

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
INTERLOCUTORY APPLICATION 2878/ 2021
IN
C.P. NO. 587 (MB)/C-III/ 2018

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

Mr. S. Gopalkrishnan

Erstwhile Interim Resolution Professional

Having office at:

1507, B Wing, One BKC,

G-Block, BKC, Bandra East,

Mumbai -400051

...Applicant

Versus

1. Axis Bank Limited

Gigaplex, NPC-1, 3rd Floor, MIDC Airoli

knowledge park, Mugulsan road, Airoli,

Navi Mumbai – 400

708

...Respondent no. 1

2. Killick Marine Services Private Limited

Basement Commercial Union House, 9,

Wallace Street, Lower Ground Floor,

Fort, Mumbai – 400 001.

...Respondent no. 2

3. Killick Nixon Limited

Pranik Chamber, B Wing, 407, Saki

Vihar Road, Opp. Petrol Pump, Saki

Naka, Andheri East, Mumbai- 400072.

...Respondent no. 3

4. Mr. Santanu Ray

Liquidator

Having office at 301, A Wing, B S E L

Tech Park, Sector 30A, Opposite Vashi

Railway Station, Vashi, Thane, Navi

Mumbai, Maharashtra, 400705

...Respondent no. 4

IN THE MATTER OF

Ms. Rama Subramanian

...Operational Creditor

Versus

M/S Sixth Dimension Project Solutions Limited

...Corporate Debtor

Order Pronounced on 11.01.2024

Coram:

MS. LAKSHMI GURUNG, MEMBER (J)

SH. CHARANJEET SINGH GULATI, MEMBER (T)

Appearances:

For Applicant: Adv. Manish Jha

For Respondent: Adv. Sachin Pawar for Respondent No.1

Per: MS. LAKSHMI GURUNG, MEMBER (J)

ORDER

1. The above I.A. has been filed by Erstwhile Resolution Professional Mr. S. Gopalkrishnan (**Applicant**) under Section 60(5) of the Insolvency and Bankruptcy Code read with Regulation 33 and 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation, 2016 for release of unpaid professional fees and expenses incurred by him towards Corporate Insolvency Resolution Process (**CIRP**) amounting to Rs.14,17,190.72.
2. An application was filed by an Operational Creditor against M/s Sixth Dimension Project Solution Ltd., (**Corporate Debtor**) under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) which was

admitted by this Adjudicating Authority vide order dated 09.10.2018 in C.P. NO. 587 (MB)/ 2018. Thus, CIRP of the Corporate Debtor commenced and Mr. S. Gopalkrishnan (**Applicant**) was appointed as the Insolvency Resolution Professional (**IRP**) to discharge the functions under IBC.

3. After the public announcement, claims were received. Thereafter report certifying constitution of the Committee of Creditors (**CoC**) along with the list of creditors was prepared and submitted on 06.11.2019 as per Regulation 17(1) and 13(2)(d) of IBBI (Insolvency Resolution Process for Corporate Person) Regulations.
4. An M.A. No 1626 of 2018 was filed on 19.12.2018 by the Committee of Creditors (**CoC**) (Comprising of Axis Bank Limited) for the replacement of the Applicant and for appointment of Mr. Santanu T Ray as Resolution Professional. However, the Adjudicating Authority dismissed the said application vide order dated 13.03.2019 and confirmed the Applicant as RP. The relevant extract of the order has been reproduced as under:

“CoC had thoroughly failed to put forth any tenable or valid or genuine reasons for the same and we hold that the CoC is not vested with the absolute power to change the IRP without any valid or tenable reasons particularly when the Adjudicating Authority after considering the contentions on both sides and expresses an opinion to continue the IRP as RP, and accordingly the present IRP is confirmed as RP of the Corporate Debtor.”

5. Aggrieved by the above, Axis Bank Ltd. preferred an appeal before Hon'ble NCLAT challenging the impugned order dated 13.03.2019. The appeal was allowed vide order dated 16.08.2019 and Respondent No 4 was appointed as the Resolution Professional of the Corporate Debtor, in following terms:-

“In view of the aforesaid observations above, we set aside the order dated 13th March, 2019 and allow the Committee

of Creditors to engage Mr. Santanu T. Ray as Resolution Professional if there is no proceeding pending against him.

Insofar as the fee and cost incurred by 'Mr. S. Gopalakrishnan' is concerned, he will place the evidence in support of the fee and cost incurred by him and 'Committee of Creditors' will decide the same and admitted dues to be released in his favour by the 'Committee of Creditors', which may be adjusted from the resolution cost. 'Mr. S. Gopalakrishnan' will hand over the charge to 'Mr. Santanu T. Ray'."

6. The Applicant had earlier filed an application bearing no MA 1984 of 2019 for Rs. 5,90,000/- to remit professional fees and expenses incurred of Rs. 7,48,415/- till 30.05.2019. The order for handing over the charge was passed after three months and the application has incurred costs and expenses till the time of actual handing over.
7. The R-4 informed the applicant that the member of COC in its 9th Meeting vide email dated 21.05.2021 had ratified the following:
 - i. *"Professional fees of the IRP for the month of December 2018, January and February 2019 – Rs. 3,54,000/-*
 - ii. *Expenses incurred by the IRP during his tenure- Rs. 3,31,462.72*
As ratified by the COC Members during CIRP, the Liquidator shall make a payment of Rs. 6,85,463/- to the designated bank account as shared by you with us."

Accordingly, an amount of Rs. **6,85,463** was credited to the account of Applicant on 11.06.2021.

Applicant's submission:

8. The Applicant submitted that he has performed duties and responsibilities from the date of his appointment till the date of handing over i.e. approx. ten months from 12.10.2018 to 16.08.2019 and is entitled to monthly remuneration @ Rs.1,18,000/- which comes

to Rs. 11,99,667/- less already received Rs. 4,72,000/- thus leaving a **balance of Rs. 7,27,667/-**. In addition to professional fee above, the Applicant claims reimbursement of expenses incurred during the same period of Rs. 10,20,986.72/- out of which part amount of Rs. 3,31,463/- has been received leaving **balance of Rs. 6,89,523/-**.

Respondent's submission:

9. It is the case of the Respondent that COC has paid a total amount of **Rs. 6,85,462.72/-** (Rupees Six Lakhs Eighty- Five Thousand Four Hundred Sixty -Two only) towards his claims (i.e. Rs. 3,54,000/- being professional fees + Rs. 331462/- for cost/ expenses) incurred as approved by COC and rest of the claims of the Applicant are in nature of reimbursement to the cost and expenses incurred to retain his appointment as RP which was challenged before NCLT and NCLAT. The Respondent Bank had challenged his appointment as an IRP and later as RP since the initial stage. It is duty of the COC to fix the expenses to be incurred by the Resolution Professional and the expenses should be directly related to the insolvency resolution process. However, in the present case, the remaining unpaid expenses are expenses to defend himself as an RP for his personal benefit and not for the Corporate Debtor.
10. Therefore, Respondent Bank is not liable to make payment of the cost and expenses incurred by the applicant in the proceedings initiated by the Respondent Bank for his replacement as RP before the Adjudicating Authority and the Appellate Authority.

FINDINGS/ OBSERVATIONS

11. Heard Ld. Counsel for the parties and perused the record.
12. The limited issue for adjudication is whether or not the Applicant is entitled to receive his professional fee for the entire period from the date of his appointment as IRP/RP i.e. 12.10.2018 till handing over of the charge by him to R-4, the new RP i.e. 16.08.2019 and the reimbursement of the expenses incurred by him during the said period, despite the fact that Committee of Creditors have not ratified the entire fee and expenses.
13. The Applicant has annexed a chart giving details of the amounts claimed with remarks which as follows:

Date	Particulars	Amount	Details of payment
03.12.2018	IRP Fees from 12.10.2018 till 11.11.2018	1,18,000.00	Payment received
12.12.2018	IRP Fees from 12.11.2018 till 11.12.2018	1,18,000.00	Pending
12.01.2019	IRP Fees from 12.12.2018 till 11.01.2019	1,18,000.00	Received on 11.06.2021
12.02.2019	IRP Fees from 12.01.2019 till 11.02.2019	1,18,000.00	Received on 11.06.2021
12.03.2019	IRP Fees from 12.02.2019 till 11.03.2019	1,18,000.00	Received on 11.06.2021
12.04.2019	IRP Fees from 12.03.2019 till 11.04.2019	1,18,000.00	Pending
12.05.2019	IRP Fees from 12.04.2019 till 11.05.2019	1,18,000.00	Pending
12.06.2019	IRP Fees from 12.05.2019 till 11.06.2019	1,18,000.00	Pending
12.07.2019	IRP Fees from 12.06.2019 till 11.07.2019	1,18,000.00	Pending

12.08.2019	IRP Fees from 12.07.2019 till 11.08.2019	1,18,000.00	Pending
17.08.2019	IRP Fees from 12.08.2019 till 16.08.2019	19,667.00	Pending
Total Professional Fees		11,99,667.00	
Professional Fees received		4,72,000.00	
Professional Fees to be paid		7,27,667.00	

14. There are no disputes raised by the Respondent as far as the facts given in above chart, is concerned. The primary contention by the Respondent is that the Respondent Bank had challenged his appointment as an IRP and later as RP since the initial stage and therefore the Applicant is not entitled to professional fee from 19.12.2018 onward when the Respondent Bank filed application before NCLT.

15. We note that COC has already approved and paid monthly remuneration @ Rs. 1,18,000/-. We refer to Circular No. **IBBI/IP/013/2018** dated 12.06.2018 in which it is mentioned as follows:-

“1. When a corporate debtor undergoes corporate insolvency resolution process (CIRP), an Insolvency Professional (IP) is vested with the management of its affairs and he manages its operations as a going concern. He complies with the applicable laws on behalf of the corporate debtor. He conducts the entire CIRP. Such responsibilities of an IP require the highest level of professional excellence, dexterity and integrity. He needs to be pay fee or incur other expenses for various goods and services required for conducting the CIRP and or managing the operations of the corporate debtor as a going concern.

2.

3. *An IP is obliged under section 208 (2) (a) of the Code to take reasonable care and diligence while performing his duties, including incurring expenses. He must, therefore, ensure that not only fee payable to him is reasonable, but also other expenses incurred by him are reasonable....”*

16. There is no dispute that the Applicant continued to discharge his duties and responsibilities as RP of the Corporate Debtor under IBC from his appointment (12.10.2018) till the date of handing over of the charge of the Corporate Debtor to R-4 (16.08.2019). During CIRP of CD, RP not only manages the CD as a going concern, but also protects the assets of the CD, convenes COC meetings etc, and takes care and responsibilities while discharging his duties as RP. Hence, he is entitled to the professional fee @ Rs. 1,18,000/- per month for the period from 12.10.2018 to 16.08.2019 amounting to Rs. 11,99,667/- less already received Rs. 4,72,000/- leaving a balance unpaid amount of Rs. 7,27,667.00.
17. We refer to **Mr. Deveranjan Raman, Resolution Professional Poo Containers Pvt. Ltd. Vs. Bank of India Ltd.** Vide its order dated 30.07.2020, wherein it was held that;

“Fixation of fee is not a business decision depending upon the commercial wisdom of the Committee of Creditors”

18. Insofar as out of pocket expenses are concerned the Applicant has claimed a total amount of Rs.10,20,986.72 out of which Rs. 3,31,463/- has already been paid to the Applicant. The Circular dated 12.06.2018 clearly states as follows:

“8. It is clarified that the Insolvency Resolution Process Cost (IRPC) shall not include:

*(a) **any fee or other expense not directly related to CIRP;***

- (b) any fee or other expense beyond the amount approved by CoC, where such approval is required;*
- (c) any fee or other expense incurred before the commencement of CIRP or to be incurred after the completion of the CIRP;*
- (d) any expense incurred by a creditor, claimant, resolution applicant, promoter or member of the Board of Directors of the corporate debtor in relation to the CIRP;*
- (e) any penalty imposed on the corporate debtor for non-compliance with applicable laws during the CIRP;”*

19. We have carefully examined the nature of expenses claimed by the Applicant. It is noticed that the expenses after December 2018 (when Axis Bank constituting COC filed application before NCLT for replacement of IRP) are pertaining to expenses paid to Advocates, for legal services, appearances and other miscellaneous expenses connected with the legal proceedings for defending legal proceedings and not for the insolvency resolution process of the Corporate Debtor. We agree with the submission of the Respondent Bank CIRP cost would not include the personal expenses incurred by RP to defend himself (for his personal benefit and not for the Corporate Debtor). COC has already made the payment of Rs. 3,31,463.00/- to the Applicant which appears to be reasonable and the Applicant is not entitled for any further reimbursement.
20. Accordingly, the Applicant is entitled to receive professional fee only as discussed in para 14 above. Hence, Respondent COC is directed to release Rs. 7,27,667.00 to the Applicant towards his unpaid professional fee within one week.

21. The **I.A. 2878/ 2021** in C.P. NO. 587 (MB)/ 2018 is partly allowed and stands **disposed of** in above terms.

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)
(Saayli, LRA)

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)