

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

CA.1192/ND/2020

IN (IB)- 1374(ND)2018

**APPLICATION UNDER SECTION 60(5) OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016 AND RULE 11 OF THE NATIONAL COMPANY
LAW TRIBUNAL RULES, 2016**

IN THE MATTER OF:

MR. GAUTAM SINGHAL

...ERSTWHILE INTERIM RESOLUTION PROFESSIONAL

VERSUS

NOBLE COOPERATIVE BANK LIMITED &ORS

...RESPONDENTS

AND IN THE MATTER OF:

M/S. ANHUI TECHNOLOGY

IMP & EXP CO.LIMITED

....OPERATIONAL CREDITOR

VERSUS

M/S PANTEL TECHNOLOGIES PVT LTD

....CORPORATE DEBTOR



CORAM:

DR. DEEPTI MUKESH
HON'BLE MEMBER (Judicial)
SMT. SUMITA PURKAYASTHA
HON'BLE MEMBER (Technical)

MEMO OF PARTIES

MR. GAUTAM SINGHAL
FORMER INTERIM RESOLUTION PROFESSIONAL
OF M/S PANTEL TECHNOLOGIES
PRIVATE LIMITED

...Applicant

VERSUS

NOBLE COOPERATIVE BANK LIMITED

...Respondents No.1

M/SPANTEL TECHNOLOGIES PRIVATE LIMITED

...Respondent No. 2

M/S ANHUI TECHNOLOGY IMP & EXP PVT LTD

...Respondent No.3

For the Respondent : Mr. Govind Bhardwaj, Adv for R-1,

Ms. NikshubhaSethi, Advocate for R-2

For the RP/IRP :

Mr. Gagan Gulati,

Ms.Pooja Mahajan,

Mr.Savar Mahajan,

Mr.Chandhiok Mahajan Advocates

ORDER

As Per Smt. Sumita Purkayastha, Member (Technical)

1. I.A. No. 1192/2020 has been filed under rule 11 of NCLT Rules, 2016 by the IRP seeking following prayers:
 - I. Fix the fees of the applicant/IRP for the period from 19.10.2019 till 07.01.2020 and to decide about the person liable to pay the said fee of the IRP and also to decide the person who will pay the expenses incurred during the CIRP period.
 - II. Pass such other order, which the Adjudicating Authority deem fit and proper in the facts and circumstances of the case.
2. The application for initiating CIRP was filed by M/S Anhui Technology Imo & Exp Co. Ltd Ltd. against the Corporate Debtor M/S Pantel Technologies Pvt Ltd under Section 9 of the IBC, which was admitted by the Adjudicating Authority vide order dated 19.09.2019 and appointed Mr. Gautam Singhal as the IRP.
3. The Applicant constituted the Committee of Creditors with the sole Financial Creditor i.e M/S Noble Cooperative Bank ltd. The first meeting of CoC was held on 17.10.2019. The applicant placed before the CoC members a list of expenses incurred by him from



the date of his appointment as IRP for approval. The CoC discussed, approved and ratified the expenses of Rs. 83,032/- incurred by the applicant. The CoC further approved an amount of Rs. 1, 25,000/- as the fee of the applicant for his tenure of 30 days as the IRP and that was paid out of the amount of Rs. 2,00,000/- remitted by the Operational Creditor. The CoC further passed a Resolution to replace the IRP/applicant and appoint Mr. Anup Kumar as the Resolution Professional.

4. It is submitted that M/S Noble Cooperative Bank Limited filed an application bearing no. 478/2019 before the Adjudicating Authority to replace the applicant with Mr. Anup Kumar as the Resolution Professional. The said application could not be decided till 07.01.2020 therefore, the applicant/IRP kept performing the functions of the RP in terms of regulation 17(3) of the Code. The Applicant further conducted the Second meeting of the CoC on 07.12.2019 which was adjourned due to absence of Quorum.
5. The Applicant then circulated the notice and agenda to the members of the CoC for third meeting of the CoC on 13.12.2019. The applicant conducted the third meeting of the CoC on 13.12.2019 and apprised the CoC about the actions taken by the Applicant as the IRP from 17.10.2019 till 11.12.2019 the applicant placed a list of expenses incurred amounting to Rs. 97,028/- which were ratified by the CoC. The Applicant proposed for approval of fee



of Rs. 4,00,000/- per month plus applicable taxes from 19.10.2019 till appointment of the RP however, the CoC proposed the professional fee of Rs. 1,25,000/- per month plus applicable taxes from 19.10.2019 the sole member of the CoC cast its vote against the resolution pertaining to the fee of the applicant.

6. Further it is submitted that one of the suspended members of the board of directors of the Corporate Debtor had filed an appeal bearing no. **1090/2019 titled Suman Chakraborty V/s Anhui Technology Imp & Exp Co. Ltd** before the Hon'ble NCLAT wherein the Hon'ble NCLAT vide its order dated 07.01.2020, set aside the order dated 19.09.2019 of the Adjudicating Authority and dismissed the application under Section 9. The Hon'ble NCLAT further directed the IRP to hand over the assets and record to the promoters/directors and also remitted back the case to the Adjudicating Authority to determine the fees, cost and expenses incurred by the IRP.
7. The Adjudicating Authority vide order dated 04.03.2020 issued notice to the Respondents and M/S Noble Cooperative Bank Ltd the Respondent No. 1 filed its reply on 29.12.2020. The Respondent No. 1 submits that the Applicant has proposed an exorbitant fee of Rs 4,00,000/- per month plus applicable taxes for the assignment of acting as IRP knowing the fact that the Corporate Debtor did not have any operational business activity going on, nor there was any



cash liquidity in the company. Considering the liquidity and financial feasibility of the said issue, the Respondent No. 1 being the sole Financial Creditor, decided and approved a professional fee of Rs. 1,25,000/- plus applicable taxes for his tenure as IRP. The Applicant further sought CoC's affirmation and consent for confirming the appointment of the Applicant as RP with the monthly remuneration of Rs. 4,00,000/- plus taxes. Considering the exorbitant fee the Respondent did not confirm the appointment of the IRP as the RP and proposed a resolution for appointment of Mr. Anup Kumar as the RP with a monthly fee of Rs. 2,00,000/- plus taxes.

8. It is further submitted by the Respondent No. 1 that the Applicant convened third CoC meeting on 13.12.2019 wherein the Applicant had apprised about the appointment of 4 Registered valuers namely Mr. Alok Kaushik, Mr Pradeep Kumar, Mr Anil Rustagi and Mr. Ajay Kumar Siwach for a professional fee of Rs 75,000/- plus GST for each of the registered valuers. The Applicant had also appointed a Forensic Auditor Ms. Shilpi Sikka (Chartered Accountant) for a professional fees of Rs. 5,00,000/- including GST and other taxes. The applicant had also appointed a chartered accountant Mr. Ankit Gupta for a professional fee of Rs 2,00,000/- including GST and other statutory taxes. The Respondent No. 1 submits that the aforesaid professionals were appointed in the month of November 2019 on such higher fee, suo-moto by the



Applicant in the most arbitrary manner without taking in confidence the Respondent No. 1 being the sole Financial Creditor, especially when the Applicant was of the view that there are not enough funds and there is no cash flow in the company to bear the expenses. The above stated view of the CoC is duly documented in the minutes of the meeting. The applicant had fixed the professional fee knowing that the applicant shall be replaced and the application for the same was pending before the Adjudicating Authority.

9. The Respondent No. 1 further submits that in the third CoC meeting dated 13.13.2019 issues relating to raising of interim finance was raised by the Applicant, which were irrelevant as the Hon`ble NCLAT vide order dated 05.12.2019 observed and directed the Applicant that the company remains as an on going concern and the Applicant will take assistance of the (Suspended) board of directors and the employees. There was no locus of appointing professionals at such huge cost during the pendency of the decision of the Hon`ble NCLAT. The appointment of the professionals was never approved, confirmed or ratified by the CoC.
10. The Respondent No. 1 submits that the Applicant had miserably and utterly failed to put forth before the Adjudicating Authority the complete details of work done by his Accounts Team, Forensic Team, Registered Valuers etc., along with their respective reports,



work done status reports as well as the ratification of Applicant himself that whether all work have been completed in terms of the of appointment as well as counter ratification by the sole COC member having 100% voting rights. That the Applicant had utterly failed to present before this Adjudicating authority as well as the Respondent No. 1, the sole COC member, in its instant Application as well, regarding the genuinity of the bills and invoices presented and annexed in its instant application as the said bills were never ever presented before the Respondent No. 1.

11. In order to decide the present issue at hand we would like to refer to the Regulation 33 of the Insolvency Resolution Process Cost Chapter IX :

33. Costs of the interim resolution professional.

(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.]

12. On perusal of the above mentioned Regulation 33(1) & (2), it is understood that the Operational Creditor being the Applicant to the main IB application shall deposit the expenses, initially. As per the minutes of the First CoC meeting held on 17.10.2019, the expenses of Rs 83,032/- made during 19/09/2019 to 17.10.2019 and the fee for the IRP as Rs. 1,25,000/- (approved and ratified) were paid to the IRP out of the Rs. 2,00,000/-.
13. Further expense of Rs. 97,028/- made during 17.10.2019 to 11.12.2019 were ratified in the 3rd CoC meeting dated 13.12.2019 and it was mentioned in ITEM 10 of the minutes of the meeting that the said expenses may be paid by the Corporate Debtor. Furthermore, it was proposed by the CoC that the professional fee for the IRP to be fixed at Rs. 1,25,000/- per month plus applicable taxes from 19.10.2019 till the appointment of the Resolution Professional.
14. The Applicant herein the IRP has also placed on records documents for expense of Rs. 88,474/- made during 12.12.2019 to 07.01.2020. Vide order date 07.01.2020 the Hon`ble NCLAT while setting aside the CIRP of the Corporate Debtor directed the IRP to hand over the assets of the Directors/Promoters of the Corporate



Debtor. The Applicant/IRP has also claimed the handing over charges of Rs. 2500/-.

15. We would like to refer to the judgement dated 06.03.2018 of the Hon`ble NCLAT in the matter of **State Bank of India VS SKC Retails Ltd Through IRP & anr Company Appeal (AT) (Insolvency) No. 08 & 43 AND 09 of 2018.**

The issue raised was **“Whether the Committee of Creditors are liable to bear the expenses incurred by the Insolvency Resolution Professional or not?”**

The Hon`ble NCLAT was of the view that *“the Applicant who has filed the application under Section 7 or 9 of the I & B code is liable to incur the expenses of resolution professional as per sub-regulation (1) of Regulation 33 of Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016. Thus the applicant is liable to bear all the expenses as explained in sub-regulation 4 of Regulation 33, and he can get the amount reimbursed by the Committee of Creditors to the extent the amount ratified by the Committee. The expenses will include all expenses as explained above in clause (4) of Regulation 33.”*

16. We have observed that the expenses of Rs 83,032/- made during 19/09/2019 to 17.10.2019 and the fee for the IRP as Rs. 1,25,000/- (approved and ratified) were paid to the IRP. Further

the fee of the IRP has already been ratified by the CoC for Rs. 1,25,000/- per month plus applicable taxes and the expenses of Rs. 97,028/- made during 17.10.2019 to 11.12.2019 were ratified in the 3rd CoC meeting dated 13.12.2019. The IRP has also placed on records documents for expense of Rs. 88,474/- made during 12.12.2019 to 07.01.2020 however, the same could not be ratified as the CIRP was set aside and CoC meeting could not be conducted for the same. While considering the above mentioned judgement passed by the Hon`ble NCLAT, We are of the view that the Applicant who has filed the application under Section 7 or 9 of the Code i.e Respondent No. 3 in the present application is liable to bear all the expenses as explained in sub-regulation 4 of Regulation 33, and he can get the amount reimbursed by the Committee of Creditors i.e Respondent No1. Hence, the IRP shall be paid his profession fee i.e Rs. 1,25,000/- per month plus taxes and all expenses from 17.10.2019 to 07.01.2020.

17. Application CA.1192/ND/2020 is allowed and disposed of in terms of the above order.
18. Let the copy of the order be served to both the parties.

SD/-

Sumita Purkayastha

Member (T)

SD/-

Dr. Deepti Mukesh

Member (J)