IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 1520/2019 in MA 254/2019
in C.P. (IB)3585(MB)/2018

Under section 60(5) & 7 of
the IBC, 2016

In the matter of
ICICI Bank Ltd.
....Applicant

v/s.

Gitanjali Gems Ltd.
….Respondent

Order delivered on 14.05.2019

Coram: Hon'ble Shri. M.K. Shrawat, Member (Judicial)

For the Petitioner : 1. Mr. Vividh Tandon, Adv.

For the Respondent : 1. Ms. Ayushi Anandpara a/w
Ms. Prerna Shah

Per M.K. Shrawat, Member (Judicial)

O R D E R

1. An Application u/s 7 of IB Code was submitted by **ICICI Bank** as 'Financial Creditor' for debt amount in default of ₹608,64,41,361/- against **Gitanjali Gems Ltd.**, a 'Corporate Debtor'.

2. Vide an order dated 08.10.2018 passed u/s 7 of IBC the said Petition of ICICI Bank was admitted and IRP Mr. Vijay Garg appointed on declaration of 'Moratorium' and commencement of Corporate Insolvency Resolution Process.

3. The said appointed IRP has moved an application bearing **MA No. 254/2019** which was decided vide an order of **05.03.2019** wherein it was held as under:-

"2. This Application is submitted by the Resolution Professional Mr. Vijaykumar Garg and the only prayer is that the Resolution Professional be allowed to open a separate Bank Account with ICICI Bank, Bandra-Kurla Complex Branch, Mumbai.

3. On 26.10.2018 the RP has informed that the Committee of Creditors had voted in favour of Creation of an ***initial Corpus of Rupees Ten Crores to be contributed by the Member of the Committee of Creditors towards CIRP cost.*** *It is informed that the Members of the Committee of Creditors have pooled the funds to create a Corpus for CIRP cost. An apprehension has been raised that the Directorate of Enforcement, Department of Revenue, Ministry of Finance, Mumbai Zonal, Office-I vide an order of 31st July, 2018/25th June 2018 have made provisional attachment over the assets vide Order No. 9/2018 by invoking the provisions of section 5(1) of Prevention of Money Laundering Act, 2002.*

4. On hearing the submissions this Bench is of the view that the provisions of the Insolvency Code overrides the other laws under section 238 of the Insolvency Code hence an independent and separate view can be taken in this case of Corporate Defaulter. It is worth to mention that M/s. Geetanjali Gems Limited being a Corporate Debtor is under Insolvency Proceedings u/s 7 of the Code in respect of a Petition filed by ICICI Bank vide an order dated 8th October, 2018.

5. It is also worth to place on record that the Corpus Fund so arranged is under the directions of NCLT, Mumbai Bench to facilitate the Insolvency Proceedings, hence the asset now so generated is in compliance of the order of the Code, therefore, not to be attached by any other Authority under law. This is not an asset of the defaulter company hence otherwise also beyond attachment by Directorate of Enforcement.

6. The Learned Resolution Professional is directed to open an Account for CIRP purpose of Geetanjali Gems Limited, if deem fit under "No Lien Account" not subject to control of any authority or bank. This bank account shall be operated as an ***'Escrow Account' under the control and supervision of NCLT, Mumbai*** *Bench along with the Members of the Committee of Creditors. Needless to mention the withdrawals are therefore to* *be ratified and also to be verified by the Members of the Committee of Creditors. Thereafter the decision in this regard of CoC to be placed before the Adjudicating Authority to seek permission of withdrawal. With these directions this Application is allowed." (* emphasis supplied *)*

4. One more development, thereafter, reported that the CoC had not approved extension of time hence the said Resolution Professional has filed an application for liquidation on 22.04.2019, now listed for hearing on 10.06.2019. There are two more Miscellaneous Applications also listed for 10.06.2019.

5. Reverting to this application, the RP has made a prayer as under:-

"12. In view of the facts aforesaid, the Applicant prays:

(a) the Hon'ble Tribunal to allow ***withdrawal of Rs. 3,57,47,494/-*** *(Rupees Three Crores Fifty Seven Lakhs Forty Seven Thousand Four Hundred and Ninety Four Only) by the Applicant (RP) for payment of the Expenses mentioned in the table above;"*

6. In this Application it is informed that in the **First Meeting** of CoC held on 01.11.2018, it was agreed to create a corpus for the expenses to be reimbursed, claimed to be towards Corporate Insolvency Resolution Process (CIRP) cost. In the said first meeting it was resolved to create **initial corpus of ₹10 crores.** It was also informed in this Application that a "Corpus Fund Account" in ICICI Bank, Bandra-Kurla Complex Branch was intended to be opened by RP. As per the Applicant the present position is that under the directions of Interim Order dated 05.03.2019 (supra) an 'escrow account' was opened to be operated under the supervision of the NCLT. Now through this application seeking permission to withdraw the expenses totalling ₹3,54,08,983/-, which were stated to be ratified vide CoC meeting held on 02.04.2019 with a majority vote of 81.14%; along with this application annexed the voting result. On perusal of minutes of **Sixth CoC meeting** held on

05.04.2019 it was found that representatives of several banks viz. Allahabad Bank, Andhra Bank, Axis Bank, Bank of Baroda, Canara Bank, Central Bank, ICICI Bank, Punjab National Bank, etc. totalling 40 representatives were physically present and approved the claim. As a consequence, this Application is moved to obtain permission for withdrawal of the amount claimed.

7. In my Prima facie opinion, it appears that the claimed amount as Corporate Insolvency Resolution Process cost of ₹3,57,47,494/- is an **exorbitant claim** considering the totality of the circumstances. This view is in conformity with two orders passed by IBBI, New Delhi bearing Ref. No.: IBBI/DC/15/2019 and IBBI/DC/16/2019 dated 21.02.2019 and 17.04.2019 respectively, wherein on the ground of unrealistic and exorbitant fees / expenses demanded by the RP their licenses were suspended to act as RP. Since a regulatory authority is keeping an eye and watching the conduct of Resolution Professionals, therefore, it is expected that before making such type of submission due care and professional ethics ought to be observed. This Bench has not been informed whether any Information Memorandum is prepared by the Ld. RP and whether advertisement has been made inviting Expression of Interest (EoI). It is also not on record whether any Valuation Report is procured by RP. Rather as of now, as informed, the 'Insolvency Process' is heading towards 'Liquidation' of the company.

8. On verification of description of the expenses, it is noticed that "D&P fees" claimed at ₹1,59,74,250/- and likewise, rest of the fees such as Lawyer fees, meeting fees, the RP insurance appeared to be towards higher side. In the absence of explanation of each items, had to be supported by corroborative evidence, it is not possible on the part of this Bench to allow entire expenditure. If we carefully examine Insolvency Resolution Regulation 2016, it is provided in Regulation 31 r/w Regulation 33, 34 and 34A that the RP shall disclose item-wise resolution cost and on approval to be placed before Adjudicating Authority who shall fix the expenses after considering the circumstances of the case. Even if approved

by CoC, these Regulations have prescribed that the Adjudicating Authority has jurisdiction whether to treat or not certain expenses incurred wholly and exclusively for the purpose of completion of Insolvency Process.

9. As a consequence, this Bench is of the opinion that a guideline can be obtained from IBBI, New Delhi that whether any Regulation or any Notification about the fixation of remuneration of RP has been issued as a guiding factor. I, therefore, refer this problem i.e. fixation of CIRP cost, etc. to IBBI, New Delhi. If deem fit, the said Regulatory Authority can examine the reasoning and he basis on which the members of the CoC have approved the claim of expenditure. As an interregnum arrangement the Ld. RP is authorised to withdraw a sum of ₹10 lakhs from the said escrow account so that the process of insolvency be completed expeditiously.

10. On receiving the reply from IBBI, New Delhi, this Bench shall again consider this MA. Application is partly allowed to the extent hereinabove.

11. It is hereby directed that RP shall submit a detailed report of work done by him so far and also submit the progress of Insolvency Resolution Process by 13th June 2019 and thereafter to be discussed in person on **24th June 2019**.

Sd/-
M.K. SHRAWAT
MEMBER (JUDICIAL)

Date: 14.05.2019
pvs