

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH : COURT-IV**

**IA-3007/2023 IN C.P.(IB)-197/(MB)/2018**

Under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 r/w Rule 34 of NCLT  
Rules, 2016.

*Application moved by:*

**Apra Enterprises** ... **Applicant**

**Vs.**

**The Monitoring Agency of Unimark  
Remedies Limited & Ors.**

**... Respondents**

**And**

**IA-2984/2023 IN C.P.(IB)-197/(MB)/2018**

Under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016.

*Application moved by:*

**Bank of Maharashtra** ... **Applicant**

**Vs.**

**Mr. Amit Gupta,** Erstwhile Resolution  
Professional of Unimark Remedies Limited &  
Ors. ... **Respondents**

*In the matter of*

**ICICI Bank Limited**

**... Financial Creditor**

**Vs.**

**Unimark Remedies Limited**

**... Corporate Debtor**

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH : C-IV

IA-3007 & 2984/2023 IN C.P.(IB)-197(MB)/2018

Order Pronounced on : **28.03.2024**

**Coram:**

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

**Appearances in IA-3007/2023:**

For the Applicant(s) : Mr. Mr. Ravi Kadam, Ld. Sr. Counsel a/w  
Mr. Dhruva Gandhi, Mr. Shyam Kapadia  
and Mr. Naishad Bhatia, Advocates.

For the Respondent No.7 : Ms. Grishma Dalvi, Adv.

**Appearances in IA-2984/2023:**

For the Applicant(s) : Mr. Animesh Bisth a/w Mr. Drishti Das  
and Mr. Vivek, Advocates.

For the Respondent(s) : Mr. Pulkit Sharma a/w Mr. Saurabh  
Bachhawat and Ms. Priyanka Pandey,  
Adv.

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. The present Application IA-3007/2023 is filed on 15.07.2023 by the Applicant, Apra Enterprises under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") r/w Rule 43 of the NCLT Rules, 2016 seeking following reliefs:

a) *"That this Hon'ble Tribunal may be pleased to quash the decision of the Respondent Nos. 2 and 3 conveyed to the Applicant vide email dated 10 July 2023 for purported further verification of the CIRP cots;*

b) *That this Hon'ble Tribunal be pleased to direct Respondent No.1 to disburse the amount of Rs.52,46,00,000/- (Rupees Fifty-Two Crores Forty-six lakhs*

- only) to the Applicant, which forms part of the previously approved CIRP costs;*
- c) That pending the hearing and final disposal of the present Interlocutory Application, this Hon'ble Tribunal be pleased to direct the Respondent No.2 and 3 to produce the final audited balance sheet of the Corporate Debtor applicable as on 17 April 2023 as well as the Minutes of the Meeting of the CoC in which the same was approved;*
- d) That pending hearing and final disposal of the present Interlocutory Application, this Hon'ble Tribunal be pleased to restrain Respondent No.2 and 3 from continuing the purported re-verification of the CIRP costs;*
- e) That pending the hearing and final disposal of the present Interlocutory Application, this Hon'ble Tribunal be pleased to pass an order providing ad interim reliefs to the Applicant in terms of prayer clauses hereinabove;*
- f) That this Hon'ble Tribunal be pleased to pass any other Orders(s)/issue any other directions(s) as it deems fit in the interest of justice, equity and good conscience."*
2. The corporate insolvency resolution process ("CIRP") of the Unimark Remedies Ltd. ("Corporate Debtor") is one of the few rare cases under the Insolvency and Bankruptcy Code, 2016 ("Code"), in which an application for approval of the resolution plan ("Plan Approval Application") was filed within 280 days of the start of the CIRP by the Resolution Professional ("RP"), but the entire resolution process hung in the balance due to multiple litigations filed by various parties, opposing the Resolution Plan. All such objections were successfully and diligently defended by the RP, and it was only on 17 April 2023 ("Plan Approval Order") (after more than 5 years of admission of the Corporate Debtor into CIRP), that the Resolution Plan was

approved by this Hon'ble Adjudicating Authority. After approval of the Resolution Plan, the Monitoring Agency of the Corporate Debtor was constituted in compliance with the Resolution Plan to overlook and facilitate the implementation of the Resolution Plan.

3. The Ld. Counsel for the Applicant submits that the Hon'ble NCLAT in its judgment in Company Appeal (AT) (Insolvency) No.839/2023 arising out of order dated 17.04.2023 passed by this Bench approving the resolution plan in the case of Corporate Debtor, considered the decision of this Bench stated para 6.2 of the order dated 17.04.2023, which reads as follows:

*"6.2. We find that exorbitant increase in CIRP cost is attributable to monthly losses in the manufacturing operations of the Corporate Debtor during the CIRP period due to low capacity utilization and high employee costs. We clarify that our observation in relation to CIRP costs should not be taken as our approval of CIRP cost claimed by the Resolution Professional in the submissions before us and the CoC shall be competent to determine the quantum of CIRP costs payable under the plan."*

4. The Hon'ble NCLAT has discussed at page 19 of the order dated 19.12.2023 and as stated that *"We, however, notice the submission of the Resolution Professional that Resolution Professional has obtained Audit Report regarding the CIRP costs and CIRP cost of INR 92.41 crores is now approved. In paragraph 4.26 and 4.27 of the reply of the Resolution Professional, following has been stated:*

*4.26. It is submitted that for audition the CIRP costs, the Answering Respondent had appointed N.V. Dand & Associated ("N.V.Dand") on 4 January 2023 to conduct a detailed audit of all CIRP cost incurred by the Corporate Debtor during the CIRP period. Notably, initially N.V.Dand had submitted its audit report till 31 December 2022. However, basis request from the CoC members, and undated report was submitted by N.V. Dand on 13 June 2023, auditing the CIRP costs for*

*the entire duration of CIRP. The said report was also shared by the Answering Respondent with the Monitoring Agency on 19 June 2023 and the CoC on 16 June 2023.*

*4.27. Upon such audit being completed, pursuant to the directions of the Hon'ble Adjudicating Authority in the plan Approval Order, the Answering Respondent duly convened a CoC meeting on 16 June 2023 and placed the audited CIRP costs before the CoC for its consideration. After detailed discussions, the CoC approved the audited CIRP costs to the extent of INR 92.41 Crores (including the amounts payable to the Appellants). Copy of the minutes of the 43<sup>rd</sup> CoC meeting is annexed as details of the outstanding dues of the Appellants during the CIRP period is annexed as Annexure-R1.*

*20. The audited Report has also been approved by the CoC towards the CIRP costs to the extent of INR 92.41 crores, as submitted by learned Counsel for the Resolution Professional, we are of the view that no approval of the CoC was required for payment of the said CIRP cost. The audited Report was obtained by the Resolution Professional to satisfy himself and to obtain a confirmation of his determination of the CIRP cost by an Auditor, which having been done, no further approval of the CoC was required for payment of CIRP cost. We, thus, are of the view that directions issued by the Adjudicating Authority in paragraph 6.2, empowering the CoC to redetermine CIRP cost deserves to be set aside and is hereby set aside."*

5. Accordingly, the Hon'ble NCLAT held at para 25 of the order that direction contained in para 6.2 of the impugned order is set aside. It was also submitted by the Counsel that this order has not been challenged before the Hon'ble Supreme Court till date and has attained finality. Accordingly, it was contended by the Counsel for the Applicant submitted that the present application seeking disbursement of claim towards CIRP cost having been determined by RP and approved by CoC while approving the plan we released without any further delay.

6. The Bank of Maharashtra, Financial Creditor filed an Application IA-2984/2023 on 14.07.2023 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") seeking following reliefs:

- a) *“to issue appropriate directions for appointment of a forensic auditor to review the transactions with Apra Enterprises and review the expenses incurred and payable to Apra Enterprises during the CIRP period;*
- b) *to issue appropriate directions to Respondent No.1- the RP, Respondent No.2- the Monitoring Agency and Respondent No.3- the Resolution Applicant to not make any payment to Apra Enterprises, unless specifically approved by the Applicant and Respondent Nos.4 to 18 (being the members of the CoC of the Corporate Debtor), as per the provisions of the Code;*
- c) *pending hearing and final disposal of this Application, to issue appropriate directions to Respondent No.1- the RP, Respondent No.2- the Monitoring Agency and Respondent No.3- the Resolution Applicant to implement the resolution plan including by (i) making payment of CIRP costs, except for any costs to Apra Enterprises, as well as (ii) payments to all creditors including the Applicant per the terms of the Resolution Plan in an expedited manner and without any further delay;*
- d) *pending hearing and final disposal of this Application, withhold amounts attributable as payable to Apra Enterprises in an escrow account to be managed by Respondent No.2- the Monitoring Agency and to be held in trust for the benefit of the financial creditors during the implementation of the Resolution Plan; and*
- e) *to pass any such other orders as this Hon'ble Tribunal deems fit in the facts and circumstances of the case”.*

7. The prayer in IA/2984/2023 pertains to the amount of CIRP cost claimed by the applicant in IA-3007/2023, accordingly, both the IAs are dealt with in this order.
8. We have heard the Ld. Counsel and perused the material on record.
9. In view of huge CIRP cost constitute approximately 70% of resolution money this Bench had directed granted a liberty to CoC to determine the CoC cost even though the same had already been approved in terms of the resolution plan. The Hon'ble NCLAT has set aside these directions holding that it is the RP who has determined the CIRP cost and no such power can be vested in the CoC to do so. This Bench is bound by the decision of Hon'ble NCLAT in this respect accordingly is of the view that the money payable to the applicant as CIRP cost in terms of the approved resolution plan cannot be held back any further. In the light of said decision, we cannot take into consideration alleged manipulation in the amounts admitted to be payable by the Resolution Professional to the Applicant by some of the Financial Creditor who had undertaken forensic audit taking a cue from the directions at para 6.2 of the order dated 17.04.2023. Accordingly, we direct the RP to release the amount of the CIRP cost as due and payable in accordance with the approved resolution plan.
10. In view of above discussion, IA-3007/2023 is **allowed** and IA-2984/2023 is **dismissed**. Both the IAs are **disposed of**.

Sd/-  
PRABHAT KUMAR  
MEMBER (TECHNICAL)

Sd/-  
KISHORE VEMULAPALLI  
MEMBER (JUDICIAL)