

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH-V**

Item No.-202

IB-1937/ND/2019

IA/2488/2020

IA/3505/2020

IA/3506/2020

IA/3582/2020

IN THE MATTER OF:

Tek Travels Pvt.Ltd.

Vs

Shivantika Bon Voyage Pvt. Ltd.

....Applicant

....Respondent

SECTION

U/s 9 IBC Code 2016

Order delivered on 15.09.2020

CORAM:

**SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)**

**SHRI K.K. VOHRA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Mr. S.K Mathur & Mr. Brijesh Kumar, IRP

For Operationa Creditor : Mr. Rachit Kohli, Advocate

For the Corporate Debtor : Mr. Mohit Seth,Advocate

ORDER

Per Mr. Abni Ranjan Kumar Sinha (Member Judicial)

IA-2488/2020, IA-3506/2020, IA-3582/2020 & IA-3505/2020

1. Since, all the applications are related with each other, therefore, we would like to dispose off all the applications with this common order.

IA-2488/2020

2. The present application has been filed on behalf of the IRP praying therein to
(a) direct the Corporate Debtor (herein after CD) to forthwith comply with the order dated 12.06.2020 and remit Rs. 1,00,000/- to meet the immediate expenses of the

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CIRP, (b) terminate the CIRP Process of the CD (c) direct the CD to pay the professional fee of the IRP and other expenditure incurred by the applicant or pass any other order as it may deem fit and proper.

3. The facts mentioned in the application in short are that by filing the present application, the IRP prayed for termination of CIRP and the payment of CIRP cost till the date of such termination. Further, the CIRP was initiated on 12.06.2020, on the application filed by M/s Tek Travels Pvt. Ltd. under Section 9 of the IBC and the applicant was appointed as IRP and the OC was directed to deposit Rs. 1,00,000/- to meet the immediate expenses of the IRP. Further, the applicant was informed by the tribunal for his appointment through mail dated 15.06.2020 and thereafter, the IRP made a public announcement in Form A, asking Rs. 9979/- which was borne by the pocket of the applicant. Thereafter, from 16.06.2020 till 20.06.2020, the applicant has made several correspondences through mail with the OC as well as the suspended board of directors of the CD and requested the suspended board of directors to co-operate in conducting the CIRP. Further, during this period, the applicant has visited the office of the CD and till the date of filing the application, the applicant has not received any claim from anyone. Further, various email communication on the record establishes that OC had no interest in the resolution in the insolvency of the CD but merely abuse the process of the Adjudicating Authority to create pressure on the CD to settle the dues. Further, as per the limited information available, it appears that CD has no assets available to carry out the exercise of resolution of insolvency and only Rs. 10,220.68/- is available in the bank account of the CD. Further, due to non-compliance, this Adjudicating Authority as well as Hyd. Bench of the NCLT had terminated the CIRP and so, the petitioner prayed for the termination of the CIRP and also claimed the amount, which he has spent i.e. Rs. 16,379/ and Rs. 50,000/- towards the filing of this application and also claimed Rs. 2 lakhs for his fee.

IA-3582/2020

4. The present application is also filed by the IRP under Section 12 (A) read with regulation 30 (A) of the IBBI (Insolvency Resolution Process for Corporate Persons) praying therein to permit to withdraw the CIRP proceedings initiated vide order dated 12.06.2020. The facts mentioned in the application in short are that the Operational Creditor (hereinafter OC) has filed Form FA, which is at page 29 of the application

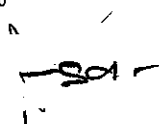
praying for the withdrawal of the CIRP initiated vide order dated 12.06.2020 in terms of the settlement arrived in between the parties and accordingly, the present application has been filed for withdrawal of the CIRP. He has also enclosed the settlement agreement, which is at page 24 of the application. Further, the OC has filed its claim, which was admitted by the applicant on 20.08.2020 and accordingly, on 20.08.2020, the CoC was constituted and in the meantime, the Suspended Board of Directors of the CD has entered into the settlement and the applicant has already filed an IA bearing no. IA-2488/2020, which is pending for disposal. Further, the applicant has discharged his duties as IRP for two and half months and claimed total expenses Rs. 65,879/- (legal expenses @ Rs. 50,000/-, Stationary @ Rs. 500/-, Out of Pocket expenses @ Rs. 5,000/-, Publication expenses @ Rs. 9,979/- & RoC filing of Form 28 charge @ Rs. 400/-) and also proposed his fee @ Rs. 2 Lakhs per month. Further M/s Tek Travels Pvt. Ltd. is the sole creditor having 100 per cent voting right in the CoC. Further, no bank guarantee is annexed and applicant is in possession of Rs. 34,121/- as CIRP expenses out of Rs. 1,00,000/- deposited vide order dated 12.06.2020.

IA-3505/2020

5. This application has been filed on behalf of the CD under Rule 11 of the NCLT Rules to bring on record the settlement agreement. The facts mentioned in the application in short are that on 19.08.2020, the CD had appeared before this Adjudicating Authority and sought adjournment for settlement of dispute with the OC. Further, on 25.08.2020, a settlement agreement was arrived in between the parties as the CD has paid Rs. 3,50,000/- to the OC in full and final settlement of the debt and in view of that settlement agreement, the CD prayed for termination of the CIRP and restore the board of directors of the CD and also directed the CD to inform the Bank, in which, the CD has its account so the same may be de-frozen in the timely manner.

IA-3506/2020

6. The present application has also been filed on behalf of the CD under Rule 11 of the NCLT Rules. The facts mentioned in the application in this application in short are that the matter has been settled between the parties and the CD has paid Rs. 3,50,000/- to the OC in full and final settlement of the debt and Rs. 1,00,000/- was



paid by the OC to the IRP on 11.06.2020. Further, the IRP had referred an application filed under Section 60 (5) of IBC and an expense of Rs. 9979/- has been incurred for making public announcement under Form A and the other amount towards the fee of the IRP and no proof of the same has been adduced, so the same cannot be entertained. Further, vide order dated 19.08.2020, this Adjudicating Authority had adjourned the matter to explore the possibility of settlement and the IRP by way of an email dated 20.08.2020, contrary to the order of this Adjudicating Authority passed on 19.08.2020 decided to schedule a meeting of the CoC of the CD. The said mail was sent by the IRP during the pendency of the application filed under Section 60 (5) of the IBC, it shows the conduct of the IRP, which is contrary to his statutory duties under IBC. The only member of the CoC was the OC. Further, the IRP also attached a notice and agenda of the first meeting of the CoC and at item no. 10 of the notice of agenda, the IRP proposed his fee of Rs. 2 lakhs per month and at item no. 16 of the agenda claimed expenses incurred @ Rs. 61,400/- and the out of pocket expenses @ Rs. 5,000/- only. Further, the Hon'ble NCLAT in Vivek Bansal Vs. Gurda Drug India Pvt. Ltd. & Anr. in Company Appeal No. (AT) Insolvency No. 552/2020 discussed the fee of expenses of IRP and in view of that, the CD prayed for remitting of the amount to be paid to the IRP.

7. We have heard the Ld. Counsel for the OC, CD and IRP and perused the averments made in the applications filed on behalf of the IRP and CD and we find that by filing the first application bearing no. 2488/2020, the IRP placed reliance upon the two decisions of the NCLT Benches for termination of the CIRP on the ground that the OC has not complied the direction of the Adjudicating Authority, by which at the time of the admission, the Adjudicating Authority directed the OC to deposit the money to meet the immediate expenses incurred by the IRP and the other ground mentioned in the application is that there is no sufficient fund lying in the account of the CD for the purpose of CIRP because as per the averments made in the application only Rs. 10,220.68/- is lying in the bank account of CD. But during the pendency of this application and in course of hearing, the OC and the CD appeared and the OC vide order dated 05.08.2020 was directed to deposit Rs. 1,00,000/- by tomorrow, accordingly, the OC has paid the said amount on 11.08.2020 and settlement agreement was arrived between the parties. Therefore, the prayer made by the IRP in IA-2488/2020 for the termination of CIRP for non-compliance of the order dated

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12.06.2020 has become infructuous and on this ground, the CIRP initiated on 12.06.2020 is not liable to be terminated.

8. At this juncture, we would like to refer the arguments advanced on behalf of the IRP. In his arguments, he submitted that he has received an amount of Rs. 1,00,000/- on 11.08.2020, which was directed vide order dated 12.06.2020 and he also admitted that the application, which is listed as IA-2488/2020 was filed only on the ground that the amount of Rs. 1,00,000/- in pursuance of order dated 12.06.2020 was not deposited by the OC and that is the reason that application was filed for a direction to the OC to make the payment or terminate the CIRP and also for the expenses incurred of Rs. 65,879/-.

9. In the light of the submissions made above, when we have gone through the prayer made in the application, which is numbered as IA-2488/2020, we find that prayers a & b are related with each other and since the amount has already been paid, therefore, on this ground the CIRP cannot be terminated, hence it is needless to consider the decisions upon which the IRP has placed reliance. So far the fixation of fee and the expenses claimed in prayer (C) is concerned, a similar prayer has been made by the IRP in application IA-3582/2020 under Section 12 A of IBC, therefore, we shall consider these prayer of the IRP, while considering the application filed under Section 12 A, which is numbered as IA-3582/2020. For the reasons discussed above, the IA-3424/2020 dismissed because the OC has already complied with the directions of the Bench.

IA-3582/2020

10. We have heard the Ld. Counsel for the IRP and the RP who appeared in person. Ld. Counsel for the IRP submitted that the IRP has received the Form FA and soon thereafter he filed this application for withdrawal of the company petition bearing no. 1937/ND/2019 in terms of the settlement arrived between the parties.

11. He further submitted that since no meeting of CoC was held, therefore the fee of the IRP has not been paid and the expenses, which was incurred has not been ratified by the CoC. He further submitted in that case, the Adjudicating Authority is empowered to fix the fee and approve the expenses. He further submitted that the Operational Creditor may be directed to pay the said amount, who is the sole member of the CoC.

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12. On the other hand, Ld. Counsel appearing for the Corporate Debtor submitted that during the pendency of main application, which is numbered as IA-2488/2020, the case was adjourned to explore the possibility of the settlement in between the Operational Creditor and the Corporate Debtor and accordingly, the matter was settled in between the Operational Creditor and the Corporate Debtor but during the pendency of the application, the IRP knowing fully, the facts that the case is adjourned for settlement, even then he constituted the CoC and also fixed date for meeting of the CoC. Thereafter, this Adjudicating Authority passed an order and restrained the IRP to conduct the meeting of CoC. He further submitted that prior to the filing of application by the IRP, the Corporate Debtor has also filed an application under Rule 11 of the NCLT Rules for termination of the CIRP, in terms of the settlement arrived in between the parties and again a fresh application has been filed under Rule 11 of the NCLT Rules, Which is numbered as IA- 3506 of 2020 for reduction of the amount paid to the Interim Resolution Process. He further submitted that the principal debt of Rs. 2,00,000/- and the Operational Creditor has deposited Rs. 1,00,000/- towards that to the immediate expenses of the IRP. He further submitted the conduct of the IRP is not in terms of the IBC because the matter was pending for settlement and the termination of the CIRP application was filed by the IRP, which is pending for hearing and the IRP constitute the CoC and prepare an Agenda, which relates to the fee of IRP which is Rs. 2,00,000/- per month and the expenses which is Rs. 63000/. He further submitted that no document has been filed in support of that.
13. Ld. Counsel appearing for the Operational Creditor submitted that the amount has already been paid to the IRP and the IRP without filing a document in support of the expenses, he claim the amount of Rs. 63,000/- towards the expenses, which is not liable to be admitted. He further submitted that the fee proposed by IRP in the Agenda is Rs. 2,00,000/- which is also not liable to be accepted because no work has been conducted by the IRP and soon after his appointment, he filed an application for termination of the CIRP.
14. Now, in the light of the contention raised on behalf of the parties, we would like to consider the averments made in the application filed on behalf of the IRP, so far the prayer of IRP to withdraw the company petition no. IB- 1937/ND/2019 and termination of the CIRP proceeding initiated vide order dated 12.06.2020 is

concerned, we have gone through the Form FA, which is at page 29 of the application and we find, the Form FA is duly signed by the OC and it is mentioned in the application that we hereby withdraw the aforesaid application bearing no. IB-1937/ND/2019 filed under Section 9 of the IBC and it is also mentioned that the estimated expenses incurred by the Interim Resolution Professional has been paid in advance by way of Cheque no. 109984 dated 06.08.2020 withdrawn at ICICI Bank.

15. We further find that the settlement agreement is also enclosed by the IRP, which is at page 24 of the application, numbered as IA-3582 of 2020. It is admitted fact that Rs. 1,00,000/- has been deposited by the OC and same has been received by the IRP. The IRP in its application in Para 13 mentioned that out of Rs. 1,00,000/- which is deposited by the OC only Rs. 34,121/- is in his possession, which shows that he has deducted the amount of Rs. 65,879/- towards the expenses. We shall consider the expenses referred by the IRP in Para 10 of the application later on but since in terms of settlement, the Form FA is submitted by the OC and the IRP seeks permission for withdrawal under Section 12A. Therefore, we think it proper to pass an order under Section 12A Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons). As per Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons), when we shall consider the application then we find during the pendency of the withdrawal application filed by the IRP, the case was adjourned to explore the possibility to settle the matter between the OC and the CD but during the pendency of that application, the IRP constitute the CoC in which the OC was the sole member of the CoC. When this fact has come to the notice of this Adjudicating Authority then vide order dated 26/08/2020 restrained the IRP to conduct the meeting of the CoC and then a settlement was arrived in between the parties and the Form FA was submitted by the OC, who is the sole member of the CoC. So, under such circumstances, we think it proper to approve the application submitted by the IRP and accordingly, we approve the application submitted by the IRP, the Company Petition No. IB- 1937/ND/2019 is dismissed as withdrawn and order dated 12.06.2020 is hereby set aside. The CIRP is terminated and the CD is released from the CIRP.

16. Now coming to the fee of the IRP Regulation 33 of the IBBI (Insolvency Resolution Process for Corporate Persons) dealt with cost of the Interim Resolution Professional. Regulation 33(2) says that the Adjudicating Authority shall fix the

expenses, where the applicant has not fixed the expenses under sub regulation 1 and the explanation attached with the Regulation 33 says for the purpose of this Regulation, expenses include the fee to be paid to the Interim Resolution Professional, fee to be paid Insolvency professional entity, if any and fee to be paid to the professional, if any and other expenses to be incurred by the Interim Resolution Professional. Admittedly, the applicant has not fixed the fee of the IRP even the expenses has not ratified by the CoC because no meeting of the CoC was held and before the meeting of the CoC, the present application has been filed by the IRP.

17. We further noticed in para 10, the IRP has mentioned the expenses, which was incurred during the CIRP :- (I) Stationary @ Rs. 500/-

(ii) Paper Publication @ Rs. 9,979/-

(iii) RoC filing of Form 28 Charges @ Rs. 400/-

and out of pocket expenses by IRP @ Rs. 5,000/-, the total amount is Rs. 15,879/- and apart from this, he claimed the Advocate fee @ Rs. 50,000/-. We further noticed he claim his remuneration @ Rs. 20,0000/- per month. So far the expenses are concerned i.e. Rs. 16,879/-, we think it proper to approve this amount. So far the expenses which the IRP claim towards the Advocate fee is concerned, we allow a lump-sum amount of Rs. 20,000/- towards the Advocate's fee, so far the remuneration the IRP is concerned, recently in IA-3083/2020 in Company Petition No. IB-2371/ND/2019, we approved the fee of IRP Rs. 50,000/- per month. Considering this fact, we think it proper to fix the fee of IRP Rs. 50,000 per month and since the order was passed on 12.06.2020, the IRP in his first application, which is numbered as IA-2488/2020 mentioned this fact that he received the order on 15.06.2020 and thereafter he referred some dates that is 16.06.2020, 17.06.2020, 18.06.2020, 19.06.2020 and 20.06.2020, on these dates, according to the IRP, he has performed some work. It further appears that thereafter, the IRP filed an application, which is numbered as IA-2488/2020 on 26.06.2020, which shows that after 26.06.2020, the IRP has not performed any work rather he has filed an application for withdrawal. Of course thereafter, he constituted the CoC after receiving the claim on 20.08.2020 and he received the claim on 14.08.2020, therefore, we think it proper to allow the fee of two months only to the IRP. Accordingly, we hereby approve Rs. 1,00,000/- @ Rs.

50,000/- per month towards the fee of the IRP, the total amount is Rs. 1,35,879/-, i.e Rs. 1,00,000/- for 2 months @ Rs. 50,000/- per month towards fee of IRP and Rs. 35,879/- towards the expenses including Advocate fee.

18. Since Rs. 1,00,000/- has already been paid by the OC, therefore, we direct the OC to deposit Rs. 35,879/-, within 2 weeks from the date of passing of this order. In the meantime, the account of the CD, which was freezed, during the pendency of the CIRP remains freezed and that will be de-freezed only after the amount of Rs. 35,879/- will be paid to the IRP.

With this order the IA-3582/2020 stands disposed off.

IA-3505 of 2020

19. In view of the order passed in IA-3582/2020, this IA stands disposed off.

IA-3506 of 2020

20. In view of the order passed in IA-3582/2020, this IA is also stands disposed off.


(K.K. VOHRA)
MEMBER (T)


(ABNI RANJAN KUMAR SINHA)
MEMBER (J)