



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 635/KB/2022

In

Company Petition (IB) No. 74/KB/2020

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

IN THE MATTER OF:

Radico Khaitan Limited

... Operational Creditor.

Versus

Concept Biosciences India Private Limited

... Corporate Debtor.

And

IN THE MATTER OF:

Ajay Kumar Agarwal

... Applicant/ IRP.

Versus

- 1. Radico Khaitan Limited**
- 2. Mahima Life Sciences Private Limited**
- 3. Employees State Insurance Corporation**
- 4. Inland World Logistics Pvt. Limited**

... Respondents.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For Erstwhile IRP: Mr. Ajay Kumar Agarwal, RP.

ORDER

1. The Court congregated through a hybrid mode.
2. By way of this application, IRP Mr. Ajay Kumar Agarwal has prayed for to fix the fees of the IRP which has neither been fixed by

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Radico Khaitan Limited, Operational Creditor under Regulation 33(1) of the CIRP Regulations, 2016, nor approved by the CoC and for a direction upon CoC to release the outstanding payment towards the IRP/RP fees and CIRP expenses in their respective voting percentage.

3. Vide Order dated 01.04.2022, the corporate debtor was admitted into CIRP, and the applicant was appointed as Interim Resolution Professional, with a direction upon Radico Khaitan being the applicant operational creditor to the company petition being C.P. (IB) No. 74/KB/2020, to deposit an amount of Rs. 3 Lakh with the IRP appointed within three days. Further, it was recorded in the said Order that IRP can claim the preliminary expenses and fees subject to the approval of the CoC and after constitution of CoC. The Applicant IRP constituted the CoC on 21.04.2022 a which was re-constituted on 19.05.2022.

4. The Applicant IRP would submit that IRP at its 1st and 2nd CoC meetings has proposed his remuneration and expenses including the professional advisors for an amount of Rs. 2,00,000/- per month excluding GST of IRP. The CoC has refused to pay the same and requested IRP to reduce the amount to Rs. 1,25,000/- per month.

5. Denial to make the contribution in the CIRP Cost, Radico Khaitan would quote the reason that they will not be able to contribute the CIRP Cost, if other CoC members are not fulfilling their obligation.

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6. Further, Mahima Life Science Private Limited would submit that they deny to the contribution in the CIRP till realization of their part in liquidation. Further, ESIC would contend that they cannot contribute in the CIRP as it is not permissible as the provisions of the law.

7. It is obvious that an Insolvency Professional who is engaged to perform his/her duty as a Resolution Professional is entitled to be remunerated by way of paying fees for his labour and work and accordingly the fees and expenses are to be approved by the COC. Further, **Regulation 34** of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**, envisages that:

“The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.”

“[Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.]”

8. We would rely upon the judgment passed by the Hon'ble NCLAT in **Jayesh N. Sanghrajka, R.P. of Aristo Developers Pvt. Ltd. v. The Monitoring Agency nominated by the Committee of Creditors of Aristo Developers Pvt. Ltd.** reported in **MANU/NL/0401/2021**, wherein it has been held that:

“32. ... The fee has to be related to acts performed or to be performed for furtherance of the CIRP, for



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dues or expenses actually incurred. It has to be directly related to acts done or expenses incurred which are necessary for the CIRP. The role of the Resolution Professional has to be like a dispassionate person concerned with performance of his duties under the Code for reasonable fees and it cannot be result oriented.”

(Emphasis Added)

9. We would note that the reason quoted by the CoC members for non-contribution in CIRP is not at all justiciable and reasonable.

10. Hence, considering all the facts and circumstances abovementioned, we direct the Committee of Creditors to take necessary action in regard to reimbursing all the fees due including the CIRP costs and Professionals' fees incurred by the Resolution Professional herein.

11. In view of above, this application is **disposed of**.

12. Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 08th Day of January 2025.

Bose, R. K. [LRA]