicant further submits that the Lease Deed as well as license fee to be paid by R-7 to the Corporate Debtor in the basis for earning revenue by the Corporate Debtor. The license fee to be charged by the Corporate Debtor is dependent upon factors such as number of admissions (admission fee), tuition (tuition fee) charged by the Respondent. Therefore, the income of the Corporate Debtor is directly linked with the income of the Respondent. Due to the abovementioned reason, the Applicant

had sought the financial data from R-7 which will help to evaluate the actual income of the Corporate Debtor. In the absence of the data sought, applicant will not be in a position to ascertain if the rent/fee being paid by R-7 is as per the terms of the agreement or not. Lastly, it is stated that all the data being sought by the applicant is to ascertain the valuation of the assets of the Corporate Debtor so as to have a fair estimate of the worth of the Corporate Debtor and its assets.

**Reply of R-8, The Shriram Millennium School, Noida:-**

45. The learned counsel for R-8 filed reply vide Diary No.1199 dated 12.03.2019 wherein it is stated that the only relationship which R-8 has with Corporate Debtor is that it is running the School in the building of Corporate Debtor under a License Agreement. It is pointed out in the reply that the provisions of Section 19 of the Code applies only to the 'personnel' of the Corporate Debtor, the promoters of Corporate Debtor and the other persons associated with the management of the Corporate Debtor and R-8 does not fall in any of the above mentioned categories. Despite of the above, R-8 shared the relevant information with the Resolution Professional vide its e-mail dated 26.11.2018 enclosing therewith the certificate of the Auditor dated 08.11.2018 which is at Annexure R-8/2 of the reply.

**Rejoinder to the reply of R-8:-**

46. It is submitted by the learned senior counsel that R-8 is a contractual party of the Corporate Debtor and R-8 along with R-46, i.e., Richmond Education Society, had entered into a License Agreement under which the Corporate Debtor is entitled for license fee comprising of monthly fixed fee and monthly variable fee which is the basis for earning revenue by the Corporate Debtor. It is also submitted that the School, in addition to the variable license fee is also required to pay a fixed fee for the infrastructure provided to the school. Assuming without

admitting, if the school has no surplus to make payments towards variable license fee, the school cannot under any circumstances use the same principle to deny payment of fixed fee. Out of total invoices raised for ₹0.99 crores during CIRP period, ₹0.52 crores remains pending. As regards the certificate of the Auditor it is stated that it contains incomplete information and does not capture all line items which determine the fee/rent to be paid by the respondent to the Corporate Debtor. The applicant reiterates that the applicant has not received complete information as has had been sought by the applicant repeatedly at various instances. The said information is crucial for maximization of value of the assets of the Corporate Debtor. Further the documents which have been sought by the applicant are only those which are relating to the financials of the respondent through which the net income of the Corporate Debtor can be ascertained.

**Reply of R-9, The Millennium School, Meerut:-**

47. The reply of R-9 is almost identical to that of R-8 no new facts are mentioned.

**Rejoinder to reply of R-9:-**

48. The rejoinder of R-9 is almost identical as that of rejoinder to reply of R-9 no new facts are mentioned. Apart from the fact that out of the total invoices raised for ₹1.68 crores during CIRP period, ₹1.13 crores remains unpaid.

**Reply of R-10, the Shriram Millennium School, Faridabad:-**

49. It is submitted in the reply on behalf of R-10 that is a School being run in the premises owned by the Corporate Debtor in accordance with the Lease and License Agreement executed between R-10 and Corporate Debtor on 01.04.2012. It is further submitted that the Books of Accounts or Financial Statements are matter of privacy and it is prerogative of the individual or organization whether to disclose it to the third party or not. Therefore, Resolution

Professional has no right to demand the financials of R-10. However, the annual turnover for F.Y. 2017-18, which is relevant for the Resolution Professional have already been provided to Resolution Professional by the Auditor of R-10 vide its e-mail dated 15.11.2018 which is at Annexure R-2 of the reply.

**Rejoinder to reply of R-10:-**

50. Learned counsel submitted that R-10 along with R-45, i.e., Surya Prabhat Trust and the Corporate Debtor had entered into a Lease Deed under which it is entitled for a fixed lease rent and has also entered into a Lease & License Agreement under which the Corporate Debtor is entitled for license fee which comprises of monthly fixed fee and monthly variable fee. All the other facts are almost identical as given in the rejoinder to the reply of R-9 except that the schools have been delinquent in payment of rentals as stipulated under lease deeds and out of the total invoices raised for ₹1.42 crores during CIRP period ₹0.71 cores remains pending.

**Reply of R-11, The Millennium School, Amritsar:-**

51. The reply of R-11 is almost identical as that of R-9, no new facts are mentioned.

**Rejoinder to reply of R-11:-**

52. It is stated in the rejoinder that R-11 along with R-37 i.e., Shri Krishna Hare Educational Trust, the trust operating R-11 had entered into a Lease Deed under which it is entitled for a fixed lease rent and has also entered into a License Agreement. All the other facts are almost identical as given in the rejoinder to the reply of R-10 except that out of the total invoices raised of ₹4.38 crores during CIRP period, ₹3.76 crores remains pending.

**Reply of R-12, The Millennium School, Panipat:-**

53. The reply of R-12 is almost identical as that of R-11, no new facts are mentioned.

**Rejoinder to reply of R-12:-**

54. It is stated in the rejoinder that R-12 along with the trust operating it, i.e., R-46, Richmond Education Society, entered into a Lease Deed under which it is entitled for a fixed lease rent and has also entered into a License Agreement. All the other facts are almost identical as given in the rejoinder to the reply of R-11 except that out of the total invoices raised of ₹4.31 crores during CIRP period, ₹3.77 crores remains pending.

**Reply of R-13, The Millennium School, Kurukshetra:-**

55. The reply of R-13 is almost identical as that of R-12, no new facts are mentioned.

**Rejoinder to reply of R-13:-**

56. It is stated in the rejoinder that R-13 along with the trust operating it, i.e., R-32 i.e., Balshiksha Educational Trust, entered into a Lease Deed under which it is entitled for a fixed lease rent and has also entered into a License Agreement. All the other facts are almost identical as given in the rejoinder to the reply of R-12 except that out of the total invoices raised of ₹4.20 crores during CIRP period, ₹3.94 crores remains pending.

**Reply of R-14, The Millennium School, Patiala:-**

57. The reply of R-14 is almost identical as that of R-13, no new facts are mentioned.

**Rejoinder to reply of R-14:-**

58. It is stated in the rejoinder that R-14 along with the trust operating it, i.e., R-42 i.e., Sri Satya Sai Educational Trust, entered into a Lease Deed under which it is entitled for a fixed lease rent and has also entered into a License

Agreement. All the other facts are almost identical as given in the rejoinder to the reply of R-13 except that out of the total invoices raised of ₹1.78 crores during CIRP period, ₹1.43 crores remains pending.

**Reply of R-15, The Millennium School, Lucknow:-**

59. The reply of R-15 has been filed through its authorised signatory Mr. Sunil Malhotra who has been authorised vide resolution dated 18.12.2018. Copy of which is at Annexure A-1 of the reply of R-15. Respondent had entered into and executed a License Agreement dated 01.04.2009 with the Corporate Debtor, whereby the respondent was granted lease hold rights over the building owned by the Corporate Debtor on lease for the purpose of running the school on the basis of the rent as agreed amongst the parties. Thereafter, the Resolution Professional vide his e-mail dated 09.07.2018 informed the respondent about the valuation to be conducted for the assets of the Corporate Debtor by the valuers appointed by the Resolution Professional. The respondent informed the Resolution Professional that Mr. Nav Bhav will be assisting the valuer for the purpose of valuation of assets of Corporate Debtor, as asked for by the Resolution Professional later on, the Resolution Professional vide his letter dated 08.08.2018 and e-mail dated 10.08.2018 sought the reply of the financials of the respondent for the period ending 31.03.2018 and quarter ending 30.06.2018 along with the details of admission fees and any other receipts of capital nature of the school for the purpose of calculation of the quarterly variable fee and for the purpose of raising the invoice. Copy of the above mentioned letter and e-mail are at Annexure A-4 (Colly) of the reply.

60. It is further submitted that in spite of the dispute with respect to the rent being raised, the respondent under protest paid rent as raised by Resolution Professional till September 2018. Also, Resolution Professional sought copy of the

financials of the respondent along with the details of admission and tuition fees and other receipts of capital nature of schools. It is also stated that the respondent is only liable to the extent of the fees as per the License Agreement executed between the Corporate Debtor and the respondent.

61. It is further submitted that the respondent in terms of the License Agreement executed between the respondent and the Corporate Debtor, the respondent provided a copy of the Auditor's Certificate dated 05.11.2018 calculating the rent to be paid for the year 2017-18 and half year ended September 2018. The said certificate was e-mailed by the respondent to the Resolution Professional vide its e-mail dated 23.11.2018. It is submitted that in the e-mail the respondent had informed the Resolution Professional that it had paid a total amount of ₹21,42,000/- (Rupees Twenty One Lacs Forty Two Thousand Only) as rent till September 2018. Copy of the Auditor's Certificate dated 05.11.2018 is annexed and marked as Annexure A-5 of the reply and copy of the e-mail dated 23.11.2018 is annexed and marked as Annexure A-6 of the reply.

62. It is submitted that the Agreements entered into with the Corporate Debtor is an onerous agreement and the respondent had stated earlier on several occasions that the respondent is willing to pay the fair market rental which can be determined by any independent agency. Further, it is a settled law that the funds of the school cannot be utilized in such a manner which would cast an unnecessary burden on the school and give an undue advantage to the Corporate Debtor at the expense of the respondent.

**Rejoinder to reply of R-15:-**

63. It is stated in the rejoinder that R-15 along with the trust operating it, i.e., R-34 i.e., Learning Leadership Foundation, entered into a Lease Deed under which it is entitled for a fixed lease rent and has also entered into a License

Agreement. All the other facts are almost identical as given in the rejoinder to the reply of R-14 except that out of the total invoices raised of ₹0.74 crores during CIRP period, ₹0.37 crores remains pending.

**Reply of R-16, The Millennium School, Indore:-**

64. The reply of R-16 is almost identical as that of R-14, no new facts are mentioned.

**Rejoinder to reply of R-16:-**

65. It is stated in the rejoinder that R-16 along with the trust operating it, i.e., R-44 i.e., Surya Kiran Educational Trust, entered into a Lease Deed under which it is entitled for a fixed lease rent and has also entered into a License Agreement. All the other facts are almost identical as given in the rejoinder to the reply of R-15 except that out of the total invoices raised of ₹0.57 crores during CIRP period, ₹0.34 crores remains pending.

**Reply of R-17, The Millennium School, Bhatinda:-**

66. The reply of R-17 is almost identical as that of R-16, no new facts are mentioned.

**Rejoinder to reply of R-17:-**

67. It is stated in the rejoinder that R-17 along with the trust operating it, i.e., R-40 i.e., Shri Radhe Educational Trust, entered into a Lease Deed under which it is entitled for a fixed lease rent and has also entered into a License Agreement. All the other facts are almost identical as given in the rejoinder to the reply of R-16 except that out of the total invoices raised of ₹4.20 crores during CIRP period, ₹3.87 crores remains pending.

**Reply of R-18, The Millennium School, Noida:-**

68. The reply of R-18 is almost identical as that of R-17, no new facts are mentioned.

**Rejoinder to reply of R-18:-**

69. It is stated in the rejoinder that R-18 along with the trust operating it, i.e., R-46 i.e., Richmond Education Society, entered into a Lease Deed under which it is entitled for a fixed lease rent and has also entered into a License Agreement. All the other facts are almost identical as given in the rejoinder to the reply of R-17 except that out of the total invoices raised of ₹0.41 crores during CIRP period, ₹0.21 crores remains pending.

**Reply of R-32, Bal Shiksha Education Trust, New Delhi:-**

70. The reply of R-32 is almost identical as that of R-18, no new facts are mentioned.

**Rejoinder to reply of R-32:-**

71. It is submitted that R-32 along with the school operated under it, i.e., R-13 i.e., The Millennium School, Kurukshetra, had entered into a Lease Deed under which it is entitled for a fixed lease rent and had also entered into a Lease & License Agreement. All the other facts are almost identical as given in the rejoinder to the reply of R-18 except that out of the total invoices raised of ₹4.20 crores during CIRP period to R-13, ₹3.94 crores remains pending.

**Reply of R-37, Shri Krishna Home Educational Trust:-**

72. The reply of R-37 is almost identical as that of R-32, no new facts are mentioned.

**Rejoinder to reply of R-37:-**

73. It is submitted that R-37 along with the school operated under it, i.e., R-11 i.e., The Millennium School, Amritsar, had entered into a Lease Deed under which it is entitled for a fixed lease rent and had also entered into a Lease & License Agreement. All the other facts are almost identical as given in the

rejoinder to the reply of R-32 except that out of the total invoices raised of ₹4.38 crores during CIRP period to R-11, ₹3.76 crores remains pending.

**Reply of R-39, Shri Radha Raman Education Trust:-**

74. The reply of R-39 is almost identical as that of R-37, no new facts are mentioned.

**Rejoinder to reply of R-39:-**

75. It is submitted that R-39 along with the school operated under it, i.e., R-12 i.e., The Millennium School, Panipat, had entered into a License Agreement. It is further submitted that the license fee to be charged by the Corporate Debtor is dependent upon factors such as admissions, tuition fee and other receipts of capital nature charged by R-12 which is being operated by the respondent. Therefore, the income of the Corporate Debtor is directly linked with the income of R-12. Due to which, the Resolution Professional had sought the financial data from the respondent as well as R-12 which will help to evaluate the actual income of the Corporate Debtor. In absence of the data, the applicant will not be in a position to ascertain if the rent/fee paid by R-12 is as per the terms of the Agreement or not and also to correctly ascertain the revenue of the Corporate Debtor. Out of total invoices raised of ₹4.31 crores during CIRP period to R-12, ₹3.77 crores remains pending.

**Reply of R-40, Shri Radhe Education Trust:-**

76. The reply of R-40 is almost identical as that of R-39, no new facts are mentioned.

**Rejoinder to reply of R-40:-**

77. It is submitted that R-40 along with the school operated under it, i.e., R-17 i.e., The Millennium School, Bhatinda, had entered into a Lease Agreement under which it is entitled for a fixed lease rent and had also entered into a Lease &

License Agreement under which the Corporate Debtor is entitled for license fee comprising of monthly fixed fee and monthly variable fee. All the other facts are almost identical as given in the rejoinder to the reply of R-37, no new fact is mentioned except that out of the total invoices raised of ₹4.20 crores during CIRP period to R-17, ₹3.87 crores remains pending.

**Reply of R-42, Sri Satya Sai Educational Trust:-**

78. The reply of R-42 is almost identical as that of R-40, no new facts are mentioned.

**Rejoinder to reply of R-42:-**

79. It is submitted that R-42 along with the school operated under it, i.e., R-14 i.e., The Millennium School, Patiala, had entered into a Lease Deed under which it is entitled for a fixed lease rent and had also entered into a Lease & License Agreement. All the other facts are almost identical as given in the rejoinder to the reply of R-40 no new fact is mentioned except that out of the total invoices raised of ₹1.78 crores during CIRP period to R-14, ₹1.43 crores remains pending.

**Reply of R-44, Surya Kiran Educational Trust:-**

80. The reply of R-44 is almost identical as that of R-42, no new facts are mentioned.

**Rejoinder to reply of R-44:-**

81. It is submitted that R-44 along with the school operated under it, i.e., R-16 i.e., The Millennium School, Indore and the Corporate Debtor had entered into a Lease Deed under which it is entitled for a fixed lease rent and has also entered into a Lease & License Agreement under which the Corporate Debtor is entitled for license fee which comprises of monthly fixed fee and monthly variable fee. All the other facts are almost identical as given in the rejoinder to the reply of

R-42, no new fact is mentioned except that out of the total invoices raised of ₹0.57 crores during CIRP period to R-16, ₹0.34 crores remains pending.

**Reply of R-46, Richmond Education Society:-**

82. The reply of R-46 is almost identical as that of R-44, no new facts are mentioned.

**Rejoinder to reply of R-46:-**

83. It is submitted that R-46 along with the school operated under it, i.e., R-8, 9 and 18 i.e., The Shriram Millennium School, Noida, The Millennium School, Meerut and The Millennium School, Noida respectively had entered into a Lease Agreement under which it is entitled for a fixed lease rent and had also entered into a Lease & License Agreement under which the Corporate Debtor is entitled for license fee comprising of monthly fixed fee and monthly variable fee. All the other facts are almost identical as given in the reply of R-44 no new fact is mentioned except that out of the total invoices raised of ₹0.99 crores, ₹1.68 crores and ₹0.41 crores during CIRP period to R-8, 9 and 18 respectively, ₹0.52 crores, ₹1.13 crores and ₹0.21 crores remains pending.

**FINDINGS :-**

84. We have heard the learned counsel for the parties at length and are of the view that this application is to be partly allowed. **Section 19** of the Code casts an obligation on the ex-personnel of the corporate debtor, its promoter or any other person associated with the ex-management including ex-directors to extend all assistance and cooperation to the Interim Resolution Professional, as may be required by him in managing the affairs of the Corporate Debtor.

85. Section 19 (2) of the Code then empowers the Resolution Professional to file appropriate application before the Adjudicating Authority-NCLT to seek necessary directions and the Adjudicating Authority must issue direction to

such defaulting personnel of ex-management. For ready reference Section 19 of the Code is set out below :-

- “19. (1) *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 interim resolution professional as may be required by him in managing the affairs of the corporate debtor.*
- (2) *Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.*
- (3) *The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and cooperate with him in collection of information and management of the corporate debtor.”*

86. The aforesaid provision makes it abundantly clear that besides the ex-management, the requirement is that the ex-directors, respondents No.1, 2, 3 and 5 , all of them collectively or independently , must furnish information and complete assistance to the Resolution Professional as required by him to facilitate in managing the affairs of the Corporate Debtor, however, the unrelated parties are under no obligation to furnish information as far as the scope and ambit of Sec. 19 of The Code is concerned. In the absence of cooperation, powers have been conferred on the Adjudicating Authority-NCLT to take appropriate action. The language of Section 19 suggests that it must issue directions to such defaulting personnel of the ex-management to comply with the directions of the resolution professional and to co-operate with him. The aforesaid provisions are mandatory in character so as to enable the Resolution Professional to complete the CIRP expeditiously and manage the affairs of the Corporate Debtor as a going concern.

Therefore, there is no escape for those persons concerned to extend full cooperation to the IRP/RP appointed.

87. Along with this miscellaneous application a voluminous compilation is on record containing reply of the respondents, however not all of them have replied, rejoinder by the applicant as well as the details of the documents called for from the respondents are filed.

88. In the array of parties as many as 48 persons were impleaded either in the capacity of individuals, corporate body or companies. At the outset it is worth to specify that respondent Nos.1, 2, 3 & 5 are the Promoters/Guarantors of the Corporate Debtor, in whose case an order under Section 10 of Insolvency Code was pronounced and the Petition was admitted vide an order dated 25.04.2018. Therefore, it is also an admitted position that the **Corporate Debtor itself** has moved the impugned petition to be declared as insolvent and bankrupt under the provisions of I&B Code, 2016. At the cost of repetition, Section 10 has certain unique provision that where if Corporate Debtor is of the opinion that a default had been committed in repayment of the debt, then **itself** can file an application for initiation of CIRP with Adjudicating Authority. Along with this application the applicant i.e. Corporate Debtor itself has to furnish information relating to its books of account and other documents for such period as specified. Thereupon within 14 days time Adjudicating Authority is expected to pass an order admitting the application or rejecting if incomplete. Immediately thereupon 'Resolution Process' shall commence from the date of order of the admission. Therefore, Section 10 has a unique feature that a Corporate Debtor also has a right to declare itself an Insolvent. In a way Section 10 provisions are at par with the old insolvency provisions where a person under heavy debts used to declare himself as an Insolvent.

89. The above discussion is necessary in the present context because the Corporate Debtor and the persons controlling the management such as Directors/key managerial persons are under strict obligations to furnish financial statements and all information relating to its books of account. The Promoters/Directors have no excuse or reason not to submit the requisite information already in their possession. Naturally on the basis of the position of debt and the corresponding financial irregularities the Board of Directors ought to have passed a resolution for submission of Section 10 application. In this case, the applicant i.e. Mr. Ashwini Mehra, Resolution Professional has submitted this miscellaneous application and in the memo of parties listed the name of the Directors as under: -

- a. Mr. Vinod Kumar Dandona
- b. Mr. Vijay Kumar Choudhary
- c. Mr. Krishna Pratap Babunandan Singh
- d. Mr. Shantanu Prakash (resigned prior to CIRP)

90. In the list of respondents at **Sr. No.4** is Dinesh Kataria & Associates, Geeta Colony, Delhi, included a Statutory Auditor of the debtor company. Naturally, he is also in possession of the financial statements of the Corporate Debtor. He is also under statutory obligations to furnish the copies of the audited accounts along with all schedules and annexures for the specified period to the Resolution Professional (Applicant).

91. In the list of respondents at **Sr. No.5** is the name of one Mr. Shantanu Prakash, Gurgaon, stated to be retired as a Director prior to CIRP. He is expected to furnish the information with him upto the date of retirement from the directorship of the debtor company. On this ground that he had resigned from the directorship just before the commencement of CIRP is not a good reason to grant

exemption from non-submission of requisite details, if any, in his possession. A simple reason is that the decisions taken during his tenure as Director would have caused financial irregularity leading to financial distress which resulted into Insolvency proceedings. Definitely he is answerable for all the decisions taken during his tenure. Instead of supplying information, in his reply **Mr. Shantanu Prakash (R-5)** has raised certain counter allegations on the Resolution Professional. This bench shall take due cognizance of the matter reported in the reply, but before that it is a must for R-5 to furnish the information, else liable for legal action as prescribed under Section 70 of the Insolvency Code.

92. As far as the presentation of defence by R-1 to R-3 is concerned, Suspended Directors, all of them have stated that the information in their possession had already been communicated to Resolution Professional. Further an excuse was made that R-3 is a non-executive director hence not under a strict obligation to furnish the information demanded because those information were not in his knowledge or possession being a non-executive director. According to us this is not a tenable excuse, reason being that he had been a part of the team hence at least can persuade the other Managerial personnel to supply the documents demanded.

93. We have examined carefully the contents of the pleadings exchanged between the Resolution Professional and Respondents/Suspended Directors and thereupon formed this opinion that there was default on their part in compliance of the provisions of Section 19 of the Insolvency Code. This Section is unambiguous that the personnel of the Corporate Debtor, its Promoters, persons associated with the management should extend all assistance to Resolution Professional in managing the affairs of the Corporate Debtor. Where any personnel does not assist or cooperate, the Resolution Professional has to make

an application to Adjudicating Authority. This Section is to be read along with **Section 18 of the Code wherein duties of Interim Resolution Professional** are carved-out. One of the foremost duty is to collect information relating to assets, finances of the Corporate Debtor for determining the financial position including the information relating to business operations for the past two years, financial operations for previous two years, collate all the information etc. It is also pertinent to read **Section 17** along with these two Sections prescribing **management of affairs of the Corporate Debtor** by Resolution Professional/Interim Resolution Professional. From the date of appointment, he is to manage the affairs which shall vest in him during CIRP period. The managers and the officers of the Corporate Debtor are required to report to Interim Resolution Professional and provide access to such documents / records as required by Interim Resolution Professional.

94. From the plain reading of above Sections, it is very much clear that the Insolvency Professional has to perform multiple roles, such as to manage the affairs of the company and simultaneously to prepare Information Memorandum to invite Expression of Interest. To implement the intention of the Code upto this extent, it is obvious that the Suspended Directors and Managerial persons should extend full cooperation. Simultaneously also furnish all information about their accounts and financial facilities availed from various financial creditors. It is also necessary to furnish the details of sundry creditors and sundry debtors as appearing in the books of account of the Corporate Debtor. From the evidence on record, it transpires and not in dispute that R-2 & R-3 have failed in their duty. Few examples of the information called from R-2 & R-3 are such as contracts and agreements between the companies and other professionals/parties, excess to Navision software for the period prior to F.Y. 2016-17, contact details of Trustees

of Trusts, supporting documents for additional claims sent by ex-employees of the Corporate Debtor, shareholding pattern of each subsidiary, bank balance of INR 1.63 Mn, loans and advances of INR 376.60 Mn as per 25.04.2018 financials. All these informations are mainly in the knowledge and possession of the Directors therefore, they are hereby held responsible for non-submission of the information as well as non-cooperation as prescribed **under Section 19 of Insolvency Code**. Once it is held so, the operation of **Section 70 of the Insolvency Code** is almost automatic. This Section prescribes that wherein officer of the Corporate Debtor does not disclose to Resolution Professional all the details of the property, details of transaction and/or any other information required for Insolvency Process, is subject to punishment. This Section also prescribes that if the officer of the Corporate Debtor delivers the information in part thereof shall also be subject to punishment under this Section. The ambit and scope of Section 70 is very large because several other instances such as preventing others for production of books of account, creation of fictitious losses, debiting of unverifiable expenses, any attempt to falsely proof a claim or not holding the meeting of creditors within last 12 months are all the examples where punishment prescribed is not less than 3 years, may extend to 5 years and a fine of ₹1 lakh, may extend to ₹1 crore or both can be imposed. Thereafter, for further action Special Court is designated to execute the punishment. Registry is hereby directed to forward a certified copy of this order to The Insolvency and Bankruptcy Board of India (IBBI), address 7th Floor, Mayur Bhawan, Shankar Market, Connaught Circus, New Delhi -110001 for due cognizance of above directions and further necessary action.

95. In this application learned Resolution Professional has made out a strong case that all the cooperation extended by the Suspended Directors was not full and complete. Only part compliances have been made however, vital

information, allegedly withheld. The consequence can be that the part compliance may also be treated as non-compliance of the provisions of Section 17 & 18 resulting into the moving of this application under Section 19 by the Resolution Professional. Even part compliance may attract the provisions of Section 70 wherein punishment is prescribed under the Code.

96. Now we have to deal with the information demanded from Respondents No.7 to 48, as listed in the array of parties of this application. Duties as prescribed under Section 18 of the Code to be performed by a Resolution Professional primarily revolve around the assets, finances, business operation etc. of the Corporate Debtor. All these information are in general use to determine the financial position of a Corporate Debtor, so as to incorporate in the 'Information Memorandum'. In addition to the information as broadly listed in this Section, it is expected that the Resolution Professional should take control and custody of the assets over which the Corporate Debtor has "ownership rights" as recorded in the balance sheet of the Corporate Debtor. Therefore, primarily the scope of calling for the information under Section 18 is confined to the assets, finances and operations as recorded in the books of account of a Corporate Debtor. It may be possible that an asset although under ownership, but not in possession does fall within the purview of Section 18 as prescribed in sub-Section (f)(ii) of this Section. Tangible as well as intangible assets, both are within the scope of this Section, hence the Resolution Professional can demand for the complete information which helps him to determine the financial position of the Corporate Debtor. Therefore, on careful study, it is unambiguous that the scope and ambit is confined to the assets belonging to the Corporate Debtor. Simultaneously, we are also aware that there is a **Regulation No.4 (Access to Books) of Insolvency Resolution Regulations, 2016 ( IBBI Insolvency Resolution Process for Corporate**

**Persons Regulation)** which prescribe that **without prejudice** to Sec.17(2)(d) the IRP may access the books of accounts or other relevant document/ Information of the Corporate Debtor to the extent relevant for discharging his duties under the Code, held with the **contractual counterparties of the Corporate Debtor**. So, an exception is carved out vis-à-vis Sec. 17(2)(d) that IRP not only has an authority to access the books of accounts , records and other relevant documents of the Corporate Debtor available with government authority or statutory authority ; but vide Regulation 4 can access relevant information of the corporate debtor available with contractual counterparties of the Corporate Debtor. However, facts and circumstances of the case do not establish to the hilt that without the impugned document the Insolvency Process could not be completed. Due to this reason we are of the view that demanding the information from respondents No.7 to 48 are in a way, under the peculiarity of the facts, exceeding the prescribed jurisdiction by Resolution Professional.

97. In support of the above finding, we also place reliance on **Regulation 36 (Information memorandum) of CIRP Regulation** wherein description of Information Memorandum is provided wherein as well the details to be contained are the assets and liabilities of the Corporate Debtor. In the Information Memorandum, audited financial statements, list of creditors, particulars of the debts, details of guarantee, names and addresses of the members and partners holding at least 1% stake, details of litigation etc. are required to be incorporated. Therefore, the indication is very clear that the information or documents demonstrating the ownership right of the Corporate Debtor or having direct control as a beneficial owner are to be incorporated in the Information Memorandum. The Resolution Professional is not justified in demanding beyond what is prescribed.

98. On examination of the information demanded from all the respondents it is noticed that the Resolution Professional wanted revenue operations of the respondents as listed in the array of parties from R-7 to R-48. As far as the Lease Agreements are concerned the same are already communicated and the Resolution Professional can peruse those agreements. At best the Resolution Professional can verify the veracity of those documents. On the basis of those lease documents, Resolution Professional can determine the ownership right of the Corporate Debtor. However, the objection is only when the Resolution Professional is demanding the statement of accounts pertaining to all these lessees appearing as respondent Nos.7 to 48. If on demand the respondents are willing to submit then such a cooperation ought to be appreciated, however, submission of such information cannot be made compulsory under Regulation 36 or Section 19 of the Insolvency Code. There is no judicial authority available to Resolution Professional to seek financial information of a third party. His enquiry should remain limited to the business transaction executed between the Corporate Debtor and the said party. The terms of the Lease Agreement also depends on party to party and no uniform standard can be fixed since execution of Lease Agreements depends upon the business decision of the parties. Even the information pertaining to the lessee cannot be made part of the Information Memorandum because the business operation of a Resolution Applicant depends upon his commercial wisdom to be exercised in case his Resolution Plan is approved. At this stage it is unfair to demand such information simply in the guise of maximisation of the value of assets of the Corporate Debtor. This approach being not fair and judicious, thus need not to be approved.

99. We therefore, conclude that the operation of Section 19 shall remain confined to respondent Nos.1, 2, 3 & 5 and not on rest of the respondents. Before

we part with, it is necessary to observe that substantial time had already exhausted but the insolvency process has not taken a final shape therefore, the Resolution Professional is expected to finalise the process by taking decision on the Resolution Plan, if any, submitted, by putting before the CoC and thereupon inform the decision of the CoC to this Bench expeditiously. The default as determined against the respondents in above paras shall not dither any further finalisation of the insolvency process. The application is partly allowed.

100. The Registry is hereby directed to serve a copy of this order 'Dasti' to the learned authorised representative of the Resolution Professional or to the Resolution Professional.

Pronounced in open Court.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

Sd/-  
(M.K. Shrawat)  
Member(Judicial)

June 14, 2019  
Anchal