

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 04.01.2022 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.160/10/AMR/2019	IA No.153/2020, IA No.08/2021	10 of IBC	NITHIN NUTRITIONS PVT LTD

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA No.153/2020 is allowed, vide separate orders.

IA No.08/2021:

For pronouncement of orders, list the matter on 05.01.2022.

I.A.No.108/2020:

For hearing, list the matter on 05.01.2022.

7/Jan
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

**I.A.No.153 of 2020
IN
CP (IB) No.160/10/AMR/2019**

**Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
Read with Rule 11, 13 & 32 of the National Company Law
Tribunal (Adjudicating Authority) Rules, 2016**

In the matter of
M/s. NITHIN NUTRITIONS PRIVATE LIMITED

BETWEEN:

Pavan Kankani,
5-9-1121, F-45, First Floor,
Agarwal Chambers, King Kothi,
Hyderabad - 500001.

.... Applicant

AND

1. Naga Bushan Bhagwati,
Resolution Professional for
M/s.Nithin Nutritions Private Limited,
1-1-380/38, Ashok Nagar Extension,
Hyderabad – 500020 (TG)
... Resolution Professional/Respondent
2. Bank of India,
Represented by its Chief Manager,
Having its Branch situated at D.No.18-1-24/C,
Vaishnavi Towers, K.T.Road,
Tirupathi – 517501.
3. Peddi Reddy Sudhir Reddy (P.Sudheer Reddy),
S/o. late P.Bhaskar Reddy,
Resident of Yarrathivripalli(V),
Sadum (M), Chittoor District.
4. T.Sahith Reddy,
S/o. Siva Sankar Reddy,
Resident of Nutanakalva (V),
K.V.Palle (M), Chittoor District.

... Committee of Creditors/Respondents

Orders pronounced on: 04.01.2022

Coram:

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

For the Applicant	: Mr. Pavan Kankani, Ex-RP (party in person)
For the Respondent No.1	: Naga Bushan Bhagwati, RP
For Respondent No.2	: V.Sethu Madhava Rao, Advocate

ORDER

1. This application is filed by Mr.Pavan Kankani, who was the erstwhile Insolvency Resolution Professional seeking for a direction to the Respondents to release the pending dues of the Applicant within reasonable time and to direct Respondents No.2 to 4 who are members of Committee of Creditors (CoC) of Corporate Debtor to release the dues of the Applicant.
2. Heard the Counsel appearing for the Applicant and Counsel appearing for Corporate Debtor and the Bank of India/2nd Respondent.
3. The present Resolution Professional who is Respondent No.1 has filed counter. But the contentions therein do not have any bearing on the prayers of the Applicant herein, hence, not discussed any further. Counter of the 2nd Respondent is filed, but the contentions made in the counter are not taken up in detail, since, the short aspect that has to be decided in this Application is whether the Applicant is entitled for any fee and as to the amount of fee that

he is entitled for. The attention of this court is drawn to Regulation 33 of Insolvency and Bankruptcy Code (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which is as under:

Costs of the interim resolution professional – (1) *The applicant shall fix the expenses to be incurred on or by the interim resolution professional.*

(2) *The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1)*

(3) *The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.*

(4) *The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.*

[Explanation – For the purpose of this regulation, expenses” include the fee to be paid to the interim 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 interim resolution professional.]

4. Hence, as per the above regulation the Applicant who is Corporate Debtor herein has to fix the expenses to be incurred by the Insolvency Resolution Process. If, he fails to fix the expenses, the Adjudicating Authority has to do so and the said expenses should be reimbursed by the committee to the extent the CoC ratifies. The Counsel for the Corporate Debtor fairly agrees for a fee to be fixed to the Applicant, who is erstwhile Insolvency Resolution Professional, on par with the fee fixed for the present Insolvency Resolution Professional which is fair enough. The Counsel for the 2nd Respondent raises objection saying that the Applicant moved this Tribunal seeking for fixation of fee and the Application was allowed, against which an Appeal was preferred

before the National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (ins) 497/2020 and the National Company Law Appellate Tribunal has set aside the orders passed by the National Company Law Tribunal in I.A.No.34/2020, 33/2020, 335/2020, 32/2020 & 31/2020. Hence, there need not be any further argument that the erstwhile Insolvency Resolution Professional i.e., the Applicant herein would at best be entitled for his fee up to the date of the order of the NCLAT in Company Appeal (AT) (ins) 497/2020 which is on 03.06.2020.

5. The Counsel for the 2nd Respondent contends that since, the order of NCLT in I.A.No.34/2020 and other IAs is set aside, the fee of the Applicant has to be fixed only for the period that he worked prior to filing the Application before NCLT in I.A.No.34/2020 and other IAs. But the undisputed fact is that the Applicant has rendered service during the period from the date of the NCLT allowing his application and NCLAT reversing the orders of the NCLT for which he would be entitled for his fee. The Counsel appearing for the contesting parties did not raise any counter arguments to the opinion expressed by the Tribunal that the fee of the Applicant would be fixed from the date of his appointment till the date of the order of the NCLAT in Company Appeal (AT) (ins) 497/2020 which is on 03.06.2020. On par with the fee that is agreed to be paid to the present Resolution Professional. The Counsel for the Corporate Debtor submits that the CoC has to approve the fee that is fixed herein and that the same would be done after the constitution of the CoC. Hence, recording the said submission the I.A is disposed of in the above terms and the fee of the Applicant shall be paid on par with the fee paid to the present Insolvency Resolution Professional, from the date of appointment of the Applicant till the date of the order of the

NCLAT in Company Appeal (AT) (ins) 497/2020 dated 03.06.2020 and the same shall be included in the CIRP costs after the CoC ratifies the same.

Accordingly, I.A.No.153/2020 in CP (IB) No.160/10/AMR/2019 is disposed of.

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**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

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