

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

**Item No.-4**  
IB-295/ND/2019  
IA/4359/2021

**IN THE MATTER OF:**

M/s. PVM Innovensys Pvt. Ltd.

**Vs.**

M/s. C-Tel Infosystems Pvt. Ltd.

**.....Respondent**

**....Applicant**

**SECTION**

U/s60(5) of IBC

**Order delivered on 27.04.2023**

**CORAM:**

**SHRI P.S.N PRASAD,  
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open Court vide separate sheets.  
IA/4359/2021in IB-295/ND/2019 **is partly allowed.**

Sd/-

**(RAHUL BHATNAGAR)  
MEMBER (T)**

Sd/-

**(P.S.N PRASAD)  
MEMBER (J)**

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

**IA NO. 4359 OF 2021  
IN  
CP IB NO. 295/ND/2019**

*An application under Section 60(5) of the Insolvency and Bankruptcy Code,  
2016 read with Rule 11 of National Company Law Tribunal Rules, 2016.*

**IN THE MATTER OF:**

**PVM INNOVENSYS PRIVATE LIMITED**

***...Petitioner***

VERSUS

**C-TEL INFOSYSTEMS PRIVATE LIMITED**

DSM361-362, DLF Tower, Shivaji Marg,

New Delhi-110015

E-mail: srinivas@ctel.in

***...Corporate Debtor***

**AND IN THE MATTER OF:**

**MR. SHYAM ARORA**

Insolvency Resolution Professional of the Corporate Debtor

96, Aravali Apartment, Alaknanda,

New Delhi-110019

E-mail: arora.shyaam@yahoo.com

***...Applicant***

VERSUS

**C-TEL INFOSYSTEMS PRIVATE LIMITED AND ORS.**

DSM361-362, DLF Tower, Shivaji Marg,

New Delhi-110015

E-mail: srinivas@ctel.in

***...Corporate Debtor***

**Coram:**

**Shri P.S.N. Prasad** : **Member (Judicial)**

**Shri Rahul Bhatnagar** : **Member (Technical)**

**Appearances (through Video Conferencing/ physical hearing)**

**For the Applicant** : Advocates Sharad Tyagi, K. Gayatri and  
Yukti Makan, Mr. Shyam Arora, IRP.

**For the Corporate Debtor** : Advocate, Akshay Kumar

**ORDER**

**PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

1. The present I.A. No. 4359 of 2021 is an application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 11 of NCLT Rules, 2016 filed by Mr. Shyam Arora ("**Applicant**"), who was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor i.e., C-Tel Infosystems Private Limited ("**Corporate Debtor**"), by this Adjudicating Authority vide order dated January 23, 2020 seeking following relief(s) :-

a) *Allow the present application and direct the Corporate Debtor to make the pending payment of Rs.18,67,500 (Rupees Eight Lacs Twelve Thousand Five Hundred) in favor of the IRP considering the order dated September 02, 2021, passed by Hon'ble National Company Law Appellate Tribunal in the matter of K. Srinivas Krishna v Shyam Arora & Ors. (Company Appeal (AT) No.221 of 2021).*

b) *Dismiss the IA No. 3874 of 2020 filed by the Operation Creditor / Respondent no. 3 and / or any other pending interim applications, as the same has become infructuous in view of the order dated September 02, 2021, passed by Hon'ble National Company Law Appellate Tribunal in the matter of K. Srinivas Krishna v Shyam Arora & Ors. (Company Appeal (AT) No.221 of 2021).*

c) *Pass such order or further order which this Hon'ble Adjudicating Authority may deem fit, proper, and just under the circumstances of the case.*

2. Briefly stated the facts of the present case as averred by the applicant are that the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of *K. Srinivas Krishna v. Shyam Arora & Ors.* [Company Appeal (AT) Ins No. 221 of 2021; order dated 02.09.2021] had released the Corporate Debtor from rigors of CIRP and remitted back the case before this Adjudicating Authority for deciding the fees and costs of CIRP payable to the IRP by the Corporate Debtor.
3. It is submitted that this Adjudicating Authority had initiated CIRP against the Corporate Debtor vide order dated January 23,2020 in the matter being CP IB No. 295 of 2019 titled as *PVM Innvensys Private Limited v. C-Tel Infosystems Private Limited*, to which Mr. Shyam Arora was appointed as an IRP. The CIRP initiated vide order dated January 23,2020 was set aside by the Hon'ble NCLAT in the matter of *K. Srinivas Krishna V. Shyam Arora & Ors.* (Company Appeal (AT) No. 221 of 2021) vide order dated September 02,2021. The Corporate Debtor was released from the rigors of CIRP and was allowed to function through its Board of Directors with immediate effect. The IRP was directed to hand over the files to the Board of Directors of the Corporate Debtor. Hence, the matter was remitted back before this Tribunal for the purpose of deciding the fee and costs of CIRP payable to IRP which shall be borne by the Corporate Debtor.
4. Further, the applicant submitted that partial consolidated fees of Rs. 9,40,000 (Nine Lacs Forty Thousand) and partial expenses worth Rs. 60,000 (Sixty Thousand) of the CoC were already ratified by the CoC in its very first meeting held on October 07,2020. The IRP also submitted that no amount in cash has been received by the Corporate Debtor. It is submitted that the Directors of the Corporate Debtor had levied various false allegations against the Applicant/IRP. However, the IRP continued to keep the Corporate Debtor

as a going concern all throughout the CIRP period starting from January 23,2020 till September 02, 2021 and also ensured that the payment of vendors and employees is made on time.

5. It is submitted that the Corporate Debtor had provided the bank guarantee up to Rs. 10,00,000/- which was not renewed by the Corporate Debtor despite several reminders by the applicant. The applicant left with no option had invoked the bank guarantee, however the applicant had not used the amount from the Bank Guarantee and the amount of Rs. 10,00,000/- encashed from the bank guarantee is submitted into a separate account of Axis Bank Limited being account number 921010031357402 at Kalka Ji Branch, New Delhi. Hence, the applicant is praying that the Corporate Debtor be directed to make a payment of balance amount of Rs. 9,32,750/-.
6. Per contra, the Corporate Debtor in its reply submitted that the applicant as the Resolution Professional has failed to conduct his duties and responsibilities during the CIRP process and no support was provided by the Resolution Professional in continuation of business. Further, the Resolution Professional has never visited the office of the Corporate Debtor except once.
7. Further, it is submitted that Hon'ble NCLAT vide order dated 27.05.2021 had stayed the matter until the date of extinguishment of the CIRP by the NCLAT vide its order dated 02.09.2021. Also, the Hon'ble NCLAT vide its order dated 03.02.2020 had stayed the constitution of COC until its subsequent order dated 25.09.2020. Thus, no cost/ expense should be payable to Resolution Professional for the aforementioned periods i.e., between 27.05.2021 to 02.09.2021 and 03.02.2020 to 25.09.2020
8. It is also submitted that the Corporate Debtor is an MSME and the amount of claim in this case was only Rs. 3.27 lakhs which has been paid by the Corporate Debtor whereas on account of CIRP cost a huge bill has been raised by the RP which is completely unjustified. In case the amount of claim of Resolution Professional is allowed by this Hon'ble NCLT, it will hamper the

business and working capital of the Corporate Debtor. Further, it is submitted that during the CIRP process, the Corporate Debtor had lost multiple business opportunities and the Covid -19 and the resultant lockdown had made it really difficult for the Corporate Debtor to survive in the market which also led to losses. Therefore, the Corporate Debtor humbly requests this Hon'ble NCLT to reject the claim of the Resolution Professional.

9. We have heard the submissions made by the learned counsel for the parties and also perused the records. This Adjudicating Authority vide order dated 28.09.2021 had directed the applicant to place on record the receipts and bills to support the expenditure and cost of CIRP as claimed by the applicant. The applicant in compliance of the order dated 28.09.2021 had filed an affidavit dated 20.10.2021 for placing on record the list of expenses incurred and pending payment along with the proof of expenses incurred. It is pertinent to mention that on the basis of said affidavit, this Hon'ble Tribunal vide its order dated December 08,2021 referred the matter to the Insolvency and Bankruptcy Board of India (IBBI) for a report on amount sought by the applicant.
10. The IBBI in its report dated April 17, 2022 had submitted the report of the Expert Committee constituted to examine and submit a report on the issue and fixation of the fee of the IP namely Mr. Shyam Arora acted as the IRP in the matter of M/s. C-Tel Infosystems Private Limited. The expert Committee in para 13 of its report had concluded that, *"In view of the aforesaid, the Committee considers that the fees of Rs. 22,32,500 and expenses to the tune of Rs. 4,25,250 as claimed by the IP may be considered as reasonable."*
11. At this juncture, it is necessary to refer Regulation 33 of IBBI (Resolution Process for Corporate Person) Regulation, 2016 which provides that the fee of the Interim Resolution Professional shall fix by the Adjudicating Authority and the same has to be ratified by the CoC. Regulation 33 - Cost of the Interim Resolution Professional is reproduced below:

"(1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.

(2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).

(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

[Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional.]”

12. The tabular representation giving blow by blow details of the expenses incurred by the applicant along with the professional fees of the applicant and the amount already received from the Corporate Debtor is reproduced herein below:

4. A list of the fees and expenses incurred by the IRP, which was also been recommended by the IBBI is given below, for ease of reference: -

Sr. No.	Particulars	Amount (in Rs.)
1.	Expenses for public announcement (Form A):	40,950
	a. Financial Express Hyderabad 6,300	
	b. Suryaa Hyderabad and Suryaa Vijayawada 25,200	
	c. Financial Express and Jansatta, Delhi 9,450	
2.	Legal Fees of Mr. Vinod Kumar Chaurasia, Advocate	73,000
3.	Legal Fees of Mr. Joydip Bhattacharya	1,50,000
4.	Legal Fees of Mr. Sharad Tyagi, Fair & Just Legal Solutions LLP 95,000	1,50,000
	55,000	
5.	Professional Fees of IRP	22,32,500
	Approved by COC till 05.10.2020 9,40,000	
	Agreed by CD to pay 05.10.2020 onwards 12,92,500	
6.	Miscellaneous Expenses	11,300
<b>Total Expenses Incurred by IRP</b>		<b>26,57,750</b>
<b>Total Amount Paid to IRP</b>		
	On 22.03.2021 75,000	
	On 31.03.2021. 5,00,000	7,25,000

*Sharad Tyagi*

②

On 31.03.2021	1,50,000	
Balance Amount pending		19,32,750
Bank Guarantee		10,00,000
<b>Balance Amount pending now</b>		<b>9,32,750/-</b>

13. The Hon'ble NCLAT in case **Mritunjay Kumar Member of the Suspended Board of Director Unibera Developers (P.) Ltd. vs Propertree Real Estate Solutions (P.) Ltd. [2022] 137 taxmann.com 356 (NCL-AT)** dated 08.02.2022, Hon'ble NCLAT held that:

“8. When this Tribunal on 7-12-2021 has stayed the entire CIRP, there was no question of incurring any cost or claiming any fee after 7-12-2021. In view of the accepted fact that fee amounting to Rs. 2 Lakhs has already been paid to the IRP, that should suffice towards payment of fee. With regard to expenses till 7-12-2021, on submission of proper bills said bills shall be paid by the Corporate Debtor. IRP may submit the necessary bills to the Corporate Debtor for payment of necessary bills till 7-12-2021.”

14. Adverting to the factual matrix of the present case, the CIRP was initiated on 23.01.2020 and the CoC in its First CoC Meeting held on 07.10.2020 had resolved to withdraw the Section 9 application with 100% majority, however, the application for withdrawal of CIRP Proceedings was rejected by this Adjudicating Authority vide order dated 19.02.2021. The Hon'ble NCLAT vide order dated 27.05.2021 had stayed the CIRP of the Corporate Debtor and vide final order dated 19.02.2021 had allowed the withdrawal of the CIRP of the Corporate Debtor.
15. From the submissions of the applicant and as represented in the table presented above, it is observed that the CoC had approved the fees of the applicant till 05.10.2020. The applicant claims that the Corporate Debtor had promised to pay the professional fees of Rs. 12,92,000/- to applicant. From the timeline, it is clear that the Hon'ble NCLAT had stayed the CIRP proceedings vide order dated 27.05.2021. Further, the applicant had failed to provide the rationale for the professional fees of Rs.12,92,000/- charged after the CoC had resolved to withdraw the CIRP of the Corporate Debtor. This professional fees of Rs.12,92,000/- to the IRP, was for an effective period of 8 months and that too when the CoC had resolved to withdraw the CIRP proceedings and matter was sub-judiced before Adjudicating Authority. This Adjudicating Authority is of the considered view that the amount of Rs.

12,92,000/- as claimed by the Applicant towards his professional fees is not just and reasonable and shall not form the part of the CIRP cost.

16. Having regard to the conspectus of facts and the settled law, this Adjudicating Authority after considering the report of the Expert Committee as submitted by IBBI and the submissions, is of the considered view that and therefore the Corporate Debtor is only liable to indemnify the applicant up to a amount of Rs. 10,00,000/-which already received by the Applicant through invocation of Bank Guarantee.
17. Accordingly, **the I.A. No. 4359/2021 is partly allowed.**

Ordered accordingly.

**Sd/-**  
**Shri Rahul Bhatnagar**  
**Member (Technical)**

**Sd/-**  
**Shri P.S.N. Prasad**  
**Member (Judicial)**