

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.192 of 2020 in
C.P (IB) No.244/BB/2018
U/s. 60(5) of the IBC 2016

Between:

Mr. Alok Kaushik

*(Registered Valuer in the CIRP of
Kavveri Telecom Infrastructure Ltd)*
G-105, Sai Baba Apartments,
Sector-9, Rohini,
Delhi - 110085

... Applicant

And

Mrs. Bhuvaneshwari Ramanathan,
*(Resolution Professional in the CIRP of
Kavveri Telecom Infrastructure Ltd)*
C-006, Pioneer Paradise,
24th Main, 7th Phase, J.P Nagar,
Bengaluru - 560 078

... Respondent/RP

Date of Order: 29th June, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

The Applicant : Mr. Alok Kaushik, Party in person
The Respondent/RP : Mrs. Bhuvaneshwari Ramanathan,

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No. 192 of 2020 in C.P. (IB) No.244/BB/2018 is filed by Mr. Alok Kaushik (hereinafter referred to as 'Applicant /Registered Valuer in CIRP') Under Section 60(5) of the IBC 2016, by *inter-alia* the following reliefs:


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- 1.) To condone the delay in preferring this application towards the order dated 19.12.2019 of this Hon'ble Bench. The concerned Resolution Professional has kept the Applicant in dark for a long time and has not herself done her duty in informing the Hon'ble NCLT for missing CIRP costs. Further the COVID-19 conditions in the country have restricted the efforts of the Applicant.
 - 2.) This Application may kindly be allowed and the Respondent may kindly be directed to make the payment of Rs.6,50,000/- plus applicable GST towards the valuation exercise fee, as per the appointment letter issued by the Resolution Professional. The Resolution Professional has confirmed that the valuation fees were duly ratified by the COC.
2. Briefs facts of the case, as mentioned in Application, which are relevant to the issue in question, are as follows:
- (1) C.P (IB) No. 244/BB/2018 filed by M/s. Dena Bank (Financial Creditor) under Section 7 the Code R/w Rule 4 of I&B (AAA) Rules, 2016 by inter alia seeking to initiate CIRP in respect of M/s. Kavveri Telecom Infrastructure Limited & others (Corporate Debtor) on the ground that it has committed a default for an amount of Rs.69,18,44,425.03/- was admitted by the Adjudicating Authority, by an order dated 21.03.2019, by initiating CIRP and appointing Mr. B.Hariharin as IRP, moratorium etc. However, the COC has changed the said IRP and nominated Mrs. Bhuvaneshwari Ramanathan as the Resolution Professional and the same was approved by AA vide its order dated 26.08.2019.
 - (2) Subsequently, the Resolution Professional appointed two registered valuers namely Mr.Alok Kaushik for Plant and machinery and Prateek Mittal for Securities and Financial

Assets , vide her appointment letter dated 16.09.2019 by interalia putting condition that whole valuation work to be completed within 30 days from the order.

- (3) It is stated that the valuer asked for information in terms of fixed assets register, agreements, contact details, site access authority etc. from the Resolution Professional. The Resolution Professional did not have information at one time and shared with the Valuer over a period of time with the last information in terms of agreements being shared on 17.12.2019. The valuer kept updating the resolution professional in terms of the site visits, findings, information and access requirements and other aspects of the valuation exercise for the wide array of sites across country. The Resolution Professional was appreciative of the work done by the valuer. In order to meet day to day expenses, the valuer sought an advance amount. The Resolution Professional shared the billing details and GST details to raise the advance invoice. The Valuer raised invoice for 30% of the total professional fees of Rs.6,50,000/- plus GST. The valuer deposited the GST heavy operating expenses and hiring services of professional at different places.
- (4) It is stated that the Resolution Professional shared further details of agreements on 17.12.2019 as an input to the valuation exercise. However, on 19.12.2019 she sent a communication that since Hon'ble NCLT, vide its order dated 18.12.2019 has set aside the CIRP, she was cancelling the appointment of valuers. The Resolution Professional assured the valuer that the Professional fees of the valuers have already been ratified by the COC as provided in the appointment letter. She also mentioned that she would make a representation to the Hon'ble NCLT regarding the payment of fees. The Applicant is under such undue pressure agreed for his own valuation fees

at 75% of the ratified fees plus actual expenses with a hope to get his hard earned dues. It is alleged that the Resolution Professional kept the applicant valuer in dark insisting that she was talking to the COC bank for release of fees. However, on 04.03.2020, the Resolution Professional wrote to the applicant valuer that the bank has not taken into consideration the valuation report considering that the CIRP period was over and since Hon'ble NCLAT has set aside the CIRP. She seems to have deliberately not informed Tribunal about the fees and expenses of the valuers in the CIRP, who were appointed by herself only and completed their work in the CIRP.

(5) It is alleged that the Resolution Professional's malicious intent and actions have prevented the Applicant/Valuer in preferring this application earlier. She kept assuring the applicant that she was speaking with the COC for release of valuer fees. Only after 04.03.2020 when she wrote to the Applicant that the COC was not releasing the fees, the applicant has decided to prefer this application. The delay on preferring this application may be condoned due to present circumstances.

3.) The Respondent/Ex Resolution Professional, has filed a Reply dated 23.06.2020 by *inter-alia* stating as follows:

(1) She has appointed 2 valuers, the Applicant and another, on 16.09.2019, after the COC approved the fees for each valuer as Rs.6,50,000/- plus Rs.1 lakh towards expenses totalling to Rs.7,50,000/- plus applicable GST, in the 5th COC meeting held on 11th September 2019. In the meantime, as the CIRP was coming to an end on 16th December 2019, the COC in the 8th meeting held on 9th December 2019, decided to liquidate the CD with proposal to sell the Company as "Going Concern" in the 1st 90 days of Liquidation as allowed in the Regulations and accordingly, the undersigned submitted the application I.A 673/2019 dated 12th


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December 2019 for Liquidation. In the meanwhile, Company Appeal (AT) No. 407 of 2019 question the order of Tribunal was allowed by an order dated 18th December 2019, by setting -aside the impugned order and consequently remitted the case to the Adjudicating Authority to decide the fee and cost of CIRP as incurred by the RP, which is to be borne and paid by Dena Bank, the Financial Creditor. Based on the above order of Hon'ble NCLAT, as the valuation was in progress and the valuers were yet to complete the valuation, not yet submitted their valuation report, the Respondent RP sent mail to the valuers on 19th December 2019, cancelling the appointment of valuers, citing the above order of Hon'ble NCLAT.

- (2) Accordingly, the Company Petition was closed by the Adjudicating Authority, by an order dated 20th December 2019 as below:

"We hereby fixed fees @ Rs.2,00,000/- (Rupees 2 Lakhs only) per month for the Resolution Professional Plus GST and other incidental expenses. Accordingly, the Resolution Professional can make a claim to the COC and thereafter the COC has to sanction the fees accordingly and pay the same within a period of 4 weeks of form the date of receipt of the copy of the order".

Finally, the COC decided to reimburse the actual expenses incurred during CIRP (as directed by Hon'ble Adjudicating Authority) and remitted the same to her on 29th February 2020, and on 2nd March 2020 communicated the breakup of the fees remitted to her. The remittance included Rs.50,000/- towards the expenses incurred by each valuer. She in turn has remitted the amount of Rs.50,000/- to each of the valuers on March 1, 2020 which has been confirmed by the Applicant for the amount received. Hence, when the COC has reimbursed only the actual expenses of Rs.50,000/- incurred by the Applicant valuer, the prayer asking the RP to make the payment of fees is completely wrong and against law. Therefore, she has urged the Tribunal to dismiss the Application.


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- 4.) Heard Mr. Alok Kaushik, Party-in-Person and Mrs. Bhuvaneshwari Ramanathan, Respondent, **through Video Conference**. We have carefully perused the pleadings of both the Parties and the extant provisions of the Code, and the Rules made thereunder.
- 5.) As stated supra, the order of admission dated 21.03.2019 passed by this Adjudicating Authority in CP (IB) No. 244/BB/2018 was set-aside by the Hon'ble NCLAT, vide its order dated 18.12.2019 passed in Company Appeal (AT) (Insolvency) No. 407 of 2019 filed by Mr.C.Shivakumar Reddy and the penultimate directions passed in the order, are extracted below:

"For the reason(s) aforesaid, we set-aside the impugned order dated 21st March 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench in CP (IB) No. 244/BB/2018 and dismiss the application under Section 7 of the I&B code filed by the Dena Bank.

*In the result, 'Corporate Debtor'- Kavveri Telecom Infrastructure Limited is released from the rigor of the 'Corporate Insolvency Resolution Process'. **All actions taken by the 'Interim Resolution Professional'/'Resolution Professional' and 'Committee of Creditors', if any, are declared illegal and set-aside.** The Resolution Professional is directed to handover the records and assets of the 'Corporate Debtor' to the Promoters/Directors of the 'Corporate Debtor' immediately.*

*The matter is remitted to the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench to **decide the fee and cost of the 'Corporate Insolvency Resolution Process' as incurred by the 'Resolution Professional',** which is to be borne and paid by the Dena Bank ('Financial Creditor'). The Appeal is allowed with the aforesaid observations and directions. No costs."*

- 6.) In pursuant to the above order, the Tribunal closed the case by an order dated 20th December 2019 by *inter-alia* fixing fees @ Rs.2,00,000/- (Rupees 2 Lakhs only) per month for the Resolution Professional Plus GST and other incidental expenses. As stated supra, the Hon'ble NCLAT has set aside all the actions taken by the Interim



Resolution Professional/Resolution Professional and the Committee of Creditors is set aside and remitted the matter to the Adjudicating Authority to decide the fee and cost of the CIRP as incurred by the Resolution Professional. So all actions should include the appointment order issued to the Applicant by appointing him as valuer. It is also relevant to point out here that the Applicant here in, along with Mr. Prateek Mittal, were appointed by the Resolution Professional, vide her letter dated 16.09.2019 for valuation of plants and machinery and securities or financial assets. The Letter dated 16.09.2019 **reads as under:**

"I, Smt. Ramanathan Bhuvaneshwari, in my capacity as the Resolution Professional of M/s. Kavveri Telecom Infrastructure Limited hereby appoint the following Valuers as the Registered Valuers of the Company."

NAME	IBBI Registration No.	Asset Class	PAN No.
Alok Kaushik	IBBI/RV/05/2018/10085	Plant and Machinery	AHKPK0799D
Prateek Mittal	IBBI/RV/05/2018/10021	Securities or Financial Assets	ALPPM1665F

One of the conditions mentioned in the order is that whole valuation work to be completed within 30 days from the date of this letter. In pursuant to the order of the Hon'ble NCLAT, the Respondent vide her e-mail dated 19.12.2019 has cancelled the appointment order.

- 7.) The statement of CIRP cost were filed along with the Petition, which says the total CIRP cost is Rs.37,85,728/- out of which, only Rs.8 Lakhs towards Interim Resolution Professional fees, Rs.2,95,000/- towards Resolution Professional (Respondent) and advertisement cost of Rs.1,36,000/- was paid and the remaining balance of Rs.25,54,728/- was not paid. Therefore it is not the case of the Applicant alone that the entire claims towards various services rendered during CIRP was not paid. Moreover it is not in dispute that Rs.50,000/- was paid each of said the valuers, which include the



Applicant herein, towards the expenses incurred by them. Since the Hon'ble NCLAT set-aside the order of this Adjudicating Authority and this Hon'ble Tribunal also passed order consequently with regard to the CIRP cost, this Adjudicating Authority cannot entertain this Application and it became functus officio. However, in case, the Applicant feels that Respondent failed to discharge her statutory duties as Resolution Professional, it is for the Applicant to pursue the same with the IBBI, which is the Competent Authority to deal with such allegations.

- 8.) For the aforesaid reasons and circumstances, we are of considered opinion that the instant Application is not maintainable and also lack merits and thus liable to be rejected.
- 9.) In the result, **I.A No.192 of 2020 in CP (IB) No. 244/BB/2018** is here by rejected. However, this order will not come in the way of Applicant to approach the IBBI seeking appropriate relief, for the allegations made against the Respondent. No orders as to costs.


ASHUTOSH CHANDRA
MEMBER, TECHNICAL


RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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