

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

ITEM No. 18

IA/3365/2020 IA (IB)/587(ND)2019

IN THE MATTER OF:

AMBIKA SETH NAVDEEP GUPTA	...	Applicant/Petitioner
Vs		
CAARA INDIA PVT. LTD.	...	Respondent
	IN	
Apavarga Trading Company	...	Applicant/Petitioner
Vs		
Caara India Pvt Ltd	...	Respondent

Order under Section 9 of IBC.

Order delivered on 25.08.2020

Coram:

DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the Applicant : Mr. Shailendra Kumar, Adv.
For the Respondent: Mr. Santosh Krishnan, Ms. Sonam Anand, Advs.
For the IRP : Mr. Rajendra Beniwal, Advs.

ORDER

Present application is filed under Rule 11 of NCLT Rules seeking withdrawal of the CIRP vide passed on 28th July 2020. Learned counsel for the applicant states that thereafter the parties had arrived at a settlement on 07th August 2020. the impugned order passed by NCLT was also challenged before NCLAT by the Corporate Debtor prior to settlement and on 13th August 2020, the Hon'ble NCLAT took notice of the Settlement Agreement and

directed the NCLT to take the Settlement Agreement dated 07th August 2020 on record when Rule 11 application is filed before NCLT. In pursuance of the said order passed by the Hon'ble NCLAT, the settlement agreement dated 07th August 2020 is taken on record allowing the party to withdraw the application filed for initiating the CIRP against the Corporate Debtor. The Hon'ble NCLAT on 13th August 2020 directed IRP not to constitute CoC for two weeks from the date of order to enable the appellant to file settlement before Adjudicating Authority and Adjudicating Authority to pass order accordingly. The same is being done within time. The CIRP is closed. IRP is discharged forthwith. If any records or assets of Corporate Debtor are received by IRP, the same shall be handed over back to the Corporate Debtor forthwith. The direction with respect to the fixing of the fees of IRP was also issued by Hon'ble NCLAT.

As per records, the CIRP order was passed on 28th July 2020 and the Hon'ble NCLAT had directed IRP not to constitute CoC on 13th August 2020. Learned counsel appearing for IRP states that there is no specific mention of CIRP being terminated. Hence, in spite of knowledge of settlement between parties on 07th August 2020, the IRP was duty bound to take appropriate steps as

required under the Code. Learned counsel for the Corporate Debtor states that IRP should not have taken any steps in view of the order of CIRP being impugned before NCLAT, hence, the IRP cannot charge for the period after the settlement and the same was brought to the notice of IRP. The total amount claimed by IRP is Rs. 5,55,886/-. The learned counsel for the Operational Creditor states that Operational Creditor was held up in Bihar since his mother was undergoing medical treatment. He has not been able to come to Delhi till date, in view of the lockdown due to Covid Pandemic. He could only deposit Rs. 50,000/- with IRP. The learned counsel accepted that the remaining Rs. 1,50,000/- shall be deposited with the IRP. In our view after perusing the detailed split up given by the IRP for his functioning till date and after perusing the amount claimed for various activities, we are of the opinion that the charges mentioned seems to be high. The claim amount in the application of the Corporate Debtor is Rs. 7,00,000/- and odd and the said order was impugned by the Corporate Debtor before NCLAT.

It is seen that time and again, the Adjudicating Authority has to take the burden of deciding /fixing the fee structure of IRP/RP. The application with respect to issue of IRP fees are filed and keeps

piling and burdening the Adjudicating Authority. The matter which require more attention involving substantial question of law and merits suffer the delay in adjudication of the same. The IBBI is requested to frame the guidelines/rules with respect to charging of fees by IRP/ RP in proportion to the work done as required under the Code.

In this case, we are of the opinion that Rs.2,00,000/- should be sufficient to compensate the work done by the IRP. Applicant was required to deposit Rs. 2,00,000/- with IRP which shall be sufficient to cover the expenses of IRP. In view of the settlement agreement, wherein clause 4 and other terms records that the applicant/Operational Creditor had agreed that after payment of Rs. 8,50,000/- by the Corporate Debtor, the Corporate Debtor will not liable to share or pay any amount with respect to CIRP cost. Let, applicant deposit balance amount of Rs. 1,50,000/- with IRP which shall be the full and final amount to be paid to the IRP as CIRP cost. Application is allowed and disposed of in terms of above order. Let, the copy of this order be sent to IBBI for consideration.

SD/-

SUMITA PURKAYASTHA
MEMBER (T)

SD/-

DR. DEEPTI MUKESH
MEMBER (J)