



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

IA-471/2022 in CP(IB)-197/MB/2018

Under Section 60(5) of the IBC, 2016

In the matter of

Alkush Enterprises ...Applicant

v/s.

Amit Gupta

...Respondent/
Res. Professional

In the matter of

ICICI Bank ...Financial Creditor

v/s.

Unimark Remedies Ltd.

...Corporate Debtor

Order Pronounced on: **17.04.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant: Mr. Kunal Chheda, Advocate.

For the Respondent: Ms. Pooja Mahajan a/w Ms. Mahima Singh, Ms. Arveena Sharma & Mr. Jineshkumar Gandhi i/b Arihant Associates, Advocates. Mr. Amit Gupta, RP present in person.



ORDER

Per: Kishore Vemulapalli, Member (Judicial)

This is an Application filed by a Service Provider viz. Alkush Enterprises seeking direction to the Resolution Professional to pay its dues for an amount of Rs.40,07,088/- (Rupees Forty lakh seven thousand eighty-eight only) towards the services rendered to the Corporate Debtor during the CIRP period.

Brief Facts of the Case:

1. The Applicant is a manpower service provider which provided manpower services to the Corporate Debtor from April 2016 under a Service Contract dated 11.04.2016 which was subsequently renewed on 26.03.2018 for a period from 01.04.2018 to 31.03.2019.
2. In the meantime, the CIRP of the Corporate Debtor viz. Unimark Remedies Ltd. was commenced vide an admission order dated 03.04.2018 of Court-I of this Bench in CP(IB)-197/MB/2018 filed by ICICI Bank; a Financial Creditor. Mr. Amit Gupta was appointed as IRP of the Corporate Debtor.
3. Upon taking charge of the Corporate Debtor, the Resolution Professional availed services of the Applicant even beyond the contract period as the business of the Corporate Debtor was continued. The Applicant provided services till July 2020. As the Resolution Professional has not paid the outstanding balance amount to the Applicant, several reminders were sent to the Resolution Professional, however, no payment is made. Therefore, the Applicant approached this Tribunal. The Applicant has attached the ledger statement reflecting the invoices raised on the Corporate Debtor and payment received by the Applicant.



4. The Respondent/RP in its reply submits that as he operated the Corporate Debtor as going concern effective from 03.04.2018, also availed services (Manpower) of the Applicant during CIRP period. The Respondent has also made various 'on account' payments towards the invoices raised by the Applicant during the CIRP period. The Respondent further submits that the whole amount i.e. Rs.40,07,088/- claimed by the Applicant in the Application is not dues fallen during the CIRP period. Only a partial amount of Rs.19,64,138/- (Rupees Nineteen lakh Sixty-four thousand one hundred thirty-eight only) is the balance due payable against the invoices raised during the CIRP period. He further submits that there was an opening balance outstanding of Rs.27,78,356/- prior to the commencement of CIRP, out of which, an amount of Rs.9,01,595/- was paid by the Respondent for the purpose of maintaining continuity of the services of the Applicant. He submits that as the CIRP costs increased and there was insufficient funds with the Corporate Debtor, he could not make full payment during CIRP period.
5. The Respondent further submits that Rs.19,64,138/- the amount remaining balance payable to the Applicant towards invoices raised during the CIRP period is already considered as "CIRP costs" as per Section 30(2) of the Code. The Respondent/RP has already filed an Application with this Tribunal seeking approval of the Resolution Plan submitted by the Resolution Applicant which is approved by the CoC with 72.25% voting share. The same Resolution Plan provides payment of CIRP costs in priority. Once the Plan is approved by this Tribunal, the CIRP costs will be paid in priority as per the timeline proposed by the Resolution Applicant



in its Resolution Plan. He also submits that since there is no case for the Applicant, the Application should be dismissed as not maintainable.

Findings:

6. While evaluating the submissions made by both parties and the ledger submitted by the Applicant, it is crystal clear to the Bench that the amount claimed in the Application is completely not coming under the CIRP costs. The amount falling under CIRP costs is only Rs.19,64,138/- which has already been considered by the RP and Resolution Applicant (RA). The balance amount of Rs.20,42,950/- is the amount due prior to the commencement of CIRP, which will normally be treated as Operational Debt and the same should have been claimed with the RP on time like all other Operational Creditors. As the Applicant herein has not made any averment about the operational debt whereas made a wrong statement in the Application para 3, this Bench is unable to consider the claim of operational debt. It is also noted that out of the total operational debt, as submitted by the RP, an amount of Rs.9,01,595/- has been paid by the RP, which is almost than 45% of the total outstanding prior to the CIRP.
7. In the above circumstances, this Bench observes that the Applicant's prayers shall stand addressed upon approval of the plan. The portion of the claimed amount of the Applicant, which is the actual CIRP costs, has already been considered by the RP in the CoC approved Plan. In the interest of justice, we direct the RP to verify the applicant's contention in relation to pre-CIRP dues and, if the claim is admissible under the



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provisions of the Code, to admit the claim in relation to pre-CIRP dues after such finding.

8. With the above direction, we **dispose** of this IA-471/2022 as partly **allowed**.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)