

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.70 of 2023**

(Arising out of Order dated 02.12.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in IA(I.B.C.)/678(KB)2022 in CP(IB)/565(KB)2020)

**IN THE MATTER OF:**

Sanjai Kumar Gupta,  
Resolution Professional of Stone India Limited,  
A-6, Charulata, BE 8, Rabindra Pally,  
Kolkata, West Bengal – 700101. .... Appellant

Vs

Gouri Prasad Goenka  
17 D, Alipore Road,  
Alipore HO, Kolkata,  
West Bengal – 700027. ... Respondent

**Present:**

**For Appellant: Mr. Rishav Banerjee, Mr. Arijit Mazumdar  
and Mr. Siddharth Shukla, Advocates.**

**For Respondent: Mr. Anirban Bhattacharya and Mr. Rajeev  
Chowdhary, Advocates for R-1.**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

This Appeal by Resolution Professional (“**RP**”) of the Corporate Debtor has been filed against the order dated 02.12.2022 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata, by which IA(I.B.C.)/678(KB)2022 filed by the RP under Section 19, sub-section (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) has been dismissed as infructuous. The Adjudicating Authority has also imposed cost of Rs.25,000/- on the RP. Aggrieved by the order, RP has come up in this Appeal.

2. Brief facts, necessary to be noticed for deciding this Appeal are:
- (i) Corporate Insolvency Resolution Process (“**CIRP**”) commenced against the Corporate Debtor Stone India Limited vide order dated 09.11.2021. Earlier Interim Resolution Professional (“**IRP**”) was replaced by order of the Adjudicating Authority dated 28.02.2022. The Appellant as RP issued email on 30.03.2022 and 02.04.2022 to the Respondent to cooperate and disclosed information.
  - (ii) An IA(I.B.C.)/678(KB)2022 was filed by the RP under Section 19, sub-section (2) against the Respondent praying for direction to Respondent to disclose documents sought by the RP, after their being non-cooperation by the Respondent.
  - (iii) Adjudicating Authority vide order dated 18.08.2022 issued notice to the Respondent and a direction was also issued to Respondent to furnish the entire information and all documents sought by the RP before the next date. Further direction was issued on 07.09.2022 on the said Application to Respondent No.1 to comply the directions issued in the order dated 25.04.2022.  
  
On 16.09.2022 and 14.10.2022 the non-cooperation was continued and on 14.10.2022 further order was passed by the Adjudicating Authority where Respondent No.1 was directed to appear in person on 21.11.2022.

On 09.11.2022, the Adjudicating Authority dispensed with the personal appearance of Respondent No.1.

On 02.12.2022, when Application was taken up, the same was rejected as frivolous. Aggrieved by which order, this Appeal has been filed.

3. The learned Counsel for the Appellant submits that the basis of impugned order is on an earlier order dated 25.04.2022 in IA No.13 of 2022, which was filed by earlier IRP, which was disposed of due to cooperation offered at that time. The order dated 25.04.2022 also granted liberty to move a fresh Application. Thus, the Application IA(I.B.C.)/678(KB)2022 was in accordance with the earlier order dated 25.04.2022 and cannot be said to be frivolous. It is further submitted that when Adjudicating Authority on the said Application having issued several directions to Respondent No.1 to extend cooperation and has also summoned Respondent No.1 to appear in person, how on the next date Application can be said to be frivolous and be dismissed as infructuous. It is further submitted by learned Counsel for the Appellant that order dated 02.12.2022 shows complete non-application of mind by the Adjudicating Authority and prejudicially affect the rights of RP. It is submitted that there is no reason for imposing cost of Rs.25,000/-.

4. The learned Counsel appearing for Respondent No.1, who has also filed a reply, submits that Application under Section 19, sub-section (2) is only filed to delay the process. It is submitted that Resolution Plan has already been approved by the Committee of Creditors (“**CoC**”) and orders

on the Application seeking approval of Resolution Plan has been reserved on 09.12.2022. The Application under Section 19, sub-section (2) filed by the RP has thus, become infructuous. It is submitted that the Respondent has resigned from the Directorship of the Corporate Debtor on 14.08.2019, hence, there was no question of non-cooperation by Respondent No.1 The Appellant has not made out a prima facie case for issuing any direction. The Application filed with the intent to delay the resolution process.

5. We have considered the submission of learned Counsel for the parties and have perused the record.

6. The Application IA(I.B.C.)/678(KB)2022 was entertained by the Adjudicating Authority and order was passed on 10.08.2022 issuing notice to Respondent and the matter was listed for 18.08.2022. On 18.08.2022 in IA(I.B.C.)/678(KB)2022 following order was passed:

***“IA(IBC)/678/KB/2022***

- 1. Registry is directed to issue notice to the Respondent by speed post and e-mail and place tracking information on record.*
- 2. It is stated in this IA the Respondent is not cooperating in furnishing the information sought by the Resolution Professional which is at page 505.*
- 3. Our attention has been drawn to e-mail dated 2<sup>nd</sup> April, 2022, 19<sup>th</sup> May, 2022 in this regard.*
- 4. Post this matter on 07.09.2022. In the meantime, we direct the respondent to furnish the entire information and all documents sought by the RP on or before next date. If this is not done, appropriate orders shall be passed with further necessary directions.”*

7. On 14.10.2022, when the Adjudicating Authority issued a direction taking a view that Respondent No.1 is trying to avoid the process of this Court and Respondent No.1 was directed to personally appear on 21.11.2022. Following was the order passed by the Adjudicating Authority on 14.10.2022 in IA(I.B.C.)/678(KB)2022:

**“IA (I.B.C)/678/KB/2022**

1. *This is an application filed under section 19(2) of IBC, 2016 vide order dated 7th September, 2022. Keeping in view, the non-cooperation of Respondent No. 1 we directed the personal presence of Respondent No. 1 before this Adjudicating Authority on 16<sup>th</sup> September, 2022.*
2. *On 16<sup>th</sup> September, 2022 when this matter was taken the Ld. Counsel appearing for R1 inform that his client unable to move and therefore cannot be present personally. Today when the matter is taken up for consideration the resolution professional who is present in person states that R1 went to his office personally on 19<sup>th</sup> September 2022 at around 2:30 PM for discussing the issues relating to the information sought by the Resolution Professional.*
3. *We that as it may we consider it appropriate to call the Respondent No. 1 in person before this Adjudicating Authority.*
4. *Since 16<sup>th</sup> September, 2022 nothing has been placed on record in support of the reasons of non-appearance of Respondent No. 1 before this Adjudicating Authority as directed earlier. Non-appearance and poor conduct is viewed seriously.*
5. *It is stated by Ld. Counsel appearing for Respondent No. 1 that this appeal under section 19(2) is not maintainable. It is noted that no reply has been filed to this application.*

*The Ld. Counsel states that no opportunity is granted to file reply affidavit and in the absence of unable to take its stand.*

- 6. After going through the record of proceedings, we see that notice was issued to Respondent No. 1 on 18<sup>th</sup> August, 2022. Wherein it was directed that the respondent to furnish entire information and all documents sought by RP on or before next date.*
- 7. It was further made clear if this was not done, appropriate orders shall be passed with further necessary directions. After that the matter has been listed a number of times. We have considered the submission Ld. Counsel appearing for R1 we are of the view over this period after issues of notice till today he had enough time to file reply or take its stand to the maintainability or the merits of the IA by way of appropriate proceedings.*
- 8. From the entire circumstances we are convinced R1 is trying to avoid the process of this court as well as the directions issued by this Adjudicating Authority, which would ultimately cause delay in process initiated under Insolvency and Bankruptcy Code, 2016.*
- 9. We direct R1 to appear in person before this Adjudicating Authority on 21.11.2022. It is also made clear if, R1 fails to appear on the next date, we will be constrained to seek police assistance to ensure his appearance.*
- 10. Rejoinder affidavit if any, be filed in the interregnum.*
- 11. Post this matter on 21.10.2022.”*

8. On the next date, i.e. 21.10.2022, no order was passed on IA(I.B.C.)/678(KB)2022. On 09.11.2022, the Adjudicating Authority dispensed with the personal appearance of Respondent No.1 and fixed the

matter for 02.12.2022. On 02.12.2022, following order was passed on IA(I.B.C.)/678(KB)2022:

**“3. IA(I.B.C)/678(KB)2022:**

- a. *This IA has been filed under Section 19(2) of IBC, 2016 for seeking books and accounts of records and other relevant documents from respondents. We note from the order dated 25.04.2022 that RP had filed IA 13 of 2022 seeking cooperation from the Suspended Board of Directors. The said application was disposed of in view of the cooperation offered as stated by the RP. It was further mentioned in this matter that if there is no continued cooperation from the Suspended Board of Directors, then the RP can file an application for seeking prosecution under Section 236 of the Code. In view of the above position, we find this IA is absolutely frivolous and wastage of time. Accordingly, this application vide IA(I.B.C)/678(KB)2022 is dismissed as infructuous.*
- b. *A cost of Rs.25,000/- to be paid by the Resolution Professional from his own sources to be deposited in the Prime Minister’s National Relief Fund within a period of one week.”*

9. The reason apparent from the order dated 02.12.2022 for rejecting the Application as infructuous is that earlier IA No.13 of 2022 seeking cooperation was disposed of. When we look into the order itself, it is clear that in 25.04.2022 order, liberty was reserved to RP to file an Application, if there is no continued cooperation from the suspended Board of Directors, for seeking prosecution under Section 236 of the Code. The prosecution under Section 236 is a different aspect from running a CIRP as per timeline

prescribed in the IBC. The order dated 25.04.2022 was passed on IA filed by the IRP. The Appellant, who is a present RP was appointed by the order of the Adjudicating Authority dated 28.02.2022 and thereafter IA(I.B.C.)/678(KB)2022 was filed by the RP, on which on 10.08.2022 notices were issued. The Adjudicating Authority passed several orders on IA(I.B.C.)/678(KB)2022 as noticed above, where Adjudicating Authority opined that Respondent No.1 is deliberately not cooperating with the RP and is not complying with the directions issued by the Adjudicating Authority. The Adjudicating Authority directed personal appearance of Respondent No.1 on 07.09.2022 and the same was again reiterated on 14.10.2022 when Adjudicating Authority noted the non-cooperation of Respondent No.1, then suddenly how the Application has been rendered infructuous and frivolous is not explained in the order dated 02.12.2022. The mere fact that in an earlier Application filed by RP, liberty was granted only to file prosecution, does not preclude the Adjudicating Authority to consider a subsequent Application filed by the RP due to continued non-cooperation by suspended Directors. The Application had substantial grounds as evidenced from the orders of the Adjudicating Authority itself that it had issued various directions including a direction of personal appearance of Respondent No.1, which was issued after the Adjudicating Authority was fully satisfied, hence, there is no occasion to dismiss Section 19, sub-section (2) Application as frivolous and infructuous. There is not even an indication or any reason given in the order of the Adjudicating Authority, as to why cost of Rs.25,000/- was imposed on the RP. We, thus,



are satisfied that order dated 02.12.2022 is clearly unsustainable and cannot be maintained.

10. Coming to the submission of learned Counsel for Respondent that Resolution Plan had already been approved by the Adjudicating Authority, which is pending consideration before the Adjudicating Authority, it is for the Adjudicating Authority to consider as to what directions can be issued in IA(I.B.C.)/678(KB)2022.

11. In result, we allow the Appeal and set aside the order dated 02.12.2022 passed in IA(I.B.C.)/678(KB)2022 and revive the IA(I.B.C.)/678(KB)2022 before the Adjudicating Authority for passing a fresh order in accordance with law. No order as to costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**22<sup>nd</sup> February, 2023**

Ashwani