

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT-V, MUMBAI BENCH

Under Section 60 (5), of the Insolvency and Bankruptcy Code, Read with Rule 11 of the National Company Law Tribunal Rules, 2016

**I.A. 2433 OF 2021
IN
CP No. 1332 OF 2020**

Mr. Vithal M. Dahake

..... Applicant

Versus

Central Bank of India

..... Respondent

In the matter of

Supershine ABS Platers Private Limited

..... Financial Creditor

Versus

Opal Luxury Time Products Limited

..... Corporate Debtor

Order Dated: 20.07.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant: Mr. Vidit Divya, Advocate

For the Respondent: Mr. Siddharth Shankar, Advocate

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The above captioned I.A. 2433 of 2021 is filed by Mr. Vithal M. Dahake the erstwhile Interim Resolution Professional under Section 60(5) of the Insolvency and Bankruptcy Code 2016 (“**Code**”) seeking following reliefs:
 - a. *Direct the members of the COC of Opal Luxury Time Products Limited i.e, the Respondent herein to permit the Applicant to continue with the CIRP of the Corporate Debtor in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and to co-operate in the same;*
 - b. *Direct the members of the COC of the Opal Luxury Time Products Limited to provide for the entire outstanding CIRP costs including the Professional fees of the Applicant and to pay the same to the Applicant within a period of 7 days;*
 - c. *Costs of this interlocutory application;*
 - d. *Any other order that this Hon’ble Tribunal may deem fit in the facts and circumstances of this case.*

FACTS OF THE CASE

2. The Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated via this Bench order dated 03.08.2021, under Section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as ‘**the Code**’) (**Admission Order**). By virtue of the said admission order, the Applicant i.e. Mr. Vithal M. Dahake, was appointed as Interim Resolution Professional. The Interim Resolution Professional gave a public notice and invited claims on 12.08.2021. Thereafter, the Resolution Plan was approved on 25.04.2022 by the Committee of Creditors (hereinafter referred to as “**COC**”).
3. Pursuant to the above public announcement, the Applicant received two claims of the Financial Creditors viz., Central Bank of India and Trio Trend Pvt Ltd. However, the Trio Trend Pvt Ltd being a related party did not have right of representation, participation or voting in a meeting of the committee of creditors as per proviso to section 21 (2) of the IBC. Therefore, the Central

Bank of India i.e. the Respondent, became the Sole COC member of the constituted COC of the Corporate Debtor.

4. The Applicant called for the first meeting of the Committee of Creditors to be held on 07.09.2021 and tabled the resolutions for ratification of expenses incurred, approval of CIRP budget, approval of budget for the Corporate debtor as a going concern, ratification of actual expenses, continuance of the Applicant as the Resolution Professional and approval for calling future meetings of the COC at a shorter notice of not less than 24 hours as provided under regulation 19 of the CIRP Regulations. **However, the COC rejected all the resolutions and declined to pass a resolution in favour of ratification of the expenses incurred by the Applicant during the CIRP Process.**
5. It is submitted that the COC had declined to continue the Applicant as the Resolution Professional of the Corporate Debtor and also had not nominated new Resolution Professional for the said purpose and therefore, the Applicant had no choice but to continue performing his duties as an IRP in accordance with the provisions of Section 16 read with 22 of the IBC, as well as Regulation 17 of the CIRP Regulations, until the new Resolution Professional was nominated by the COC.
6. The Applicant submits that in the second meeting of the Committee of Creditors dated 18.09.2021, the CoC resolved to appoint Mr. Jitendra Palande having IBBI registration no. IBBI / IPA003/IP-N 00028 / 2017-18/10188 as Resolution Professional of the Corporate Debtor with immediate effect, however the same had to file an application before the Adjudicating Authority in accordance with the provisions of Section 22 (3) of the Code. Therefore, as per the provisions of Section 22 of the Code, the Applicant was duty bound to continue as the Interim Resolution Professional of the Corporate Debtor until the Resolution Professional as resolved by the COC was appointed by an order of the Tribunal. Meanwhile, the Applicant/ erstwhile IRP continued to discharge the functions and he

had claimed that he spent out of his personal account for the CIRP of the Corporate Debtor.

REPLY OF THE RESPONDENT

7. In reply the Respondent i.e. Sole COC member – Central Bank of India, had denied all the allegations and contentions raised in the Application.
8. It is submitted by the Respondent that the Respondent is ready and willing to disburse the payments for the expenses incurred by the erstwhile IRP after the receipt of proper accounts, demonstrating the payments incurred. However, the Applicant has failed to place on record the substantive proof with respect to the purported expenses incurred in discharge of its function.
9. In terms of Regulations 6(3) and 33(1)(2) of CIRP Regulations, the expenses which are not ratified by the COC, have to be paid by the Operational Creditor who initiated the CIRP against the Corporate Debtor.
10. It is submitted that the question of cost and approval of CIRP costs lies in the domain of the COC and the COC may ratify, modify or set aside the cost claimed. Accordingly, the Operational Creditor viz Supershine Abs Platers Pvt. Ltd. who instituted the Company Petition, is legally bound to pay the IRP fee/expenses and the IRP should seek the payment from the said company i.e. Supershine Abs Platers Pvt. Ltd. However, the Applicant has failed to make Supershine Abs Platers Pvt Ltd a party to the present Application.
11. It is further submitted that in the 7th COC meeting held on 25.04.2022 wherein the Resolution Plan filed by Univastu India Ltd was approved, it was resolved that the fees of the Applicant (erstwhile RP) will be paid by the Operational Creditor i.e. Supershine Abs Plasters Pvt Ltd. who initiated the CIRP against the Corporate Debtor.

FINDINGS:-

12. We have heard the Learned Counsels appearing for the parties and perused the records.
13. The Ld. counsel for the erstwhile IRP reiterated that the COC in its 3rd meeting had orally agreed to pay the fees of the erstwhile IRP as well as costs and this Bench, had vide order dated 28.10.2021 directed the COC to pay the requisite fees of the erstwhile IRP.
14. The Ld. counsel for erstwhile IRP drew attention to the order of this Bench dated 07.01.2022 wherein the Bench directed the erstwhile IRP and COC to reconcile the memo of cost raised by the Applicant and pay the amount of expenses incurred by the erstwhile IRP.
15. It appears that our direction dated 28.10.2021 and 07.01.2022 have not been complied with. However, the Respondent, in its reply to the present I.A 2433 of 2021, had themselves admitted that they are ready and willing to disburse the payments for the expenses incurred by the Applicant after receipt of proper accounts demonstrating the payments incurred. The necessary details has already been provided by the Applicant vide email dated 07.01.2022 and 17.01.2022. That being so, under the circumstances, the Respondent/COC ought to pay the cost and fees of the erstwhile IRP. Therefore, we direct the COC to pay the amount of expense incurred by the IRP within 15 days of this order and file a report to this Bench in this regard.
16. Accordingly, the above **I.A. 2433 of 2021** is **allowed and disposed of.**

SD/-

ANURADHA SANJAY BHATIA
Member (Technical)

SD/-

KULDIP KUMAR KAREER
Member (Judicial)