



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
CP (IB) – 759 (PB)/2018**

**IA-736/2023,
IA-4141/2022,
IA-4790/2022,
IA-2363/2022,
IA-3908/2022,
IA-3913/2022,
IA-3914/2022.**

IN THE MATTER OF:

IVL FINANCE

..... Financial Creditor

Versus

INCOM CABLES PRIVATE LIMITED

..... Corporate Debtor

ORDER PRONOUNCED ON: 28.02.2023

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For IVL Finance : Adv. Sunil Fernandes, Adv. Rudreshwar Singh,
Adv. Rudreshwar Singh, Adv. Isha Singh, Adv.
Shankari Mishra, Adv. Niharika Tanwar, Adv.
Ishan Mukherjee
For the RP : Adv. Lalit Moha, Adv. Videsh Vaish, Adv.
Aakansha, Adv. Ritesh

ORDER

PER : AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. This Adjudicating Authority vide its order dated 08.04.2019 admitted the Company Application (IB) No. 759 (PB) of 2019 filed on behalf of Financial



Creditor M/s IVL Finance against the Corporate Debtor (CD) i.e. Incom Cables Private Limited for initiating the CIRP under section 7 of the Code and appointed Mr. Sunil Prakash as an Interim Resolution Professional.

2. The said judgment dated 08.04.2019 passed by this Adjudicating Authority was appealed by the Suspended Board of Directors of the Corporate Debtor before NCLAT in Company Appeal (AT) (Insolvency) No. 427 of 2019 and via the judgment dated 22.04.2019, Hon'ble NCLAT upheld the impugned judgment dated 08.04.2019 passed by this Adjudicating Authority.
3. That an Appeal was filed before the Hon'ble Supreme Court by the Suspended Board of Directors challenging the impugned judgment dated 22.04.2019 passed by Hon'ble NCLAT. Vide order dated 03.07.2019 Hon'ble Supreme Court in *Raghav Sharma v. IVL Finance Pvt. Ltd and Anr* having Civil Appeal No. 5048/2019 stayed the operation of the impugned judgment dated 22.04.2019 passed by Hon'ble NCLAT and consequently judgment dated 08.04.2019 passed by this Adjudicating Authority.
4. That vide order dated 22.05.2019 this Adjudicating Authority replaced the earlier IRP Mr. Sunil Prakash with new RP Ms. Reshma Mittal. Thereafter on 21.04.2022 Hon'ble Supreme Court in *Raghav Sharma v. IVL Finance Pvt. Ltd and Anr* having Civil Appeal No. 5048/2019 dismissed the appeal of the Suspended Directors of the Corporate Debtor.

IA- 4141/2022

5. IA-4141/2022 is a joint application being filed by Canara Bank (Applicant No.1) forming 94.85% of CoC of the Corporate Debtor and Mr. Raghav Sharma (Applicant No.2) suspended director of the CD under Section 12A of the Insolvency and Bankruptcy Code, 2016 (IBC) read



with Rule 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 (the CIRP Regulations) seeking approval for withdrawal of Insolvency resolution process of the Corporate Debtor.

6. It is submitted that on 14.07.2022, the suspended board of directors/Applicant No. 2 via OTS proposal having Ref. No. 19208/SAMB/INCOM/GRP/OTS/CONVEY/2022_23 dated 14.07.2022 have entered into a settlement agreement and have settled with the Applicant No.1.
7. It is submitted that the Applicant No. 1, i.e. Canara Bank vide email dated 16.07.2022, 19.07.2022 and 20.07.2022 had written it to the RP requesting the RP to conduct the CoC meeting, however the RP beyond her powers as enshrined under the code, in email dated 21.07.2022 has stated that she is not available in town to conduct such a meeting for Corporate Debtor.
8. It is submitted that while issuing the agenda for the 5th CoC meeting of CoC, the RP (Respondent) did not include a specific agenda for withdrawal of CIRP under section 12A of the code and on 19.07.2022 when the captioned petition was listed for hearing, the RP made a statement that they are not aware of the settlement being entered into between the parties contrary to the communication being sent by the Applicant No. 1 to the RP on 16.07.2022 requesting the RP to conduct the CoC meeting with settlement being added as the agenda.

New IA 736/2023

9. IA-736/2023 is a joint application under Section 12A of the IBC being filed by IVL Finance (currently known as Dhani Loans & Services) Applicant No.1, the original section 7 petitioner along with Canara Bank (Applicant No. 2) and the Suspended Board of Directors (Applicant No.3)



seeking withdrawal of the Insolvency Resolution Process against the Corporate Debtor in lieu of the settlement being recorded and ordered by this Adjudicating Authority on 10.01.2023 and 11.01.2023.

10. It is submitted that during the hearing of I.A. No. 4141/2022, the suspended Management of the Corporate Debtor and the original financial creditor/ Applicant No. 1 also sought to settle their outstanding disputes, which intention was graciously recorded by this Hon'ble Adjudicating Authority in its order dated 10.01.2023 and 11.01.2023.
11. It is submitted that in view of the settlement being arrived between Applicant No. 1 and No. 3, the following amount in the following manner has been transferred by the Applicant No. 3 in the accounts of the Applicant No.1,
 - i. An amount of Rs. 5,00,000 has been transferred via cheque no. 604015 on 10.01.2023.
 - ii. An amount of Rs. 10,00,000 has been transferred via RTGS on 19.01.2023 having UTR-BDBLR52023011900001246;
 - iii. An amount of Rs. 10,00,000 has been transferred vide cheque no. 000030 on 25.01.2023;
12. It is submitted that in lieu of the settlement arrived at between the Applicants constituting about 95.07% of the CoC, the applicants have moved a joint application seeking withdrawal of CIRP against the Corporate Debtor.
13. After analysing the provisions of Regulation 30A of the CIRP Regulations, 2016 read with Section 12A of the IBC for filing a withdrawal application, we note that the following needs to be satisfied:
 - i. After the constitution of CoC, the withdrawal application can be filed by the applicant/financial creditor who had filed the petition u/s 7,9 or 10 of the code through the IRP or the RP, as the case may be.



- ii. The withdrawal application needs to be made in Form FA of the CIRP Regulations accompanied by a bank guarantee.
 - iii. The application for withdrawal needs to be approved by the CoC with 90% voting share and thereafter the Resolution Professional can submit such application along with the approval of CoC to this Adjudicating Authority on behalf of the applicant.
14. In the present case we observe that the Suspended Board of Directors of the Corporate Debtor has already settled with the original Financial Creditor namely IVL Finance as well as with Canara Bank which both together constitute 95.07% of the CoC.
15. Though the Financial Creditors are holding 95.07% of voting share in the CoC, the RP has not moved an application for terminating CIRP. Hence, we may refer to Section 12A of the IBC which provides as follows:

[12A Withdrawal of application admitted under section 7,9 or 10.-

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.]

We find that the ingredients of Section 12A are satisfied in this application i.e. New IA 736/2023. We are of the view that this is a fit case to exercise our inherent powers under Rule 11 of NCLT Rules, 2016 to overcome the recalcitrance of the RP in not following the provisions of CIRP Regulation 30A(3).

- 16.** Accordingly, New IA 736/2023 is allowed. IA-4141/2022 also stands disposed of in terms of the order in New IA 736/2023.



IA-4790/2022

17. This application is being filed by Canara Bank under section 60(5) of the code seeking directions against the Respondent/RP for reimbursement of CIRP fees for work not done by the Respondent at the time when the CIRP was stayed by the Hon'ble Supreme Court from 03.07.2019 to 21.04.2022.
18. It is submitted that the Respondent during the stay period granted by Hon'ble Supreme Court has charged exorbitant fee without any reasonable reflection of work done by her and thereby has violated the provisions of clauses 10, 24, 25 and 27 of the Code of Conduct for Insolvency Professionals under the first schedule of the IBBI (Insolvency Professionals) Regulations 2016 and Section 20 of the Code.
19. It is submitted that till date, the applicant has paid an amount of approximately 90 Lakhs for work done by the Respondent only for 5 months when there was no stay i.e. period from 06.05.2019 till 02.07.2019 (2 Months) and 21.04.2022 till 14.07.2022 (Approx. 3 Months) and the Respondent in addition to the 90 Lakhs being paid to itself is seeking an additional cost of approximately 71 lakhs from the applicant.
20. Respondent/RP in reply has objected to the submissions of applicant by contending that the:
 - i. Cost of CIRP has been incurred by the Applicant Bank even during the stay period till 21.08.2020 and upon the settlement proposal given by the director of the Corporate Debtor the applicant bank stopped paying the CIRP cost.
 - ii. Contention made in the application that the Respondent RP has not done significant work is preposterous and vague as the expenses were approved in the 3rd meeting of CoC wherein the CIRP costs for various



services to be paid to Respondent/RP and Insolvency Entity were specifically approved.

- iii. Respondent has incurred legal expenses as she has attended 14 hearings in total wherein Mahavir Transmission Pvt. Ltd approached this Adjudicating Authority for the refund of EMD amount and filed IA no. 3800/2020. The RP/Respondent had informed about the hearings regarding the refund of EMD amount via emails.

21. We find it appropriate to ask the IBBI to look into the aspect of reimbursement of CIRP fees at the time when the CIRP was stayed by the Hon'ble Supreme Court from 03.07.2019 to 21.04.2022 and decide the matter. This IA-4790/2022 along with all pleadings and a copy of this order may be sent to Chairman, IBBI by the Registry within 3 days of passing of this Order.

IA-2363/2022

22. IA-2363/2022 is filed by the RP/Applicant under section 19(2) & (3) of the IBC seeking directions to the Suspended Management/Respondents of the Corporate Debtor to provide required cooperation & information/documentation to the RP/Applicant on an immediate basis for carrying out the CIRP.

23. In wake of the order passed in IA-736/2023 above, the relief sought in IA 2363/2022 has become infructuous.

Accordingly, IA-2363/2022 is disposed of as having become infructuous.

IA-3908/2022, IA- 3913/2022 & IA-3914/2022

24. IA-3908/2022, IA-3913/2022 & IA-3914/2022 has been filed by the applicant/RP u/s-43,45 & 66 of the IBC alleging various preferential, undervalued transactions to defraud creditors and extortionate credit transactions being undertaken by the management of the Corporate Debtor.



25. In wake of the order passed in IA-736/2023 above, the relief sought in IA-3908/2022, IA-3913/2022 and IA-3914/2022 has become infructuous in light of the settlement being arrived at between the parties Accordingly, IA-3908/2022, IA-3913/2022 and IA-3914/2022 stand disposed of as having become infructuous.

26. To summarise:

- i. IA-4141/2022 is subsumed in IA-736/2023
- ii. IA-736/2023 is allowed;
- iii. IA-4790/2022 is referred to IBBI to take a decision on the fees payable to the RP; a copy of the documents may be kept in our records
- iv. IAs- 2363/2022, 3908/2022, 3913/2022 & 3914/2022 are disposed of as infructuous

27. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

28. CP (IB)-759(PB)/2018 is disposed of in above terms. File and relevant documents be consigned to records.

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**RAMALINGAM SUDHAKAR
(PRESIDENT)**

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**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**