

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT - II

Item No. 01
(IB)-266(ND)2019
IA/3533/2020

IN THE MATTER OF:

Mr. R. Tarkeshwar Narayan

...

Applicant/Petitioner

Versus

M/s. Horizon Buildcon Pvt. Ltd.

...

Respondent

Under Section: 7 of IBC, 2016

Order delivered on 13.07.2021

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (J)

SHRI L.N. GUPTA,
HON'BLE MEMBER (T)

PRESENT

ORDER

Order is pronounced in the Open Court today.



(L. N. GUPTA)
MEMBER (T)



(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

ORDER

Per Mr. Abni Ranjan Kumar Sinha (Member Judicial)

The present application is preferred under section 60(5) of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") by Sanjay Gupta, the Interim Resolution Professional (hereinafter referred to as "IRP/Applicant") of Horizon Buildcon Private Limited (hereinafter referred to as "Corporate Debtor"), seeking directions against the Committee of Creditors (hereinafter referred to as "CoC") for payment of fees and expenses as per the order dated 15.07.2020 passed by this Tribunal.

2. The brief facts leading to filing of the instant application are as follows:
 - i. That this Adjudicating Authority vide its order dated 08.11.2019 initiated CIRP against the Corporate Debtor and appointed Mr. Sanjay Gupta as the Interim Resolution Professional (IRP).
 - ii. That the IRP undertook the duties and extensively prepared the Information Memorandum, collated all the claims from the creditors, prepared Evaluation Matrix, and pursuant to these steps, a Resolution Plan from IRIDIA Home Buyers Association was also received.
 - iii. That the 1st CoC meeting was held on 08.12.2019, wherein the IRP informed the CoC members about the published Form-A on 16th& 17th November 2019 and receipt of approximately 135 claims as on 24 November 2019. Further, it was noted in the said minutes that application for the appointment of Authorized Representative to be filed, intimation sent to directors, financial institutions etc., and lastly, the lists of expenses which would form part of the CIRP cost.
 - iv. That a resolution put for arranging funds for meeting the cost of CIRP was passed in the 1st CoC meeting. That in the said resolution, it was clearly mentioned that the same would mean expenses towards:



- Payment of Salaries to security Guards
 - Payment towards publishing of EOI for inviting Resolution Applicants.
 - Payment to Transaction Auditor
 - Payment to Statutory Auditor
 - Misc. expenses including visit to Corporate Debtor's factories, offices for various purposes
 - Fees of the Resolution Professional and the IPE.
- v. That the 2nd meeting of CoC was held on 04.01.2020, wherein additional claims were brought to the notice of the CoC members, the appointment of Authorized Representative Mr. Pawan Kumar Garg, appointment of valuers vis-a-vis different categories (the members of CoC ratified the appointment of the valuers).
- vi. That Resolution No. 1 (Ratify and approve the cost incurred on CIRP), and Resolution No. 2 (Estimated Cost of the CIRP) were passed by the CoC in its 2nd meeting. The said resolutions are reproduced as follows:

Resolution No. 1 *“Resolved that expenses incurred by IRP amounting to **Rs. 13.12 Lakhs** as per details provided be and is hereby approved as Corporate Insolvency Resolution Process Cost”*

RESULT: PASSED

Resolution No. 2 *“Resolved that, the estimated CIRP cost amounting to **Rs. 80 Lakhs** be and is hereby approved”.*

RESULT: PASSED

Resolution No. 4 *“Resolve that, the members of the Committee of Creditors be and is hereby approves the remuneration of the Interim Resolution Professional i.e. Mr. Sanjay Gupta bearing registration number IBBI/IPA/001/IP00117/2017-18/10252 to the tune of **Rs. 6 Lakhs per month (plus applicable taxes)** for the period he is the Interim Resolution Professional”*

RESULT: PASSED

Resolution No. 5 *“Resolve that, the members of the COC be and is hereby approves the remuneration of the RP i.e. Mr. Sanjay Gupta bearing registration number IBBI/IPA/001/IPP00 117/2017-18/10252 to the tune of **Rs. 6 Lakhs** per month (plus applicable taxes) for the entire period as the Resolution Professional during which he continuous to manage the operations of the Corporate Debtor under Section 23 of the Code”.*

RESULT: PASSED

Resolution No. 6 *“Resolve that the division of approved professional fee of IRP/RP between the IRP/RP and the IPE "to which he is a partner, as proposed by IRP/RP, i.e. 30% to IRP/RP and 70% to the IPE, be and is hereby ratified as the division of the fee is not impacting the overall CIRP cost”*

RESULT: PASSED

- vii. That the COC passed a resolution for the estimated CIRP cost of INR 80 Lakhs and the same was to be paid by way of contribution from secured financial creditor (i.e., Bank) and INR 10,000/- from each of the home buyers. However, the sufficient contribution was not received from the CoC.
- viii. That it is clear from the above resolutions that the fees of the IRP, estimated cost, and the split between the IRP and the IPE were duly ratified by the CoC.
- ix. That the 3rd CoC meeting was held on 10.02.2020, wherein the IRP informed the CoC about the valuations being done by the valuers, shared the provisional list of the Prospective Resolution Applicants, and gave an update on Information Memorandum etc..
- x. That the 4th CoC meeting was held on 24.02.2020 and the minutes clearly recorded that even after a resolution was passed in the 2nd CoC for an aggregate expenditure of INR 86.50 Lakhs, the IRP did not receive payments from the CoC members.

- xi. Thereafter, while the last date for submission of Resolution plan was approaching, the IRP received a resolution plan on 11.03.2020 from IRIDIA Homebuyers Association. It is pertinent to mention that the IRP replacement application being IA no. 1752/2020 was pending before this Tribunal.
- xii. Further, immediately after the last date of submission of the Resolution Plan, 5th meeting was called on 23.03.2020. However, the CoC requested to defer the meeting and informed the IRP that the CoC members are awaiting the IRP's replacement order and requested the IRP not to open the Resolution Plan.
- xiii. Further, the Valuation tasks were completed by the respective valuers and for the same, the team of the IRP coordinated and assisted the valuers for undertaking the valuation work as per the Code.
- xiv. That vide order dt. 12.03.2020 in the I.A. 1752/2020 filed by the CoC members for replacement of IRP, the Tribunal *directed to clear the payment as admissible to IRP and file the compliance report*. The relevant part of the said order is reproduced hereunder:
- “One of the financial Creditor being the applicant in IA-1752/2020 which is a prayer for change of RP, is present. The counsel for IRP states that his payment is yet to be cleared. The CoC is directed to clear the payment as an admissible to IRP and file the compliance report. Be listed on 16th March 2020”*
- xv. That vide order dt. 15.07.2020, this Tribunal replaced the IRP herein with the Resolution Professional. That however, this Tribunal directed the CoC to look into the representation of the IRP (regarding details of expenses during CIRP along with proof) and clear the dues as admissible within one week of



representation. The relevant part of the said order is reproduced hereunder:

“The present IRP, Mr. Sanjay Gupta is discharged from his duties with a direction to handover all the records within a week to the newly appointed RP Mr. Praveen Kumar Aggarwal. As regards, short payment of fee, IRP Mr. Sanjay Gupta may file the details of expenses incurred during the CIRP along with proof before the CoC. The CoC is directed to look into representation of the IRP and clear the dues as admissible within one week of the representation.

The newly appointed RP, Mr. Praveen Kumar Aggarwal will file the next status report including the decision of CoC on payment of the claims of IRP by 31st July 2020. The IA is allowed”

- xvi. That after the replacement, the IRP provided the Resolution Professional with all the details of the pending bills along with the invoices and proof of expenses incurred thereto, and was awaiting the payments to be made by the CoC. In that regard, the IRP attended the CoC meeting on 27.07.2020 and made representations alongwith CIRP detailed cost sheet and copies of all the invoices. However, no payments were received thereafter.
- xvii. That the Resolution Professional sent an email on 08.08.2020 (reproduced below) stating therein that the already approved fees of the IRP has been slashed by the CoC by passing a resolution to that effect:

“Mr. Sanjai,

The following resolution has been passed by the sixth CoC which held on 27th July, pertaining to your pending bills.

“RESOLVED THAT that the fee of the outgoing IRP Mr. Sanjay Gupta be reduced from Rs. 6 lakh per month to Rs. 2.50 lakh per month due to his non-performance from the date of his engagement, corresponding share of

the IPE will also stand revised. Further resolved that bills for a sum of Rs. 15,62,540/- as against Rs. 71,61,552/- claimed by IRP be approved as Corporate Insolvency Resolution on Process Cost.

It was further RESOLVED that the claims for GST and TDS reimbursements, missing bills and additional amount if any on clearance of pointed out anomalies in the bills, will be considered in its next meeting.”

In view of the above resolutions, I would request you submit complete supporting documents/information on about the GST and TDS reimbursement claims, missing bills and address the pointed-out anomalies in the bills at the earliest.

In addition, the following information, documents, files are still awaited, would request you to expedite their handover as well:

- 1. Court files for the various cases being contested by the Corporate Debtor.*
- 2. The reconstructed documents in support of the claims admitted.*

Further, a part of the balance admitted amount will be released on Monday 10th August 2020.”

- xviii. That the applicant has submitted that it is evident from the above email that despite an order passed by this Tribunal to clear all dues of the IRP, the CoC proceeded to reduce the fees already approved in the 2nd CoC. That the same intent was never made clear to this Tribunal during the hearing of the I.A.1757/2020.
- xix. That the IRP immediately replied to the email dated 08.08.2020 received from the Resolution Professional and objected to the reduction of his fees with retrospective effect. That the IRP highlighted to the Resolution Professional about the said reduction being untenable in law and must be immediately withdrawn. The relevant portion of the email reply dated 09.08.2020 sent by the IRP to the Resolution Professional is reproduced herein below:

“Dear Parveen ji

V

Such resolution, reducing the fee of outgoing RP from the beginning, passed after the date of his replacement order, that too without IRP's consent has no meaning and does not stand in the eyes of law. Fees cannot be reduced retrospectively without the consent of IRP. The undersigned had taken the assignment on a certain amount of fee approved by the COC in the first meeting. The same fee would continue till the order of NCLT replacing the undersigned with new RP. Such a decision of CoC is not acceptable and is liable to be challenged before NCLT.

Since an IP is restrained by IBBI/IBC from taking too many assignments, so It is on the whims of the Resolution Professional to accept/reject an assignment depending upon the infrastructure/capacity/ fee of the assignment. Had the undersigned been offered the lower fee, the assignment would not have been accepted by me.

Please convey our decision to the CoC. Also as per order of Hon'ble NCLT dated 15.07.2020, COC was directed to make the payment of approved fee/expenditure within 7 days of representation made by the undersigned i.e. IRP. The undersigned would file the petition against such NON-COMPLIANCE by COC and also against the decision/ resolution of the COC for reduction of fee RETROSPECTIVELY, in the Hon'ble NCLT if the approved fee of the undersigned is not paid within 3 days.

Secondly, the total bills/invoices have been provided to you again vide our 4 emails dated 27 July, 2020 from 7.41pm to 7.48pm. The same was also provided to you in the pen drive on the same day. Also the TDS & GST reconciliation has also been shared with you. Please go through all the data and please specify your requirement left, if any and please feel free to call the undersigned for any clarification, latest by tomorrow 6pm otherwise it will be deemed that you have received all the invoices of CIRP cost.”



3. That the Applicant has further filed written submissions and submitted almost the same facts as narrated above, except the following:

- i. It is contended that the CoC was given multiple opportunities to file their response in the instant application, but the same was not filed and the right of CoC to file reply was closed by this Tribunal on 05.01.2021 and again on 12.01.2021. This was later reaffirmed by the Hon'ble NCLAT on 15.02.2021 in the appeal preferred by the CoC. It is clear from the conduct of the CoC that it did not have any defence or cogent reason to deny the approved fees of the Applicant.
- ii. That it is stated that the Applicant completed and complied the timelines prescribed under Section 40A of the Code and while demitting his office, the Applicant had one resolution plan submitted to him by one Resolution Applicant namely, IRIDIA Home Buyers Association (IHBA). A chart is prepared by the Applicant reflecting clearly the tasks completed by the Applicant before the timelines prescribed in the Section 40A of the Code within which a resolution professional is required to complete tasks. Even after doing a satisfactory job to the satisfaction of the CoC and completion of all tasks before the suggested timelines, the Applicant was not paid his fees/expenses.
- iii. That only a part payment (INR 14,13,940/-) has been made by the members of the CoC to the Applicant. However, the substantial part remains unpaid (INR 57.58 Lakhs).
- iv. That it is important to note that the Applicant has submitted all bills, invoices to the CoC through RP based on the fees approved by the CoC in the 2nd CoC meeting dated 04.01.2020. Most importantly, a resolution regarding the estimated cost to be incurred during CIRP was also passed by the CoC in the 2nd CoC meeting.



- v. It is therefore clear that the CoC is yet to make payment of INR 57.58 Lakhs to the Applicant.
- vi. That after the replacement of the Applicant on 15.07.2020, a CoC meeting was called in which the fees of the Applicant was revised from INR 6 Lakhs to INR 2 Lakhs, which is *prima facie* illegal/unlawful. An email was also sent to the CoC (through RP), and the RP promised to relook into the illegality, but no response was received from the CoC/RP.
- vii. Furthermore, to get away with their responsibility to pay the fees/expenses of the Applicant, certain belated allegations were made about performance of the Applicant, which are being countered in a tabular form at below for the convenience of this Tribunal.

Allegations raised by the CoC after replacement of the Applicant	Counter along-with Proof, if any
Custody of the Project site from Kaveri Sahkari Awas Samiti (KSASL)	There is a Collaboration Agreement dated 28 th August, 2012 executed between Corporate Debtor and (KSASL), which says construction was to be done by CD and in turn, CD will take 64% of built up area and rest 36% were to be taken by KSASL. So KSASL was already in possession of the project and deputed their guards and were not cooperating with IRP for handing over possession of the 64% of the share. A copy of the email to KSASL is annexed herewith and is marked as Annexure- 4.
Did not put notice board showing moratorium at CD's various places. Did not take custody of registered office, site in Amritsar, vehicles, agriculture land etc.	On 23.11.2019 & 28.11.2019, the IRP's custody team visited the site of Amritsar. The IRP was informed that the site is no more in the name of the Corporate Debtor and is now in the custody of "Vijay National". The IRP though displayed a notice board the photographs of which were shared with the members of the COC. A copy of the photographs are annexed herewith as Annexure-5.



Did not report to local police about illegal occupation of project site.	Reported to police on 09.02.2020 to DGP, and SP (Noida City) about the incident. A copy of the complaint sent to police authorities is annexed herewith as Annexure-6.
Hard copy of the documents lost in a fire at IPE's office on 23.06.2020.	That's a fact, but the IRP delivered 900 emails and all the soft copies of all the documents through Google drive as well as in the Pen Drive. A copy of the Affidavit (Annexure-3) herein may be seen in this regard.
No information/clarification on payments made on account of GST/TDS.	All compliances were done in time. The allegations are entirely vague.
Forensic report not complete, no valuation done.	Appointment letters of Transaction auditors and Valuers are attached herewith as Annexure-7 (Colly).
Promised legal associate, management associate and a CS but never present in CoC.	In every COC, Legal associate and CS were present. A copy of the members present with IRP in the 4 th CoC is attached and marked as Annexure-8.

viii. That in the light of the submissions, it is prayed to direct the CoC to make payments of INR 57.58 Lakhs to the Applicant with an addition of INR 2 Lakhs towards the legal expenses in pursuing the present application.

4. That the Respondent/Committee of Creditors has filed written submissions and submitted the following:

i. That the Applicant in its application has failed to mention any amount due to him. That the Applicant has sought direction against the CoC for the payment of fees and expenses as per the order dated 15/07/2020 passed by this Tribunal but no part of the said order directs the CoC to pay any amount to the Applicant. The Tribunal in the said order at nowhere directed the CoC to clear any arbitrary amount asked for by the Applicant / erstwhile IRP. The Applicant is misleading this Tribunal and trying to use the forum to extort untenable amount from the CoC.



- ii. That the Applicant has mentioned that no fees was paid to him after the order dated 15.07.2020. However, to the contrary, he is relying on the expenses chart which was calculated till 17.07.2020. It relevant to submit that cost sheet is provided by the RP to the CoC and the authenticity and the veracity of the same could only be given by the RP. Further, it is only the RP who could verify whether the Applicant has attached / substantiated the amount so claimed from the CoC under the CIRP cost with the bills, invoices and documents, etc.
- iii. That the present application is not maintainable under Section 60 (5) (c) of the IBC which reads that “any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.” If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky, an IRP/RP will claim any single penny not paid by the CoC or disputed by the CoC at any time before the Tribunal, instead of filing the same and raising question at relevant time.
- iv. That the Applicant was well aware that on 20.02.2020, Sh. Praveen Kumar Agarwal was appointed as the Resolution Professional in the present matter and therefore he cannot claim his dues for the period after the said date, as no work was performed by him. Further, the application filed by the Applicant is bad on the face of it for non-joinder of party as the Applicant has not impleaded RP as a party who, in the present case, has all the details regarding the invoices/documents submitted by the Applicant to substantiate its claim. The role of CoC is only to approve or disapprove any agenda/payment, which is put to them on the basis of the supporting documents; hence the present application is vague, ambiguous, contrary

c



and non-est in eyes of law as there is a concealment of relevant facts.

- v. That the Applicant has done various unprofessional and unethical acts and have miserably failed to perform his duties as an IRP. He allowed custody of Iridia project site to the Operational Creditor M/s Kaveri Sahkari Awas Samiti (KSASL) despite having admitted its claim. He did not put-up notice board showing moratorium in terms of NCLT order dated 08.11.2019 at prominent places like registered office, administrative office, agriculture land, and construction sites of the Corporate Debtor despite having raised bills for expenses for this purpose. He did not report the matter to the local police about illegal occupation of Iridia project site in Noida by the Operational Creditor for three months in violation of moratorium by the Tribunal. On the top of it, in his emails dated 9.02.2020 to KSASL and the SSP Gautam Budh Nagar, the IRP himself conceded right of occupation of the site to KSASL on 36% of land despite having admitted its claim against the Corporate Debtor. The erstwhile IRP (Applicant) refused to take these facts on record in the minutes of the 3rd meeting of CoC. The erstwhile IRP (Applicant) refused to file FIR with concerned police station against the promoter/director and land owners to get access to the premises of the Corporate Debtor as per the 4th meeting of CoC.
- vi. That the Erstwhile IRP & the IPE did not protect the record of CIRP including the Resolution Plan. Instead of ensuring its safety in fire proof safes, the IRP & IPE allowed it to be gutted in the alleged fire in the office of the IPE. The alleged incident of fire at the premises of IPE took place on 23.06.2020 but the erstwhile IRP (Applicant) did not inform the CoC about fire and damage to the records of CIRP, which is surprising in view of the emails sent by it through AR to COC members about the



petty matters like thunder storm at the project site. Instead of handing over all records, he preferred to declare that all records were gutted in fire on 23.06.2020.

- vii. That the erstwhile IRP (Applicant) did not take custody of the registered office, administrative office, Iridia project site in Noida, construction site in Amritsar, vehicles, agriculture land, computer systems, tools & equipment, and other assets of the Corporate Debtor despite having claimed payment of expenses on this count by raising three invoices and despite the CoC members having requested him to take custody of assets on priority in every meeting. Furthermore, despite repeated requests, no information / clarification is given by the Applicant with respect to the payments made by him on account of GST and TDS.
- viii. That for all the acts done / services provided by the Applicant in the CIRP of the corporate debtor and for all such process the Applicant had presented the same before the CoC and the CoC after due consideration (looking into the respective bills / invoices as provided by the Applicant), has approved a total payment of Rs. 15,62,540/- towards CIRP cost incurred by the Applicant from 13/11/2019 till 24/03/2020. Further, out of the approved amount of Rs. 15,62,540/- an amount of Rs. 14,69,804/- has already been paid to the Applicant.
- ix. That the Information Memorandum prepared by the Applicant does not contain vital information. The said Information Memorandum was never presented before the CoC. It is relevant to mention here that the books of account and balance sheet for the Financial Year 2019-20 were not prepared by him. He failed to complete identification of the avoidable transactions and forensic audit / transaction and perform valuation of assets at the relevant time.



Most importantly, the Applicant failed to handover the actual physical copies of the documents of the CIRP of the corporate debtor as it is alleged that the same were destroyed in the fire at the office of the Applicant/IPE.

- x. That the fees decided to be paid to the Applicant (Sh. Sanjay Gupta) of Rs. 6 lacs per month includes cost on account of engaging full time Qualified Legal Associate, Management Associate and Company Secretary, which the Applicant had never engaged/appointed. It is evident from the absence of all of them from CoC meetings held thereafter and also evident from the expenses claimed by the Applicant towards filing of MCA compliances. Looking to the non-performance of the Applicant (erstwhile IRP) and non-engagement of these officials, the Applicant was requested by CoC to put up the matter of revision of IRP's fee in the 5th meeting of CoC. But the Applicant (erstwhile IRP) did not care to add the same in the agenda. However, looking into to all these issues, his fee was revised to Rs. 2.50 Lakh per month in the 6th meeting of the CoC, while the fee approved for the Resolution Professional was Rs. 2 lacs per month. In this way, the Respondent has approved still a higher fee for the Applicant vis-a-vis the fee being paid to the Resolution Professional.
- xi. It is submitted that the CoC has complied with the orders of the Tribunal and cleared dues as directed by this tribunal. It is further submitted that a Compliance Report was filed in compliance of the order dated 12.03.2020.

5. We have heard the Ld. Counsel for the applicant and COC, perused the averments made in the application and written submissions filed by the applicant as well the CoC.



6. As we notice that despite direction given to the CoC to file the reply, the CoC has failed to file the reply then vide order dated 05.01.2021, right to file reply was closed.

7. We further notice that against that order, the CoC had moved to the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 115-116/2021 for setting aside the order dated 05.01.2021 and subsequent order dated 12.01.2021 (by which the prayer to review the order dated 05.01.2021 was rejected by this Adjudicating Authority). Hon'ble NCLAT after hearing the matter, dismissed the appeal with a direction to the Adjudicating Authority to allow the appellant to place on record its written submissions and an opportunity of being heard.

8. We further notice that accordingly, the CoC has filed its written submissions, which are on record.

9. On perusal of the averments made in the application as well as written submissions filed by both the parties, we observe that the main dispute is with regard to the payment of fee and expenses to the erstwhile IRP. According to the applicant/IRP since the CoC had earlier approved his fee @ Rs. 6 lakhs per month he is entitled to get his fee @ Rs. 6 lakhs per month from the date of his appointment till he was discharged on 15/07/2020 and also the amount towards other expenses. Whereas the contention of the CoC is that it has resolved to reduce the fee of IRP from Rs. 6 lakhs per month to Rs. 2.5 lakhs per month in its 6th meeting held on 27.07.2020 on the ground that even the fee of the newly appointed RP by the same resolution was fixed Rs. 2 lakhs per month plus applicable taxes.

10. We further notice the CoC has claimed that it has approved a total payment of Rs. 15,62,540/- towards CIRP conducted by the applicant from 13.11.2019 till 24.03.2020 (date when the lockdown was declared due to Covid-19 pandemic) and against that the CoC has already paid an amount of Rs. 14,69,804/- to the applicant. Whereas the contention of the applicant is that he is entitled to get the fee for the lockdown period also because he

continued to work till the approval of the appointment of new RP by the Adjudicating Authority on 15.07.2020.

11. In the light of the aforesaid disputed facts, we consider the provision regarding the fixation of fee and ratification of fee and expenses of the IRP.

12. Accordingly, we refer to Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which deals with the cost of Interim Resolution Professional and the same is quoted below: -

33. Costs of the interim resolution professional.

(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 any, and other expenses to be incurred by the Interim Resolution Professional.

13. A bare perusal of Regulation 33(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shows that the amount of expenses ratified by the committee shall be treated as Insolvency Resolution Process Costs. Since it is an admitted fact that the COC has fixed the fee and ratified the expenses of the petitioner and as per Explanation to Regulation 33, "expenses" includes the fee of IRP. , In terms of the above Regulation, the Adjudicating Authority has been empowered to fix the "expenses" only if it is not fixed by the applicant/COC.



14. It is also an admitted fact that the IRP in the 2nd meeting of CoC held on 04.01.2020 placed the matter regarding fixation of his fee and ratification of expenses and the CoC has approved the fee of Rs. 6 lakhs per month, which included the fee of IRP and IPE (Insolvency Professional Entity) along with a team of professionals in the ratio of 30:70%.

15. It is further seen that in the 6th meeting of the CoC dated 27.07.2020, the matter regarding the ratification of fee and expenses of the applicant was considered and the applicant was also present in that meeting. After considering the statement of expences presented by the applicant/IRP, the CoC in its 6th meeting considered the bills submitted by the applicant as Item No. 8 of the agenda and passed the following Resolution same are quoted below: -

8. BILLS SUBMITTED BY THE IRP MR. SANJAY GUPTA FOR CONDUCTING THE CIRP.

The Chairman informed the committee that the outgoing IRP has presented the statement of expenses incurred by him in respect of CIRP. The total expenses claimed / incurred by the outgoing IRP are for Rs. 71.62 Lacs, as detailed below:

~~5~~



Serial No.	Particulars	Amount Claimed (Rs.)
1.	IRP Fee @ Rs. 1.80 Lakhs per month Excluding applicable Taxes	16,16,447
2.	Professional Fee of IPE i.e., AAA Insolvency Professionals LLP to which IRP is a Partner and is taking support from IPE i.e. 4.20 Lakhs per month	38,30,237
3.	Cost of conducting 1st COC meeting on 10th December, 2019 (AAA Insolvency Professionals LLP)	4,223
4.	Cost of conducting 2nd meeting on 4th January, 2020 (AAA Insolvency Professionals LLP)	8,528
5.	Cost of conducting 3rd meeting on 10th Feb. 2020 (AAA Insolvency Professionals LLP)	1,001
6.	Cost of conducting 5th meeting on 18th Mar. 2020 (AAA Insolvency Professionals LLP)	778
7.	Reimbursement of Expenses Incurred For Maintain the Email ID of Horizon Buildcon Private Limited For CIRP Process@2412- for Per Year etc.(AAA Insolvency Professionals LLP)	2,846
8.	Miscellaneous charges including printing and stationery, postage and courier etc.(AAA Insolvency Professionals LLP)	11,650
9.	Public Announcements published (2 times) (Avanitika Communications)	7,560
10.	Visit and inspection charges for 2 sites (Inspection 07.06.2020, 26.06.2020 & 08.07.2020)	16,284
11	Amount of Bill of Security Agency for providing Security Guards. (From 19.12.2019- 20.07.2020) (Shivay Group)	2,61,418
12	Bill of Advocate for filing of report/ application for constitution of Committee of Creditors/Authorized Representative including attending hearing and filing fee.(India Juris)	3,09,870

13	Form-G published (Millenium-2001 Advertising Agency)	37,440
14	Publication expense in financial express & Jansaat on 16-11-19, financial express on 17-11-19 (Sri Vinayaka ADS)	12,667
15	Bills for E-Voting (1st, 2nd, 3rd, 4th and 5th) (Link Star Infosys Private Limited)	1,08,000
16	INC -28, New GST Registration & TDS Return (AVRG Chartered Accountant Firm)	15,340
17	Bills for Authorized representative (1st, 2nd, 3rd, 4th and 5th) (Mr Pawan Kumar)	1,35,000
18	Professional Fees billed as per the terms of agreement (BDO India LLP)	97,200
19	GST Payments	1,09,504
20	TDS Payments	5,75,559
	Total	71,61,522

The Chairman further informed that Mr Sanjay Gupta is present in the meeting to make his representation about his bills. The committee may discuss with him the statement of expenses, consider and pass as it deems fit.

Mr. Sanjay Gupta IRP, informed that he has put up bills for a sum of Rs. 71.62 lacs for his fee, IPE's fee and the expenses incurred to conduct CIRP. Mr. Sanjay stated that the expenses including his fee for a sum of Rs. 59.52 lacs has already been approved by the COC. The reimbursement of TDS and GST amounting to Rs. 6.85 lacs and expenses for Rs. 5.24 lacs are to be approved, the bills have been submitted to COC. The committee may consider the bills and ask him if any query is there. With regard to the work done under CIRP, Mr. Sanjay told the committee that whatever work has been done that is all before the committee and recorded in the minutes of the meetings.

The committee was quite critical of the performance put up by IRP. The committee drew attention of the IRP to the minutes of the second COC meeting wherein it was recorded that the possession of the IRIDIA project Noida had been taken over and the possession of Amritsar project will also be taken over if the same has not already

been sold. The committee citing subsequent events wherein entry was not allowed to the project site to the home buyers and to the Valuers, coupled with the fact that an application has been filed by the IRP under Section 19(2) before the hon'ble adjudicating authority praying for the directions to take over possession of the project besides other matters, expressed displeasure over the mis-statement of having taken over possession of the assets of the CD in 2nd CoC meeting. The committee was of the view that the IRP had failed in performing his duties as IRP. The committee noted that though the CIRP began on 13.11.2019 yet the following important work are to be done:

- Possession of the assets not yet taken over.
- Books of Accounts for FY 2019-20 not ready.
- Balance Sheet for the year 2019-20 - not final.
- Forensic / Transaction Audit not done.
- Valuation of the assets -not done.

In addition, the committee pointed out some anomalies in the bills submitted and also about the missing bills. Mr. Sanjay agreed to look into those anomalies and assured to submit the missing bills.

The committee pointed out that the bills for the fee during the lockdown period which started from 25th March 2020 have been claimed by IRP. The committee was of the view that when the CIRP remained suspended during the lockdown period, claiming fee for the period is not justified. Therefore, the committee rejected the fee of IRP for the lockdown period.

However, Mr. Sanjay - IRP was of the firm opinion that the fee bills for the lockdown period are justified and should be approved by the committee.

The committee expressed displeasure over the failure on the part of IRP to inform the committee of the fire which took place in his office on 23rd June 2020 which as per the IRP gutted the supporting documents for the Claims, Resolution plan, Cheque book, EMD pay order etc.

Mr. Sanjay -IRP agreed to bear the expenses to be incurred to reconstruct the record in particular the Creditors Claim record destroyed in the fire.

The committee considering the performance of the IRP, fee bills for the lockdown period and anomalies in the bills, proposed to put up a resolution to reduce the IRP's fee from the date of his engagement from Rs 6 lakh per month to Rs. 2.50 lakh per month and as a result for approval of payment of bills for Rs. 15,62,540/- as against Rs. 71,61,552/- claimed by the IRP. The committee agreed to consider in addition the claims for GST and TDS reimbursements, missing bills and additional amount if any on clearance of pointed out anomalies in the bills, in its next meeting. The committee suggested the bills of the vendors pending for payment will be paid directly to them. Mr. Sanjay agreed with the proposal.

"RESOLVED THAT that the fee of the outgoing IRP Mr Sanjay Gupta be reduced from Rs. 6 lakh per month to Rs. 2.50 lakh per month due to his non-performance from the date of his engagement, corresponding share of the IPE will also stand revised. Further resolved that bills for a sum of Rs. Rs.15,62,540/- as against Rs. 71,61,552/- claimed by IRP be approved as Corporate Insolvency Resolution Process Cost.

It was further RESOLVED that the claims for GST and TDS reimbursements, missing bills and additional amount if any on clearance of pointed out anomalies in the bills, will be considered in its next meeting."

The Chairman informed that the approved expenses including fee shall be paid to them within 7 days as directed by the hon'ble adjudicating authority. Mr.Sanjay-IRP was requested to complete the handover process in the intervening period.

16. It is further seen that in the same meeting, the CoC as Item No. 10 has resolved to approve the fee and expenses of the newly appointed RP Mr. Parveen Kumar Agrawal and the scanned copy of the same is quoted below: -

10. APPROVAL OF THE FEE PAYABLE TO THE RP TO CONDUCT THE CIRP.

In the COC meeting held on 20th February, it was resolved by the COC with majority voting to appoint Mr. Praveen Kumar Agrawal as RP of the Corporate Debtor. Subsequently NCLT confirmed the appointment vide Order Dt. 15.07.2020. It is proposed to pay him Rs.2,00,000/- per month plus applicable taxes and out of pocket expenses with effect from 15th July 2020. Depending on his performance, the fee could be enhanced. It is further proposed that M/s Synergy Insolvency Professionals LLP (IPE) recognised as an Insolvency Professional Entity under IBC, and registered with IBBI be allowed to be engaged by RP for providing support services to him as and when needed for efficient management of the CIRP.

The Committee discussed the same at length. The following resolution was placed before the meeting for voting.

"RESOLVED THAT a remuneration of Rs.2.00 Lakhs per month plus applicable taxes and out of pocket expenses be and is hereby approved for payment with effect from 15th July 2020 to the Resolution Professional in the Corporate Insolvency Resolution Process of Horizon Buildcon Private Limited. The fee could be enhanced depending on his performance. In addition to the Professional Fee and applicable taxes, the RP will be entitled for reimbursement of expenses like Insurance Premium for the assets of the Corporate debtor, Fee payable to professionals engaged by the RP / IPE and as approved by CoC, publication of public announcement, expenses for conducting COC meetings, travel expenses and other incidentals incurred during the corporate insolvency resolution process or any other expense incidental to CIRP."



17. On the basis of these two resolutions, the CoC claimed that since the fee of the newly appointed Resolution Professional is fixed @ Rs. 2 lakhs per month plus applicable taxes, the fee of the ex-IRP has been reduced from Rs. 6 lakhs to Rs. 2.5 lakhs per month.

18. As we observe, as per Regulation 33(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the amount of expenses ratified by the committee shall be treated as Insolvency Resolution Process Costs and the Adjudicating Authority *shall fix expenses where the applicant has not fixed expenses under sub-regulation (1)* and here in the case in hand, the COC, which represents the Applicant, has already fixed and ratified the fee and expenses of the I.R.P in the 6th meeting of the CoC dated 27.07.2020. Therefore, we are not inclined to interfere with the fixation of fee made by the COC.

19. At this juncture, we consider the next contention of the Applicant. It is contended on behalf of the applicant that he has continued to work as IRP till the approval of the appointment of Mr. Parveen Kumar Agrawal as RP on 15.07.2020, but the COC has not approved the fee from the period of lockdown commencing from 25/03/2020 till the date of appointment of the Resolution Professional.

20. We observe that in the order dated 15.07.2020 passed by this Adjudicating Authority, it is clearly mentioned that the applicant Mr. Sanjay Gupta is discharged from his duties on that day. Which means that the IRP has performed his duties till 15/07/2020. If an Insolvency Professional has continued to work as an IRP till 15.07.2020, there is no reason to deprive him from getting the remuneration/fee for that period.

Therefore, we are unable to accept the contention of the CoC that the applicant is not entitled to get his fee for the period of lockdown. Rather, we are of the considered view that the applicant is entitled to get the fee till the date of his discharge from his duties.



21. Hence, we have no option but to hold that apart from fee and expenses approved by the COC in its 6th meeting dated 27.07.2020, the applicant is also entitled to get the fee till the date of appointment of R.P. i.e till 15/07/2020.

22. Accordingly, we direct the COC, apart from the amount already approved by the COC in its 6th meeting dated 27.07.2020, to pay the fee of the IRP till the date of 15/07/2020, as per the rate approved in that meeting, within two weeks from the date of this order.

23. *With this order, the present application stands disposed of.*

- Sd -

(L.N. GUPTA)
Member (T)

- Sd -

(ABNI RANJAN KUMAR SINHA)
Member (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT - II

Item No. 212

IB-266(ND)2019

IA/3960/2020, IA/3975/2020, IA/1577/2020, IA/140/2021

IN THE MATTER OF:

Mr. R. Tarkeshwar Narayan

... **Applicant/Petitioner**

Versus

M/s. Horizon Buildcon Pvt. Ltd.

... **Respondent**

Under Section: 7 of IBC, 2016

Order delivered on 13.07.2021

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (J)

SHRI L.N. GUPTA,
HON'BLE MEMBER (T)

PRESENT:

Abhishek Anand & Pathik Choudhury Advocates for RP
Sadheer Aaryaan Sadanand, Advocate for Kaveri Shakari Ltd.
Mayuri Raghuvanshi adv for Respondent Indian Overseas Bank in IA No.
3975/2020 and 140/2021, Adv Aishvary Vikram and Mrinali Prasad for
IA No. 3975/2020 & IA 140/2021, Aditya Nayyar Advocate for CoC
Ms. Nattasha Garg & Mr. Harsimran Duggal- Advocates for Respondent in
IA 3960/2020

ORDER

IA/140/2021- Ld. Counsel appearing for the applicant seeks permission to withdraw the application.
Application is **Dismissed as withdrawn**.

IA/1577/2020- Pleadings are complete. List this IA on 18th August 2021.

IA/3975/2020- In the course of hearing, we notice that the reply filed by Respondent no. 2, the Indian Overseas Bank is not available on the DMS, whereas the Ld. Counsel appearing for Respondent no. 2 submits that she had already filed the reply in the month of October 2020. Therefore, the Registry is directed to upload the same, if it is defect free. In the meantime, the Respondent no. 2 is also directed to get it verified from the Registry. If there is any defect pointed out, remove the same. List this IA on 28th July 2021.



(L. N. GUPTA)
MEMBER (T)



(ABNI RANJAN KUMAR SINHA)
MEMBER (J)