

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-4144/2022
In
IB-1018(ND)/2020

IN THE MATTER OF IB-1018(ND)/2020:

Mr. Amit Goel

..... **Financial Creditor**

Versus

M/s. CMYK Printech Limited

..... **Corporate Debtor**

AND IN THE MATTER OF IA-4144/2022:

Mr. Shailendra Singh

..... **Applicant**

Versus

Committee of Creditors- M/s. CYMK Printech Ltd. & Ors.

..... **Respondents**

Order Pronounced On: 28.02.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

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

PRESENT:

For the Applicant : Ms. Swaralipi Deb Roy, Adv.

For the Respondent :

ORDER

PER:ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by Mr. Shailendra Singh, the Applicant on 23.08.2022 under Regulations 31 and 33 of the Corporate Insolvency Resolution Process Regulation read with Rule 11 of National Company Law Tribunal Rules, 2016 and other applicable provisions of the Insolvency and Bankruptcy Code, for seeking the following reliefs:

“a) Pass directions under Regulation 31 and 33 of the corporate insolvency Resolution Process Regulation read with rule 11 of National Company Law Tribunal Rules 2016 and other applicable provisions of

the Insolvency and Bankruptcy Code to clear the professional dues of the applicant (as per para 7) amounting to Rs. 7,63,600.00/- (Rupees Seven Lakh Sixty-Three Thousand and Six Hundred Only), which form part of the CIRP expenses along with the cost of litigation of Rs. Two Lakh to be paid to the applicant, or as per discretion of this Hon'ble Tribunal.

b). Pass any other order as deem fit and proper to this Hon'ble Tribunal.”

2. Brief Background of the Case:

The facts which are relevant for the purposes of determination of the issues involved in this application are stated as under:

- i.** An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. Mr. Amit Goel, against the Corporate Debtor i.e. M/s. CMYK Printech Limited and the said application was admitted by this Adjudicating Authority vide order dated 19.01.2021 and a moratorium was declared including the appointment of Mr. Ranjeet Kumar Verma as an Interim Resolution Professional. Subsequently, the present Respondent No. 2 was confirmed as Resolution Professional in terms of Section 22 of IBC.

3. Submissions of the Applicants:

- i.** The Applicant vide letter dated 31.07.2021 shared a fees schedule with Mr. Ranjeet Kumar Verma, the Erstwhile Resolution Professional. Mr. Ranjeet Kumar Verma vide letter dated 02.08.2021, in pursuance of his powers under Section 17 of the Insolvency and Bankruptcy Code, 2016 and under Section 20(2)(a) was pleased to appoint Mr. Shailendra Singh as the counsel for IRP. The said appointment was

also informed to the Committee of Creditors in a meeting dated 27.09.2021.

- ii.** It is stated that the Applicant raised 4 cheques (Bearing Number 51287, 504479, 504481 and 504480) wherein only one cheque was honored (Bearing number 512875), while the other cheques were dishonored. The said information was duly brought into the knowledge of COC and RP, however, no action was taken in this regard. A Copy of dishonored cheques is filed along with the application.
- iii.** During the time as counsel for then IRP, Mr. Ranjeet Kumar Verma raised a total bill amounting to Rs. 8,20,712/-, out of which Rs. 57,112/- was paid vide cheque no. 512875 whereas the remaining amount of Rs. 7,63,600/- is still pending till date. The summary of bills is filed along with the application.
- iv.** The Applicant has been requesting the RP and COC to clear the professional charges of the Applicant to be cleared at the earliest. Via mail dated 24.02.2022, it was informed by the RP that payments for the appointments of consultants done by then IRP have been put on hold by the COC. Since 14.04.2022, the Applicant has not received, even though follow up email seeking information on the same was sent by the Applicant on 04.06.2022. It appears that the RP and COC are trying to evade their liability to pay the due professional fees to the Applicant.

4. Submissions of the Respondent:

- i.** The Respondent No. 2 has filed a reply affidavit denying the allegations made by the Applicant and stated that it appears that the amount, payable, if any, shall be paid by the Respondent No. 3 who appointed the Applicant without obtaining consent and approval of the CoC in terms of provisions of the Code.

- ii.** It is the case of the Respondent No. 2 that the Applicant has placed minutes of CoC dated 27.9.2021, which is the first CoC Minutes in CIRP of the Corporate Debtor wherein under the head 'Appointment of Legal Advisor'- the name of the Applicant has been mentioned in last sentence mentioning therein 'now Shailnder Singh is assisting the Interim Resolution Professional'.
- iii.** It is further stated that no resolution or proposal for the appointment of the Applicant as legal counsel was placed by the IRP nor such a document is placed by the Applicant with the application under reply. Further, the Respondent No. 3 has withdrawn more than Rs. 70 lacs from the bank account of the Corporate Debtor without the approval of the CoC of the Corporate Debtor, which is an illegal act contrary to the provisions of the Code.
- iv.** It is submitted that the Corporate Debtor can make the payments only of those costs which are approved or ratified by the CoC of the Corporate Debtor in accordance with the Code. It is also a provision in the Code that the cost and fee of IRP to the extent or which is not ratified or approved by the CoC, shall be payable by the applicant on whose application the IRP was appointed.

5. Analysis and Findings:

- i.** We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondent. We have also perused the records.
- ii.** Admittedly, the Applicant did not produce any document before this Adjudicating Authority qua his appointment by the CoC of the Corporate Debtor as indicated in the email dated 06.01.2022.
- iii.** We find that the letter dated 02.08.2021 issued by the Respondent No. 3 was without the due approval of the CoC of the Corporate Debtor and therefore in the absence of such approval of CoC, the cost

associated with the letter dated 02.08.2022 cannot be considered as CIRP Cost as contemplated in the Code.

- iv.** We are of the considered view that the fee demanded by the Applicant would not be paid by the COC of the Corporate Debtor unless the Applicant shows that such payments or fee were approved by the CoC.
- v.** We therefore do not find any merit in the present application, which is ought to be dismissed.

6. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

- i.** The Application bearing **IA-4144/2022** filed by the Applicant is **dismissed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)