

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT III

IA/654/2020

In

CP(IB)No.2284/MB/C-III/2018

*Application filed under Regulation 33 of the Insolvency and
Bankruptcy Board of India (Insolvency Resolution Process
for Corporate Persons) Regulation, 2016.*

Mr. Hazari Lal Saini, IRP

Having his address at 704, A Wing, N.G. Sterling
Building, Opp. Queen Mary High School, Mira
Bhayander Rd, Mira Road East- 401107.

...Applicant/IRP

In the matter of

Raychem RPG Private Limited

...Operational Creditor

Vs.

Herodex Power Systems Private Limited

...Corporate Debtor

Order Pronounced on: 27.03.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the IRP: Adv. Siddharth Shankar i/b Agarwal and Dhanuka Legal

For the CoC: Adv. Prakash Shinde

ORDER***Per- Ms. Lakshmi Gurung, Member Judicial***

1. It is an application filed under Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations, 2016”) by Mr. Hazari Lal Saini, Interim Resolution Professional (“IRP/Applicant”) of Herodex Power Systems Private Limited (“Corporate Debtor”) seeking following reliefs:

- a. To direct the CoC members to approve and pay fees to IRP for work which he has being functions of the RP as mandated by Regulation 17(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Such fees may be paid @ Rs. 1,50,000/- per month from the 30th day till the day the Applicant functions under Regulation 17(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*
- b. To direct the CoC to confirm the IRP as RP considering the facts supra of the case, present status and remaining period of the CIR Process thereby;*
- c. To direct the CoC that in any of the meetings of CoC henceforth, the Financial Creditor must be represented by such persons who are authorized to take decisions on the spot, without deferring decisions for want of any internal approval from the financial creditors;*
- d. Any other relief/direction as the Hon’ble adjudicating Authority may deem fit in the interest of justice.*

2. Undisputed facts are that the Corporate Debtor was admitted to Corporate Insolvency Resolution Process by this Tribunal on 09.09.2019 and the Applicant was appointed as the Interim Resolution Professional (“IRP”). Based on the claims received by the Applicant, CoC was formed on 05.11.2019. The CoC consists of only one member i.e. Canara Bank which is having 100 % voting share.

Submission on behalf of the Applicant:

3. The Applicant submits that upon his appointment as IRP, public announcement was issued by him on 03.10.2019 inviting claims against the

Corporate Debtor. Thereafter letters were issued to the ex-management of the Corporate Debtor requesting them to handover information, documents pertaining to the Corporate Debtor and to extend full co-operation for conducting the smooth process of CIRP.

4. He further submits that on 11.10.2019, he visited the factory premises of the Corporate Debtor in order to take possession of the Corporate Debtor. The Applicant visited the factory premises of the Corporate Debtor for the second time to conduct verification of fixed assets.
5. The Applicant submits that he constituted the Committee of Creditors (“CoC”) as per the provisions of the Code. The Report on constitution of CoC was filed by him on 04.11.2019. The Applicant continued to function as the IRP/RP till new RP was appointed on 19.02.2020 and during this period he conducted five COC meetings, relevant decisions pertaining to his fee are extracted below:-

Date	COC Meeting No.	Decisions taken
05.11.2019	1 st COC Meeting	COC was formed. Applicant placed a resolution before the COC to approve his professional fee of Rs. 2,50,000/-. The CoC deferred voting on the Resolution to approve IRP fees stating that they will confirm the final fees of the IRP after consulting with their Head Office.
26.11.2019	2 nd CoC Meeting	The same Resolution was put forth before the COC in the Second meeting of the COC dated 26.11.2019 and the COC took a decision to discuss the matter in the next meeting of COC.
03.12.2019	3 rd COC Meeting	COC approved Rs 1,50,000/- per month plus applicable taxes as the fees of the IP.

27.12.2019	4 th COC Meeting	IRP proposed a fees of Rs 2,00,000/- per month plus applicable taxes but the same was rejected by the CoC.
22.01.2020	5 th COC Meeting	CoC resolved to appoint Mr. Prakash Nath Mishra as the RP.
19.02.2020		RP was appointed replacing the IRP/Applicant.

6. The Applicant relied on Sec 16(5) of the IBC, 2016, “The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under section 22”.
7. Further submitted that as per Regulation 17(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, “Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under section 22”.
8. The Applicant further submitted that the CoC is obligated to appoint an RP in the First meeting of CoC but it was delayed due to the CoC. Under the circumstances, the IRP was left with no choice but to perform the functions of the RP till a RP is appointed.
9. The CoC has not fixed the fees of the IRP for the period for which he has performed the functions of RP.
10. The IRP has performed all functions of the RP as mandated by law and should be compensated by the CoC for the work done by him on the Corporate Insolvency Resolution Process (CIRP) for the period from 01.11.2019 to till the regular RP appointed.
11. The list of work done by the Applicant are as follows:

- i. Conducted 5 CoC meetings.
- ii. Prepared the Information Memorandum.
- iii. Issued the publication of Form G for EoI.
- iv. Inspection of the factory premises of the Corporate Debtor.
- v. Formed an opinion on transactions which are preferential and fraudulent in nature.
- vi. Appointed registered valuers under the Code.
- vii. Analyzed the financial and business operations of the Corporate Debtor for last two years along with completing the financial position, review, rolling cash flow statements and scrutiny of related party transactions.
- viii. Received Four EoI's till date.
- ix. Had discussion with all the PRA's to submit their Resolution Plan.
- x. IRP and his team has arranged all the data for valuer viz. Fixed Assets Register, Stock Register with location for smooth conduct of valuation.
- xi. The Applicant has also received draft valuation report for his record.
- xii. The Applicant has managed to convince the accounts team of the Corporate Debtor who had abandoned the accounts writing work to complete accounts and got them audited from the existing Auditor and has kept the audited accounts ready for Prospective Resolution Applicants.
- xiii. The Applicant and his team has also met its one of the biggest customer TANGEDCO in Tamil Nadu and convinced them to grant the Corporate Debtor an opportunity to complete the incomplete contracts worth INR Two crores annually and also attempted to recover dues of INR 21 Crore as per Audited Balance Sheet.
- xiv. The Applicant visited Coimbatore to unearthed stock of INR 16 lakhs which Corporate Debtor has never disclosed.
- xv. The Applicant and his team has also initiated with TANGEDCO to buy back stock lying at various locations worth crores which will otherwise getting deteriorated and fetch scrap value.

Submission on the behalf of the CoC:

12. The contention of COC (Canara Bank) is that COC has not ratified the fee payable to the Applicant and therefore COC is not liable to make the fee payment to the Applicant. The amount of professional fee not ratified by the CoC, shall be borne by the Original Applicant i.e. Raychem RPG Private Limited.

13. In any case, Canara Bank/CoC has already paid Rs. 4,00,000 /- (Rupees Four Lakhs Only) towards professional fees and Rs. 1,69,885/- (Rupees One Lakh Sixty-Nine Thousand Eight Hundred Eighty-Five Only) towards expenses to IRP/Applicant, total aggregating to Rs. 5,69,885/- (Rupees Five Lakh Sixty-Nine Thousand Eight Hundred Eighty-Five Only).
14. As per the minutes of the 5th CoC meeting held on 22.01.2020, the CoC offered the Applicant a monthly remuneration of Rs. 80,000/-. He further had agreed to act and serve as the RP for the rest of the period at the remuneration of Rs. 80,000/- as fixed by the CoC, since most of the work had already concluded by him and the resolution to that effect was put for voting before the CoC. However, the said resolution was dissented by the CoC during the 5th CoC meeting, and appointed Mr. Prakash Nath Mishra as the RP of the Applicant. Thus, it is clear that the remuneration of the Applicant was fixed for Rs. 80,000/-.
15. The CoC has further submitted that the IRP has not conducted effective CIRP process of the Corporate Debtor and there was no progress during the period for which fees is allegedly claimed by the Applicant. The alleged fees charged/claimed by the Applicant is exorbitant. Thus, it is respectfully submitted that CoC is not liable to pay any alleged amount as allegedly claimed by the Applicant and the said IA is liable to be dismissed with costs.

Observations and Findings:

16. Heard the Parties for both the sides and perused the record.
17. We observe that the Corporate Debtor was admitted to Corporate Insolvency Resolution Process by this Tribunal on 09.09.2019 and the Applicant was appointed as the Interim Resolution Professional (“IRP”).
18. Further it is evident from the minutes of the 4th CoC meeting dated 27.12.2024 that it approved Rs. 1,50,000/- plus applicable taxes as the fees of the IRP. The relevant resolution is as follows:

“RESOLVED THAT pursuant to Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other applicable provisions, if any, of the Insolvency and Bankruptcy Code, 2016, remuneration of Rs. 1,50,000/- Per Month (Rupees One Lakh Fifty Thousand only) plus applicable taxes fixed by the CoC for payment to IRP for rendering the professional services till the appointment of Resolution Professional, be and is hereby approved.”

19. Further, the CoC in its 5th meeting dated 22.01.2020, the CoC offered the Applicant a monthly remuneration of Rs. 80,000/-, which was agreed to act and serve as the RP for the rest of the period at the remuneration of Rs. 80,000/-. However, the CoC further resolved to appoint Mr. Prakash Nath Mishra as RP. Further an MA/612/2020 was filed before this Tribunal for replacing the IRP/Applicant, with Mr. Prakash Nath Mishra as Resolution Professional, same was allowed by this Tribunal vide order dated 19.02.2020.
20. The Applicant has prayed for a fee of Rs. 1,50,000/- per month for the duration of their service as Resolution Professional, which was approved by the CoC in its 3rd meeting.
21. Considering the entire facts and circumstances of the present case, we are of considered opinion that IRP/Applicant should be paid Rs. 1,50,000/- per month from 09.09.2019 to 22.01.2020, and from 22.01.2020 to 19.02.2020 Rs. 80,000/- p.m. should be paid. This decision is based on the CoC offering the Applicant a monthly remuneration of Rs. 80,000, which was accepted by the Applicant for serving as the RP for the remaining period.
22. Therefore, we partly allow the present application with the direction to the Canara Bank (sole member of CoC) to pay the Fees amounting to Rs. 1,50,000/- per month from 09.09.2019 (date of initiation of CIRP) till 22.01.2020 and Rs. 80,000/- per month from 23.01.2020 to 19.02.2020

(date of appointment of regular RP). Any amount already paid to the Applicant in this context, is to be deducted and adjusted accordingly.

23. Accordingly, the present application is **partly allowed** and is **disposed of**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Arpan, LRA

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)