

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

M.A. 3399/2019

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 read
with Rule 11 Of the National Company Law Tribunal Rules, 2016

In the matter of

Mr. Rohit Vora

1103 Raj Sunflower Royal Complex
Eksar Road, Borivali (West), Mumbai 92

...Applicant/Resolution Professional

Vs.

**1. Religare Finvest Limited (India
Resurgence ARC Private Limited)**

Offices No. 113 to 116, 1st Floor, B-Wing,
Building Pride Silicon Plaza,
Next to Chaturshringi Temple,
S. No. 106A/2A/7, Senapati Bapat Road,
Pune – 411016

2. Dena Bank now Bank of Baroda

WHC Road, Near Times of India Bldg.,
Dharamseth – 440010

3. Star Orechem International Pvt. Ltd.

Amrata Manor, Bunglow No. 1,
1st Floor Opposite Axis Bank,
Rabindranath Tagore Road, Civil Lines,
Nagpur – 440001

4. Zumberlal Bharat & Sons HUF

64/65 East Wardhawan Nagar,
Nagpur – 440008

5. Poddar Telecom Private Limited

Tirupati Balaji Roadlines (India),
88, Jaideo Appartment, Chapru Nagar,
Central Avenue, Nagpur – 440008

6. Ujwala Bharut

64/65 East Wardhawan Nagar,
Nagpur - 440008

...Respondents

In the matter of
C.P. No. (IB) 4065/MB/2018

Dena Bank Limited

...Financial Creditor

Versus

Jogma Laminates industry Private Limited

...Corporate Debtor

Reserved for order on: 15.09.2022

Order delivered on: 10.11.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

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

Appearance:

For the Applicant: Adv. Partho Sarkar a/w Adv. Partik Sarkar
i/b Vidhi Legal

For the Respondents: Adv. Nausher Kohli a/w Adv. Vaisala
Pant, Adv. Nasarin Shaikh i/b Indus Law

Per: Shri H.V. Subba Rao, Member (J)

ORDER

1. The above I.A. 3399 of 2019 has been filed by the RP Mr. Rohit Vora under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 Of the National Company Law Tribunal Rules, 2016 praying for following reliefs:

- i. *That this Hon'ble Tribunal may be pleased to issue appropriate directions to the Respondents to release amount of Rs. 24,25,143.86/- Rs. Twenty Four Lakhs Twenty Five Thousand One Hundred Forty Three and Eighty Six paise only, i.e. Resolution Professional fees and expenses till 31st August, 2019 and other legal expenses till the date of filing.*
- ii. *That this Hon'ble Tribunal may be pleased to issue orders permitting the Applicant to reject the claims of the Respondent who do not comply with prayer (i) in view of non-payment.*
- iii. *In alternative to prayer (i) and (ii) above, the Respondent No.1 being the largest Financial Creditor be directed to pay the Applicant and later recover from the Resolution Process.*
- iv. *That this Hon'ble Tribunal may be pleased to issue appropriate directions and/or orders to the Respondents in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.*
- v. *That this Hon'ble Tribunal may be pleased to pass such further and other orders as this Hon'ble Tribunal may deem fit and proper in view of the facts and circumstances of the case.*
- vi. *That this Hon'ble Tribunal may be pleased to pass any orders/directions as deem fit and necessary by this Hon'ble Tribunal in the interest of justice and equity &*
- vii. *Costs of this Miscellaneous Application be provided for.*

2. The brief facts behind filing the above Interlocutory Application are as follows:

- i. The applicant states and submits that the captioned petition was preferred by the petitioner on 22/10/2018 for initiating

Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code (“the Code”).

- ii. The Applicant states and submits that this Hon’ble Tribunal was pleased to admit the petition vide order dated 25th April 2019 inter alia declaring moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016. The applicant was appointed as Interim Resolution Professional (IRP).
- iii. The Applicant states and submits that the Respondents have filed their respective claims before the Applicant. The Applicant craves leaves of this Tribunal to refer and rely upon the claims filed with the Applicant.
- iv. The Applicant states and submits that the Applicant is an Insolvency Professional duly appointed by this Hon’ble Tribunal and is duly bound under provisions of the Insolvency and Bankruptcy Code, 2016 to conduct resolution process of the Corporate Debtor in a time bound manner. The applicant further states that
 - a) The applicant has held various COC meetings on following occasions:
 - i. 24th May, 2019
 - ii. 14th June, 2019
 - iii. 18th July, 2019
 - iv. 26th August, 2019
 - b) The Applicant states and submits that the applicant has filed status report with this Hon’ble Tribunal on following occasion:
 - i) Vide Diary No. D 9714 dated 21th May, 2019 the Report Certifying the Constitution of Committee of Creditor.

- ii) Vide Diary No. D 12977 dated 5th July, 2019 the Report certifying the Constitution of Committee of Creditor.
 - iii) Vide Diary No. D 16901 dated 5th September, 2019, the status report of this Corporate Insolvency Resolution Process mentioning the grave hardship as faced by the Applicant while delivering the casted prime responsibility under I & BC 2016 of bringing about Resolution than Liquidation.
- v. The applicant states and submits that in all the above COC meetings, the fees of resolution professional and reimbursement of CIRP cost has been approved by the Committee Members/ Financial Creditor (the approval has been duly recorded and accorded in the minutes of the meetings). However, none of the COC member have paid any amount. The Applicant has been following up with the COC members regularly for the payment, however the COC is not responding. The non-payment of CIRP costs hinders the Corporate Insolvency Resolution Process and consequently performance of the Resolution Professional.
- vi. The Applicant states and submits that till date the COC is under liability to pay the following amounts:

Particulars	Amount (Rs.)
Fee payable to Resolution Professional and the RP Team (MyCFO) for the 3 Months (Rs.375000 X 4 months) (25 April 2019 to 24 th August 2019), breakup – INR 1,00,000/- to RP Rohit Vora and INR 2,75,000/- Practus Advisors Pvt. Ltd.	15,00,000.00

Out of Pocket Expenses incurred by MyCFO	2,44,945.49
Out of Pocket Expenses incurred by Mr. Rohit Vora	94,651.00
Add: GST @ 18%	3,31,127.37
Sub-Total	21,40,723.86
Add: E-Voting expenses for 3 rd COC meeting	4,720.00
Add: Security Service Provider payment till 30 th June	16,200.00
Add: Security Service Provider Payment from 1 st July to 31 July	27,000.00
Add: Security Service Provider payment from 1 st August to 31 st August	27,000.00
Add: Technical Expert Payment	29,500.00
Add: Legal expenses for preferring captioned Miscellaneous Application	1,50,000.00
Total Demand for CIRP	22,25,143.86

Total: Rs.24,25,143.86 Rs. Twenty-Four Lakhs Twenty-Five Thousand One Hundred Forty-Three and Eighty-Six paise only/- (Rs.Only).

- vii. The Applicant states and submits that despite regular follow ups for the payment of the aforesaid amount, the Respondents are not making any payment to the Applicant. This hinders the Applicant's performance. The Applicant further states and submits that the Applicant is handicapped due to non-availability of the funds and the Respondents are conveniently not releasing the payments.

- viii. The Applicant states and submits that the present Miscellaneous Application is filed against the members of CoC to release fees in proportion of their voting rights.
- ix. The Applicant states and submits that the One Hundred Eighty days are expiring on 23rd October 2019 but till date, there is no discussion of extension of CIRP.
- x. The Applicant states and submits that the Respondents by their conduct have caused obstructions and/or hindrances in smooth conduct of Corporate Insolvency Resolution process of the Corporate Debtor.

3. The Respondent No. 1 filed a detailed reply opposing the above application. The important paras of the reply filed by the Respondent No. 1 are extracted herein under:

- i. The Respondent in its affidavit in reply stated that the debt owned by the Religare Finvest Limited who is the highest stakeholder in the COC assigned its debt to India Resurgence ARC Private Limited through a Deed of Assignment dated 05.11.2019. Therefore, for sake of convenience India Resurgence ARC Private Limited will be referred to as “Respondent No. 1” and Religare Finvest Limited is to be referred to as “Former Respondent No.1”.

Para. 11.

- a) The Respondent states that though the Applicant was appointed as the Resolution Professional, however, pursuant to the Meeting of COC held on 18 July 2019, it was resolved that the Applicant, ie. Mr. Rohit Vora be replaced by Mr. Rajat Naidu as the Resolution Professional by 98.36% votes.
- b) The Respondent further states that the debt owed by the Corporate Debtor to Religare Finvest Limited, ie, the Former Respondent No. 1, to the tune of Rs. 17,51,50,167/- (Rupees

Seventeen Crore Fifty One Lakh Fifty Thousand One Hundred and Sixty Seven Only) as on 25th April 2019, has been assigned to the India Resurgence Trust II, whereby India Resurgence ARC Private Limited is acting as trustee of the India Resurgence Trust II, vide Deed of Assignment dated 5th November 2019. In view thereof, voting share of Religare Finvest Limited be read as voting share of India Resurgence ARC Private Limited.

- e) The Respondent states that although the Applicant acknowledges that he is duty bound under the Insolvency and Bankruptcy Code, 2016 to conduct resolution process of the Corporate Debtor in a time bound manner, however, the Applicant has failed to undertake his duties, in time bound manner or otherwise, as demonstrated hereinabove. The conduct of the Meetings of the COC along with the filing of the Progress Reports are a matter of record. However, I reserve my right to comment on the contents of the same as and when required.
- f) It is further states that the Applicant quite artfully has given a very brief outline of proceedings of the Meeting of the COC and has failed to delineate the circumstances in which such resolutions were passed and/or the decisions were taken. I repeat and reiterate the facts and circumstances in relation to the Corporate Insolvency Resolution Process of the Corporate Debtor as stated above pursuant to which the resolutions came to be passed and/ or decisions were taken as indicated by the Applicant.
- g) The Respondent further states that the COC is required to make any payment at all to the Applicant. I say that in view of the non performance of duties in time bound manner as

stipulated under the provisions of the Insolvency and Bankruptcy Code, 2016 along with the Rules and Regulations thereunder, the Applicant is not entitled to any payment as claimed by the Applicant in this Application. In fact, the Applicant has acted in detriment to the interest of the COC and the Corporate Debtor and is therefore, not entitled to any compensation which is sought solely for his own benefit without having performed his duties.

- h) The Respondent further deny that the COC, more specifically Religare Finvest Limited, did not cooperate with the Applicant. I say that it was Applicant who failed to act in accordance with the suggestions of the COC and in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, as is evident from the Minutes of Meeting I say that Religare Finvest Limited had, in the Second Meeting of the CoC held on 14 June 2019, suggested that the liquidation of the Corporate Debtor ought to be considered and instead of circulating the same as an agenda in the next meeting held on 18 July 2019, the Applicant chose to dilly-dally and did not act in accordance with the suggestions of the member of the COC having the majority voting share.

It would be futile to extend the time period for Corporate Insolvency Resolution Process. Therefore, allegations and assertions that the Applicant could not carry out his duties due to acts and/ or omissions of the CoC are utterly baseless, unfounded and malafide and only a desperate attempt to cast a shadow on the COC

- i) The Respondent deny that the averments and allegations made therein. It is pertinent to state that whether a Corporate Debtor is to be liquidated or a Resolution Plan is to be

considered is a matter of commercial wisdom of the COC. In case the COC is of the opinion that the Corporate Debtor is to be liquidated, the same cannot be considered as a deviation from the provisions of the Insolvency and Bankruptcy Code and would in no scenario amount to obstructing the Applicant for discharging its duties.

- j) Further the COC do not accept appointment of the Applicant as the liquidator in the captioned matter and submit that the Applicant ought to be replaced in terms of Section 34 of the Insolvency and Bankruptcy Code, 2016.
- k) In light of the aforesaid facts and circumstances the Applicant is not entitled to any amount towards legal fees, especially considering that he failed to act in accordance of the provisions of the Insolvency and Bankruptcy Code. 2016.
- l) It is further stated by the Respondent that the Applicant is not entitled to reliefs claimed thereunder pertaining to appointment as liquidator and payment of fees, costs and expenses. However, as regards liquidation of the Corporate Debtor, the Respondent No. 1 does not object to the same.

FINDINGS

1. Heard Mr. Partho Sarkar, counsel appearing for the Applicant/Resolution Professional and Mr. Nausher Kohli, counsel appearing for the Respondents and perused the material available on record.
2. It is the submission of Mr. Partho Sarkar that the COC having ratified the fees and expenses of the Resolution Professional failed to pay the same and therefore the Resolution Professional has every legal right to be paid his fees and expenses by COC. It is his further submission that even though the COC in its third meeting

dated 18.07.2019 decoded to replace the RP by appointing Shri Rajat Naidu, did not move any application so far for replacement and therefore the present RP is deemed to be continuing by legal fiction. It is his further submission that the COC is duty bound to pay the RP's fees and expenses as ratified. In support of the above contentions, he has relied upon the following orders passed by Hon'ble NCLAT:

- i. Sajeve Deora Vs. Axis Bank Company Appeal (AT) (Ins) 741 of 2019
 - ii. Prakash Pandya Vs. Milestone Real Estate Fund (2021) ibclaw.in 403 NCLAT
 - iii. Aqua Omega Services Vs. Great United Energy (P) Ltd. MA 986/2018 IN CP (IB)-2014/MB/2018
 - iv. Alok Kaushik Vs. ARSEC (India) 2018 SCC Online NCLAT 995.
3. Mr. Nausher Kohli, counsel appearing for the Respondent objected for allowing the above application contending that the RP has authorized the suspended director, Mr. Jagdish Patel for asset protection and preservation without any approval of COC which is prejudicial to the interest of the Corporate Debtor. He further contends that the RP except expressing the difficulties to prepare the Information Memorandum on account of non-availability and access to the books of accounts along with fixed asset register of the Corporate Debtor did not do anything and refused to consider even filing an application for liquidation as per the mandate of majority of the COC members on the ground that he cannot contemplate liquidation at this stage as the same would be contrary to his duty to take measures of resolution of the Corporate Debtor. He further contends that the RP acted hand in glove with the suspended director of the Corporate Debtor and

intend to restart the operations of the Corporate Debtor at the costs of COC. He further submits that finally, the RP held meeting to deliberate the issue of liquidation as soon as after passing the resolution by the COC to replace the present RP and choose to include an agenda of proceedings with liquidation and sought to be appointed as the liquidator. He further contends that the RP has miserably failed to file any application and initiate any action against the suspended directors as proposed by the COC for their non-cooperation. He further submits that it is the prerogative of COC to either go for resolution or liquidation and the RP cannot dictate terms to COC as he is a mere facilitator.

Disregarding the above contentions, Mr. Kolhi across the bar submitted that the COC has no objection for paying the fee of RP at the rate of Rs. 1 lakh per month plus GST as agreed plus reasonable expenses incurred by him.

4. In the light of the above rival contentions of both parties, the issue that needs to be decided in the above Interlocutory Application is:-
 - i. *Whether the Applicant is entitled to receive Rs. 24,25,143.86/- (Rupees Twenty Four Lakhs Twenty Five Thousand One Hundred Forty Three and Eighty Six paisa), i.e., Resolution Professional fees and expenses till 31st August, 2019?*
5. Before deciding the above issue, it is important to briefly mention the undisputed facts in this case.
6. It is an admitted fact between the parties that the Applicant was appointed as the Interim Resolution Professional by this Tribunal vide order dated 25.04.2019 and was further appointed as Resolution Professional in the 1st COC Meeting dated 24.05.2019 as 98.98% COC Members voted in favor of appointing the Applicant as Resolution Professional with a monthly remuneration of Rs. 3,75,000/- (Rupees Three Lakh Seventy Five

Thousand only) plus GST till the conclusion of the CIRP of the Corporate Debtor by confirming the same in the 2nd COC Meeting.

7. It is also an admitted fact that the COC in its third COC meeting dated 18.07.2019 resolved to replace the RP, Mr. Rohit Vora by appointing Mr. Rajat Naidu and no such application for appointment of Mr. Rajat Naidu was filed by the COC so far before this Tribunal. The relevant extract of the above COC meeting dated 18.07.2019 is extracted below for ready reference:

To change Resolution Professional

Representatives of Religare Finvest proposed change of Resolution Professional and suggested appointment of Mr. Rajat Naidu as the new Resolution Professional. The Chairman discussed the same and enquired about the reason for proposing change in Resolution Professional. Representatives of Religare Finvest, however, informed that they are not legally bound to disclose the reason. Accordingly, following resolution is proposed to be passed by the Committee of Creditors:

“RESOLVED THAT *Mr. Rajat Naidu be and hereby appointed as the Resolution Professional of Jogma Laminates Industry Private Limited under section 27(1) of the Insolvency and Bankruptcy Code, 2016 from the date of confirmation of his appointment by National Company Law Tribunal, Mumbai, till conclusion of the Corporate Insolvency Resolution Process of the Corporate Debtor.*

FURTHER RESOLVED THAT *Mr. Rohit Vora shall continue to be Resolution Professional of the Corporate Debtor on existing terms and conditions as regards monthly remuneration, out of*

pocket expenses, etc., and discharge the duties and responsibilities cast upon him until appointment of Mr. Rajat Naidu as Resolution Professional in accordance with the provision of section 27(4) of the Code and Committee of Creditors agree to contribute to pay to Mr. Rohit Vora, monthly Remuneration as resolved to be paid to him as Resolution Professional till the date of his demitting office as also contribute to reimburse expenditure incurred by him and his team in discharge of his responsibilities as Resolution Professional of the Corporate Debtor and outstanding as on the date of demitting office, within seven days of the date of demand being submitted.”

8. Therefore, it is very clear from the above resolution that the COC in its wisdom resolve to replace the Resolution Professional. The COC further agreed to contribute to pay to the present applicant monthly remuneration as resolve to be paid to him as resolution professional till the date of his demitting office as also contribute to reimburse expenditure incurred by him and his team.
9. After hearing the above submissions on both sides and upon perusing the material available on record, this Bench observes that no resolution has taken place even after lapse of more than two and half years after passing the CIRP order in this case. The CIRP process has come to a standstill because of the tussle between the RP and COC. This Bench further observes that even though the COC is raising the above allegations against the RP, nothing was reduced into writing of the above allegations against the RP in any of the COC meetings as appearing from the minutes. On the other hand, it was recorded in the second COC meeting dated 14.06.2019 that the RP has informed the COC to the effect that the suspended directors of the CD has provided access to the

Corporate Debtor's books of accounts. It is also observed from the minutes of the third COC meeting dated 18.07.2019 that the original lender, Religare Finvest Limited express their inability to provide interim finance and requested the RP to proceed ahead with the regular statutory audit and not to proceed with forensic audit. 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 grounds which were not borne by record.

10. Therefore, under these circumstances 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. Accordingly, the above IA is **allowed** in terms of prayer clause 'A'. The other prayers sought by the applicant in prayer clauses 'b' & 'c' are hereby rejected as they are beyond the power of this Tribunal. The COC shall pay the amount to the RP within one week from the date of uploading the order without causing any further delay.

With the above observations and directions, the above I.A. is **disposed of**.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)