

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

ITEM No. 203
(IB)-441(PB)/2018

IN THE MATTER OF:

Bank of India Applicant/petitioner
v.
M/s Advance Navotpad Surfactants Ltd. Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016 CIRP

Order delivered on 11.06.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

SH. S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENTS:

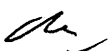
For the RP Mr. H.S. Kohli, Advocate
For the Respondent Mr. Pankaj Seth, Advocate

ORDER

The prayer made in the application is that all documents and information which is within the knowledge and custody of the erstwhile Promoters/Directors/Auditor be furnished and the non applicant respondent may be asked to assist the Resolution Professional to furnished information required by him and handover the custody and control of entire factory.

In the reply filed by the non applicant respondent no. 1 and 2, the stand taken in the preliminary submissions is extremely intriguing. In para 1 of the preliminary submission inter-alia the following stand has been taken.

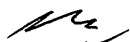
“It is further submitted that corporate debtor has been under financial stress for a long time, consequently most of its employees have left the services of the corporate debtor



without handing over the documents, files, records and information in their possession and power to respondent nos. 1 and 2, and most of the data, information and documents of the corporate debtor are in raw state and there are no employees with corporate debtor to compile the same, that is why compilation of the same takes time and that is the reason at times there has been unintentional and bonafide delay on the part of respondent nos. 1 and 2 in providing documents, data, information and files to the resolution professional and he is also fully aware of these facts.”

A perusal of the aforesaid averments made by the non-applicants show that the averments are wholly vague when it states that the employees have left the services of the corporate debtor without handing over the documents, files, records and information. Such a stand in the first place cannot be appreciated and secondly if any, employee has taken the record with him while leaving then the necessary information with regard to that employee should have been disclosed. If the record of the employer is stolen by the employee it would be wholly unauthorised and it has to be retrieved. Therefore, the respondents no. 1 and 2 are directed either to supply complete information or disclose the names of all such employees who have taken the record along with them; and also information in their possession and power.

The Resolution Professional has submitted that the books of accounts from the year 2014 and financial statements from 2015



onwards have also not been given. It is needless to say that a Resolution Professional would not be able to conduct CIRP in the absence of vital records and the books of accounts. Accordingly, we direct the non applicant no. 1 and 2 to apprise the Resolution Professional and furnish the aforesaid record before 24.06.2019. If the needful is not done then respondent no. 1 and 2 shall remain present in person on the adjourned date.

The non applicant respondent no. 3, 4 & 5 have filed their separate replies. Respondent no. 3 has taken the stand that he had resigned from the Board of Directors of the Corporate Debtors "long time ago and therefore there is no question of respondent no. 3 providing any document/information pertaining to the said company to the Resolution Professional". In respect of respondent no. 4, the stand taken is that he is an independent director and has not attended any meeting of Board of Directors ever and therefore by virtue of provision under section 167 (1) (b) of the Companies Act, 2013 he stands automatically removed as a director. Likewise, respondent no. 5 has taken the stand that "he is only an employee of the corporate debtor and is working in the capacity of an independent director and that he is not involved in day to day affairs of the corporate debtor".

The stand of the respondent no. 3 that he has resigned long time ago ~~is~~ cannot be accepted because the Resolution Professional has enclosed a copy of the master data which shows that respondent Mr. Subhash Kumar is a director since 26.06.2014 and the date of expiry of his tenure is 17.06.2019. In respect of the respondent no. 4, his date of appointment is the

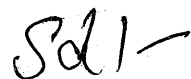


same and his tenure expires on 27.12.2020. Likewise, respondent no. 5 has been a director since 13.06.2016 and the date of expiry of his tenure is 29.08.2020.

A presumption of truthfulness attaches to an official document like the master data maintained by the ROC and in the absence anything contrary in the master data it cannot be accepted that anyone of them resigned or on account of continuous absence he attracted disqualification of remaining no longer director or that respondent no. 5 is an employee and is an independent director. The aforesaid defence taken by the respondents no. 3, 4 & 5 is wholly unrealistic and against the express provisions of law. An intimation to the ROC is required to be given. There is nothing on record to support their assertion. Therefore, they are directed to co-operate and assist the Resolution Professional in the Corporate Insolvency Resolution Process by furnishing required information, documents in their control and possession by 24.06.2019. If they failed to do so, then they shall remain present in person on 02.07.2019.

List on 02.07.2019.


(M.M.KUMAR)
PRESIDENT


(S. K. MOHAPATRA)
MEMBER (TECHNICAL)