

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 1129 OF 2022

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

Mr. Devarajan Raman,
The Resolution Professional
...Applicant

Vs.

Vistra ITCL (India) Limited & others
...Respondents

In the matter of

C.P.(IB) No. 1632/MB/2019

Vistra ITCL (India) Limited

Financial Creditor

Vs.

M/s Satra Properties India Limited

Corporate Debtor

Order delivered on: 04.03.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Liquidator : Mr. Pulkit Sharma, Advocate
For the Respondent No. 7 & 8 : Mr. Rohan Agarwal, Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Application IA 1129/2022 is filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (“Code”) read with Rule 11 of the NCLT Rules, 2016 by Mr. Devarajan Raman, Resolution Professional (“Applicant”) in the Corporate Insolvency Resolution Process (“CIRP”) of M/s Satra Properties (India) Limited (“Corporate Debtor”), seeking following reliefs:
 - a. Direct the respondents to contribute towards CIRP cost an amount of Rs.80,40,487.50/- (Rupees Eighty Lakh Forty Thousand Four Hundred and Eighty-Seven& Fifty Paise only) as per table in Exhibit - B with in a period of 7 days.
 - b. Direct that the CIRP cost of Rs. 57,59,187/- incurred for the period 01.10.2021 to 31.03.2022, as per approved budget, which was rejected by CoC at the 16th meeting held on 21.04.2022, be treated as CIRP Cost.
 - c. Disallow the claim of the member of the CoC who fail to contribute towards the approved CIRP cost within seven days;
2. The Corporate Debtor (CD) was admitted to Corporate Insolvency Resolution Process (CIRP) vide order dated 03.08.2020. Mr. Devarajan Raman was appointed as Interim Resolution Professional (IRP) and later confirmed as Resolution Professional (RP) in the First Committee of Creditors (CoC) meeting held on 03.10.2020.

2.1. The public announcement was made on 08.08.2020 and 15.08.2020 for the claims. Claims were verified and the list of creditors was filed with Hon'ble NCLT on 26.09.2020. The CoC was constituted on 28.09.2020 under Regulation 17 (1) of the Insolvency and Bankruptcy Board of India (Insolvency resolution Process for Corporate Persons). The report constituting CoC was filed before this Tribunal. Respondents are members of CoC. As against total claims made by Financial Creditors amounting to Rs. 336,94,26,529/- (Rupees Three Hundred Thirty-Six Crore Ninety- Four Lakh Twenty-Six Thousand Five Hundred and Twenty-Nine only), a sum of Rs.1,45,04,66,684/- (Rupees One Hundred and Forty-Five Crore Four Lakh Sixty-Six Thousand Six Hundred and Eighty Four only) was admitted. Total amount receivable from the CoC towards contribution of CIRP cost is Rs.80,40,487.50/- (Rupees Eighty Lakh Forty Thousand Four Hundred and Eighty Seven & Fifty Paise only). List of CoC along with their respective voting share is as follows:

Name of the Member	Amount claimed (Rs.)	Amount admitted (Rs.)	Voting share (%)
Anchor Leasing Pvt. Ltd.	1,21,50,41,839	1,32,01,749	0.91
Jumbo Finvest India Ltd.	8,27,95,155	6,92,68,996	4.77
Neon Laboratories Ltd.	3,03,05,675	3,03,05,675	2.08
U.Y. Fincorp Ltd.	14,96,35,069	14,96,35,069	10.32
Zircon Traders Ltd.	91,29,990	91,29,990	0.63
Gajendra Investments Ltd.	26,43,44,576	25,16,43,876	17.35
Pratiti Trading Pvt. Ltd.	28,16,97,422	10,53,44,381	7.26
Divyagyan Trading Pvt. Ltd.	43,55,684	38,55,684	0.27
Punjab National Bank	1,59,50,266	1,53,15,115	1.06
Vistra ITCL (India) Ltd.	1,31,02,82,634	79,87,08,505	55.07
Sudesh Bhatia & Sahil Bhatia	58,88,219	40,57,644	0.28
TOTAL	336,94,26,529	1,45,04,66,684	100.00

2.2. The applicant took approvals for the CIRP cost from the respondents at the CoC meetings periodically. The payments up to 30.09.2021 were approved by the CoC. However, only

part payments have been made thereby making it difficult for the Applicant to conduct the CIRP. The applicant has to make various payments to professionals and vendors which are getting delayed and there is pressure on the applicant to release dues to the parties who have helped to carry out the process smoothly.

2.3. The respondents have approved the plan of the successful resolution applicant by voting share of 95.40%. The applicant has filed IA/2273/2021 on 01.10.2021 for approval of the resolution plan which is pending adjudication before this Tribunal.

2.4. The applicant has carried out his duties with utmost care and diligence and cannot be made to run from pillar to post to get contribution for the CIRP cost. It will be observed that an amount of Rs.80,40,487.50/-. (Rupees Eighty Lakh Forty Thousand Four Hundred and Eighty Seven & Fifty Paise only) is yet to be paid which is making it impossible for the Applicant to conduct the CIRP. The Applicant had pursued a policy of persuasion in the spirit of accommodation with the objective of Resolution. It is pertinent to mention that surprisingly, the CoC has rejected the resolution for ratification of CIRP cost for the period 01.10.2021 to 31.03.2022, based on the approved budget, placed before the 16th CoC meeting, without assigning any reason. However, CIRP cost for the period from 01.09.2021 up to 30.09.2021 was approved by 95.95% CoC members.

2.5. It is surprising that post approval of the plan the majority vote shareholder in the CoC requested for reduction of fees which was agreed to by the Applicant since only the operations of the Corporate Debtor is to be managed as per section 23(1) of the

Code, Being a listed company there were compliances, the quarterly results could not be completed due to Non-Cooperation and AGM could not be conducted. All these processed were completed. For the FY 20 and FY 21. The quarterly results for the FY 21-22 are ready but unable to proceed due to lack of funds to pay the Auditor and for publishing in Newspaper. As on date total payments to vendors and professionals of Rs.1,26,06,457/- is pending.

2.6. It is apposite to mention the order passed by NCLT, Principal Bench in the matter of *Reliance Commercial Finance Ltd. Vis. Noble Resourcing Business and Solutions Pvt. Ltd. CA - 430 (PB)/2019* wherein it was held as follows:

“for effective continuation of the Corporate Insolvency Resolution Process, the financial creditor constituting the CoC has to contribute to the expenses, fee and other cost of the process. Otherwise, the whole process would come to a halt and cause unnecessary delay. If the financial creditor like Intec Capital Limited non applicant is not inclined to contribute to the cost of the process, then we are doubtful as to how their claim could be considered in the whole process. Accordingly, we direct the non-applicant respondent to contribute proportionately to the extent of 42.78% to the running CIRP cost as approved by the CoC. If the non-applicant respondent fails to contribute, then their claim in the CIR Process would not be considered.... A copy of the order is attached marked Exhibit - 'E'.

2.7. In the present case also, the CoC has approved the cost but failed to pay their respective contribution and the law laid down

in the matter of Reliance Commercial (Supra) is squarely applicable to the present case.

3. The Respondent No. 1, 7 & 8 have filed their affidavit in reply dated 14th June 2022 stating Respondents being majority of CoC Members (Le. 79.65%) have decided to replace Mr. Devarajan Raman, the Applicant as the Resolution Professional of the Corporate Debtor as per section 27 of IBC, 2016. Respondents have raised objections for continuance of the Applicant as the Resolution Professional of the Corporate Debtor. The Applicant has on various occasions taken *suo-moto* actions without the approval of the majority of the CoC. Despite of the objections as raised by the majority of the CoC Members for continuance of the Applicant as a Resolution Professional, the Applicant is holding out as Resolution Professional of the Corporate Debtor. The Applicant is in contravention of the provisions of the IBC, 2016 and in contrary creating impediments in allowing the majority of the members of the CoC to replace Resolution Professional.

3.1. That on and around 27th April 2022, the Respondents being majority of CoC Members (i.e. 79.65%) have preferred Interlocutory Application No. 1162 of 2022 in Company Petition No. 1632 of 2019 before this Hon'ble NCLT under Section 27 and Section 60(5) of IBC, 2016 read with rule 11 of NCLT Rules, 2016 for seeking directions from this Hon'ble Tribunal for replacement of Resolution Professional.

3.2. We say that the majority of the COC have decided to replace the Resolution Professional Devarajan Raman (the Applicant herein) with Mrs. Vaishali Arun Patrikar, as the Resolution Professional of the Corporate Debtor ie M/s. Satra Properties

(India) Limited in accordance with section 27 of the Insolvency and Bankruptcy Code, 2016.

- 3.3. We say that after preferring application for replacement of Resolution Professional, the Respondents have received several emails from the Applicant for release of the CIRP cost. The responding Respondents gave response on all such emails by sending a letter dated 04.06.2022 to the Applicant. The copy of the letter dated 04.06.2022 is annexed herewith and marked as EXHIBIT-A.
- 3.4. The Respondents being majority of CoC Members (i.e. 79.65%) have requested the Applicant to conduct and hold the CoC Meeting for considering the agenda for removal and replacement of Resolution Professional of the Corporate Debtor. We submit that once the Resolution Professional has been replaced, the CoC Members will transfer the CIRP Cost as approved by the CoC Members in the escrow account opened / handled by the newly appointed Resolution Professional for the said purpose.
- 3.5. The Applicant has time and again failed to cooperate with the majority of the CoC Members. On several occasions, the responding Respondents have requested the Applicant not to act as the resolution professional/authorized person of the Corporate Debtor. Further request was made to the Applicant not to make any statements on behalf of the Corporate Debtor nor file any documents on behalf of the Corporate Debtor. The CoC Members also objected the suo moto actions of the Applicant to continue to take decisions on behalf of the Corporate Debtor contrary to the decisions of the majority of COC Members. The copy of letter objecting the actions of the

Applicant is referred in point 10 above and marked as Exhibit-A to this Reply.

4. Heard learned Counsel and perused the material on record.
 - 4.1. We find that the issue in contention before us is whether the CoC having after the budget cost of CIRP for particular period can resile from the said approval and disapprove the actual expenditure in terms of the approved budget costs later on. It is the case of the Respondent Nos. 7 & 8 that the Applicant was instructed to convene a meeting of CoC to replace him as Resolution Professional and he didn't bother to do so, which resulted into filing of an Interlocutory Application bearing IA No. 1162 of 2022 before this Tribunal for seeking replacement of the Applicant as Resolution Professional.
 - 4.2. The Applicant has contended that the CIRP cost for the period upto 30.09.2021 claimed by him were incurred in terms of the approved budget and ratified also in every meeting of the CoC, latest being 15th CoC meeting held in September, 2021. That the said statement of the CIRP cost claimed to have been approved shows that sum of Rs. 1600, 10,703.80 was approved as CIRP cost out of which a sum of Rs. 8570,216.37 has already been received thus leaving a balance of Rs. 8040, 487.50 is still to be recovered. We find that the Applicant has not placed on record copies of relevant CoC meetings; however, we believe on the basis of submissions made by the Applicant that these costs would have been approved. Having considered the submissions, we are of the considered view that this amount of CIRP cost incurred pursuant to the approved budget is payable and is to be as CIRP cost as set out in the Resolution Plan.
 - 4.3. The Applicant has relied upon the decision of the Principal Bench in the case of *Reliance Commercial Finance Ltd.* supra to

contend that CoC ought to have contributed towards CIRP cost to carry on CIR Process. Though we are in agreement with this proposition, we consider it appropriate to clarify that it may be primary responsibility of the CoC to fund CIR process; however, such contribution from the CoC members is purely on the interim finance which is recoverable from the Resolution proceeds of the Corporate Debtor as CIRP Cost. In the present case the Resolution Plan in the case of the Corporate Debtor is already before this Bench; accordingly, if any CIRP costs, remain unpaid the same shall be dealt with in terms of the said plan and shall be payable out of the Resolution Proceeds or if plan failed out of the Liquidation Proceeds.

4.4. We further note that CoC on a vote on 25.04.2022 has rejected the Resolution seeking approval of CIRP cost from the period from 01.10.2021 to 31.03.2022 and another Resolution seeking approval of cost relating to the statutory dues and Counsel fees which were not earlier budgeted, by a majority vote of 81.65%.

4.5. Here also the Applicant has contended that the said cost ought not to have been disapproved because the Applicant has incurred those costs in accordance with the approved budget. In so far as unbudgeted costs are concerned those were in nature of statutory listing fees and professional fees for conversion of financial statement.

4.6. We note that Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that *The Committee shall fix the expenses to be incurred on or by the Resolution Professional and the expenses shall constitute Insolvency Resolution Process costs.* By way of explanation the expenses are to include the fee to be paid to the 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 Resolution Professional.

- 4.7. Accordingly, in the absence of allegation that the Applicant had not performed during this period, the CoC cannot deny the CIRP cost which are regular in nature and have been incurred in accordance with the approved rate for the successive period. In so far as legal fees is concerned, we direct the RP to verify whether those legal fees were incurred for the purpose of CIR Process or were incurred in relation to the personal business of Resolution Professional. In case it is found that those legal expenses were incurred in relation to legal matters, RP ought to have prosecuted at its own cost in his personal capacity. The said cost shall not form part of the CIRP cost.
5. In view of the aforesaid the Interlocutory Application bearing IA No. 1129 of 2022, is partly allowed and disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)