

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI
Company Appeal (AT) (Insolvency) No. 1055 of 2020**

IN THE MATTER OF:

Mr. Parag Sheth

**Interim Resolution Professional
of M/s Digjam Ltd.**

**Aged about Adult,
Having office at 404,
Sachet-II, Opp. GSL
University, Maradia Plaza
Lane, C.G. Road,
Ahmadabad 380006**

...Appellant

Vs

**1. Mr. Sunil Kumar Agarwal
Resolution Professional for Digjam Ltd.
Aged about adult, Occupation:
Insolvency Professional,
Having Office at 202,
2nd Floor, Sakar-III,
Near CU Shah Collage,
Income Tax Circle, Ashram Road,
Ahmadabad 380014.**

**2. UCO Bank, Digjam Branch,
Aerodrome Road, Jamnagar.
361006**

**3. State Bank of India,
Stress Asset Management Branch,
Opp. Kapadia Guest House,
NR. V S Hospital, Ellis Bridge,
Ashram Road, Ahmadabad
380006**

...Respondents

Present:

For Appellant: Ms. Natasha Dhruman, Advocate

**For Respondents: Mr. Pratik Thakkar, Advocate for Respondent
No. 1
Mr. Atul Sharma, Advocate for Respondent Nos.
2 & 3.**

J U D G M E N T

Jarat Kumar Jain: J.

The Appellant “Parag Sheth” erstwhile Interim Resolution Professional (IRP) of M/s Digjam Ltd. filed this Appeal against the order dated 08.10.2020 passed by Adjudicating Authority (National Company Law Tribunal, Ahmadabad Bench, Ahmadabad) whereby dismissed the Appellant’s Application I.A. No. 234 of 2020 in I.A. No. 232 of 2020 in CP (IB) No. 594/NCLT/AHM/2018 filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations).

2. Brief facts of this case are that one Operational Creditor M/s Oman Inc (HUF) filed an Application under Section 9 for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor M/s Digjam Ltd. Ld. Adjudicating Authority admitted the Application vide order dated 26.04.2019 and initiated CIRP and appointed Mr. Parag Sheth as IRP. Subsequently, IRP Mr. Parag Sheth has been replaced by the Resolution Professional (RP) Mr. Sunil Kumar Agarwal vide order dated 01.01.2020. Mr. Parag Sheth has handover the charge and documents to the RP between 03.01.2020 to 07.01.2020.

3. On 12.02.2020 the Applicant “Mr. Parag Sheth” received an email from the Company Secretary (CS) of the Corporate Debtor that the Committee of Creditors (COC) in their 11th Meeting held on 03.02.2020 decided to pay the dues total Rs. 12,14,081/- (after deducting the excess

amount paid for insurance premium Rs. 4,19,719/-. On 15.02.2020 the CS of the Corporate Debtor has sent a cheque of Rs. 11,06,081 after deducting TDS. Thereafter, on 27.05.2020 the Applicant has filed the Application I.A. No. 234 of 2020 before the Adjudicating Authority with the prayer that the RP and the Financial Creditors who are the Members of the CoC may be directed to pay outstanding professional fees and expenses to the Applicant and professional fees of Rs. 15,000/- to the PCS Mr. Jignesh Shah and Rs. 2,36,000/- to the Chartered Accountant (CA) Mr. Hiten Parikh.

4. The Respondent No. 2 & 3 resisted the Application on various grounds.

5. Ld. Adjudicating Authority held that the Applicant is seeking direction to pay professional fees of CS Mr. Jignesh Shah and CA Mr. Hiten Parikh, but they have not authorized the Applicant for the same. Therefore, the Application on behalf of aforesaid professionals is not maintainable. The Applicant has paid excess insurance premium Rs. 4,19,719/- without approval of CoC and the Applicant is agitating the issue at belated stage when the Resolution Plan has already been approved by the Adjudicating Authority and CoC has been dissolved and the RP has also been discharged from his duty. Thus, the claim of the Applicant is not maintainable. Hence, dismissed the Application.

6. Being aggrieved with this order the Appellant (Mr. Parag Sheth) has filed this Appeal.

7. Ld. Counsel for the Appellant submitted that upon the instructions of the CoC the Appellant called quotations from insurance companies on receipt of the quotation the same were circulated amongst the Members of

CoC alongwith comparison of their premium amount. As the insurance of the assets of the Corporate Debtor was lapsing on 10.12.2019. Therefore, the Appellant as the IRP recognizing the urgent need to get the insurance renewed in order to safeguard the assets of the Corporate Debtor, decided to go with United India Insurance Company Ltd. The decision taken by the Appellant was in due discharge of his duties and was fair and for the benefit of the Corporate Debtor to maintain it as a going concern. The Appellant has a statutory authority under Section 20 (2) (b) of the IBC to take the aforesaid action, assuming without the prior consent of the Creditors.

8. It is further submitted that Mr. Jignesh Shah was appointed to seek legal opinion on related party by the Appellant in exercise of power under section 20(2) (b) of the IBC. There is no limitation prescribed for filing such an Application and when the Application was filed at that time the Resolution Plan was pending before the Adjudicating Authority for approval. Ld. Adjudicating Authority without appreciating the facts erroneously dismissed the Application, the impugned order is liable to be set aside.

9. Per Contra, Ld. Counsels appearing for the Respondent No. 2 & 3 support the impugned order and submitted that without approval of CoC the Appellant had paid excess insurance premium amount of Rs. 4,19,719/, therefore, this amount has rightly been deducted from his fees and expenses. The CoC has not approved the appointment of PCS Mr.Jignesh Shah and CA Mr. Hiten Parikh. The CoC filed Application under Section 22 of the IBC seeking replacement of the Appellant (IRP) by appointment of Respondent No. 1 as RP. This application was contested by the CA Mr. Hiten Parikh representing the Appellant before the Adjudicating Authority. Thus,

the Appellant cannot claim such professional fees. There is no merit in this Appeal. Hence, the Appeal is liable to be dismissed.

10. After hearing Ld. Counsels for the parties, we have gone through the record.

11. It is admitted fact that the Appellant had performed his duty as IRP from 26.04.2019 to 01.01.2020 and the Appellant has got the fees and expenses as shown in Annexure A10 Rs. 11,06,081/- after deducting TDS by Cheque No. 22 dated 10.02.2020, in this amount excess premium paid by the Appellant i.e. Rs. 4,19,719/- has been deducted.

12. For appreciating the argument, it is useful to reproduced the grounds 9.2 (d, e, f, g) of memo of appeal, which are as under:-

“(d). The Appellant submits that the Members of the CoC decided to take insurance from IFFCO Tokio General Insurance Company Ltd. with premium amounting to Rs. 19,90,192/ as it was lowest quotation amongst all three quotation received. However, on due diligence of the same, it was found by the Appellant that the quotation which was quoted by the agent of the IFFCO Tokio was without the approval of the IFFCO Tokio General Insurance Company Ltd. and that the said insurance Company would only consider 30% of the sum assured for this insurance premium amount.

(e). In furtherance to the above, it is submitted that in view of the aforesaid the Appellant renegotiated with the second lowest quotation provider i.e. United India Insurance Company Ltd. and got a quotation for Rs. 24,09,911/- which was duly informed to the Respondent No. 1 & 2 vide email dated 18.12.2019.

(f). It is submitted by the Appellant that in view that the insurance of the assets of the Digjam Ltd. was lapsing on 10.12.2019, the Appellant as the IRP of the Corporate Debtor recognizing the urgent need to get the insurance renewed in order to safeguard the assets of the Corporate Debtor decided to go with United India Insurance Company Ltd. The Appellant submits that the decision taken by the Applicant was in due discharge of his duties and was fair and for the benefit of the Corporate Debtor to maintain it as a going concern, as well as stakeholders of the Corporate Debtor.

(g). The Appellant states and submits that the Appellant has the statutory authority under Section 20 of the IBC to take aforesaid

action, assuming while denying, without prior consent of the Creditors.”

13. With the aforesaid, it is apparent that without approval of the CoC the Appellant has taken decision to go with United India Insurance Company and renewed the insurance by paying higher insurance premium.

14. The Appellant submitted that he has statutory authority under Section 20(2) (b) of the IBC to take such decision. Hence, we have considered whether Section 20(2)(b) of the IBC authorizes the IRP to take such decision. Section 20(2)(b) reproduced as under:

“To enter into contracts on behalf of the Corporate Debtor or to amend or modify the contracts or transactions which were entered into before the commencement of Corporate Insolvency Resolution Process”

15. We are of the view that Section 20 (2)(b) of the IBC authorizes the IRP to enter into such contracts which were entered into before the commencement of CIRP. In this case there was a new contract of insurance after the commencement of CIRP. The Appellant was aware with this situation that he cannot take such decision, therefore, he has circulated the quotations amongst the Members of CoC alongwith comparison of their premium amount. Thus, we are of the view that the aforesaid provision does not authorize the IRP to renew the insurance policy without approval of CoC at higher premium rate.

16. The Appellant (IRP) has engaged CA Mr. Hiten Parikh for representing the Appellant before the Adjudicating Authority against the decision taken by the CoC. As CoC has filed Application I.A. No. 306 of 2019 seeking to replacement of the Appellant as IRP by appointment of Respondent No. 1 as RP. Certainly,

the Appellant (IRP) is not entitled for professional fees of CA of Mr. Hiten Parikh.

17. The Appellant without any approval appointed CS Jignesh Shah for the purpose of seeking legal opinion in the matter of related party. It is also pertinent to note that Mr. Hiten Parikh and Jignesh Shah have not authorized the Appellant to file Application on behalf of them. Thus, the Appellant cannot pursue their claims before the Adjudicating Authority.

18. It is true that there is no limitation prescribed for filing the Application for IRP's fees but such Application should have been filed without delay. In this matter, the Appellant came to know on 12.02.2020 that the excess premium amount i.e. Rs. 4,19,719/- has been deducted from his fees and expenses then he should have filed the Application immediately before the CoC/ the Adjudicating Authority, however, he has filed the Application after lapse of three months on 13.05.2020.

19. Now, the Resolution Plan has been approved by the Adjudicating Authority and therefore, the CoC has already been dissolved and the RP has been discharged. In such circumstances, Ld. Adjudicating Authority has rightly dismissed the Application. We find no ground to interfere in the impugned order. Thus, the Appeal is dismissed, however, no order as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member(Technical)

New Delhi
13th August, 2021

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