

**THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**COURT III**

IA-4941/2022  
In  
(IB) 218/ND/2020

*Order under Section 60(5) of the Code, 2016 read with Rule 11 of the NCLT Rules, 2016*

**IN THE MATTER OF:**

M/s. HIND TRADEX LTD. ....OPERATIONAL CREDITOR

VERSUS

M/s. AGL TELEVENTURES PVT. LTD. ....CORPORATE DEBTOR

**AND IN THE MATTER OF:**

VIKKY DANG

(RESOLUTION PROFESSIONAL OF CORPORATE DEBTOR)

.....APPLICANT

VERSUS

M/s. HIND TRADEX LTD. & Ors. ....RESPONDENT

Order Pronounced on: 14.12.2023

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS**

HON'BLE MEMBER (JUDICIAL)

**SHRI ATUL CHATURVEDI**

HON'BLE MEMBER (TECHNICAL)

**Parties / Counsels present**

For Applicant: Mr. Vikky Dang, RP

For Respondent: Mr. Shivanshu Kumar, Advocate

## **ORDER**

**Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The application has been filed under Section 60(5) of the Code, 2016 read with Rule 11 of the NCLT Rules, 2016 by Applicant/Resolution Professional seeking following prayers: -

*a) This Adjudicating Authority may be pleased to direct the withdrawal of the main case IB – 218/ND/2020 since none of the members of CoC are willing to continue with the CIR process and thus, the Applicant cannot continue the process; or*

*b) This Adjudicating Authority may be pleased to pass orders for the discharge of the Applicant from his duties as envisaged in the IBC, 2016;*

*c) Direct the Respondents to pay the IRP fees and expenses incurred in accordance of the Regulation 33 and 34 of the IBBI (CIRP) Regulations, 2016.*

2. Briefly stated the facts of the present case as averred by the applicant is that the CIRP of the Corporate Debtor is on absolute halt as the Respondent No.2 being a lead Bank i.e., Jammu & Kashmir Bank limited having voting share of 96.58% in the CoC has taken a decision to withdraw it's claim. Further, Respondent No. 1 i.e., Hind Tradex Limited (Operational Creditor) has failed to deposit Rs.2,00,000/- with the IRP for smooth and effective conduct of the CIR process of the Corporate Debtor.

3. This Adjudicating Authority vide Order dated 09.06.2022 initiated CIRP against the Corporate Debtor and appointed Mr. Vikky Dang as the Interim Resolution Professional from the list of Registered Insolvency Professionals as the Respondent No. 1 did not propose the name of the IRP. This Adjudicating Authority directed Respondent No. 1 to provide the initial financial assistance to the tune of Rs. 2,00,000/- to the IRP within a week time as an advance money towards initial cost and other expenses of CIR process.

4. The Applicant/IRP made public announcement as stipulated under the provisions of Section – 15 of the code and invited claims from all the creditors. The announcements were published in the newspapers viz. Financial Express, English Newspaper (New Delhi Edition) and Jansatta, Hindi Newspaper (New Delhi Edition) on 11.06.2022.

5. It is further submitted that, the Applicant/IRP sent an email dated 15.06.2022 to the Respondent No. 1 (Operational Creditor) and requested for the Respondent No/ 1 for payment of Rs. 2,00,000/- in compliance of the Order dated 09.06.2022. The Respondent No. 1 failed to adhere on the request made by applicant. The applicant further sent various reminders dated 21.06.2022, 24.06.2022 and 02.07.2022 but Respondent No. 1 paid no heed. Further, the applicant filed an application against the Respondent No.1 in IA – 3187/2022, wherein, this Adjudicating Authority vide Order dated 14.07.2022 and 25.07.2022 directed the Respondent No. 1 to deposit amount of Rs. 2,00,000/- to the applicant but despite such directions the Respondent No.1 has failed to deposit the said amount.

4. It is further averred that, the applicant convened 1<sup>st</sup> CoC meeting on 08.07.2022, and informed the members of the CoC about the actions taken by IRP as contemplated under Section – 18 of the code. Further, in the same

meeting, IRP apprised the members of CoC about the present status of the Corporate Debtor.

5. It is further submitted by the applicant that, the members of CoC abstained from E-voting process on the Resolution discussed in the 1<sup>st</sup> CoC meeting held on 08.07.2022. Further, the members of CoC willingly did not choose to approve the resolution for the appointment of the applicant as Resolution Professional of the Corporate Debtor.

6. The applicant convened 2<sup>nd</sup> CoC meeting on 22.08.2022, wherein the majority shareholder member of CoC i.e., Jammu & Kashmir Bank Limited, having voting rights of 96.58% informed the IRP that they are willing to withdraw their claim of Rs. 21.64 crores against the Corporate Debtor. The Respondent No. 1,3,5 and 6 did not attend the meeting. The applicant, pursuant to the first CoC meeting made the CoC aware of the fact that the Corporate Debtor has no assets and have insufficient funds even to cover the CIRP cost of the Corporate Debtor. The CoC members again abstained from E-voting process.

7. It is further submitted by the applicant that, by the withdrawal of Respondent No.2 being the member of CoC having majority voting shares of 96.58% from the CIR process of the Corporate Debtor has created a deadlock like situation and further brought the CIR process to dead-end as rest of the members of the CoC having voting share of merely 4.22% cannot even bear the cost of CIR process of the Corporate Debtor. The CoC members has further failed to ratify the CIRP cost borne by IRP and fee of the IRP in accordance with the Regulation 33 and Regulation 34B of the IBBI (CIRP) Regulations, 2106.

8. In response to the averments and submission made the applicant, Respondent No. 2, 3 & 4 have filed their reply as being the members of the CoC.

**REPLY OF RESPONDENT NO. 2 (Jammu & Kashmir Bank Limited)**

9. It is submitted by the Ld. Counsel appearing for the Respondent No.2 that, the Corporate Debtor has availed various credit facilities aggregating to the tune of Rs. 23,87,72,000/- and the outstanding balance is Rs. 24,26,63,811/- as on 30.04.2023 in the loan account of the Corporate Debtor. The Corporate Debtor failed to repay the credit facilities availed from the Respondent No. 2 and the account of Corporate Debtor was declared as NPA. The application was filed under Section – 9 of IBC, 2016 by the Respondent No. 1 (M/s. Hind Tradex Limited) against the Corporate Debtor and same was admitted by this Adjudicating Authority and applicant was appointed as IRP.

10. It is further submitted that, the applicant/IRP in compliance to the Order dated 11.06.2022 invited claims from the creditors of the Corporate Debtor. The Respondent No. 2 being a Financial Creditor/Secured Creditor of the Corporate Debtor submitted a claim of Rs. 21,64,00,000/-. In 1<sup>st</sup> CoC meeting the Respondent No. 2 has duly apprised the Interim Resolution Professional for withdrawal of the claim giving reasons that as per balance sheet of the Corporate Debtor, the Corporate Debtor does not own any fixed assets. In absence of the assets or recoverable form the Corporate Debtor and insufficient funds to even cover the CIRP cost, there would be no sagacity to pursue claim filed by the Respondent No. 2.

11. It is further averred that, no directions have been passed by this Adjudicating Authority with reference to the payment to be made to the

Applicant/IRP. It is the responsibility of the Operational Creditor to pay the due amount to the Applicant/IRP not the Respondent No. 2.

**REPLY OF RESPONDENT NO. 3 (Fair Securities Private Limited)**

12. It is submitted by the Ld. Counsel appearing for the Respondent No.3 that, Respondent no. 3 is a Financial Creditor of the Corporate Debtor. The respondent no. 3 did not get any intimation regarding the formation of CoC as contemplated under IBC, code. Further, submitted that the Respondent no. 3 was not aware about the E-voting process and for the same reason not able to attend any voting process and on these reasons the Respondent No.3 prayed that Corporate Debtor should refund the claim amount to the Respondent No. 3.

**REPLY OF RESPONDENT NO. 4 (Vibhor Management Private Limited)**

13. It is submitted by the Ld. Counsel appearing for the Respondent No.4 that, as Respondent No. 2 i.e., Jammu & Kashmir Bank Limited having shares of 95.78% in the CoC, informed the IRP about the withdrawal of claim against the Corporate Debtor therefore, there is a deadlock like situation in continuing the CIR process. The Respondent No/4 are unsecured Creditor of M/s. AGL Televentures Private limited having nominal 2.15% voting rights in CoC, and are unable to bear entire cost of CIRP of the Corporate Debtor and intends to withdraw from CIRP.

14. We have heard the argument advanced by the Ld. Counsel appearing for Resolution Professional as well as for the Respondents.

15. In the light of the arguments advanced and the documents submitted before this Adjudicating Authority, one important questions which arise for our consideration is: -

I. In this situation of a 'deadlock' who will bear the IRP fees claim and expenses incurred in the CIRP proceedings.

16. At this outset, we would like to refer the relevant provisions of IBC code, IBBI (Insolvency Professionals) Regulations, 2016 and CIRP Regulations, 2016: -

**“Section 5(13) of IBC reads as under:**

*(13) Insolvency Resolution Process Costs” means – (a) the amount of any interim finance and the costs incurred in raising such finance;*

*(b) the fees payable to any person acting as a resolution professional;*

*(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;*

*(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and*

*(e) any other costs as may be specified by the Board;*

**Section 208(2) reads as under:** 208. (2) Every insolvency professional shall abide by the following code of conduct: –

*(a) to take reasonable care and diligence while performing his duties;*

*(b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;*

*(c) to allow the insolvency professional agency to inspect his records;*

*(d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and (e) to perform his*

*functions in such manner and subject to such conditions as may be specified.*

**Costs of the interim resolution professional.**

**33.** (1) *The applicant shall fix the expenses to be incurred on or by the interim resolution professional.*

(2) *The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).*

(3) *The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.*

(4) *The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs. Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the interim 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 interim resolution professional.*

**Resolution professional costs.**

**34.** *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.*

17. In the light of statutory provisions and the regulations contained thereunder relating to the fees/expenses of the IRP, for a better appreciation of the matter at hand, we may also take note of some of the significant dates

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of the present case. It is an admitted fact that, the CIRP commencement date was 09.06.2022. Further, it is noted that, IRP had issued a public announcement in the prescribed Form 'A' on 11.06.2022 in accordance with CIRP Regulation 6. Applicant/IRP made public announcement as stipulated under the provisions of Section – 15 of the code and invited claims from all the creditors. The applicant/IRP further sent various reminders dated 21.06.2022, 24.06.2022 and 02.07.2022 but Respondent No. 1 (Operational Creditor) failed to provide mandatory amount of Rs. 2,00,000/-. We have no hesitation to hold that, the IRP had discharged his duties as IRP with due diligence and with reasonable care. It is pertinent at this stage to refer decision of **Hon'ble NCLAT in Shri Guru Containers vs. Jitendra Palande (Company Appeal (AT) (Ins.) No. 106 of 2023**. The relevant paragraph is reproduced below for reference: -

*“16. We do not hesitate to add that though the scope of CIRP related work became limited and restricted by the fact that progress got stonewalled due to lack of flow of information and lack of claims, diligence on the part of the IRP in proceeding with the CIRP cannot be found to be wanting. Shifting the entire blame on the IRP on grounds of non-performance of duty and making him the scapegoat does not appear to be justified. **It is equally important for the creditors to play a catalytic role in the insolvency resolution process given the present regime of creditor-driven IBC. The rigours of similar standards of discipline should also apply on the creditors. This is clearly a case where the CIRP process was being hindered due to want of cooperation and participation from the creditors. The conduct of the Operational Creditor in the present case is deprecatory in that once the CIRP process had commenced, the Operational Creditor went into a sleeping mode.** This position has been further aggravated by the fact that it was the Appellant/Operational Creditor who had triggered this judicial process and then abdicated himself from all responsibilities.”*

“18. This brings us to the question as to who will bear the CIRP expenses in the present case. CIRP Regulation 33 clearly provides that the **applicant** shall bear the expenses to be incurred by or on the IRP. In the present case, when the Operational Creditor had initiated the CIRP proceedings which had led to the appointment of the IRP. Given these peculiar circumstances, we are of the considered view that in terms of Company Appeal (AT) (Insolvency) No.106 of 2023 14 the statutory construct of IBC, it is the Operational Creditor who is liable to bear the expense/fees of IRP in the present case.”

18. Thus, having regard to the conspectus of all relevant facts and circumstances and the judgement cited **supra**, we are of the considered view that, it is the Operational Creditor who will bear the IRP fees claim and expenses incurred in the CIRP proceedings. The CIRP Regulation 33 of course also provides that the reimbursement would be to the extent it is ratified by the CoC. We also make it clear that, the IRP is entitled only towards fixed fee for the period for which the CIRP had continued. This Adjudicating Authority is allowing amount/expenses as per the recorded minutes of CoC meeting held on 22.08.2022 which are as follows: -

Details of expenses	Amount (Rs.)
Professional fee of the Interim Resolution Professional for the interim resolution process period of two months	3,00,000
NCLT filing fees of Formation of Committee of Creditors & Application against the Operational Creditor.	2000
INC- 28 with ROC and Filing charges	1500
Publication of Public Announcement	7,938
Dispatch of Letters to Statutory Authorities	200
Travelling Expenses & Miscellaneous Expenses	3100
E-voting Expenses	4720
<b>TOTAL</b>	<b>3,19,458/-</b>

19. We also hold that, all the objections are raised by the Respondents are neither tenable on the eyes of law nor on facts. As Respondent No. 2 has raised objection that the Applicant/IRP is seeking expenses for the conveyance and other expenses which is not all rational and payable as no fruitful work has been concluded by the applicant and it is the Operational Creditor's duty to pay the expenses. We have already decided this issue on merits by taking into consideration the date/events and observed that, the IRP has discharged his duties with due diligence and with reasonable care and as per Rule 34 it is the duty of the committee to fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs. Further, we do not find force in the contention raised by the Respondent no. 3 that they did not get any intimation regarding the formation of CoC as contemplated under IBC, code. We have no hesitation to hold that, just to hide their own inability the Respondent no. 3 has submitted a fabricated fact and a feeble attempt to shift all the burden on the Applicant/IRP. The Respondent no. 4 *per se*, has not raised any such objection.

20. The Applicant in the present application has also prayed that the direction for withdrawal of the main case IB – 218/ND/2020 should be granted since, none of the members of CoC are willing to continue with the CIR process. Further, placed on record email dated 14.09.2022 sent by CoC member (Jammu & Kashmir Bank) holding 96.58% voting right. The extract of the email is reproduced below for reference: -

*Dear Sir,*

*This is with reference to your trailing mail, in this context, please be informed that as per the direction of our Competent Authority we (JK Bank) is withdrawing of the CIRP proceedings initiated against the Corporate Debtor viz M/s AGL Televenture Pvt Ltd by operational creditor viz M/s. Hind Tradex Ltd. You are requested to kindly proceed further accordingly in the said matter.*

*Kindly acknowledge the receipt.*

*With Regards,  
Chief Manager / Branch Head  
Impaired Asset Recovery Branch JAMMU & KASHMIR BANK.*

21. Thus, it is clear that, none of the members of CoC are willing to continue with the CIR process. It is settled proposition of law that for withdrawal of the main matter a proper withdrawal application has to be filed before this Adjudicating Authority. In this strange and odd situation there is no provision of law which empowers this Adjudicating Authority to allow the withdrawal of the main matter as, no withdrawal application has been filed by parties. The IRP is directed to file a proper application before this Adjudicating Authority. The decided amount to the IRP should be paid within one week from the date of uploading this order.

22. In the above mentioned terms I.A – 4941 (ND) 2022 stands, ***disposed of***.

**SD/-**

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

**SD/-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**