

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court -II)
KOLKATA**

IA(IBC)/770(KB)2022
in
CP(IB)/802(KB)2019

In the matter of:

An application u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Insolvency Resolution Process for Corporate Person Regulations, 2016 and rule 11 of the National Company Law Tribunal Rules, 2016;

And

In the matter of:

Shiv Lalit Barter Private Limited (CIN: U51909WB1995PTC074980) having its registered office at 57/15, Ballygunge Circular Road, Kolkata 700019;

....Operational Creditor

-Versus-

Dev R. Nil Design Private Limited (CIN: U74900WB2014PTC204686) having its Registered Office at 42P, Raja Santosh Road, Kolkata 700027;

....Corporate Debtor

And

In the matter of:

Mr. Dhruva Mazumder, Erstwhile Interim Resolution Professional of Dev R Nil Design Private Limited, residing at Flat No. F-901, Rail Vihar, Behind DLF-1, Street No.64, Newtown, Kolkata 700156;

....Applicant

-Versus-

State Bank of India, SME New Alipore Branch, 63, Nalini Ranjan Branch, Kolkata 700053.

....Respondent/Committee of Creditors

Order reserved on: 11/08/2023

Order pronounced on: 18/10/2023

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through hybrid mode):

For RP in IA/454/2022, IA/829/2023 & IA/1164/2023	:	Mr. Balaram Pandit, Adv. Mr. Surya Kanta Satapathy, RP in person
For applicant in IA/454/2022	:	Mr. Sourojit Dasgupta, Adv. Mr. Ashis Kumar Mukherjee, Adv. Mr. Rishav Banerjee, Adv.
For RP	:	Mr. Shaunak Mitra, Adv.
For erstwhile IRP in IA/770/2022	:	Mr. Rahul Parasrampuria, PCS
For SBI in IA/770/2023	:	Mr. Om Narayan Rai, Adv. Mr. Prashant Agarwal, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/700(KB)2022** has been filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) read with IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and rule 11 of the National Company Law Tribunal Rules, 2016 by Mr. Dhruva Mazumder, the Erstwhile Interim Resolution Professional, of Dev R Nil Design Private Limited seeking the following reliefs:
 - (a) *Allow the present application;*
 - (b) *The Hon’ble Tribunal be pleased to issue necessary directions to the Respondents to pay the fees amounting to Rs.5,00,000/- and unreimbursed expenses of Interim Resolution Professional; and*
 - (c) *The Hon’ble Tribunal be pleased to pass such other and further orders as may be deemed fit and proper, in the interests of justice and equity.*

The application is supported by an affidavit¹ duly affirmed by Mr. Dhruba Mazumder, the Erstwhile IRP and filed on the e-portal on 02/08/2022.

3. *Vide* an order² dated 22/03/2022, this Adjudicating Authority, on a petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) by one Shiv Lalit Barter Private Limited, the Operational Creditor, had ordered initiation of the Corporate Insolvency Resolution Process (“**CIRP**”) against Dev R. Nil Design Private Limited, the Corporate Debtor, appointing Mr. Dhruba Mazumder as Interim Resolution Professional (“**IRP**”).
4. In terms of section 15 of the IBC, Public Announcement was made by the IRP on 25/03/2022 in “*Financial Express*” (English) and “*Aajkal*” (Bengali). Committee of Creditors (“**CoC**”) was duly constituted on 12/04/2022. Report of constitution of CoC was also duly intimated to this Adjudicating Authority on 14/04/2022. 1st, 2nd and 3rd meetings of the CoC were held on 21/04/2022, 21/05/2022 and 04/06/2022 respectively by the IRP. Copies of minutes of the 1st, 2nd and 3rd CoC meetings form Annexure “C”³, Annexure “D”⁴ and Annexure “E”⁵ respectively.
5. *Vide* order⁶ dated 30/06/2022 in IA(IBC)/603/2022 filed by the State Bank of India seeking replacement of Mr. Dhruba Mazumder, erstwhile IRP, this Adjudicating Authority had approved appointment of Mr. Surya Kanta Satapathy, as the Resolution Professional, in replacement of Mr. Dhruba Mazumder, the erstwhile IRP, who took over the charge from the erstwhile IRP on 07/07/2022.
6. The applicant states that in the 1st CoC meeting held on 21/04/2022, the applicant in the capacity of IRP claimed Rs.3,00,000/- for the 1st month and then on monthly basis with the same rate, the decision on which was deferred by the CoC

¹ At pages 9 and 10 of the application

² Annexure “A” at pages 18 to 46 of the application

³ At pages 49 to 55 of the application

⁴ At pages 56 to 63 of the application

⁵ At pages 64 to 78 of the application

⁶ Annexure “B” at pages 47 and 48 of the application

to the next CoC meeting⁷. At the 2nd CoC meeting held on 21/05/2022, the CoC asked the IRP the minimum fee expected by him to which the IRP negotiated the fees, considering the workload to Rs.1,50,000/- per month. However, the CoC offered Rs.50,000/-, to which the IRP did not agree. Thus, the CoC deferred the decision to the next CoC meeting.⁸ At the 3rd CoC meeting held on 04/06/2022, the CoC with 100% voting share has resolved to appoint RP fixing the remuneration of IRP to Rs.40,000/- per month plus GST in addition to out of pocket expenses⁹.

7. Ld. Authorised Representative of the applicant submits that the applicant has fulfilled all his duties as the IRP up to 30/06/2022, on which date this Adjudicating Authority *vide* order dated 30/06/2022 in IA(IBC)/603(KB)2022 had replaced the IRP appointing Mr. Surya Kanta Satapathy as the RP. Thus some payment on account of IRP fees and expenses has become due to the applicant.
8. Respondent has filed reply affidavit affirmed by Mr. Prabhat Kumar Tiwary, Chief Manager, State Bank of India, SME New Alipore Branch, 63, Nalini Ranjan Branch, Kolkata 700053. Save and except what are matters of record the answering respondent did not admit anything that is inconsistent with or contrary to the records.
9. Ld. Counsel appearing for the State Bank of India submits that considering the Bank's exposure of Rs.60 Lakhs secured by CGTMSE guarantee, low cash flows and non-complexity of the account, the claim of IRP of Rs.3,00,000/- as remuneration for the 1st month and then on monthly basis as his fees and a further sum of Rs.50,000/- per month for the professional advisor/legal advisor on regular basis was considered exorbitantly high by the CoC and the same was not approved. At the 2nd CoC meeting IRP reduced his fee to Rs.1,50,000/- per month as remuneration and the same was declined by the CoC as there was no

⁷ Averments in paragraph 4(f) at page 10 of the application

⁸ Averments in paragraph 4(h) at pages 10 and 11 of the application

⁹ Averments in paragraph 4(j) at page 11 of the application

sufficient cash flow and offered a sum of Rs.50,000/- per month to which the IRP did not agree and the decision was again deferred to the next CoC meeting. As the remuneration offered to the IRP was not acceptable by him, the CoC in its 3rd meeting held on 04/06/2022, approved appointment of Shri Surya Kanta Satapathy as the Resolution Professional, who was selected as per SOP upon inviting bids from the qualified experienced and empanelled RPs, who quoted their fees after knowing about the details of the case and an application being IA(IBC)/603(KB)2022 was filed and the same was approved by this Adjudicating Authority vide order dated 30/06/2022. However, new RP has been executing the same job with alacrity at a remuneration of Rs.40,000/- per month.

10. Ld. Counsel appearing for the State Bank of India further submits that in the aforesaid facts and background, the CoC approved IRP remuneration at the rate which was the same as that of the remuneration decided for the new RP, who was selected upon inviting bids from the qualified, empanelled and experienced RPs. Accordingly, a total amount of Rs.1,38,843/- has already been paid to Shri Dhruba Mazumder towards his Professional Fees and expenses as on 29/08/2022 for his service as IRP in the instant case and there was no sum due and owing to him on this account from the respondent bank, i.e., State Bank of India.
11. We have heard the Ld. Authorised Representative for the applicant and the Ld. Counsel for the respondent and perused the application and the documents attached therewith as well as the reply affidavit filed by the respondent.
12. We, therefore, to put the matter to rest feel that IRP should be paid Rs.50,000/- for the first month and thereafter @ of Rs.50,000/- per month till his replacement by the RP along with CIRP cost incurred by the IRP on actual basis on production of supporting Vouchers/Bills by the IRP after deduction of Rs.1,38,843/- which has already been paid to him by the respondent, State Bank of India.
13. The application bearing **IA(IBC)/770(KB)2023** shall stand disposed of in accordance with the above directions.

14. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
15. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 18th day of October, 2023.

hb.