

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CA (IB) No. 1544/KB/2019

in

CP (IB) No. 1472/KB/2018

In the matter of

An application under section 33(2) of the Insolvency and Bankruptcy Code, 2016

And

In the matter of

Section 9 of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of

UEM India Private Limited

... Operational Creditor

Versus

Bengal Chemicals & Pharmaceuticals Limited

... Corporate Debtor

And

Sonu Jain, Interim Resolution Professional of Bengal Chemicals & Pharmaceuticals Limited

... Applicant

Order reserved on: 25.02.2021

Order pronounced on: 26.03.2021

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (through video conferencing):

For the Applicant/IRP

Ms. Sonu Jain, Pr. C.A

For the Operational Creditor

Mr. Pawan Sharma, Advocate

For the Corporate Debtor

Ms. Supriya Ranjan Saha, Advocate

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conferencing.
2. I.A. (IB) No. 1544/KB/2019 is an interlocutory application filed by Ms. Sonu Jain, the Interim Resolution Professional (“IRP”) of Bengal Chemicals & Pharmaceuticals Limited, (“Corporate Debtor”) for payment of the fees and expenses of the IRP amounting to Rs.5,50,000/- (Rupees Five Lakh Fifty Thousand only) by the Operational Creditor.
3. This Adjudicating Authority had, *vide* order dated 01.11.2019 in C.P. (IB) No. 1472/KB/2018, admitted the petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 and ordered initiation of Corporate Insolvency Resolution Process (CIRP) of Bengal Chemicals & Pharmaceuticals Limited and appointed Ms. Sonu Jain as the IRP.
4. The order dated 01.11.2019 directed the Operational Creditor to deposit Rs.1,00,000/- [Rupees One Lakh only] to the IRP, the IRP submits that this advance given was spent in newspaper publication for Public Announcement in Form A in accordance with section 15 of the Code and payment of irrevocable advance towards appointment of professionals.
5. The admission order dated 01.11.2019 was set aside *vide* order dated 13.11.2019 passed in C.A. (IB) No. 1474/KB/2019 on the ground that the entire amount had been paid to the Operational Creditor by the Corporate Debtor.

6. Heard the Applicant/IRP, the learned Counsel for the Operational Creditor, learned Counsel for the Corporate Debtor and perused the records.
7. It is pertinent to note that the CIRP ended in thirteen days i.e. from 01.11.2019 to 13.11.2019. It is not a matter in dispute that the Operational Creditor has complied with the order dated 01.11.2019 and has made payment of Rs. 1,00,000/- (Rupees One Lakh only) to the IRP.
8. Though the Applicant has submitted that the advance given to the Applicant has been utilised for payment made for newspaper publication, other admin expenses and appointment of professionals, but upon perusal of record, it is seen that the Applicant has failed to disclose the expenditure incurred by her in detail. The Applicant has not filed any supporting documents to show the expenses incurred by her.
9. The Applicant has only filed an invoice wherein the Applicant has charged the fees to “TOSHIBA WATER SOLUTIONS PRIVATE LIMITED” and has sent an email to anilchauhan@toshiba-water.com on 14.11.2019 for payment of fess. It is apparent from the documents filed by the Applicant that the invoice has been raised and sent to another Company and not to the Operational Creditor. It has not been explained by the Applicant as to why the bill was raised and sent to another Company which is not the Operational Creditor.
10. To add to the miseries, the Applicant has raised an invoice of Rs.6,49,000/- (Rs.5,50,000/- as fees + Rs.99,000/- as IGST @ 18%), for a CIRP that lasted for merely thirteen days.
11. The Insolvency Professionals are governed by the Insolvency and Bankruptcy Board of India (“IBBI”), the IBBI have issued several circulars with respect to the fees incurred by the Insolvency Resolution Professionals. Circular No. IP/004/2018 dated 16th January, 2018 provides “.... *it is clarified that an insolvency professional shall render services for a fee which is a reasonable reflection of his work, raise bills / invoices in his name towards such fees*” and Circular No. IBBI/IP/013/2018 dated 12th June, 2018 provides :.... *He must, therefore, ensure that not only fee payable to him is*

reasonable, but also other expenses incurred by him are reasonable. What is reasonable is context specific and it is not amenable to a precise definition.” It is unfortunate that despite several directions from the IBBI, such exorbitant amounts are being charged with no justifiable reason given.

12. In view of the above discussions, we reject the prayer of the Applicant for payment of fees by the Operational Creditor amounting to Rs.6,49,000/- for thirteen days despite receiving an advance of Rs.1,00,000/- as the same is not only unjustifiable but also lacks supporting documents.
13. The **I.A. (IB) No. 1544/KB/2019 in C.P. (IB) No. 1472/KB/2018** shall stand dismissed.
14. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps. The Registry is directed to send a copy of this order to the IBBI for further necessary action on their part in so far as the actions of the Applicant/IRP are concerned.
15. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

[Harish Chander Suri]

Member [Technical]

[Rajasekhar V.K.]

Member [Judicial]

26th day of March, 2021.

GGRB[LRA]