

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

I.A. 1201/2020

In

C.P. 2995/IBC/MB/2019

Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Regulations 6(3), 31(c), 31(d), 33(3) and 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

In the matter of

Mr. Gajesh Labhchand Jain

...Applicant/ Interim
Resolution Professional

vs.

**Committee of Creditors of E&G
Global Estates Private Limited**

... Respondent

And

In the matter of

**Small Industrial Development
Bank of India**

... Financial Creditor

vs.

**E&G Global Estates Private
Limited**

... Corporate Debtor

Order Pronounced on: 29.09.2020

Coram:

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Appearances (via videoconferencing):

Applicant: CA Mr. Ayush J Rajani i/b AKR Advisors for Applicant,
Mr. Gajesh Jain (RP) in person

Respondent: Mr. Karthikeyan for SIDBI and Mr. Jitendra Kothari
(Authorised Representative of Home Buyers)

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. The Applicant Resolution Professional has filed an application bearing I.A. 1201 of 2020 in C.P. 2995 of 2019 on 12.08.2020 under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "The Code") read with Regulations 6(3), 31(c), 31(d), 33(3) and 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking the order of direction to COC members to contribute their share towards CIRP cost.

2. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by an Order dated 24.06.2020, on a Section 7 Petition filed by the Financial Creditor (SIDBI), wherein Mr. Gajesh Labchand Jain was appointed as Interim Resolution Professional (IRP).

3. Subsequently the Applicant submits that a public announcement was made by the Applicant on 26.06.2020 seeking claims from all the creditors by 08.07.2020. The Applicant has identified financial creditors being Home Buyers. The Applicant had nominated three Authorised Representatives for class of financial creditors and Form AB were obtained from the nominated Authorised Representatives in terms of the provisions of Section 21 of the Code read with Regulation 4A of the IBBI (CIRP) Regulations, 2016.

4. Subsequently, votes of class of financial creditors were collated and Mr. Jitender Kothari bearing registration number IBBI/IPA-001/IP-P00540/2017-18/10965, with the highest number of votes of the financial creditor, was selected as the Authorised Representative for the "Home Buyers" of the Corporate Debtor. This Bench has already confirmed appointment of Mr. Jitender Kothari as the "Authorised Representative" vide its Order dated 18.08.2020 in IA 1079 of 2020 in C.P. No. 2995 of 2019.

5. It is then submitted by the Applicant that as on the date of hearing of this Application, the Applicant/ Interim Resolution Professional has been confirmed to act as a Resolution Professional in the matter. The Applicant submits that expenses

have been incurred during the ongoing Corporate Insolvency and Resolution Process which forms part of the Insolvency Resolution Process Costs (hereinafter referred as "IRPC") in terms of Section 5(13) of the Code read with Regulation 31 and 34 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which remain unpaid by the CoC while there are insufficient funds in the account of the Corporate Debtor.

6. The Applicant submits that the CoC comprises of SIDBI with 21% voting share and the class of creditors being home buyers with 79% voting share. While some of the Insolvency Resolution Process Costs (IRPC) incurred so far have been ratified in the first CoC meeting held on 24.07.2020 and some costs are ratified during the 2nd CoC meeting held on 01.09.2020, but the financial creditors since the initiation of CIRP have infused funds so as to pay such costs and there are no funds in the Corporate Debtor Company.

7. The Applicant also submits that he has incurred costs right from the date of initiation of CIRP, the details of the said costs are summarised below. It is submitted that the second CoC meeting was held on 01.09.2020 which was after the filing of the present Application and hence, the updated cost scheduled with details of ratification as per the table below was produced before this Bench:

Details of CIRP Expenses incurred/Accrued till Sept 15, 2020

Particulars	Amount	GST	Total	Remarks
Security Charges	93,600	16,848	1,10,448	Ratified in 1st CoC meeting held on 24 June 2020
Valuation (Includes OPE to the extent of INR 9,500)	2,24,500	40,410	2,64,910	Ratified in 1st CoC meeting held on 24 June 2020
IRP Fees	6,87,500	1,23,750	8,11,250	Ratified in 2nd CoC meeting held on 01 September 2020
Legal Fees	2,90,740	-	2,90,740	Ratified in 2nd CoC meeting held on 01 September 2020
Company Secretary	5,000	-	5,000	Ratified in 2nd CoC meeting held on 01 September 2020
Filing of Inc 28 and GNL 2	1,200	-	1,200	Ratified in 2nd CoC meeting held on 01 September 2020
Public Announcement Expenses	10,240	512	10,752	Ratified in 2nd CoC meeting held on 01 September 2020
Meeting	2,250	-	2,250	Ratified in 2nd

Details of CIRP Expenses incurred/Accrued till Sept 15, 2020				
Particulars	Amount	GST	Total	Remarks
Expenses (2 meetings)				CoC meeting held on 01 September 2020
Voting Charges (3 voting processes)	12,000	2,160	14,160	Ratified in 2nd CoC meeting held on 01 September 2020
Authorised Representative Fee	15,000	-	15,000	Ratified in 2nd CoC meeting held on 01 September 2020
Obtaining New GST No.	5,000	900	5,900	Ratified in 2nd CoC meeting held on 01 September 2020
Forensic Audit (includes OPE max 10% of fees)	4,12,500	74,250	4,86,750	Ratified in 2nd CoC meeting held on 01 September 2020
Website Preparation charges	12,000	2,160	14,160	Expense incurred post 2nd CoC meeting. To be ratified in the next CoC meeting
TOTAL	Rs. 17,71,530	Rs. 2,60,990	Rs. 20,32,520	

Finding:

8. The table above demonstrates the date on which the quantum of payment was ratified by the COC in their meetings held. An amount of Rs20,32,520/(Twenty Lakhs, Thirty Two thousand, five hundred and twenty rupees only) towards the CIRP cost which was already ratified by the COC may be paid immediately forthwith by the COC. It is further directed that the COC members may contribute to the CIRP costs as per the CIRP regulations.

9. In the light of above observation, it is ordered as follows:

- a) The COC shall pay the amount of Rs 20,32,520- /(Twenty Lakhs, Thirty Two thousand, five hundred and twenty rupees only) towards the CIRP cost which was already ratified by the COC, immediately forthwith.
- b) It is further directed that the COC members may contribute to the CIRP costs as per the CIRP regulations.
- c) The IA is allowed and disposed of.

SD/-

Chandra Bhan Singh
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)