

THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH – I,
MUMBAI

MA 986/2018 IN CP (IB)-2104/MB/2018

CORAM : SHRI V.P. SINGH, MEMBER (J)
SHRI RAVIKUMAR DURASAMY, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **31.10.2018**

NAME OF THE PARTIES: **AQUA OMEGA SERVICES PVT LTD.**

v/s
GREAT UNITED ENERGY PVT. LTD.

SECTION 9 OF INSOLVENCY & BANKRUPTCY CODE, 2016

ORDER

16. MA 986/2018 IN CP (IB)-2104/MB/2018

MA 986/2018 has been filed by the Resolution professional for issuing direction against the Respondents (R1 Operational Creditor and R2 ICICI Bank, i.e. the Financial Creditor) for realising the IRP fees, i.e. Rs.2,36,000 and other out of pocket expenses totalling to Rs.42,780/-, which was approved and ratified by the CoC in its meeting held on 3.8.2018.

Further direction has been sought against the R1 and R2 for bearing the expenses of Rs.2,31,870 incurred on mooring ropes to be settled for protecting vessel during the period of IRP. Resolution professional has also sought relief that ICICI Bank, Sole CoC Member be directed to regularly remit the professional charges of Rs.2,00,000 plus GST per month and other out of pocket expenses to be incurred during the CIRP to Resolution professional as approved at the first CoC meeting.

In reply to the above MA, ICICI Bank stated that applicant is not entitled to any payment from R2 at this stage, where the Corporate Debtor

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MUMBAI

is still under CIRP and payments, if any can be made as per the provisions.

We have heard the arguments of both the parties and perused the record. It appears that applicant has annexed the minutes of the CoC meeting dated 3.8.2018. It is on record that CoC in its meeting has passed a resolution regarding approval of the fees of IRP, i.e. Rs.2,36,000 including GST for 30 days for the period from 26.6.2018 to 25.7.2018. Resolution was further passed by the CoC to confirm the appointment of IRP as RP at a remuneration of Rs.2,00,000 per month plus applicable taxes and out of pocket expenses.

Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 provides that the applicant shall fix the expenses to be incurred on or by the Interim Resolution Professional. In this case, applicant is the Operational Creditor, therefore, as per Regulation 33(1), it is the Operational Creditor's responsibility to bear the expenses of IRP, i.e. for one-month period, i.e. from 26.6.2018 to 25.7.2018. Regulation 33 further provides that applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies. In this case, admittedly CoC has ratified the expenses for the period from 26.6.2018 to 25.7.2018. Therefore, it is the responsibility of CoC to make the payment of IRP, i.e. Rs.2,36,000 plus GST including out of pocket expenses.

Regulation 33(4) provides that the amount of expenses ratified by the committee shall be treated as Insolvency Resolution Process costs.

Regulation 34 further provides that Committee shall fix the expenses to be incurred on or by the Resolution Professional and the expenses shall constitute Insolvency Resolution process costs. In the explanation to Regulation 34, it is stated that for this Regulation, "expenses" means the fee to be paid to the Resolution Professional and other expenses, including the cost of engaging professional advisors, to be incurred by the Resolution professional.

THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH – I,
MUMBAI

At the outset, from the reading of Regulation 33 and Regulation 34, it is very much clear that initially the responsibility of payment of IRP costs for one-month period remains on the applicant, i.e. the Operational Creditor. After ratification of that amount by CoC, it was to be reimbursed by the CoC. Regulation 34 provides that committee shall fix the expenses incurred by the RP and in this case, committee has fixed the Resolution professional costs as Rs.2,00,000 per month plus applicable taxes and out of pocket expenses. Therefore, as per the provisions of Regulation 33 and Regulation 34, it is the responsibility of the CoC to make the payment of Resolution professionals costs. In this case, CoC consists of sole Financial creditor, i.e. ICICI Bank. Therefore, ICICI Bank is directed to make the payment of the Resolution Professional cost along with IRP expenses, which has been ratified by the CoC before 5th November 2018.

MA 986/2018 is disposed of accordingly.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V. P. SINGH
Member (Judicial)