



**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

IA No. 454/2021

In

**CP (IB) No. 197/Chd/Chd/2019
(Admitted)**

**Under Section 19(2) Read with
Section 60(5) of the Insolvency and
Bankruptcy Code, 2016**

In the matter of:

State Bank of India

...Petitioner/Financial Creditor

Vs.

M/s Agro Dutch Industries Limited

....Respondent/Corporate Debtor

In the matter of IA No. 454/2020

Sumat Kumar Gupta, Resolution Professional
R/o 2581/3, B-1, Near Zoom Hotel Building,
Industrial Area-A, Transport Nagar,
Ludhiana-141003

...Applicant

Vs.

Bank of India
SCO No. 81, 82, 2nd Floor,
Sector -17B, Chandigarh- 160017

UV Asset Reconstruction Company Limited
1304-1304A, 13th Floor, Chiranjiv Tower,
43, Nehru Place, New Delhi-110019

Pegasus Assets Reconstruction Private Limited
507, Dalamal House, Nariman Point, Mumbai-400021

Edelweiss Asset Reconstruction Company
Edelweiss House, Off C.S.T Road, Kalina, Mumbai

....Respondents

Order delivered on: 17.04.2023



**Coram: Hon'ble Mr Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr Subrata Kumar Dash, Member (Technical)**

Present :

For Applicant : Dr. Rajansh Thukral, Advocate
For Respondent No. 1 : Mr. Vimish Singh, Advocate
For Respondent No. 2 : Mr. Vipul Joshi, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

IA No. 454/2021

1. The present application is being filed by Mr. Sumat Kumar Gupta (herein referred to as Resolution Professional/ Applicant) against Bank of India (herein referred to as Respondent) under Section 19(2) read with Section 60(5) of Insolvency and Bankruptcy Code, 2016.

2. It is prayed by the applicant to incorporate with the Resolution Professional in carrying out the CIRP and to contribute CIRP cost in the ratio of their voting share.

3. The brief facts of the case, as stated in the application are that the CIRP has been initiated by order dated 27.11.2019 and the Interim Resolution Professional was replaced by the present applicant by order dated 25.02.2020. After the appointment of the RP, the Committee of Creditors was reconstituted comprising ten Financial Creditors. The Corporate Debtor has two plants situated at Village Lalru and another one at Chennai which were closed long time back. The securities have been deployed from various security agencies at sites to take care of the property of the company and the applicant is also carrying out the process of CIRP in accordance with the provisions of IBC which involves

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expenditure on various counts. The Corporate Debtor is not a going concern and there are no liquid assets and no bank balance available to meet the CIRP cost. The Resolution Professional is making repeated request to all the members of CoC to contribute towards the CIRP cost in the ratio of their voting share.

4. It is further submitted that all the members of the CoC have paid their share except the respondents. The Committee of Creditors have approved the CIRP cost time to time on various occasions in terms of various resolutions passed from time to time. As per averments, the Resolution Professional has spent Rs. 1,46,92,768/- till 30.06.2021 and a balance of Rs. 40,14,523/- is outstanding out of which Rs. 29,93,312/- which has to be contributed by the four respondents. The tabulated CIRP cost incurred upto 30.06.2021 showing the allocation of amount, the amount received and the outstanding amount is attached as Annexure A3 of the application. As per Regulations 33 and 34 of IBBI (Insolvency Resolution Process for Corporate Persons), the expenses ratified by the CoC shall be reimbursed. The emails sent by the applicant to the members of the CoC to contribute their share of CIRP cost is attached as Annexure A4 of the application.

5. Notice of this application was issued to the respondents by order dated 04.01.2022 and the applicant has filed an affidavit of service vide diary No.01014/1 dated 10.02.2022 wherein notices were served to the respondents and the original postal receipts along with the tracking report along with the email sent to the respondents evidencing the services of the notices is attached as Annexure A7 and A8 of the aforesaid affidavit. Further, by order dated 20.09.2022, the last opportunity was granted to the respondents to file a reply.



However, respondents No.3 and 4 have failed to appear and there is no reply from respondent No.2.

6. The respondent no. 1 has filed its reply by Diary No. 01014/2 dated 04.10.2022 wherein it is stated that no substantial progress has been made by the Resolution Professional in the last more than 2 years and the members of CoC have been burdened with heavy bills towards miscellaneous expenses and fee of the Resolution Professional which is public money.

7. The Applicant has filed the Rejoinder by Diary No. 01014/3 dated 24.11.2022 wherein it has been rebutted that as per the voting share of Respondent No. 1, they are required to contribute Rs. 12,34,637/- towards the CIRP cost which is calculated upto 31.03.2021. Respondent no. 1 paid Rs. 10,03,697- on 27.08.2021 to the Resolution Professional's bank account through RTGS. However, no amount has been contributed for the period from 01.04.2021 to 30.09.2022. The Resolution Professional being the custodian of the Corporate Debtor is required to protect the assets which are cost intensive. Moreover, necessary actions are taken to minimise the basic expenses like security charges etc.

8. We have heard learned counsel for the applicant and respondents and have perused the record carefully.

9. In the present case, the Committee of Creditors has ratified the CIRP cost in different meetings from 28.02.2020 to 30.06.2021. The relevant Regulations i.e. Regulations 31, 33 and 34 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are reproduced hereunder:



“31. Insolvency resolution process costs. *“Insolvency resolution process costs” under Section 5(13)(e) shall mean-*
Xx xx xx xx

(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;

(d) expenses incurred on or by the resolution professional fixed under Regulation 34; and

(e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.

33. Costs of the interim resolution professional.

(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.]

34. Resolution professional costs.

The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

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

10. It is pertinent to note that despite service of the notice to Respondents No. 3 and 4, they have failed to appear before this Tribunal and Respondent No. 2 has not filed any reply to the present application. The following amount is yet to be contributed by the respondents which are reproduced below:-



Sr. No.	Name of the Bank	Amount (Rs.)
1.	Bank of India	12,34,637.41
2.	UV Asset Reconstruction Company (Assignee of Axis Bank)	4,42,643.01
3.	Pegasus Assets Reconstruction Private Limited (Assignee of Allahabad Bank (now Indian Bank))	3,82,364.69
4.	Edelweiss Asset Reconstruction Company Limited (Assignee of State Bank of Patiala)	9,33,666.99
	Total	29,93,312.10

11. We are conscious of the decision of Hon'ble NCLAT in the case of ***Income Tax Department Vs. M/s. Indianroots Shopping Ltd. Company Appeal (AT) (Insolvency) No.32 of 2022 With Company Appeal (AT) (Insolvency) No.1123 of 2022 dated 17.11.2022*** wherein under similar facts, Hon'ble NCLAT had directed the Operational Creditors to deposit their dues with the Operational Creditor. The respondent No. 1 has objected that no substantial progress has been made by the Resolution Professional in the last more than two years. However, the Resolution Professional is incurring various expenses on security and other professional fees. As per Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the CoC has to fix the expenses and as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the expenses has to be reimbursed by the Committee to the extent it ratifies. The members of CoC cannot refuse to contribute towards the CIRP expenses, as ratified in their meeting by linking the same to the recovery of their dues. In the result, the respondents are directed to



contribute CIRP cost in the ratio of their voting share within four weeks of this order.

12. In view of the aforesaid discussion IA No.454/2021 is allowed and disposed of accordingly.

-sd-
(Subrata Kumar Dash)
Member (Technical)

-sd-
(Harnam Singh Thakur)
Member (Judicial)

April 17, 2023
SA/SM