

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**IA No.468/2022**

**In**

**CP (IB) No.515/Chd/Chd/2019  
(admitted)**

**Under Section 60 read with  
Section 5(31) of the  
Insolvency & Bankruptcy  
Code, 2016 and Rule 11 of  
NCLT Rules, 2016**

**In the matter of:**

Parivartan Investment and Finance Company

....Petitioner-Financial Creditor

Versus

Haryana Telecom limited

....Respondent-Corporate Debtor

And in the matter of:

**IA No.468/2022**

**Mr. Sanyam Goel,**

**Resolution Professional for Haryana Telecom Limited**

Office at: Unit No. 110, First Floor, JMD Pacific Square

Sector 15, Part II Gurugram,

Haryana-122001

....Applicant

Vs.

**Parivartan Investment and Finance Company**

registered office at

SCO 21, ICL Road, Madhuban Colony,

Rajpura, Patiala, Punjab-140401

...Respondent

**Order delivered on: 18.10.2022**

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

IA No.468/2022

In

CP (IB) No.515/Chd/Chd/2019  
(admitted)

**Present through video-conferencing in IA No. 468/2022:**

|                             |   |                                                                                                                                           |
|-----------------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------|
| For the Applicant           | : | 1. Mr. Anand Chibbar, Senior Advocate<br>2. Mr. Abhishek Anand, Advocate<br>3. Mr. Viren Sharma, Advocate<br>4. Mr. Mohit Uppal, Advocate |
| For Resolution Professional | : | Mr. Sanyam Goel                                                                                                                           |
| For the Respondent          | : | Mr. Naman Joshi, Advocate                                                                                                                 |

**Per: Subrata Kumar Dash, Member (Technical)**

**ORDER**

**IA No. 468/2022**

The present application is filed by Resolution Professional seeking directions to respondent to defray the CIRP expenses amounting to Rs. 54,70,342/- as already approved in terms of Section 5(13) of the Insolvency and Bankruptcy Code, 2016.

2. The brief facts pertaining to the instant application as submitted by the applicant-Resolution Professional are as follows:

2.1 This Adjudicating Authority vide order dated 07.02.2020 admitted the CP(IB) No. 515/Chd/Chd/2019 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 on behalf of financial creditor i.e. Parivartan Investment and Finance Company against the corporate debtor. Mr. Sanyam Goel was appointed as Interim Resolution Professional and later confirmed as Resolution Professional by the COC.

2.2 It is stated that the applicant in terms of Section 18(1)(a) of the Code constituted Committee of Creditors comprising one financial creditor of the corporate debtor i.e. Parivartan Investment and Finance

Company-respondent for a claim totalling to Rs. 8,20,76,575/-. The first CoC was held on 09.03.2020. The applicant-Resolution Professional convened 9th CoC on 31.10.2020, where Resolution Plan of Mr. Abhimanyu Singh Mehlawat was approved by a voting share of 100% of CoC. An application under Section 31 for the approval of Resolution Plan i.e. IA No. 823/2020 is filed before this Adjudicating Authority. It is further submitted that once the Resolution Plan is approved by this Adjudicating Authority, the Resolution Applicant will defray the CIRP costs in priority as per the Resolution Plan which will be then disbursed to the respondent.

2.3 It is further stated by the applicant that the respondent had remitted towards CIRP cost an amount of Rs. 20,00,000/- on 01.10.2021 which has been utilized by the applicant. The applicant made multiple requests to fund the CIRP expenses. The respondent made payment of Rs. 5,00,000/- towards CIRP cost, the same was acknowledged by the applicant vide email dated 17.02.2022. It is submitted that the applicant had made a request to the respondent seeking expenses of CIRP.

2.4 The applicant-Resolution Professional have submitted the approximate of CIRP cost of RS. 54,70,342/- with the following particulars:

## Pending CIRP Cost as on May 2022 (Including GST)

| Month of 2022 | Particulars                                          | Amount           |
|---------------|------------------------------------------------------|------------------|
| January       | RP Remuneration                                      | 3,54,000         |
| February      | RP Remuneration                                      | 3,54,000         |
| March         | RP Remuneration                                      | 3,54,000         |
| March         | Security                                             | 63,720           |
| March         | Legal Fee (Sr. Advocate Abhinav Vashisht)            | 12,98,000        |
| March         | Legal Fee (Sr. Advocate Abhinav Vashisht) 03.03.2022 | 6,49,000         |
| March         | Legal Fee (Sr. Advocate Abhinav Vashisht) 31.03.2022 | 6,49,000         |
| March         | Annual Certification for ROC filing                  | 4,500            |
| March         | Audit Fee due for FY 2021-22                         | 53,100           |
| April         | Staff Salary                                         | 54,300           |
| April         | Consumables                                          | 6,392            |
| April         | Security                                             | 63,720           |
| April         | RP Remuneration                                      | 3,54,000         |
| May           | Electricity                                          | 25,000           |
| May           | Staff Salary                                         | 54,300           |
| May           | Consumables                                          | 7,000            |
| May           | Security                                             | 63,720           |
| May           | RP Remuneration                                      | 3,54,000         |
| May           | Legal Fee (Advocate Abhishek Anand)                  | 7,08,590         |
|               | <b>Total</b>                                         | <b>54,70,342</b> |

2.5 The applicant has relied on the judgment passed by Hon'ble NCLAT in the matter of **Edelweiss Asset Reconstruction Company Limited v. Sai Regency Power Corporation Put Ltd, in Company Appeal (AT) (Ins) No.887 of 2019**, which held that:

*"When COC in a meeting of the Financial Creditors by requisite majority takes a decision with regard to CIRP costs which includes execution of responsibility put by law on the IRP/RP to keep the Company a going concern, the same cannot be treated as forcing the Appellant to part with property or forcing to incur liability. Appellant has itself sought to be part of COC and joined it. Nobody is forcing Appellant to file claim and/or to be part of COC. If the Appellant is part of COC and wants to remain part of COC, the Appellant cannot expect to only claim benefits from the process and claim that it would not take any of the liabilities and responsibilities which in the present matter, are apparently based on legal provisions for the duties to be performed by IRP/RP/COC. In COC meeting the Appellant has right of dissent but if decision is still taken by majority provided under the statute, all of COC members are duty bound to abide by the decision."*

Further, reliance has been placed on **Reliance Commercial Finance Ltd. Vs. Noble Resourcing Business and Solutions Pvt. Ltd. in CA-430(PB)/2019 in CP No. (IB)-494(PB)/2017** where the Hon'ble Adjudicating Authority vide order dated 12.04.2019 has held:

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(admitted)

*"We have heard, Ld. Counsel for the parties and we are of the view that for effective continuation of the Corporate Insolvency Resolution Process, the financial creditor constituting the CoC has to contribute to the expenses, fee and other cost of the process. Otherwise, the whole process would come to a halt and cause unnecessary delay. If the financial creditor like Intec Capital Limited-non applicant is not inclined to contribute to the cost of the process, then we are doubtful as to how their claim could be considered in the whole process. Accordingly, we direct the non-applicant -respondent to contribute proportionately to the extent of 42.78% to the running CIRP cost as approved by CoC. If the non-applicant-respondent fails to contribute, then their claim in the CIR Process would not be considered. CA-430(PB)/2019 stands disposed of."*

3. The respondent-financial creditor has filed its reply vide Diary No. 010082/3 dated 30.09.2022, whereby, the following submissions have been made;

3.1 The respondent has denied the averments made by the applicant-Resolution Professional. It is stated that respondent had already remitted towards CIRP cost an amount of INR 20,00,000/- on 01.10.2021 and an amount of INR 5,00,000/- on 17.02.2022 which have already been utilized by the applicant.

3.2 It is averred that the approved CIRP cost of the corporate debtor is INR 1 Crores. The applicant, in effect, is burdening the respondent to pay approximately 80% i.e. INR 79,70,342/- of the total CIRP cost of the corporate debtor. It is submitted that the respondent has no funds available to itself. The CIRP costs that have been paid till date, have been disbursed from the personal pockets of Ms. Sunaina Singh, who is a Director in the respondent company.

3.3 It is further submitted that the amount demanded is not towards the operating of the corporate debtor as a going concern. Out of a sum

of INR 54,70,342/-, the applicant is demanding INR 17,70,000/- towards his own fees and a sum of INR 33,04,590/- towards legal fee of the corporate debtor, whereas, only a meagre amount of INR 3,95,752/- has been demanded as cost towards the actual running of the corporate debtor as a going concern.

3.4 It is stated by the respondent-financial creditor that for the purpose of fulfilling the duties mentioned in Section 20(1) and Section 25(1) of the Code, the RP is empowered to raise interim finance for the corporate debtor during the Resolution Process under the Code. The interim finances raised for payment of CIRP cost can also be recovered from the Resolution Applicant once the Resolution Plan of the Resolution Applicant is approved by this Adjudicating Authority. In the present petition, CoC has already approved the Resolution Plan application bearing IA No. 823 of 2020 under Section 31 pending before this Adjudicating Authority. Considering the matter is at the last leg of litigation, the same can be recovered once the Resolution Plan of Resolution Applicant is approved by this Adjudicating Authority.

4. We have heard the learned counsels for the applicant-Resolution Professional and Respondent-Financial Creditor.

5. It may be noted that the CoC in its first meeting held on 09.03.2020 at Agenda 9 resolved that :

*TO FIX REMUNERATION OF MR. SANYAM GOEL TO ACT AS RESOLUTION PROFESSIONAL*

*The Chairman proposed before the COC an amount of monthly remuneration to be paid to Mr. Sanyam Goel amounting to Rs. 3,00,000/- (Rupees Three Lakh only) plus applicable taxes to act as RP of Corporate Debtor.*

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*After discussion, the following resolution was passed at the meeting unanimously:*

*"RESOLVED THAT pursuant to the provisions of Section 22 of Insolvency and Bankruptcy Code, 2016, remuneration of Mr. Sanyam Goel, having IBBI Registration No. IBBI/IPA-002/1P-N00138/2017-18/10397, to act as the Resolution Professional be and is hereby fixed at a monthly remuneration of Rs. 3,00,000/- (Rupees Three Lakh only) plus applicable taxes.*

*RESOLVED FURTHER THAT Resolution Professional be and is hereby authorised to do all such acts, deeds and things as may be required or considered necessary or incidental thereto"*

6. The respondent herein is required to pay the expenses and remuneration approved by CoC in terms of judgment of the Hon'ble NCLAT in **State Bank of India Vs. SKC Retails Ltd Through IRP & Anr.(2018) ibclaw.in 132 NCLAT** in Company Appeal (AT) (Insolvency) No. 08 & 43 of 2018 at Para No.10 which is to the following effect:

*"10. As per Regulation 33, the applicant means the person who files the application under Section 7 or 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "I&B Code") who generally proposes the name of the 'interim resolution professional'. Such applicant negotiates the fee to be charged and paid to the interim resolution professional.....XXXXX  
....XXXXX*

*In such case, the applicant, who has filed the application under Section 7 or 9 of the I & B Code, is required to bear the expenses which is to be reimbursed by the committee of creditors to the extent the Committee of Creditors ratifies the same."*

7. Whereas, Regulation 31 specifies the Insolvency Regulation Process costs, which are as follows:

*"31. Insolvency resolution process costs. – "Insolvency resolution process costs" under section 5(13)(e) shall mean –*

*(a) Amounts due to suppliers of essential goods and services under regulation 32;*

*[(aa) fee payable to authorised representative under [sub-regulation (8)] of regulation 16-A;*

*(ab) out of pocket expenses of authorised representative for discharge of his functions under [section 25-A];]*

- (b) Amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);*
- (c) Expenses incurred on or by the interim resolution professional to the extent ratified under regulation 33;*
- (d) Expenses incurred on or by the resolution professional fixed under regulation 34; and*
- (e) Other costs directly relating to the corporate insolvency resolution process and approved by the committee.”*

8. A reference is also made to the decision of the Hon'ble NCLAT in ***Bharat Hotels Ltd. Vs. Tapan Chakraborty RP of RDG Interior Decoration Exterior Architecture Pvt. Ltd.(2022) ibclaw.in 650 NCLAT*** wherein it is held that;

*“Question of cost and its approval lays in the domain of the CoC. The CoC may ratify, modify or set aside the cost claimed. These issues may be decided in the meeting of the CoC and are not to be examined by the Adjudicating Authority even before the CoC takes a decision.”*

The respondent, therefore, is directed to pay the fees of the Resolution Professional and other expenses as ratified by the CoC within 15 days. The Resolution Professional is further directed to convene the meeting of CoC within a period of three weeks from the date of this order and put up the fees/expenses which have not been ratified so far for the consideration of CoC

9. With these observations, the instant application is allowed and disposed of accordingly.

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

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

October 18, 2022  
PB/ASH