

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

IA. No. 3791/2022

**In
CP(IB)No. 1792/MB/C-II/2017**

Application filed under section 60(5) of Insolvency and Bankruptcy Code, 2016, r/w Regulation 31 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), 2016 r/w Rule 11 of National Company Law Tribunal Rules, 2016.

Minita D Raja, RP

...Applicant

V/s.

The Cosmos Co-op Bank Limited

In the matter of

The Cosmos Co-op Bank Limited.

...Financial Creditor

V/s

Crystal Clear Veg Oil Refinery Pvt. Ltd.

...Corporate Debtor

Order Pronounced on :- 11.08.2023

Coram:

Shyam Babu Gautam

Member Technical

Kuldip Kumar Kareer

Member Judicial

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

IA. No. 3791/2022

In
CP(IB)No. 1792/MB/C-II/2017

Appearances (through video conferencing)

For the Applicant : Mr. Sandeep Bajaj, Advocate

For the Financial Creditor : Mr. Rohit Gupta, Advocate

ORDER

Per :- Shyam Babu Gautam, Member Technical

1. The present Application has been filed by the Resolution Professional seeking payment of Resolution Professionals fee and reimbursement of expenses incurred by the Applicant in conducting the Corporate Insolvency Resolution Process of the Corporate Debtor. The Applicant states that since June, 2020 the Applicant has neither received her professional fees nor the miscellaneous expenses incurred. The Applicant has filed the present Application to consider the expenses incurred by the Applicant in light of the Judgement dated 17.11.2022 passed by Hon'ble NCLAT wherein it was Ordered as :

“14. In view of the judgment of the Hon'ble Supreme Court on the law and the reasons as stated above, this Tribunal is of the view that the Order passed by the Adjudicating Authority is a non-speaking and without assigning any reasons is per se illegal. Accordingly, the order passed by the Adjudicating Authority in I.A. No. 1339 of 2019 and I.A. No. 3967 of

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

IA. No. 3791/2022

In
CP(IB)No. 1792/MB/C-II/2017

2019 in CP 1792 of 2017 dated 04.01.2021 is set aside and the matter is remitted back with the following directions:

- i. The Adjudicating Authority is directed to reconsider the Application on its merit and pass a reasoned order in accordance with law within a period of 45 days from receipt of copy of this Order.*
- ii. The period spent before this Tribunal from the date of filing of this Appeal and till this date is excluded for the purpose of CIRP.”*

2. In pursuance to the said Order, the Applicant apprised the Tribunal about the directions of the Hon'ble NCLAT and accordingly MA 1339 of 2019 was taken. The RP filed Affidavit dated 13.01.2023 and 14.04.2023 thereby placing on record the updated statement of expenses incurred in carrying out the CIRP till April amounting to Rs. 88,05,305/- and list of statutory filings from July 2020 onwards to keep the Corporate Debtor as a going concern.

3. Further, the Respondent have taken contentions as to that the RP has not performed any work from July, 2020 and therefore is not entitled for any fee. The fee charged by the RP is excessive and arbitrary and against the submitted Resolution Plan of Rs. 65,00,000/- (which was rejected by the Respondent), the CIRP cost is more than Rs. 1,00,00,000/- which is not justifiable. The Respondent asked the Applicant to convene a meeting of CoC members for reduction of fees of the RP, however, the Applicant

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

IA. No. 3791/2022

In
CP(IB)No. 1792/MB/C-II/2017

refused to call the meeting on the ground that the CIRP is over and thus the meeting could not be conducted. The Respondent also contended that the Applicant has also not made the up to date statutory compliances. The Applicant also failed to file an application for liquidation nor filed an Appeal challenging the IA 1339 of 2019 which was filed under Section 12A of the Code.

4. The Applicant vide its Affidavit dated 14.04.2023 has placed on record list of work performed by the RP from the year 2020. The Applicant states that several compliances, filings have been done by the Applicant from time to time to keep the Corporate Debtor Company as a going concern. Further, the Applicants fee was duly approved by the CoC in the 2nd CoC meeting being Rs. 2,50,000/-. The Respondent also gave undertaking dated 04.04.2019 to pay entire CIRP cost. Also, the fees of the Applicant was negotiated by the CoC and was reduced to Rs. 2,00,000 after the CIRP was over. The Respondent withdrew the said undertaking along with the IA 1339 of 2019 filed under section 12A.
5. The Applicant has further stated that the CIRP cost and the fee of the RP does not depend on the total value of the assets of the Corporate Debtor. in the present case the that the total value of assets of the Corporate Debtor is more than 4,50,00,000. Even if the Company goes in tp liquidation and the assets are realized, the receipt of the amount is first utilized towards payment of CIRP cost as well as liquidation cost. The present value of the

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

IA. No. 3791/2022

In
CP(IB)No. 1792/MB/C-II/2017

assets of the Corporate Debtor is more than 4,50,00,000 the amount which can be recovered from realization of assets under liquidation would be more than the cost of the CIRP.

6. Further, the plea taken by the Respondent that the Applicant has not filed application for liquidation against the rejection of the 12A application is unacceptable by the Applicant because the Respondent herein had already appealed against the said rejection of 12A application in Hon'ble NCLAT. The application filed by the Applicant for liquidation would have amounted to the appeal filed by the Respondent in Hon'ble NCLAT as infructuous.
7. Hence, the Applicant thereby prays that the fees to be fixed by the Hon'ble Tribunal in view of the activities, compliances and work performed by the Applicant from July, 2020 onwards and towards maintaining the Corporate Debtor as a going concern.

FINDINGS

8. Heard the Counsel for the Applicant and the Respondent. The relevant laws available to deal the present issue is as under :-

The Code of Conduct under the IBBI (Insolvency Professionals) Regulation, 2016 are depicted below:

Under Regulation 7(2)(h) Code of Conduct for Insolvency Professionals
“Remuneration and costs.

25. An insolvency professional must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations”

9. The IBBI Circular No. IP/004/2018 dated 16.01.2018 also amply made clear on the subject of Resolution Professional’s fee

“3. In view of the above, it is clarified that an insolvency professional shall render services for a fee which is a reasonable reflection of his work, raise bills/invoices in his name towards such fees, and such fees shall be paid to his bank account. Any payment of fees for the services of an insolvency professional to any person other than the insolvency professional shall not form part of the insolvency resolution process cost.

4. Similarly, any other professional appointed by an insolvency professional shall raise bills/invoices in his/its (such as registered valuer) name towards such fees, and such fees shall be paid to his/its bank account.”

e) Also pertaining to point out that IBBI Regulatory Authority has also issued a circular vide No. IBBI/IP/013/2018 dated 12.06.2018 on fee and other expenses in regard to CIRP

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

IA. No. 3791/2022

In
CP(IB)No. 1792/MB/C-II/2017

Sub: Fee and other expenses incurred for Corporate Insolvency Resolution Process Case Citation: (2022) ibclaw.in 410 NCLAT IBC Laws | www.ibclaw.in Company Appeal(AT)(Insolvency) No. 266 of 2020 Page 31 of 34

“3. An IP is obliged under section 208(2)(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. What is reasonable is context specific and it is not amenable to a precise definition. An illustrative list of facts considered in determination of what is reasonable is given in Annexure B.”

6. Keeping the above in view, the IP is directed to ensure that:- (a) the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable;

(b) the fee or other expenses incurred by him are directly related to and necessary for the CIRP.

(c) the fee or other expenses are determined by him on an arms' length basis, in consonance with the requirements of integrity and independence;

(d) Written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained;

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

IA. No. 3791/2022

In
CP(IB)No. 1792/MB/C-II/2017

(e) supporting records of fee and other expenses incurred are maintained at least for three years from the completion of the CIRP;

(f) approval of the Co0mmittee of Creditors (CoC) for the fee or other expense is obtained, wherever approval is required; and

(g) all CIRP related fee and other expense3s are paid through banking channel. “

10. Keeping in view the said laws and also considering the peculiar nature of the case, it is seen that this Tribunal vide its Order dated 04.01.2021 rejected the Application filed under Section 12A i.e. IA 1339 of 2019. The said Order was assailed before Hon'ble NCLAT and Hon'ble NCLAT set aside the matter and the same was remitted back to the Adjudicating Authority to reconsider the Application on merits.

11. On perusal of the above facts, it is evident that the period commencing from 04.01.2021 till 17.11.2022, no such work appears to be done by the Applicant RP. Hence his claim for Professional fees amounting to Rs. 2 Lakhs per month is not commensurate with the work performed during the said interregnum period. Therefore, we are of the view that since RP was in place, this Bench considers Rs. 50,000/- per month Professional fee for the period of July, 2020 to March, 2023 i.e. Rs. 17,00,000/- for 34 months plus Applicable taxes for the work performed by the Applicant. For the other Miscellaneous expenses like professional legal fees and security

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

IA. No. 3791/2022

In
CP(IB)No. 1792/MB/C-II/2017

services expenses are allowed to be reimbursed to the Applicant on actual basis as indicated by the Applicant in its Affidavit dated 14.04.2023.

12. In view of the above observations, **IA 3791 of 2022 is partly allowed** in above terms and disposed of.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)