IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA No. 352/JPR/2023
In CP No. (IB)- 47/9/JPR/2018

IN THE MATTER OF:

M/S TACK INNOVATIONS

...OPERATIONAL CREDITOR

VERSUS

M/S AUTOPAL INDUSTRIES LIMITED

...CORPORATE DEBTOR

MEMO OF PARTIES

IA No. 352/JPR/2023:

AJAY GUPTA
Resolution Professional of
Autopal Industries Limited
C-618, Tower C, Klj, Noida One
Sector 62, Noida, 201309
cirp.autopal@gmail.com

...Applicant

VERSUS

RELIANCE COMMERCIAL FINANCE LIMITED
7th Floor, B Wing, Lower Parel
Mumbai-400001
shreya.binju@relianceada.com
paresh.narvekar@authum.com
sweta.b.kumari@relianceada.com

...Respondent No. 1

PAISALO DIGITAL LTD.
CSC Pocket 52
Cr Park, Near Police Station
New Delhi -110019

Sd/-

Sd/-

l99@paisalo.in; legal@paisalo.in

...Respondent No. 2

LATE SH BHANGWANT DAS SOLANKI
Through its Legal Heir
Sh. Sai Ji Maharaja Sarujanik Parmarth
Address: Post Chutisara Dist. Nagaur
Rajasthan – 321001
hitesh1657@gmail.com
saijimaharajtrust@gmail.com
radhika07bs@gmail.com

...Respondent No. 3

For Applicant	: Milan Singh Negi, Adv.
	: Manish Parihar, Adv.
	: Ajay Gupta, RP
For Respondent	: Prateek Kedawat, Adv.
	: Apratim Animesh Thakur, Adv.
	: Hitesh Kumar, Adv.

Order Pronounced On: 07.06.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present Application bearing *IA No. 352/JPR/2023 vide* Dairy No. 1598/2023 dated 27.06.2023 has been filed by *Mr. Ajay Gupta*, Resolution Professional ('Applicant'/ 'Resolution Professional') of *M/s Autopal Industries Limited* ('Corporate Debtor') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Regulation 31 read with Regulation 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations')

Sd/- Sd/-

read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') against *M/S Reliance Commercial Finance Limited* ('Reliance'/ 'RCFL'/ 'Respondent No.1'), *M/S Paisalo Digital Limited* ('*Paisalo*'/ 'Respondent No.2') and late *Sh. Bhagwant Singh Solanki* through its legal heir, *Sh. Sai Ji Maharaja Sarujanik Parmarth Trust* ('BSS'/ 'Respondent No.3') seeking payment/ contributions towards the unpaid IRP costs and expenses incurred by the Resolution Professional/ Applicant from the Respondents.

2. This Adjudicating Authority had admitted the Application filed by *M/s Tack Innovations* ('Operational Creditor') under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and appointed *Mr. Ajay Gupta*, as Interim Resolution Professional ('IRP') *vide* Order dated 16.08.2022.

3. The present Application has been filed on the following set of facts:

3.1. It is submitted that upon admission of the Application under Section 9 of the Code by this Adjudicating Authority *vide* Order dated 16.08.2022, the Resolution Professional effected a public announcement on 28.08.2022 thereby calling upon the creditors/stakeholders of the Corporate Debtor to submit their claims with the Resolution Professional.

3.2. Pursuant to the public announcement, initially only two financial creditors namely, *M/S Reliance Commercial Finance Limited* and

Sd/- Sd/-

Bhagwant Singh Solanki (now deceased) had submitted their claims. As a result, the Committee of Creditors (CoC) was constituted, comprising these financial creditors. In the first CoC meeting held on 24.09.2022, the IRP *Mr. Ajay Gupta* was appointed as the Resolution Professional. In addition, the fees and expenses incurred by the Applicant as IRP and the remuneration of the Applicant as the Resolution Professional for the entire period of CIRP was ratified by the CoC members with 100% voting share.

3.3. Subsequently, on 31.10.2022, the Resolution Professional received another claim from *M/S Paisalo Digital Limited.* Meanwhile, the Resolution Professional discovered that the claims of *Reliance* and *Paisalo* were based on an Arbitral Award and therefore categorized them as 'Other Creditors' rather than 'Financial Creditors'. However, when *Reliance* and *Paisalo* objected to this categorization, the Resolution Professional filed an Application bearing no. *IA 629/JPR/2022* seeking clarification regarding the said categorisation. This Adjudicating Authority *vide* Order dated 22.02.2023 directed that *Reliance* and *Paisalo* be included as Financial Creditors, not 'Other Creditors'.

3.4. It is submitted that on 01.01.2023, the Resolution Professional received an email from the legal representative of Respondent No. 3 informing about the unfortunate demise of Respondent No. 3 on

Sd/- Sd/-

31.12.2022. Further, following the Order of this Adjudicating Authority, the Resolution Professional reconstituted the CoC. The reconstituted CoC comprised of *Reliance*, *Paisalo*, and *Shri Sai Ji Maharaja Sarujanik Parmath Trust* (legal heirs of Respondent No. 3). The details of the re-constituted CoC are as follows:

S. No.	***Name of the member***	***Admitted amount (in Rs.)***	***Voting share in the CoC***
1	*Reliance Commercial Finance Ltd. (Respondent No. 1)*	*1,28,99,728.00*	*64.20%*
2	*Paisalo Digital Ltd. (Respondent No. 2)*	*41,66,538.00*	*20.74%*
3	*Late Sh. Bhagwat Singh Solanki (Through LRs) (Respondent No. 3)*	*30,26,200.00*	*15.06%*

3.5. Subsequently, the Resolution Professional convened the 5th CoC meeting on 03.03.2023 to update the members about the developments since the initiation of the CIRP. In this meeting, the Resolution Professional requested the members to make payments towards the unpaid CIRP costs and estimated expenses incurred/to be incurred by the Resolution Professional. In the said meeting, the Resolution Professional also presented a detailed list of such expenses for the CoC's consideration. The resolution regarding the unpaid IRP costs was put to a vote, however it was not approved by the CoC. It is submitted that Respondent No. 3 had made the

Sd/-

Sd/-

majority of his contribution, while the other two members have yet to contribute their share of expenses towards the CIRP costs.

3.6. It is submitted that in the 6th CoC meeting dated 08.04.2023, the Resolution Professional again proposed the ratification of the costs and expenses incurred up to that period so they would form part of the CIRP costs. Consequently, an agenda was placed before the CoC for the ratification of these costs and the same was duly approved by 79.26% majority with Respondent No. 1 and 3 voting in favor, while Respondent No. 2, holding a 20.74% voting share abstained from voting. Despite the ratification by the CoC, no contributions were made by Respondent No. 1 and 2.

3.7. It is stated that in the 7th and 8th CoC meetings, the Resolution Professional apprised the CoC members about their unpaid contributions towards the IRP costs and requested them to remit the outstanding amounts. During these meetings, the Resolution Professional presented Resolution Plans for consideration and voting. However, due to various hindrances created by Respondent No. 1, no conclusions were reached. Furthermore, Respondent No. 1 sought clarification from the Resolution Professional regarding the approved IRP costs *vide* its email dated 13.06.2023. The Resolution Professional replied to the email on 14.06.2023 and addressed the clarifications sought. Despite the clarifications,

Sd/- Sd/-

Respondent No. 1 sent another email on 14.06.2023 disputing the IRP costs already approved by the CoC.

3.8. It is submitted that owing to the above facts, the present CIRP has reached an impasse, and neither the Resolution Plan has been approved, nor any other agenda has been passed. The Applicant has relied upon the following Judgements supporting the contention regarding payment towards IRP costs:

I. *Reliance Commercial Finance Ltd vs Noble Resourcing Business and Solutions Pvt Ltd being CA no 430(PB)/2019 in IB-494(PB)/ 2017*

II. B. Parameshwara Udpa Vs. DBS Bank India Ltd. and Ors. being IA/967/IB/2020 in IBA/1045/2019

4. The Respondent No. 1 has filed its Reply *vide* Diary No. 2734/2023 dated 20.11.2023, stating as below:

4.1. Respondent No. 1 submitted that the loan facility provided by it to the Corporate Debtor is securitized with Bank of Baroda as per the Deed of Assignment with underlying Security executed between Reliance Capital Limited ('RCL') and Dena Bank (which later merged into Bank of Baroda) dated 30.01.2017. The Hon'ble High Court of Bombay *vide* its order dated 09.12.2016 approved the scheme of arrangement between RCL and Respondent No. 1 where

Sd/-

Sd/-

part of the business undertaking of RCL was transferred to Respondent No. 1.

4.2. It is submitted that RCL was appointed as a Servicer Agent for all the accounts transferred to Dena Bank by way of Service Agreement dated 30.01.2023, therefore all rights vested in RCL were subsequently passed on to Respondent No. 1. In a nutshell, RCFL was a trustee of the account of the Corporate Debtor.

4.3. It is contended that all the approvals with regard to legal actions, costs and expenses etc. are required to be sought from Bank of Baroda. Despite seeking approvals and necessary actions from the bank in respect of IRP costs and payments, no positive response has been received. Due to non-receipt of approval from Bank of Baroda, the Respondent is unable to contribute/pay IRP costs. The copies of the email communications between Respondent No. 1 and Bank of Baroda are attached as Annexure R/3.

4.4. The Respondent No. 1 stated that the Resolution Professional has failed to produce requisite/ complete documents/ evidences/ clarifications in support of the expenses/fees incurred by him by which it is apparent that Resolution Professional has failed to duly perform the duties entrusted upon him. Further, Respondent No. 1 had ratified the IRP cost under the *bonafide* belief and on the basis

Sd/- Sd/-

of *prima facie* details provided by the Applicant in the CoC meeting.

4.5. It is further contended that due process was not followed by the Resolution Professional during verification of the claims received from the creditors of Corporate Debtor and failed to categorize the claims as well due to which additional cost was incurred during the CIRP. Hence, the answering Respondent is not bound to contribute towards the IRP costs.

5. The Respondent No. 2 has filed its Reply *vide* Diary No. 3038/2023 dated 20.12.2023, stating as below:

5.1. It is submitted that the Respondent No. 2 had participated in the CoC meetings with utmost sincerity, anticipating a successful resolution and revival of the Corporate Debtor. Respondent No. 2 contended that the majority Financial Creditor, i.e., Respondent No. 1, deliberately failed to participate in the CIRP thereby frustrating and jeopardizing the entire process for the Corporate Debtor. Respondent No. 1's conduct indicates a lack of interest in the revival of the distressed Corporate Debtor and a desire to push the Corporate Debtor into liquidation.

5.2. It is contended that the failure of the CIRP is inevitable and Respondent No. 2 had decided to withdraw its claim(s) from the CIRP. The intimation of withdrawal of claim(s) was communicated

Sd/- Sd/-

to the Resolution Professional *vide* Email dated 01.08.2023. Relevant contents of the email are reproduced hereunder:

> *"It is with reference to the ongoing CIRP of Autopal Industries Ltd. As Reliance Commercial Finance Ltd. (having majority share in COC), are not interested in the successful resolution of the Corporate Debtor, it has become very difficult for us to continue and participate in the COC. Therefore, we hereby withdraw our claims from the CIRP."*

5.3. It is submitted that the instant Application came up for hearing before this Adjudicating Authority on 03.08.2023. However, the Resolution Professional deliberately failed to inform this Adjudicating Authority of Respondent No. 2's decision to withdraw its claim(s) and its unwillingness to participate in the CIRP.

5.4. It is stated that instead of informing the said decision of Respondent No. 2, the Applicant sent an email on 11.08.2023 seeking clarification on whether there is any provision under the Code that warrants the withdrawal of claim(s) by Respondent No. 2. In response to the email, Respondent No. 2 stated that it is a business decision of Respondent No. 2 and withdrawal of the claim is nowhere prohibited in the Code.

5.5. The CIRP cost in the present matter is grossly inflated which can be evidenced by the records. Furthermore, Respondent No. 2

Sd/- Sd/-

played no role in the accumulation of the incurred IRP costs or expenses, as initially it was not the part of the CoC.

5.6. In support, the answering Respondent relied upon the Insolvency Board through IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations), circulars and orders, provide guidance in the matter of fixation of remuneration of Resolution Professional and other professionals appointed by him which are as follows:

I. Para 25-27 of the Code of Conduct in the First Schedule of IP Regulations.

II. *Circular No. IP/005/2018 dated 16.01.2018*, on "*Fees payable to an Insolvency Professional and to other professionals appointed by an insolvency professional*".

III. *Circular No. IBBI/IP/013/2018 dated 12.06.2018* on "*Fee and other Expenses incurred for Corporate Insolvency Resolution Process*".

5.7. It is submitted that since the Resolution Professional has been extremely callous and negligent in discharging his duties as a professional, in terms of the Code, the CoC is fully competent to revise the CIRP costs, including the professional fee, even if they were previously ratified or approved. In support, Respondent No. 2 relied on the Judgment passed by the Hon'ble NCLAT in

Sd/- Sd/-

Khushvinder Singhal vs. Reena Tiwari, Company Appeal (AT) (Insolvency) No. 469 of 2022.

5.8. It is stated that Respondent No. 2 was inducted into the CoC during the Fifth CoC meeting pursuant to the order of this Adjudicating Authority. Since Respondent No. 2 was inducted into the CoC at a belated stage and it cannot be held accountable for costs incurred, as it had no role in any previous decision-making processes.

5.9. Respondent No. 2 denied that the ratification of costs and expenses incurred was done by the CoC members through voting. However, it states that Respondent No. 2 had abstained itself from voting on various proposals put forth as it did not agree with the proposal of the Resolution Professional. The expenses towards CIRP costs were incurred prior to Respondent No. 2 joining as a CoC member. Therefore, the amount claimed as incurred CIRP expenses was never ratified by Respondent No. 2.

6. The Respondent No. 3 has filed its Reply *vide* Diary No. 2405/2023 dated 05.10.2023, stating as below:

6.1. It is submitted that the interest of Respondent No. 3 is represented through its legal heir i.e., *Shri Sai Ji Maharaja Sarujanik Parmath Trust*. Respondent No. 3 had a 15% share in the CoC, following the admission of the claim of Rs. 30,26,600/- (Rupees Thirty Lakhs

Sd/- Sd/-

Twenty-Six Thousand and Six Hundred Only) by the Resolution Professional.

6.2. It is stated that despite consenting to the extension of the CIRP period, Respondent No. 1 & 2 have not ratified or discharged the CIRP costs. Additionally, they have also stalled or abstained from voting on various issues, thereby rendering the entire CIRP ineffective.

6.3. It is submitted that Respondent No. 3 has already contributed the majority of its share, whereas no contribution has been made by Respondent No. 1 & 2. Furthermore, it is stated that Respondent No. 1, who holds the majority of voting shares i.e., 64.20%, is responsible for derailing the entire CIRP. Respondent No. 1 took 42 days to consider the pending Resolution Plan, and when it was finally put to a vote, Respondent No. 1 abstained itself from voting.

7. The Applicant has submitted its Rejoinder to the Reply filed by Respondent No. 1 *vide* Dairy No. 2968/2023 dated 18.12.2023 and made the following submissions:

7.1. It is submitted that Respondent No. 1 has never disclosed the facts of the servicer agreement while filing its claim and is disclosing it for the first time in its Reply. Respondent No. 1 cannot justify its actions on the pretext of the servicer agreement by stating that it

Sd/- Sd/-

could not make any payment of CIRP costs since they did not receive approval from Bank of Baroda.

7.2. It is submitted that the Applicant has provided all the information/ requisite documents/ evidences/ clarifications as sought by Respondent No. 1 in support of expenses *vide* the emails dated 29.05.2023, 14.06.2023 and 15.06.2023.

7.3. It is submitted that the Respondent No. 1 has wasted the crucial time of the CIRP which has led to increase in CIRP cost. The Applicant mentioned that the process is standstill since April 2023 due to the inaction of Respondent No. 1.

7.4. It is submitted that during the ongoing CIRP, the Applicant has been incurring the recurring expenses such as rental expenses for the premises where assets of the Corporate Debtor are stored. The rental expense for this premises is Rs. 25,000/- (Rupees Twenty-Five Thousand Only) per month, and it has remained outstanding since the initiation of the CIRP as no funds were available with the Corporate Debtor. The landlord sent a notice dated 11.07.2023 to the Resolution Professional regarding non-payment of rent for the past 10 months.

7.5. It is submitted that the cost, which at the time of filing of the instant Application was Rs. 21,83,265/- (Rupees Twenty-One Lakhs Eighty-Three Thousand Two Hundred and Sixty-Five Only) has

Sd/- Sd/-

increased to Rs. 29,02,965/- (Rupees Twenty-Nine Lakhs Two Thousand Nine Hundred and Sixty-Five Only) as on 06.12.2023.

8. After hearing this instant Application on 21.05.2024, the Adjudicating Authority granted 7 days to file Written Submissions to the parties. On 05.06.2024, *vide* Diary No. 1445/2024, the Applicant filed the Written Submissions. The Applicant reiterated the submissions previously made and additionally submitted the details of costs related to CIRP as of 30.05.2024 and the same is reproduced below:

Particulars	Basic Amount	GST	Total	Paid	Unpaid	Remarks
CIRP cost till filing of this application (a)	**22,95,253**	**2,33,108**	**25,28,361**	**3,45,096**	**21,83,265**	
Additional Cost incurred after application						
RP fees additional (05.07.2023 till date 04.06.2024)	11,00,000	1,98,000	12,98,000	-	12,98,000	Fees of RP already approved by CoC in 8th CoC meeting.
Premises rental from 16.08.2023 till 16.06.2024	2,50,000	-	2,50,000	-	2,50,000	Recurring cost, approval to be sought in next CoC meeting.
Legal cost	2,50,000	-	2,50,000	-	2,50,000	Additional Legal cost incurred by RP due to the applications filed before this Hon'ble Tribunal. Approval of CoC will be sought in next meeting.

Sd/- Sd/-

Particulars	Basic Amount	GST	Total	Paid	Unpaid	Remarks
E-voting 9th CoC	2,500	450	2,950	-	2,950	Evoting cost incurred for 9th CoC meeting, yet to be approved by CoC.
Total additional cost (b)	**16,02,500**	**1,98,450**	**18,00,950**	**-**	**18,00,950**	
Grand Total (a+b)	**38,97,753**	**4,31,558**	**43,29,311**	**3,45,096**	**39,84,215**	
Contribution of each member	**Claimed admitted**	**% share**	**Share Amount**	**Amount already contributed**	**Balance to be paid**	
Reliance	1,28,99,728	64.20%	27,79,441	-	27,79,441	
Paisalo	41,66,538	20.74%	8,97,743	-	8,97,743	
Bhagat Singh Solanki	30,26,600	15.06%	6,52,127	3,45,096	3,07,031	
	2,00,92,866	**100%**	**43,29,311**	**3,45,096**	**39,84,215**	

9. Heard the submissions made by the learned counsels of the parties and perused the files including the documents placed on record.

10. At the outset, we would like to refer the relevant provisions of the Code, and CIRP Regulations, 2016: -

Section 5(13) of IBC reads as under:

(13) Insolvency Resolution Process Costs" means –

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

(e) any other costs as may be specified by the Board;

Sd/- Sd/-

Regulation 34 of CIRP Regulations reads as under:

Resolution professional costs.

34. *The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.*

Explanation. - For the purposes of this regulation, "expenses" 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 expenses to be incurred by the resolution professional.

11. In the light of statutory provisions and the regulations contained thereunder relating to the fees/expenses of the IRP, for a better appreciation of the matter at hand, it is apposite to take note of some of the significant dates of the present case. It is an admitted fact that, the CIRP commencement date was 16.08.2022. Further, it is noted that, IRP had issued a public announcement in the prescribed Form 'A' on 28.08.2022 in accordance with Regulation 6 of the CIRP Regulations 2016 and Section 15 of the Code thereby inviting claims from all the creditors.

12. We have considered the submissions made by Respondent No. 1 wherein it states that due to the non-receipt of the approval from Bank of Baroda, the Respondent is unable to contribute/pay IRP costs. Respondent No. 1 in support also submitted the following:

I. Scheme of Arrangement between RCL and Respondent No. 1.

II. Servicer Agreement between RCL and Dena Bank (now Bank of Baroda) dated 30.01.2017.

Sd/-

Sd/-

III. Copies of emails correspondence between Respondent No. 1 and Bank of Baroda.

Considering the submissions, we are of the view that all the aforementioned arrangements executed by Respondent No. 1 were in the course of their business and have no relevance to the issue in the present Application. We have also observed the email communications between Respondent No. 1 and Bank of Baroda; however, the same cannot be accepted as an excuse for the non-payment of the CIRP costs on time, as seeking Bank of Baroda's approval is their internal affair. It is a settled principle that time is of the essence in the IBC, and every proceeding must be completed within the prescribed timelines. Thus, the contention raised by Respondent No. 1 is not tenable.

13. Respondent No. 1 also raised the contention that the costs submitted by the Resolution Professional are highly inflated, and no sufficient justification supporting the CIRP expenses/costs have been provided. We do not find any merit in the allegation for two reasons; firstly, Respondent No. 1 has failed to submit specific instances with proof that demonstrate the inflation of costs/expenses incurred by the Applicant during the CIRP process. Therefore, making a general statement throughout the contentions without substantiating them cannot be considered valid. Secondly, the CIRP costs or a portion thereof were duly approved time

Sd/- Sd/-

and again in various CoC meetings. Therefore, we do not find any force in the contentions raised by Respondent No. 1 in this regard.

14. The first contention raised by Respondent No. 2 is that they have decided not to continue as part of the CoC, and this decision was communicated to the Resolution Professional *vide* email dated 01.08.2023. However, the Resolution Professional has not informed the said decision of Respondent No. 2 to the Adjudicating Authority, thus they argue that they cannot be held liable to pay. The second contention stated by Respondent No. 2 is that it became part of the CoC from the 5th CoC meeting onwards and therefore cannot be liable to pay for costs incurred prior to that.

15. In this regard, it is important to mention Regulation 12(3) of CIRP Regulations which states:

> *"12. Submission of proof of claims.*
>
> ...
>
> *(3) Where the creditor in sub-regulation (2) is a financial creditor under regulation 8, it shall be included in the committee from the date of admission of such claim.*
> *Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion."*

It is a settled position under the law that any inclusion of new financial creditor in the CoC will be deemed to have taken place from the date of admission of such claim. In addition, any new inclusion in the CoC will not affect the validity of any decision taken by the CoC prior to such inclusion. Thus, the contention of Respondent No. 2 is not tenable.

Sd/- Sd/-

Further, it is pertinent to mention that Respondent No. 2 submitted its claim on 31.10.2022, and all further proceedings regarding the admission of the claim were carried out, including the proceedings of IA 629/JPR/2022. The Adjudicating Authority, while deciding the said IA on 22.02.2023 included Respondent No. 1 & 2 in the category of Financial Creditors. All these proceedings were undertaken because of Respondent No. 2's claim and the uncertainty involved therein. Therefore, the contention of the Respondent No. 2 that it is not liable to pay IRP costs prior to its admission into the CoC holds no ground.

Respondent No. 2 has relied on the Judgment of the Hon'ble NCLAT in *Khushvinder Singhal vs. Reena Tiwari, Company Appeal (AT) (Insolvency) No. 469 of 2022*, wherein the issue pertained to the reconsideration of CIRP cost by the CoC. However, in the present Application, no such issue of reconsideration of CIRP cost is involved. Therefore, this judgment does not support the contentions made by Respondent No. 2.

16. Regarding the contention of withdrawal of the claim by Respondent No. 2, it is noted that the IBC does not provide for withdrawal of a claim submitted by the financial creditor. In this connection, reference can be made to the decision of the Hon'ble NCLAT in the case of ***Mr. K.N. Rajakumar Suspended Director, Aruna Hotels Ltd Vs. V. Nagarajan Resolution Professional, M/s. Aruna Hotels Limited; Company Appeal***

Sd/- Sd/-

(AT) (CH) (Ins) No.48 of 2021(2022) 4 SCC 617 dated 30.04.2021. In this case, certain financial creditors, who were part of the original CoC of the corporate debtor, withdrew their claims entirely during the course of the CIRP. Despite such a change in circumstances, the Hon'ble NCLAT ordered the original CoC, which was constituted by such erstwhile creditors as well, to reconvene and determine the fate of the corporate debtor as of the relevant date. The Hon'ble NCLAT upheld the NCLT's order on the basis that the Resolution Professional does not have any 'adjudicatory power' under the IBC.

Respondent No. 2 has neither contended about the withdrawal of its claim before 01.08.2023 (the date of the email by Respondent No. 2 to the Applicant stating withdrawal of the claim from the CIRP) nor approached this Adjudicating Authority regarding the said issue. Furthermore, as stated above in ***Mr. K.N. Rajakumar Suspended Director*** *(supra)* the Resolution Professional does not have the adjudicating power under the Code and thus cannot, by itself, remove any member of the CoC and reconstitute the CoC.

17. The present Application has been filed by the Resolution Professional seeking payment of the unpaid CIRP cost. In this regard, it is pertinent to mention the events took place during the CIRP.

18. In the present case, after lodging the claims by the financial creditors and proceedings during the course of CIRP, the Resolution Professional has

Sd/- Sd/-

re-constituted the CoC pursuant to the order of this Adjudicating Authority in the following manner:

S. No.	Name of the member	Admitted amount (in Rs.)	Voting share in the CoC
1	Reliance Commercial Finance Ltd. (R-1)	1,28,99,728.00	64.20%
2	Paisalo Digital Ltd. (R-2)	41,66,538.00	20.74%
3	Late Sh. Bhagwat Singh Solanki (Through LRs) (R-3)	30,26,200.00	15.06%

19. The Applicant with this instant Application submitted a detailed table depicting the details of pending payments towards the unpaid CIRP costs and expenses incurred/ to be incurred by the Applicant herein is annexed as Annexure A-1. It is reproduced below:

Particulars	Basic Amount	GST	Total	Paid	Unpaid
1st CoC	1,19,583	18,180	1,37,763	1,37,763	
2nd CoC	2,13,223	19,110	2,32,333	2,07,333	25,000
3rd CoC	1,30,950	18,450	1,49,400		1,49,400
4th CoC	2,98,140	982	2,99,122		2,99,122
6th CoC-1(Cost of 5th CoC)	1,66,420	886	1,67,306		1,67,306
6th CoC-2 (Cost of 6th CoC)	37,000	450	37,450		37,450
RP fees for 3 month	3,00,000	54,000	3,54,000		3,54,000
Other costs vide separate Resolutions					
-Transaction Audit Fees (Including tax and OPE)	77,000	12,600	89,600		89,600
-Valuation fees (Including tax and OPE)	90,000	16,200	1,06,200		1,06,200
-Technical Person for physical verification	15,000		15,000		15,000
-RPs incentive	1,70,000	30,600	2,00,600		2,00,600
IBBI's fees	35,000	6300	41,300		41,300
Total approved(a)	**16,52,316**	**1,77,758**	**18,30,074**	**3,45,096**	**14,84,978**
Additional Costs for ratification in 8th CoC					
-7th CoC	2500	450	2950		2950

Sd/- Sd/-

Particulars	Basic Amount	GST	Total	Paid	Unpaid
-RP fees additional (06-04-23 till date of filing of application for seeking approval of Resolution Plan or liquidation as the case may be)	***3,00,000***	***54,000***	***3,54,000***		***3,54,000***
-Advocates fees for compliance report	*40,000*		*40,000*		*40,000*
-8th CoC	*50,000*	*900*	*50,900*		*50,900*
Total (b)	*3,92,500*	*55,350*	*4,47,850*		*4,47,850*
Grand Total C(a+b)	*20,44,816*	*2,33,108*	*22,77,924*	*3,45,096*	*19,32,828*
Additional Costs that will be incurred in future					
-premises rental for 6 months (6 months costs already approved cost of next 6 months to be approved due to extension and exclusion in CIRP period)	***1,50,000***		***1,50,000***		***1,50,000***
-Advocates fees for filing Resolution Plan approval/ Liquidation	*60,000*		*60,000*		*60,000*
Total (d)	*2,10,000*		*2,10,000*		*2,10,000*
Costs incurred by RP for travel to Mumbai upon request of Reliance (e)	*40,437*		*40,437*		*40,437*
Grand Total (c+d+e)	*22,95,253*	*2,33,108*	*25,28,361*	*3,45,096*	*21,83,265*
Contribution of each member	*Claim admitted*	*% share*	*Share amount*	*Amount already contributed*	*Balance to be paid*
-Reliance	*1,28,99,728*	*64.20%*	*16,23,221*		*16,23,221*
-Paisalo	*41,66,538*	*20.74%*	*5,24,291*		*5,24,219*
-Bhagwat Singh Solanki	*30,26,600*	*15.06%*	*3,80,848*	*3,45,096*	*35,752*
	2,00,92,866	*100%*	*25,28,361*	*3,45,096*	*21,83,265*

20. We have seen the minutes of all the CoC meetings placed before us. The issue pertaining to the unpaid IRP costs is dealt hereunder:

20.1. From the minutes of the 1st to the 6th CoC meetings, it is observed that the CoC approved a total amount of Rs. 18,30,074/- (Rupees Eighteen Lakhs Thirty Thousand and Seventy-Four Only), as also specified in the table mentioned in Para 19 of this Order titled

Sd/- Sd/-

"***Total approved (a)***". The costs of various expenses incurred by the Resolution Professional were repeatedly presented before the CoC, and the same was approved by the CoC. Therefore, the said amount of Rs. 18,30,074/- (Rupees Eighteen Lakhs Thirty Thousand and Seventy-Four Only) is hereby approved and the Respondents are directed to pay the same.

20.2. Furthermore, as per ***Item No. B3*** in the minutes of the 8th CoC meeting held on 08.09.2023 and 09.09.2023, and the e-voting summary records, the CoC, with the requisite majority, approved the fees of the Resolution Professional from the completion of 180 days of CIRP, i.e., 06.04.2024, until the date of filing of the Application for seeking approval of the Resolution Plan or liquidation of the Corporate Debtor, as applicable. Therefore, the fees of the Resolution Professional amounting to Rs. 3,54,000/- (Rupees Three Lakhs and Fifty-Four Thousand Only), as mentioned in the table in Para 19 of this Order titled "***RP fees additional (06-04-23 till date of filing of application for seeking approval of Resolution Plan or liquidation as the case may be)***", is also approved, as it was approved by the CoC in the 8th CoC meeting and the Respondents are directed to pay the same.

20.3. It is noted that in previous meetings, the CoC had approved rental expenses of Rs. 25,000/- (Rupees Twenty-Five Thousand Only) per

Sd/- Sd/-

month. In the table mentioned in Para 19 of this Order, the recurring rental cost of Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand Only) is specified under the name "***premises rental for 6 months (6 months costs already approved, cost of next 6 months to be approved due to extension and exclusion in CIRP period)***". Since this is a recurring cost and has not been disputed by any of the Respondents in this instant Application, we hereby approve the said amount of Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand Only) and the Respondents are directed to pay the same.

20.4. The Applicant in his Written Submissions has submitted the status of CIRP costs till 30.05.2024. The same is reproduced below:

Particulars	*Basic Amount*	*GST*	*Total*	*Paid*	*Unpaid*	*Remarks*
CIRP cost till filing of this application (a)	*22,95,253*	*2,33,108*	*25,28,361*	*3,45,096*	*21,83,265*	
Additional Cost incurred after application						
RP fees additional (05.07.2023 till date 04.06.2024)	***11,00,000***	***1,98,000***	***12,98,000***	-	***12,98,000***	***Fees of RP already approved by CoC in 8th CoC meeting.***
Premises rental from 16.08.2023 till 16.06.2024	***2,50,000***	-	***2,50,000***	-	***2,50,000***	*Recurring cost, approval to be sought in next CoC meeting.*
Legal cost	*2,50,000*	-	*2,50,000*	-	*2,50,000*	*Additional Legal cost incurred by RP due to the applications*

Sd/- Sd/-

Particulars	*Basic Amount*	*GST*	*Total*	*Paid*	*Unpaid*	*Remarks*
						filed before this Hon'ble Tribunal. Approval of CoC will be sought in next meeting.
E-voting 9th CoC	*2,500*	*450*	*2,950*	-	*2,950*	*Evoting cost incurred for 9th CoC meeting, yet to be approved by CoC.*
Total additional cost (b)	*16,02,500*	*1,98,450*	*18,00,950*	-	*18,00,950*	
Grand Total (a+b)	*38,97,753*	*4,31,558*	*43,29,311*	*3,45,096*	*39,84,215*	
Contribution of each member	*Claimed admitted*	*% share*	*Share Amount*	*Amount already contributed*	*Balance to be paid*	
Reliance	*1,28,99,728*	*64.20%*	*27,79,441*	-	*27,79,441*	
Paisalo	*41,66,538*	*20.74%*	*8,97,743*	-	*8,97,743*	
Bhagat Singh Solanki	*30,26,600*	*15.06%*	*6,52,127*	*3,45,096*	*3,07,031*	
	2,00,92,866	*100%*	*43,29,311*	*3,45,096*	*39,84,215*	

As provided in the table, the fees of Resolution Professional from 05.07.2023 (following the month of filing of this instant Application) until 04.06.2024 (up to the current date), amount to Rs. 12,98,000/- (Rupees Twelve Lakhs Ninety-Eight Thousand Only) has already been approved by the CoC in their 8th meeting. Therefore, we hereby approve the said amount of Rs. 12,98,000/- (Rupees Twelve Lakhs Ninety-Eight Thousand Only), making the Respondents liable to pay.

Sd/-

Sd/-

The table also indicates that the rental of the premises is Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousand Only) from 16.08.2023, until 16.06.2024. We hereby reiterate that this is a recurring cost and is not disputed by any of the Respondents in this instant Application. Therefore, we approve the said amount of Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousand Only), making the Respondents liable to pay.

21. At the cost of repetition, for the sake of clarity regarding the costs and expenses of CIRP as approved in Para 20, the following costs and expenses incurred are hereby approved, and the Respondents are directed to contribute in proportion to their voting rights in the CoC:

S. No.	Particulars	Amount	Remarks
1.	Total IRP cost approved	Rs. 18,30,074/- (Rupees Eighteen Lakhs Thirty Thousand and Seventy-Four Only)	The amount of Rs. 3,45,096/- (Rupees Three Lakhs Forty-Five Thousand and Ninety-Six Only) already paid by Respondent No. 3 shall be adjusted from the share of Respondent No. 3.
2.	Fees of the Resolution Professional till filing of this instant Application	Rs. 3,54,000/- (Rupees Three Lakhs and Fifty-Four Thousand Only)	NA
3.	Premise Rental for 6 months prior to filing of this Application	Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand Only)	NA

Sd/- Sd/-

S. No.	Particulars	Amount	Remarks
4.	RP Fees for the period 16.08.2023 till 16.06.2024	Rs. 12,98,000/- (Rupees Twelve Lakhs Ninety-Eight Thousand Only)	NA
5.	Premise Rental from 16.08.2023 till 16.06.2024	Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousand Only)	NA
Total		**Rs. 38,82,074/- (Rupees Thirty-Eight Lakhs Eighty-Two Thousand and Seventy-Four Only)**	The amount of Rs. 3,45,096/- (Rupees Three Lakhs Forty-Five Thousand and Ninety-Six Only) already paid by Respondent No. 3 shall be adjusted from the share of Respondent No. 3.

22. The Respondents are directed to contribute the amount specified in Para 21 of this order within 21 days of this order.

23. Further, in respect to the other cost/expenses claimed by the Resolution Professional, it is imperative here to refer the Judgement of Hon'ble NCLAT in ***Bharat Hotels Ltd. Vs. Tapan Chakraborty (Company Appeal (AT) (Insolvency) No. 1074 of 2022)*** wherein it was held that

> *"The Question of cost and its approval lays in the domain of the CoC. The CoC may ratify, modify or set aside the cost claimed. These issued may be decided in the meeting of the CoC and are not to be examined by the Adjudicating Authority even before the CoC takes a decision. It shall be always open for the appellant to raise issue regarding the cost in the meeting of the Committee of Creditors".*

Sd/- Sd/-

Additionally, as per Regulation 34 of the CIRP Regulations, 2016, the CoC is to ratify the expenses of the Resolution Professional. The Resolution Professional is therefore directed to convene the meeting of the CoC within 15 days of this order, and the Respondents are directed to participate in the same and ratify the costs based on the evidence produced by the Resolution Professional before the CoC in this regard.

24. As regards the prayer of the Respondent No. 2 to withdraw its claim, this bench gives liberty to the Respondent No. 2 to move a separate application after making compliance of the aforementioned directions.

25. In the result, the IA no. 352/JPR/2023 is partly allowed and disposed off accordingly.

Sd/-

DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

Sd/-

RAJEEV MEHROTRA,
TECHNICAL MEMBER