

IA No. 3766 of 2023

IN

CP (IB) NO. 4048/MB/2018

Application u/s 19(2) read with Section 70 and 60(5) of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Pradeep Kumar Chakravarty,

Resolution Professional of M/S Team

Interventure Exports (India) Private Limited;

...Applicant

V/s.

Vinod Kumar Umadatta Agarwal
 (Member of suspended Board of Directors)

...... Respondent No.1

2. Nand Kishore and Co. (Statutory Auditor from F.Y 2014-15 to 2018-19)

...... Respondent No.2

3. IP Mehta and Company (Statutory Auditor from F.Y 2020-21 to 2022-23)

...... Respondent No.3

In the matter of

Bank of Baroda (earlier known as Dena Bank)

...Financial Creditor

v/s.

M/S Team Interventure Exports (India) Private Limited



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Order pronounced on 30.08.2024.

Coram:

Shri. Kuldip Kumar Kareer: Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearance:

For the Applicant : Counsel, Aniruth Purusothaman a/w Aditya Sharma

For the Respondent No.1: Counsel, Rohit Gupta a/w Vatsal Gosalia i/b Akash

Acharya

For the Respondent No.2: Counsel, Atishay Jain

For the Respondent No.3: Counsel, Kekti Minhas

#### **ORDER**

#### Per: Coram.

- 1. The Present Application is filed by Pradeep Kumar Chakravarty, Resolution Professional (RP) of M/S Team Interventure Exports (India) Private Limited ("the Corporate Debtor") under section 19(2) read with Section 70 and 60(5) of the Insolvency and Bankruptcy Code, 2016 seekiing the following reliefs:
- Be pleased to direct the Respondent no. 1 to furnish all the requisite information/documents as per Table A of this application and further information/ documents as may be needed to the Applicant so as to carry out smooth functioning of CIRP of the Corporate Debtor.
- Be pleased to direct the Respondent no. 2 and 3 to furnish all the requisite information/documents as per Table B of this application and further information/ documents as may be needed to the Applicant so as to carry out smooth functioning of CIRP of the Corporate Debtor.



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#### **Brief Facts of the Case:**

- 2. It is submitted that an Application for Corporate Insolvency Resolution Process was filed by Bank of Baroda under Section 7 of the IBC 2016 which was admitted vide order dated 17.03.2023 in CP (IB) No. 4048/MB/2018 wherein the Applicant was appointed as the Interim Resolution Professional of the Corporate Debtor. The first meeting of the Committee of Creditors (CoC) took place on 17.04.2023. After receiving claims, the IRP formed the CoC, which resolved to continue the IRP as the Resolution Professional (RP) for the Corporate Debtor.
- 3. The present application has been filed due to the Respondents' failure to provide necessary information and cooperation required for conducting the CIRP. The Respondents, particularly Respondent No. 1, have obstructed the process by not assisting and cooperating with the RP, impeding the management of the Corporate Debtor's assets, and deliberately creating obstacles to prevent the RP from taking control, as mandated by the law.

#### **Brief Submission of the Applicant:**

- 4. The Applicant submits that Upon taking charge, the Applicant discovered that the Corporate Debtor had not filed financial statements with the Registrar of Companies since the financial year 2015-16. To clarify the financial situation, the Applicant requested detailed information and documents pertaining to Corporate Debtor from Respondent No. 1 via emails dated 26.03.2023.
- 5. Subsequent emails were sent on 28.03.2023, 02.04.2023, and 10.04.2023, reiterating the requests for financial documents, Tally software data, and other necessary information and also informed about the urgency of the matter and the consequences of non-cooperation to Respondent No.1. Respondent No. 1 replied on 12.04.2023 but did not provide the required documents. Further, the applicant replied on it with email dated 30.04.2023, raising specific queries and pointing out the lacuna in the information provided by the Respondent No 1.



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- 6. The Applicant continued to request this information, including details about legal cases, financial statements, fixed assets, investments, and transactions, particularly through emails sent on 08.05.2023 and 28.05.2023. Although Respondent No. 1 eventually provided some financial statements for FY 2020-21 and 2021-22 and trial balance prints from 01.04.2022 till CIRP date, However, the Tally data was not received.
- 7. The Applicant submits that, the Applicant by email dated 08.06.2023, informed the Respondents that a Transaction Auditor has been appointed during the CIRP process and there was requirement of certain information for the purpose of said audit and vide email dated 10.06.2023 sought login credentials for the Income Tax and GST website from the Respondent No.1 and also again requested Respondent no. 1 to submit the responses to all the queries raised and provide the data including details of the Debtors of the Corporate Debtor.
- 8. Thereafter, the Applicant had received financials for the year ended on 31.03.2021 and 31.03.2022 from the Respondent No 1, which were signed by Chartered Accountant Firm i.e., Respondent no. 3. However, the said financials did not carry any Unique Document Identification Number (UDIN) which is a mandatory requirement for certification of Financials, as per ICAI norms. Further, the Applicant sent an email to the Respondent no. 3 and Respondent No.1, requesting them to clarify about non-mentioning the UDIN on the financials and providing back up of the tally data for F.Y ended 31.03.2021 and 31.03.2022. However, no reply has been received by the Applicant from the Respondent No. 1 and 3 till date.
- 9. The Applicant submits that despite several reminders, following information and documents are not provided as sought from Respondent no. 1 which are essential in conducting the CIRP of the Corporate Debtor. It is submitted that vide mail dated 15.06.2023, to the Respondent No.1, the Applicant sought various information as it was required immediately by the valuers and transaction auditor. However, no reply has been received by the Applicant from the Respondent No. 1, till date.



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- 10. The Applicant submits that after such huge persuasions as stated above, the Respondent No.1 vide his mail dated 30.06.2023, submitted tally data of the Corporate Debtor for the period from 01.04.2020 to 31.03.2023, instead of 01.04.2023 to 31.03.2023. Further, on 17.07.2023, the Applicant requested additional documents for the statutory and tax audits for FY 2022-23, but as of now, no response has been received from Respondent No. 1 or Respondent No. 3.
- 11. The Applicant submits that despite several reminders following information and documents are not provided as sought from Respondents. Further, due to the unavailability of requisite documents from the Respondents, the Applicant is unable to carry out his duties for smooth functioning of CIRP of the Corporate Debtor The list of documents and information which the Respondents has failed to provide is as per Table- A and Table- B.

#### **Submissions from Respondent-1**

- 12. The Respondent No. 1 has submitted that the current application filed by the Resolution Professional (RP) is not valid and was submitted as an afterthought to cover up mistakes and delays in the Corporate Insolvency Resolution Process (CIRP). The Respondent further asserts that the application omits critical facts and presents false information to the Tribunal. Additionally, the Respondent argues that the application is flawed due to the non-inclusion of a necessary party, namely Dena Bank (now Bank of Baroda), which had taken possession of the company's records. The Respondent denies all allegations made by the RP that contradict their statements in the reply.
- 13. The Respondent No. 1 submits that when the company petition was admitted, the Corporate Debtor was no longer operational since March 2018, and the Respondent was not involved in managing the company's daily or financial affairs. These responsibilities were handled by Mr. Suresh Kumar Agarwal (Elder brother of Respondent No.1) and the accountant, Mr. Ashok Agarwal.



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- 14. The Company had taken loans from various banks (Bank of Baroda, Dena Bank, UCO Bank, IndusInd Bank) to expand its export business, securing these loans with properties owned by the company. The company's business operations and records were maintained at its registered office in Banu Mansion, Fort, Mumbai.
- 15. The Respondent submits that financial difficulties, including the effects of demonetization and exchange rate fluctuations, caused the company to default on loan repayments, leading to the banks classifying the accounts as Non-Performing Assets (NPA) and initiating recovery actions under the SARFAESI Act. Thereafter, On February 23, 2018, Dena Bank (now Bank of Baroda) took physical possession of the company's assets, including its registered office, with the help of police and a court commissioner, seizing all inventories and records. The company's directors had to move whatever they could from the Fort office to a storage location at the Ghatkopar office which was later seized by Bank of Baroda on February 13, 2023. The Fort office was reportedly sold by the banks in September 2021 under the SARFAESI Act.
- 16. The Respondent asserts that the Corporate Debtor no longer had any assets in its control after the events of 2018 and denies any obstruction in producing documents since the company was non-functional. The Respondent's elder brother, Suresh Kumar Agarwal, who managed the company's day-to-day affairs, passed away on December 10, 2022. The company's accountant, Ashok Agarwal, who managed the accounts and legal matters, also passed away suddenly on May 25, 2023.
- 17. The Respondent has cooperated with the RP by providing all the data in their possession and assisting with the CIRP process, including providing balance sheets and financial details from 2020 to 2023 as requested. The Respondent provided the necessary bank details and information about court cases against the Corporate Debtor as requested by the RP. The Respondent also provided KYC details and assisted in obtaining IT and GST login credentials for the RP.



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- 18. The Respondent submits that pursuant to the fourth Committee of Creditors (CoC) meeting on July 31, 2023, it was noted that the balance sheet had been filed up to March 31, 2021. The Respondent in email dated 29.08.023, provided all necessary details for the statutory audit for FY 2022-23 as requested by the RP. The Respondent submits that in the fifth CoC meeting on August 23, 2023, it was resolved to liquidate the Corporate Debtor and to file the necessary applications, making the continuation of the current application legally questionable. The Respondent has cooperated with the transaction auditors appointed by the RP by providing the requested details and clarifications.
- 19. The Respondent denies obstructing the Resolution Professional (RP) and asserts that they have consistently cooperated. They clarify that the company's assets were already in the possession of secured creditors before the initiation of the CIRP and financial statements were provided to the RP, but the RP has been requesting information beyond the look-back period, which the Respondent finds irrelevant to the CIRP process.
- 20. The Respondent has already provided details about legal cases involving the Corporate Debtor (CD), including disputes with Axom Global that led to criminal proceedings. The financial details related to these disputes have also been shared. The Applicant requested details of old financial transactions, but the Respondent explains that many of these transactions are from beyond the look-back period and involved an entity called Ruchika International, which ceased to exist in 2010. The assets and liabilities of Ruchika were taken over by the Corporate Debtor, and any benefits or drawbacks received from the customs authorities were credited to the CD.
- 21. The Respondent submits that the financial statement for the year ending 2022 was not certified due to the illness and subsequent death of a director, which prevented the generation of a UDIN number. The Respondent has cooperated fully with the RP by providing the requested Tally data, bank account details, and other information, despite difficulties in accessing older records. They also addressed specific financial queries and made necessary deposits as requested by the RP. The Respondent highlights that many documents and data are now with the bank or the RP due to the seizure of



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the company's assets. The Respondent clarifies that they have been continuously providing necessary information and clarifications, despite the RP's repeated requests for older data that are beyond the control of the Respondent.

#### **Submissions from Respondent No.2**

- 22. The Respondent No. 2 denies all allegations, contentions, and claims made in the Application, except for those explicitly admitted. The Respondent asserts that the Applicant has filed the Application without proper consideration, causing unnecessary harassment. The information requested in the Application clearly demonstrates a lack of due diligence. Further, this Application is completely based on ipsi dixi of the Applicant and by misusing the power vested in him by the virtue of being resolution professional of the Corporate Debtor
- 23. The Respondent's sole proprietorship firm specializes in tax planning and financial reporting. As the statutory auditor for the Corporate Debtor from FY 2014-15 to FY 2018-19, the Respondent's role was limited to auditing according to established norms. The Respondent had no managerial or custodial responsibilities and does not possess any documents or records of the Corporate Debtor.
- 24. The Respondent submits that statutory audit is carried out on the representations of the management and on test check basis in accordance with the Ind. AS and the books of accounts and documents are never retained or are in custody of the Statutory Auditor. Therefore, it is pertinent to mention that the Respondent No. 2 neither holds any material information nor has tried to hide or tamper the documents of the Corporate Debtor. It is further submitted that the only thing, which generally a statuary auditor retains are the notes of working but they were also lost due to crashing of the hard disk and the same was communicated to the Applicant as also the fact that my professional fee was also not paid by the client.
- 25. The Respondent acted in full compliance with professional standards and had no involvement in the management of the Corporate Debtor. The



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Application is based on incorrect assumptions about the Respondent's role as a statutory auditor and should be dismissed with costs.

26. As per Order dated 18.01.2024, the Applicant states that since Respondent No.3 was appointed in the year 2021 as Statutory Auditor and has also supplied the necessary data available, the Applicant does not want to proceed with the present Application against Respondent No.3.

#### Rejoinder from Applicant No.1

- 27. The Corporate Debtor (CD) was most active from 2012 to 2015, during which most transactions occurred. However, the company stopped filing returns with the Registrar of Companies (ROC) after 2015, making financial statements unavailable in the public domain. The company's accounts became non-performing assets (NPA) in 2017, and its GST account was blocked in 2018 due to non-filing of returns.
- 28. The Applicant submits during the CIRP period, on 15/05/2023, the Applicant received claim from SBI Global Factors Limited (Financial creditor). The claim was based on the Arbitral Award Dated 19/09/2019. The fact was that a related partnership firm (partners were promoters of the CD) M/s Ruchika International had availed substantial loan through factoring of export sale bills from SBI Global Factors Limited in the year 2008-2009. The bills remain unpaid and the said loan became NPA in the 2011. In March / April 2010, the partners of the said firm informed that the said partnership firm had been merged with the Corporate Debtor. The merger deed as received from SBI Global Factors Limited along with their claim, appeared very vague and incomplete in financial terms. The queries raised by the Applicant were never answered by the Respondent. The Applicants submit that the Income tax liabilities from 2011 to 2018 which were not mentioned in the CD's financial statements, further indicating that the Respondents withheld significant information. Due to this, the Applicant believes there may be fraud involved and requests more data for a 10-year review.



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- 29. The Applicant disputes the Respondents' claim that the CD was not operational after 2018, citing that the company had a turnover in 2019-2020 of Rs.17.69 Lacs. The Applicant also notes that only two directors were involved, contradicting the Respondents' claim of non-involvement of the Respondents. The Applicant found that when the Bank of Baroda took possession of the CD's offices, important files, documents, and computers had already been removed by the Respondents. The remaining files were mostly old and irrelevant. The Applicant is prepared to present a list of the available materials if required by the Tribunal.
- 30. The Applicant challenges the Respondent's assertion that relevant data is available in the public domain, noting that the Corporate Debtor stopped filing returns after 2015, limiting public access to financial statements. The Applicant states that the 10-year look-back period does not limit seeking cooperation from the former management, especially in cases of fraud. The Applicant accuses the Respondent of intentionally withholding necessary information to conceal earlier misdeeds, which has resulted in limited data being available from public authorities.
- 31. The Applicant submits that a bare perusal of the Respondent's Reply shows that the Respondent has mentioned as "NOT AVAILABLE" for most of the information which is sought by the Applicant.

#### **Analysis and Findings:**

- 32. We have heard the Counsel for the parties and gone through the record.
- 33. We have noted that the following are the details sought by the Applicant from Respondent No.1 in Table A and Respondent No.2 in Table B and their replies are also given as under: -



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#### Table A

<u>Sr.</u> <u>No.</u>	Details Sought from Respondent No. 1	Replies from Respondent No.1	Details to be sought by the Applicant after the Rejoinder
<u>1.</u>	Copy of Audited Financial Statements with Notes to accounts for the FY 2013-14 to FY 2019-20.	Not available as possession taken by bank and latest provided (replied vide Email 12/04/23,29/05 & 30/05)	Copy of Audited Financial Statements with Notes to accounts for the FY 2013-14 to FY 2019-20.
<u>2.</u>	Access to Books of Accounts for the period 01.04.2013 to 31.03.2022 (i.e. if the accounts are being maintained in Tally then final backup for 2013-14 to 2021-22 and up to March, 2023).	2020-2023 provided (replied vide Email 12/04/23,29/05 & 30/05) 2013-2019 Not available as possession taken	Access to Books of Accounts for the period 01.04.2013 to 31.03.2022 (i.e. if the accounts are being maintained in Tally then final backup for 2013-14 to 2021-22 and up to March, 2023).
<u>3.</u>	List of Subsidiary / Related companies / entities and their Financial Statements for FY 2013-14 to FY 2021-22, if any.	Not Applicable	List of Subsidiary / Related companies / entities and their Financial Statements for FY 2013- 14 to FY 2021-22, if any
<u>4.</u>	Details of All Debtors of the Company with Name, Address, E-mail IDs, Contact No, Debt Outstanding, Supporting Documents.	No operations since 2018	Details of All Debtors of the Company with Name, Address, Email IDs, Contact No, Debt Outstanding, Supporting Documents.
<u>5.</u>	Details of Assets of the Company including the details of individuals which are shown as sundry creditors of the company but having debit balance in their accounts.	Emails dated 10/04/23 and 29/05/23	Details of Assets of the Company including the details of individuals which are shown as sundry creditors of the company but having debit balance in their accounts.
<u>6.</u>	Details of Liabilities of the Company	Bank Liabilities Emails dated 10/04/23 and 29/08/23	-
<u>7.</u>	All Documents relating to all litigations filed by / against the Company.	Emails dated 10/04/23, 17/05/23, 29/06/23,5/07/23 & 29/08/23	-
<u>8.</u>	Details of Guarantees obtained and given in favour of other parties.	Email dated. 12/4/23	-
9.	Details of ECGC Credit obtained, availed and outstanding receivables against such dues, along with supporting documents.	8.64 cr. and email 29/08/23	Details of ECGC Credit obtained, availed and outstanding receivables against such dues, along with supporting documents.
<u>10.</u>	Details of outstanding amount shown as receivable from Duty Drawback.	1.79 cr. from customs Authorizes	Details of outstanding amount shown as receivable from Duty Drawback.
<u>11.</u>	Details pertaining to SBI Global Factors Facility and explanation with regard to transactions with Ruchika International.	Email dated 05/07/23, 13/07/2023.	Details pertaining to SBI Global Factors Facility and explanation with regard to transactions with Ruchika International.
<u>12.</u>	Login Details of GST Websites	Whatsapp dated. 08/07/23	-
<u>13.</u>	Audited Financial Statements as of 31/03/2010,01/04/2010,31/03/2011 and onwards of Ruchika International, a firm owned by	Not available.	Audited Financial Statements as of 31/03/2010,01/04/2010,31/03/2 011 and onwards of Ruchika International, a firm owned by the



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	the Respondent No.1.			Respondent No.1.
<u>14.</u>	Related papers submitted to courts informing about the death of Suresh Kumar Umadatta Agarwal.	Email 29/08/23	13/07/23 &	-
<u>15.</u>	List of All bank accounts operated and closed during 01.04.2013 to 31.03.2022 and 01.04.2022 to March, 2023	Email 30/06/23	12/04/23 ,	List of All bank accounts operated and closed during 01.04.2013 to 31.03.2022 and 01.04.2022 to March, 2023
<u>16.</u>	Information m the check list (Excel Sheet of transaction auditor mailed on 08/06/2023 & 15/06/2023)	Email 07/09/23	28/08/23,	Information in the check list (Excel Sheet of transaction auditor mailed on 08/06/2023 & 15/06/2023)

#### Table B

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<u>Sr.</u>	Details Sought from Respondent No. 2	Details to be sought by the Applicant after the Reply of		
No.		Respondent No.2		
<u>1.</u>	Shareholders detail as well as share certificate	Shareholders detail as well as share certificate		
<u>2.</u>	Loan Confirmation from Unsecured loans for	Loan Confirmation from Unsecured loans for		
	31/3/23	31/3/23		
<u>3.</u>	Loan Confirmation from Bank which has taken	-		
	against Hypothecation of Export Bills			
<u>4.</u>	Creditor Balance confirmation dues other than	Creditor Balance confirmation dues other than		
	MSME parties.	MSME parties.		
<u>5.</u>	Details of Advance from Customers.	Details of Advance from Customers.		
<u>6.</u>	Certificate of Court Deposit.	-		
<u>7.</u>	Debtors Confirmation	Debtors Confirmation		
<u>8.</u>	Details of Short Term loan & Advances	Details of Short Term loan & Advances		
<u>9.</u>	Details of Other Parties	Details of Other Parties		
<u>10.</u>	Last Year signed Balance Sheet with UDIN	-		
<u>11.</u>	Bank Statement	-		
<u>12.</u>	Loan Statement	-		
<u>13.</u>	Banks Sanction letters	-		
<u>14.</u>	Pending Court Cases	-		
<u>15.</u>	Pending GST Liability, Income Tax Liability,	Pending GST Liability, Income Tax Liability, ESIC		
	ESIC and PF Liability details	and PF Liability details		
<u>16.</u>	TDS login details	-		
<u>17.</u>	List of Director and Director KTC	List of Director and Director KTC		
<u>18.</u>	Last Auditor appointment detail with resolution	Last Auditor appointment detail with resolution		
	and ADT-1	and ADT-1		
<u>19.</u>	Tally data and Books of Accounts	Tally data and Books of Accounts		
<u>20.</u>	Book of Expenses	Book of Expenses		

34. So far as Respondent No. 1 is concerned, as is evident from table (A), the documents mentioned in the last column of the table are yet to be supplied by Respondent No. 1. The said documents include copy of audited financial statements for the years 2013-14 to 2019-20 and further the account books



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pertaining to the period from 01.04.2013 to 31.03.2022. The document further includes the list of subsidiaries/related companies/entities of the corporate Debtor and their financial statements for the years 2013-14 to 2021-22. All these documents are supposed to be in power and possession of Respondent No. 1 being promoter/suspended director of the Corporate Debtor who is under a legal obligation to supply all these documents to the Applicant. Therefore, in our considered view, it would be just and proper if a direction is issued to Respondent No. 1 to forthwith supply all the documents mentioned in the last column of Table (A) reproduce above.

- 35. So far as Respondent No. 2 is concerned, Respondent No. 2 has been an auditor of the Corporate Debtor for the years 2014-15 to 2018-19. We have perused table (B) which contains the details of the documents which have been sought from Respondent No. 2. These includes shareholding details, loan confirmation in respect of unsecured loans, creditor balance confirmation from other than MSME parties, details of advance from customer etc.
- 36. So far as Respondent No. 2 is concerned, though it has been claimed that as an auditor of the Corporate Debtor, Respondent No. 2 is not liable to retain in its possession all the documents such as shareholders detail, loan confirmation from the unsecured loans etc. as shown in Table (B) reproduced above, in our considered view, as per the Auditing and Assurance Standard (AAS) 3, the auditor is required to retain a permanent audit file containing working papers to give an overall understanding of the audit carried out by him. Therefore, we deem it appropriate to issue a direction to Respondent No. 2 give whatever information is available with it with regard to the documents mentioned in Table (B) reproduced above.
- 37. It is pertinent to mention that the application as against Respondent No. 3 was withdrawn by the Applicant/Resolution Professional as is evident from the interim order dated 18.01.2024 passed by this Bench.



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38. As a result of the above discussion, **IA No. 3766 of 2023** is allowed with an order directing Respondent No. 1 to supply all the documents to the Applicant which have been referred in the last column of Table (A) reproduced above. Respondent No. 2 is also directed to furnish all the information available with it in the context of documents mentioned in Table (B). **IA No. 3766 of 2023** is accordingly **allowed and disposed of** in the aforesaid terms.

Sd/-ANIL RAJ CHELLAN (MEMBER TECHNICAL) Sd/KULDIP KUMAR KAREER
(MEMBER JUDICIAL)