IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT NO.-I)
KOLKATA

I.A (IB) No. 1767/KB/2025
And
I.A (IB) No. 466/KB/2026
In
C.P (IB) No. 89/KB/2024

An Application under Section 19(2) and 60(5) of the Insolvency and Bankruptcy Code, 2016 read with applicable regulations.

IN THE MATTER OF:

Central Bnak of India

...... Financial Creditor

Versus

Vivek Brothers Private Limited

...... Corporate Debtor

And

IN THE MATTER OF:

Subodh Kumar Agarwal, Resolution Professional of Vivek Brothers Private Limited

......Applicants

Versus

CA Parimal Sarkar, Sarkar Gurumurthy & Associates

......Respondent

And

An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

CA Parimal Sarkar, Sarkar Gurumurthy & Associates

......Applicant

Versus

Subodh Kumar Agarwal, **Resolution Professional of Vivek Brothers Private Limited.**

……Respondent

Date of Pronouncement: 22.07.2026

Coram:

SMT. BIDISHA BANERJEE (JUDICIAL)

MS. REKHA KANTILAL SHAH, MEMBER (TECHNICAL)

Appearances (via Physical / Hybrid Mode):

For the Resolution Professional:

Ms. Pooja Agrawal, Adv

Mr. Subodh Kumar Agarwal, RP

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through physical / hybrid mode.

IA (IB) No. 1767/KB/2025

2. The Interlocutory Application being No. **1767/KB/2025** is filed by Mr. Subodh Kumar Agarwal, Resolution Professional ("RP") of Vivek Brother Private Limited (herein referred to as "Corporate Debtor") *inter alia* seeking followings reliefs:
    a) Necessary directions upon the Respondent to immediately hand over and/or provide access to the Applicant of all Financial records, financial statement, ledgers, detailed trail balance, details of tax filings, audit working papers, and all other relevant documents and information pertaining to the Corporate Debtor;

b) *Necessary directions upon the Respondent to cooperate fully with the Applicant to complete the statutory audit for the Financial Year 2024-25;*

c) *Such further and/or other order or orders as this Hon'ble Court may deem fit and proper.*

3. **Brief Facts of the Case**

a) The present Application arises out of the Corporate Insolvency Resolution Process ("CIRP") of **Vivek Brothers Pvt. Ltd.** ("Corporate Debtor"). The Corporate Debtor committed default in repayment of its financial debt, pursuant to which a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code") came to be filed by the Central Bank of India.

b) This Adjudicating Authority, by an Order dated **17.12.2024** passed in **C.P. (IB) No. 89/KB/2024**, admitted the petition under Section 7 of the Code and initiated the CIRP against the Corporate Debtor. Consequent upon such admission, a moratorium under Section 14 of the Code came into force and **Subodh Kumar Agrawal** was appointed as the Interim Resolution Professional ("IRP"). Subsequently, in the second meeting of the Committee of Creditors ("CoC"), the appointment of the IRP was confirmed, and he continued as the Resolution Professional ("RP") of the Corporate Debtor.

c) It is the case of the Applicant that, immediately upon commencement of the CIRP, the RP took steps to assume control and management of the affairs of the Corporate Debtor in accordance with the provisions of the Code. On **18.12.2024**, the RP informed the suspended Board of Directors, through the e-mail addresses available on the records of the Ministry of Corporate Affairs and other available sources, regarding the commencement of the CIRP and directed that no debit transactions be undertaken from the bank accounts of the Corporate Debtor without the prior approval of the RP.

d) The Applicant also intimated the bankers and financial creditors of the Corporate Debtor, based on the information available from the records of the Financial Creditor and the public domain, requesting them to restrict debit operations from the bank accounts of the Corporate Debtor except with the prior approval of the RP, so as to preserve the assets of the Corporate Debtor during the CIRP.

e) It is further stated that, in compliance with the provisions of the Code and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional caused a public announcement to be made on **19.12.2024** in the newspapers **The Financial Express (Kolkata Edition)** and **Aajkal (Kolkata Edition)**, having circulation in the locality where the registered office and factory of the Corporate Debtor are situated, inviting claims from all stakeholders and creditors of the Corporate Debtor within the prescribed period.

4. **Applicant's Contention:**

a) Learned Counsel appearing for the Applicant/Resolution Professional submits that upon commencement of the Corporate Insolvency Resolution Process ("CIRP"), the powers of the Board of Directors stood suspended and the management of the affairs of the Corporate Debtor vested with the Resolution Professional in terms of Sections 17, 18 and 19 of the Insolvency and Bankruptcy Code, 2016. It is submitted that the Applicant has discharged his duties in accordance with the provisions of the Code and the CIRP Regulations.

b) It is submitted that the Applicant visited the registered office of the Corporate Debtor on 21.12.2024 to ascertain the operations of the Corporate Debtor and take control of its assets. During the inspection, no suspended director was found present and only a caretaker was available. It is stated that no functional office was found operating from the registered office and it was learnt that certain assets of the Corporate Debtor had been leased out to tenants.

c) The Applicant submits that despite repeated communications dated 27.12.2024 and subsequent reminders seeking books of account, statutory records and other information required for conduct of the CIRP, the suspended Board of Directors furnished only limited documents, namely, Tally data and financials as on the insolvency commencement date, rent agreements with tenants, list of debtors, employee details, bank statements, cash certificate and bank closure details. According to the Applicant, despite repeated requests, complete information and documents were not furnished, thereby hampering the CIRP.

d) It is further submitted that owing to the continued non-cooperation of the suspended Board of Directors, the Applicant filed IA No. 355/KB/2025 under Section 19(2) of the Code seeking appropriate directions against the suspended directors, which is presently pending adjudication before this Adjudicating Authority.

e) Learned Counsel submits that in view of the non-cooperation of the suspended management, the Applicant approached the Respondent, being the Statutory Auditor of the Corporate Debtor, and by communication dated 09.04.2025 sought various financial records including detailed Tally data and trial balances for the preceding five financial years, list of creditors and debtors, details of fixed assets, inventory, statutory dues, related party transactions and other relevant documents required for conducting the CIRP.

f) It is submitted that upon examining the trial balance shared by the Respondent for the financial year ending 31.03.2024, the Applicant found the same to be incomplete as it did not contain detailed particulars relating to loans, advances, creditors, debtors and customer advances. The Applicant also sought audit working papers and previous years' records, however, despite repeated reminders, no satisfactory response was received from the Respondent.

g) The Applicant further submits that while requesting the Respondent to provide documents necessary for conducting the statutory audit for the financial year 2024-25, the Respondent, by an e-mail dated 23.10.2025, informed that it had resigned as the Statutory Auditor of the Corporate Debtor and would not undertake the statutory audit for the said financial year. It is contended that despite requests, neither the resignation communication nor the supporting documents were furnished to the Applicant.

h) Learned Counsel submits that the Respondent was under an obligation to extend assistance and cooperation during the CIRP in terms of the applicable provisions of the Code and the CIRP Regulations. It is further contended that the Respondent has neither disclosed compliance with the statutory requirements governing resignation of an auditor, including filing of the prescribed forms with the Registrar of Companies, nor informed the Applicant about such resignation, despite being aware of the ongoing CIRP.

i) It is further submitted that although extension of time for holding the Annual General Meeting had been obtained from the Registrar of Companies, the statutory audit for the financial year

2024-25 could not be completed due to the alleged non-cooperation of the suspended management and the Respondent. According to the Applicant, non-availability of complete books of account, ledgers, vouchers, trial balances, audit working papers and other financial records has materially affected the Applicant's ability to ascertain the true financial position of the Corporate Debtor and discharge his statutory functions.

j) The Applicant has also raised concerns regarding the operation of the Corporate Debtor's bank account maintained with Punjab National Bank, alleging that an erstwhile director, who had resigned from the Company, continued as the authorised signatory for a considerable period and that no observations regarding such transactions were reflected in the audit report or financial statements.

k) It is submitted that the issue of the Respondent's alleged non-cooperation and resignation was placed before the Committee of Creditors in its 13th meeting held on 29.10.2025, wherein the Applicant informed the members of his intention to initiate appropriate proceedings before this Adjudicating Authority and to make a representation before the Institute of Chartered Accountants of India.

l) In the aforesaid circumstances, the Applicant submits that the continued non-cooperation of the Respondent has obstructed the Corporate Insolvency Resolution Process and has materially impeded the Applicant in performing his statutory duties. Accordingly, the present application has been filed under Section 19 of the Insolvency and Bankruptcy Code, 2016 seeking directions upon the Respondent to provide all books of account, detailed trial balances, audit working papers and other financial records sought by the Resolution Professional, and to complete the statutory audit for the financial year 2024-25 before resigning in accordance with law.

IA (IB) No. 466/KB/2026

5. The Statutory Auditor of the Corporate Debtor instead of filing a reply to the RP's application filed the present interlocutory application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, *inter alia*, seeking following reliefs:
   a) *Take the present application on record and accept the explanation of the Applicant;*
   b) *Exempt the Applicant from personal appearance before this Hon'ble Tribunal;*
   c) *Discharge the Applicant from the proceedings arising out of I.A. (I.B.C) No. 1767/KB/2025;*
   d) *Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper.*

6. **Contention of the Statutory Auditor**

a) Ld. Counsel appearing for the Applicant submits that the Applicant has filed the present application in his capacity as the erstwhile Independent Statutory Auditor of the Corporate Debtor and had no role in the management or day-to-day affairs of the Corporate Debtor. It is submitted that the present application has been preferred pursuant to the order dated 25.02.2026 passed by this Adjudicating Authority directing the Applicant to appear in person. According to the Applicant, he became aware of the said order only upon receipt of an email dated 09.03.2026 from the e-filing portal of this Adjudicating Authority containing the link to the order passed in I.A. (I.B.C.) No. 1767 (KB) of 2025, whereby certain directions were issued against him. It is contended that prior thereto, the Applicant had no knowledge of the said application or the proceedings arising therefrom.

b) Ld. Counsel further submits that the Applicant had received a notice dated 02.03.2026 issued by this Adjudicating Authority calling upon him to take notice of a petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor. It is submitted that save and except the said notice, the Applicant had no prior involvement or knowledge of the CIRP proceedings. It is further submitted that the Applicant discharged his duties strictly in his independent professional capacity as the Statutory Auditor of the Corporate Debtor in accordance with the applicable laws and professional standards.

c) Ld. Counsel submits that the Applicant had tendered his resignation as the Statutory Auditor of the Corporate Debtor vide letter dated 30.09.2025 and, thereafter, ceased to have possession or control over the records of the Corporate Debtor. It is contended that the Applicant is neither in possession nor in control of any records of the Corporate Debtor and is not under any continuing statutory obligation in relation to the Corporate Insolvency Resolution Process. It is further submitted that, in the absence of any material indicating misconduct, suppression of facts or non-cooperation on the part of the Applicant, the continuation of the proceedings against him is unwarranted and beyond jurisdiction. Nevertheless, the Applicant expresses his willingness to extend all reasonable assistance, if so required, by this Adjudicating Authority.

7. **Analysis and Findings**

a) We have heard the Ld. Counsel for the Applicant and the Statutory Auditor and perused the documents on record. The Tribunal has carefully considered the both the application filed by the parties seeking appropriate directions/orders. Both the application are being disposed through this common order.

b) We have perused the record and find that, although the RP has acknowledged receipt of certain documents from the suspended Board of Directors, including the Tally data and the financial statements as on the Insolvency Commencement Date, the specific financial records and accounting statements requisitioned by the RP were admittedly not furnished in their entirety. The material placed on record further indicates that despite repeated requests, the requisite information was not made available, compelling the RP to initiate proceedings under Section 19(2) of the Code by filing **IA (IB) No. 355/KB/2025** alleging non-cooperation on the part of the suspended Board of Directors which is still pending.

c) The record further reveals that, in view of the continued non-cooperation of the suspended management, the RP approached the Respondent, being the Statutory Auditor of the Corporate Debtor, seeking production of various financial records, books of account and other relevant documents necessary for conduct of the CIRP. It is not in dispute that certain information was furnished by the Statutory Auditor; however, according to the RP, the same was incomplete and lacked the detailed particulars required for effectively discharging his statutory functions. It is also borne out from the record that, by an e-mail dated 23.10.2025, the Statutory Auditor informed the RP that it had resigned as the Statutory Auditor of the Corporate Debtor.

d) We note that the erstwhile Statutory Auditor has filed a separate Interlocutory Application contending that I.A. No. 1767/KB/2025 was filed by the RP on **24.11.2025**, subsequent to his resignation as the Statutory Auditor of the Corporate Debtor vide letter dated **30.09.2025**. It is further contended that he is neither in possession nor in control of any records of the Corporate Debtor and is under no continuing statutory obligation in relation to the CIRP. The Statutory Auditor further submits that he has already furnished all such documents and information as were available in his possession and, therefore, continuation of the present proceedings against him is unwarranted and beyond the jurisdiction of this Adjudicating Authority.

e) Now it is pertinent to examine **Section 19** of the IBC, it only mandates the corporate debtor, its promoters or any other person associated with the management of the CD to extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor. **Sec.19(1)** which is relevant now, reads as below:

> *"**Section 19: Personnel to extend cooperation to interim resolution professional**. 1) The personnel of the corporate debtor, its promoters or any other person <u>associated with the management</u> of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in <u>managing the affairs of the corporate debtor.</u>"*

A bare perusal of the above provision, it is keenly observed, Sec.19 does not on its face state anything specifically about any need to deliver information, but broadly state, (a) who are required to assist or cooperate with the RP; and (b) the purpose for which such assistance or cooperation may be insisted by the

IRP or the RP. To sum up, under Sec.19(1), an IRP or a RP, as the case may be, may insist only those personnel of the CD which includes its directors, and/or any other person who were associated with the management of the corporate debtor to assist or to cooperate with the him in his effort in managing the CD for running it as a going concern and for the protection of CD's properties. There cannot be any other way of constructing the ambit of Sec.19(1) IBC.

f) From the overall facts and circumstances emerging from the record and upon a careful consideration of the provisions of Section 19 of the IBC, this Adjudicating Authority is of the considered view that the present application, in so far as it seeks directions against the erstwhile Statutory Auditor of the Corporate Debtor, is devoid of merit.

g) It is not in dispute that, prior to the institution of the present application, the Respondent had already furnished certain books of account, financial statements and other information available with him to the RP. The grievance of the RP is essentially that the information supplied was incomplete and that several additional documents sought by him were not produced. However, except making such a general assertion, no material has been placed on record to demonstrate that the specific documents or information requisitioned by the RP were, in fact, available in the possession, custody or control of the erstwhile Statutory Auditor. Mere non-production of the information sought cannot, by itself, give rise to an inference that the same was available with the Statutory Auditor but was deliberately withheld.

h) It is equally significant to note that the role and statutory responsibilities of an independent Statutory Auditor are distinct from those of the management or personnel of the Corporate Debtor. A Statutory Auditor is appointed to conduct an independent audit of the financial statements of the company in accordance with the provisions of the Companies Act, 2013 and the applicable auditing standards. Such an auditor neither manages the day-to-day affairs of the Corporate Debtor nor exercises control over its books of account, statutory records or business operations. The primary obligation to maintain and preserve the books of account and other corporate records rests upon the management of the Corporate Debtor. Consequently, a Statutory Auditor cannot be presumed to have custody or control of every financial record or document maintained by the Corporate Debtor.

i) Further, Section 19 of the IBC casts a statutory obligation upon the personnel of the Corporate Debtor, its promoters and persons associated with the management of the Corporate Debtor to extend all assistance and cooperation to the Interim Resolution Professional or Resolution Professional. The legislative intent underlying the provision is to secure cooperation from those persons who are in charge of, or have control over, the affairs, assets and records of the Corporate Debtor. The provision cannot be construed so broadly as to fasten a continuing obligation upon an independent professional merely because such professional had rendered statutory services to the Corporate Debtor in the past, particularly when such professional has ceased to hold office and there is no material to establish that the records sought are in his possession or control.

j) In the present case, the RP has also not been able to establish that the Respondent deliberately withheld any information or failed to furnish any document admittedly available with him. On the contrary, the record indicates that whatever information was available with the Respondent had already been shared with the RP before the filing of the present application. The mere fact that the RP requires additional information for the purposes of conducting the CIRP cannot, in the absence of cogent material, justify issuance of coercive directions against the erstwhile Statutory Auditor.

k) In these circumstances, this Adjudicating Authority is unable to accept the contention of the RP that the Respondent has failed to discharge any statutory obligation warranting exercise of jurisdiction under Section 19 of the IBC. The appropriate remedy of the RP, if the records are not made available by the persons responsible for maintaining the same, lies against those persons upon whom the Code casts the statutory duty of cooperation and not against an erstwhile Statutory Auditor whose role is independent and whose custody over such records has not been established.

8. In view of the above discussion, this Adjudicating Authority is inclined to **allow** and **disposed of** the **IA (IB) No. 466/KB/2026** filed by the Statutory Auditor of the Corporate Debtor. Accordingly, **I.A. (IB) No. 1767/KB/2025** is **dismissed** and **disposed of.**
9. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
10. The certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

(Rekha Kantilal Shah)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on the 22nd day of July, 2026.

S.T. (LRA)