

S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
01-08-2023 AT 10:30 AM**

**IA (IBC) 303/2023 in CP(IB) No.181/7/HDB/2019**  
u/s. 7 of IBC, 2016

**IN THE MATTER OF:**

Laxmi Kantha Rao Thota

**...Financial Creditor**

**VS**

IRIS Electro Optics Pvt Ltd

**...Corporate Debtor**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**IA (IBC) 303/2023**

Order in IA No. 303 of 2023 pronounced, recorded vide separate sheets. In the result, this petition is partly allowed by directing the Financial Creditor Mr. Laxmi Kantha Rao Thota, to pay the Resolution Professional fees as indicated herein. With these directions this petition is partly allowed.

**Sd/-**

**MEMBER (T)**

**Sd/-**

**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**

**IA (IBC) 303/2023 in  
CP (IB) No. 181/7/HDB/2019**

*Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule  
11 of National Company Law Tribunal Rules, 2016.*

**IN THE MATTER OF:**

Mr. Chakravarthi Srinivasan  
Erstwhile Resolution Professional of  
M/s Iris Electro Optics Pvt. Ltd.

**... Applicant**

Vs

Bank of India  
Member of CoC  
Represented by its Senior Branch Manager  
Cherlapally Branch, Hyderabad.

...Respondent No.1/Financial Creditor

Laxmi Kantha Rao Thota  
S/o Yadagiri Rao Tota,  
R/o 88, Maple Town, Sun City,  
Bandlaguda Jagir, Rajender Nagar,  
K.V. Ranga Reddy,  
Hyderabad-500086 TG

...Respondent No.2/Financial Creditor

**Date of Order: 01.08.2023**

**CORAM:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,**

**HON'BLE MEMBER (JUDICIAL)**

**SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**Appearance:-**

For the Applicant : - Mr. Harsh Chowdhary, Counsel.

For the Respondent No.1: - Mr. V. Sethu Madhava Rao, Counsel.

**PER: BENCH**

1. This is an application filed by the Financial Creditor U/s 60(5) seeking for the following relief:

- i. Direct the Respondents to make payments of Resolution Professional fees and expenses of Corporate Insolvency Resolution Process Rs. 38,21,022/- incurred by the Applicant according to their share proportion.

**2. The gist of the Application in brief:**

- a. It is averred that this application is filed by the Financial Creditor namely Mr. Laxmi Kumar Rao Thota under section of Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy Rules, 2016 before this Tribunal vide its order dated 28.03.2019 ordered the commencement of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor within 180 days from the date of order.
- b. It is averred that this Tribunal has appointed the applicant as Interim Resolution Professional (IRP) and directed to take charge of the management of the Corporate Debtor.
- c. It is averred that as per the direction in the order of this Tribunal the applicant caused Public Notice, held CoC Meeting on and when necessary during the CIRP period.

- d. It is averred that in the 1<sup>st</sup> CoC meeting one of the agenda item was to approve reimbursement of expenses incurred on the release of advertisement and the fees of Rs.1,50,000/- and was paid to the applicant to act as Interim Resolution Professional and further the fees of Rs. 1,00,000/-was agreed by the Respondents in the 1<sup>st</sup> CoC meeting. The Copy of 1<sup>st</sup> Minutes of CoC is annexed here as “Annexure-1”.
- e. It is averred that the share of respondents as per their voting rights as given below:

<b>Name of Financial Creditor</b>	<b>Percentage of Voting Share</b>	<b>Amount</b>
Bank of India	63.95%	24,43,671
Lakshmi Katha Rao Thota	36.05%	13,77,551
Total		38,21,222/-

- f. It is averred that the applicant previously filed an IA 544/2019 in CP(IB) No. 181/7/HDB/2019 for directing the Respondent/Financial Creditor to share the expenses of the CIRP in proportion of its voting share and the same was allowed by this Tribunal vide order dated 27.11.2019 directing the respondents to pay the expenses incurred by the Resolution Professional and further the same was neglected by both the respondents on frivolous grounds and Copy of order dated 27.11.2019 was annexed here as “Annexure-2”.

- g. It is averred that the respondents who approved the CIRP Expenses and fees the respondents after several remainders by the applicant through emails and order of this Tribunal has not paid any CIRP Expenses until now and the copy of mail requesting the respondents to share the expenses is annexed as “Annexure-3”.
- h. It is averred that the CIRP process has completed 32 months as Resolution Professional without any remuneration and has incurred expenses from its own coffers for running the CIRP and during the CIRP the Original Company Petition was set aside by this Tribunal Vide IA No.785/2019 order dated 14.02.2022, based on this order the Respondents have neglected to pay the CIRP expenses.
- i. It is averred that the Apex Court in Civil Appeal No.4065/2020 and in the matter of Alok Kaushik vs Mrs. Bhuwaneshwari Ramanathan and others have enunciated that :-

*“Though the CIRP was set aside later, the claim of the appellant as registered valuer related to the period when he was discharging his functions as a registered valuer appointed as an incident of the CIRP. The NCLT would have been justified in exercising its jurisdiction under section 60(5)(c) of the IBC and, in exercise of our jurisdiction under Article 142 of the Constitution, we accordingly order and direct that in a situation such as the present case, the Adjudicating Authority is sufficiently empowered under section 60(5)(c) of the IBC to make a determination of the amount which is payable to an expert valuer as an intrinsic part of the CIRP costs.*

*“ We accordingly allow the appeal and set aside the impugned judgment and order of the NCLAT dated 13.10.2020. the proceedings shall accordingly stand remitted back to the NCLT for determining the claim of the appellant for the payment of the professional charges as a registered Valuer appointed by the RP in pursuance of the initiation of the CIRP. In order to facilitate A fresh determination by the NCLT, the order passed by the NCLT on 18.12.2019 is also set aside and CA No. 192 of 2020 shall stand restored to the file of the NCLT for determination afresh in the light of the above observations”.*

- j. It is averred that this instant case is similar to above judgment, the CIRP was initiated and was set aside later by this Tribunal and CIRP expenses was not determined by the Respondents. Further the Hon'ble Supreme Court allowed the appeal and remitted back to NCLT for determining the claim of Appellant.

**3. Counter Affidavit filed on behalf of the Respondent No.1/Financial Creditor:**

- i. This counter affidavit was filed on behalf of the Respondent No.1/Financial Creditor averred that the applicant is entitled to claim Resolution Professional fee of Rs.33,50,000/- and IRP fee of Rs. 1,50,000/- and Advocate fee of Rs.2,50,000/- in NCLAT Appeal and all other miscellaneous expenses and he entitled to claim Rs. 38,21,222/- towards his fee and expenses, and all the allegations that the applicant made was untrue, untenable and unsustainable.

- ii. It is averred that the respondent herein filed IA No.785/2019 seeking to recall the order dt. 28.03.2019 admitting the company petition No. 181/7/HDB/2019 against the Corporate Debtor or in the alternatively to appoint Mrs. G. Kalpana as RP in the place of Mr. Chakravarthi Srinivasan (Applicant herein), and to declare the voting share of 36.05% allotted to Mr. Lakshmi Kanth Rao Thota as illegal and to declare COC meeting dt. 11.05.2019 and 27.05.2019 and appointment of Mr. Chakravarthi Srinivasan as Null and Void and to hold the expenses incurred under CIRP so far be borne by the Financial Creditor and not to be included in CIRP costs and to impose Rs. 1.00 Crore on the Financial Creditor for abusing the process of law and that the said application was disposed by this Tribunal on 27.11.2019.
- iii. It is averred that the Respondent Bank filed Company Appeal No. 49/2020 before Hon'ble NCLAT, New Delhi. The Hon'ble Appellate Authority vide orders dt 22.05.2020 set aside the order passed in IA No. 785/2019 and directed the Hon'ble Adjudicating Authority to accord fresh consideration to IA No. 785/2019 and record the finding about the status of Respondent

No.3 as a related party and also finding whether the Respondent No.3 has fraudulently initiated CIRP by filing application under section 7 of the IB Code against the Corporate Debtor. It is relevant to refer the observations made by the Hon'ble NCLAT on the conduct of the present applicant at Para No.14 of the order. The said relevant portion is reproduced hereunder for ready reference. ***“The exclusion of Appellant from ‘Committee of Creditors’ should have raised eyebrows about the role of ‘Interim Resolution Professional’, even though the Adjudicating Authority appears to have passed direction for fresh determination of voting share of ‘Financial Creditors’.***

- iv. It is averred that after remand from the NCLAT the Hon'ble Adjudicating Authority vide orders dt 14.02.2022 allowed IA No. 785/2019 and the Company Petition C.P.No.181/7/HDB/2019 was dismissed and also imposed penalty of Rs. 1.00 Crore on the Mr. Lakshmi Kanth Rao Thota.
- v. It is averred that the Disciplinary Action initiated against Shri Chakravathi Srinivasan by the disciplinary committee of IBBI vide orders No. IBBI/DC/93/2022, dt. 06.05.2022 cancelled the registration of Shri Chakravathi Srinivasan as Insolvency

Professional having registration No. IBBI/IPA/-  
002/IPN00649/2018-2019/11990.

vi. It is averred that after disposal of the IA No. 785/2019 the borrower has approached the Respondent Bank for settlement of the account under OTS and the account was settled and the Respondent Bank has also released the title deeds offered as security and also the OA No. 559/2021 filed by the Bank before the Hon'ble Debts Recovery Tribunal -II Hyderabad was closed as settled outside the Debts Recovery Tribunal and the Respondent Bank is not having any contractual obligation or pending proceedings against the borrower and as such the applicant is not entitled to seek any claim against the Respondent Bank.

4. Despite service of notice the second respondent did not choose to contest this application. Thus, this application is resisted only by the first respondent, hence the following point is framed for our consideration.

**Point:**

*Whether the first respondent (Bank of India) is liable for payment of the fee and expenses of the petitioner? if so what amount?*

5. We have heard Sri Harhsa Chowdhary Learned Counsel for the petitioner and Mr. V. Sethu Madhava Rao, Learned Counsel for the First Respondent. Perused the record and the submissions.

**Point:**

*Whether the first respondent (Bank of India) is liable for payment of the fee and expenses of the petitioner? If so what amount?*

6. According to the Learned Counsel for the petitioner the fee and expenses of the Resolution professional approved in the first CoC meeting, break up of which is given in Para (4) of the petition, though both the respondents are liable to share in the ratio of 63.95% and 36.05%, the same is not paid, hence this application has been filed for a direction to the respondents to pay the same. The Learned Counsel relied on the order passed in IA 544/2019 in CP No.181/2019 dated 27.11.2019, whereunder, this Tribunal directed the first respondent herein being the sole secured creditor to contribute the costs of CIRP as per its voting share.
7. Learned Counsel for Resolution Professional, therefore submits that, the First Respondent (Bank of India), is precluded under law from contending that it is not liable to contribute Resolution Professional Fee and Expenses, in view of the above order.

8. However, Learned Counsel for Bank of India, at the outset contended that, the order admitting the Iris Electro Optics Private Limited into CIRP dated 28.03.2019 vide Company Petition CP No 181/2019, which petition has been triggered by the Second Respondent herein has been set aside by this Tribunal vide order in IA No. 785/2019 in CP No 181/2019 dated 14.02.2022, holding *inter alia*, that,

**XXXVII.** *It may also be pertinent to state herein, that the Resolution Professional though ought to have ensured that Bank of India, an important Financial Creditor is given due weightage in the CoC. By adopting a biased approach, the Resolution Professional got reduced the Bank's legitimate voting share below 66% so that the petitioner cannot have its firm say in CoC meeting. The Resolution Professional also denied opportunity to the Bank by returning the claim submitted by the Bank on technical grounds. Having known that Bank of India is a Public Sector Undertaking (PSU), which is also a Financial Creditor in the fray, the Resolution professional had deliberately ensured that the Bank is no available for voting in the first CoC meeting and thereby got himself confirmed as RP. Thereafter, he stated deciding voting percentage of the CoC Members by applying yard sticks which are unheard of. This clearly strengthens the allegations that the Resolution professional is acting at the behest of the Mr. Laxmi Kantha Rao Thota, the Applicant in the main Company Petition. The Resolution Professional ought to have appreciated/focussed on the fact that Mr. Laxmi Kantha Rao Thota, the Applicant in the main Company Petition is the husband of one of the Directors of the Corporate Debtor and thus, he is not eligible to be in the CoC as a 'related party'. Instead, he knowingly admitted Mr. Laxmi Kantha Rao Thota.*

**XXXVIII.** *Further, it was also brought to the notice of this Adjudicating Authority, by the Learned Counsel for the Bank of India, than on 06.08.2020 the Bank has lodged a complaint against the Resolution Professional before IBBI alleging, inter alia, that the Resolution Professional has been conducting CIRP in a partisan manner in collusion with the Corporate Debtor as well as Mr. Laxmi Kantha Rao Thota and that the same is pending with IBBI.*

**XXXIX.** *Thus, prima facie, we are also of the view that the role of Resolution Professional in the case of hand in tainted with the allegations of bias towards the 1<sup>st</sup> and 3<sup>rd</sup> respondents, besides proven violation of the mandatory provisions of the I & B Code.*

9. Therefore, according to Learned Counsel, since very initiation of proceedings by the first petitioner under section 7 of IBC by the first respondent held to be collusive, illegal and fraudulent, no amount is payable to the petitioner, by way of his fee and expenses by the first respondent.
10. Learned counsel further submitted that the first petitioner (Bank of India) was not part of the CoC meetings said to have been held under the chairmanship of the petitioner, as such the decisions taken there in cannot bind the first respondent should conduct of CIRP.
11. Having heard Learned Counsels from both sides and on perusal of the record, at the outset it is to be stated that, reliance placed by the petitioner on the order in IA 544/2019 dated 27.11.2019, is unsustainable, in as much as the very order admitting the Corporate Debtor, i.e., Iris Electro Optics Private Limited, into CIRP has been set aside, holding *inter alia*, that the same is a collusive and fraudulent act on the part of the company petitioner there in.
12. Admittedly, this Tribunal while allowing IA No 785/2019 whereby the order admitting the Corporate Debtor into Insolvency Resolution Process

has been set aside, commented on the role of the Resolution Professional by observing as follow:

*” It may also be pertinent to state herein, that the Resolution Professional though ought to have ensured that Bank of India, an important Financial Creditor is given due weightage in the CoC. By adopting a biased approach, the Resolution Professional got reduced the Bank’s legitimate voting share below 66% so that the petitioner cannot have its firm say in CoC meetings. The Resolution Professional also denied opportunity to the Bank by returning the claim submitted by the Bank on technical grounds. Having known that Bank of India is a Public Sector Undertaking (PSU), which is also a Financial Creditor in the fray, the Resolution Professional had deliberately ensured that the Bank is not available for voting in the first CoC Meeting and thereby got himself confirmed as RP. Thereafter, he started deciding voting percentage of the CoC Members by applying yardsticks which are unheard of. This clearly strengthens the allegation that the Resolution Professional is acting at the behest of Mr. Laxmi Kantha Rao Thota, the Applicant in the main Company Petition. The Resolution Professional ought to have appreciated/focused on the fact that Mr. Laxmi Kantha Rao Thota, the Applicant in the main Company Petition is the husband of one of the Directors of the Corporate Debtor and thus, he is not eligible to be in the CoC as a ‘related party’. Instead, he knowingly admitted Mr. Laxmi Kantha Rao Thota.”*

**13.**Therefore, in the light of the finding that constitution of CoC by the petitioner, is illegal and fraudulent, the decisions taken there in including the one regarding payment of fee and expenses of the Resolution Professional, if allowed to be implemented, it would amount to legalizing the acts which are already declared as illegal and fraudulent by this Tribunal.

**14.** We are therefore of the firm view that, the petitioner is not entitled to claim any amount much less the amount claimed in this petition towards the fee and expenses from the first respondent. However, as the second respondent Financial Creditor has not contested this applicant and was

a sole member of CoC, when the decisions as to the payment of fee and expenses of Resolution Professional were taken, we find it proper to the second respondent responsible for payment of the fee and expenses of the Resolution Professional which according to the petitioner is at Rs.13,77,551/-.

- 15.** We therefore while dismissing the petition against the first respondent direct the second respondent Mr. Laxmi Kantha Rao Thota to pay the sum of Rs. 13,77,551/- towards fee and expenses of the petitioner within 30 days from the date of our order.
- 16.** In the result, this petition is partly allowed by dismissing the claim against first petitioner and by directing the second respondent to pay Rs. 13,77,551/- (Rupees Thirteen Lakhs Seventy Seven Thousand Five Hundred Fifty One Only) towards fee and expenses of the petitioner within 30 days from the date of our order.
- 17.** Accordingly, this IA is disposed of. No costs.

**Sd/-**

Charan Singh  
Member Technical

**Sd/-**

Dr. Venkata Ramakrishna Badarinath Nandula  
Member Judicial

*Swapna*