

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**IA No.953/2020
In
CP (IB) No.121/Chd/Hry/2017
(admitted)**

**Under Section 60(5) of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

Brij Lal Ashok Kumar

....Petitioner-Operational Creditor

Versus

Tara Chand Rice Mills Pvt. Ltd.

....Respondent-Corporate Debtor

In the matter of IA No. 953/2020

Mr. Sameer Rastogi
erstwhile Resolution Professional
Tara Chand Rice Mills Private Limited
registered office at
F-116, Lajpat Nagar-I, New Delhi-110024

....Applicant

Versus

Mr. Rakesh Ahuja
Liquidator of M/s. Tara Chand Rice Mills Private limited
registered office at
2238, Sector 18, Huda, Panipat, Haryana-132103

....Respondent

Order delivered on: 14.10.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through video-conferencing in IA No. 953/2020:

For the Applicant : Mr. Dhruvajit Saikia, Advocate
For the Respondent : Mr. Pulkit Goyal, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No. 953/2020

The present application is filed by erstwhile Resolution Professional of corporate debtor i.e. Mr. Sameer Rastogi seeking direction against the Liquidator to pay the fees of erstwhile Resolution Professional (for the period of 21.12.2018 to 12.02.2019) amounting to Rs. 5,77,102/- as a part of Insolvency Resolution Process under Section 5(13) read with Section 23(1) of Insolvency and Bankruptcy Code, 2016 and further direction to Liquidator to pay the above said amount to erstwhile Resolution Professional before any other amount to be distributed as per Section 53 of the I & B Code, 2016 on priority basis.

2) The brief facts pertaining to the present application submitted by the applicant are as follows:

2.1 It is stated that this Adjudicating Authority appointed Mr. Sameer Rastogi as Interim Resolution Professional vide order dated 21.03.2018. Further, on 2nd CoC meeting dated 03.05.2018, in pursuance of Section 22(3)(a) of I & B Code, 2016, CoC had decided to appoint IRP Mr. Sameer Rastogi as Resolution Professional to conduct the CIRP and resolved to pay a professional fee of Rs.

4,00,000/- and other expenses. The relevant item 8 of the CoC meeting is extracted hereinbelow:

“FURTHER RESOLVED THAT during CIRP or any extension thereof, the professional fee of the Resolution Professional of Rs. 4.00 Lakhs per month plus applicable taxes, be and is hereby approved in the matter of Corporate Insolvency Resolution Process of Tara Chand Rice Mills Pvt. Ltd. and shall form a part of CIRP cost.

FURTHER RESOLVED THAT the fee paid to Resolution Professional shall be inclusive of Advocate’s fee for NCLT matters during CIRP and fee for Accounting Services of the Corporate Debtor during CIRP, however, any expenses incurred by Resolution Professional shall be reimbursed to Resolution Professional at actual”

2.2 It is submitted that in furtherance with the Resolution in 10th CoC meeting dated 20.11.2018 and 11th CoC meetings dated 04.12.2018, RP had filed the application under Section 33(1) of I & B Code, 2016 having CA No. 609/2018. The matter was first listed for hearing on 20.12.2018 and this Adjudicating Authority vide order dated 12.02.2019 had passed an order under Section 33 of the Code. The RP continued to manage the operation of corporate debtor upto the date of liquidation order i.e. 12.02.2019.

2.3 It is stated that RP had written to erstwhile CoC regarding the professional fee of RP on many occasions dated 21.02.2019, 06.03.2019, 18.07.2019 and also issued reminder to Liquidator against the unpaid CIRP cost through email on 12.12.2019 and 18.12.2019 and further on 23.12.2019.

3. The respondent-Liquidator has filed its reply vide Diary No. 01539/2 dated 29.11.2021, whereby, the brief facts are stated hereinbelow:

3.1 It is stated by the respondent-Liquidator that the present application is not maintainable on the ground that the applicant-erstwhile Resolution Professional did not make the members of CoC a party in the present application.

3.2 It is further submitted that the Liquidator had forwarded the request made by the applicant-erstwhile Resolution Professional for the release of unpaid due to the members of CoC, however, no response was given to that effect.

3.3 The respondent submitted that in the instant matter CIRP expired on 11.09.2018 and extension of 90 days also expired on 10.12.2018. Also, for the remaining period no fee was ratified by the CoC.

4. We have heard the submissions made by the learned counsels for the applicant and respondent-Liquidator.

In the case in hand, the issues for adjudication are (1)Whether the present application for the payment to the Resolution Professional for the period beyond what was expressly approved by the COC is maintainable;and (2)Who will decide the fees, if any, due to applicant- erstwhile Resolution Professional as the COC has not been made a party to the application.

5. To recapitulate in the present case the original CIRP concluded on 11.09.2018, was extended upto 10.12.2018. The CoC had approved the professional fees during the CIRP or any extension thereof, as inferred from above mentioned item no.8 of 2nd CoC meeting. The period from 11.12.2018 till the RP had managed the affairs of corporate debtor upto 12.02.2019, has been without any approval of the CoC, as raised by the respondent in its reply,

has been deliberated upon. Taking up the issue of the claim of fees of the RP, a reference is made to the provisions of Section 23(1) of the Code, extracted hereinbelow:

23. (1) Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.

Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority.

In the present case, in the absence of any order from this Adjudicating Authority appointing a liquidator, the applicant's continuation as a RP is not in contravention of any provisions of IBC. We draw support from the order of Hon'ble NCLAT on almost similar facts in the case of **CoC M/s. Smartec Build Systems Pvt. Ltd. Vs. B. Santosh Babu & Ors. [2020] ibclaw.in 10 NCLAT** held as follows

“Admittedly, Mr. B. Santosh Babu performed the duty of the ‘Interim Resolution Professional’ and constituted the ‘Committee of Creditors’ and thereafter, continued to function even beyond 30 days with designation of the ‘Interim Resolution Professional’ and as he moved an application for liquidation (though designated “continue as Interim Resolution Professional”), we agree with the observations made by the Adjudicating Authority that the ‘Committee of Creditors’ is to pay the fees and cost incurred by Mr. B. Santosh Babu, ‘Interim Resolution Professional’, who also acted during the resolution process beyond 30

days till the date of liquidation having not allowed to continue as Liquidator.”

Keeping in view the above, respondent's contention that no fees is payable for the extended period as the same was not ratified by the CoC is untenable.

6. we are aware of the decision by Hon'ble NCLAT in **CA Rita Gupta (Erstwhile RP in the matter of Shilpi Cable Technologies Ltd.) Vs. M/s. Shilpi Cable Technologies Ltd. Through its Liquidator Mr. Huzefa Fakhri Sitabkhan. (2022) ibclaw.in 549 NCLAT**, where the Hon'ble Tribunal considered the case of the RP who could not submit its claim before the CoC as the same was defunct after the initiation of liquidation, and held that;

.....in the meantime, the Company has gone to Liquidation, a 'Claim' cannot be preferred by the RP before the Liquidator. Keeping in view the factual matrix of the attendant case, we are of the view that the Adjudicating Authority is empowered under the provisions of Section 60(5) of the Code read with Regulation 33(2) of the CIRP Regulations to fix the fees payable to the Resolution Professional, as pursuant to it directions on 11.02.2019, there was no decision taken.

7. Keeping in view the above observation of the Hon'ble NCLAT and the fact that in the present case, company is already under liquidation, we direct the liquidator to disburse the professional fee of RP at the rate approved by CoC for the period from 21.12.2018 to 12.02.2019 i.e, upto the period ending with order of liquidation. The said amount be disbursed to erstwhile Resolution Professional before any other amount to be distributed as per Section 53 of

the I & B Code, 2016 as the said fees comes under the heading under section 5(13) i.e., insolvency resolution process cost.

8. In view of above, the present application is allowed and disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

October 14,2022

PB/ASH

Sd/-

(Harnam Singh Thakur)
Member (Judicial)