

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-IV
AT NEW DELHI

I.A. 4547/ND/2021

IN

Company Petition No. (IB) – 1635(ND)/2018

In the matter of:

Diwan Chand Arya

...Applicant

Versus

Sikkim Hydro Power Ventures Limited

....Respondent/Corporate Debtor

In the matter of:

AF Consult Pvt. Ltd

...Applicant/Operational Creditor

Versus

Sikkim Hydro Power Ventures Limited

....Respondent/Corporate Debtor

Order delivered on: 06.06.2022

CORAM:

SHRI. DHARMINDER SINGH RATHORE, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per: SHRI DHARMINDER SINGH RATHORE, HON'BLE MEMBER (J)

Instant IA/4547/2021 has been filed on behalf of the applicant/erstwhile RP seeking direction against the respondent to pay the fees and the expenses incurred by the applicant during CIRP proceeding of the Corporate Debtor.

2. Briefly stated that this Tribunal vide order dated 30.07.2020 admitted the application under Section 9 of the Code against the Corporate Debtor. Accordingly, directed to initiate CIRP

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11/07/22

proceeding against the Corporate Debtor. The present applicant was appointed as IRP who was later on confirmed as a RP. However, during the pendency, the CoC was not satisfied with the performance of the present applicant accordingly, decided to move an application for appointment of another RP i.e. Mr. Devvart Rana, which was accepted. Accordingly, the present applicant was discharged from his duties, and Mr. Devvart Rana, was appointed as RP.

3. Further, it is submitted on behalf of the applicant that in the first CoC meeting of the professional fees has been fixed as Rs. 5 lakhs per month. However, later on the CoC again held the meeting and stated that the above said 5 lakhs are not being confirmed on the applicant has been left with only Rs. 2 lakhs which was paid in advance on appointment of the IRP in the present matter. Accordingly, prayed for directing the respondent to pay the fees/costs i.e. Rs. 21,58,195/- as a IRP/RP till 11.11.2020.
4. On the other hand, the detailed reply has been filed on behalf of the respondent/RP as the Corporate Debtor denying the pleadings made in the present application and submitted that CoC has called first meeting and vide e-mail 23.10.2022,

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called upon the IRP to call the meeting to rectify the costs of the IRP, which are incurred by Mr. Diwan Chand Arya, IRP and to reduce the notice period of future meetings and to consider to appoint Mr. Diwan Chand Arya, IRP as the RP, however, the CoC unanimously passed the following resolution, whereby resolved that the voting result circulated on 09.10.2020 for the meeting held on 04.09.2020 stands declared as null and void.

5. Further, it is submitted that IRP did not hold the meeting in terms of the request made by the CoC and also did not record objection of the conduct of voting of first CoC meeting. Therefore, the CoC, government of Sikkam moved an application bearing No.IA/4857/2020 under Section 22 of the Code replacing the IRP as there were serious lapses on his part. Accordingly, by subsequent order dated 11.11.2020, this Tribunal allowed the IA/4857/2020 under Section 22 of Code for replacement of Resolution Professional. The said order was challenged by the erstwhile IRP claiming that the order dated 11.11.2020 was not passed in conformity with the provision of the IBC Code, the said appeal was dismissed vide order dated 23.11.2020 and it is recorded by the Hon'ble NCLAT that the

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conduct of the IRP was disapproved by the CoC as the IRP has lost his confidence then the erstwhile IRP has not vested right of foisting himself upon CoC for the continuance. Therefore, the amount of Rs. 2 lakh is sufficient for the work done by the applicant herein. Accordingly, prayed for dismissal of the present application herein. Heard the record has thoroughly perused. Apparently, the CIR proceeding were order to be initiated on 30.07.2020 and Mr. Diwan Chand Arya, was appointed as IRP in the present matter. No doubt, in the first meeting, CoC approved the fees of IRP as Rs. 5 lakh per month, but apparently, the IRP was not conducting this proceedings properly, accordingly, this Tribunal vide order dated 11.11.2020 replaced the RP and Mr. Devvart Rana, was appointed as RP. Hence, the present applicant has worked as IRP/RP for a period of approximately 3 months. Except calling the meeting, making public announcement and receiving the claim, nothing concrete has been done by the applicant. Although, it is being stated in the applicant that the expenses were born on professional fees of engaging the counsels for moving an application under Section 19(2) as well as filing the appeal before the NCLT and defending the application filed by

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the CoC for the placement of the RP and the lawyers have been paid approximately Rs. 55,000/- for each application. Apart that the public announcement has been made. The details of the bill which has been filed born is as under:-

Sr. No.	Particulars	Date	Amount (in Rs.)	Status
1.	Professional Fee of the Applicant as IRP for the period from 05.08.2020 to 04.09.2020	10.10.2020	5,00,000/-	Pending
2.	Professional Fee of the Applicant as IRP for the period from 05.09.2020 to 04.10.2020	10.10.2020	5,00,000/-	Pending
3.	Professional Fee of the Applicant as IRP/RP for the period from 05.10.2020 to 04.11.2020	05.11.2020	5,00,000/-	Pending
4.	Professional Fee of the Applicant as RP for the period from 05.11.2020 to 11.11.2020	11.11.2020	5,00,000/-	Pending
5.	Expenses incurred for public announcement	-	37,905/-	Paid
6.	Expenses incurred in verification of Form 28	-	2,000/-	Paid
7.	Out of pocket expenses	-	4,290/-	Paid
	Less: Advance Received		(2,00,000/-)	
	Counsel Engaged			
8.	Professional fee of the counsel engaged by the applicant for IA No. 4193/2020 filed before this Hon'ble Tribunal	08.09.2020	50,000/-	Pending
9.	Professional fee of the counsel engaged by the applicant for Appeal No. 825/2020 filed before this Hon'ble NCLAT	30.09.2020	55,000/-	Pending
10.	Professional fee of the counsel engaged by the applicant IA No.	17.10.2020	55,000/-	Pending

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	4758/2020 filed before this Hon'ble Tribunal			
11.	Professional fee of the counsel engaged by the applicant.	28.10.2020	55,000/-	Pending
12.	Professional engaged fee charged by Sanjay Singh vide no. 25 for the period from 05.08.2020 to 04.09.2020	12.10.2020	40,000/-	Pending
13.	Fee charged by M/s Balwinder Singh & Associates vide Bill No. 013/CHD/2020-21 for the period from 05.08.2020 to 04.09.2020	01.11.2020	59,000/-	Pending
	Total Outstanding		21,58,195/-	

6. On perusal of the above said bills, it is apparent that mere for simple applications and filing an appeal before the NCLT, the lawyers have been given an exorbitant fees i.e. of Rs. 55000/- in each case, (50,000+ 55000+ 55000+ 55000+ 40000+ 59000 = 3,14,000/-). Whereas, the applicant demanded Rs. 5 lakhs per month as his profession fees for the period 05.08.2020 to 11.11.2020. CoC though in the first meeting said that the applicant herein is entitled to Rs. 5 lakhs per month, but from the perusal of the entire bill details, which have been mentioned above. It is apparent that the same is exorbitant enough as the applicant herein did not perform his complete work during these three months.

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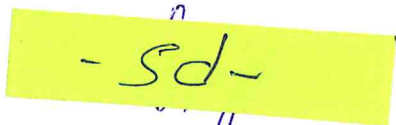
7. Unjust enrichment cannot be permitted. Certainly, the applicant herein being IRP/RP has contested the application, and also born expenses for public announcement. Hence, he is entitled to that amount as well as his personal/professional fees. So far as, the personal/professional fees is concerned, taking into consideration the work done by the applicant herein, he is entitled to Rs. 1 lakh per month. As the applicant worked for three months, therefore, his fees are assessed Rs. 3 lakhs. Whereas, the engaged advocate fees as well as expenses are hereby assessed at the rate of Rs. 25,000/- each. The applicant herein got contested five application through different advocate, therefore, he is entitled to Rs. 1,25,000/- towards the advocates fees and expenses. Apart that, he has spent an amount for public announcement etc. i.e. comes out of Rs. 44,195/-. Hence, in all, the applicant is entitled to Rs. 3,00,000+ 1,25,000+ 44,195= 4,69,195/-. The applicant herein has already received sum of Rs. 2 lakhs at the time of appointment as IRP in the present matter. Therefore, after deducting the said amount, the applicant is entitled to Rs. 4,69,195 - 2,00,000 = Rs. 2,69,195/-.


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8. Consequently, the present application stand accepted partly with the direction to CoC to make the above said payment within 15 days.

File be consigned to records.


(SUMITA PURKAYASTHA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)