



**THE NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1
MUMBAI BENCH**

IA 3178 of 2024 in CP (IB) No. 1095 OF 2017

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

In the matter of

**Dushyant C. Dave Resolution
Professional of Anand Distilleries
Pvt. Ltd. Now Chairman of the
Monitoring Committee**

... Applicant

v/s

Dera Finvest Private Limited & Ors.,

... Respondents

Order delivered on 06.06.2025

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant	:	Ms. Shikha Bhura
Applicant	:	Mr. Dushyant Dave
For the Respondent No. 1	:	Mr. Aashray Chaudhary, Advocate i/b Jatin Kumar
For the Respondent No. 2	:	Ms. Sejal Kanse, Advocate
For Bank of Baroda	:	Ms. Ananya Gadre, Advocate i/b S.N Fuladi



Per : **Coram**

ORDER

1. This application has been filed on 12.02.2024 by Mr. Dushyant C. Dave, the erstwhile Resolution Professional of Anand Distilleries Pvt. Ltd. (“Corporate Debtor”) on under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016, seeking following reliefs;
 - a. *It is therefore most respectfully prayed to this Hon’ble Tribunal that the Respondent No. 1 be directed to make necessary compliances and pay the remaining outstanding dues of the other creditors and the outstanding legal fees making a total outstanding due of Rs. 4,43,07,633/- plus pending CIRP costs as per actuals as shown in books of accounts as on 31/03/2019 as detailed in the para 13 of this application;*
 - b. *That the Respondent no 1 be asked to make the above outstanding including the payment of the interest at the rate of 12% on the outstanding for the period it remained unpaid on the same lines as the SRA paid the interest to the Respondent number 2.*
 - c. *That the Respondent no 1 be asked to report to the monitoring committee on the details of the payments made as per Hon’ble NCLT directions;*
 - d. *That the monitoring committee to submit report to Hon’ble NCLT on full implementation of the Resolution Plan;*
 - e. *Pass any such order(s) and/or directions in the interest of justice which this Hon’ble Tribunal deems appropriate.*

2. The Resolution Plan for the Corporate Debtor, submitted by Respondent No.1 Dera Finvest Private Limited, was approved by this Tribunal vide its order dated 08.04.2019, which records at para 20 thereof. that “*the supervision of the resolution plan is to be done by the monitoring*



committee consisting of the present RP, as head of the monitoring committee, and one nominee from Punjab National Bank.”. The Respondent No.2 & 3 i.e. Punjab National Bank & Bank of Baroda are erstwhile CoC members The Applicant has sought direction in relation to following amounts, stated to be unpaid in the present Application.

Sr. No.	Particulars	Amount in INR
1.	Outstanding dues of Bank of Baroda	49,65,578/-
2.	Outstanding CIRP costs	Actuals as per books of account
3.	Operational Creditors (Trade/Goods/Services)	9,17,083/-
4.	Operation Creditors (Employees and Workman's dues)	10,31,972/-
5.	Outstanding Legal fees	4,00,000/-
6.	Outstanding remuneration of Chairman of Monitoring Committee as approved by CoC as per invoice raised and given to the Corporate Debtor including GST of 18%	3,69,93,000/-
	Total	4,43,07,633 actual CIRP costs.



3. The amount outstanding to Bank of Baroda is stated to have since been paid. The Ld. Counsel for Bank of Baroda appeared and insisted that Bank of Baroda ought to be paid interest on delayed payment made by Respondent No.1, as has been done in case of another Financial Creditor i.e. Respondent No.2 Punjab National Bank. Since such demand made by Respondent No.3 Bank of Baroda is not part of this application, this Bench had directed the Ld. Counsel appearing for them to file appropriate application in this relation, if such application is otherwise permissible under the law.

4. In this case this Tribunal had passed an order dated 11.08.2023 in IA 1167 of 2021, filed on 28.5.2021 by Punjab National Bank in terms of Section 33(3) of Insolvency and Bankruptcy Code, 2016, directing liquidation of the Corporate Debtor after noting that the Respondent No.1 has paid Rs. 09.91 crores till the date of passing of that order out of total payment of Rs. 23.51 crores. This order dated 11.08.2021 was challenged by Respondent No.1 in appeal before Hon'ble NCLAT in Company Appeal (AT) (Ins.) No. 1118 of 2023. After recording the consent terms dated 18.12.2023 entered between Respondent No.1 & Respondent No.2, the Hon'ble NCLAT set aside the order dated 11.08.2021 vide its order dated 03.01.2024. The said consent terms record that Punjab National Bank is entitled to 96.30% of total amounts payable to Financial Creditor under the approved Resolution Plan and a sum of Rs. 19.25 crores shall be deposited with Respondent No.1 towards their final claim. Accordingly, Respondent No.2 didn't bother to ensure the settlement of other creditors in terms of approved Resolution Plan.



5. The approved Resolution Plan mandated payment to the Financial Creditors before 31.03.2019 or the four months from the effective date. Needless to say, CIRP cost, operation creditors and dissenting Financial Creditors were to be paid prior to payment to Financial Creditor.
6. It is case of the Applicant that he was engaged by the Corporate Debtor vide letter dated 22.04.2019 as member of the Monitoring Committee for the remuneration of Rs. 5.50 lakhs per month aggregating to Rs. Rs. 3,69,93,000/- and other sums outstanding to Creditors are still unpaid by Respondent No. 1 in terms of approved Resolution Plan. The Applicant has further submitted that the Corporate debtor has always acknowledged the pending payment of the fees of the monitoring committee chairman and has requested in past to reduce the fees to Rs.1,00,000/- (Rupees One Lakhs Only) per month which was not responded to by the Applicant as there were serious efforts being put in by the Monitoring committee to get the Resolution plan fully implemented. It is further submitted that the monitoring committee had many meetings both physical virtual and over the phone during the last four years, even during the Covid period, and the members are all aware about the happenings. There were many informal meetings as well over the phone and at the offices of PNB as the SRA had continuously delayed in payment of the dues as per the approved resolution plan. The committee had deliberated constantly on the legal hearings legal strategies to be decided and tackled with the constant demands from workmen and suppliers and other creditors for the outstanding dues unpaid by SRA. The SRA had even levelled baseless allegations against the CoC and the RP which had to be dealt with. Both



RP and PNB had spent a considerable time and costs in frivolous litigation raised by the SRA.

7. Respondent No. 1/Dera Finvest Private Limited has filed Reply stating that considering the high degree of callousness and nonchalance during the entire process, coupled with several acts of impropriety and misconduct, Respondent No. 1 has approached this Tribunal in terms of IA 3692 of 2019 *inter alia* seeking removal of the Applicant from the Monitoring Committee of the Corporate Debtor and custody of the claims forms as well as other relevant documents, however, this Application was disposed of as infructuous on 16.10.2023, in view of the order dt. 11.08.2023, passed by this Tribunal ordering Liquidation of the Corporate Debtor on an Application of Punjab National Bank. Respondent No. 1 has further disputed the maintainability and locus to file this Application and stated that this Application is not maintainable on the ground of non-joinder of the Corporate Debtor, which is a necessary party. It is further stated in the Reply that the sole agenda of calling the Monitoring Committee's meeting was to recover his own illegal fees. Notwithstanding, the Respondents challenge to the Effective Date, it paid of all Financial Creditors and almost all the Operational Creditors, including the Statutory Authorities despite active non-cooperation on part of the Applicant. Further, the Applicant provided claim forms of the Creditors to the Respondent No. 2 and refused to provide the same to the Respondent No. 1. It is from the Respondent No. 2 that the Respondent could obtain the claim forms and settle the claims of other Creditors. It is further stated that as far as CIRP cost goes, it is and was an incumbent upon the Resolution Professional to demonstrate the quantum of the CIRP



cost payable along with the supporting documents which he had failed to provide. It is also submitted that *“even on merits, the Applicant is not eligible for any remuneration as he has failed demonstrate any work, tasks, or assignments that he allegedly undertook in the relevant period. It is submitted that he is not entitled to remuneration only for holding the designation of ‘Chairman of the Monitoring Committee’. The principle of ‘no work no pay’ is strictly applicable to case at hand, in terms of which an employee or a worker would be disentitled from seeking hi remuneration even though he reports to his workplace but does not undertake his designated tasks. Even otherwise, the SRA Hs pleaded a formidable case in IA 3692/2019, wherein it has been shown through various documents as to how the SRA has lost confidence in the Applicant/RP on account of his actions omissions, negligence and serious misconduct. As a matter of fact, the RP, to the best of Respondent’s knowledge, has been reprimanded by IBBI on two separate occasions, for not acting in consonance with the provisions of the Code and Regulations made thereunder. This only consolidate the case being pleaded by the Respondent.”* The Respondent has finally submitted that it cannot be made liable to pay any amount beyond of offered amount of Rs. 23,26,73,526/- under the approved Resolution Plan.

8. Respondent No. 2/Punjab National Bank has filed the Reply stating that (a) the remuneration for the Chairman of Monitoring Committee was neither fixed by the Committee of Creditors nor provided in the Resolution Plan and the remuneration ought to be fair, reasonable and consistent with the work done by the Applicant. (b) the claim of the Applicant for sum of Rs. 3,69,93,000/- towards the outstanding



remuneration as the Chairman of Monitoring Committee and Rs. 4,00,000/- towards the outstanding legal fees is exorbitant and without any basis. (c) Notwithstanding, the Applicant has been lax in exercising his duties as the Chairman of Monitoring Committee. As the Chairman he was expected to intimate this Tribunal regarding the default by the Resolution Applicant and further to file necessary application for liquidation. Whereas the Applicant failed to discharge his duties, forcing this Respondent No. 2 to file necessary Application to apprise the Tribunal regarding the default by the Resolution Applicant and for Liquidation. The Applicant further failed to monitor the running of the Corporate Debtor by the Resolution Applicant.

9. Respondent No.3/Bank of Baroda appeared and informed that they have since been paid the amount against their claim in terms of the approved Resolution Plan, however, they ought to be paid the interest on delayed payment made by the Respondent No. 1 on equitable ground as the Respondent No. 1 has paid interest on delayed payment on the Respondent No. 2 as well in terms of Consent Terms with them.
10. Heard the Ld. Counsel for Parties and perused the material on record.
11. At the outset it is stated that the amounts due to the Respondent No. 3/Bank of Baroda has since been paid and Bank of Baroda has issued “No Dues Certificate” dt. 02.08.2024, certifying that Bank has received the shares as per the Resolution Plan. As regards their demand for interest on equitable ground, this request cannot be decided in this Application as this Application pertains to directions for payment of some money



payable in terms of the Resolution Plan and some other costs payable to the Applicant for the post approval period.

12. The Applicant has sought directions in relation to the unpaid CIRP costs, payments to some of the Operational Creditors (for goods and services), Operational Creditors (workmen and employees), his fees as Monitoring Committee Chairman and the fees of Lawyers engaged in relation to Litigation after approval of the Plan. The Respondent No. 1 has placed on record a statement demonstrating the Party wise payment made to each person, which demonstrates that all amounts have been paid except some amounts. Remaining payable on account of non-encashments of cheques by other Financial Creditors aggregating Rs. 1,17,128/- and Operational Creditors aggregating to Rs. 11,53,904/-. Further, a sum of Rs. 5,22,272 remains payable to workmen and employees due to details of their Banks or their address not available to the Respondent No. 1. In view of this, we are of the considered view that no further amount can be claimed from the Respondent No. 1 or the Corporate Debtor. Nonetheless, the amount still not claimed shall be deposited and kept in Separate Account and shall not be utilised by the Corporate Debtor for any purpose without leave of this Tribunal.
13. As regards Applicant's claim for CIRP cost, it is the case of the Respondent No. 1 that the details of CIRP cost remaining unpaid was not made available. It is also not apparent from the records before us whether the amount payable to each of Parties stated to be forming part of CIRP costs were approved by the CoC. Nonetheless, we are unable to understand how could the CIRP cost be stated as payable while such cost was to be defrayed first from the resolution money before making any



payment to the Financial Creditor, who were paid at first instance on 26.04.2019 and 07.05.2019, and the Applicant/Resolution professional remained silent on such payment in priority to the Financial Creditor. It is also intriguing that the Applicant even didn't bother to approach this Tribunal on this blatant contravention of the approved Resolution Plan. We further note that the Stakeholders were to be paid before 31.03.2019 or the four months from the effective date; the Plan was approved on 08.04.2019, accordingly, the due date for payment to all Stakeholders was not later than 08.08.2019; and the Respondent No. 2 filed an Application for the Liquidation of the Corporate Debtor on 28.05.2021. In other words, the Applicant herein, claiming to be the Chairman of the Monitoring Committee responsible for implementation of the Resolution Plan, remained mute spectator for all those Two Years. It is also pertinent to note that the Respondent No. 2 had filed an Application for removal of the Applicant as Chairman on 23.07.2019 i.e. prior to the expiry of Four Months from the date of approval of the Resolution Plan, which in itself indicates the distrust of the Financial Creditor in relation to the conduct of the Applicant. It is also noteworthy that the Applicant has himself claimed that he came to know about the settlement between the Respondent No. 1 and 2 on 17.01.2024 about filing of the Consent Terms and was not aware of the proceedings going before the Hon'ble NCLAT in relation to the appeal of the Respondent No. 1 against the Order of Liquidation. This clearly indicates that the Applicant had not carried out any act as Chairman after 28.05.2021, till that date, even if it is assumed that he had provided any service, except holding meetings, or shouldered any responsibility in relation to the implementation of the Plan.



14. Nonetheless, as regard claim of Post CIRP fees and expenses, the approved Resolution Plan has not stated any amount which shall be payable to the Applicant and the said Plan only provides the composition of the Monitoring Committee. It is undisputed fact that the Applicant was engaged as Chairman, in terms of letter dt. 22.04.2019 by the Corporate Debtor accordingly, any amount, if any payable, can be claimed from the Corporate Debtor and not as part of or in terms of approved Resolution Plan. The Resolution Process comes to an end on approval of the Resolution Plan by this Tribunal and the implementation of such approved Resolution Plan cannot said to have extended the Resolution Process Period. It is relevant to note that the provisions of the Code contemplate settlement of creditors dues as on Insolvency Commencement date as well as Insolvency Resolution process costs and does not deal with the settlement of claims of creditors accruing after the approval of Resolution Plan in relation to services rendered after such approval.
15. The powers vested in this Tribunal in terms of Section 60(5)(c) of the Code are residuary powers and can be exercised in relation to the provisions of the Code itself and not beyond that. Further, the dispute pertaining to claims arising from services performed after approval of Resolution Plan cannot be said to be arising from the Insolvency of a Corporate Debtor. The provisions of section 60(5)(c) of the Code are also to be understood in the context of Section 14(1)(a) of the Code which prohibits institution of suits or continuation of pending suits or proceedings against the corporate debtor after declaration of moratorium upon commencement of Corporate Insolvency Resolution Process.



Accordingly, the civil claims arising out of insolvency, on account of prohibition on institution of suits against the Corporate Debtor, can be entertained by this Tribunal, however, after cessation of the moratorium, this Tribunal cannot exercise its power to entertain civil disputes.

16. In view of the foregoing, this Tribunal can not issue any directions to the Respondent No. 1 in relation to the fees of Applicant and legal professional's fees, having been engaged as Chairman of Monitoring Committee during the implementation period.
17. As regards unpaid CIRP costs, the Applicant shall provide complete details to the Respondent No. 1 along with approval of the CoC in relation to those expenses and relevant evidences substantiating the incurrence of such costs, as such costs are payable on actuals under the approved Resolution Plan. The Respondent No. 1 upon receipt of these information shall make Payment to the respective Parties within 15 days without any further delay.
18. Before we part away, we consider it appropriate to draw attention of IBA and IBBI Chairman to the conduct of the Financial Creditors i.e. Punjab National Bank and Bank of Baroda, in accepting the payment prior to payment towards CIRP costs and to the Operational Creditors as is mandatory under the Code. It is also pertinent to note the conduct of Punjab National Bank, holding about 96% vote share, in entering into consent terms with the Successful Resolution Applicant, settling its own claim and leaving the other Financial Creditor Bank of Baroda and other Stakeholders to their own fate. The erstwhile Resolution Professional has stated that he was not a party before the Hon'ble NCLAT, meaning



thereby the finding recorded by the Hon'ble NCLAT that the Plan stands fully implemented might have come on the basis of submissions of the Punjab National Bank only. Considering all the facts of this case, we are of the considered view that the Financial Creditors ought to have acted as a custodian of the process beyond their individual interest. Registry is directed to send a copy of this Order to the Chairman of IBBI and IBA, for their information.

19. In view of the above, **IA 3178 of 2024** is disposed of in terms of direction at para 12 and 17 of the Order.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

V.G. Bisht
Member (Judicial)