NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1766 of 2024
&
I.A. No. 6443, 6445 of 2024

[Arising out of the Impugned Order dated 11.06.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench in I.A. No. 350 of 2021 filed in C.P.(IB) No. 397 of 2018]

IN THE MATTER OF:

Narayan Ramchandra Ghumatkar
Suspended Director of KSL & INDUSTRIES LTD.
1/19, N M JOSHI MARG, BYCULLA STATION WEST, MUMBAI – 400027 **...Appellant**

Versus

KIRAN SHAH
RESOLUTION PROFESSIONAL, KSL & INDUSTRIES LTD.
608, SAKAR-1, NEAR GANDHIGRAM RAILWAY STATION,
ASHRAM ROAD, AHMEDABAD – 380 009
Email: dhruvvitks@gmail.com **...Respondent**

Present:

For Appellant(s) : Mr. K.D. Sharma, Advocate.

For Respondent(s) : CA Kiran Shah, Respondent in person.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

The facts, that require inevitable consideration are, that the Appellant, who happens to be the Suspended Director of the Corporate Debtor 'KSL & Industries Ltd.', has challenged the impugned order dated 11.06.2024, that was passed by the Ld. NCLT while considering I.A. No. 350 of 2021 filed by the Resolution Professional, thereby invoking the provisions contained under Section 19(2) of the Insolvency and Bankruptcy Code, 2016.

2. The brief facts, as referred to by the Ld. Counsel for the Appellant for challenging the impugned order dated 11.06.2024, could be summarized in the following manner. The CIRP was initiated against the Corporate Debtor M/s KSL & Industries Ltd., by initiation of the same, by an order has been passed on 06.09.2019. As a consequence of the initiation of the CIRP and RP was appointed, namely Mr. Kiran Shah, the Respondent herein, by the Ld. Adjudicating Authority vide its order of 28.07.2020.

3. It is the case of the Appellant that ever since the initiation of the CIRP w.e.f. 06.09.2019, the Appellant had been rendering his fullest cooperation, along with the Suspended Board of Directors, as regards to supplying of all details in form of numerous emails, series of records, documentation and information as was shared by the Suspended Directors with the Resolution Professional, those were expressed to be required to be considered for the purposes of carrying out the CIRP.

4. During the intervening period, one of the Directors, namely Smt. Mansi Wadkar, Respondent No.1(a) before the Adjudicating Authority, who was the lead director of the Corporate Debtor and was mostly at the helm of affairs of the Corporate Debtor, was intricately aware of all the financial transactions and details of it, that were carried out by the Corporate Debtor and she had been effectively and actively collaborating too with the Resolution Professional by providing all requisite information from time to time including the documents. But unfortunately, Smt. Mansi Wadkar met with sad demise passed away on 02.05.2021. Upon her demise, the other Suspended Directors

including the Appellant had very limited information available with them, that could be provided to the Resolution Professional because most of the knowledge vested and held with Late Smt. Mansi Wadkar. Though, despite of the best of the efforts, the Appellant contends, that still as and when the information was solicited by the Resolution Professional, he had supplied the requisite information, but still the Resolution Professional being dissatisfied with the information supplied by the Appellant, is said to have filed an application I.A. no. 350 of 2021, by filing the same before the Registry of the NCLT under Section 19(2) of the I&B Code, to be read with Section 60(5). In the application thus preferred, the Resolution Professional had came up with the case, that upon the CIRP being initiated against M/s 'KSL & Industries Ltd.', the Company which according to him was incorporated under the provisions of Companies Act, 1956, that was placed under the CIRP and during its course, number of vital information were required to be solicited and as such. He submitted that Mr. Anil Kumar, the Opposite Party No.2 in the Company Petition, after being appointed as such as an IRP, proceeded with the CIRP but could not be completed because of which an extension was granted for completion of CIRP by an order dated 04.03.2020.

5. The Respondent's case has been that the Ld. Adjudicating Authority while exercising its power under Rule 11 of the NCLT Rules, appointed the applicant to the I.A., i.e., the Respondent No.1 herein, Kiran Shah, as a Resolution Professional of the Corporate Debtor vide its order dated 28.07.2020. The Respondent No.2 is shown to have filed an application, for

grant of further extension and for extension of CIRP period beyond 330 days. Owing to the fact, that in the application for exhaustion of time it was alleged by the Resolution Professional, that it was becoming very difficult to complete the CIRP in respect of the Corporate Debtor. The reason was due to the situation that was prevailing on account of persistent dispute amongst the members of the CoC. Taking into cognizance of the entire scenario, the Ld. Adjudicating Authority is shown to have granted an extension of 233 days vide its order dated 24.11.2020, to complete the CIRP.

6. It has been the case of the Resolution Professional, that henceforth, several meetings with the CoC were held, holding discussions with regard to several vital matters having an impact upon the revival of the Corporate Debtor and for the purposes of completion of the CIRP. The applicant to I.A. No. 350 of 2021, i.e., the Respondent No.1, in an application thus preferred had submitted that O.P. No.1, i.e., the present Appellant, since being the representative of the Suspended Management of the Corporate Debtor, has not submitted the complete records. Those were demanded and required to be maintained under the Companies Act and other documents prepared under various other laws as applicable, statutorily required, viz, the registers like fixed assets register; titled documents of the properties of the Corporate Debtor, employees record and such other documents and data, which were duly mandated and required to be submitted under the I&B Code, for an effective completion of the CIRP. It is alleged by the Applicant/Respondent, that when despite various reminders and several telephonic communications

and email sent by Respondent No.1 along with the list of pending data and documents, those were required, they were not supplied.

7. It had been the case of the Respondent, that owing to the aforesaid fact of incomplete information supplied, he was constrained to hold the 6th meeting of the members of the CoC, which was held on 01.01.2021, wherein the issue of pending details and data from the Suspended Management was also discussed, in the CoC meeting it was alleged, that the Appellant had agreed to furnish the pending details and data as were required by Respondent No.1. In relation thereto to substantiate the application, the Respondents have made reference to the minutes of the meeting of the CoC, that was placed on record.

8. It is on this background the Respondent No.1 submitted that the conduct of the Appellant was demonstrative of a non-cooperative attitude of the Appellant, which was prejudicial to the interest of the stakeholders of the Corporate Debtor, besides that it also reflected the negligence and irresponsible behaviour of the Suspended Management of the Corporate Debtor. The allegation levelled in the application was that despite several reminders over calls and emails, the Respondent No.1's emails and particularly the email dated 27.03.2021 calling to give the elaborative list of documents, which were still pending, they were not supplied. Which was taken to be an act of non-cooperation on the part of the Appellant in disrupting and holding the continuing the CIRP in respect of the Corporate Debtor.

9. It is the case of the Respondent in the I.A. thus filed before the Ld. Tribunal invoking Section 19(2) of the I&B Code, that after being appointed as the Resolution Professional, he had requested the erstwhile Resolution Professional, to hand over the possession of the Corporate Debtor, as well as the records, vide its email communication dated 31.07.2020, however in that process of handing over the records by the Erstwhile IRP, the O.P. No.2 to the I.A., didn't remain present at the corporate office of the Corporate Debtor, where part of the records were stated to be maintained by the Applicant. The Respondent No.1 submitted that despite the email communication that was made as part of the application, the records were not submitted, he preferred the I.A. praying for the following reliefs:

> "*6.1. The Hon'ble Adjudicating Authority may be pleased to direct the Opponent No. 1 herein, being the representatives of the Suspended Management of the Corporate Debtor, to co-operate with the Resolution Professional, the Applicant herein and direct to submit the documents and data as sought for in the Annexure E (Colly.) and support / co-operate as and when required by the Resolution Professional, the Applicant herein.*
>
> *6.2. The Hon'ble Adjudicating Authority may be pleased to direct the erstwhile Interim resolution Professional, Opponent No. 2 herein to co-operate with the Resolution Professional, the Applicant herein and direct to submit the documents and data as sought for in the Annexure H and support as and when required by the Resolution Professional, the Applicant herein.*
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> *6.3. The Hon'ble Adjudicating Authority may be pleased to grant such other and further reliefs as may be deemed fit and proper by this Hon'ble Adjudicating Authority, in the interest of equity and justice.*"

10. Particularly in relation to the subject falling to be brought under Section 19(2) of the Code. The Respondent along with the application has filed **Annexure-E,** which according to him contained the list of documents that were required to be submitted, the particulars of which constituted as to be part of the application, are extracted hereunder:

	ANNEXURE- E
	KSL AND INDUSTRIES LTD.
	Pending Documents List as on 05.04.2021
1	Status of cases against KSL with amount involved
2	Lease Agreement of Land at Icchalkaranji given to Actif Corporation Ltd
3	Agreement of Sale of Land by Kalameshwar Textile Mills Ltd to Satelite Consultancy & Services Ltd for Mall at Kalmeshwar
4	Audited Financials for FY 2019-20 - after revision in Notes
5	Copies of Bills raised and recoveries from Tenants
6	Glenmark Bright Life Case Surgo Overseas - Copy of Agreement
7	GSTR For 9 & 9C copy FY 2017-18
8	List of employees with joining Date with break-up of Salaries and outstanding dues payable.
9	Status of Statuatory dues like PF, ESIC, TDS
10	Bank Statement of Following Bank Accounts
i	Axis Bank 4010200829403
ii	Corporation Bank CA 832
iii	Corporation Bank CBCA /01/001119
iv	Corporation Bank CBCA /01/001149
v	Corporation Bank Nagpur CA /882
vi	ICICI Bank 10709
vii	ICICI Bank CA 239
viii	ICICI Bank 698505112222
ix	ICICI Bank 698505113816
x	ICICI Bank Fort CA 670301114561
xi	ICICI Bank 655105110600
11	Reconciliation Of PVR Ledger Account
12	Details of Other Assets like DG Set Furniture at Empress Mall and IT Park
13	Details of deposit - HPCL SBU of Rs 1.04 Crores
14	Details of Security Deposits of Rs. 1.42 Crores
15	FDR details Of Rs 3.98 crores - we need the details of Bank and Branch address together with relevant Account Nos
16	Agreement of Dombivali Factory premises given on rent to Asahi Industries Ltd
17	List of all the allottees of the Marol project.

11. When this application came up for consideration, the Appellant is shown to have filed a reply, in the shape of a compliance affidavit, on 04.06.2023 in response to the said I.A., the applicant contended therein that he happens to be one of the Directors whose Board had been suspended in his capacity vide order dated 06.09.2019 by the order of the Tribunal, that was passed in C.P.(IB) No. 397 of 2018 and in the response affidavit filed on 04.06.2023 by the Appellant. Apart from denying the allegations in I.A. No. 350 of 2021 filed by the Respondent and placing on record the fact that during the intervening period between 08.06.2022 to 15.09.2022, the Appellant contends, that he did provide the required information as per Section 19 of the I&B Code, and the following documents were supplied by the Appellant to the RP.

(i) Complete status of cases against the Corporate Debtor.

(ii) Copies of bills raised and recoveries that were made from tenants.

(iii) Glenmark Bright Life Case Surgo Overseas and its agreement.

(iv) List of employees with their respective joining date with break-up of salaries and outstanding dues payable to them.

(v) The status of stationery dues like PF, ESIC and TDS.

(vi) Copies of GSTR-9 and 9C for the Financial Year 2018-19 and 2019-2020.

(vii) Bank statements in relation to as many as ten banks accounts, with which the Corporate Debtor having its financial relationship.

(viii) Reconciliation of PVR Ledger account.

(ix) Details of other assets like DG set furniture at Empress Mall and IT Park

(x) Details of Deposit – HPCL SBU of INR 1.04 crores.

(xi) Details of Security Deposits of INR 1.42 crores.

(xii) FDR Details of INR 3.98 crores.

(xiii) List of all the allottees of the Marol Project along with names of the allottees and their payment details.

(xiv) GST Login credentials of GSTN registered by suspended management.

(xv) Identify the Plot No. in revenue records in relation to Sale of land by Kalameshwar Textile Mills Limited to Satellite Consultancy & Services Limited for Mall at Kamleshwar Unit.

12. The Appellant submitted, that owing to the aforesaid details which were supplied by the Appellant in response to the order of the Tribunal dated 08.06.2022 and 15.09.2022, they have been complying with all the directions in its full terms and in the best possible manner. Besides that, the Appellant had always been timely assisting and providing documents and the information sought by the RP, as and when required and submitted that this response is based upon the supplying of the documents as detailed hereinabove, the Suspended Board of Directors and RP were able to provide details of all such relevant documents pertaining to Information Memorandum, publishing of Form-G for invitation of Expression of Interest, and the request for resolution plan. The RP was able to get all the support of

valuation of the fixed assets, details of all proceedings, security and financial assets and on the basis of the request for the resolution plan, that has been submitted by the Prospective Resolution Applicant and which was duly approved by the Members of the CoC. It was argued by the Appellant, that its because of the above facts that the RP had been able to reach to the stage of making the request for resolution plan and that has been submitted by the Prospective Resolution Applicant and which was approved by the duly constituted CoC, hence there would be a presumptive inference that the Appellant had supplied all the necessary and relevant documents, as it was called for by the RP and further as it was required to be submitted by the order of the Adjudicating Authority dated 08.06.2022 and 15.09.2022.

13. It submitted that because of the implication of the approval of the plan by the CoC and because of the fact that the suspended board has also given all the rental receipts since 2016 onwards, which were valid up to 2023, all contracts, salaries, electricity bills and RP expanses which was too duly paid. The Appellant contended that all documents which were available within the premises of the Corporate Debtor and protected, had been supplied and nothing was suppressed by the Appellant. Apart from the aforesaid response submitted by the Appellant on 24.06.2023 to the application I.A. No. 350 of 2021, he also referred to other communications made by him on 24.09.2022 wherein he had made the following averments:

> "*1. Audited Financial Statement for the year 2019-2000*
> *2. Form-26AS for the for the Financial Year 2018-2019*
> *3. Form-26AS for the Financial Year 2019-2020*

4. FormGSTR-9 for the Financial Year 17-18.

Please refer to our various e-mail correspondences on the subject matter wherein we have already provided the necessary documents.

Sir, we have also provided the details of all the properties, fixed assets, list of plant and machineries well in advance, which you have covered the details under RFRP"

14. Receipt of the above documents was duly endorsed by the RP vide its endorsement of 24.09.2022 made at 02:50 P.M. Based upon the aforesaid fact, the Appellant submitted that the action taken in pursuance to the I.A. No. 350 of 2021 was not sustainable for the reasons being that:

(i) That the Adjudicating Authority while passing the impugned order didn't even refer to the list of pending documents allegedly not supplied and had proceeded to pass the impugned order merely on the basis of statement of the RP.

(ii) When the proceedings are drawn under Section 19(2) of the I&B Code, it becomes incumbent upon the Adjudicating Authority, to hear the application particularly the person against the allegation under Section 19 has been made, looking to all circumstances including the statements and documents placed on record and then only to come to a conclusion as to whether there had been any overt act of non-cooperation and non-providing of the documents. This aspect was missing in the impugned order, which do not reflect an effective hearing before passing the impugned order, due to not considering the vital facts and the order being silent on it.

15. Further, it was argued that if we see the language under Section 19(2) of the I&B Code, it was not supposed to be utilized as a tool by the RP to act as an arm-twisting devise for the suspended management, during the CIRP, and also because it may be possible that despite the fact that all the documents have been supplied, but still there could be a reasonable presumption with not material that some of the documents may not be available with the Appellant, being part of the suspended management and in these eventualities Section 70 of I&B Code, will come into play to safeguard against the wrath of an inaction under Section 19. Its important to take note of that **the stage at which action under Section 19(2) was being taken the plan has already been approved by the CoC and therefore none of the allegations levelled in the application under Section 19(2) preferred by the Respondent could be sustained. Because upon approval of plan by CoC, the logical inference would be that it was considered by CoC only after all the documents being made available to it.**

16. It's based upon the aforesaid backdrop, normally the question that falls for consideration before us is, as to whether at all the applications under Section 19(2) could at all be initiated with the documents having as directed had been supplied, and were not available! Whether it could be utilized as a penal action as against the suspended management and that too in absence of the careful scrutiny of the documents placed by the Appellant on record. And even because in the absence of a failure on the part of the party to supply the documents as called for, if there was any breach, then the statute did

contemplate a recourse under Section 70 of the Code, which was not resorted to in the instant case, in the eventuality that there would be presumption that because of the fact that there were no proceedings drawn under Section 17 of the Code and besides that since the plan was already to be approved by the CoC, the presumption would be that the Appellant had supplied.

17. Based upon the aforesaid, when the matter was taken up, it was argued by the Ld. Counsel for the Appellant, that 17 specific documents which were required to be filed, those were already shared by the Suspended Directors, as back as on 24.09.2022 and the same was discussed too in the meeting that was held between the representative of the suspended board and the RP, as per the minutes recorded therein in the board's meeting of 24.09.2022, some 15 specific documents/information were listed and were shown as pending to be handed over and according to the Appellant, out of list of 15 documents, 14 such documents were already handed over to the RP, as the Appellant filed the affidavit is that regard on 24.06.2023.

18. There has been nothing on record that was brought by the RP, to show as to why the RP requires the document, and their relevancy after approval of plan, which is alleged to have not been supplied. There was no plausible reply forthcoming, as it was simply answered, that these documents were required to be handed over to the Successful Resolution Applicant after the approval of the resolution plan. Though there was no such corresponding need was ever expressed by the SRA for getting those documents, which had formed the basis of filing an application under Section 19(2) of the Code, if at all the SRA

had reflected, that the SRA required the documents even after having been determined as to be a SRA. A tabulation was called for to provide as to which documents referred to in I.A. No. 350 of 2021 were not supplied. There was no plausible reply given by the Respondent, as to which documents were not supplied and as to how they were relevant, in the absence of the same, being supplied to the SRA as argued by the Ld. Counsel for the Respondent.

19. The RP submitted, that he had filed another affidavit before the Ld. Adjudicating Authority on 06.03.2024 along with another list of documents and information, that was required as on 06.03.2024, the impugned order is based upon the said list of 06.03.2024. Even during the course of pendency of this Appeal. This Appellate Tribunal by an order of 18.02.2026 directed the RP, to share with the Appellant a copy of the statement dated 14.04.2024 and the Appellant was required to prepare a tabulation-wise explanation with reference to the dates and figures and RP was also required to make the statement not general, but in an absolute precision as regards to the documents these were not supplied; its relevance to the proceedings and its relevancy of being served to the resolution applicant after approval of plan. But by an order of 18.02.2026 passed by this Tribunal, it was observed that RP had continued to receive notice of litigation but without any specific reference to those proceedings, he submitted that he was not in possession to place the statement about the documents and their requirement as referred to hereinabove, and how it were necessary to be supplied to the SRA.

20. On this premise, the Ld. Adjudicating Authority passed the impugned order dated 11.06.2024 in I.A. No. 350 of 2021, which was filed under Section 19(2) read with Section 60(5) of the Code. It recorded that the suspended management had not complied with the order dated 16.04.2024 for providing the documents sought by the RP, that the statements made on its behalf were found to be wrong, and that it had not extended cooperation, as seen from the list of documents yet to be submitted. It then passed the following order:

> *"In view of the wrong submissions and matter of Section 19 continued, a cost of Rs.25,000/- to be imposed upon respondent no.1 & 2 each to be paid to Prime Minister's National Relief Fund. Respondent No. 1 & 2 are directed to appear with all documents needed by the Resolution Professional on next date of hearing."*

21. Before we could carve out the reasons from the logic assigned is the impugned order of 11.06.2024, a reference to Section 19(2) of the Code becomes necessary to be considered under Section 19(2) reads as under:

> "*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."*

22. Section 19 obliges the personnel of the Corporate Debtor and the suspended management to assist and cooperate with the RP. Where they do not, Section 19(2) allows the RP to apply to the Adjudicating Authority for directions. The Appellant contends that the information sought was supplied, as shown by the responses of 24.06.2023 and 14.04.2024, and that Section 19(2) does not permit the imposition of costs. The question, therefore, is whether the cost imposed by the impugned order can be sustained.

23. The Appellant also contends that, since the CoC approved the resolution plan, it must be presumed that the documents supplied were sufficient. We do not agree. Approval of a plan by the CoC is a commercial decision. It raises no presumption that the suspended management has cooperated with the RP. The CIRP may proceed on information which the RP gathers from other sources, but that does not relieve the suspended management of its duty.

24. The Appellant next contends that the only remedy for non-cooperation lies under Section 70 of the Code. We do not agree. Section 70 provides for punishment for misconduct in the course of CIRP. It does not take away the power of the Adjudicating Authority to impose costs on a party for its conduct in the proceedings before it.

25. The Appellant relies on the affidavit of 24.06.2023 and the list of 14.04.2024. The RP, by his affidavit dated 06.03.2024, placed on record a list of the documents and information still outstanding, and the impugned order is based on that list. The Adjudicating Authority found that the statement made by the Appellant was not correct and that the documents sought by the RP had not been provided. We see no reason to differ. The pendency of the plan for approval did not relieve the Appellant of the duty to hand over the records of the Corporate Debtor.

26. We accept that Section 19(2) only enables the RP to seek directions, and does not provide for the imposition of costs. It was, therefore, not the

appropriate provision, and the appropriate provision ought to have been invoked. However, the invocation of a wrong provision does not vitiate an order when the power exercised exists in law. The Hon'ble Supreme Court in *P.K. Palanisamy v. N. Arumugham & Anr.* (Civil Appeal arising out of SLP (Civil) No. 2308 of 2009, decided on 23.07.2009) has held that "mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor." In doing so, it relied upon its earlier judgment in *Ram Sunder Ram v. Union of India & Ors.*, (2007) 13 SCC 255, where it was held that a reference to a wrong provision of law does not by itself vitiate the exercise of a power, "so long as the power does exist and can be traced to a source available in law". In that case, the reference to Section 20 of the Army Act, 1950, instead of Section 22, was held not to take away the jurisdiction of the authority under Section 22. Here, the power of the Adjudicating Authority to impose costs on a party for its conduct in the proceedings before it is traceable to Section 60(5) of the Code read with Rule 11 of the NCLT Rules, 2016. The reference to Section 19(2), therefore, does not by itself invalidate the impugned order. Having gone through the merits of the case, we find that the Appellant did not cooperate with the RP. Directions for supply of documents were issued on 08.06.2022 and 15.09.2022. The Ld. Adjudicating Authority found that the documents had not been provided and that the statement of the Appellant was not correct. The duty to cooperate under Section 19(1) is a continuing one, and partial compliance is not full compliance. The cost of Rs. 25,000/- is,

therefore, justified. The Company Appeal is **dismissed**, and the impugned order dated 11.06.2024 passed on I.A. No. 350 of 2021 by NCLT, Ahmedabad, is upheld.

27. All pending interlocutory applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
30 Oct, 2026.
Abhishek Pandey