

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 1435 OF 2022

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

**Resolve Support Services Private
Limited
Through its Authorized Representative
Mr. Hitesh Jain**
...Applicant

Vs.

Mr. Ashish Vyas
Liquidator of Orient Tourism Private
Limited
...Respondent

In the matter of

C.P.(IB) No. 1567/MB/2018

Team Outdoors

Operational Creditor

Vs.

Orient Tourism Private Ltd.

Corporate Debtor

Order delivered on: 18.04.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances:

For the Liquidator : Mr. Manish Jha, Advocate
For the Respondent : Mr. Shadab S Jan, Advocate
For the Respondent 2 : Mr. Nausher Kohli, Advocate
For the Respondent 3 : Mr. Rohit Gupta, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This application IA 1435/2025 was filed by Mr. Hitesh Jain, Authorized Representative Resolve Support Services Private Limited ("Applicant") in the liquidation of proceedings of Orient Tourism Private Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code") to direct the Liquidator to repay the interim finance dues of Rs. 90,80,214/- (Rupees Ninety Lakhs Eighty Thousand Two Hundred Fourteen Only) as on 10.05.2022 along with further interest of 15% p.a. and default interest of 2% p.m. till date of full repayment, as per the terms of sanction.
2. This instant Application has been filed u/s Section 60(5) of IBC and Rule 11 of the National Company Law Tribunal Rules 2016 r/w Section 5 (13) of the Code. That the Operational Creditor filed a Company Petition u/s 9 of IBC, 2016 against the Corporate Debtor for initiation of CIRP. Furthermore, vide the order of this Tribunal dated 17.09.2019, the said Company Petition was

admitted and CIRP was initiated against the Corporate Debtor, appointing Mr. Anurag Jain as the IRP.

2.1. The IRP made a public announcement on 13.10.2019 inviting the claims from the creditors of the Corporate Debtor and upon receipt of the claims, constituted the Committee of Creditors.

2.2. The Resolution Professional held the first meeting of the CoC on 13.11.2019 and apprised the members regarding the Application submitted by the Operational Creditor in 'Form FA for withdrawal of the CIRP. The said Resolution was put to vote, the COC by a vote of 100% voted in the favour of the Withdrawal of the CIRP process. That the Resolution Professional filed an IA No. 3595 of 2019 for withdrawal u/s 12A of the Code. That vide order dated 08.01.2021 the Tribunal rejected the same, as two claims from Financial Creditor was received and Form FA was not accompanied by the Bank Guarantee mandated under Regulation 30 (A) of IBBI Regulations, 2016. Further the Tribunal in the same order excluded the litigation period from 06.11.2019 till 08.01.2021 from the CIRP period.

2.3. In the same meeting the CoC voted 100% in favour of resolution to authorise the Interim Resolution Professional / Resolution Professional to avail of interim finance to run the process and the operations of the company, at appropriate terms at a maximum interest rate of 15% p.a.".

2.4. Thereafter on 15.02.2021, Orient Tourism Private Limited through the Resolution Professional entered into the

Agreement with the Applicant i.e. Resolve Support Service Private Limited for raising the interim finance.

- 2.5. The Loan Agreement was entered with the Applicant by the Resolution Professional after complying with all the provisions as laid down u/s 25(2)(c) read with Sections 5(13)(a) and 28(1)(a) of the Insolvency and Bankruptcy Code for the purposes mentioned in Section 25 of the IBC.
- 2.6. The resolution professional vide letter dated 16.2.2021 requested for the disbursement of interim finance facility of Rs. 50 lacs towards the payment of CIRP cost including RP fees, legal support fees and other approved expenses out of sanctioned loan of Rs. 100.00 Lakhs.
- 2.7. The Applicant thereafter filed IA No. 1626 of 2021 seeking the Liquidation of the Corporate Debtor. Vide order dated 05.08.2021 the Tribunal allowed the said IA and appointed Mr. Ashish Vyas as the Liquidator of the Corporate Debtor.
- 2.8. Vide email dated 27.08.2021, the Applicant apprised the Liquidator that the Resolution Professional with the approval of COC had availed interim finance for a sum of Rs. 1,00,00,000/-, repayable as a bullet instalment at the end of tenure of six months from the initial drawdown dated being 18.02.2021. As such the amount is due to be repaid on 17.08.2021, along with interest. Thereafter the Applicant sent various reminder e-mails on 05.09.2021, 18.09.2021.
- 2.9. Vide email dated 08.04.2022, the Liquidator informed the Applicant to share supporting documents, invoices etc. relating to the amount of interim finance raised by the Resolution Professional. In response to the same the Applicant on

08.04.2022 shared the various requests for disbursement of interim finance sent by the Corporate Debtor through the Resolution Professional. However, till date the liquidator has not made any repayment of the amount due towards interim finance.

3. The Respondent filed Affidavit in reply dated 27.06.2022 stating that he has received a copy of the Letter dated 26/06/2022 from the Advocate of Religare Finvest Limited ("Religare"), one of the members of COC of the Corporate Debtor, who has opposed the reliefs sought by the Applicant in the Captioned Interlocutory Application No. 1435. Religare in the said Letter has categorically submitted that COC never took into consideration as to how much amount is to be availed as interim finance, at what interest or from which financial institution the amount is to be disbursed. Such a huge amount has been availed by the erstwhile RP without any approval whatsoever from the COC. Furthermore, Religare has stated that the amount availed by the RP under the shelter of interim finance, a major portion of such funds was utilised for clearing payment of the monthly professional charges of the erstwhile RP (Para 2(h) of the Letter dated 26/06/2022).

- 3.1. Religare has also contended that the institution from where the Interim finance was availed i.e. Resolve, is a related party to the RP and this was concealed from the CoC members and pursuant to Section 28(1)(f), no COC approval has been taken by the erstwhile RP before undertaking any related party transaction (Para 2(1) to 2(n) of the Letter dated 26/06/2022).

- 3.2. Religare has also contended that there is a complete misjoinder of parties to the Captioned Interlocutory Application as RP ought to have been made a party and RP should be directed to file an Affidavit explaining his conduct and actions which are completely contrary to the provisions of IBC, 2016. (Para 2(p) of the Letter dated 26/06/2022)
- 3.3. Currently there is on or about Rs.71,415/- in the bank account of the Corporate Debtor (under Liquidation). I shall abide by the directions passed by this Hon'ble Tribunal in the Captioned Interlocutory Application No. 1435 of 2022.
4. Heard learned counsel for both sides and perused the records.
- 4.1. On perusal of the minutes of the meeting held on 13.11.2019, where at Religare Finvest Limited was also represented, we note that the said minutes record that “*The IRP informed the members the need for the CoC to contribute to the corpus fund to run the CIR process of the Company and more importantly or complying with various tax laws and other regulations. A sheet detailing the calculation of amount of corpus fund was annexed to the notice and discussed at the length by the CoC. The members stated that they will not be able to provide any such contribution and that the IRP can get interim funding at appropriate terms and that interest can be paid at 15% p.a. The CoC members however decided to put the issue for e voting*”. The objections dated 26.06.2022 sent by Religare before the Applicant/Liquidator states that “*our client had disagreed with the contents of the minutes of the 1st CoC meeting as they were not properly recorded with regards to the RPs fees and the CIRP cost. By the said email, in light of the aforementioned events, our*

client had recorded that the RP had to re-propose the resolutions pertaining to the RPs fees and CIRP costs during the next CoC meeting for seeking approval of the CoC”.

4.2. The Religare had also stated that out of the interim finance amounting to Rs. 64,74,109/- raised by the then RP and a sum of Rs. 49.56 Lakhs was drawn by RP as professional fees; further a sum of Rs. 11,48,533/- was paid as legal fees to one Mr. Vishal Jain, who is also one of the Director of Applicant Financial Creditor and the remaining amount was debited on account of interest on Interim finance and processing fees and documentation. The Religare was also informed that Mr. Vishal G Jain and RP are related parties and therefore the Applicant Company as well as RP are related parties. It is further pointed that the then RP Mr. Anurag Jain was appointed as whole time Director from 26.08.2020 of Resolve IP Private Limited which also has Mr. Vishal Jain as whole Time Director. These payments are stated to be made during the period from 18.02.2021 to 05.08.2021.

4.3. On careful consideration of above facts, we find that the Applicant Company and Resolve IP Private Limited of which the then RP was the Director have Mr. Vishal Jain as a common Director and proceeds of Interim Finance were utilized for clearing the outstanding dues of the then RP and Mr. Vishal Jain. The remaining amount claimed as Interim Finance pertains to processing charges an interest on interim finance. We are conscious of the RP fees and legal fees are in nature of CIRP cost and are paid to be in priority. Further, the interim finance is also to be paid in priority in all other debts.

4.4. Accordingly, one amount of priority debt has been replaced by another amount of priority debt. However, the conduct of RP in raising interim finance for the sole purpose of clearing his dues and related party dues is deplorable. Accordingly, even if there was a approval from CoC to raise interim finance at a maximum rate of 15%, it cannot be said that such interim finance was raised for bonafide purpose except to clear his and his related party dues in preference over all other CIRP costs. Since, interim finance as well as CIRP costs are to be priority, we are of the view that principal amount of Rs.64,74,109/- ought to be refunded back to the interim finance provider since this amount is in any case payable either as refund of interim finance or as RP/legal professional fees. Since, this interim finance has been utilized solely for own benefit by the RP and such dues would have been paid as and when the funds would be available with the Corporate Debtor, we are not inclined to hold that such interim finance shall be refundable along with the agreed interest and processing fees.

4.5. Accordingly, we direct the liquidator to pay an amount of Rs.64,74,109/- within 30 days. Considering the objections of the Religare that RP and legal fees were not approved, we direct the liquidator to verify the substance in the contention and if found correct place it before SCC for final confirmation.

5. In view of forgoing, this I.A. 1435/2022 is disposed of as partly allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)