

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – IV

IA 2321/MB/C-IV/2023

In

CP (IB) 2207/MB/C-IV/2019

Under Rule 11 of NCLT Rules, 2016.

In the Application of

IA 2321/MB/C-IV/2023

**Sudha Navandar Interim Resolution Professional
(herein after referred as IRP) of Shah Group Builder
Limited.**

...Applicant/ Resolution Professional

VS

Nalini Virji Shah & Others

...Respondents

In the matter of

CP (IB) 2207/MB/C-IV/2019

Satish Sadashiv Rane

...Financial Creditor

Versus

Shah Group Builders Limited

...Corporate Debtor

Order Delivered on 20.10.2023

Coram:

Hon'ble Member (Judicial) : Mr. Kishore Vemulapalli

Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Applicant : Mr. Nausher Kohli a/w Shaila
Taware Advocate for IRP, and
Ms. Sudha Navandar, IRP.



For the Respondent

: Rahul Sarda a/w Adv. Zill
Shahnand i/b J. Nishar & Co.

ORDER

Per: Anu Jagmohan Singh, Member (Technical)

1. The present application is moved by **Sudha Navandar Interim Resolution Professional (IRP) of Shah Group Builder Limited** (hereinafter called as “the Applicant”) **under** Rule 11 of NCLT Rules, 2016 to release the professional fees and Corporate Insolvency Resolution Process (herein after referred as “CIRP”) Expenses i.e Rs.93,78,920/- and Legal Cost of Rs.40,000/- from the Respondents.

Submissions made by the Applicant:

2. The above captioned Company Petition was admitted by this Tribunal vide order dated 08.07.2021. Order dated 08.07.2021 of this Tribunal was challenged before the Hon’ble National Company Law Appellate Tribunal (NCLAT) wherein interim stay was granted on 06.08.2021 directing not to constitute Committee of Creditors (herein after referred as “CoC”) till the next date of hearing and allowing the Corporate Debtor and Financial Creditor to settle the matter.
3. The settlement agreement was signed between the Financial Creditor and the Corporate Debtor on 20.09.2021, and Form FA was received on 23.09.2021 signed by Mr. Anand Laxamrao Dhumal, Authorised



Power Attorney Holder of Mr. Satish Shadashiv Rane- Financial Creditor.

4. Pursuant to the settlement arrived between the Corporate Debtor and Financial Creditor, the Application was filed u/s 12A for withdrawal of “CIRP” of the M/s Shah Group Builders Limited on 04.10.2021 numbered as IA No. 2209 of 2021 and the withdrawal was allowed vide order dated 17.03.2023.
5. The applicant has also preferred an application IA No. 1670 of 2022 seeking for reimbursement of fees and other “CIRP” costs. As per the direction of this Tribunal vide order dated 17.03.2023 the Applicant’s fees shall be reimbursed by the Corporate Debtor upon withdrawal of “CIRP” against the Corporate Debtor. The Applicant has sent reminder vide email dated 21.03.2023 for payment of fees and expenses. However, the Respondent failed to pay the fees.
6. The Applicant has submitted summary of amounts claimed:

Summary of the payment Outstanding towards CIRP Cost and IRP Fees:

SHAH GROUP BUILDERS LIMITED					
<u>Payment to Interim Resolution Professional towards CIRP of “Shah Group Builders Limited”</u>					
Fees of IRP Sudha P. Navandar for the CIRP Peroid (20.07.2021 to 17.03.2023)					
Particulars	From 20.07.2021 to 20.09.2021	From 01.10.2021 to 31.01.2022	From 01.02.2022 to 28.02.2023	From 01.03.2022 to 17.03.2023	Total Amount

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	<i>Rs. 6 lakhs per month as per mandate with Applicant</i>	<i>Rs. 5 Lakhs per month as per Settlement Agreement between CD and Applicant</i>	<i>Rs. 5 Lakhs per month as per Settlement Agreement between CD and Applicant. Also Intimated in Additional Submission filed under IA 1670 on 06.03.2023</i>	<i>Proportionate fees for the Month of March i.e. till 17.03.2023 till order Pronounced by NCLT Mumbai Bench on 17.03.2023</i>	
IRP Fees	12,00,000	20,00,000	65,00,000	2,46,775	
GST on above	0#	3,60,000	11,70,000	44,419	
Gross Amount Receivable	12,00,000	23,60,000	76,70,000	2,91,194	79,61,194
Less: Amount Received as full and Final Settlement	-5,00,000	-5,00,000	-	-	
	Till 30.09.2021	Till 31.01.2022			
Total Outstanding Fees to be received (A)	-	-	76,70,000	2,91,194	79,61,194

Expenses of IRP Sudha Navandar for the CIRP Peroid (20.07.2021 to 17.03.2023)			
Expenses:	From 20.07.2021 to 28.02.2023	From 01.03.2022 to 17.03.2023	TOTAL Amount
	<i>As per Detailed Sheet Filed with IA 1670 on 18.06.2022</i>	<i>Actual Expenses * for March 2023</i>	



	<i>and Additional submission on 06.03.2023 under IA 1670</i>		
Gross Amount Receivable	16,25,978	46,748	16,72,726
Less: Amount Received on Order pronouncement on 17.03.2023			2,55,000
Total Outstanding Expenses to be received (B)			14,17,726
Total Amount to be received [Fees (A) + Expenses (B)]			93,78,920
	<p><i>*Estimated Expenses were Rs. 49,648 as Intimated in Additional Submission Filed under IA 1670 on 06.03.2023. However, in the above sheet we have considered Actual Expenses incurred in March 2023 of Rs. 46,748. This includes Security Services Bill of Rs. 39,648/- and Actual Operating Expenses of Rs. 7,100/-</i></p> <p><i>#The Applicant was not liable to be registered under GST Law during the said period.</i></p>		

Findings:

7. Heard the Ld. Counsel for the Applicant and perused the records.
8. It is observed that the Corporate Debtor was admitted into CIRP on 08.07.2021. Thereafter, the Hon'ble NCLAT stayed the constitution of CoC and granted time to settle the matter. The settlement agreement was signed between the Financial Creditor and the Corporate Debtor on 20.09.2021, pursuant to which IA



No. 2209 of 2021 was filed u/s 12A for withdrawal of CIRP which was allowed by this Tribunal vide order dated 17.03.2023.

9. Further this Bench vide order dated 17.03.2023 also disposed of the IA 1670 of 2022 ordering as follows:

*“During hearing, in IA-1670/2022, this Bench sought clarification from the Ld. Counsel for the Corporate Debtor whether fee of the IRP along with CIRP cost incurred by her shall be paid to IRP by the Corporate Debtor, in case, this Bench decided to allow the withdrawal application filed under section 12A of the Code. The Ld. Counsel confirmed that the CIRP cost incurred by the IRP and her fee shall be reimbursed by the Corporate Debtor upon withdrawal of CIRP against the Corporate Debtor. In view of this assertion the Applicant IRP is directed to intimate her claim to the Corporate Debtor for payment thereof. In view of this, this IA-1670/2022 is **allowed** and ordered accordingly.”*

10. This bench notices that in view of the sequence of events no substantial professional work was done by the IRP after the date of settlement and the fee demanded by the IRP is neither fair and just nor reasonable.
11. Since CoC was not formed, the fees of IRP was not ratified. Hence, this bench vide order dated 10.08.2023 had directed the Corporate Debtor to pay 20 Lakhs and expenses.



12. In these peculiar circumstances and events of the case as narrated (Supra), this bench observes that an amount of Rs. 20 lakh as IRP fee and reimbursement of expenses would be fair and reasonable.
13. In that view of the matter this bench directs the Corporate Debtor to pay the expenses, which is pending to be reimbursed and Rs.20 lakhs plus GST thereon as fees of the IRP.
14. The Interlocutory Application No. 2321 of 2023 in CP 2207 of 2019 is accordingly **disposed of in view of the above directions.**

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
20.10.2023

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)