
(2023) 03 NCLT CK 0063

In the National Company Law Tribunal

Case No : IA No. 2341/2022 IN CP (IB) 76/2021

Udayraj Patwardhan Vs Sameer Patil ?

Date of Decision : 24-03-2023

Acts Referred:

Citation : (2023) 03 NCLT CK 0063

Hon'ble Judges : Kishore Vemulapalli, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Satyendra K. Rai, Udyaraj Patwardhan, Akshay Petkar, Mohit Jha, Avinash R Khanolkar

Final Decision : Allowed

Judgement

Kishore Vemulapalli, Member (Judicial)

1. This is an Application filed by the Resolution Professional of M/s Orange (Corporate Debtor) seeking co-operation of the suspended board members(R1 & R2), statutory auditor for FY 16 to FY 21(R3) and practicing CS (R4) for provision of information, documents pertaining to the Corporate Debtor

2. The Applicant has submitted that it has sent emails from 12.03.2020 to 19.07.2020 to the Suspended Board and asked them to provide the information. However, most of the information is still pending. The Applicant has also visited Commissioner of Police Pune and other Police officials to seek their assistance for taking over the control and custody of the Corporate Debtor and also paid requisite fee for police bandobasat in this regard. Consequent to this, the Applicant took over the control and custody of the assets of the Corporate Debtor.

3. Consequent to directions by the Bench, the Applicant has provided detailed list of document/information to be supplied by the Suspended Board vide his additional Affidavit dated 25.02.2023. On perusal of the said list it is seen that pending details contain statutory records/registers; Fixed Asset Registers; Books of Accounts from 01.04.2016 onwards along with invoices, bills and vouchers; and other details/logins/records. We feel that the other details/logins/records etc. can be obtained from the government portals.

4. Respondent No. 1 i.e. one of suspended directors namely Sameer. M. Patil has submitted vide his Affidavit in Reply dated 03.01.2023 that post admission the Resolution Professional has never tried to meet him or other Directors and made WhatsApp calls and emails during odd hours; he requested Respondent No. 3 i.e. the Chartered Accountant and Respondent No. 4 i.e. the Company Secretary to provide all available information to him which were provided by both of them to the Resolution Professional. It was pleaded that there is no non-cooperation from the Directors. It is also stated that the Resolution Professional gave insufficient notice for taking possession on 25.05.2022 making it impossible for the Construction Agency to hand over the possession and such Agency had clearly told the the Resolution Professional that he shall be responsible in the event documents are stolen or damage, however, the Resolution Professional did not take the possession during the appointed time and came few hours later. It is further submitted that all documents required by the Resolution Professional were available there.

5. Respondent No. 3 has filed his affidavit in Reply dated 21.02.2023 stating that he has already provided Financials from FY 2015-16 to 2020-21 vide email dated 29.04.2022 along with other relevant documents which came to his possession during course of Audit Hence he may be removed as party to this Application as nothing remains against him.

6. The Applicant has also filed Another Affidavit dated 13.03.2022 enclosing the Copy of Panchnama and Record of Police Assistance. From perusal thereof, the documents and assets found from the office of the Corporate Debtor at the time of taking over are duly listed in said Panchnama which is witnessed by two persons as well as head supervisor of Trishul Security Force. The information/documents stated to be pending in detailed list of document/information, provided by Affidavit dated 25.02.2023, were not available at the office of Corporate Debtor.

7. We heard the counsels present and perused their contentions. We feel that Suspended Directors are consciously not providing the Statutory Record/Registers and Books of Accounts with vouchers on the pretext that those were kept at the premise, taken over by the Resolution Professional. In view of this, we direct the Resolution Professional to create the Books of Accounts and Records based on Financial Statements, Bank Statements, various returns filed with Authorities and Lenders and Respondent no. 1 and 2 shall co-operate the Applicant to understand the transaction if any. Further, such collated Statements shall be verified by the Respondent no. 1 and 2 upon presentation without any further delay.

8. We also note that the suspended Directors have failed to maintain and preserve the Records of the Corporate Debtor in the manner and for the period required under Companies Act, 2013. We direct the Respondent No. 1 to bring this fact to the notice of concerned Registrar of Companies for appropriate action in this regard against the Suspended Board.

9. In view of the above the IA No. 2341 of 2022 in CP-76/MB-IV/2021 is allowed.