

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
**(Exercising powers of Adjudicating Authority under**  
**the Insolvency and Bankruptcy Code, 2016)**

**I.A. No.295 of 2021 in**  
**C.P. (IB)No.165/BB/2018**  
**C/w**  
**C.P. (IB)No.135/BB/2018**  
**U/s 60(5) of the IBC, 2016**  
**R/w Rule 11 of the NCLT Rules, 2016**

**In the matter of:**

**Shri Pankaj Srivastava**

*Erstwhile Resolution Professional*

5, 5<sup>th</sup> Cross, Navya Nagar, Jakkur

Bangalore - 560 064.

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Applicant/ Erstwhile RP

**Vs.**

**M/s. BT & FC Pvt. Ltd.**

15, 1<sup>st</sup> Phase, Peenya

Bangalore - 560 081. & 04 Ors.

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Respondents

**Order delivered on: 25.05.2023**

**CORAM:** 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Parties/Counsels Present:**

For the Applicant/RP

:

Ms. Ayushi Agarwal

For the R-2 to R-4

:

Mrs. Chitra Nirmala

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The instant Application has been filed by Shri Pankaj Srivastava, Erstwhile Resolution Professional ('Applicant') under Section 60(5) of the IBC, 2016 r/w Rule 11 of the NCLT Rules, 2016 *inter alia* seeking to direct the members of the erstwhile CoC of the Corporate Debtor represented by the RP, Mr. Shivadutt Bannanje to disburse unpaid Insolvency Resolution process costs amounting to

Rs.30,91,656/- (Rupees Thirty Lakhs Ninety One Thousand Six Hundred and Fifty Six Only) to the Applicant herein.

2. Brief facts of the case, as mentioned in the Application which are relevant to the issue in question, are as follows:

a) It is stated that the CoC in its meeting dated 11.11.2019 appointed the Applicant as the RP of the Corporate Debtor and fixed a monthly remuneration of Rs.2,50,000/- and in the 6<sup>th</sup> CoC meeting dated 25.02.2020 the following resolution was passed:

*“RESOLVED THAT the CIRP expenses amounting to Rs.4,10,730.00 (including RP fee and GST thereon) incurred for the month of Feb 2020 be and is hereby rectified and approved.”*

*“RESOLVED FURTHER THAT Mr. Pankaj Srivastava to continue to hold office until the order of liquidation and appointment of Liquidator is passed by the Adjudicating Authority and shall continue to be paid a monthly remuneration of Rs.2,50,000/- per month plus applicable taxes and all the out of pocket expenses.”*

b) It is stated that though the CoC had approved the remuneration of Rs.2,50,000/- per month, the Applicant due to Covid 19 pandemic reduced it to a consolidated amount of Rs.2,00,000/- (excluding GST) for April - June 2020. This was resolved to be paid in the 8<sup>th</sup> COC meeting held on 05.08.2020.

c) It is further stated that from July 2020 to April 2021, the Applicant is entitled to receive Rs.2,50,000/- per month as his remuneration as agreed in the 06<sup>th</sup> CoC meeting and the 8<sup>th</sup> CoC meeting. Therefore the Applicant raised invoices at the rate of Rs.2,50,000/- per month (excluding GST). Even in the 8<sup>th</sup> CoC meeting, it was agreed that from the month of July 2020 onwards, the original agreed fees of Rs.2,50,000/- per month will be paid, and in the Minutes of the meeting fees approved for the month of July amounted to Rs.2,95,000/- (i.e. Rs.2,50,000/- + GST at 18%). Accordingly, the total outstanding amount due to be paid the Applicant is Rs.30,91,656/-.

- d) It is stated that the Applicant vide email dated 23.07.2020, 14.09.2020, 15.09.2020, 26.09.2020, 05.10.2020, 08.10.2020 and 09.11.2020, 25.02.2021, 22.03.2021 and 21.04.2021 requested the COC to clear the abovementioned dues. However, the COC citing frivolous excuses vide its email dated 12.08.2020, 10.08.2020 and 25.02.2021 and failed to pay the same.
- e) Subsequently, the Hon'ble NCLAT vide order dated 26.03.2021, stayed the present matter pending with NCLT and directed group insolvency to be undertaken with respect to the Corporate Debtor with the appointment of a Resolution Professional. Accordingly, NCLT vide order dated 09.04.2021 appointed Mr. Shivadutt Bannanje as the new RP and also directed this Applicant to handover all the documents to the new RP. The Applicant handed over all the documents to the new RP as on 29.04.2021. The Applicant also submitted all information regarding the said CIRP cost in FORM III to the governing body of the Insolvency Professionals and also requested the new RP to release the same, however till date the said CIRP cost has not been released.
3. The Respondent Nos.2-5 have filed the Statement of Objections, Sur-rejoinder & Synopsis by inter alia contending as follows:
- a) It is stated that the Corporate Debtor, namely, BT & FC was not a going concern, and its assets included only movable properties such as plant and machinery, which were located in the land and building asset of one another Corporate Debtor namely M/s. Bangalore Dehydration and Dyeing Ltd. The RP's predominant concern was to remove the attachments of the Karnataka State Excise Department and that of Deputy Registrar of Co-operative Societies, apart from pursuing the Insolvency process of inviting Resolution Plans. The RP was not engaged in running of business of the Corporate Debtor, as the manufacturing process had ceased.

- b) It is also stated that no interested parties had shown any interest in proffering a Resolution Plan, including the Operational Creditor, namely, M/s. Radico Khaitan. Hence a Resolution recommending liquidation of the Corporate Debtor was passed on 25.02.2020 in the 6<sup>th</sup> COC meeting, and Smt. Bhuvaneshwari Ramanathan, was identified as the Liquidator. In this meeting held on 25.02.2020, the Applicant was requested to hold office until the liquidation order is passed, and the remuneration was to be continued at existing levels.
- c) The Applicant had accordingly filed an I.A. No.156/2020 on 04.03.2020 seeking liquidation of the Corporate Debtor. However, shortly thereafter nationwide lockdown owing to Covid-19 was announced and no further activities or processes happened in the CIRP Process. The Applicant as RP did not take any further processes not only during the period of lockdown, but even after NCLT started to function. Accordingly, the COC in the 7<sup>th</sup> meeting suggested that the fee of the RP should be paid as a consolidated amount of Rs.2,00,000/- plus GST for the period of April 2020 to June 2020.
- d) It is submitted that though the RP had filed the Application for liquidation on 04.03.2020, he failed to bring the matter to a logical end, and the said Application was still pending. Pursuant to the order of the NCLAT passed on 26.03.2021, a common Resolution Professional/Liquidator Mr. Shivadutt Bananjee was appointed by the NCLT on 09.04.2021. Therefore, the COC is not in favour of paying fees at the levels decided prior to Lockdown, when nil or negligible activities were undertaken by the Applicant since passing of the recommendation for liquidation.
- e) It is admitted that the COC had indeed requested the RP during its 6<sup>th</sup> Committee meeting held on 25.02.2020, to continue to hold office for a payment of Rs.2,50,000/- per month. However, the said recommendation was made prior to the lockdown period, with the presumption that in normal course a liquidation application will be adjudicated upon by the Adjudicating Authority in a period of 3 to 4 months. And when activities

ceased during the lockdown period, the fee was reduced to the consolidated amount for the months of April, May and June of 2020. The Applicant as RP was not authorized by the COC either participate in the proceedings initiated by the Operational Creditor before the NCLT or before the NCLAT for the combined proceedings of two independent Corporate Debtors. The claim of the Applicant for fees for the period when no work was undertaken by him is untenable and is against the Circular of IBBI on payment of fees to the Resolution Professionals. In Circular No.IP/004/2018 dated 16.01.2018 issued by IBBI, particularly under Para 2 of the said circular, it is stipulated that “Insolvency Professionals must provide services which is charged in transparent manner and is a reasonable reflection of the work necessarily and properly undertaken.” The Applicant had not undertaken any work, hence he is not entitled for any fee in terms of the said Circular.

- f) Further, the present claim of the Applicant is not commensurate with the Circular No.IBBI/IP/013/2018 dated 12.06.2018 issued by IBBI. The said Circular stressed that an Insolvency Professional is obliged under Section 208(2)(a) of the Code to take reasonable care and diligence while performing his duties and incurring expenses. Further, Regulation 25 of the IBBI (Insolvency Professionals) Regulations, 2016 has laid that the Insolvency Professional must provide services for remuneration which is charged in a transparent manner, and is a reasonable reflection of work which is necessarily and properly undertaken and is not inconsistent with applicable regulations. The RP himself has admitted in para 6 of his rejoinder, that he did not undertake any work post lifting of lockdown.
- g) The main contention of the Applicant is that once a fee is accepted, the COC cannot re-fix the fees. It is submitted that the COC has powers to revisit its decision on payment of fees to the RP. The said position is supported by the judgment of Hon’ble NCLAT, Principal Bench, New Delhi in *Khushvinder Singhal, Erstwhile RP of Bestways Transport (India), Pvt.*

*Ltd. vs. Reena Tiwari, Financial Creditor, Bestways Transport (India) Pvt. Ltd. & Ors.* Wherein Hon'ble NCLAT has held that "in CIRP process, the COC is fully competent to revise the fee even if it was earlier approved by any earlier COC decision. The entitlement of the fee depends on several factors including the change in circumstance, the length of CIRP proceeding hence we are of the view of that Regulation 12(3) proviso does not fetter the COC to consider the fee and expenses...." The power of Adjudicating Authority to decide on the fees of the RP has been laid in *Mr. Jayesh N Sangharajka, Erstwhile RP of Aristo Developers Pvt. Ltd. vs the Monitoring Agency nominated by the COC of Aristo Developers Pvt. Ltd.*, by the principal Bench New Delhi.

h) It is stated that the Appellate Tribunal at Chennai had heard the Respondents, considered the Circulars issued by IBBI relied on by the Respondents, referred to the judgments of the Appellate Tribunal and Principal Bench referred above, considered that there was merit in the position taken by the Respondent and passed orders directing this Adjudicating Authority to consider on merits.

4. The Applicant has filed the Written Arguments by inter alia stating as follows:

- a) The Applicant has relied upon the judgment of *Mukesh Verma vs. Punjab National Bank in I.A. No.1917/2020 in C.P.(IB)No.2731/MB/2019*, wherein the Adjudicating Authority directs "the COC to make payment of full CIRP cost as agreed in the 01<sup>st</sup> and 03<sup>rd</sup> COC meetings and orders that the reduction of the professional fees of the RP for the lockdown period shall not be allowed."
- b) In the case of *Atul Jain vs. Central Bank of India and Ors.* in C.P. (IB)No.2826/MB/2018, the Adjudicating Authority observed that "till the date of handling over charge taken over by the New RP Mr. Rajendra K. Bhutta, the Applicant Mrs. Atul Jain was performing his duties as there cannot be any vacuum during CIRP period therefore he is entitled for his Professional fees accordingly we direct the Respondent to pay an amount of Rs.3,99,500/- (for 51 days) plus applicable taxes minus amount already paid if any for this period within 2 weeks from the date of receipt of copy of this order/uploading the order on NCLT

*website. Further, we direct to pay 12% interest per annum from the original due date of payment till actual payment is made. Further by exercising power under Rule 11 of the NCLT Rules, 2016, we direct the Respondents to reimburse Rs.50,000/- towards legal cost to the Applicant."*

- c) In the case of *Mr. Rohit Vora vs. Religare Finvest Ltd.* in I.A. No.3399/2019 in C.P.(IB)4065/MB/2018, where in the Adjudicating Authority stated that *"9..... If at all the COC is unhappy about the conduct of the RP or dereliction of duty on the part of the RP, they are at liberty to report the matter to IBBI for initiating disciplinary proceedings against the RP. Since the COC has resolved to change the RP, the present RP is not questioning the Resolution nor the power of COC except claiming his fees. The COC having agreed to continue the present RP till the new RP is appointed on the same terms, now cannot deny his fee and expenses on flimsy ground which were not borne by record.*

*10. Therefore, under these circumstance and for the aforesaid reasons, this Tribunal did not find any valid reasons to deny the fee and expenses claimed by the RP in this Application."*

- d) As regards the contention of the Respondent regarding the circular on Insolvency Professionals, it is submitted that the said circular also mentions that the fees to be paid to such insolvency professional shall have to be approved by the COC. Therefore, since the fee to be paid to the RP was approved by the COC itself, the Respondents cannot unilaterally change the said decision.
- e) As regards the contention of the Respondent regarding the COC's right to revisit their decision, it is submitted no such resolution has been passed by the COC wherein they have revised the fees to be paid to the erstwhile RP. Further, since the Corporate Debtor is now under liquidation, the COC itself have dissolved and therefore the question to visit the decision of the COC does not arise at all.

- f) It is submitted that the list of activities performed by the RP after filing of the liquidation application has been detailed in Annexure 2 at page No.17 of the instant Application. Without prejudice, if the Respondent are aggrieved by the acts of the erstwhile RP, they are at liberty to report the matter to IBBI for initiating disciplinary proceedings against the RP. However, the Respondent now cannot deny his fee and expenses on flimsy ground which are not borne by record.
5. In addition to the synopsis filed by the Respondent Nos.2-4, the Respondents submitted that the judgment relied on by the Applicant in the matter of *PNB Vs Sab Global* passed by a co-ordinate Bench, will not have bearing on the present claims, since, the facts and circumstances of the case is totally different. In the said case of PNB, the RP even after lockdown was imposed and undertaken work under CIRP Process, such an conduct of meeting, engagement of professionals, issuance of EOI etc. whereas in the present case, even before the lockdown, the COC recommended for liquidation. Hence, the said judgment cannot be relied on. As to the judgment in *Atul Jain Vs. Central Bank of India*, the Adjudicating Authority in an implicit manner re-fixed the fees payable to the RP, as against the claim of the RP. The said judgment in fact does not support the cause of the Applicant herein. The judgment in the matter of *Dena Bank Ltd, vs. Jogma Laminates*, is fact specific, and the judgment is totally depended upon the fact of that particular case. Hence, the same will not apply to the present case.
6. Heard the learned Counsels for the parties. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Regulations made thereunder.
7. During the course of hearing in the instant Application, this Adjudicating Authority, vide order dated 20.07.2022 had directed all the Financial Creditors to pay the dues of the erstwhile RP (Applicant herein) within two weeks and file the receipt of payment.

8. Being aggrieved with the order dt.20.07.2022, the Financial Creditors who are part of the Committee of Creditors of the CD (M/s. BT & FC Pvt. Ltd.), namely, M/s. Ugro Capital Ltd. through its constituted Attorney: Parijatha Business Solution Pvt. Ltd. and State Bank of India, having 73% and 27% of the voting rights respectively, preferred an appeal before the Hon'ble NCLAT in Company Appeal (AT) (CH) (Ins) No.407 of 2022. The Hon'ble NCLAT vide its Order dated 17.11.2022 disposed of the said Appeal by directing this Adjudicating Authority to decide the IA No.295 of 2021 in a fair, just and in an objective manner and in accordance with Law; after considering the IBBI circulars dated 16.01.2018 and 12.06.2018 on the subject; and pass a speaking order on merits.
9. The Applicant in its application has inter alia stated that the CoC in its 8th meeting held on 05.08.2020 has agreed that from the month of July, 2020 onwards, the original agreed fees of Rs.2,50,000/- per month will be paid to the Applicant herein. However, referring to the 8<sup>th</sup> CoC Minutes, it is observed that Agenda Item No.5 dealing with the ratification of expenses incurred by the RP does not mention anything relating to the IRP Fees for the month of July, 2020. The said Agenda is reproduced hereunder:

*"To ratify the expenses incurred by the Resolution Professional along with his team of professionals:*

***Facts and Explanatory Statement:***

*The expenses incurred by the RP along with his team of professionals towards CIRP – Running Process for the month of July 2020 was tabled at the meeting and attached as Annexure 1.*

***It is proposed to discuss and pass the following Resolution with or without modification.***

***"RESOLVED THAT the IRPC expenses incurred by RP amounting to Rs.25,660.00 is hereby ratified and approved."***

***"RESOLVED FURTHER THAT, the RP Fees for the months of April, May and June 2020 is approved as a consolidated discounted fee of Rs.2,00,000.00 (Rupees Two Lakhs) excluding GST and out of pocket expenses due."***

***RESOLVED FURTHER THAT, the of RP fees of Apr, May and June 2020 together with out of pocket expenses amounting to Rs.2,47,660.00 and fees incurred on***

*professionals amounting to Rs.64,000.00 shall be disbursed within 2 weeks in the ratio of voting share of the COC members."*

10. From the above, it is seen that the said resolution was only proposed, but no final resolution was passed or has been annexed to the Application. Only in the 6<sup>th</sup> meeting held on 25.02.2020, the COC had resolved to pay a monthly remuneration of Rs.2,50,000/- per month plus applicable taxes and all out of pocket expenses.
11. The Applicant states that post filing the liquidation application on 04.03.2020 and till 29.04.2021, he has undertaken various actions as envisaged under the Code, which inter alia includes pursuing possession of factory premises belonging to the Corporate Debtor and safeguard the assets of the Corporate Debtor; receiving, reviewing and responding to the claims made by various creditors; conducting 7th & 8th CoC Meetings at the request of CoC Members on 04.07.2020 & 05.08.2020 respectively; ensuring all regular compliances with IBBI, IIP of ICAI and other statutory authorities from time to time; filing response through appointed Legal Counsel with the Hon'ble High Court of Karnataka where he as RP of Corporate Debtor was made R-4 in the Writ Petition filed by Bangalore Dehydration and Drying Equipment Co. Pvt. Ltd. in WP No.8860/2020; attending all the hearings from time to time in the NCLAT in which the RP was made party by the Applicant etc.
12. It is also observed that the CoC of the Corporate Debtor subsequent to their resolution passed on 25.02.2020 to pay a monthly remuneration of Rs.2,50,000/- has not passed any further resolution in subsequent meetings to revise or reduce the RP fees owing to the pandemic; other than approving the consolidated amount of Rs.2,00,000/- plus expenses for a period of 3 months - April to June 2020.
13. Considering the direction of the Hon'ble NCLAT in its order dated 17.11.2022, the pleadings made by both the Parties and upon perusing the unpaid portion of IRP Cost incurred by the RP of M/s. BT & FC Pvt. Ltd. amounting to Rs.30,91,656/- and the explanation given by the Applicant regarding the work

performed by him in the impugned period, we are of the considered opinion that the remuneration of Applicant be fixed on the basis of at the rate of Rs.2,00,000/- for every period of three months (excluding GST) from July, 2020 to April, 2021 and an amount of Rs.1,41,656/- towards the other expenses incurred by the RP. This is in view of the fact that this rate of Rs.2,00,000/- for 3 months was approved by COC for the period of April-June 2020; and therefore it is considered reasonable and proper to follow the same for the subsequent period of July 2020 up to April 2021. The Financial Creditors are directed to make the balance payment accordingly, within a period of two weeks and file proof of payment in the Registry within one week thereafter.

14. Accordingly, IA No.295 of 2021 stands disposed of.

**Sd/-**

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**Sd/-**

**(T. KRISHNAVALLI)  
MEMBER (JUDICIAL)**