

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(IBC) No. 274/JPR/2023
IA (IBC) No. 325/JPR/2023
In CP No. (IB)- 316/9/JPR/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S ADHUNIK NIRYAT ISPAT LIMITED

...Operational Creditor/Applicant

Versus

M/S SURYA IRRIGATION PRIVATE LIMITED

...Corporate Debtor/Respondent

IA(IBC) No. 274/JPR/2023:

MEMO OF PARTIES

SIDDHARTH JAIN

52/74, Ramjas Road, Karol Bagh,
Near Ramjas School No. 5, New Delhi- 110005

... Applicant

Versus

ADHUNIK NIRYAT ISPAT LIMITED

208-210, Sushma Tower, D Block,
Central Market, Prashant Vihar, Delhi- 110085

... Respondent No. 1/ Operational Creditor

IA(IBC) No. 274/JPR/2023
IA (IBC) No. 325/JPR/2023
In CP No. (IB)- 316/9/JPR/2019

Sd/-

Sd/-

SHYAM SUNDAR MAHESHWARI
35, Flast No. F-2, Shanti Vihar, Kalyan Nagar,
Tonk Road, Sanganer, Jaipur, Rajasthan- 302029

... Respondent No. 2/Interim Resolution Professional

IA (IBC) No. 325/JPR/2023:

MEMO OF PARTIES

SHYAM SUNDAR MAHESHWARI
35, Flast No. F-2, Shanti Vihar, Kalyan Nagar,
Tonk Road, Sanganer, Jaipur, Rajasthan- 302029

...Applicant/Interim Resolution Professional

Versus

ADHUNIK NIRYAT ISPAT LIMITED
208-210, Sushma Tower, D Block,
Central Market, Prashant Vihar, Delhi- 110085

...Respondent /Operational Creditor

For Operational Creditor	: Prateek Kedawat, Adv.
For the Interim Resolution Professional	: Nitesh Shrivastava, Adv. Sanyam Jain, Adv. Shyam Sunder Maheshwari, RP

Order Pronounced On: 27.09.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The parties in the aforementioned matters have filed an interim application seeking directions for proper adjudication and disposal of necessary issues. As the facts of both applications are similar, the issues at hand are intertwined, and the relief prayed in the aforementioned applications is

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mutually exclusive. Therefore, both the applications are being considered simultaneously for proper and effective adjudication of the issues and reliefs prayed for.

2. The Interim Application No. 274/JPR/2022 ('Withdrawal Petition') has been filed by M/s Adhunik Niryat Ispat Limited, the operational creditor ('Original Applicant'), of M/s Surya Irrigation Private Limited ('Corporate Debtor') under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (the 'Code'/'IBC') read with Rule Rule 11 of National Company Law Tribunal Rules, 2016 ('NCLT Rules') praying expedite directions for the withdrawal application and other ancillary directions.
3. Whereas the Interim Application ('Application for CIRP Cost') has been filed by the interim resolution professional ('IRP/ RP'), Mr. Shyam Sundar Maheshwari of the Corporate Debtor under Section 60 (5) of Insolvency and Bankruptcy Code, 2016 (the 'Code'/'IBC') read with Regulation 33(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016 ('CIRP Regulations') seeking directions to be issued to the operational creditor of Corporate Debtor for approval of Corporate Insolvency Resolution Process' ('CIRP') cost and other necessary directions.
4. This Adjudicating Authority *vide* Order dated 05.12.2022 ('CIRP Order') admitted the application under Section 9 of the IBC, filed by M/s Adhunik

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Niryat Ispat Limited ('Operational Creditor') against the Corporate Debtor in the above-mentioned matter. Mr. Shyam Sundar Maheshwari was appointed as Interim Resolution Professional ('IRP') and was directed to take all such steps as are required under the Code with utmost dedication, integrity, and honesty.

5. Subsequently, the *suspended* management of the Corporate Debtor filed an appeal before the Hon'ble NCLAT against the CIRP Order. The Hon'ble NCLAT *vide* Order dated 21.12.2022 ('NCLAT Order') directed that '*In the meantime, in pursuance of the Impugned Order, IRP may proceed to collate the claims but Committee of Creditors may not be constituted.*' A copy of the NCLAT Order is annexed as Annexure A-2 of the IA No.325/JPR/2023.

IA (IBC) No. 325/JPR/2023:

6. The IRP has moved the present application on the following set of facts:

- 6.1. The IRP made a public announcement in Form – A on 14.12.2022 for collating the claims of the creditors. The IRP stated that the Hon'ble NCLAT has not given a stay on the ongoing CIRP. Thus, the IRP took the initiative to take over the possession and custody of the assets of the Corporate Debtor in accordance with the Code wherein he made numerous efforts to obtain the physical possession of all the assets, information pertaining to the finances and operations of the Corporate Debtor including the registered office and has performed all his functions

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and duties as enumerated under the Code except the functions which are barred by the Hon'ble NCLAT for Sections 18(c) and 21(1) of the Code.

6.2. However, given the failure of the *suspended* management to comply and cooperate with the IRP as required under Sections 17 and 19 of the Code; the IRP filed an IA No. 40/JPR/2023 seeking direction against the *suspended* Management. Hence, the Adjudicating Authority *vide* Order 14.02.2023 directed the Operational Creditor to pay a sum of Rs. 1,50,000/- while directing *suspended* management to cooperate with the IRP in collating the claims and necessary documents thereon. This order was challenged by the *suspended* management before the Hon'ble NCLAT. Such actions of the *suspended* management of the Corporate Debtor forced the Applicant to engage a counsel before the Hon'ble NCLAT besides out-of-pocket expenses and his professional fees. A copy of the invoices along with supporting costs is annexed as Annexure A-4 (Colly) of IA No.325/JPR/2023.

6.3. Meanwhile, the Operational Creditor and *suspended* management entered into a settlement deed dated 29.04.2023 ('Settlement Deed') wherein the parties have settled the matter in Rs. 5,00,000/- (Rupees Five Lakhs Only). Consequently, the Original Applicant has *vide* Email dated 29.04.2023 ('Withdrawal Email') requested the IRP to file an application under Section 12A of the Code read with Regulation 30A(1) of the CIRP

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Regulations. However, the IRP informed the Operational Creditor that the Form FA was not submitted following the Code as justified CIRP costs are not being paid. A copy of the email communication between the parties is annexed as Annexure A-5 (Colly) of the IA No.325/JPR/2023.

6.4. The Adjudicating Authority *vide* Order dated 31.05.2022 directed the parties to settle the matter amicably. Pursuant to this, the IRP approached the Operational Creditor and Corporate Debtor for payment of CIRP costs *vide* Email dated 01.06.2023, which remained unanswered. A copy of the Email dated 01.06.2023 is annexed as Annexure A-7 of the IA No.325/JPR/2023.

6.5. The IRP *vide* Diary No. 2100/2023 dated 25.08.2023 has filed a supplementary affidavit taking additional documents on record and stated that during the CIRP period, additional claims have been filed by the Financial Creditors. Thus, the IRP collated the total claim, totalling Rs. 16,14,18,487/- (Rupees Sixteen Crores Fourteen Lakhs Eighteen Thousand Four Hundred and Eighty-Seven Only). Further, he undertook steps to protect and preserve the assets of the Corporate Debtor which were successfully auctioned by the Punjab National Bank ('PNB') during the moratorium period.

6.6. The PNB informed *vide* Email dated 28.06.2023 that it did not have any knowledge of the CIRP Order; therefore, it put the e-auction. However,

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upon knowing the CIRP Order it has cancelled the confirmation of the sale and is in the process of returning the initial bidding amount. Moreover, the official of the PNB stated that it has only symbolic possession of the assets of the Corporate Debtor, yet no documentation was made available regarding the sale of the properties. The officials of PNB sent an Email dated 16.08.2023 regarding the conducted meeting for appraisal of the present position of the matter.

6.7. It is stated that the application under Section 12A of the Code could not be filed by the IRP due to the submission of defective Form FA by the Original Applicant as there is no tender of CIRP Costs. Thus, it is prayed in the present IA to pay the outstanding CIRP cost of Rs. 5,37,188/- (Rupees Five Lakhs Thirty-Seven Thousand One Hundred and Eighty-Eight Only); alternatively, determine the expenses and fee of the IRP in accordance with Regulation 33(2) of the CIRP Regulations.

7. The Respondent *vide* Diary No. 2002/2023 dated 16.08.2023 filed its reply to the present IA, stating the following:

7.1. The present IA has been filed to delay the ongoing proceedings as the Operational Creditor has already paid Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) on the account of IRP Fees. This fee was deducted towards his professional fees. Further, as per Regulations 33(1) and 33(2) of CIRP Regulations, either the Original Applicant or the Adjudicating



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Authority shall fix expenses to be incurred by the IRP. As no Committee of Creditors was formed, on the directions of the Hon'ble NCLAT, it would be the Applicant who would have to bear all the expenses.

7.2. The payment of Rs. 1.5 Lakhs to the IRP is proportional to the work undertaken by him in the light of the directions of the Hon'ble NCLAT where it specifically directed the IRP only to collate the claims. The Applicant deliberately extended his duties despite the knowledge of the NCLAT Order. Hence, besides collating the claims all the other duties are barred by the law.

7.3. Furthermore, the Operational Creditor cannot be made accountable for the failure of *suspended* management's non-compliance and non-cooperation as required under Sections 17(1)(c) and 19(1) of the Code. Moreover, the insolvency proceedings are not proceedings for only the fee of the IRP. The fees and costs of the IRP or Resolution Professional are consequential to the main proceedings and work undertaken thereto. The Operational Creditor has relied on the following judgements:

7.3.1. Deepankur Sharma v. Pradeep Cycle Industries, Company Appeal (AT)(Ins.) No. 474 of 2022.

7.3.2. IndusInd Bank Limited v. Rajendra K. Bhuta, Company Appeal (AT)(Ins.) No. 177 of 2022.



7.3.3. Mritunjay Kumar Member of the Suspended Board of Director Unibera Developers (P.) Ltd. v. Propertree Real Estate Solutions (P.) Ltd., Company Appeal (AT)(Ins.) No. 950 & 1023 of 2021.

8. In the case of Deepankur (*Supra*), the Hon'ble NCLAT observed that '8. *The Application was admitted on 22nd December, 2021 and on 04th January, 2022, the Adjudicating Authority after noticing the Application and submissions of the Learned Counsel for the Operational Creditor has directed the Status Quo, the IRP virtually effectively functioned only for 14 days. In view of the Status Quo order was not to function any further, we are of the view that Order of the Adjudicating Authority directing the payment of fee and CIRP cost of Rs. 1,10,000/- in addition to Rs. 75,000/- was quite reasonable and does not warrant any interference.*'
9. The Hon'ble NCLAT further reaffirmed its stance in the case of Indusland (*Supra*), wherein it has stated that '7. *When the Hon'ble Supreme Court by Interim Order dated 26th November, 2018 has stayed the insolvency proceedings which proceedings ultimately were set aside by the final Judgment dated 2nd September, 2019, we are of the view that Resolution Professional is not entitled for any fee after 26th November, 2018. The RP is entitled for fee from 13th June, 2018 to 25th November, 2018 hence the Order of the Adjudicating Authority in Paragraph 17 is modified to the above extent that RP fee shall be entitled to fee from the period 13th June, 2018 to 25th*



November, 2018. No fee shall be entitled with effect from 26th November, 2018. The order passed in paragraph 17 is modified to this extent. In regard to the Order of expenses as ordered in paragraph 18 of the Impugned Order, we affirm the Order of the Adjudicating Authority in paragraph 18 and the same be paid as directed by the Adjudicating Authority in paragraph 18. The Appeal is partly allowed to the above extent.'

10. Moreover, in Mritunjay (*Supra*), the Hon'ble NCLAT while holding that *'when application for withdrawal is filed before constitution of the Committee of Creditors, the approval of the Committee of Creditors is not required as contemplated in Section 12A, has observed that '8. When this Tribunal on 07.12.2021 has stayed the entire CIRP, there was no question of incurring any cost or claiming any fee after 07.12.2021. In view of the accepted fact that fee amounting to Rs.2 Lakhs has already been paid to the IRP, that should suffice towards payment of fee. With regard to expenses till 07.12.2021, on submission of proper bills said bills shall be paid by the Corporate Debtor. IRP may submit the necessary bills to the Corporate Debtor for payment of necessary bills till 07.12.2021.'*

11. The Applicant has submitted the following in IA (IBC) No. 274/JPR/2023, reiterating, controverting, or adding to, what is stated beforehand in IA No. 325/JPR/2023.

IA(IBC) No. 274/JPR/2023:

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12. The Applicant has moved the instant application on the following set of facts:

12.1. That the *suspended* management under the Settlement Deed paid Rs. 5,00,000/- as full and final settlement amount *vide* Bankers Cheque Number 947094 dated 06.04.2023. A copy of the Bankers Cheque is annexed as Annexure A-4 of the IA No. 274/JPR/2023. Accordingly, the Operational Creditor had signed the requisite Form – FA under Regulation 30 of the CIRP Regulations along with the Settlement Deed and Board Resolution *vide* Email dated 29.04.2023. Further, Clause 6 (d) of the Settlement Deed relates to the IRP fee, which is reproduced below for ease of reference:

‘The Operational Creditor and Interim Resolution Professional hereby confirm that the IRP fee of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) vide NEFT: PUNBH23058726182/5109841844 as mentioned in the order dated 14.02.2023 passed in IA No. 40/JPR/2023 of the Company Petition (IB) No. 316/9/JPR/2019 has been paid.’

A copy of the Board Resolution, Form – FA and Settlement Deed are annexed as Annexure A-2 (Colly) of the IA No. 274/JPR/2023.

12.2. Subsequently, the IRP *vide* Email dated 29.04.2023 (‘IRP Response Email’) responded that Rs. 1,50,000/- ‘*was not on account of fee but on account for expenses of IRP and therefore IRP doesn’t confirm that any*




fee has been received from the Applicant/Operational Creditor. A copy of the IRP Response Email is annexed as Annexure A-3 of the IA No. 274/JPR/2023.

12.3. Thus, it is prayed that the IRP be directed to file an appropriate application under Section 12A of the Code and take the Settlement Deed, Form-FA and Board Resolution on record.

13. The IRP submitted during the course of the argument *vide* Order 25.08.2023 that he does not want to file a reply in the IA No. 274/JPR/2023.

14. We have heard the Learned Counsels for the parties and perused the averments made in the application, reply, written submissions and the documents enclosed with their respective application(s).

15. The Original Applicant requested the IRP *vide* Withdrawal Email to file an application for withdrawal under Section 12A of the Code as there were no CoC members and the matter was amicably settled between the parties. However, the IRP refused to undertake such actions. In the instant case, the application for Withdrawal is filed by the Operational Creditor wherein the Withdrawal Petition is not accompanied by the bank guarantee as stipulated under Regulation 30A (2) of CIRP Regulations towards the expenses incurred by the IRP till the date of filing of the Withdrawal Petition.

16. The Applicant has substantiated his limited work through the mail correspondence with the officials of the PNB. Further, he visited, in a failed

attempt to take over, the registered office of the Corporate Debtor on 14.12.2022. Subsequently, the Applicant visited PNB's Branch where the bank account of the Corporate Debtor is situated to collect hard copies of supporting documents on 04.07.2023. Lastly, on 14.08.2023, he conducted a meeting for appraisal of the present matter with PNB and made a final visit registered office of the Corporate Debtor where no person was present on the registered premises of the Corporate Debtor.

17. Notwithstanding the email correspondence with the official of the PNB, the Applicant has not attached any proof of his visit either in the form of photographs, *panchnaam*, or any other documentary proof for his actions undertaken pursuant to his claims. Hence, such steps undertaken by the Applicant warrant strict scrutiny in the light of the NCLAT Order which had given intelligible directions to the IRP to not proceed further in the matter as any exercise undertaken by the IRP, in furtherance of Form – A, requires the ratifications and consent of the CoC.

18. It is seen from the records and documents produced before us that the Applicant has published the public announcement under Form – A on 14.12.2022 upon passing of the CIRP Order. Consequently, the NCLAT Order has granted a stay over the formation of the CoC. However, it has allowed the IRP to collate the claims with the intent to complete the due

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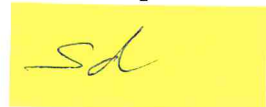
process as prescribed under Regulation 6 of CIRP Regulation and nothing further.

19. Accordingly, the wilful actions undertaken by the IRP, despite the stay of the Hon'ble NCLAT, were not justified with the proportionate work and are not appreciated by this Adjudicating Authority. In addition, in the current set of circumstances, the IRP after the publication of the invitation of claims has gone beyond the directions of the Hon'ble NCLAT. It was admitted by the IRP that he was not allowed to take any substantial steps towards the successful completion of the CIRP of the Corporate Debtor which suggests his inclination and knowledge towards taking no significant action given the NCLAT Order.

20. It is found that the IRP has submitted a chart of CIRP costs, showing the CIRP cost of Rs. 6,87,188/-, which is categorized as follows:

- A. IRP fees amounting to Rs. 4,96,667/- (From 05.12.2023 to 03.05.2023).
- B. Advocate fees and Legal Expenses amounting to Rs. 1,37,540/-.
- C. Filing, Printing, and Publication charges amounting to Rs. 39,625/-.
- D. RP conveyance and other expenses amounting to Rs. 13,356/-.

21. In the said amount of Rs. 6,87,188/-, the IRP has already received an amount of Rs. 1,50,000/-. Therefore, the total pending CIRP cost to be paid to the IRP is Rs. 5,37,188/-. The list of expenses under B, C and D are comprised of:



S. No.	Advocate fees and Legal Expenses		Total
	List of Fees & Expenses	Amount	
1.	IA No. 40/JPR/2023 – Filing and Three Appearance	Rs. 16,270 + 22,500 = Rs. 38,770/-	Rs. 1,37,540/-
2.	Company Appeal No. 1532/2022 & IA 997/2023 – Filing and Appearance	Rs. 75,000/- (includes entire filing and appearance)	
3.	IA under Section 12A – to be filed and one appearance	Rs. 16,270 + 7,500 = Rs. 23,770/-	

S. No.	Filing, Printing, and Publication charges		Total
	List of Fees & Expenses	Amount	
1.	Publication of Form – A	Rs. 25,725/-	Rs. 39,625/-
2.	Filing of INC 28	Rs. 2,500/-	
3.	Printing & Stationary Expenses	Rs. 5,500/-	
4.	Due Diligence Report	Rs. 5,900/-	

S. No.	RP conveyance and other expenses		Total
	List of Fees & Expenses	Amount	

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1.	Visit to Registered Office on 14.12.2022 through Taxi	Rs. 11,756/-	Rs. 13,356/-
2.	Food	Rs. 950/-	
3.	Other Misc. Expenses	Rs. 650/-	

22. Against the claimed amount of Rs 5,37,188/- as the CIRP cost, the list of CIRP Cost's expenses as mentioned in B is allowed to the extent of Rs. 75,000/- for representation before the Hon'ble NCLAT. The remaining balance amount of the fee paid for legal expenses is to be borne by the IRP as the IRP cannot be allowed to deliberately assume and perform the powers which are not conferred upon him by the law and be compensated for going beyond his expected course of action. This fee of Rs. 75,000/- shall form part of the CIRP cost.

23. Likewise, the expenses mentioned in C and D amounting to a total of Rs. 52,981/- shall be placed before the Operational Creditor with the requisite bills. The Operational Creditor shall upon scrutiny, reimburse the expenses, against which bills have been produced, in the bank account of the IRP which shall form part of CIRP cost. The IRP is directed to file an affidavit along with the invoices including his fees, engaged professional's fees, legal and other expenses, etc. in original before this Adjudicating Authority as well.

24. Considering the job undertaken by the IRP, submissions of both sides and the papers submitted before us, we find it reasonable to fix the IRP fees of

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Rs. 1,00,000/- per month in accordance with Regulation 34B of CIRP Regulations read with Schedule II. Therefore, the total IRP fees would be payable from the admission of the CIRP till the NCLAT Order i.e., sixteen days from 05.12.2022 to 21.12.2022 is Rs. 53,333/- without applicable GST and will form part of CIRP Cost. Amount, if any, paid to the IRP for the CIRP cost shall be adjusted towards the expenses including professional fees of Rs 53,333/- and the balance shall be adjusted towards expenses incurred by the IRP against which invoices shall be placed before the Operational Creditor. Hence, the actual invoiced amount is to be paid by the Operational Creditor.

25. In view of fees and costs as fixed in Para 21, 22 and 23 above, we dispose of the concerned applications with the following directions:

25.1. The Operational Creditor needs to provide a bank guarantee of Rs. 31,314/- (Rupees Thirty-One Thousand Three Hundred and Fourteen Only) in favour of the IRP, the bank guarantee should be given to the IRP within ten days. The aforesaid bank guarantee amount is arrived at keeping in view the amount of Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand Only) already paid against fees, now approved as Rs. 53,333/- as fees and Rs. 75,000/- as legal expenses;

25.2. The aforesaid bank guarantee which will be returned, upon reimbursement of actual bills against the expenses of Rs. 52,981/- (Rupees Fifty-Two Thousand Nine Hundred and Eighty-One Only);

25.3. The revised Form FA will be filed by the IRP within fifteen days from the date of this Order.

26. The Operational Creditors are required to pay the difference amount of the CIRP cost, if any, into the account of the IRP. The IRP shall file a compliance report before this Authority by 17.10.2023. In view of the foregoing, the Interim Application bearing IA No. 274/JPR/2023 and IA No. 325/JPR/2023 stands disposed of with the aforementioned directions for compliance.

27. Additionally, the Settlement Deed which is placed on record *vide* IA No. 274/JPR/2023 is taken on record and is accepted on the terms stated in the Settlement Deed. As a result, the IRP shall take appropriate steps under the provision of the Code for withdrawal of the CIRP, subject to the directions afore-stated. Thus, the parties shall file a proper withdrawal application as per Regulation 30A of the CIRP Regulations along with the affidavit of IRP for payment of CIRP cost. The concerned parties will be bound by the Settlement Deed.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**