

Sl. No. 3

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 12.07.2024 AT 03:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/130/9/AMR/2022	Main Case	9 of IBC	Southern Power Distribution Company of A.P. Limited Vs. Sudalagunta Sugars Limited
	IA(IBC)/412/2023	U/s 60(5) of IBC, 2016 r/w Rule 33 of IBBI (Insolvency Resolution Process for Corporate Persons) Reg's 2016	Mrs Gaddam Sritha Shireen , Erstwhile IRP of Sudalagunta Sugars Limited Vs M/s Southern Power Distribution Company of A.P Limited

ORDER

IA(IBC)/412/2023:

Present: Ms. Sarvani Desiraju, Ld. Counsel for the Respondent.

Orders pronounced. IA(IBC)/412/2023 is allowed and recorded vide separate sheets.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI SPECIAL BENCH**

IA (IBC)/412/2023
in
CP (IB)/130/9/AMR/2022

[Under section 60(5) of the Insolvency and Bankruptcy Code, 2016, read
with Regulation 33 of the Insolvency and Bankruptcy Board of India
(Insolvency Resolution for Corporate Persons), Regulations, 2016]

In the matter of M/s SUDALAGUNTA SUGARS LIMITED

BETWEEN:

Mrs. Gaddam Sritha Shireen

Erstwhile IRP of M/s. Sudalagunta Sugars Limited,
#23-38-1 & 1A, siva Raman Street,
Satyanarayanapuram, Vijayawada,
Andhra Pradesh – 520 011.
IBBI/ IPA-001/ IP-P01225/2018-19/11974

... Applicant

Versus

M/s. Southern Power Distribution Company of A.P Limited,
19-13-65/A, Srinivasapuram,
Tiruchanoor Road,
Tirupathi, Chittoor District,
Andhra Pradesh – 517 644

...Respondent/ Operational Creditor

Date of Order: 12.07.2024

Coram:

**SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)
SHRI SANJAY PURI, MEMBER (TECHNICAL)**

Sd/-

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Parties/Counsels present:

For the Applicant : Ms. Prabha Prasad, Advocate

For the Respondent : Ms. Sarvani Desiraju, Advocate

ORDER
(Per: Bench)

1. This Application filed by the Erstwhile IRP of M/s. Sudalagunta Sugars Limited ('Applicant') under Section 60(5) of the Insolvency and Bankruptcy Code 2016 r/w Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons), Regulations, 2016 seeking directions to M/s. Southern Power Distribution Company of A.P Limited ('Respondent')
 - i. To pay amount of INR 2,27,838/- towards Applicant's Fees, CIRP cost and other expenses, as ratified in the 1st CoC meeting dated 10.05.2023.
 - ii. To pay the cost and legal fees incurred by the Applicant towards filing of this Application.
2. Brief Facts and contentions of the applicant leading to the present Application are as follows:
 - 2.1. The Respondent/Operational Creditor has initiated a Petition under Section 9 of the Code vide CP(IBC)/130/9/AMR/2022, against M/s. Sudalagunta Sugars Limited ('Corporate Debtor' "CD"), before this Tribunal and the same was admitted into Corporate Insolvency Resolution Process (CIRP) vide order dated 10.04.2023 and the present applicant has been appointed as the Interim Resolution Professional ('IRP').

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- 2.2. On the receipt of the aforesaid order, the Applicant made public announcement dated 13.04.2023 in two newspapers i.e. Financial Express (English Language) and Prajasakti (Vernacular Language) for inviting claims from the Creditors.
- 2.3. On 19.04.2023, the Applicant along with her team visited the factory premises of CD located at Mayura Nagar, Katura post, B.N Kandriga Mandal, Andhra Pradesh – 517 644 and at Prabhagiripatnam Village, Podalakur Mandal, SPSR Nellore District, AP – 524 345 and that on 21.04.2023 has filed the Form A intimating the public announcement with IBBI portal and further intimations regarding the commencement of CIRP of the Corporate Debtor was informed to all the concerned authorities.
- 2.4. In response to the public announcement, the applicant received claims during the period from 24.04.2023 to 01.05.2023 and the same were verified and further communications were sent to the claimants and constituted the Committee of Creditors (CoC) and report certifying the constitution of the CoC was filed before this Tribunal.
- 2.5. In the 1st CoC meeting held on 10.05.2023, the CoC were updated regarding the status and actions taken by the Applicant under the Code, claims received, expenses incurred towards the professional fees and out of Pocket expenses etc. by the Applicant. Further submitted that in the 2nd CoC Meeting held on 31.05.2023, the CoC resolved to appoint Mr. Chinnam Poorna Chandra Rao as the Resolution Professional ('RP').

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- 2.6. The CD by the way of an Application, MA (IBC)/1/2023 under Rule 49(2) of the NCLT Rules, 2016 sought the setting aside of the ex-parte order dated 10.04.2023 admitting the Corporate Debtor into CIRP and this Tribunal vide order dated 06.06.2023 ordered the Applicant not to proceed with the CIRP process until further orders and the same is allowed by this Tribunal vide order dated 23.06.2023 to set aside *ex parte* order dated 10.04.2023.
- 2.7. The Respondent had paid only an amount of INR 17,535/- towards public announcement and that the professional fee and out of pocket expenses of the IRP/Applicant, which is totalling to an amount of INR 2,27,838/- is due and payable by Respondent/OC. But the Respondent/OC has failed to pay the above claim amount despite of several reminders. Hence this Application.
3. The Respondent/Operational Creditor filed counter contending that:
- 3.1. The application is not maintainable whether on law or on facts under the Insolvency and Bankruptcy Code, 2016 and it is misuse of the provisions of law. It is further submitted that the application is filed seeking recovery of amount and such a claim cannot be adjudicated before this Tribunal.
- 3.2. Admitting to some of the averments made by the Applicant which are the timeline of proceedings which happened till date in the Captioned Company Petition, the Respondent contended that it is settled position of law and that as per the provisions of Regulation 33 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for

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Corporate Persons) Regulations, 2016, that the CoC was the appropriate body from which the claim had to be asked.

"Regulation 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.*
- (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.*

- 3.3. It is submitted that the Applicant clearly in the Order dated 13.06.2023 which was passed in IA(IBC)/222/2023 has stated that the Applicant had no objection when Mr. Chinnam Purnachandra Rao was appointed as the Resolution Professional. The Respondent further contended that the allegation of the Applicant that the Respondent has to pay the balance amount is absolutely false and that it is vehemently denied.
- 3.4. The Respondent contended that the present Application is filed without disclosure of all the facts and the fact that the Applicant has given her No Objection for the appointment of Mr. Chinnam Purnachandra Rao as the new RP. It is further contended that the question of recovery of due amounts from the Respondent cannot be subject to adjudication before this Tribunal and that the CoC are not made party to this Application wilfully to harass the Respondent.
- 3.5. It is contended that the Application lacks merits and it is prayed by the Respondents to dismiss the Application with exemplary costs.

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4. We have heard the Learned Counsels for both the parties and perused the entire records.
5. In the light of the contest as aforementioned, the point which emerges for our consideration is:

“Whether the IRP is entitled to claim fees and expenses incurred in the CIRP proceedings and, if so, whether Respondent/Operational Creditor is liable to bear such fees/expenses.”

6. So much so, it is undisputed that the CoC in the 1st meeting on 10.05.2023 has ratified the expenses incurred by the IRP tuned to an amount of INR 2,81,373/- (including GST of INR 36,000/-). Relevant extracts from the meeting is as follows:

“Item No. B1: To ratify the expenses incurred by IRP towards her professional fees and out of Pocket expense.

S.No.	Particulars of Expenditure	Amount in INR
1.	IRP Professional Fee (Incl of GST INR 36,000/-)	2,36,000
2.	Public Announcement	17,535
3.	Travelling & Conveyance – Visit to CD Factories	23,346
4.	Form INC 28 – Filing Fee	2,000
5.	E-Forms & Postage Charges	607
6.	IA filing fee of Report Certifying Constitution of CoC	1,885
	Total	2,81,373

Conclusion: With 100% voting unanimously resolved that approval of the Committee of Creditors is hereby accorded in respect of CIRP Costs mounting to Rs. 2,81,373/- as incurred during the IRP period and such approval is in compliance with the I&B Code and regulations made there under”.

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7. The Ld. Counsel for the Applicant submitted that out of the total expenses of INR 2,45,373/- (Excl. GST of INR 36,000/-), an amount of INR 17,535/- which incurred towards issuing public announcement is directly paid by the Respondent to the advertisement Company and that the final claim amount is INR 2,27,838/- and the same is not contended by the Respondent.
8. In respect of the entitlement of the claim amount by the Applicant and the same is ratified by the CoC in their 1st meeting, we are thus of the considered view that the IRP is entitled in this case to claim her fees/expenses incurred on CIRP and needs to be compensated for her professional services and out of pocket expenses.
9. In respect of the point of consideration as to if the Respondent is liable to pay for the expenses incurred by the IRP, the Ld. Counsel for the Applicant has placed their reliance on the ruling of the Hon'ble Supreme Court in the case of *Rajakumar Brothers and Production Pvt. Ltd. V. Harish Amilineni shareholder and Erstwhile Director of Amilionn Techonologies Pvt. Ltd.* [Civil Appeal No. 4044 of 2020], where the decision of the Hon'ble NCLAT was upheld that the Operational Creditor to pay the Expenses incurred by the IRP and also cited another ruling by the Hon'ble NCLT, Jaipur bench, in a similar case of *Mr. Vijendra Bangar (Erstwhile IRP) v. M/s. Aditya Birla Money Limited* [IA No. 113/JPR/2021 in IB No. 596(ND)/2018] wherein the Operational Creditor was directed to pay the expenses incurred by the IRP.

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10. The relevant provisions of law regarding the cost of the interim resolution professional

CIRP Regulation 33 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

“Regulation 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.*
- (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.”

11. Accordingly, in the ruling of *Shri Guru Containers Vs. Jitendra Palande* [Company Appeal (AT) (Insolvency) No.106 of 2023], rendered by the Hon’ble NCLAT, it is observed by the Hon’ble NCLAT that:

“18. This brings us to the question as to who will bear the CIRP expenses in the present case. CIRP Regulation 33 clearly provides that the applicant shall bear the expenses to be incurred by or on the IRP. In the present case, when the Operational Creditor had initiated the CIRP proceedings which had led to the appointment of the IRP, it is incumbent upon the Operational Creditor to pay for the CIRP expenses. For the Operational Creditor to claim that it is not obligatory to reimburse the fees/expenses of IRP squarely contravenes the Regulations and therefore cannot be countenanced. The CIRP Regulation 33 of course also provides that the reimbursement would be to the extent it is ratified by the CoC.”

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14/05/2023

12. It is clear from the aforementioned ruling of the Hon'ble NCLAT that it is binding on the operational creditor to pay for the CIRP expenses and that the Regulation even provides for the reimbursement of the same to the extent ratified by the CoC.
13. In the light of the aforesaid discussion and by placing our reliance on the aforementioned provisions of Law and the ruling by the Hon'ble NCLAT, this Application is allowed and the Respondent/Operational creditor is directed to pay amount of INR 2,27,838/- towards Applicant's Fees, CIRP cost and other expenses, as ratified in the 1st CoC meeting dated 10.05.2023 and to pay other legal expenses as claimed by the Applicant.
14. Accordingly, the IA(IBC)/412/2023 in CP(IBC)/130/9/AMR/2022 is disposed of.

Sd/-

SANJAY PURI
Member (Technical)

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RAJEEV BHARDWAJ
Member (Judicial)