

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

**IA No. 2328 of 2021
IN
CP (IB) 190/MB/2018**

Under section 60(5) of the Insolvency and
Bankruptcy Code, 2016

In the matter of

**Mr. Hiten Parikh & Anr.
..... Applicant/Erstwhile Resolution
Professional**

Versus

**State Bank of India
..... Respondent**

In the matter of

Bank of India

v/s

**Shrenuj & Co. Ltd.
... Corporate Debtor**

Order Delivered on :- 24.01.2023

Coram:

Justice P.N. Deshmukh : Member (Judicial)

Shyam Babu Gautam : Member (Technical)

Appearances:

For the Applicant : Adv. Shyam Kapadia

For the Respondent : Adv. Sneha Panchmukh

ORDER

Per:- CORAM

1. The Application in hand is filed by the Applicants being the erstwhile Resolution Professional (RP) of the Corporate Debtor praying that :-
 - a. Declare that the CoC/Respondent No. 1 are liable to pay the CIRP fees claimed by the Applicants to the tune of Rs. 95,58,000/- (Rupees Ninety-Five Lakhs Fifty Eight Thousand Only).
 - b. Direct the CoC/Respondent No. 1 to ratify and/or reimburse the CIRP costs claimed by the Applicants to the tune of Rs. 52,22,036/- (Fifty-Two Lakhs Twenty-Two Thousand Thirty Six Only) and reimburse the same.
 - c. Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.
2. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by order dated 12.03.2019 and the Applicant herein was appointed as the Interim Resolution Process (IRP) and was later appointed as RP on 04.05.2019. The fees and the CIRP expenses was approved by a resolution passed by the CoC through E-voting conducted between 02.05.2019 to 04.05.2019.
3. However, till date the payment vouchers raised by the Applicants have not been paid by the Respondent in view of the same the Applicants have filed the present application to direct the Respondent to ratify and or reimburse the CIRP fee claimed by the Applicants.

4. On 09.12.2019, the Applicant in pursuance of the meeting of the COC held on 04.11.2019, filed an Application for liquidation and the said was allowed by the Adjudicating Authority (AA) on 12.07.2021. Since, the Application for liquidation was filed, the Respondent did not made the payments to the Applicants against the vouchers raised by the Applicants. Other CIRP expenses as litigation cost, retainer ship cost and other miscellaneous expenses are also pending. The Respondent is liable to clear the said fee and expenses as approved and ratified in the COC meeting.

5. The Applicants states that though the Application for liquidation of the Corporate Debtor was filed and till the Order for liquidation was passed on 12.07.2021, the Applicants have discharged their duties in the capacity of Resolution Professional and Insolvency Professional Entity. Till the time the certified copy of the liquidation Order was made available, the Applicants continued to carry their duties till the liquidator was appointed by the Adjudicating Authority and also till the handover of all the documents and records of the Corporate Debtor was taken over. On various occasions vide email dated 27.11.2020 and 07.08.2021, the Applicants asked the Respondents to clear the outstanding invoices as raised. The Respondents did not make the payments.

6. The Respondent filed its reply dated 13.12.2021. The Respondent states that after passing of the Resolution of the members of the CoC to file an Application for liquidation of the Corporate Debtor on 04.11.2019, the Applicant filed liquidation Application on 09.12.2019 and the liquidation was approved on 12.07.2021. Hence, after filing of the liquidation application, the Applicants is not entitled for any fees.

There was no substantial work done by the Applicants. Also, if the members of the CoC are of the opinion that there is no possibility of receiving an Resolution Plan or revival of the of the Corporate Debtor Company, the decision for liquidation of the Corporate Debtor Company is taken and hence after the said is filed, the Applicants are not entitled for the fees as claimed as no substantial work was done by the Applicants.

7. The fees approved to be paid to the Applicants was decided with respect to the services provided. The CoC cannot make the payment to the Applicants for no services and work done after filing of the liquidation application or also after passing of the resolution of liquidation of the Corporate Debtor. The Applicants are demanding for its fees where there is no proof of any work done by the Applicants.
8. The Respondent submits that the condition of the Corporate Debtor in liquidation is a result of the misconduct and improper management of the Corporate Debtor. The CoC on several occasions have raised the misconduct with regard to the functions of the Applicant. The CoC had also filed an I.A. No. 154 of 2020 seeking replacement of the liquidator due to the misconduct and wrongdoing of the Applicants. Further it is also to be noted that the Applicants have themselves decided and informed to the CoC about his unwillingness to act as a liquidator.
9. The Respondents have also pointed out various instances of the irregularities and misconduct of the Applicants with respect to the appointment of registered valuer, transaction audit report, misappropriation of funds, diversion of funds etc.

10. The Applicants have filed a Rejoinder dated 27.04.2022 wherein the Applicants have denied the allegation as raised by the Respondents. The Applicants have managed the affairs of the Corporate Debtor Company until the order of the liquidation was passed by the AA. The Applicant submits that the Resolution Professional is required to manage the operations of the Corporate Debtor as per Section 23 of the Code.
11. The Applicants have denied all the allegations as raised by the Respondents and states that the Applicants have diligently carried out its services as per the provision of Section 23 of Insolvency and Bankruptcy Code, 2016. The RP must exercise his powers till the time an Order for approving the Resolution Plan under section 31 (1) or appointing liquidator under section 34 is passed by the Adjudicating Authority.
12. The Applicants are entitled to the fees as approved by the CoC as the Applicants have rendered it's services and the Respondents have failed to make the payments. Hence, the Application to reimburse and ratify the CIRP cost/expenses and payment of fees is to be allowed.

FINDINGS

13. We have considered the submissions of the parties and perused the documents and records available. The question for consideration here is whether Applicants are entitled for the fees after the CoC passing a resolution to file for liquidation of the Corporate Debtor. It is observed that the fees of the Applicants was approved in the 1st meeting of the CoC and was also paid by the Respondents till December, 2019.

Further the fee was not paid from January, 2020 till the Order of the liquidation passed by the Tribunal. Thereafter, the Applicants have not received the fees.

14. The Applicants have relied upon section 23 of the Code wherein it is stated that the Resolution Professional shall continue to manage the Operations of the Corporate Debtor after the expiry of the Corporate Insolvency Resolution Process period, until an Order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 passed by the Adjudicating Authority. In view of the same, the Applicants are liable to receive the fees till the Order of liquidation was passed i.e. 12.07.2021 since the Applicants have managed and discharged their duties in the capacity of Resolution Professional and Insolvency Professional Entity. Further, the Applicant has produced invoices raised by the respective parties being the litigation cost, retainer ship costs and other miscellaneous expenses on account of the CIRP proceedings to be considered as CIRP costs. The said costs are to be ratified and reimbursed to the Applicant herein.

15. Further, as stated by the Respondent that the Applicants are not eligible for any fees post the filing of the Liquidation Application as there is no possibility of revival of the Insolvency Resolution Process of the Corporate Debtor as there would no longer be a possibility of the Resolution of the Company is untenable as a reference is made to the provision of Section 23(1) of the Code which says that subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period. Further it is explained that provided that the resolution

professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the AA. Thus, it clearly demonstrates that the RP is liable to get fees until the appointment of the liquidator by the AA. The Applicants continuation as a RP is not in contravention of any provisions of the Code.

16. Keeping in view the above observation and the facts in the present case the company is already under liquidation, we hereby direct the Applicant to file the claim before the liquidator and the liquidator to verify and consider the claim (CIRP costs and fees) and pay in priority as per section 53 of the code.
17. In view of the above, IA 2328 of 2021 is disposed of.

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)