

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH — V AT NEW DELHI
COMPANY APPLICATION NO. OF 3521/ 2020 & 4690/2020**

IN

COMPANY PETITION-IB- 1828(ND)/2019

In the matter of:

The Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

APPLICATION ON BEHALF OF THE DEEMED RESOLUTION PROFESSIONAL/ (IRP) FOR RATIFICATION OF FEES PAYABLE TO THE IRP/ DEEMED RESOLUTION PROFESSIONAL , CONFIRMATION OF IRP AS THE DEEMED RESOLUTION PROFESSIONAL, REIMBURSEMENT OF EXPENSES BORNE BY IRP/DEEMED RESOLUTION PROFESSIONAL AND ISSUE OF NECESSARY INSTRUCTIONS TO COMMITTEE OF CREDITORS TO COMPLY WITH THE PROVISIONS FOR WITHDRAWAL OF CIRP - IN THE CORPORATE INSOLVENCY RESOLUTION PROCESS OF M/S ATUL VATIKA DEVELOPERS PVT LTD AS PER REGULATION 30A, 31, 33 & 34 OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016

AND

IN THE MATTER OF:

M/s KABITA BARIK & ORS.

...PETITIONER

VERSUS

M/s. ATUL VATIKA DEVELOPERS PVT LTD

...RESPONDENT/CORPORATE DEBTOR



MR AKHILESH KUMAR GUPTA

... APPLICANT / DEEMED RESOLUTION PROFESSIONAL

VERSUS

CORPORATION BANK

... RESPONDENT

NO. 1

KABITA BARIK & ORS

... RESPONDENT

NO. 2

ORDER DELIVERED ON: 03.12.2020

CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. Kapal Kumar Vohra, Hon'ble Member (Technical)

For the Applicant/ Operational Creditor: Mr. Gautam Singhal for RP

For the Respondent/ Corporate Debtor: Mr. Samendra Kumar for
Union Bank of India

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL

1. Since facts of both the IAs are common, therefore, we would like to dispose off both the IAs by this common order.

IA 3521/ 2020: -

2. By filing this the Applicant has prayed the following reliefs: -
 - a. Direct the Corporation Bank to
 - i. Ratify the remuneration of the Applicant (IRP) of Rs. 1,25,000/-from the date of appointment of Applicant as IRP on January 22, 2020 till 1st CoC meeting dated February 21, 2020;
 - ii. Confirm and approve of the appointment of Applicant as RP at a fee of Rs. 1,25,000/- or to replace by another Resolution Professional as per section 22(2) of the Insolvency & Bankruptcy Code, 2016;

COMPANY APPLICATION NO. OF 3521/ 2020 & 4690/2020
IN
COMPANY PETITION-IB- 1828(ND)/2019

- iii. Ratify and approve the remuneration of Deemed Resolution Professional (Applicant) at a fee of Rs. 1,25,000/- since the 1st CoC meeting dated February 21, 2020 till the date of withdrawal of the claim by Corporation Bank dated March 11, 2020;
- iv. Ratify and reimburse the expenses borne by the Applicant (IRP) from the date of appointment till the date of withdrawal of the claim by Corporation Bank dated March 11, 2020.
- v. To issue necessary instructions to Corporation Bank and Kabita Bank & Ors the members of COC to comply with the regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for withdrawal of CIRP against the Corporate Debtor.
3. Vide order dated January 22, 2020, the applicant was ~~Responsible~~ [✓] ~~Responsible~~ appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor.
4. As per the provisions of the Code, the Applicant made Public Announcement on January 27, 2020 to receive and admit claims from various Creditors (both Financial & Operational) and subsequently admitted a total amount of Rs. 96,21,027/- against the claims received from the Petitioners and the Bank/Financial Creditor.

S. No.	Name of the Financial Creditors	Amount in INR	Voting rights in COC
1.	Corporation Bank Plot No.35, IGNOU Road, NEB Sarai, New Delhi-110068	Rs. 59,68,335	62.03%
2.	Kabita Barik&Ors.143, UGF, Savitri	Rs. 36,52,692	37.97%



	Nagar, New Delhi- 110017		
	TOTAL	Rs. 96,21,027	100%

5. The Applicant, thereafter, conducted 1st meeting of CoC on February 21, 2020 having both the Financial Creditors as the members of the CoC. The Applicant, in the Agenda no. 12 of the 1st CoC, being eligible, offered himself for the appointment and his confirmation as the Resolution Professional (RP), proposing a fee of Rs. 1,25,000 per month for the same.
6. That after due deliberation and discussion, the Petitioner in the main Company Petition approved the confirmation of the Applicant/IRP as the RP with the proposed fee of the RP plus applicable taxes and out of pocket expenses. However, the other Financial Creditor, the Corporation Bank, requested for e-voting in this matter. Accordingly, the process of e-voting was conducted in accordance with the provisions of Regulation 25 and Regulation 26 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. (hereinafter referred to as "the Regulations")
7. Further, the approval of the division of aforementioned professional fees of the IRP/RP between the IRP/RP and the Insolvency Professional Entity (IPE i.e. Luthra and Luthra Restructuring and Insolvency Advisors LLP) was also taken from the members of the CoC.
8. As requested by the Corporation Bank, the process of e-voting was conducted in accordance with the provisions of Regulation 25 and Regulation 26 of the Regulations, wherein the Corporation Bank, the Financial Creditor carrying 62.03% of voting rights did not vote in favor of:

- a. Ratification of the remuneration of the Applicant (IRP) of Rs. 1,25,000/- from the date of appointment of Applicant as IRP on January 22, 2020 till 1st CoC meeting dated February 21, 2020;
 - b. Confirmation and approval of the appointment of Applicant as RP at a fee of Rs. 1,25,000/- or to replace by another Resolution Professional as per section 22(2) of the Insolvency & Bankruptcy Code, 2016.
9. The Applicant, thereafter, conducted the 2nd meeting of CoC on March 11, 2020 which was attended by only Corporation Bank since the other Financial Creditor (Petitioner of the main CP) was held up in other court proceedings. During the meeting M/s Corporation Bank submitted its letter dated March 11, 2020 for 'withdrawal of its Claim from the CIR Process and exit from the CoC' to the Applicant.
10. The Applicant, therefore, put forth his requests to ratify the remuneration of the Applicant as IRP and approve the remuneration of Deemed Resolution Professional till the replacement of IRP by new Resolution Professional along with ratification of CIRP costs incurred by the Applicant in the capacity of the IRP/Deemed RP since the last CoC meeting dated February 21, 2020, which were not approved/ratified by the Corporation Bank.
11. The Applicant discharged his duties since the date of appointment till date.
12. Both the members of CoC, Corporation Bank and Kabita Barik & Ors. have communicated to IRP/Deemed Resolution Professional vide mail/letter of their decision to withdraw their claims against the Corporate Debtor.
- a. The Corporation Bank vide letter dated 11th March 2020 has intimated about their decision to withdraw their claims against the Corporate Debtor and exit from the CIRP process.



- b. Kabita Bank &Ors. has vide letter/ mail dated 14th March 2020 and 16th March 2020 informed that they have recovered most of the dues from the Corporate Debtor and accordingly, withdraw their claim from CIRP against the Corporate Debtor.
13. Respondent no. 1 (Corporation Bank) vide its reply dated 28.09.2020 contends that:
- a. In terms of Public Announcement dated 27.01.2020, the answering Respondent No. 1 filed Form "C" claiming an amount of Rs.61.77 Lacs for the Vehicle Loan given to the Company to part finance the Two Brand New Toyota Fortuner 4x4 Diesel bearing Registration No. DL 3CCM 2249 and DL 3CCM 0980 to Rs. 76.54 Lacs. The said claim was accepted by the Applicant Interim Resolution Professional and answering Respondent No.1 Bank has become major COC member having voting rights of around 62%.
- b. After the constitution of COC, 2 COC meetings were conducted on 21.02.2020 & 11.03.2020 respectively. Subsequent to 1st COC meeting, e-voting was conducted on 23rd February, 2020, wherein the agenda item to confirm and approve the fees of IRP of an amount of Rs. 1,25,000/-was put up for e-voting. The said agenda item was not approved by the answering Respondent no.1.
- c. The answering respondent Bank sent a letter dated 11.03.2020 to the Applicant IRP for withdrawal of our claim assigning the reasons that as per audited balance sheet of the Corporate Debtor for the year ended 31.03.2018 filed with MCA, the Company does not own any fixed assets. The Applicant IRP has not taken any concrete steps to trace the directors of the Corporate Debtor as well as secured vehicle financed by answering respondent bank or any other assets. It is submitted by Respondent No. 1 that in the absence of assets or recoverable from the Corporate Debtor, there is no sense of appointing any IPE for which the Applicant Interim resolution Professional is asking an amount of Rs. 1, 00, 000.00 which is arbitrary and not warranted. The appointment of the said IPE hasnot



brought any substantial value addition to the CIRP. The Applicant Interim resolution Professional is also asking for the conveyance and other expenses which is not at all logical and payable as no fruitful work yet has been concluded by the Applicant IRP.

IA/4690/2020: -

14. The facts of this IA is almost same as of I.A no. 3521/20, except that the applicant has also received the Form FA dated 06.10.2020 from the Original Applicant on whose application the Corporate Insolvency Resolution Process against the Corporate Debtor i.e M/s Atul Vatika Developers Private Limited was initiated. The Form FA is annexed here with. However, the Original Applicant failed to provide the bank guarantee covering CIRP cost in terms of Regulation 30A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(REPLY)

15. Respondent no. 1 (Corporation Bank) vide its reply dated 28.09.2020 contends that:
- a. In terms of Public Announcement dated 27.01.2020, the answering Respondent No. 1 filed Form "C" claiming an amount of Rs.61.77 Lacs for the Vehicle Loan given to the Company to part finance the Two Brand New Toyota Fortuner 4x4 Diesel bearing Registration No. DL 3CCM 2249 and DL 3CCM 0980 to Rs. 76.54 Lacs. The said claim was accepted by the Applicant Interim Resolution Professional and answering Respondent No.1 Bank has become major COC member having voting rights of around 62%.
 - b. After the constitution of COC, 2 COC meetings were conducted on 21.02.2020 & 11.03.2020 respectively. Subsequent to 1st COC meeting, e-voting was conducted on 23rd February, 2020, wherein the agenda item to confirm and approve the fees of IRP of an amount of Rs. 1,25,000/-was put up for e-voting. The said agenda item was not approved by the answering Respondent no.1.



- c. The answering respondent Bank sent a letter dated 11.03.2020 to the Applicant IRP for withdrawal of our claim assigning the reasons that as per audited balance sheet of the Corporate Debtor for the year ended 31.03.2018 filed with MCA, the Company does not own any fixed assets. The Applicant IRP has not taken any concrete steps to trace the directors of the Corporate Debtor as well as secured vehicle financed by answering respondent bank or any other assets. It is submitted by Respondent No. 1 that in the absence of assets or recoverable from the Corporate Debtor, there is no sense of appointing any IPE for which the Applicant Interim resolution Professional is asking an amount of Rs. 1, 00, 000.00 which is arbitrary and not warranted. The appointment of the said IPE has not brought any substantial value addition to the CIRP. The Applicant Interim Resolutional Professional is also asking for the conveyance and other expenses which is not at all logical and payable as no fruitful work yet has been concluded by the Applicant IRP.
16. It is further stated that the respondent no. 1 bank is amalgamated with Union Bank of India in terms of Gazette Notification dated 04.03.2020, so the Applicant IRP is required to modify/amend his application in view of the above said changed circumstances and prayed this Hon'ble Tribunal to dismiss the present application with exemplary cost.
17. We have heard Ld. Counsel for the IRP as well as Ld. Counsel for the Corporation Bank and perused the averments made in the application. Earlier, the IRP had filed an application which was registered as IA-3521/2020 and the IRP in that IA made a prayer regarding the approval of his fee and also approval of the expenses which was refused by one of the member of CoC i.e. Corporation Bank. By filing subsequent application which is registered as IA-4690/2020, the IRP prayed for withdrawal of the company petition in pursuance of the Form FA submitted by the applicant of the main company petition.



18. Ld. Counsel for the IRP submitted that his fee/remuneration was not ratified by the Corporation Bank by 62.03 percent of voting, whereas the other member of CoC i.e. Kabita Barik having 37.97 percent of voting right had approved the remuneration. He further submitted that this is the reason he had filed this present application. He further submitted that during the CIRP proceeding, the Corporation Bank had withdrawn its claim and the other Financial Creditor (Kabita Barik) also submitted that she has already received the part payment from the Corporate Debtor. He further submitted that earlier he had received Rs. 2 Lakhs from the applicant of the main company petition i.e. Kabita Barik. He further submitted that in IA-4690/2020 at page no. 57, he has enclosed the list of fee and expenses incurred towards the CIRP of the CD. He further submitted that towards the expenses he claimed Rs. 1,07,419/-, whereas towards the fee from the period January 24, 2020 to March 20, 2020, he claimed total fee of Rs. 2,54,836/- @ Rs. 1,25,000/- per month. He further submitted that he had also mentioned the different headings under which he had claimed the expenses.
19. On the other hand Ld. Counsel for the Corporation Bank submitted that he has already withdrawn their claim. He further submitted that the IRP is claiming Rs. 1 Lakh, which is arbitrary. He further submitted that the respondent no. 1, Corporation Bank is amalgamated with Union Bank of India in terms of Gazette Notification dated 04.03.2020. He further submitted that since the Corporation Bank has not approved the fee, therefore, the Bank is not liable to pay any amount. He further submitted that the amount charged towards the expenses is also not approved by the CoC.
20. In the light of the submissions raised on behalf of the parties, we have gone through the averments made in the application and noticed that it is the admitted fact that that the Corporation Bank had also submitted a claim and the CoC was constituted in which the Corporation Bank was one of the member. It is also admitted fact that public announcement was made. Therefore, at this juncture, we would like to refer Regulation



33 of IBBI (Insolvency Resolution Process for Corporate Person) 2016 and the same is quoted below: -

33. Costs of the interim resolution professional.

(1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.

(2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).

(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

[Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional.]

21. Mere plain reading of the provision shows that if the applicant fails to fix the expenses under sub Regulation 1 of Regulation 33 of IBBI then the Adjudicating Authority shall fix the expenses and the explanation attached to Regulation 33 shows that for the purpose of this regulation expenses includes the fee to be paid to the IRP. This fee is to be paid to the IRP entity and fee to be paid to the professional and the other expenses by the IRP.

22. In the light of this provision, when we consider the case in hand, we notice that it is a peculiar case, in which the Corporation Bank had also submitted its claim but subsequently withdrawn the claim without ratifying the fee and expenses. We further notice that an agenda regarding the approval of fee and ratification of expenses were placed before the CoC but the Corporation Bank had not approved although the other Financial Creditor i.e. Kabita Barik and others had approved and that is why, this matter came before us.

23. At this juncture, we would also like to refer Regulation 34 A and the same is quoted below: -



34 A. Disclosure of Costs.

The interim resolution professional or the resolution professional, as the case may be, shall disclose item wise insolvency resolution process costs in such manner as may be required by the Board.]

24. Mere plain reading of the Regulation shows that as per the Regulation 34 A, the IRP or the RP is required to disclose the item wise cost. In the light of that provision, we consider the chart by which the IRP claimed the expenses, we notice that at page 57 of the application registered as IA-4690/2020, the IRP has enclosed fee and expenses and a chart has been given, which shows the breakup of the expenses incurred by the IRP which is as under:-

Sr. No.	Breakup of the expenses incurred by the IRP	
1	Heading	Amt. in Rs.
2	Publication expenses	21,756
3	NCLT and ROC Fee	7,632
4	Conveyance	8,787
5	Printing and Stationary including stamp paper and notarization	2,331
6	Lawyer fee	50,000
7	Expenses for conducting e-voting	7,670
8	Speed Post	243
9	Miscellaneous	9,000
	Total	1,07,419

and towards fee he claimed Rs. 2,54,836/- @ Rs. 1,25,000/- per month for the period Jan 24,2020 to March 20, 2020. So far the expenses are concerned, we hereby approve the expenses under the following heads: -

Breakup of the expenses incurred by the IRP		
Sr. No.	Heading	Amt. in

COMPANY APPLICATION NO. OF 3521/ 2020 & 4690/2020
IN
COMPANY PETITION-IB- 1828(ND)/2019



		Rs.
1	Publication expenses	21,756
2	NCLT and ROC Fee	7,632
3	Conveyance (Since no receipt has been enclosed, therefore, we are approving lump sum amount of Rs. 5000/-)	5,000
4	Printing and Stationary including stamp paper and notarization	2,331
5	Lawyer fee (Lump Sum)	25,000
6	Expenses for conducting e-voting	7,670
7	Speed Post	243
8	Miscellaneous	5,000
	Total	74,632

25. So far the fee of the IRP is concerned, we are approving fee @ 75000/ per month, but a lump sum amount of Rs. 1,50,000/- towards the fee of the IRP for the period starting from Jan 24, 2020 till March 20, 2020

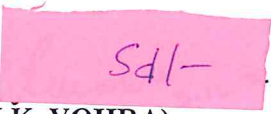
26. Since, Rs. 2 Lakh has already been paid by the applicant (Kabita Barik) having voting right of 37.97 percent and there are only two members in the CoC and the Corporation Bank having voting right of 62.03 percent, therefore, we think it proper to distribute the total amount of fee and expenses in the manner the Financial Creditors having voting rights. In other words, out of total amount of fee of IRP (Rs. 1,50,000/-) plus amount towards expenses (Rs. 74,632/-) 62.03 percent will be paid by the Corporation Bank and 37.97 percent will be paid by Kabita Barik. Since, Kabita Barik had already paid Rs. 2 Lakhs and the total amount to be paid is Rs. 2,24,632/-, therefore, Corporation Bank is directed to pay the remaining balance amount and also reimburse the excess amount paid by Kabita Barik in the ratio of their voting right within a month from today. With this order, the present application stands disposed off.


27. Now, coming to the withdrawal application, since out of two Financial Creditors, one Corporation Bank has already withdrawn his claim and



Kabita Barik has submitted the Form FA, which is at page 48 as annexure G of the application being IA no.4690/2020, therefore, we think it proper to approve the application under Regulation 30 A of the IBBI read with Section 12 A of the IBC because after the withdrawal of the claim by the Union Bank, the sole member of CoC has submitted the Form FA and Form FA is duly signed by the applicant of the main application of IB-1828/ND/2019 . Accordingly, we here by approve the withdrawal application filed by the IRP, and Company Petition no. IB-1828/ND/2019 is here by dismissed as withdrawn.

28. With this order, both the IAs stand disposed off.


(K.K. VOHRA)
MEMBER (T)


(ABNI RANJAN KUMAR SINHA)
MEMBER (J)