



**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 28.03.2023 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB)No.202/9/AMR/2019	Main Case	9 of IBC	Tricon Energy (India) Pvt Ltd Vs S V K Shipping Services Pvt Ltd
	IA(IBC)/347/2022	60(5) of IBC	Kantipudi Venkata Raju, erstwhile RP of M/s SVK Shipping Services Private Limited

ORDER

IA(IBC)/347/2022:

Mr. Shaik Gouse, PCS for the Applicant present. Ms. J.V.L. Bharati, Counsel for the Respondent/CoC Present. Orders pronounced. IA(IBC)/347/2022 is allowed, vide separate orders.

Sd/-
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

RSN



**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

**IA(IBC)/347/2022
IN
CP (IB)/202/9/AMR/2019**

**Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 and
Rule 11 of the NCLT Rules, 2016**

**In the matter of
M/s. S.V.K. SHIPPING SERVICES PRIVATE LIMITED**

BETWEEN:

Mr. Kantipudi Venkata Raju,
Erstwhile Interim Resolution Professional of
S.V.K. Shipping Services Pvt. Ltd., (CD)
R/o. 4-198, Manikya Nagar, Valasapakala,
Kakinada, East Godavari,
Andhra Pradesh – 533005

.....Applicant

AND

1. The Chief Managar,
Canara Bank (Sole Financial Creditor)
Chinna Waltair Branch,
7-1-73A, University Road,
Anoop Apartments, Chinna Waltair,
Visakhapatnam, AP -530017
2. Mr.Kalvakolanu Murali Krishna Prasad,
Resolution Professional of
S.V.K. Shipping Services Pvt. Ltd., (CD)
Flat No.303, Krishnanjali Towers,
8-1-7/1, Balaji Nagar, Waltair Uproads,
Siripuram, Visakhapatnam, AP-530017

.....Respondents

Date of pronouncement of Orders: 28.03.2023



Coram:

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

For the Applicant : Mr. Shaik Gouse, PCS

For the Respondents : Ms. J.V.L. Bharati, Advocate

ORDER

Per: Justice Telaprolu Rajani, Member Judicial

1. This is an Application filed by the Applicant under section 60(5) of Insolvency and Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules, 2016 seeking to direct the Respondents 1 and 2 to pay Rs.9,05,058/- to the Applicant in respect of the fees and expenses incurred during his tenure as IRP.
2. The brief facts of the Application are:
 - i. The Company Petition i.e., CP(IBC)/202/9/AMR/2019 is filed under Section 9 of IBC, 2016 by M/s. Tricon Energy (India) Pvt. Ltd (OC) against M/s. S.V.K. Shipping Services Pvt. Ltd., (CD) and was admitted by this Tribunal vide its order dated 13.05.2022. Mr. Kantipudi Venkata Raju (Applicant herein), was appointed as Interim Resolution Professional (IRP).
 - ii. On 16.05.2022, the Applicant issued the Public Announcement in Form A, by inviting claims from the creditors and in response to the publication, the Applicant received three claims i.e., one from Financial Creditor i.e., Respondent No.1 herein and two from



Operational Creditors. The same were admitted and the Committee of Creditors (CoC) with Canara Bank, as financial creditor with 100% voting right, was constituted. After constitution of Committee of Creditors, the applicant has called the 1st CoC meeting on 09.06.2022 by giving proper notice, along with agenda notes, to the all eligible members.

- iii. In the 1st CoC meeting held on 09.06.222, the applicant has brought to the notice of CoC that he has received 1st month remuneration of Rs.3,00,000/- and also received expenditure incurred for the first month, including the public announcement of Rs.82,242.70 from the Operational Creditor who has filed the application under Section 9, for initiation of the CIRP of the CD and in the same meeting, the applicant also brought to the notice of the CoC about the provisions of Section 22 (2) of the Code, that the CoC may resolve either to appoint him as RP or to replace with another Insolvency Professional. The applicant further informed the CoC that, he is willing to continue as RP if the CoC resolves on the same terms of fee of Rs.3,00,000/- per month and expenses as per actual, which was fixed by the applicant. In this regard, CoC i.e., Respondent No.1 said that normally they would like to appoint the RP who has been named in their empanelment list and they need to consult their head office and inform the same accordingly. The applicant then informed the CoC that till the appointment of new RP, he will continue as IRP at a remuneration of Rs.3,00,000/- per month



plus reimbursement of expenditure as per actual, for which CoC representing 100% voting power consented.

- iv. In the 2nd CoC meeting held on 13.07.2022, the Applicant served proper notice along with agenda notes to all the eligible members and in the said meeting the CoC, among the agenda items, discussed about the appointment of new RP in the place of IRP and in this regard, Financial Creditor, Canara Bank informed the CoC that they have already appointed one of their panel Insolvency Professionals as RP of the CD and received the soft copy of the consent and expected to receive the hard copy soon and that they will inform the Adjudicating Authority in this regard. In the same meeting, the applicant brought to the notice of the CoC about the expenses of Rs.30,561/- incurred during the 2nd month along with monthly remuneration of Rs.3,00,000/- per month as agreed in the 1st CoC meeting and requested the CoC to clear the bills from the Financial Creditor in the absence of funds available with CD. The CoC approved the same.
- v. In the 3rd CoC meeting held on 20.07.2022 , apart from the other agenda items, the CoC has resolved to replace the Applicant with Respondent No.2 as Resolution Professional and authorized Respondent No.1, Canara Bank to file necessary application before this Tribunal on behalf of CoC for appointment of Respondent No.2 as RP. In the said meeting, the Applicant brought to the notice of the CoC regarding the fees of Rs.3,00,000/- and reimbursement of expenses incurred and



submitted that all the bills have been submitted to Respondent No.1, being the Financial Creditor with 100% voting rights, for release of the same.

- vi. In view of the Resolution Passed in the 3rd CoC meeting for appointment of Respondent No.2 as RP in the place of the Applicant, Respondent No.1 has filed the Interlocutory Application before this Tribunal, bearing No. IA (IBC)/175/2022 and the said application has been allowed by this Tribunal, vide orders dated 24.08.2022 confirming the appointment of Respondent No.2 as RP in place of applicant and also directed the CoC in Para 3 of the order as follows: “However, the fee of the present IRP shall be paid as agreed till he hands over charge to the new RP”.
- vii. On receipt of the said order, on 26.08.2022 the applicant immediately informed the CoC of his readiness to handover the charge any day as they are comfortable and made a request to clear the pending bills of his remuneration and also reimbursement of the expenditure incurred on behalf of the CD. Respondent No.2 communicated to the Applicant that he will take over the charge on 06.09.2022 and requested the applicant to keep the record ready on that date. Hence, the Applicant, as agreed, handed over the charge to Respondent No.2 along with all the records and documents of the CD on 06.09.2022 and obtained the acknowledgement from Respondent No.2 and the same has been intimated to the CoC with a request to release the



pending bills and expenditure incurred till the date of handing over of the charge, i.e., 06.09.2022.

- viii. Even after the handing over of the charge to Respondent No.2 and after making numerous requests to Respondent No.1, the following bills relating to the remuneration of the Applicant and the expenditure incurred towards the CIRP has not been released in spite of the directions of this Hon'ble Tribunal, vide order No. IA (IBC) No.175 of 2022 dated 24.08.2022.

Letter No. and Date	Particulars	Amount Due in Rs.
SVKSSPL/2022/16 Dated 08.07.2022	Fee of IRP From 13.06.2022 to 13.07.2022	3,00,000
	Expenses during the period from 15.06.2022 to 13.07.2022	30,561
SVKSSPL/2022/19, dated 13.08.2022	Fee of IRP from 14.07.2022 to 13.08.2022	3,00,000
	Expenses during the period from 16.07.2022 to 13.08.2022	24,376
SVKSSPL/2022/22, dated 07.09.2022	Fee of IRP from 14.08.2022 to 06.09.2022	2,50,121
	Total	9,05,058

- ix. The applicant has made full efforts to communicate with Respondent No.1 through emails dated 29.09.2022, 09.10.2022, 15.10.2022, 20.10.2022 and 25.10.2022 and thereafter sent reminder emails requesting them to clear their pending bills and complied with the order of this Hon'ble Bench. In spite of several efforts of the Applicant to get the bills cleared,



Respondent No.1 failed to clear the pending bills. Hence this application.

3. Respondent No.1 filed counter, denying the contents of the Application and contending that the facts stated in the affidavit are not presented properly by the Applicant and are not correct and further contending that the applicant filed this IA with ulterior motives and further states that the CP(IB)/202/9/AMR/2019 was admitted for CIRP by Hon'ble NCLT Amravati Bench vide order dated 13.05.2022 and the applicant Mr Kantipudi Venkataraju was appointed as IRP. Since the case was filed by the Operational creditor, M/s. Tricon Energy (India) Pvt. Ltd., the IRP fee was acceptable to the Operational Creditor. In the 1st CoC meeting held on 09.06.2022 the representative of the Canara Bank, did not find the exorbitant rates acceptable to them, and informed the CoC that they did not want to ratify the same. Further, since the said IRP is not accepting the Canara Bank Fee structure, during deliberations, informed that they would replace the IRP with another RP as per their standard operating procedure. However, the IRP unilaterally recorded in the minutes that he should be paid his remuneration @ Rs. 3,00,000/- per month and actual expenses, until his replacement with another RP, without taking up any voting as required. The Bank has also informed the erstwhile IRP that IRP fee issue is a "VOTING ITEM" and the erstwhile IRP has not conducted any voting and only recorded his version in the Minutes without any heed to Bank version/norms. Minutes of the 1st CoC meeting were erroneously recorded by the IRP. The CoC noticed that though IRP continued as deemed RP for a tenure of 3 months and



11 days i.e., from the date of appointment till the date of replacement, he failed to do verification and admission of claims, collation of financial data, preparation of information memorandum and publication of form G etc. All these jobs were pending till the date of replacement. Further, the competent authority has to ratify the IRP fee schedule as per norms of Canara Bank. The fee demanded by the applicant did not fit in the Canara Bank fee structure and this has been already informed to the applicant by Canara Bank. They clearly stated that IRP/RP fee structure should be ratified after taking approval from the competent authority of Canara Bank and if there is any reduction/ revised rate fixed by the competent authority, then the same may be taken into account and the fee of RP shall be fixed as per the advice of competent authority. The Bank always warned him that the CoC may not ratify the rate suggested by him as they would not fit into the schedule of Canara Bank rates. But, the applicant, without taking into consideration all these procedures, is unnecessarily making a hue and cry. The new RP/Respondent No.2 organized 4th CoC dated 25.10.2022 and the CoC informed the new RP that the COC ratified only Rs.50,000 as the fee for the erstwhile IRP/RP and the miscellaneous expenses incurred by him in total. This is recorded in the Minutes of 4th CoC. The Applicant filed this application against Respondent No.1 to harass and tried to prevent the course of law by filing this frivolous application before this Hon'ble Tribunal. Hence, the Application is liable to be dismissed with costs. Respondent No.2 filed counter, raising the same contentions as raised by Respondent No.1.



4. Heard both the counsel. The counsel for the Applicant during the course of arguments, draws the attention of this Tribunal to the minutes of the CoC meeting held on 09.06.2022 wherein, under the agenda item of replacement or continuation of IRP, a clarification was sought for whether the existing IRP as on that date was an unpanelled RP for which the answer came in the negative. The CoC took a decision that till the RP is appointed, the IRP should continue and fee of Rs.3 Lakhs per month and actual expenses should be met with. It is also recorded that the FC representing 100% voting share consented for the same. It also can be seen that the signature of the Chairman of the 1st CoC meeting is also affixed. The Counsel for the Applicant also draws the attention to the minutes of the CoC meeting dated 13.07.2022, which shows that a mail was sent to all the participants along with material for agenda items and the participants have confirmed the receipt of the same. In the said meeting also fee and expenses of IRP for the period from 13.06.2022 to 12.07.2022 were resolved to be paid. It is also recorded that the bills were also going to be submitted. The minutes of the meeting dated 20.07.2022 also had as one of which agenda items, the fee and expenses of IRP for the period from 13.06.2022 to 12.07.2022 wherein it is stated that the IRP has already submitted his bills towards the fee and expenses to Canara Bank.

5. The Counsel appearing for the CoC draws the attention of this Tribunal to Rule 33 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Under sub clause (3) of the



said Regulations it is specified that *“the applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies”*. Relying on the provision the counsel for the CoC submits that the CoC has not ratified the expenses. She draws the attention of this, Tribunal to the minutes of the 1st CoC meeting, wherein, under the agenda item No.1 it is mentioned that the *“IRP brought to the notice of the meeting, Regulation 33 (3) of CIRP Regulation. The applicant shall bear the expenses of IRP which shall be reimbursed by the CoC to the extent it ratifies. He informed that he has received fee of Rs.3 Lakhs from M/s.Tricon and Rs.1 Lakh towards expenses and submitted a detailed account of expenses. He requested the Financial Creditor i.e., Canara Bank with 100% vote share that any amount they want to ratify out of the total spent by M/s. Tricons. Canara Bank represented by AGM, Mr.K.Sanyasi Rao, informed that they do not want to ratify any amount. ”*

6. The PCS for the RP submits that the ratification was with regard to the fee of the IRP, but the claim now laid is for the fee of the IRP for acting as RP. Under agenda Item No.2 in the 1st CoC meeting, it can be seen that the Financial Creditor representing 100% voting has consented for the fee of Rs.3 Lakhs per month to be paid to the IRP for acting as RP till such time the regular RP is appointed. Hence, the submission made by the counsel for the CoC is not valid in the background of the fact that the fee claimed by the IRP now is for acting as RP.



7. The counsel appearing for the CoC submits that the IRP was sought to be removed only because of the inability of the CoC to pay such a huge fee and that the CoC did not accept for the said fee. But the said argument is completely contrary to the minutes, which records that the CoC has voted with 100% voting, approving the fee of Rs.3 Lakhs per month and CIRP costs. The new IRP was appointed on 24.08.2022 till which time the erstwhile IRP continued to function and consequently he would be entitled for his fee. Hence, in view of the above, the application is allowed and the CoC is directed to pay an amount of Rs.9,05,058/- to the Applicant in respect of the fees and expenses incurred during his tenure as IRP.

Accordingly, IA(IBC)/347/2022 in CP (IB)/202/9/AMR/2019 is disposed of.

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu