



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CA No. 494/2019
in
CP (IB) No.37/Chd/Pb/2017
(Admitted)**

Under Section 60(5) of the IBC, 2016

In the matter of:

Hero Steels LimitedApplicant/Operational Creditor

Vs.

Rolex Cycles Private Limited ...Respondent/Corporate Debtor

And in the matter of CA No.494/2019:-

Anil Kumar
Interim Resolution ProfessionalApplicant

Vs.

1. Mr. Dinesh Seth, Liquidator
having its registered office at
1382/1 GTB Complex, Sector-70
Mohali-(Punjab)-160055Respondent No. 1
2. Sh. Nipan Bansal
Resolution Professional
having its address at
House No. 10-B, Udham Singh Nagar,
Civil Lines, Ludhiana (Punjab)Respondent No. 2
3. The Chief Manager
Canara Bank
MCB, Bharat Nagar Chowk
Ludhiana, Punjab-141001
.....Respondent No. 3
4. The Chief Manager
Bank of Maharashtra
Dharmesh Nagar, Gill Road,
Ludhiana, Punjab-141003Respondent No. 4



Order delivered on: 28.04.2023

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

Present:

For the Applicant in

CA No. 494/2019 : Mr. G.S. Sarin, Practising Company Secretary

For respondent in

CA No. 494/2019 : Mr. Anil Kumar Aggarwal, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

In the present application, the applicant-Mr. Anil Kumar, Interim Resolution Professional seeking direction for the payment of fees as he was appointed as IRP by order of this Bench dated 20.07.2017 for the initial period of 30 days from the commencement of the CIRP of the corporate debtor on 13.07.2017. It is stated that even after the initial period of 30 days, the IRP continued to function for a period of 68 days, i.e., from 19.08.2017 to 25.10.2017.

2. It is further stated that the remuneration of the Insolvency Resolution Professional (IRP) was ratified in the 2nd CoC meeting (Annexure A-1 to the application) held on 04.10.2017 for the extended period with the following resolutions:

Agenda Item No. 4

To ratify and approve the remuneration of the Interim Resolution Professional (IRP) for the extended period / Resolution Professional (RP)

The RP proposed a fee of Rs.6.75 Lacs + taxes for the assignment of Interim Resolution Professional for a period of 30 days. The members were of the opinion that as per Regulation 33(3) as discussed above,



they can ratify the fees of IRP to the extent of Rs. 11,000/- only. Therefore, a Resolution was passed as under:

"RESOLVED THAT CA Anil Kumar, Insolvency Professional, be paid a sum of Rs. 11,000/- for the assignment of Interim Resolution Professional that was carried out by him in the case of Rolex Cycles Private Limited"

3. The fee for the extended period was discussed, and the following resolution was passed in the second CoC meeting:

"Resolved that, CA Anil Kumar, Insolvency Professional be paid remuneration for the extended period over and above his 30 days of commencement of CIRP at a rate which would be equivalent to the rate finalized for the new RP in this case".

Further Resolved that, the fees of new RP whenever settled will be shared with CA. Anil Kumar"

(Emphasis Supplied)

The applicant has pointed out that the extended period was for 68 days, i.e. from 19.08.2017 to 25.10.2017 of IRP.

4. As recorded under Item No. 8 of the minutes of the fourth meeting of the CoC dated 06.12.2017 (Annexure A-2 to the application), the chairman proposed for ratification of previously approved remuneration of the IRP-Sh. Anil Kumar, but the same was not ratified by the CoC; the same is extracted as below:

Item No. 8

"RESOLVED THAT the Committee of Creditors declined the request of the Resolution Professional to ratify the previously unapproved remuneration of Interim Resolution Professional as also approval of previously unapproved costs incurred by the Interim Resolution Professional including reimbursement of other incidental costs/out of pocket expenses/ third party consultants & professional costs/valuation professional expenses, legal costs



and any other costs in connection with Corporate Insolvency Resolution Process"

(Emphasis Supplied)

5. It is submitted that at item No. 9 of the minutes of the fourth meeting, the remuneration to the new Resolution Professional- Sh. Nipan Bansal was approved with the following resolution:

"RESOLVED THAT pursuant to Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 the approval of the Committee of Creditors be and is hereby accorded to ratify the remuneration of Nipan Bansal at Rs.400000/- and reimbursement of other incidental costs/out of pocket expenses/third party consultants & professional costs valuation professional expenses, legal costs, any other costs in connection with corporate insolvency resolution process"

(Emphasis Supplied)

6. It is further stated that the applicant has fulfilled all the duties as mentioned in Section 18 of the IBC, and the CoC members/Liquidator be ordered to clear the fee of the IRP for the extended period of 68 days:

"Order the COC members/ liquidator to clear the prolonged fee of IRP of Rs. 4,33,730 (Four lakh Thirty Three Thousand Seven Hundred and Thirty Only)for the Extended Period i.e: 68 days i.e. from 1st August, 2017 to 2nd October, 2017 of CIRP of the Corporate Debtor."

7. In its reply filed by diary No. 00849/01 dated 23.11.2021, respondent No. 1/Liquidator has admitted that the discussions under Item No. 9 of the 4th CoC meeting and the Resolution Passed there under was silent about the remuneration payable to the applicant for rendering services as Resolution Professional for the extended period beyond the interim period of 30 days. However, the Liquidator has further stated that earlier in the second meeting held on 04.10.2017, the CoC had admitted that the IRP/RP should be paid



remuneration/fees for the extended period, and the resolution was passed. The relevant parts of the resolution are extracted at para 3 above.

8. In a written submission filed by diary No. 00849/4 dated 20.07.2022 by the learned counsel for the applicant, it is stated that two issues need to be adjudicated:

- 1) The rate at which remuneration to be paid to the IRP.
- 2) The exact days of the extra period for which the IRP needs to be paid his fees.

As regards the first issue, it is submitted that the applicant/IRP be paid remuneration for the extended period over and above is 30 days on commencement of CIRP at a rate which would be equivalent to the rate finalised for the RP in this case as resolved in the second CoC meeting. As regards the days for calculating payment of remuneration, it is stated that though the date of appointment of Mr. Nipan Bansal-IRP was 12.10.2017, he took over charge for the IRP on 25.10.2017 and hence, the latter date should be considered for calculation of the extended period. The calculation thus work's out as:

Date	Particulars	No. of Days
13.07.2017	Date of Commencement of CIRP	-
20.07.2017	Date of Appointment of IRP	
12.10.2017	Date of Appointment of RP	
25.10.2017	Date of taking over the charge by the RP(Mr. Nipan Bansal)	
	Therefore total days worked by the IRP as RP	98
	Remuneration paid to IRP	30



	Total No. days for which fee due and pending for payment	68
	Total amount of fee due and pending for payment @ Rs. 4,00,000.00 PM and GST @18%	4,33,730.00

9. In a written submission filed by diary No. 00849/3 dated 18.05.2022 by learned counsel for respondent No. 1, it is stated by the learned counsel for the liquidator that the RP-Mr. Nipan Bansal was paid Rs. 4 Lakhs for working as RP for 89 days, and if the applicant- Mr. Anil Kumar, is to be paid proportionately for 54 days, then his remuneration would be Rs. 2,42,697/-. He has also calculated that the IRP has worked for an extra number of 6 days, amounting to 54 days.
10. The rejoinder has been filed by the applicant to the reply of respondent No. 2 by diary No. 00849/2 dated 04.01.2022, wherein it is stated that vide email dated 16.04.2018, the applicant's claim for the IRP fee for the extended period has been admitted by the liquidator to the tune of Rs. 2,74,157/-.
11. We have heard learned counsel for the parties and have carefully perused the records available.
12. At the outset, we are surprised by the fact that having been committed to pay the remuneration for the extended period to the applicant-Insolvency Professional in the second CoC meeting, the CoC chose not to take any decision on the matter in their 4th meeting as recorded in para 3 & 4 above. Prima facie, there is no justification for such a decision and it appears to be illogical. We are therefore directing the CoC to act on its own decision to pay remuneration for the extended period over and above his 30 days of



commencement of CIRP at a rate which would be equivalent to the rate finalized for the new RP in this case.

13. We also note that at item 9, the CoC had ratified the remuneration of new RP, i.e., Mr. Nipan Bansal at Rs. 4 Lakhs. The claim of the applicant that his dues should be calculated @ Rs. 4 Lakhs Per Month and GST @ 18%, therefore, does not match with the remuneration approved in the 4th meeting of the CoC, which clearly states that the amount ratified is Rs. 4 Lakhs. We, however, have taken note of the fact that though the new RP was appointed on 12.10.2017, he took over charge from 25.10.2017. This statement by the applicant has not been challenged. In view of this, a slight modification of the dates caused by a gap between the date of the appointment and the date of taking over of charge is called for. It is appropriate to hold that Mr. Nipan Bansal has worked for 74 days, i.e., for the period from 12.10.2017 to 08.01.2018 and has received remuneration of Rs. 4 Lakhs. The daily remuneration of the new RP-Mr. Nipan Bansal is to be worked out by taking a payment of Rs. 4 Lakhs for a period of 74 days. The remuneration of the applicant-IRP, therefore, is to be determined at a pro-rata basis for a period of 68 days. The CoC is directed to ratify the payment and ensure that the payment to the applicant-IRP is made within 15 days of this order.

14. In view of the same, the CA No. 494/2019 is allowed as above and disposed off accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

April 28, 2023
PB