

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P No. 01/2016
IA No.28 of 2017

CORAM: Present: SHRI B.S.V. PRAKASH KUMAR
MEMBER (J)

SHRI V. NALLASENAPATHY
MEMBER (T)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 02.05.2017

NAME OF THE PARTIES: ICICI Bank Limited
V/s.
Innovative Industries Limited

SECTION OF THE COMPANIES ACT: I&BP Code2016.

S. No.	NAME	DESIGNATION	SIGNATURE
--------	------	-------------	-----------

ORDER

I.A.28/2017 in CP 01/I & BP/NCLT/MB/MAH/2016

The Insolvency Resolution Professional filed this application with relief as follows:

- (a) *Interest on the interim finance, constituting insolvency resolution process cost shall be payable beyond the liquidation commencement date as liquidation costs under Section 53(1) and shall be payable in full;*

- (b) *Declaring that Rule 27 of the Liquidation Process Rules is not applicable to such interest cost, which is a liquidation cost, as the said interim finance constituting financial debt is legitimately continued by the liquidator for protection and preservation of the assets and properties and for carrying on the business in accordance with Section 35(1)(d) and (e) of the Code and therefore constitute liquidation cost payable in full under Section 53; and*
- (c) *Director that the Resolution Professional can proceed to raise interim finances under Section 25(2) (c) subject to the approval of the Committee of Creditors on the clear understanding that interim finance constitutes insolvency resolution process cost inclusive of costs incurred in raising such finance and interest thereon till payment and realization and that obligation of interest and costs after the liquidation commencement date shall constitute liquidation costs secured for payment in full and under Section 53(1) of the Code as first priority payment;*
- (d) *Any other order which the Hon'ble Tribunal may find fit in the facts and circumstance of the present case.*

On perusal of the reliefs sought and the minutes of the Committee of Creditors, it appears that the proposal for interim finance he made in this Company Application has not been approved by the Committee of Creditors.

By reading Section 25 dealing with the duties of the Resolution Professional, it appears in Sub-Section 2(c), in case the Resolution Professional is inclined to raise finances either to preserve and protect the assets of the Corporate Debtor Company or for continuing the business operations of the Corporate Debtor, he has to raise finance subject to the provisions of Section 28. Under section 28, it is made clear that notwithstanding anything contained in any other law for the time being in force, the Resolution professional shall not take any of the actions mentioned in the section, including raising interim finance, without the prior approval of the committee of the creditors.

not take any of the actions mentioned in the section, including raising interim finance, without the prior approval of the committee of the creditors.

On reading this application as well as minutes filed, it is nowhere seen that any approval is given by the Committee of Creditors to this applicant to proceed to raise interim finance. If any such approval is assumed to have been taken, all details for such approval shall be indicated in the minutes of the Committee of Creditors. Moreover, it is a business decision to be taken by the Creditors, to whom such powers have been vested, not by IRP.

For the Resolution Professional has failed to take approval of the committee of creditors to raise interim finance as envisaged under the law, this Bench giving approval to the Resolution Professional to raise finance will not arise, hence this application is hereby dismissed.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)