

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

IA No. 108/JPR/2023
In CP No. (IB)- 131/9/JPR/2019

IN THE MATTER OF:

**SANWAR MAL TIWARI
(SOLE PROPRIETOR OF
RAJASTHAN STEEL
CORPORATION)**

...OPERATIONAL CREDITOR

VERSUS

**M/S AESTHETIC STONE ARTS
INDIA PVT. LTD.**

...CORPORATE DEBTOR

MEMO OF PARTIES

IA No. 108/JPR/2023:

**VASUNDHRA GUPTA
Suspended Director M/s Aesthetic
Stone Arts India Pvt. Ltd.
R/o Plot No. 9, 22 Godam Circle,
Behind Nehru Sahkar Bhawan, Jaipur-
302001**

...Applicant

VERSUS

**MR. VIJENDRA BANGAR
Resolution Professional,
Aesthetic Stone Arts India Pvt.
Ltd.
Office: 103A, Shyam Anukampa,
O-11, Ashok Marg, C-scheme,
Jaipur-302001**

...Respondent No. 1





PUNJAB NATIONAL BANK

Sole Member of Committee of
Creditor, Aesthetic Stone Arts
India Pvt. Ltd.

Address: Zonal Office-2, Nehru
Place, Tonk Road, Jaipur,
Rajasthan- 302015

...Respondent No. 2

FOR APPLICANT(S) : Nitesh Shrivastava, Adv.
FOR RESPONDENT NO. 1 : Amol Vyas, Adv.
Danish Akhtar, Adv.
FOR RESPONDENT NO. 2 : Vikas Jain, Adv.

Order Pronounced On: 12.03.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. This present Application bearing *IA No. 108/JPR/2023* has been filed by *Vasundhra Gupta*, Suspended Director ('Applicant') of *M/s Aesthetic Stone Arts India Pvt. Ltd.* ('Corporate Debtor') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 11 of NCLT Rules, 2016 seeking the following set of reliefs:

- *Declare that the CIRP cost as approved in the 15th COC meeting dated 03.02.2023 of Rs. 8,98,729/- (Rupees Eight Lakhs Ninety-Eight Thousand Seven Hundred and Twenty-Nine Only) for period 01.09.2021 to 31.12.2022 is unjust and arbitrary in nature.*
- *To quash and set aside the 15th COC meeting dated 03.02.2023.*
- *To direct the COC to reconsider the CIRP cost considering the facts mentioned in the Application which shall be justified and guided by the intent of the IBC to resolve a MSME under Section 240A of the IBC, 2016 considering a lady entrepreneur.*
- *To direct the COC to accept the Resolution Plan considering the CIRP expenses already approved in 14th COC meeting dated 13.09.2021.*
- *Pass any other order as this Hon'ble Tribunal deem fit and just.*

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2. This Adjudicating Authority *vide* order dated 04.03.2020 had admitted the Application filed by *Sanwar Mal Tiwari* ('Operational Creditor') under Section 9 of Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and as a consequence thereof, appointed *Ms. Anuradha Gupta*, as Interim Resolution Professional ('IRP'). Later on, *Mr. Vijendra Bangar* was appointed as the RP ('RP'/ 'Respondent No. 1') by the CoC and confirmed *vide* order dated 15.10.2020.
3. The present application has been filed on the following set of facts:
 - 3.1. It is submitted that the Applicant had previously filed an *IA No. 320/JPR/2021* seeking to quash minutes of the 13th and the 14th Committee of Creditors ('COC') meeting dated 01.09.2021 and 13.09.2021 respectively wherein the Expression of Interest ('EOI') filed by the Applicant in the capacity of Suspended Director and promoter of MSME was rejected by the COC member. The *IA No. 320/JPR/2021* is pending adjudication before this Adjudicating Authority. However, *vide* order dated 20.01.2023, directions were passed to Respondent No. 1, being the Resolution Professional of the Corporate Debtor to convene a meeting of COC in order to discuss the issue of non-consideration of the Resolution Plan. Also, the Adjudicating Authority further directed the COC to file a response as to why the Resolution Plan filed was not considered.

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- 3.2. In compliance of the Order dated 20.01.2023, the Respondent No. 1 convened the 15th COC meeting on 03.02.2023. In the aforesaid meeting, the Applicant re-submitted the Resolution Plan which was earlier submitted on 17.03.2021 and 26.03.2021, with modifications in relation to the payment and payment schedule. In the 15th COC meeting, Respondent No. 1 presented the updated status of the claim according to which, the claim of Respondent No. 2 was Rs. 37,28,029/- (Rupees Thirty-Seven Lakhs Twenty-Eight Thousand and Twenty-Nine Only) against the total claim of Rs. 1,95,19,029/- (Rupees One Crore Ninety-Five Lakhs Nineteen Thousand and Twenty-Nine Only).
- 3.3. The Applicant submitted that in the 15th COC meeting, the revised Resolution Plan submitted by her was not considered in the interest of the Corporate Debtor. The Applicant further contended that Respondent No. 1 took this opportunity to get his unjustified professional fees approved and to further approve fees of his appointed advocates to file his 31 Progress Reports (being 18th to 49th progress reports for the period 01.09.2021 to 31.12.2022). These actions were a moonshine attempt to extend the CIRP cost and to add an unlawful burden on the Applicant/Corporate Debtor. The Respondent No. 1 furnished the details of professional fees and expenses incurred by him from 01.09.2021 to 31.12.2022, amounting to Rs. 10,08,729.10/-



(Rupees Ten Lakhs Eight Thousand Seven Hundred and Twenty-Nine Only).

3.4. The Applicant is ready and willing to add the CIRP cost of Rs. 7,46,295/- (Rupees Seven Lakhs Forty-Six Thousand Two Hundred and Ninety-Five Only) already approved till 14th COC meeting dated 13.09.2021, however, once the liquidation application was filed no action was taken by the Resolution Professional entitling him to claim his professional fees. The COC in the 15th COC Meeting dated 03.02.2023, approved Rs. 8,98,729/- (Rupees Eight Lakhs Ninety-Eight Thousand Seven Hundred and Twenty-Nine Only) out of the total Rs. 10,08,729.10/- (Rupees Ten Lakhs Eight Thousand Seven Hundred and Twenty-Nine Only) sought to be approved by Respondent No. 1 as a CIRP cost from period 01.09.2021 to 31.12.2022. It is important to mention herein that the CIRP cost of Rs. 7,46,295/- (Rupees Seven Lakhs Forty-Six Thousand Two Hundred and Ninety-Five Only) has already been approved and paid by the COC to the Respondent No. 1 from the cash credit account of Corporate Debtor up to the last COC meeting held on 13.09.2021 which has to be paid by the Applicant.

3.5. The Applicant further stated that the fees/ expenses of Respondent No. 1 as approved in the 15th COC meeting does not relate to any professional duties performed by him for the period from 01.09.2021 to 31.12.2022. In this meeting, Respondent No. 1 stated that the

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Resolution Plan submitted by the Applicant does not provide the CIRP cost of Rs. 16,45,024/- (Rupees Sixteen Lakhs Forty-Five Thousand and Twenty-Four Only) as approved by the COC in the 15th COC Meeting, accordingly the Resolution Plan was not in accordance with section 30(2) of the Code i.e., non-inclusion of CIRP cost in the Resolution Plan. The Respondent No. 1 further directed the Applicant to submit a Resolution Plan by adding the CIRP cost as approved by the COC in the 15th COC Meeting.

3.6. The Applicant submitted the following objections with respect to the different costs approved by the COC in the 15th COC Meeting:

a. The Respondent No. 1 has claimed professional fees of Rs. 35,000/- (Rupees Thirty-Five Thousand Only) per month from the period 01.09.2021 to 31.12.2022 amounting to Rs. 5,60,000/- (Rupees Five Lakhs Sixty Thousand Only) although during this period he was not performing any duty since an application for initiation of Liquidation pursuant to the Resolution of the Liquidation by the COC in the 14th COC Meeting dated 13.09.2021 was filed. This substantiates that no action has been performed by him after filing the Application for Liquidation and as such the amount claimed and approved by the COC is unjust, arbitrary, and frivolous.

b. In respect to the cost of Rs. 2,03,580/- (Rupees Two Lakhs Three Thousand Five Hundred and Eighty Only) towards the professional

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fees and expenses incurred in filing monthly progress report for the period 01.09.2021 to 31.12.2022, it is submitted that no progress has been made since 01.09.2021 till filing of this IA and therefore, the monthly progress reports filed by the Respondent No. 1 are required to be reviewed by this Adjudicating Authority as the same were filed without any progress and thus merely to increase the CIRP cost when the liquidation application has already been filed. It is stated that during the pendency of the liquidation application, filing of progress reports are irrelevant and there is no mandatory requirement of the same.

- c. The Respondent No. 1 has already received the fees of the advocates appointed by him for the matters already approved. *For instance*, the fees of *Adv. Amol Vyas* for filing application u/s 25 of IBC 2016 were already approved and paid by the COC, but the same has been levied again and was approved by COC in the 15th COC meeting. Further, the COC has also approved fees of *Adv Amol Vyas* for conducting matters before DRT, Jaipur, whereas, no appearance has been marked or required to be given in any proceedings before DRT, Jaipur, on behalf of Respondent No. 1, as PNB has not sought any relief against Corporate Debtor in the Original Application filed for recovery against the Applicant. The copy of the DRT's order dated 19.12.2022 is annexed with the Application.

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d. The Respondent No. 1 got approval for the payment of the fees to *Adv. Sandeep Chillana* of Rs. 57,100/- (Rupees Fifty-Seven Thousand and One Hundred Only) to appear before the Hon'ble Supreme Court @ Rs. 10,000/- (Rupees Ten Thousand Only) per hearing whereas, *Adv. Sandeep Chillana* has not even appeared before the Hon'ble Supreme Court and no reply has also been filed by the Advocate on behalf of Respondent No. 1, therefore, there are huge discrepancies and unjust additions by Respondent No. 1 which are liable to be set aside. A copy of the proceedings sheets and order of the Hon'ble Supreme Court and Hon'ble High Court are annexed with the Application.

e. The fees of *CS Harshita Saxena* as sought to be approved is also unjustified as she is a part of the team of the Resolution Professional.

3.7. The Applicant further submits that the Applicant is willing to resolve the debts of the Corporate Debtor and clear the entire outstanding debt of Rs. 37,28,029/- (Rupees Thirty-Seven Lakhs Twenty-Eight Thousand and Twenty-Nine Only). The Applicant resolved to make entire payment within 6 months of approval of the Resolution Plan and closure of CIRP as per the schedule provided in the Resolution Plan submitted on 03.02.2023.

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3.8. Further, in addition, a One Time Settlement (OTS) Plan was also submitted by the Applicant in the capacity as the Suspended Director/ Guarantor to Respondent No. 2 directly for Rs. 83,10,000/- (Rupees Eighty-Three Lakhs and Ten Thousand Only) which has been approved *vide* sanction of OTS dated 18.07.2022 by PNB. However, the Applicant made a request to modify the terms of the OTS and the Respondent No. 2 *vide* letter dated 02.02.2023 has agreed to make amendments in the terms and conditions as requested by the Applicant. A copy of the said letter dated 02.02.2023 has been annexed as Annexure A5.

3.9. The Applicant mentioned that the OTS amount of Rs. 83,10,000/- (Rupees Eighty-Three Lakhs and Ten Thousand Only), the CIRP cost and all other expenses were already included up to 18.07.2022 including the CIRP cost already paid till 14th COC meeting of Rs. 7,46,295/- (Rupees Seven Lakhs Forty-Six Thousand Two Hundred and Ninety-Five Only) which the Applicant also agreed to pay. The Respondent No. 2 in its letter dated 02.02.2023 stated that the Applicant is liable to pay the additional CIRP cost/expenses which have been incurred after 18.07.2022. Further, the Applicant, after the 15th COC meeting, has shown her reasoned dissatisfaction *vide* its letter dated 06.02.2023, towards the approval of the additional amount of Rs. 8,98,729/- (Rupees Eight Lakhs Ninety-Eight Thousand Seven

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Hundred and Twenty-Nine Only) as CIRP expenses in 15th COC meeting. A copy of the letter dated 06.02.2023 is annexed with the Application as Annexure A6. However, Respondent No. 2 *vide* its email dated 09.02.2023 denied the allegations made by the Applicant and tried to justify the actions taken in the 15th COC meeting. A copy of the email dated 09.02.2023 is annexed with the Application as Annexure A7.

3.10. The Applicant submitted that in the OTS, which was accepted on 18.07.2022, no bifurcation has been provided with respect to the CIRP cost and the Applicant has been put into the complete dark but it is assumed that the entire cost up to 18.07.2022 has been covered. The Applicant further wrote an email dated 15.02.2023 wherein she showed her dissatisfaction towards the CIRP cost/ expenses approved by the COC in its 15th meeting. In the said letter itself the Applicant, reserving her right to contest the unlawful addition in the CIRP cost in the 15th COC meeting, agreed to pay a further sum of Rs. 1,00,000/- (Rupees One Lakh Only) as CIRP expenses incurred by the Respondent No. 1 such as filing fees of progress report, printing and stationary expenses, and other professional fees and reasonable payment to the advocates appointed by the Respondent No. 1. A copy of the email dated 15.02.2023 is annexed with the Application as Annexure A8.

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3.11. The Applicant further submitted that apart from the approved amount of Rs. 7,46,295/- (Rupees Seven Lakhs Forty-Six Thousand Two Hundred and Ninety-Five Only) in favour of Respondent No. 1, the Applicant has also paid Rs. 1,78,979/- (Rupees One Lakh Seventy-Eight Thousand Nine Hundred and Seventy-Nine Only) as fees for *Mrs. Anuradha Gupta* (Interim Resolution Professional). Thus, as of the current date, an amount of Rs. 9,25,274/- (Rupees Nine Lakhs Twenty-Five Thousand Two Hundred and Seventy-Four Only) has been paid as CIRP costs, as approved in the 14th COC meeting. The additional approved CIRP cost of Rs. 8,98,729/- (Rupees Eight Lakhs Ninety-Eight Thousand Seven Hundred and Twenty-Nine Only) will increase the total CIRP cost to Rs. 18,24,003/- (Rupees Eighteen Lakhs Twenty-Four Thousand and Three Rupees Only), which is unjust and arbitrary.

3.12. The Respondent No.1, *vide* email dated 16.02.2023, reiterated his stand that the Applicant is liable to add and pay the entire CIRP costs approved till the 15th COC meeting amounting to Rs. 16,45,024.10/- (Rupees Sixteen Lakhs Forty-Five Thousand Twenty-Four and Ten Paise Only) in the Resolution Plan submitted by her without which the resolution plan cannot be considered. A copy of the email dated 16.02.2023 is annexed with the Application as Annexure A9. Therefore, the Applicant submits that the demand is unjustified and does not qualify as CIRP expense as provided in Regulation 31 of the

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IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016 and for the purpose of Section 30(2)(a) of the Code.

4. The Adjudicating Authority, *vide* its order dated 13.04.2023, directed Respondent No. 2 to furnish details regarding the amount of claim, interest thereon, legal expenses, and CIRP expenses in the form of an affidavit. It also directed the Applicant to furnish details regarding the payments made to the Bank.
5. In compliance of the Order dated 13.04.2023, the Respondent No. 2 has submitted an Affidavit *vide* Dairy No. 1008/2023 dated 18.04.2023. Without prejudice to the other submissions made in the said Affidavit, Respondent No. 2 has submitted that Rs. 16,45,024.10/- (Rupees Sixteen Lakhs Forty-Five Thousand Twenty-Four and Ten Paise Only) has been paid by PNB i.e., the Respondent No. 2 till 31.12.2022 and CIRP cost w.e.f. 01.01.2023 to till date is yet to be approved by the COC. Further, the schedule of amounts credited in the loan account being maintained in the name of the Corporate Debtor is mentioned which shows that the total amount credited is Rs. 1,57,96,873/- (Rupees One Crore Fifty-Seven Lakhs Ninety-Six Thousand Eight Hundred and Seventy-Three Only).
6. In compliance with the aforementioned Order, the Applicant submitted an Affidavit *vide* Dairy No. 1010/2023 dated 18.04.2023 stating that after the initiation of CIRP, an amount of Rs. 1,57,91,000/- (Rupees One Crore Fifty-Seven Lakhs Ninety-One Thousand Only) has been paid in the account of

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Corporate Debtor in tranches out of total outstanding claim of Rs. 1,95,19,029/- (Rupees One Crore Ninety-Five Lakhs Nineteen Thousand and Twenty-Nine Only). Thus 80.90% of the total dues of the CD have already been settled and an amount of Rs. 37,28,029/- (Rupees Thirty-Seven Lakhs Twenty-Eight Thousand and Twenty-Nine Only) is outstanding. The Applicant further stated that during the 16th COC meeting dated 06.04.2023, out of the total outstanding amount, the Applicant has further agreed and offered to pay Rs. 18,64,014/- (Rupees Eighteen Lakhs Sixty-Four Thousand and Fourteen Only) along with the CIRP cost subject to the order of this Application, i.e., IA No. 108 of 2023, thereby satisfying Rs. 1,76,55,015/- (Rupees One Crore Seventy-Six Lakhs Fifty-Five Thousand and Fifteen Only) out of the total admitted claim.

7. The Respondent No. 1 filed its Reply, *vide* Diary No. 1948/2023 dated 09.08.2023, stating as below:

7.1. The Respondent No. 1 has submitted that the EOI was decided by the COC. The role of the RP is limited to scrutinise whether the prospective resolution applicant fulfils the criteria laid down under the EOI and to inform the same to the members of COC.

7.2. Further, it is submitted that as per the mandate of section 30(2)(a) of the Code the Resolution Professional is required to examine whether the Resolution Plan provides the CIRP cost in priority to the payment of the other debts of the Corporate Debtor. Thus, the RP, in the present



situation, only followed the mandate of the law and thereby asked the Applicant to submit Resolution Plan by adding the CIRP cost as approved by the COC in its 15th Meeting.

7.3. With regard to the claim of non-performance of duties it is contended that after the filing of the Liquidation Application, this Adjudicating Authority instructed the Suspended Director to submit the resolution plan to the RP for presentation before the members of the COC. Consequently, it became the RP's responsibility to convene the COC meeting in accordance with this directive. It is also denied that no work has been performed between the period 01.09.2021 to 31.12.2022, as after September 2021, the matter was listed on 22.10.2021 wherein the 19th Progress Report was filed by the RP for the period 22.09.2021 to 06.10.2021, the same was taken on record and duly recorded in the Order dated 22.10.2021. Thereafter, the 18th, 20th, and 21st Progress Reports were taken on record and duly recorded in the Order dated 30.11.2021. The RP filed the application bearing IA No. 102/2021 for modification of the Order dated 15.07.2021 and at the same time, the 22nd Progress Report has been taken on record.

7.4. It is further submitted that merely filing the application for initiation of liquidation proceedings does not mean that the RP ceases to perform his duties, especially when there have been repeated directions by this Adjudicating Authority to receive the Resolution Plan and to place the

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same before the COC. This Adjudicating Authority on various occasions, i.e., on 27.01.2022, 20.01.2023, 28.02.2023, 21.03.2023, 13.04.2023, & 20.05.2023 has directed the RP to consider the Resolution Plan as may be submitted by the Applicant/ Suspended Director.

7.5. The RP, *vide* Order dated 21.03.2023, was directed to file progress reports once every quarter, thereby withdrawing the earlier order which stated to submit progress reports every fortnight. Accordingly, the RP, in compliance with the orders of this Adjudicating Authority, submitted various progress reports in due course.

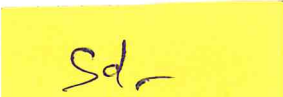
7.6. The Respondent No. 1 further submitted that the Applicant has no *locus standi* to file the present application as the CIRP cost has been approved by the COC and thus the Applicant has no right to challenge the CIRP cost for the period 01.09.2021 to 31.12.2022. In addition, the Resolution Applicant has limited right to make a request for consideration of the Resolution Plan by the member of the COC. The request of the Applicant is contrary to the provision of IBC which provides that as and when the Resolution Plan is being considered, the CIRP cost will form part of the repayment plan. The Resolution Applicant cannot dispute the CIRP cost.

7.7. Further, Respondent No. 1 submits that the objection raised by the Applicant on the payment of Rs. 35,000/- (Rupees Thirty-Five



Thousand Only) per month to the Resolution Professional for the period 01.09.2021 to 31.12.2022 is not tenable as the fees of the RP was approved by the member of the COC in the meeting dated 14.12.2020. It is important to note here that the Applicant has not challenged the aforementioned decision of the COC, whereby the fees of the RP were approved at Rs. 35,000/- (Rupees Thirty-Five Thousand Only) per month. Thus, unless and until such decision of the COC, taken on 14.12.2020, is challenged, the present application is not maintainable. A copy of the minutes of the meeting dated 14.12.2020 is attached with the Reply. Furthermore, the fees of the RP have already been approved by the COC and the Adjudicating Authority has no power to interfere in this aspect. Bare pursual of Regulation 33 & 34 of the CIRP Regulations will reveal that the Adjudicating Authority has no jurisdiction to determine the fee of the Resolution Professional once it has been fixed by the COC. The COC has been given power to fix the CIRP cost and this Adjudicating Authority can interfere only when the Committee failed to fix the same.

- 7.8. With respect to the fees of the advocates, it is submitted that Advocates appearing for the RP have already been paid for the services rendered by them. The fixation of the fee of the Advocate appearing on behalf of RP is based on the contract between the RP and the Advocate and since the Applicant is not privy to the aforesaid contract, she cannot



dispute the same. It is mentioned further that the Advocate of the RP is appearing on each and every occasion and has made submissions as per the instructions which is evident from the order sheets of this Adjudicating Authority from 10.06.2021 to 27.07.2023.

7.9. Moreover, it is evident from the order sheets of this Adjudicating Authority that the RP and the Advocate of the RP have been regularly appearing before this Adjudicating Authority. A bare pursual of the Minutes dated 03.02.2023 shows that COC has fixed professional fees of Rs. 10,000/- (Rupees Ten Thousand Only) per I.A. and Rs. 20,000/- (Rupees Twenty Thousand Only) for the matter before the DRT, therefore, under no circumstances this can be said to be excessive or unreasonable.

7.10. Further, it is submitted by Respondent No. 1 that the fees charged by *Adv. Sandeep Chillana* appearing in Civil Appeal No. 3193/2022 and 3190/2022 before the Hon'ble Supreme Court of India is completely justified as he has only charged Rs. 10,000/- (Rupees Ten Thousand Only) per appearance.

7.11. In regard to the OTS, Respondent No. 1 submitted that whenever the OTS was submitted by the Suspended Director/Applicant, it was breached by her, for which Respondent No. 1 cannot be held responsible. Furthermore, if the OTS of the Suspended Director could not have been worked out with the Punjab National Bank and the

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Corporate Debtor had continued to remain under CIRP, the RP had no option but to perform his duties.

8. The Respondent No. 2, being the sole member of COC, filed its Reply, *vide* Diary No. 2310/2023 dated 20.09.2023, stating as below:

8.1. The Respondent No. 2 considered the OTS proposal according to bank guidelines and sanctioned the compromise (OTS Proposal) of the Applicant i.e., *Personal Guarantor Ms Vasundhara Gupta vide* its letter dated 18.07.2022. The obligants of the loan account of the Corporate Debtor were required to comply with the terms and conditions of the OTS/Compromise. However, the terms and conditions of the letter were not honoured/complied with by the obligants, including the Applicant. The Respondent No. 2, through its letters dated 08.08.2022, 21.09.2022, and 15.11.2022, requested the Applicant to comply with the terms and conditions of the sanction, however, the Applicant failed to comply with the same.

8.2. The Applicant *vide* letter dated 09.01.2023 requested Respondent No. 2 for amendment in terms and conditions of letter dated 18.07.2022. Responding to the said request, Respondent No. 2, in the interest of all stakeholders, approved the amendments in terms and conditions *vide* letter dated 02.02.2023. The Applicant did not accept the terms and conditions of the sanction despite various communications which resulted in the failure of the OTS proposal.

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8.3. Thereafter, the Financial Creditor Bank, i.e., Respondent No. 2, filed an *OA 189/2022* before Ld. DRT Jaipur for the recovery of its outstanding loan amount from the personal guarantors of the Corporate Debtor. The Financial Creditor Bank did not seek any recovery from the Corporate Debtor in the captioned OA, as CIRP proceedings were pending with respect to the Corporate Debtor before this Adjudicating Authority. In the said OA, the Corporate Debtor was made a party so that the RP can be apprised of the latest position of the case and also with respect to any recoveries made, if any, in the proceedings before the Ld. DRT.

8.4. In compliance with the order dated 21.03.2023, the Resolution Applicant ('RA') submitted the revised Resolution Plan, wherein it offered to make a payment of Rs. 8,00,000/- (Rupees Eight Lakhs Only) to the Financial Creditor Bank and also offered to pay the CIRP cost. After discussion, the Financial Creditor Bank has agreed to a sum of Rs. 18,64,015/- (Rupees Eighteen Lakhs Sixty-Four Thousand and Fifteen Only) payable within six months and payment of the entire CIRP cost. However, the RA did not agree to this, therefore, the resolution plan was rejected by the COC in its commercial wisdom.

8.5. The fees of the professionals associated have to be reimbursed for the services rendered by them. The matter is under CIRP at present and no settlement has been arrived at between the parties. Also, stay of

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proceedings has not been granted by any Court of Law, therefore the cost and expenses are likely to rise with the passing period, as professionals are involved in the CIRP to maintain the status of the corporate debtor company.

9. The Applicant *vide* Dairy No. 2600/2023 dated 31.10.2023 has submitted the written submission stating as below:

9.1. The RP and PNB never considered the fact that the CD is categorised as MSME and the PNB made it mandatory for payment of the entire CIRP cost and fees of RP until the approval of the Resolution Plan. However, the COC should have deliberated to justify the CIRP cost based on facts, circumstances and the MSME status, considering that the only promoter is filing the plan as per Section 240A of the Code. Additionally, the CIRP cost does not reflect the commercial wisdom of the COC.

9.2. The RP failed to take any action on stocks lying at the project sites situated at Kar Bhavan and Jobner, where work was terminated by RSRDC after the moratorium. A police complaint was belatedly filed after 2.5 years of the termination of the Contract/Tender. The delay in filing the complaint shows that the RP has failed to safeguard the interests of the Corporate Debtor, and no steps were taken to protect the assets at the sites.

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9.3. With respect to the fees of RP, it is submitted that as per Circular No. IBBI/IP/013/2018 dated 12.06.2018, RP has to ensure that the fees payable to him as well as the other expenses incurred by him are reasonable. The test of reasonability is provided in Annexure-B of the circular and the relevant paragraph is reproduced below:

“(iii) An insolvency professional should consider the following factors while determining the quantum of fee to charged: (a) value and nature of the assets dealt with, (b) time properly given by the insolvency professional and her staff in attending to the affairs of the debtor, (c) the complexity of the case, (d) exceptional responsibility falling on the insolvency professional, (e) the effectiveness with which the insolvency professional carries out her duties.”

9.4. The Applicant relied upon the Hon’ble Supreme Court judgment in the matter of *Alok Kaushik vs. Bhuvaneshwari Ramanathan and Other CA 4065/2020* to contended that determination of the fees is not commercial wisdom of COC and NCLT can determine the issue of fees.

10. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder, Written Submission along with the documents enclosed therein.

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11. The issue in the present Application is whether the CIRP cost and expenses approved by the COC in the 15th COC meeting are justified and reasonable. To provide an answer, we shall analyze all the cost and expense submitted and approved by the COC. Before proceeding further, it is important to reiterate that the Applicant is ready and willing to include the CIRP cost of Rs. 7,46,295/- (Rupees Seven Lakhs Forty-Six Thousand Two Hundred and Ninety-Five Only) already approved until the 14th COC meeting dated 13.09.2021. The total expenses submitted by the Resolution Professional for the period 01.09.2021 to 31.12.2022 before the COC were Rs. 10,08,729.10/- (Rupees Ten Lakhs Eight Thousand Seven Hundred and Twenty-Nine Only), out of which Rs. 8,98,729/- (Rupees Eight Lakhs Ninety-Eight Thousand Seven Hundred and Twenty-Nine Only) was approved by the COC in the 15th COC meeting.

12. The major proportion of the CIRP cost in question is the professional fees of Resolution Professional, amounting to Rs. 35,000/- (Rupees Thirty-Five Thousand Only) per month from the period 01.09.2021 to 31.12.2022 totalling to Rs. 5,60,000/- (Rupees Five Lakhs Sixty Thousand Only). Witnessing Item No. B.4 of the minutes of the 4th COC meeting dated 14.12.2020 shows that the COC ratified the fees of the Resolution Professional, *Mr. Vijendra Bangar*, at Rs. 35,000/- (Rupees Thirty-Five Thousand Only) per month. The relevant part is reproduced below:

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“B.4 TO APPROVE AND RATIFY FEES OF RESOLUTION PROFESSIONAL:

.... Resolved that a Remuneration of Rs. 35,000/- (Rupees Thirty-Five Thousand Only) Per month be and is hereby approved and ratified by the members of committee of creditors for payment to Resolution professional in the Corporate Insolvency Resolution Process of Aesthetic Stone Arts India Private Limited.”

It is also important to mention that the said approval has not been challenged before any Adjudication Authority; thus, the contention of the Applicant that the fee charged is unjust, arbitrary, and frivolous is not tenable. Moreover, it is settled law that the CoC’s commercial wisdom is of utmost importance and hence, no judicial intervention in their commercial decisions is allowed.

13. The Applicant has also contended that during the period 01.09.2021 to 31.12.2022, no duty has been performed by Respondent No. 1, and no progress has been made since 01.09.2021 until the filing of this IA. Therefore, the progress reports filed by the Respondent No. 1 are required to be reviewed by this Adjudicating Authority. To analyse the same, we will look into the actions taken by the RP during the period 01.09.2021 to 31.12.2022. The Progress Report submitted during the period in question cannot be disputed, as it was in compliance with the order of this Adjudicating Authority dated 04.03.2020, and no objections of any nature

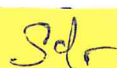
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had been raised prior to the Order of this Adjudicating Authority dated 21.03.2023, which modified the order dated 04.03.2020 and directed the progress report to be filed only on a quarterly basis.

14. Moreover, as per section 25(2)(f) of the Code, it is one of the duties of the RP to “*convene and attend all meetings of the committee of creditors*” and the RP is duty-bound to ensure compliance of the directions/ orders given by the Adjudicating Authority in this regard. Thus, it is evident that this Adjudicating Authority on various occasions, i.e., on 27.01.2022, 20.01.2023, 28.02.2023, 21.03.2023, 13.04.2023, & 20.05.2023 has directed the RP to consider the Resolution Plan as may be submitted by the Applicant/ Suspended Director. While the Corporate Debtor deposited a substantial amount during CIRP, fresh proposals were forwarded for consideration. Considering liquidation as a last resort, the application for liquidation of Corporate Debtor remained pending before this Adjudicating Authority. Hence the CIRP has not yet concluded thereby entitling the Resolution Professional for the fees which was duly approved by the COC. Therefore, the role of the RP was involved and it will be wrong to conclude that no work has been performed by the RP during the period in question and hence, the contentions of the Applicant are not tenable in this regard.

15. Furthermore, the fact cannot be neglected that the COC does not find any irregularity with respect to the cost of Rs. 2,03,580/- (Rupees Two Lakhs Three Thousand Five Hundred and Eighty Only) towards the professional




fees and expenses incurred in filing monthly progress reports for the period 01.09.2021 to 31.12.2022. Therefore, since the transaction is not *prima facie* appearing to be unjust, without prejudice to the other findings, the Adjudicating Authority is not interfering with the commercial wisdom of the COC.

16. Concerning the fees of Advocates, Company Secretary and related expenses, we have scrutinised the minutes of the 15th COC meeting dated 03.02.2023 wherein, it is evident that the COC has examined every minor expense which has been placed for the approval. Thus, without going into the nitty-gritty of the said fees and expenses, we stand by the intent of the Code which granted commercial wisdom to the COC, therefore, without prejudice to the other findings and observations, we are not interfering with the decision of the COC taken in the 15th COC meeting dated 03.02.2023. In addition, we uphold the contention of the Applicant that fixation of the fee of the Advocate for RP is a part of a contract between the RP and the Advocate and hence, due to the privity of contract this Adjudicating Authority cannot interfere in the same. Moreover, it is a settled fact that, in a pending matter the cost and expenses are likely to rise with the passing period.

17. The findings of the Hon'ble Supreme Court in the matter *Alok Kaushik vs. Bhuvaneshwari Ramanathan and Others CA 4065/2020* established more precisely the jurisdiction of NCLT in regard to the determination of the

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amount which forms part of the CIRP cost. We, in the aforementioned findings, have already explained the matter in detail depicting the compliance of the order of the Hon'ble Supreme Court.

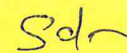
18. Without prejudice to anything stated above, this *IA 108/JPR/2023* is filed for limited reliefs which does not include the consideration of One Time Settlement; therefore, it is not required to decide on that aspect as far as the present IA is concerned.

19. Therefore, the cost approved by the COC i.e., Rs 8,98,729/- (Rupees Eight Lakhs Ninety-Eight Thousand Seven Hundred and Twenty-Nine Only) cannot be declared unjust and arbitrary and we cannot quash and set aside the 15th COC meeting dated 03.02.2023.

20. Therefore, this application is rejected and disposed off accordingly.



DEEP CHANDRA JOSHI
JUDICIAL MEMBER



RAJEEV MEHROTRA
TECHNICAL MEMBER