

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-VI

IA. 457/ND/2021

IN

Company Petition No. 514 (ND) /2020

In the matter of:

Apogee Enterprises Pvt. Ltd.

Creditor

Vs.

Anil Nanda

Personal Guarantor

AND IN THE MATTER OF:

Rajesh Kumar Sinha

... Applicant/ Resolution Professional

Vs.

Apogee Enterprises Pvt. Ltd.

.... Respondent

Under Section 60(5) of the IBC, 2016 read with Rule 11 of NCLT Rules, 2016.

Counsel for Applicant-

Mr. GP Madaan & Mr. Shravan Chandrashekar, Advocates for Resolution Professional along with Resolution Professional Mr. Rajesh Kumar Sinha.

Counsel for Respondent-

Mr. Keshav Gulati, Mr. Abhishek Kumar, Advocates.

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Coram:

SHRI P.S.N PRASAD, MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)

ORDER

PER P.S.N. PRASAD, MEMBER (Judicial)

1. The present application is filed by the Resolution Professional, Mr. Rajesh Kumar Sinha, for issue of directions to the Creditor to pay the remuneration of the Resolution Professional on 16.01.2021. This is a case wherein the Creditor has filed application under Section 95 by itself and not through the Resolution Professional. In exercise of powers conferred under sub-section 3 of Section 97, the IBBI has nominated the Resolution Professional for carrying out the Insolvency Resolution Process by its letter/file no: IP-13011/1/2019-IBBI/884/250 dated 05-03-2020.
2. The creditor has filed a detailed reply on 04.01.2022 disputing the remuneration claimed by the IRP.

3. We have gone through the application and reply filed in this matter. The arguments advanced by the counsels for both the parties and written submissions have been considered. To be precise and concise and to ensure brevity, those submissions have not been reproduced here. It transpires that there was not any prior consensus or any formal understanding amongst the parties regarding fees and expenses of the RP. This Tribunal is of view that the Creditor i.e., Apogee Enterprises Pvt. Ltd should have fixed the fees of the IRP/RP clearly and amicably well in advance or prior to the commencement of the work by IRP.
4. During the proceedings, both the parties have submitted that this tribunal may decide the fees and they have also consented to abide by the order of this tribunal.
5. We have examined the question of whether the Adjudicating Authority can determine the fees payable to the Resolution Professional in case the fee/expenses of the Resolution Professional have not been fixed/determined by the Financial Creditor/Applicant.

6. As we have not come across enabling provision with regard to fixation of the fee of IRP in matters pertaining to initiation of proceeding under Section 95 of IBC wherein fees/expenses were not fixed by the financial creditor, we therefore have drawn analogy from Regulation 33(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The said sub-regulation 2 of regulation 33 enables the Adjudicating Authority to determine the fees of the IRP in case the same is not fixed by the applicant.

Taking spirit of law from above, this Adjudicating Authority is of the view that it may decide the remuneration/expenses of the IRP/RP specially when these expenses/fees were not fixed in advance by applicant/creditor.

7. The fees of the Resolution Professional must be commensurate to and be a reasonable compensation of the amount of work involved, we hereby fix the fees of the Resolution Professional, as per the details given below:

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- i. Fees for the initial period 31st Aug 2020 to 14th Oct 2020:

Rs 3,50,000 per month as against the fees claimed by the RP of Rs.4,50,000 per month. While determining the fees for this period, we have duly taken into account the various steps involved prior to submission of report as per the provisions of the IBC, 2016.
- ii. Fees for the period w.e.f. 15th October, 2020 till the date of compliance of this order: Rs. 50,000 per month as against the fees claimed by the RP of Rs.1,00,000 per month. While determining the fees of this period, we have considered the fact of adjournment of the matter and also the quantum of litigations managed/work performed by the Resolution Professional before the Hon'ble Supreme Court of India and also before this Tribunal.
- iii. All other expenses such as Counsel fees and Out of Pocket expenses (as provided by the Resolution Professional in its



'Calculation Statement of Fees') are not unreasonable considering the continuous involvement of the RP in the matter.

8. Creditor is directed to comply with this order within 10 days and the compliance affidavit of this order may be filed before this tribunal at the earliest.

9. We further direct Registry NCLT, New Delhi to forward a copy of this order to IBBI to look into the aspect of fixation of fee of the IRP/RP in matters relating to personal guarantees and to make/incorporate suitable regulation in the existing regulations on 'Insolvency Resolution Process for Personal Guarantors to Corporate Debtors' Regulations, 2019 so as to reduce and rule-out the scope of litigation by the Creditor and Resolution Professional. IBBI may also consider to draw analogy from Sub-regulation (1) and (2) of Regulation 33 of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016.

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10. The IA No. 457/ND/2021 in IB-514/ND/2020 stands disposed of.

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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(P.S.N. PRASAD)
MEMBER (JUDICIAL)