

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 146/2023
In
CP (IB) No.70/Chd/Hry/2021
(admitted)
Under Section 60(5) of the IBC, 2016**

In the matter of:

R R Kabel Limited

....Petitioner-Operational Creditor

Versus

Govind Electrica Private Limited

....Respondent-Corporate Debtor

And in the matter of IA No. 146/2023:-

Mr. Pramod Kumar Misra
having its registered office at
5203, DLF City Phase-4,
Gurgaon, Haryana-122002

...Applicant/Interim Resolution Professional

Vs.

Committee of Creditors of Govind Electrica Private Limited
Through Shri Ram City Union Finance Limited
having its registered office at
Angappan Naicken Street
Chennai-600001

...Respondent

Order delivered on: 18.05.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present :

For the Applicant in

IA No. 146/2023

: Mr. Raghav Kakkar, Advocate

For the Respondent in

IA No. 146/2023

: Ms. Usha Singh, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No.146/2023

The present application has been filed by the applicant, i.e. Mr. Pramod Kumar Misra-Interim Resolution Professional, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016, seeking direction to the respondent to participate in the CIRP process and approve the professional fees of the applicant and other cost/expenses therein.

2) The main Company Petition bearing CP(IB) No. 70/Chd/Hry/2021 for initiating the Corporate Insolvency Resolution Process (CIRP) filed by RR Kabel Limited (the Operational Creditor”) against Govind Electrica Private Limited (The “Corporate Debtor”) under Section 9 of Insolvency and Bankruptcy Code, 2016 was admitted by this Adjudicating Authority on 21.09.2022. A copy of the same is attached as Annexure A-1 with the application.

3) The brief facts submitted by the applicant in the instant application are as follows:

3.1 It is stated that the sole-financial creditor is not participating in the CIRP process and is also not approving the professional fees of the applicant and other incidental costs/expenses incurred by the applicant during CIRP.

3.2 It is stated that the sole-financial creditor, i.e. Shriram City Union Finance Limited, submitted its claim of Rs. 16,10,608/- along with interest of Rs. 7,16,396/- totalling Rs. 23,50,004/- which was admitted in its entirety and informed to the sole-financial creditor by RP's email dated 12.10.2022. Subsequently, the issue of approval of the fee of the IRP and ratification of CIRP cost incurred since the commencement of the CIRP, along with the professional fee of the advocate engaged by the IRP, has been on the agenda for the first and second CoC meetings, but the respondent has rejected the proposals of the applicant. Subsequently, in response to the query raised by the respondent, i.e. sole financial creditor, the applicant-RP by its email dated 14.12.2022, sent to the respondent providing confidentiality undertaking to share the Information Memorandum of the corporate debtor. The respondent, however, by its email dated 19.12.2022, has instructed the applicant to withdraw its claim against the corporate debtor.

3.3 it is further stated that such withdrawal by the respondent, who is the sole financial creditor of the corporate debtor at such a belated stage, is not permissible under the law.

4) Respondent No. 1 has filed its reply by Diary No. 00025/3 dated 10.03.2023 stating that the Resolution Professional has requested for payment of fees and expenses but has not annexed any supporting documents or has not mentioned the amount due and payable to him. It is further stated that as

the corporate debtor has no assets, the claim of the respondent cannot be

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(admitted)

recovered through the CIR Process. It is also submitted that the fee claimed by the Interim Resolution Professional is higher than the claim of the respondent. Furthermore, it is pointed out that the respondent has already informed the Interim Resolution Professional that it wishes to withdraw its claim from the CIRP, and the IRP has filed the present application instead of accepting the withdrawal of the claims. It is further prayed that the respondent may be allowed to withdraw from the CIRP, and the operational creditor may be held liable to make payment of the fee of the IRP.

5) We have heard the learned counsels for the applicant-RP and respondent.

6) The issue to be adjudicated is whether, after the initiation of CIRP, the financial creditor, after lodging its claim, can withdraw the same and refuse to become part of the CoC. In this connection, a reference is made to the definition of a claim under Section 3(6) extracted as below:

“(6) “claim” means—

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;”

7) As per the provisions of Section 15(1) of the code, the Interim Resolution Professional is to make a public announcement within 3 days of his appointment. As per Section 15(1) (c) read with CIRP Regulation 6(2) (c), the creditors have to submit their claims within 14 days from the date of appointment of an Interim Resolution Professional.

8) It is noted that the IBC does not provide for the event of withdrawal of a claim submitted by the financial creditor. In this connection, a reference is made to the decision of the Hon'ble NCLAT in the case of **Mr. K.N. Rajakumar Suspended Director, Aruna Hotels Ltd Vs. V. Nagarajan Resolution Professional, M/s. Aruna Hotels Limited**; Company Appeal (AT) (CH) (Ins) No.48 of 2021 dated 30.04.2021, wherein certain financial creditors, who were part of the original CoC of the corporate debtor, withdrew their claims entirely during the course of the CIRP. Despite such change in circumstances, the Hon'ble NCLAT ordered the original COC, which was constituted by such erstwhile creditors as well, to reconvene and determine the fate of the corporate debtor as on the relevant date. The NCLAT upheld the NCLT's order on the basis that the Resolution Professional does not have any 'adjudicatory power' under the IBC.

9) In the present case, the financial creditor, i.e., Shriram City Union Finance Limited, has lodged a claim of Rs. 23,50,004/- by email dated 12.10.2022. Subsequently, in compliance of Section 21(1) of the Code, the IRP has constituted the following CoC:

Sr. No.	Name of the Member Creditor	Claim Submitted	Claim Admitted	Voting Share%
1.	Shriram City Union Finance Limited	23,50,004	23,50,004	100%
	Total	23,50,004	23,50,004	100.00

10) As the IRP has no adjudicatory power under IBC, he cannot reconstitute or take any decision on the constitution of the CoC again. The creditor, i.e.

Shriram City Union Finance Limited, is therefore directed to participate in the meeting and decide on the agenda items placed before the committee. The present application also includes prayers for the payment of fees and costs of the IRP. Under Regulation 33 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the CoC is to ratify the expenses of the IRP. The IRP is therefore directed to convene the meeting of the CoC within 15 days of this order, and the respondent is to participate in the same and ratify the costs based on the evidence produced by the IRP before the CoC in this regard. As regards the prayer of the respondent to withdraw its claim, this bench gives liberty to the respondent to move a separate application in this regard after making compliance of our aforementioned directions.

11) In the result, the IA no. 146/2023 is allowed and disposed off accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

May 18 , 2023
PB

Sd/-
(Harnam Singh Thakur)
Member (Judicial)