

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II

I.A. No. 3976/2020
IN
(IB)-2584/ND/2019

IN THE MATTER OF:

MR. ASHOK TRIPATHI

...Financial Creditor

Vs.

ANSAL PROPERTIES AND INFRASTRUCTURE LTD.

....Corporate Debtor

IN THE MATTER OF:

Mr. Amarpal

Interim Resolution Professional For

Corporate Debtor

...Applicant

Versus

M/s Ansal Properties and Infrastructure Ltd.

...Respondent

Order Delivered on : 05/10/2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

MR. L.N. GUPTA, MEMBER HON'BLE (TECHNICAL)

PRESENT: -

For the Applicant: Adv. Shohit Chaudhary for Applicant (IRP) and Adv. Malak Bhatt,

For the Respondent: Adv. Neeha Nagpal

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ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

IA. 3436/2021

1. The present application is filed under Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter referred to as the "Rules") seeking the following direction:

"Direct Respondent to release of a sum of Rs. 24,83,471 in favour of the Applicant immediately towards his professional fees and other expenses incurred by him during the CIRP"

2. The facts mentioned in the application in brief are as follows:

- That the promoter of the Corporate Debtor had filed an Appeal against the order dt. 17.03.2020 by which Corporate Insolvency Resolution Process (CIRP) was initiated against the corporate debtor, before the Hon'ble National company Law Appellate Tribunal (NCLAT), and Vide judgement dated 14.08.2020, the Hon'ble NCLAT allowed the said appeal and directed as under:

"26. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional' for the period he has functioned."

- That the details of professional fees and expenses incurred by the IRP from March, 2020 to August, 2020 have been placed.

3. The Respondent has filed its reply and written arguments raising objections against the prayer of applicant, stating that:

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- Hon'ble NCLAT in its order dated 14.08.2020, has nowhere mentioned that the payment of the said fee will be made by the corporate debtor.
- Further, it is stated that in terms of Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), the applicant is to bear expenses incurred by the IRP, which shall then be reimbursed by the CoC. Since in the present matter, CoC was not constituted and Hon'ble NCLAT has noted in its order that the initiation of CIRP was suffered from grave legal infirmity, hence the Respondent No.1 should not be burdened with extra expenses such as fee of IRP and other expenses incurred by IRP.
- The respondent has relied upon the order of the Hon'ble NCLAT in Civil Appeal No. 4044/2020 titled as 'Rajkumar Brothers & Production Pvt. Ltd Vs. Harish Amilineni Shareholder and erstwhile Director of Amilionn Technologies Pvt. Ltd. & Anr.' Hon'ble NCLAT vide order dated 22.01.2021 observed as under:

"The direction is in the nature of costs of the proceedings under Section 7 of the IBC, which have been found to be unsustainable in law. The Respondent having succeeded, cannot be saddled with the costs of the Corporate Insolvency Resolution Process (CIRP) initiated at the behest of the Appellant or with the fees of the Interim Resolution



Professional (IRP). The direction does not warrant interference in appeal.”

- It is submitted that the said settlement agreement, executed between financial creditor and corporate debtor was limited to bearing expenses for the Financial Creditor towards “legal proceedings” only. It did not cover CIRP expenses or costs incurred by the IRP in any manner.
 - It is also alleged that the fee claimed by the applicant is unreasonable and high, without any rational justification.
4. The applicant has filed rejoinder to the reply and submitted:
- That the financial creditors vide email dated 11.11.2020, have also informed that the obligation to make payment of fees of the applicant is upon the Corporate Debtor. The email dated 11.11.2020, sent by the Financial Creditors to the Corporate Debtor has been placed at page 69 of the rejoinder.
 - That it is pertinent to mention that the Consent Form dated 02.03.2019, as given by the Financial Creditor to the Applicant, clearly states that the proposed fee of the IRP would be Rs.11,00,000/- per month, until the Constitution of the Committee of Creditors.
 - That the CIRP has been conducted from March, 2020 to August, 2020 and in terms of the above, the IRP would be entitled to a minimum fee of Rs.66,00,000/-, however, the Applicant is seeking directions of payment of only a sum of



Rs.24,83,471/- towards the actual work carried out and litigation cost before the Court.

5. It is pertinent to mention here that vide order dated 23.12.2020 Insolvency and Bankruptcy Board of India (IBBI) was directed to directed to examine the matter and submit the report and accordingly, IBBI has filed the report and submitted as follows:

- The (IBBI) committee found that the fees of Rs. 17,70,000/- as claimed by applicant is unreasonable. The committee considered that for the activities performed by applicant on a limited scale, a total fee of Rs. 2,00,000/- (calculated at Rs. 40,000/- per month) may be considered as reasonable.
- The committee observed that the applicant has
- made two announcements. First public announcement was made in March, 2020 at cost of Rs. 47,074/-, which covered 5 cities and 10 editions and the second was made in in April 2020 (at the cost of Rs. 48,646/-) covering 1 city and 2 editions. The committee did not find the cost incurred towards second public announcement as acceptable as the same was not necessary, given that the first public announcement was already made.
- It is stated that the applicant appointed Pankaj Agarwal & Associates, Advocates and Solicitors for the purpose of claims' verification on 16.05.2020 and a bill no. APIL/NCLT-CD-2/07/2020-21 for an amount of Rs.



1,75,000/- was raised to the applicant towards the said claim verification. It is observed by the committee that since the claim verification is the duty of IRP under the Code, it cannot be outsourced and hence, this claim of applicant is not acceptable as the same has been suitably factored in while arriving at the fee payable to IRP.

- It is opined by the committee that Rs. 42,750/- claimed by applicant towards other expenses can be considered as acceptable.
- In respect of the cost of legal retainership, it is submitted that the applicant had appointed Shohit Chaudhry & Associates, Advocates, as legal counsel for the given purpose on 15.05.2020, the appointment was confirmed on 26.05.2020. The appointment was made after two months' gap from CIRP Commencement date. It is submitted that Bill of Rs. 6,00,000/- raised by Advocate is not acceptable and fee of Rs. 3,00,000/- may be considered as acceptable, keeping in view that the work performed by the Advocate was limited for a period of two months only.

6. The applicant has filed rejoinder to the aforementioned reply/report of IBBI and submitted that:

- As per audited financial statement for the year 2018-19 of the Corporate Debtor, the remuneration of Mr. Sunil Kumar Gupta (CFO) has been stated to be Rs.28,35,536/- for the year



2018-19, i.e. Rs.2,36,294/-per month. Since, the responsibilities of IRP are more than CFO, hence the fees proposed by the Applicant at the rate of Rs.3,00,000/- per month is reasonable and appropriate.

- The recommendations made by the members of the Expert Committee themselves is contradictory to the professional fees being charged themselves in the assignments undertaken by them. As per the details in the report, in the CIRP of Ess Dee Aluminium Ltd., Ms. Deepika Bhugra Prasad, had charged approximately Rupees Four Lakhs per month, where the claims were worth Rs. 401 Crores. In comparison, in the impugned CIRP of the present Corporate Debtor, the claims were approximately worth Rs. 1255 Crores. Using the same as the basis, the professional fees of the Applicant should be more than Rupees 4 Lakhs per month.
- That duration of the CIRP of the Corporate Debtor was from 17.03.2020 to 14.08.2020, i.e. a total of 150 days. There were total 150 home-buyers in the 2 projects under CIRP. More than 283 claims including those of Financial Creditors, Other Creditors, Creditor-in-class (allottees) of other projects of Corporate Debtor, were received by the Applicant, amounting to a sum of Rs.1,255 Crore. Despite the insolvency being limited to two Projects of the Corporate Debtor, all kind of creditors had filed their claims. Several Creditors such as Banks and Financial Institutions, Debenture Holders, Decree-



Holder, were not exclusive to any particular project and as a result, all of them filed their claims. Being the IRP, it was the Applicant's duty to collect and verify the every claim received by him. That the Committee has failed to consider the fact that the appointment of Mr. Pankaj Agarwal, Advocate, was made to obtain legal advice in verification of the Claims filed by Banks, which require legal assistance. Such appointment was required to discharge the responsibility cast upon the IRP.

- The committee has erroneously recorded that the second public announcement was not necessary, given that the first public announcement was already made. It is stated that the first Public Announcement was made in Form A on 18.03.2020 after the commencement of CIRP. Thereafter, in the Appeal filed by the Management of the Corporate Debtor, the Hon'ble NCLAT, vide order dated 20.03.2020, directed to limit the CIRP to 2 RERA registered projects. The said projects are situated in Lucknow, Uttar Pradesh, hence, in order to comply with the directions of the Hon'ble NCLAT, the public announcement was made in Lucknow only on 18.04.2020. Had the second Public Announcement was not made, it would have resulted into non-compliance of the order by Hon'ble NCLAT



7. We have heard the Learned Counsels appearing for the Applicant, Respondent and the IBBI and perused the averments made in the application, reply, rejoinder, reports submitted by the IBBI and the written submissions filed by the respective parties.

8. The Learned Counsel for the applicant placed all the facts mentioned in the application as well as the written submissions and submitted that vide judgement dated 14.08.2020, the Hon'ble NCLAT set aside the CIRP and directed the Adjudicating Authority to fix the fee of the IRP and in pursuance of that, the present application is filed. He further submitted that a report was called for from the IBBI. The IBBI has submitted a report, which is misconceived and without any basis, in fact or law. He further submitted that the IBBI has not reasoned while computing the fee for the IRP. He further submitted that IRP has claimed the fee in terms of the agreement arrived between the parties.

9. On the other hand, the Learned Counsel appearing for the respondent / corporate debtor submitted that in terms of Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), the applicant is to bear expenses incurred by the IRP, which shall then be reimbursed by the CoC. He further submitted that the Corporate Debtor is not liable to pay the fee and expenses.

10. He also placed the reliance upon the decision of the Hon'ble Supreme Court in Civil Appeal Number 4044/2020 in which the Hon'ble Supreme Court held that ***"the direction is in the nature of costs of the proceedings under Section 7 of the IBC, which have been found to be unsustainable in law. The respondent having succeeded, cannot be saddled with the***

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costs of the Corporate Insolvency Resolution Process (CIRP) initiated at the behest of the Appellant or with the fees of the Interim Resolution Professional (IRP). The direction does not warrant interference in appeal”.

11. The Learned Counsel appearing for the IBBI submitted that in pursuance of the direction, the IBBI had constituted a Committee to examine the cost and expenses claimed by the applicant and accordingly, the IBBI has submitted the report and the operative portion of the report has already been referred to Supra, therefore, it is needless to repeat the same.

12. Now in the light of submissions, we consider the prayer of the applicant. It is an admitted fact that the CIRP initiated against the respondent is set aside by the Hon’ble NCLAT in Company Appeal 80 (Insolvency no. 452/2020) and while disposing of the appeal the Hon’ble NCLAT in para 26 of the Judgement observed that “the Adjudicating Authority will fix the fee of IRP for the period he has functioned” and in pursuance of that direction, the present application is filed.

13. In terms of the Regulation 33 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation 2016, cost of the Interim Resolution Professional shall be fixed by -

“Regulation 33 - Costs of the interim resolution professional.

(1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.

(2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).

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(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

[Explanation. - For the purposes of this regulation, "expenses" include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional.]"

14. A bare perusal of the Regulation 33 shows that it is the applicant, who shall fix the expenses to be incurred on or by the IRP and if the same has not been fixed, the Adjudicating Authority shall fix the expenses and the applicant shall bear the expenses, which shall be reimbursed by the Committee (COC) to the extent it ratifies.

15. Here in the case in hand, admittedly, there was no CoC constituted, therefore, we had directed the IBBI to examine the fee and expenses claimed by the applicant, which in its report has stated the admissible fee and expenses, which the applicant is entitled to get. At the cost of repetition, we would like to refer to the relevant portion of the report dated 04.08.2021 submitted by IBBI, which is as follows-

- "The committee found that the fees of Rs. 17,70,000/- as claimed by applicant is unreasonable. The committee considered that the activities performed by applicant on a limited scale, a fee of Rs. 2,00,000/- (calculated at Rs. 40,000/- per month) may be considered as reasonable.

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- The committee observed that applicant had made two announcements. First public announcement made in March, 2020 at cost of Rs. 47,074/-, which covered 5 cities and 10 editions and second in April 2020 (at the cost of Rs. 48,646/-) covering 1 city and 2 editions. The committee did not find cost incurred towards second public announcement as acceptable as the same was not necessary given that the first public announcement was already made.
- It is stated that the applicant appointed Pankaj Agarwal & Associates, Advocates and Solicitors for the purpose of claim verification on 16.05.2020 and a bill no. APIL/NCLT-CD-2/07/2020-21 for an amount of Rs. 1,75,000/- was raised to the applicant towards said claim verification. It is observed by the committee since claim verification is duty of IRP under the Code, it cannot be outsourced and hence, this claim of applicant is not acceptable as the same has been suitably factored while arriving at the fee payable to IRP.
- It is submitted that the committee opined that Rs. 42,750/- claimed by applicant towards other expenses can be considered as acceptable.
- In respect of cost of legal retainership, it is submitted that the applicant appointed Shohit Chaudhry & Associates, Advocates, as legal counsel for the given purpose on



15.05.2020 the appointment was confirmed on 26.05.2020. The appointment was made after two months gap from CIRP Commencement date. It is submitted that Bill of Rs. 6,00,000/- raised by advocates is not acceptable and fee of Rs. 3,00,000/- may be considered as acceptable keeping in view that the work performed by the advocate was limited for the period of two months only”.

16. On the basis of this report, we notice that the IBBI has fixed the total fee of IRP of Rs. 2,00,000/-, @ 40,000/- per month and also allowed the legal retainership fee of Rs. 3,00,000/-.

17. We further notice that towards other expenses, the IBBI has recommended to accept a cost of Rs. 47074/-towards the first public announcement only but reject the cost of Rs.48646/ towards the second public announcement. And for other expenses, the IBBI has recommended an amount of Rs. 42750/-.


18. Considering the above facts, submissions and report of IBBI, we accept all the recommendation of the IBBI, except towards the expenses incurred for the public announcement. Although the IBBI has rejected the claim of second public announcement but we are of the considered view, since the public announcement has been made and that has not been denied, hence we approve/ grant the cost / expenses incurred towards the second public announcement too.

19. Accordingly, we conclude that the IRP is entitled to receive the fee and expenses in the following manner: -

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1. Towards total fee, Rs. 2,00,000/- (calculated at the rate of Rs. 40,000/- per month);
 2. Towards legal retainership - Rs. 3,00,000/-
 3. Towards other expenses -Rs. 42750/-; and
 4. In addition to Rs. 47074 for first public announcement, Rs. 48646/-for second Public announcement - (Total Rs. 47074+ 48646= Rs. 95,720/
 5. Accordingly, we hold that the IRP is entitled to receive a total amount of Rs. 6,38,470/-(Rs. Six lakh thirty eight thousand four hundred seventy) only towards his fee and other expenses.
 6. So far as the responsibility to pay the cost is concerned, since, the CIRP is terminated and there is no COC. We also observe, no specific direction has been given by the Hon'ble NCLAT hence, in our considered view the aforesaid amount will be paid by the Corporate Debtor and not by the applicant.
20. **Accordingly, we direct the Corporate Debtor to pay total amount of Rs. 6,38,470/- (Rs. Six lakh thirty eight thousand four hundred seventy) only towards his fee and other expenses, within a month from today.**
21. **With this, the present IA stands disposed of.**



(L.N. GUPTA)
Member (T)



(ABNI RANJAN KUMAR SINHA)
Member (J)