



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT – VI

Item No. 1

I.A/4765/2020 IN IB-532/PB/2016

IN THE MATTER OF:

M/S. VARISCON ENGINEERING SERVICES PRIVATE LIMITED
...OPERATIONAL CREDITOR

VERSUS

M/S. PIER ONE CONSTRUCTION PRIVATE LIMITED
...CORPORATE DEBTOR

Order under Section 60(5), IBC,2016

Order delivered on 26.09.2023

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

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

ORDER

Order pronounced in open Court vide separate sheets.

I.A/4765/2020 in IB-532/PB/2016 stands disposed off.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI**

I.A/4765/2020 IN IB-532/PB/2016

Application under Section 60(5) of the IBC,2016.

IN THE MATTER OF:

M/S. VARISCON ENGINEERING SERVICES PRIVATE LIMITED
...OPERATIONAL CREDITOR

VERSUS

M/S. PIER ONE CONSTRUCTION PRIVATE LIMITED
...CORPORATE DEBTOR

AND IN THE MATTER OF:

MR. SANDEEP GOEL
LIQUIDATOR FOR M/S PIER ONE CONSTRUCTION
PRIVATE LIMITED

...APPLICANT

VERSUS

STANDARD CHARTERED BANK

...RESPONDENT NO. 1

ASSET RECONSTRUCTION COMPANY LIMITED

...RESPONDENT NO. 2



Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)

Counsel for the Applicant: Mr. Abhishek Anand, Advocate

Counsel for the Respondents: Mr. PBA Srinivasan, Advocate

Order Pronounced on: 26.09.2023

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application has been filed by the Applicant under Section 60(5), 52 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 31, 33, 34 & 44 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Rule 11 Of the National Company Law Tribunal Rules, 2016 praying for the following reliefs:

(a) Allow the present application; and



- (b) Extend the period of Liquidation Process in terms of Regulation 44 of the Liquidation Process Regulations, 2016 for a period of 6 months; and*
- (c) Issue appropriate directions to the Respondent No. 2 to hand over the security interest of the Corporate Debtor to the Liquidation Estate for completion of Liquidation Process; and*
- (d) Issue appropriate directions to the Respondent No.1 to defray Corporate Insolvency Resolution Process Costs as directed by this Hon'ble Adjudicating Authority vide order dated 04.07.2018;*
- (e) Pass such other further order / order(s) as may be deemed fit and proper in the facts and circumstances of the case.*

2. The brief facts as averred by the Applicant for filing the present Application are as follows:

- i. That this Adjudicating Authority vide order dated 21.11.2017 admitted the captioned petition i.e. C.P. (IB) No. 532(PB) of 2016 filed by Operational Creditor M/s. Variscon Engineering Services Private Limited under Section 9 of the Insolvency and



Bankruptcy Code, 2016 ("Code") seeking initiation of Corporate Insolvency Resolution Process against Corporate Debtor i.e. M/s Pier One Construction Private Limited and appointed the Applicant as Interim Resolution Professional.

- ii. That in terms of Section 18(1)(a) of the Code, the said Interim Resolution Professional (IRP) collated all claims submitted by the creditors pursuant to the public announcement and constituted a Committee of Creditors comprising of one Financial Creditor of the Corporate Debtor i.e. Standard Chartered Bank/ Respondent No. 1.
- iii. That the Respondent No. 1 being sole member of Committee of Creditors asked a quotation of fee from the Applicant to continue as a Resolution Professional for conducting Corporate Insolvency Resolution Process of the Corporate Debtor. The Applicant vide its email dated 04.01.2018 sent quotation of fee to the Respondent No.1 and offered his services for continuing as Resolution Professional at a fee of Rs. 2,00,000/- per month.
- iv. That first meeting of Committee of Creditors was convened on 10.01.2018 wherein, the Applicant placed before the Committee



of Creditors agenda for appointment of Interim. Resolution Professional as Resolution Professional for the Corporate Debtor. That member of Committee of Creditors confirmed the appointment of Applicant as the Resolution Professional by 100% voting in favour.

- v. Accordingly, the Applicant discharged his duties as Resolution Professional. On 21.02.2018 the Applicant raised first invoice for a sum of Rs. 2,00,000/- and the same was sent to the Respondent No. 1. The Respondent No. 1 vide its email dated 22.02.2018 raised a dispute with respect to invoice raised by the Applicant.
- vi. That the Applicant filed an application against suspended Board of Directors under Section 19(2) of the Code, 2016.
- vii. That the second meeting of Committee of Creditors was scheduled on 19.02.2018 which was postponed and held on 23.02.2018 on the request of Respondent No. 1. The Applicant raised issues relating to Corporate Insolvency Resolution Process of the Corporate Debtor and for approval of the fee of



the Applicant as Resolution Professional after his appointment as Resolution Professional vide Order dated 11.01.2018.

- viii. That the Applicant circulated the minutes of 2nd meeting of Committee of Creditors dated 23.02.2018 through E-mail dated 24.02.2018. The Respondent No. 1 sent an email dated 26.02.2018 requesting for modification of minutes of 2nd meeting of Committee of Creditors and stated that the charges of the fee raised by the Applicant is unreasonable. That vide email dated 27.02.2018, the Applicant responded to the Respondent No. 1 and requested the Respondent No. 1 to appoint another Resolution Professional, in terms of the Code, 2016 if the fee is not acceptable to the Respondent No. 1 and the Applicant also requested the Respondent No. 1 to make payment of pending fee of the Applicant in accordance with e-mail dated 04.01.2018.
- ix. That this Adjudicating Authority vide its order dated 04.07.2018 was pleased to allow the liquidation of the Corporate Debtor and appointed the Applicant as liquidator for the Corporate Debtor.



- x. That the Applicant sent a letter dated 16.08.2018 to the Respondent No. 1 being Financial Creditor seeking as to whether the Secured Creditor wishes to relinquish the assets of the Corporate Debtor, namely D-2 Second Floor, Geetanjali Enclave, New Delhi — 110017 to the Liquidation Estate or not. The Respondent No. 1 i.e. Standard Chartered Bank sent a reply letter on 26.08.2018 to the Applicant and stated that they do not wish to relinquish its right over the asset (said property) in terms of Section 52 of the Code, 2016 and wish to realize the said asset/property on their own.
- xi. That the Respondent No. 1 issued public notice for sale of property of the Corporate Debtor in Business Standard Newspaper on 28.09.2019 for the property i.e. D-2, Second Floor, Geetanjali Enclave, New Delhi — 110017. That while issuing the public notice for sale of property of the Corporate Debtor, the Respondent No. 1 in complete violation of the Code, 2016, failed to mention that the asset which is to be sold by the Respondent No. 1 belongs to Corporate Debtor which is under liquidation and further failed to defray the CIRP costs as



required to be defrayed including the fee of the Applicant as the Resolution Professional.

- xii. Pursuant to public notice for sale of property of the Corporate Debtor by the Respondent No. 1, the auction for the sale was conducted on 31.10.2019 from 2:00 P.M. to 4:00 P.M. That the Applicant through various telephonic conversations requested the Respondent No. 1 about the outcome of the auction. However, the Respondent No. 1 failed/avoided to intimate the same to the Applicant.
- xiii. Even after various follow ups, when the Respondent No. 1 failed to intimate the Applicant about status of the sale, the Applicant called upon the meeting of all the Stakeholders on 07.01.2020 to enquire about the current status of assets of Corporate Debtor since the asset was in the custody and control of the Respondent No. 1. However, the meeting was postponed and re-scheduled to 15.01.2020 on the request of Respondent no. 1. That during the meeting the Respondent No. 1 stated that they have assigned their debt. The Respondent No. 1, however,



failed/avoided to give any details as to the assignment of debt during the Liquidation Process.

- xiv. Pursuant to the above, the Applicant waited for the documents from Respondent No. 1 relating to the assignment of debt for realisation of asset of the Corporate Debtor but did not receive any e-mail or documents from the Respondent No. 1 as requested in the meeting till date. Subsequently, the Applicant from Respondent No. 2 received an instrument with title of Deed of Assignment dated 13.12.2019 executed between Respondent No. 1 and 2.
- xv. That from the date of initiation of the Corporate Insolvency Resolution Process, till the date of filing of the present application the Respondent No. 1 have not paid even a single penny towards the Corporate Insolvency Resolution Process cost incurred by the Applicant till date.
- xvi. That despite completion of two years, Respondents have not been able to realize the "security interest" in terms of Section 52 of the I & B Code, 2016. Even, after assignment of debt by Respondent No.1 to Respondent No.2 on 13.12.2019, the



Respondent No. 2 has failed to sell the assets of the Corporate Debtor and therefore, the Liquidation Process is being delayed and have not been completed within the two years provided under Regulation 44, Liquidation Process Regulations, 2016.

- 3.** The Respondent No. 1 has filed its reply stating as follows:
- i. That the Respondent No.1 i.e. Standard Chartered Bank, a banking corporation assigned its debts along with security interests, charges lien, guarantees, mortgage together with future interests inter-alia loan account of the present Corporate Debtor/Pier-One Construction Company Private Ltd. to answering Respondent No.2/ARCIL by Assignment Agreement dated 13.12.2019. The Respondent no.2 has stepped into the shoes of the Respondent no.1 and is entitled to initiate, continue legal actions initiated or to be initiated on behalf of Respondent no. 1 as Secured Creditor/ Financial Creditor.
 - ii. That, it was on 26.11.2020 that the Respondent No.1 wrote a Letter to the Respondent No.2, informing that the Physical Possession of the Secured Asset is being handed over to the



Respondent No.2. That the Respondent No.2 also through its letter dated 26.11.2020 confirmed to the Respondent No.1 that it has received the physical possession of the Secured Asset of the Corporate Debtor.

- iii. That in between this the Applicant filed the present application, which was listed for hearing on 20.11.2020 and this Tribunal issued notice to the Respondents and next date of hearing was fixed on 22.12.2020.
- iv. That the Respondent No.2 had received the Physical Possession of the Secured Asset on 26.11.2020 and the Respondent No.2 had appointed the Government approved valuer to examine and evaluate the exact value of the Secured Assets date as on 17.12.2020 and valuation exercise is at final stage and thus Respondent No.2 is in the process of issuance of E-auction Sale Notice and publication of the same in newspapers of sale of secured asset. Thus, there is no delay of any kind on behalf of the Respondent No.2 to sell the secured asset of the Corporate Debtor.



4. The Applicant has filed written submission stating as follows:

- i. That this Tribunal vide order dated 04.07.2018 had already approved the insolvency resolution process cost of Rs. 10,45,000/- due to the applicant.
- ii. That the recent amendment made by the Insolvency and Bankruptcy Board of India, whereby vide notification dated 13.09.2022 Insolvency and Bankruptcy Board of India (Resolution Process for Corporate Persons) Regulations, 2016 has been amended and regulation 34B has been inserted, whereby minimum and maximum fee to be paid to the interim resolution professional of Resolution Profession has been fixed to Rs. 1,00,000/- to Rs. 5,00,000/- per month.
- iii. That an amount of Rs. 27,46,053/- due remains towards the unpaid Liquidation and CIRP Cost.

5. The Respondent No. 2 has filed written submission stating as follows:

- i. That the Respondent No.2 has stepped into the shoes of Respondent No.1 and is entitled to initiate on behalf of



Respondent No.1 and is entitled to initiate, and continue the legal actions initiated or to be initiated on behalf of Respondent No.1 as Secured Creditor/ Financial Creditor.

- ii. That the Applicant in the present application, through prayer clause "d" has emphasized, "Corporate Insolvency Resolution Process Costs as directed by this Adjudicating Authority vide order dated 04.07.2018". It is pertinent to mention herein that going through the order dated 04.07.2018 passed by this Tribunal, there is no direction given by this Tribunal towards payment of any definite amount.
- iii. That according to the IBC regulations, the CoC has the right to fix the RP fees and in the present matter the CoC has not fixed the RP fees as Rs.2,00,000/-. It is the Applicant who has approached this Tribunal with the present application with wrong facts and assumptions.
- iv. That the Applicant has clearly misrepresented the order dated 04.07.2018 passed by this Tribunal, as there is no direction given by this Tribunal towards payment of any definite amount.



- v. That after the debt was assigned to Respondent No.2 by Respondent No.1, they have duly complied with all the Regulations of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. It is submitted that as previously the RP fees were fixed at Rs. 24,000/-pm by the COC however after due diligence the fees of the RP was agreed by Respondent No.2 to be increased from Rs. 24,000/-p.m. to Rs. 60,000/-p.m. and rest all the expenses provided by the Applicant was also agreed to be paid.
- vi. That vide order dated 02.02.2022 this Tribunal had directed Respondent No.2 to file the proposal for CIRP and Liquidation Cost by the Applicant and the Respondent. The Respondent No.2 had duly complied with the order dated 02.02.2022.
- vii. That Respondent No. 2 had increased the RP fees from Rs. 24,000/- to Rs. 60,000/- and had accepted all the expenses relating to advisor fees, advocate fees, etc. raised by the Applicant and proposed CIRP cost and Liquidation Cost of Rs.9,80,919.2/- pending till 30.06.2019.



- 6.** We have heard the submissions made by all the parties. The first relief that the Applicant has prayed for is to extend the period of Liquidation Process in terms of Regulation 44 of the Liquidation Process Regulations, 2016 for a period of 6 months. The Liquidation period has already been extended for a period of three months starting from 03.08.2023 vide order dated 09.08.2023 passed by this Tribunal.

- 7.** The second relief that the Applicant has prayed for is to issue appropriate directions to the Respondent No. 2 to hand over the security interest of the Corporate Debtor to the Liquidation Estate for completion of Liquidation Process. In terms of Section 52 of the IBC, 2016 the Secured Creditor can either relinquish its security interest or realise its security interest. However, once the secured creditor chooses to realise its security interest then the Liquidator has no locus to demand that such asset be made a part of the Liquidation Process.



8. During the course of hearing, the counsel for the Liquidator appeared and submitted that he will be pressing only prayer (d).
9. The last relief/prayer (d) of the Applicant is to issue appropriate directions to the Respondent No.1 to defray with Corporate Insolvency Resolution Process Costs as directed by this Adjudicating Authority vide order dated 04.07.2018. The relevant part of the order is reproduced herein below:

“Accordingly, we direct the RP, Mr. Sandeep Goel to act as a Liquidator. As a Liquidator he is to first pay the dues of insolvency resolution process costs, if any, paid by the IRP or RP as per the provisions of Regulation 53 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.”

It is evident from the order dated 04.07.2018 passed by this Tribunal, there is no direction given by this Tribunal towards payment of any definite amount.



10. As per the averments of the Applicant, the CIRP Cost and the Liquidation Cost till 30.04.2023 were Rs. 37,26,053/-. In the order dated 31.10.2022, it was noted as follows: “Ld. Counsel Mr. P. B. A. Srinivasan appearing on behalf of the Respondent No. 2 ARCIL, undertakes to pay the sum of Rs. 9.80 Lakhs approximately without prejudice to the right to oppose further as per affidavit dated 03.02.2022. Ld. Counsel Mr. Abhishek Anand appearing on behalf of the Liquidator is willing to accept the amount of Rs. 9.80 Lakhs approximately without prejudice to the claim in the application.”

11. In compliance of the Order dated 31.10.2022 passed by this Adjudicating Authority, the Respondent has paid a sum of Rs. 9.80 Lakhs. As per the Applicant after adjusting this amount of Rs. 9.80 Lakhs, the outstanding CIRP and Liquidation cost is Rs. 27,46,053/-.

12. The Respondent is obligated to pay the outstanding CIRP and Liquidation cost in terms of Section 52(8) of the IBC, 2016 and



Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016.

13. The Applicant has contended that an amount of Rs. 2,00,000/- per month was fixed as the fees of the RP. However, the fees of the RP was never ratified by the CoC. Therefore, after carefully going through the submissions of both the Applicant and the Respondents, we fix the fees of the RP as Rs. 1,00,000/- per month in terms of IBBI circular dated 14.09.2022. We direct the Respondent No. 2 to pay a sum of Rs. 6,98,500/- as the CIRP cost, the breakup of which is as follows:

Particulars	Amount	GST (18%)	Total
RP fees from 10.01.2018-03.07.2018 (5 months) @ Rs. 1 Lac per month in terms of IBBI circular dated 14.09.2022	Rs. 5,00,000/-	Rs. 90,000	Rs. 5,90,000
Out of pocket expenses	Rs. 20,000		Rs. 20,000
Advisor Fee	Rs. 25000	Rs. 4500	Rs. 29,500
Advocate Fee	Rs. 50,000	Rs. 9000	Rs. 59000
Total			6,98,500/-



- 14.** Further, for the Liquidation Process carried out by the Applicant acting as Liquidator, the Respondent No. 2 has already paid a sum of Rs. 9.80 Lakhs which includes all the out of pocket expenses of the Liquidator. However, in the interest of justice, we direct a lump sum amount of Rs. 5,00,000/- to be paid by the Respondent No. 2 as the fees of the Liquidator since no fees was fixed by the Stakeholders Consultation Committee.
- 15.** In light of the above, the Respondent No. 2 is directed to pay a total sum of Rs. 11,98,500/-to the Applicant as the outstanding CIRP and Liquidation Cost.
- 16.** IA/4765/2020 stands disposed off in terms of the above order.

Let a copy of order be served to parties.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER(JUDICIAL)