

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

IA No. 228/JPR/2023
In CP No. (IB) No. 03/9/JPR/2018

IN THE MATTER OF:

M/S UVA ENGINEERS PRIVATE LIMITED

...Operational Creditor

VERSUS

M/S MAHA ASSOCIATED HOTELS PRIVATE LIMITED

...Corporate Debtor

IA No. 228/JPR/2023

IN THE MATTER OF:

MEMO OF PARTIES

Mr. Naresh Kumar Munjal,
Erstwhile RP of Maha Associated
Hotels Private Limited, 125, 2nd Floor,
Kailash Hills, New Delhi-110065.

...Applicant

VERSUS

M/s Punjab National Bank,
(Sole Financial Creditor)
Rajendra Place, New Delhi-110008.

...Respondent





For the Applicant : Naresh Kumar Munjal, Erstwhile RP
For the Respondent : Ram Charan Sharma, Adv.
Gourav Sharma, Adv.

Order Pronounced On: 30.04.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. This Interlocutory Application ('IA') bearing *IA No. 228/JRP/2023* has been filed by the Erstwhile Resolution Professional, *Mr. Naresh Kumar Munjal* ('Applicant'/ 'ERP') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') seeking directions against *Punjab & Sind Bank* ('Respondent'/ 'Bank') for payment of fees of Rs. 23,63,888/- (Rupees Twenty-Three Lakhs Sixty-Three Thousand Eight Hundred and Eighty-Eight Only) plus travelling and out of pocket expenses of Rs. 1,03,500/- (Rupees One Lakh Three Thousand and Five Hundred Only) incurred by the Applicant.
2. The Adjudicating Authority *vide* Order dated 30.11.2018 admitted *IB No.03/JPR/2018* under Section 9 of the IBC, filed by *M/s UVA Engineers Private Limited* ('Operational Creditor') against *M/s Maha Associated Hotels Private Limited* ('Corporate Debtor') in the matter mentioned above whereas *Mr. Brij Mohan Sharma* was appointed as Interim Resolution Professional. The Committee of Creditors ('CoC') in its 2nd meeting dated 12.11.2018, replaced the

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IRP and the Applicant herein was appointed as the Resolution Professional *vide* order dated 30.11.2018.

3. Thereafter, the Applicant filed an *IA No. 568/JPR/2022* to recuse himself from the responsibility of the Resolution Professional ('RP') in the present matter. On the other hand, the CoC filed an *IA No. 12/JPR/2023* for the replacement of the Applicant as RP and suggested the name of *Mr. Tara Chand Meenia* for appointment as RP. This Adjudicating Authority *vide* order dated 21.03.2023 replaced the Applicant and appointed *Mr. Tara Chand Meenia* as the RP of the Corporate Debtor. Further, the Applicant was directed to file its claim for fee before the CoC and the CoC was directed to make provisions for payment of fee and unpaid expenses incurred by the Applicant.
4. Before any decision was taken on the claim of the Applicant by the CoC, the present Application was moved on 12.04.2023 by the Applicant on the following set of facts:
 - 4.1 The Applicant filed its claim of Rs. 23,63,888/- (Rupees Twenty-Three Lakh Sixty-Three Thousand Eight Hundred and Eighty-Eight Only) towards its fee and Rs. 1,03,500/- (Rupees One Lakh Three Thousand and Five Hundred Only) for traveling and out of pocket expenses before the Respondent on 29.03.2023. It has also been contended that the Applicant had forgone the claim of the CA/CS professional fee of Rs. 18,00,000/-

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(Rupees Eighteen Lakh Only) and Rs. 12,00,000/- (Rupees Twelve Lakh Only) of office support services extended by IPE during CIRP.

4.2 The Applicant has filed various documents in support of its claim which are as follows:

4.2.1 *Invoice for Rs. 23,63,888/- plus GST (Restated as per CoC resolution dated 20.11.2019) as of 28.03.2023;*

4.2.2 *Ho. L&R/2018-19 letter dated 11.02.2019;*

4.2.3 *CoC Resolution dated 20.11.2019 of 14th CoC Meeting of the CD*

4.2.4 *NCLT Order dated 04.03.2020 vide IA 94/JPR/2020 ordering FC to pay fee as per CoC resolution dated 20.11.2019*

4.2.5 *NCLT Order dated 21.03.2023*

Copy of the aforementioned documents are annexed as Annexure- A1, A2, A3, A4, and A5 respectively of the Application.

5. The Respondent filed its Reply *vide* Dairy No. 1298/2023 dated 24.05.2023 stating the following:

5.1 The Respondent submitted that the Applicant had forwarded the pending bills and details of the fee payable *vide* E-mail dated 26.04.2023 and the same has been placed before the CoC in the 38th meeting dated 02.05.2023. The member of CoC clarified that the fee of the erstwhile RP has been paid for 180 days, however, with respect to the extended period of CIRP, no

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agenda was placed before the CoC. As per the direction of this Adjudicating Authority, the fee of the Applicant has been paid till November 2020.

5.2 Additionally, it is stated that the Applicant has not carried out the following tasks during the CIRP:

5.2.1 Failed to take physical possession of the project site and project site was in possession of the security agency appointed by the erstwhile Director;

5.2.2 Filing of replies or submission on behalf of the Corporate Debtor in the Income Tax matters;


5.2.3 Filing of GST returns resulting in suo moto revocation of GST registration by authorities;

5.2.4 Filing of GST returns for FY 2021-2022;

5.2.5 Statutory Audit not conducted for FY 2021-2022;

5.2.6 Filing of RoC return and other related forms before appropriate authorities for FY 2021-2022

5.3 In view of the deficiencies in the work of ERP, the CoC rejected the claim of the Applicant. It is pertinent to note that the details of the fee were placed in the 38th CoC meeting on 02.05.2023 and the Applicant had filed the present Application on 12.04.2023 which is prior to the said CoC meeting. The Respondent complied with the directions of this Adjudicating Authority and rejected the claim of the Applicant.



5.4 The Respondent has also filed a complaint before the Insolvency and Bankruptcy Board of India about the erstwhile RP on 29.04.2023 for non-compliance and lapses in CIRP. Copy of the complaint dated 29.04.2023 is annexed as Annexure-R3 of the Reply.

6. The Respondent has filed Written Submissions *vide* Dairy No. 258/2024 dated 30.10.2024 wherein stating the following:

6.1 The Respondent has submitted that the fee of the erstwhile RP has already been paid. The details of the payment are as follows:

<i>Date</i>	<i>Particulars</i>	<i>Amount (In Rs.)</i>
12.03.2019	ERP Fees	1,00,000/-
23.08.2019	ERP fees for the period 12.11.2018 to 18.03.2019	1,00,000/-
04.04.2020	ERP fees for the period 01.03.2020 to 31.05.2020	7,69,444/-
09.07.2020	ERP fees for the period 01.03.2020 to 31.05.2020	2,50,000/-
31.12.2020	ERP fees for the period 01.06.2020 to 27.11.2020	5,00,000/-
	Total payment made to ERP till 27.11.2020	17,19,444/-

6.2 The Respondent has also paid other CIRP expenses of Rs. 18,50,748/- (Rupees Eighteen Lakh Fifty Thousand Seven Hundred Forty-Eight Only). Further, it was stated that no agenda was placed before the CoC and the fee which is demanded by the Applicant is beyond the statutory period. The erstwhile RP acted in violation of Sections 17(2)(e), 18(a)(f), 23(1)(2), 28, 196(1)(f)(q)(r), 208, 217 & 218 of the Code, 2016.

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6.3 It is contended that along with the Application no supporting invoices/bills have been attached by the Applicant in support of its claim. The Respondent has also relied on the following Judgments:

*6.3.1 COC of Essar Steel India Ltd. Vs Satish Kumar Gupta (2020)
8SCC 531*

6.3.2 Devarajan Raman Vs Bank of India Limited (2022) 3 SCC 254

7. The Applicant has filed the Rejoinder and Written Submissions *vide* Dairy No. 408/2024 and 409/2024 respectively dated 19.02.2024 whereby the Applicant reiterated the contentions mentioned in application and additionally relied on the following Judgements:

7.1 Alok Kaushik Vs Bhuvaneshwari Ramanathan and Ors. (2021) 5SCC 787

7.2 Jayesh N. Sanghrajka, R.P. of Aristo Developers Pvt. Ltd. V. The Monitoring Agency nominated by the Committee of Creditors of Aristo Developers Pvt. Ltd.

7.3 Brij Lal Ashok Kumar Vs Tara Chand Rice Mills Pvt. Ltd. in the matter of Mr. Sameer Rastogi, ERP

7.4 CoC M/s Smartec Build Systems Pvt. Ltd. Vs. B. Santosh Babu & Ors. [2020] NCLAT

8. We have perused the Application, Reply, Rejoinder and Written Submissions along with the documents annexed therewith.

9. From the records available, submissions made and documents led before us it is clear that the CIRP was initiated on 20.09.2018. In the 2nd CoC meeting dated

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12.11.2018, the appointment of the Applicant as Resolution Professional was approved by the CoC. Further, the CoC has passed the resolution for the payment of the fee of the Applicant in its 14th meeting dated 20.11.2019 wherein it was resolved that:

“fee of the Resolution Professional is maximum of Rs. 5.00 Lac for the period of 180 days. There being no provision of RP fee for extended and exclusion period, fee to RP for exclusion period on pro-rata basis be and is hereby approved.”

10. Thereafter, in the 35th CoC meeting dated 12.11.2022, a resolution was passed for the replacement of the RP i.e., Applicant, and a new RP was appointed by this Adjudicating Authority *vide* Order dated 21.03.2023. Further, it was directed that the ERP shall put its claim of fees and expenses before the CoC and the CoC shall make the provisions for the payment of unpaid expenses of the ERP.
11. Subsequently, upon the directions passed by this Adjudicating Authority, the CoC in its 38th meeting dated 02.05.2023 has discussed the status of the ERP fee and clarified that the fee of the ERP for 180 days was approved and paid. Further, it is noted the ERP has failed to comply with the following works during its tenure:

11.1. Filing of replies or submissions on behalf of Corporate Debtor before Income Tax matters and notices issued by Income Tax Authorities;

11.2. Filing of GST returns resulting in suo moto revocation of GST registration by authorities;

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11.3. *Filing of Income Tax returns for FY 2021-2022;*

11.4. *Statutory Audit not conducted for FY 2021-2022;*

11.5. *Filing of RoC return and other related forms before appropriate authorities for FY 2021-2022*

Keeping in view the aforesaid deficiencies in the work of ERP, the CoC has not approved the payment of fee for the extended CIRP period.

12. In the case at hand, the ERP has claimed Rs. 23,63,888/- (Rupees Twenty-Three Lakh Sixty-Three Thousand Eight Hundred and Eighty-Eight Only) as its fee from 28.11.2020 to 28.03.2023 and Rs. 1,03,500/- (Rupees One Lakh Three Thousand Five Hundred Only) as traveling and out-pocket expenses from the Respondent.

13. To begin with, it is relevant to refer to the provisions of the IBC and the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016: -

“Section 5(13) of IBC reads as under:

(13) Insolvency Resolution Process Costs” means –

- (a) the amount of any interim finance and the costs incurred in raising such finance;*
- (b) the fees payable to any person acting as a resolution professional;*
- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;*
- (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and*
- (e) any other costs as may be specified by the Board;”*

The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

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The relevant portions of Chapter IX of the CIRP Regulations in the context of the present matter read as under:

Insolvency Resolution Process Costs.

31. *“Insolvency resolution process costs” under Section 5(13)(e) shall mean-*

- (a) amounts due to suppliers of essential goods and services under Regulation 32;*
- (aa) fee payable to authorised representative under [sub-regulation (8)] of regulation 16A [section 25A]*
- (ab) out of pocket expenses of authorised representative for discharge of his functions under*
- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);*
- (ba) fee payable to Board under regulation 31A;]*
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;*
- (d) expenses incurred on or by the resolution professional fixed under Regulation 34; and*
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.*

Costs of the interim resolution professional.

33. *“(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

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any, and other expenses to be incurred by the interim resolution professional.

Resolution professional costs.

34. "The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

Explanation. - For the purposes of this regulation, "expenses" include the fee to be paid to the 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 resolution professional.

Disclosure of Costs.

34 A. The interim resolution professional or the resolution professional, as the case may be, shall disclose item wise insolvency resolution process costs in such manner as may be required by the Board."

14. At this juncture, we consider it relevant to refer to the Judgment of Hon'ble NCLAT in the matter of *Shri Guru Containers Through its Sole Proprietor, Mr. Som Prakash Jhunjhunwala vs Jitendra Palande in Company Appeal (AT) (Insolvency) No. 106 of 2023* dated 22.02.2023. The relevant extracts are given below:

"22. The provisions as appearing in IBC and Regulations framed thereunder read with the Code of Conduct of IRP all indicate that although quantum of fees has not been fixed, the quantum of fees payable is context specific. Thus, what fee is reasonable is context specific but what is context specific is not amenable to a precise definition. However, the fee should be a reasonable reflection of the work necessarily and properly undertaken by IRP. Further the fees should not be inconsistent with the applicable regulations and should be charged in a transparent manner. Keeping these broad parameters in mind, we may now look into the reasonability of the fees/expenses which has been allowed by the Adjudicating Authority in the present case."

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15. In the present case, the ERP has failed to carry out its duties as envisaged under the Code. During his tenure, the ERP failed to file Income Tax returns, GST returns, and RoC returns of the Corporate Debtor. Further, the ERP did not file any reply or submissions on behalf of the Corporate Debtor before the Income Tax Authorities. As per the Judgment referred to above and the provisions of the Code and the Regulations framed thereunder, the fees should be charged in a reasonable and transparent manner. Keeping these broad parameters in mind and the deficiency in services rendered by the ERP, we deem it reasonable that the ERP should be paid 1/3rd of the amount claimed by him. Thus, the ERP shall be entitled to receive a sum of Rs. 7,87,963 (Rupees Seven Lakh Eighty Seven Thousand Nine Hundred and Sixty Three Only) plus GST as against ERP's total claim of Rs. 23,63,888/- (Rupees Twenty-Three Lakh Sixty-Three Thousand Eight Hundred and Eighty-Eight Only) for the period of 28.11.2020 to 28.03.2023.

16. As a sequel to the above, we pass the following order:

16.1. The CoC is directed to pay a sum of Rs, 7,87,963 (Rupees Seven Lakh Eighty Seven Thousand Nine Hundred and Sixty Three Only) plus GST as ERP's fee for the duration of 28.11.2020 to 28.03.2023.

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16.2. Further, in relation to the amount claimed by ERP for travelling and out-of-pocket expenses, the same shall be payable by the CoC upon the production of actual bills and documents.

16.3. The same shall be complied with within 21 days from the date of this Order.

17. In the view of forgoing the present IA bearing no. *IA No. 228/JPR/2023* is partly allowed and stands disposed of with the aforesaid observations. A copy of this order shall be furnished to the parties.



DEEP CHANDRA JOSHI
(JUDICIAL MEMBER)



RAJEEV MEHROTRA
(TECHNICAL MEMBER)