

**NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**

**Item No.-105 & 106**

IB-1639/ND/2019

IA/2394/ND/2020

IA/2383/ND/2020

**IN THE MATTER OF:**

Nawal Kishore Prasad

....Applicant

**Vs**

Hospitech Management Consultants Pvt Ltd

....Respondent

**SECTION**

U/s 7 IBC code 2016

Order delivered on 13.07.2020

**CORAM:**

**SHRI ABNI RANJAN KUMAR SINHA**

**HON'BLE MEMBER (JUDICIAL)**

**SHRI K.K. VOHRA,**

**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant

: Adv. Rituraj Biswas, Adv. Pawanjeet Dhamija

For the Respondent

: Adv. Lakshay Dhamija for Director, Adv. Mani Bhusan Sinha

**ORDER**

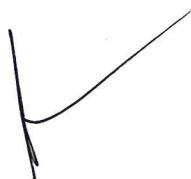
**AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

**IA-2394/2020:-**

1. The present application is filed for submissions of Status report by Mr. Kumud Shekhar, Resolution Professional, in respect of second meeting of Committee of Creditors of Hospitech Management Counsultants Pvt. Ltd. In the status report it is specifically mentioned that after the disposal of the Company Appeal (AT) Insolvency No. 219/2020 on 10.06.2020, the second CoC meeting was held on 13.06.2020 through VC and in that meeting, it was resolved that RP

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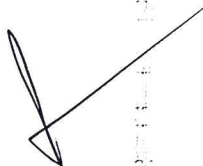
shall file Form FA after the CIRP cost till 25<sup>th</sup> June 2020, is paid by the Corporate Debtor to withdraw the CIRP which is amounted to Rs. 17,75,638/-

**IA-2383/2020: -**

2. The present application is filed under Section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016 and Section 12 A of IBC, 2016 read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking directions in company petition (IB) No. 1639/ND/2019 titled **Nawal Kishore Prasad Vs. Hopitech Management Consultants Pvt. Ltd.**
3. Since, both the IAs are related with each other, therefore, we would like to dispose off both the IAs with this common order.
4. We have heard the Ld. Counsel for petitioner/Corporate Debtor as well as RP and perused the averments made in both the applications.
5. Ld. Counsel for petitioner submitted that Corporate Debtor had preferred an appeal against the order dated 27.01.2020 passed by this Adjudicating Authority and in that appeal the Hon'ble NCLAT passed the following order: -

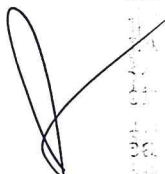
*"We accordingly dispose of this appeal giving liberty to the Corporate Debtor to approach the Committee of Creditor through IRP for permitting the Operational Creditor to withdraw the application in view of settlement stated to have been arrived at, inter-se the Operational Creditor and the Corporate Debtor. The appeal is accordingly disposed off. The interim directions shall stand vacated."*

6. He further submitted that further in pursuant of said direction, the present application is filed by the Director of the suspended Board and hereinafter, through present application, the applicant seeks directions inter alia for fixing reasonable and realistic cost incurred for the purpose of Regulation 31(c) and (d) by the respondent/RP as the



respondent/RP is harassing the applicant by demanding arbitrary, unreasonable and preposterous Corporate Insolvency Professional Process cost of Rs. 3,50,000/- per month plus the expenses even though the entire country since 25.03.2020 is under lockdown and businesses are suffering and the companies are not in the best of financial situations and the applicant's company which is an MSME is not in best of the financial position. Furthermore, for the period 05.03.2020 till 10.06.2020 (which includes the lockdown period due to COVID-19 pandemic), practically, no services were rendered or required concerning the CIRP of the Corporate Debtor. The Copy of order dated 27.01.2020 passed by this Hon'ble Adjudicating Authority in Company Petition no. IB-1639/2019 is annexed as Annexure 1.

7. That the Hon'ble Appellate Tribunal, New Delhi during the hearing dated 17.02.2020 of the appeal after hearing oral submissions on behalf of the applicant was pleased to direct the Interim Resolution Professional to not constitute the Committee of Creditors. That the said direction were pronounced while dictating the orders in the captioned matter and Hon'ble Appellate Tribunal further stated that the common order for stay will be passed.
8. However, on going through the order dated 17.02.2020 from the website of the Hon'ble Appellate Tribunal, the applicant came to know that the order dated 17.02.2020 inadvertently did not find mention of what had transpired during the course of hearing dated 17.02.2020 before the Hon'ble Appellate Tribunal regarding stay of the constitution of the Committee of Creditor or stay of CIRP till the pendency of the appeal before the Hon'ble Appellate Tribunal for which reason respondent/IRP/RP unnecessarily started harassing the directors of Corporate Debtor. Copy of order dated 17.02.2020 passed by Hon'ble Appellate Tribunal in Company Appeal (AT) Insolvency No. 219/2020 tiled as "Avtar Rahi Vs. Hospitech Management





Consultants Private Limited through IRP & Another is annexed as Annexure-2.

9. He further submitted then the applicant immediately filed an application on 19.02.2020 under Rule 11 of the NCLAT Rules, 2016 before Hon'ble Appellate Tribunal seeking directions as to stay of CoC and CIRP process till pendency of the appeal, which came to be listed on 03.03.2020 and the Hon'ble Appellate Tribunal on 05.03.2020 was pleased to stay the CoC till next date i.e. 13.03.2020. On 13.03.2020, interim order passed on 05.03.2020 continued till 27.03.2020. He further submitted that the interim order was in operation as no date were been notified for the appeal due to lockdown owing to COVID-19 pandemic and in pursuance of order dated 30.03.2020 passed in Suo Moto Company Appeal (AT) Insolvency No. 01/2020 by the Hon'ble Appellate Tribunal.
10. He further submitted that under such circumstances petitioner may be permitted to withdraw the main application no. IB-1639/2019 and pass directions thereby for setting aside the arbitrary and unreasonable Corporate Insolvency Resolution Process fee of Rs. 3,50,000/- per month of the Respondent/IRP/RP.
11. On the other hand, Ld. Counsel for IRP/RP submitted that he has enclosed the Form FA and also submitted that fee and expenses has been approved by the CoC and he further submitted that Corporate Debtor may be directed to file the settlement agreement.
12. Now, in the light of submissions raised by the parties, we have gone through the averments made in both the IAs and we find that the **IA-2383/2020** has been filed on behalf of Corporate Debtor on the basis of following order passed by Hon'ble NCLAT, therefore, we would like to like the following order and the same is quoted below:-

"We accordingly dispose of this appeal giving liberty to the Corporate Debtor to approach the Committee of Creditor through IRP for permitting the Operational Creditor to withdraw the application in view



of settlement stated to have been arrived at, inter-se the Operational Creditor and the Corporate Debtor. The appeal is accordingly disposed off. The interim directions shall stand vacated.”

13. Mere plain reading of the order shows that while disposing of the appeal the Hon’ble NCLAT passed the order i.e. “We accordingly dispose of this appeal giving liberty to the Corporate Debtor to approach the Committee of Creditor through IRP for permitting the Operational Creditor to withdraw the application in view of settlement stated to have been arrived at, inter-se the Operational Creditor and the Corporate Debtor. The appeal is accordingly disposed off”. The interim directions shall stand vacated. and in pursuance of that order, the meeting was held on 13.06.2020 and the matter was taken up before the CoC on 13.06.2020 as Item No. 8, which is at page 18 of the application and it was resolved that pursuant to Section 12A of IBC, 2016 read with Regulation 30A of IBBI (CIRP) Regulations, the RP was directed to file form FA after the CIRP cost is paid to the RP by Corporate Debtor to withdraw the CIRP against the Corporate Debtor vide order dated 27.01.2020 and we further find that IRP/RP has claimed Rs. 17,75,638/- which is duly approved by the CoC.
14. At this juncture, we would like to refer the arguments advanced on behalf of petitioner’s counsel, who in course of argument submitted that during the lockdown period, the RP has charged fee and expenses for the 3 months at the rate of Rs. 2,50,000/- + Rs. 1,50,000/- which is not proper because no work has been done by the IRP during this period, so, RP cannot charge fee for that period.
15. At this juncture, we would like to refer Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Person) Regulation 2016 and same is quoted below: -

“The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process cost.



Explanation :- For the purpose of this regulation”expense “ 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 expense to be incurred by the resolution professional.”

16. In view of the aforesaid regulation the fee and expenses shall be fixed by the committee of creditor and not by adjudicating authority, and here in the case in hand it is not the case of applicant that fee and expenses are not approved by the committee of creditor rather the case of the applicant is that fee of Resolution professional is exorbitant, therefore, in view of aforesaid regulation this adjudicating authority is unable to accept the contention of the applicant of **IA-2383/2020**.
17. In our considered view, when a person is engaged to perform the duty then he is entitled to get the fee and accordingly, the fee and expenses of the IRP/RP was approved by the CoC, therefore, only on the ground that during lockdown period no work has been done by the IRP/RP, the person cannot be debarred from claiming the fee, if it is approved by the committee of creditors, so, we find no force in the contention raised by the Ld. Counsel for Corporate Debtor that IRP/RP is not entitled to get the fee and expenses for the lockdown period.
18. So far the prayer of the Corporate Debtor to withdraw the main application IB No. 1639/2019 is concerned, it is admitted fact that CoC has been constituted and that is why Hon’ble NCLAT directed to file the application through RP and accordingly, the matter had been placed before the CoC and CoC directed the RP to file Form FA, after receiving the fee and expenses . We further find that instead of paying the fee and cost to the IRP/RP or bank guarantee regarding that fee and cost, the Corporate Debtor has directly filed this application bearing no. IA-2383/2020 under Section 60(5) of the IBC, 2016 read



with Rule 11 of the NCLT Rules, 2016 and Section 12 A of IBC, 2016 read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for withdrawal of company petition (IB) No. 1639/ND/2019 titled **Nawal Kishore Prasad Vs. Hopitech Management Consultants Pvt. Ltd**, therefore, at this juncture, we would like to quote Section 12A as well as Regulation 30A and the same is quoted below:-

*30 A. Withdrawal of application.*

*(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –*

*(a) before the constitution of the committee, by the applicant through the interim resolution professional;*

*(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:*

*Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.*

*(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee-*

*(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1); or*

*(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).*

*(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.*

*(4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within*



*seven days of its receipt.*

*(5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.*

*(6) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (3) or (5).*

*(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.]*

*12A. The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be prescribed.]*

19. Mere plain reading of the provisions show that as per regulation 30A, after constitution of the COC, the applicant must filed application for withdrawal u/s 12A of IBC through IRP/RP and that is the reason Hon'ble NCLAT directed the corporate debtor to approach the Committee of Creditor through IRP for permitting the Operational Creditor to withdraw the application in view of settlement stated to have been arrived at, inter-se the Operational Creditor and the Corporate Debtor. Hence we are of ther considered view that since the applicant directly filed the present application , therefore, same is not maintainable.





Accordingly, we hereby DISMISSED the IA-2383/2020 .

20. So far IA -2394 is concerned, Corporate Debtor is directed to file bank guarantee of Rs. 17,75,638/- in favour of RP, thereafter, RP is directed to file an withdrawal application, which shall be considered in accordance with the provision of law. With this order IA-2394 is **disposed off.**

SD/-

(K.K. VOHRA)  
MEMBER (T)

SD/-

(ABNI RANJAN KUMAR SINHA)  
MEMBER (J)