

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT-V**

**I.A. 1708 OF 2022**

**IN**

**C.P.(IB) No. 3703/MB/2019**

Under Section 60(5) of the Insolvency &  
Bankruptcy Code, 2016

**Mr. Navin Khendelwal,**

Erstwhile RP of Corporate Debtor

S & H Gears Private Limited

206, Navneet Plaza 5/2, Old Palasia,

Indore - 452018, Madhya Pradesh

**...Applicant**

Vs

**1. Bank of Baroda,**

**2. Madhya Pradesh Financial  
Corporation**

**3. Garha Utilbrocce Tools Limited**

**4. Rani Agro Pvt. Ltd.**

**5. Prithviraj Hospitality Limited**

**6. Smt. Teena Saraswat Pandey**

**...Respondents**

In the matter of

**Rani Agro Private Limited,**

**...Financial Creditor**

Vs

**S & H Gears Private Limited**

**...Original Respondent/  
Corporate Debtor**

**Order Pronounced on: 10.07.2023**

**Coram:**

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

***Appearances (via Videoconferencing)***

**For the Petitioner:** Adv. Manoj Munshi

**For the RP:** Ms. Teena Saraswat Pandey

**Per: Kuldip Kumar Kareer, Member (Judicial)**

**ORDER**

1. The present Application is filed by the Applicant, namely, **Ms. Teena Saraswat Pandey**, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with rule 11 of the National Company Law Tribunal Rules, 2016 ("**NCLT Rules**") seeking directions to the Committee of Creditors of **S & H Gears Private Limited** to release the funds with their respective share as per voting percentage at the earliest.
2. The Applicant has sought the relief to direct Committee of Creditors to pay professional fees and expenses paid by applicant of Rs. 2,47,172/- to the applicant and amount of Rs. 4,05,073 outstanding on account of vendors either to be directly paid to the vendors or to the Applicant for further payment to vendors.

**FACTS OF THE CASE**

3. The Company Petition no. 3703 of 2019 was admitted vide order dated 24.01.2020 by this Tribunal and the Corporate Insolvency Resolution Process has been initiated against M/s. S & H Gears Private Limited (Hereinafter referred to as "**Corporate Debtor**"). Pursuant to the given

other, the Applicant was appointed as the Interim Resolution Professional.

4. The Applicant has published the Public Announcement in FORM A as per section 12 and Section 15 of the Code on 20.03.2020 and Committee of Creditors was constituted on 16.06.2020.
5. The Applicant was appointed as the Resolution Professional in the 1<sup>st</sup> Meeting of the Committee of Creditors held on 22.06.2020.
6. The Applicant has submitted that the unit is not in operation since 2016, therefore, the Applicant had to take the proper care of the assets of the company and hence, considerable expenses were incurred on the security of the factory premises. It has further been submitted that certain operational and legal expenses have been incurred in order to conduct the CIRP process efficiently which are detailed below:

**Applicants' professional fees and other expenses including  
payment made by applicant towards CIRP expenses**

<b>Cumulative Expenses called from the COC Members till 07.07.2021</b>	<b>Cumulative Outstanding Amount (Rs)</b>	<b>Approval in CoC Meeting</b>
RP fees form 25th June 2020 to 7 <sup>th</sup> July 2021	153,302	1st
Visit expense	3,697	2nd, 4th,5th
INC-28 fees	119	
Printing & Postage Expenses	1,754	4th, 5th
Lawyer's fees for	35,000	2nd

hearing and filing application at NCLT – Nikhil Waje		
CA Ronak Patni	32,300	9th
Construction of wall factory site	21,000	9th
<b>Grand Total (In Rs.)</b>	<b>247172</b>	

**List of outstanding expenses of the Vendors**

<b>Cumulative Expenses called from the COC Members till 07.07.2021</b>	<b>Cumulative Outstanding Amount (in Rs.)</b>	<b>Approval in CoC Meeting</b>
E Voting Cost	11,417	2nd, 4th
Audit & Income tax compliances	25,000	3rd
Advertisement Expenses for Publication of FORM G	93,555	9th
Security services - Bluecap Security	210,101	9th
ROC compliances	10,000	3rd
CS Madhuri Pandey for filing 1 application of extension of CIRP period	35,000	9th
CS Madhuri Pandey for drafting reply	20,000	Approval via email
<b>Grand Total (In Rs.)</b>	<b>4,05,073</b>	

7. The Applicant has placed all the relevant documents regarding expenses incurred for the approval of Committee of Creditors and all the documents have been noted in the respective CoC Meetings.
8. It has further submitted that Smt. Teena Saraswat Pandey was appointed as the new Resolution Professional of the Corporate Debtor vide NCLT order dated 24.06.2021.
9. It has further been submitted that Applicant has requested the members of COC for release of the funds of their respective shares as per their percentage of voting in the COC for the payments incurred in the CIRP process and sent reminders as well via email.
10. With the above averments, the Applicant has prayed that the present Application be allowed.

**REPLY FILED BY THE RESPONDENT NO. 6 (MS. TEENA SARASWAT PANDEY/ RESOLUTION PROFESSIONAL OF S&H GEARS PRIVATE LIMITED)**

11. It has been submitted by the Respondent no. 6 that during the tenure of the Applicant as the Resolution Professional of the Corporate Debtor, the Applicant had conducted 10 CoC meetings wherein the expenses incurred by the Applicant were also ratified. It has been submitted that with respect to such expenses, only partial payments were being made by the CoC particularly by Respondent Nos. 1 and 2.
12. It has further submitted by the Respondent no. 6 that after taking the charge of the affairs of the Corporate Debtor as Resolution Professional, only partial payments were being made by the CoC and even these partial payments were used in safeguarding the assets of

the Corporate Debtor. It has further submitted that despite repeatedly sharing the list of Corporate Insolvency Resolution Process (“CIRP”) expenses with the CoC members, the members of the CoC have failed to provide the payment towards the outstanding CIRP costs. The Respondent further expressed her concern towards the outstanding CIRP cost in the 13<sup>th</sup> Committee of Creditors meeting held on 06.09.2021.

13. It was informed to the members that due to absence of funds, the security guards were not paid since long and they were required to be paid for continuation of their services. It was further informed that after sending repeated reminders, some amounts were released by the Respondent Nos. 1 and 2, however, no payments have been made by the Respondent Nos. 3,4 and 5.
14. It has further submitted that pursuant to this, Respondent No. 6 had received partial amounts towards the CIRP cost from Respondent Nos. 1 and 2 and some partial payments were also made in October 2021 by Respondent Nos. 3, 4 and 5. However, thereafter no monies were deposited by the members towards the pending CIRP dues. This necessitated the Respondent No. 6 to file an Application bearing no. 1642 of 2022 against the CoC members for seeking payment towards the outstanding CIRP cost. Pertinently, Respondent No. 6 had also taken into account the outstanding dues of the Applicant.
15. Respondent No. 6 respectfully has further submitted that Application No. 1642 of 2022 may also be heard and the CoC shall be directed to pay the outstanding CIRP costs, as the outcome of the said Application would have a direct bearing on the Application filed by the Applicant herein.

**FINDINGS**

16. We have heard the Learned Counsel for the Parties and perused the documents available on record.
17. This Bench on bare perusal of Regulation 33 of IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016 is of the view of the fact that the Applicant shall bear the expenses which shall be reimbursed by the Committee of Creditors to the extent it ratifies.
18. In the present case, the Applicant has sought direction to the COC to pay the professional fees and expenditure of Rs. 2,47,172/- incurred by the Applicant and an amount of Rs. 4,05,073 outstanding on account of employees which were duly approved/ratified by the COC in its several meetings. The details of the same has been provided by the Applicant at page 10 of the present Application.
19. The details of the amount to be paid by the COC members in their respective shares are as under:

<b>Sr. No.</b>	<b>Name of the Financial Creditor</b>	<b>Total Amount Called from CoC</b>	<b>Amount Received from CoC Member</b>	<b>Pending Amount</b>
1	Bank of Baroda	945,219	482,876	462,343
2	Madhya Pradesh Financial Corporation	51,195	5,105	46,090
3	Garha Utilbrocce	38,509	19,927	18,608

	Tools Limited			
4	Rani Agro Pvt. Ltd.	211,672	107,984	103,688
5	Prithviraj Hospitality Limited	43,904	22,387	21,517
	<b>Total</b>	<b>1,290,498</b>	<b>638,279</b>	<b>652,245</b>

20. Therefore, this Bench hereby directs the COC to release the funds referred hereinabove which include professional fee of the Applicant and other expenses incurred by the Applicant in their respective share as per their voting percentage to the Applicant and to the Vendors directly.

21. Accordingly, I.A. 1708 of 2022 is **allowed and disposed of** in the aforesaid terms.

**Sd/-**  
**Anuradha Sanjay Bhatia**  
**Member (Technical)**

**Sd/-**  
**Kuldip Kumar Kareer**  
**Member (Judicial)**