

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA/967/IB/2020 in IBA/1045/2019

*(filed under Section 60(5) read with Section 25 (2) (c) of the Insolvency
and Bankruptcy Code, 2016)*

In the matter of ***M/s. Easun Reyrolle Limited***

B. Parameshwara Udpa,
Resolution Professional of
M/s. Easun Reyrolle Limited
R No.827/7, 8th A Main,
4th Block, BEL Layout, Vidyananapuram,
Bangalore – 560 097

... Applicant

-Vs-

1. **DBS Bank India Limited**
1st Floor, Capitol Point,
Baba Khari Singh Marg,
Connaught Place,
New Delhi – 110 001
2. **Axis Bank Limited**
Structured Asset Group
Jawahar Tower, 1st Floor,
No.3, Club House Road,
Anna Salai,
Chennai – 600 002
3. **Standard Chartered Bank**
6th Floor, 1 Basinghall Avenue,
London – EC2V 5DD

... Respondents

Order pronounced on 12th August 2021

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

Applicant / RP : *B. Dhanaraj, Advocate*
For 1st Respondent : *Varun Srinivasan, Advocate*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This is an Application filed by the Applicant viz., B. Parameshawara Udpa, Resolution Professional of M/s. Easun Reyrolle Limited under Sections 60(5) read with Section 25(2)(c) of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) seeking reliefs as follows:-

- a. Direct the 1st, 2nd and 3rd Respondents to remit their share of the CIRP costs and Expenditure in proportion to their voting rights i.e. Rs.3,04,504.65 by the 1st Respondent (7.39%), Rs.2,97,891.71 by the 2nd Respondent (11.83%), and Rs.1,93,251.26 by the 3rd Respondent (4.69%) to the Current Account No.39508541515 of the Corporate Debtor.
- b. Pass such further or other orders which this Hon'ble Tribunal may deem fit and proper in the circumstances of this case and thus render justice.

2. It is seen from the records that after filing of the present Application, the Applicant has filed a Memo vide SR No. 3892 dated 17.12.2020 before this Tribunal stating that the 2nd and 3rd Respondent have paid their respective CIRP cost and expenditure in relation to the Corporate Debtor. The said memo is taken on record and the relief as sought for sustains only in relation to the 1st Respondent.

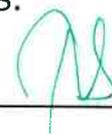
3. The Learned Counsel for the Applicant submitted that the CIRP in relation to the Corporate Debtor was ordered by this

Tribunal on 05.05.2020 and that the Applicant herein was appointed as the Interim Resolution Professional. Further, the Applicant has constituted the Committee of Creditors with 6 Financial Creditor as follows;

S. No.	NAME OF FINANCIAL CREDITOR	VOTING PERCENTAGE
1	State Bank of India	49.85
2	Canara Bank	13.43
3	DBS Bank India Limited	11.83
4	Standard Chartered Bank (India)	7.39
5	Standard Chartered Bank (UK)	12.81
6	Axis Bank Limited	4.69
	TOTAL	100

4. The Learned Counsel for the Applicant submitted that in the 2nd CoC meeting held on 10.07.2020, discussions were made as to the ratification of the cost incurred to the tune of Rs.16,02,392/- from the date of commencement of CIRP till the date of the 2nd CoC meeting and the following Resolution was passed;

- "i) Resolved that the CIRP Costs of Rs.16,02,392/- for the period from 08.05.2020 till 07.07.2020 is approved, being Expenditure towards Essential commodities i.e. Water, Electricity, Housekeeping, sanitization etc., are also approved.
- ii) Further resolved that the member Banks may make the payment of their share directly to the CIRP Account maintained at SBI Mookandapalli (IFSC: SBIN0006242) branch immediately in any case not later than three days
- iii) Further Resolved that Resolution Professional MR. Benegal Parameshwara Udpa is Authorized to make payment of CIRP costs to the concerned persons by issuing Cheques / NEFT / RTGS.



5. Pursuant to above, it was submitted that the Applicant in his capacity as the Resolution Professional in relation to the Corporate Debtor vide his email dated 21.07.2020 requested all the member banks of the CoC to remit their respective share of the CIRP cost incurred. Also, the Applicant has sent an email to the 1st Respondent on 26.07.2020 to pay his share of the CIRP for which, it was submitted that the Applicant has received a vague response from the 1st Respondent on 29.07.2020. It is also pertinent to point out here that the 1st Respondent vide their e-mail dated 03.08.2020 has expressed their denial to remit its agreed share of Rs.1,18,416.77/- towards the CIRP cost. Further, it was also submitted by the Learned Counsel for the Applicant that the State Bank of India, Canara Bank, and the Standard Chartered Bank (India) had remitted their respective shares of the CIRP in the Current Account maintained by the Corporate Debtor.

6. The Learned Counsel for the Applicant submitted that the Applicant in his capacity had raised Interim Finance during the CIRP period with the approval for the CoC members in order to meet out the expenses incurred during the CIRP. However, it was submitted that though the Interim Finance towards the CIRP costs have been consented in full, the 1st Respondent has not remitted his due and the CIRP costs and Expenditure till date, despite several attempts in this regard having been made by the Applicant.

7. Under such circumstances, it was submitted that the Applicant / Resolution Professional was left with no other option than to file the present Application seeking direction against the 1st Respondent for the remittance of the CIRP in proportion to his voting share as approved by the CoC, to be deposited in the Current Account of the Corporate Debtor.

8. The 1st Respondent has filed counter. The Learned Counsel for the 1st Respondent submitted that the present Application is liable to be dismissed for non-impleadment of necessary party, since the 1st Respondent has not sanctioned any facilities in relation to the Corporate Debtor, but is only acting as the Power of Attorney Holder for DBS Bank Ltd., Singapore as its Security Trustee / Arranger. It was submitted by the Learned Counsel for the 1st Respondent that they had given External Commercial Borrowing (ECB) facility to the Corporate Debtor and that the said facility would require approval from the Reserve Bank of India (RBI) in view of the fact that the disbursement of the amount was being made by DBS Bank Ltd., Singapore through its branch at Anna Salai, Chennai to the account of the Corporate Debtor and accordingly, the RBI vide its letter dated 17.11.2011 has stated that the disbursement of the funds to be made to the Corporate Debtor through the "Approval Route" as per its Regulations /



Guidelines. Further, it was submitted that on 28.02.2019, the RBI had approved the scheme of Amalgamation wherein all the branches of DBS Bank Limited, in India would function as DBS Bank India Limited, with effect from 01.03.2019. Therefore, it was submitted that for all the purposes of the subject transaction, DBS Bank Limited., Singapore was the lender and the Anna Salai Branch of the DBS Bank Limited, Singapore stood as the Arranger and the 1st Respondent herein was the POA holder in order to act for and on behalf of the DBS Bank Limited.

9. The Learned Counsel for the 1st Respondent further submitted that, even assuming that the CIRP costs are to be paid by the Respondent, the 1st Respondent cannot contribute the same unless due approval is sought from the RBI in view of the original sanction / funding is based out of the ECB provided by the DBS Bank Ltd., Singapore. Thus, the 1st Respondent has expressed its inability to remit the CIRP costs in relation to the Corporate Debtor.

10. The Applicant has filed rejoinder. The Learned Counsel for the Applicant submitted that the stance of the Applicant that they have to get prior approval of the RBI in order to make the CIRP payment is false, since that circular referred to by the Learned Counsel for the Applicant refers to raising of funds through ECB only if resolution plan provides and does not pertain to contribution to

CIRP. Further, it was submitted that one of the CoC members though situated in London, United Kingdom is making contribution for the smooth functioning of the CIRP. Also, it was submitted that the 1st Respondent is required to remit the CIRP cost and expenses in terms of IBC, 2016 and the 1st Respondent is bound by the majority decision of the Committee of Creditors members who have agreed to ratify the CIRP costs and expenses and share the same in the ratio of their voting rights. The Learned Counsel for the Applicant submitted that the 1st Respondent has not made out a case for denying the contribution of payment towards the CIRP expenses, however has taken a moonshine defence to protract the proceedings and deny the Applicant of the lawful contribution of the CIRP.

11. Heard the submissions made by the Learned Counsel for both the parties and perused the files including the documents placed on record. The issue which is required to be adjudicated before this Tribunal is to whether the 1st Respondent is required to pay the CIRP in relation to the Corporate Debtor and if not so, what will be consequences.

12. We have perused the claim form submitted by the 1st Respondent before the Applicant as soon as the CIRP in relation to the Corporate Debtor was triggered by this Tribunal. The Form – C

shows that the same was filed before the IRP on 22.05.2020 and the claim was filed by (1) DBS Bank Limited Singapore and (2) DBS Bank India Limited. Thus, it is clear both the Banks have filed a single claim Form before the IRP. Eventhough the Claim form was filed jointly by both the aforementioned banks, the claim form is seen to have been signed by one Mr. Ravi Roshan, Vice President of DBS Bank India Limited, First Floor, Capitol Point, Baba Kharak Singh Marg, Connaught Palace, New Delhi – 110 001 and not in the capacity of DBS Bank Limited, Singapore. Further, at this juncture it is relevant to refer to clause 9 of the claim Form – C filed by the 1st Respondent which is reproduced hereunder;

9	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a Resolution Plan	Bank	DBS Bank India Ltd.
		A/C. No.	820LIABITSCLGINR
		IFSC Code	DBSS0IN0811

13. A perusal of the aforesaid table shows that in the Claim Form filed by the 1st Respondent along with DBS Bank Limited Singapore, the proceeds of the amount pursuant to the Resolution Plan, if any, approved by this Tribunal would go into the account of the DBS Bank India Limited. However, we find it strange on the part of the Learned Counsel for the Applicant who states that they cannot contribute the same unless due approval is sought from the RBI.



14. As per Regulation 33 and 34 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 it is the duty of the members of the Committee of Creditors to pay the fees and the cost incurred by the Resolution Professional, once the same has been ratified by the CoC by passing a Resolution to that effect. However the 1st Respondent in the present case is not willing to pay the CIRP costs citing the reason that they have to get approval of the RBI in order to pay the CIRP costs in relation to the Corporate Debtor, which reason we find it quite bizarre and we are unable to comprehend. The 1st Respondent is ready to receive the proceeds of the Resolution Plan, into its bank account, however for the purpose of the paying the CIRP costs they are raising a feeble defence that they have to get the approval of the RBI.

15. This is a peculiar case, wherein the CoC member has categorically expressed its inability to pay the costs of the CIRP. On perusal of the provisions of the IBC, 2016 and the Rules and Regulations framed thereunder, we do not find any exception to CoC members from payment of the CIRP costs. This leads us to the question that whether a CoC member can participate in the CoC meeting, if they have clearly expressed their inability to pay the CIRP cost. The Regulations framed by the IBBI and the provisions of IBC, 2016 have no specific provisions in relation to the same. However, we are of the view it would be a futile exercise, if we

direct a member of the CoC who has already expressed its inability to make the payment towards the CIRP costs.

16. All the Financial Creditors, other than Related Part, be it secured or unsecured, by the provisions of IBC, 2016 becomes the member of the CoC. Further, the Regulation mandates that the Financial Creditors are required to contribute towards the CIRP costs in proportion to their voting share. Thus, it becomes clear that a Financial Creditor so as to **continue** as the member of the CoC, it is mandatory for them to contribute towards the CIRP costs. Further, it is significant to note here that the Financial Creditor is exercising its voting right in respect of the Corporate Debtor has also been empowered to decide and vote upon the future state of the Corporate Debtor. Thus, the Financial Creditor cannot shy away from their liability of payment towards the expenditure incurred on account of CIRP in relation to the Corporate Debtor.

17. Further, IBC, 2016 being a time bound process; the RP cannot run from pillar to post to collect the CIRP cost. Hence, on equity, we are of the considered view that since the 1st Respondent cannot contribute towards the CIRP costs, the 1st Respondent is debarred from participating in the meetings of the CoC. Also, the 1st Respondent has categorically stated in the counter that they are not the Financial Creditor in respect of the Corporate Debtor and



they are acting only as an Arranger for DBS Bank Limited, Singapore. Since both of them are not ready to bear the CIRP costs, we are of the considered view that both the 1st Respondent as well as DBS Bank Limited, Singapore cannot participate in the meetings of the CoC.

18. Under such circumstances, by taking into consideration the facts of the present case and also the fact that the 1st Respondent has expressed its inability to pay the CIRP costs, we hereby direct the Applicant to remove the 1st Respondent from the member of Committee of Creditors and to reconstitute the CoC afresh, without the 1st Respondent. However, it is made clear that the claim of the 1st Respondent will remain intact and only the 1st Respondent is barred from participating in any of the meetings of the CoC in relation to the Corporate Debtor hereinafter.

19. With the above said directions, this Application stands **disposed of.**

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond