

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IA No. IA/06/2019**

**Connected with IB-302/(ND)/2017**

Section: Under Rule 11 of the National Company Law Tribunal Rules,  
2016.

**In the matter of:**

**PUNJAB NATIONAL BANK**

***...Financial Creditor***

*versus*

**CARNATION AUTO INDIA PVT. LTD.**

***...Corporate Debtor***

**In the matter of:**

**K.G. SOMANI & CO.**

Registered Office:  
3/15, Asaf Ali Road,  
New Delhi- 110002

***...Applicant***

**VERSUS**

**ARVIND GARG**

Liquidator of Carnation Auto India Pvt. Ltd.  
302-A, Pal Mohan Plaza, Karol Bagh,  
D.B. Gupta Road, New Delhi- 110005

***...Respondent***



**Coram:**

**SH. P.S.N. PRASAD Hon'ble Member (Judicial)**

**DR. V.K. SUBBURAJ, Hon'ble Member (Technical)**

Counsel for Applicant: Mr. Pawan Sharma and Arpita Yadav,  
Advocates  
Counsel for Respondent, Ms. Heerika Shukla, Advocate

**ORDER**

**Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)**

**Date: 09.02.2021**

1. This is an application filed by the Applicant K.G. Somani & Co. appointed as Forensic Auditor of Carnation Auto India Pvt. Ltd., seeking to direct Respondent Mr. Arvind Garg, appointed as Liquidator for the Carnation Auto India Pvt. Ltd., to admit and pay Rs. 5,31,000/- arising out of invoice dated 09.01.2018. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the applicant was engaged for conducting Forensic Audit of the books of accounts of M/s Carnation Auto

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India Pvt. Ltd. by the Punjab National Bank for the period of six years vide letter dated 18.07.2017.

- ii.* The applicant further submits that during the course of the audit the company was admitted to Corporate Insolvency Resolution Process by an order passed by the Hon'ble NCLT dated 25.09.2017.
- iii.* That a fee of Rs. 3,00,000/- was negotiated by the Punjab National Bank, on behalf of the then IRP Mr. Mukesh Mohan with the applicant for conducting the audit under the provision of Insolvency and Bankruptcy Code, 2016, the applicant further submits that the same was also communicated to the then IRP vide Email dated 08.12.2017.
- iv.* The applicant further submits that he remained aligned with the then IRP/RP and thereafter the Respondent since the respondent took over the position of RP and eventually as of Liquidator, since the Corporate Debtor went into Liquidation on dated 01.08.2018.

- v.* The applicant states that the Forensic Audit Report dated 03.01.2018 was duly tendered and since the exercise entrusted to the applicant being concluded an invoice of Rs.5,31,000/- was raised to the then RP on dated 09.01.2018.
- vi.* The applicant submits that several meetings with the Respondent and the member of COC to provide necessary clarifications as and when required were attended by the applicant. The applicant further submits that the Respondent vide email dated 05.10.2018 responded to the email of the applicant, wherein it was acknowledged that the Forensic Audit report being part of the CIRP even after initiation of Liquidation process on 01.08.2018.
- vii.* The applicant states that the Invoice of the applicant falls within the part and parcel of the CIRP expenses of the Corporate Debtor and further mentions that the applicant services though initiated before the commencement of CIRP but remained continued after the commencement of



CIRP and the same was never disputed by the then IRP, RP, COC.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions are made:

- i. The Respondent submits that the application is not maintainable under Rule 11 of National Company Law Tribunal Rules, 2016 and is liable to be dismissed.
- ii. The Respondent stated in his reply that the application is in contravention of Rule 20(3) of NCLT Rules as the Respondent alleges that the application has not been serially numbered hence, it is not in conformity with the requirements of Rule 20(3) of NCLT Rules.
- iii. The Respondent further submits that the Circular No. IBBI/IP/013/2018 issued by IBBI on 12<sup>th</sup> June, 2018 clarifies:

*7. The Code read with regulations made thereunder specify what is included in the insolvency resolution process cost (IRPC). The IP is directed to ensure that: -*

*(a) no fee or expense other than what is permitted under the Code read with regulations made thereunder is included in the IRPC;*  
*(b) no fee or expense other than the IRPC incurred by the IP is borne by the corporate debtor;*

*8. It is clarified that the IRPC shall not include:*

*(c) any fee or other expense incurred before the commencement of CIRP or to be incurred after the completion of the CIRP;*  
*(d) any expense incurred by a creditor, claimant, resolution applicant, promoter or member of the Board of Directors of the corporate debtor in relation to the CIRP;*  
*(f) any expense incurred by a member of CoC or a professional engaged by the CoC;*

iv. The Respondent in its reply submitted that the applicant raised an invoice on the then Resolution Professional Mr. Mukesh Mohan for being appointed by the Punjab National Bank as the Forensic Auditor vide Letter dated 18.07.2017. whereas, the IBBI Disciplinary Committee passes an order against the erstwhile Resolution Professional of the Corporate Debtor stating that:

*"4.1 In view of the above, the Disciplinary Committee, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulations (7) and (8) of regulation 11 of the 1881 (Insolvency Professionals) Regulations, 2016 and regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, hereby*

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*cancel the registration of Mr. Mukesh Mohan as Insolvency Professional, having Registration No. IBBI/IPA-001/1P-P00018/2016-2017/10042 and debar him from seeking fresh registration as an insolvency professional or providing any services under the Insolvency and Bankruptcy Code, 2016 for ten years."*

- v. The Respondent further submitted that in an order passed in the matter of Mr. Mahender Kumar Khandelwal, Insolvency Professional (IP) under Regulation II of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 read with Section 220 of the Insolvency and Bankruptcy Code, 2016 on November 14, 2019, Disciplinary Committee of Insolvency and Bankruptcy Board of India (hereinafter referred to as 'IBBI') imposed a monetary penalty of Rs. 29,24,167/- (Twenty-nine Lakh Twenty-four Thousand One Hundred and Sixty-seven only) on the aforementioned IP and directed him to make good the loss by securing reimbursement and also directed him to produce evidence to IBBI of deposit of Its. 12,09,90,189- (Twelve Crores Nine Lakh Ninety Thousand One Hundred

Eighty-five only) in the account of Bhushan Power and Steel Limited. In the order No. 11381/DC/15/2019-20 Disciplinary Committee of IB131 has observed;

*It is incidental that the Board conducted an inspection and came across this unlawful loss to the CD. Otherwise, the RP and the members of the CoC would have succeeded in their design. In the process, they included a sum of Rs. 12,09,90,185/- (Twelve Crores Nine Lacs Ninety Thousand One Hundred and Eighty-Five only) in the IRPC causing loss of this amount to the CD, reached a conspiracy for an unlawful act and attempted to deprive stakeholders to the extent of Rs. 12,09.90,185• from resolution plan, in blatant disregard of the law. Thus, irrespective of the understanding between the parties, it is a fact that the CD has unduly suffered, the Creditors has been unduly benefitted and the RP has deliberately allowed such unlawful gain and loss (i.e., payment of Rs. 12,09,90,189- to legal counsel of CoC forming part of IRPC) in contravention of the provisions of the Code and Regulations.*

- vi. That the respondent in its reply specifically denied that expenses incurred on forensic audit activity assigned to the Applicant by the financial creditor, Punjab National Bank form part of Insolvency Resolution Process Cost within the purview of section 5(13) of IBC read with regulation 31 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate



Persons) Regulations, 2016 and Circular IBBI/IP  
(013/2018 issued by IBBI.

3. We have gone through the documents filed by both the applicant and Respondents and heard the arguments advanced by the counsels. The applicant prayed for the direction to be given to the Respondent to admit and pay Rs. 5,31,000/- arising out of invoice dated 09.01.2018 to the applicant along with the appropriate interest.
4. From the perusal of the Application and reply filed by the Respondents it is clear that the applicant was appointed as the Forensic Auditor by the Punjab National Bank vide dated 18.07.2017, whereas, the CIRP in the matter of Punjab National Bank vs. Carnation Auto India Pvt. Ltd was initiated vide Hon'ble NCLT order dated 25.09.2017.
5. That the work assigned to the applicant of Forensic Audit by the Financial Creditor, Punjab National Bank was prior to the initiation of CIRP, hence, could not be considered as forming

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part of Insolvency Resolution Process cost within the purview of Section 5(13) of IBC, 2016.

6. That the that the Circular No. IBBI/IP/013/2018 issued by IBBI on 12<sup>th</sup> June, 2018 further clarifies what is included in the Insolvency Resolution process Cost which can be read as under:

*7. The Code read with regulations made thereunder specify what is included in the insolvency resolution process cost (IRPC). The IP is directed to ensure that: -*

*(a) no fee or expense other than what is permitted under the Code read with regulations made thereunder is included in the IRPC;*

*(b) no fee or expense other than the IRPC incurred by the IP is borne by the corporate debtor; and*

*(c) only the IRPC, to the extent not paid during the CIRP from the internal sources of the Corporate Debtor, shall be met in the manner provided in section 30 or section 53, as the case may be.*

*8. It is clarified that the IRPC shall not include:*

*a) any fee or other expense not directly related to CIRP;*

*(b) any fee or other expense beyond the amount approved by CoC, where such approval is required;*

*(c) any fee or other expense incurred before the commencement of CIRP or to be incurred after the completion of the CIRP;*

*(d) any expense incurred by a creditor, claimant, resolution applicant, promoter or member of the Board of Directors of the corporate debtor in relation to the CIRP;*

7. Hence, the perusal of section 5(13) of IBC, 2016 and Circular

No. IBBI/IP/013/2018 issued by IBBI, it is clear that the

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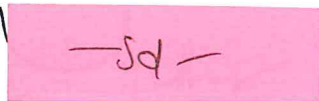
IA/06/2019

Connected with IB no. 302 (ND) of 2017

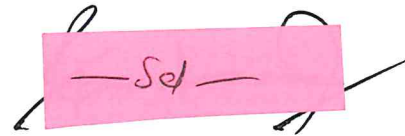
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Forensic Audit activity performed by the applicant is not within the purview of Insolvency Resolution Process Cost as the applicant was appointed prior to the initiation of CIRP by the Financial Creditor.

8. In light of the above, after giving careful consideration of the entire matter, appreciation of the documents placed on record to substantiate the claim and hearing the arguments of the parties, the present application is **Dismissed**.



**(Dr. V.K. SUBBURAJ)**  
**MEMBER (TECHNICAL)**



**(SH. P.S.N. PRASAD)**  
**MEMBER (JUDICIAL)**

RDS