

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA No.392/ALD/2022 IN CP (IB) No.90/ALD/2019

IN THE MATTER OF:

An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF:

M/s BAAF ENGINEERS PRIVATE LIMITED

.....Petitioner/Operational Creditor

Versus

M/s PRATISHTHA DAIRY FARMS PRIVATE LIMITED

.....Respondent/Corporate Debtor

AND IN THE MATTER OF:

ANKIT AGRAWAL

...Applicant/Resolution Professional

VERSUS

CANARA BANK (Sole Member of Committee of Creditors)
OF M/S PRATISTHA DAIRY FARMS PRIVATE LIMITED (UNDER
CIRP)

.....Respondent

Order Pronounced On- 16th April, 2024

Coram:

Mr. Praveen Gupta. : Member (Judicial)
Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Krishna Dev Vyas, Adv. : *For the Applicant in all IAs*
Sh. Aakarshan Aditya, Adv. : *For Res. in IA No.08/2023*
Sh. Ankur Gupta, Adv. : *For Res. in IA No.392/2022*

ORDER

1. This application has been filed by the Resolution Professional of the Corporate debtor, i.e., M/s Pratishtha Dairy Farms Private limited (hereinafter referred as the “**applicant**”) seeking the following prayer:

(a) Allow the present application and issue appropriate directions for setting aside the resolutions passed by the sole member of the COC to the extent the said resolutions blatantly reject the expenses incurred by the IRP (now the RP) during CIRP;

(b) To call upon and produce the Bank's policy / internal circular passed by Canara Bank (the sole CoC member) for payment of bills to Legal Professionals in respect to matters pertaining to insolvency resolution process under I&B Code, 2016 and representations before NCLT;

AND

To set aside the Bank's policy / internal circular passed by Canara Bank (the sole CoC member) as the same cannot override the provisions of the Code and be applied to a insolvency process governed by the provisions of the Code;

c) To approve the expenses and the costs that have been incurred during the CIRP period, including the payment of the professionals hired by the IRP (now the RP appointed by the Tribunal) as per the I&B Code and the Regulations made thereunder for meeting the objectives of the Code;

(d) To summon / call upon the General Manager of the Canara Bank (Sole CoC Member) to provide a detailed explanation for disregarding the order of the Tribunal dated 02.03.22 (Annexure no. 11 of the present application);

(e) To forthwith release the remuneration of the RP including the cost and expenses incurred during CIRP;

(f) Award costs of the present petition; and

(g) Pass such other or further order/order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.

- 2.** It is stated that initially an application U/s 9 of the Code was initiated by the Operational Creditor against the Corporate Debtor and on admission of the application filed U/s 9 of the

Code, the CIRP was initiated on 11.08.2021. Mr. Ankit Agarwal was appointed to be the Interim Resolution Professional vide the same order.

- 3.** In the first meeting of the CoC dated 10.09.2021, the IRP had informed COC about the costs and expenses which shall be incurred in the CIRP. He had also rejected to work on a remuneration as per Canara Bank's (the sole COC member being a single Financial Creditor) internal circular. Subsequently, the agenda for confirming the appointment of Mr. Agarwal from IRP to RP was rejected. In the second CoC meeting dated 28.09.2021, Mr. Agarwal was replaced by Mr. Bhoopesh Gupta as RP.
- 4.** In the first as well as second CoC meeting, the sole COC member, i.e. Canara bank had rejected the proposal of appointment and fees of the legal professional. Thus, in the 3rd meeting, the IRP emphasized how crucial the appointment of a legal professional is to the CIRP process. However, the COC again rejected this proposal by the IRP in the third as well as the fourth CoC meeting.
- 5.** On 24.01.2022, this Tribunal directed the COC to pay the

pending fees of IRP within a week when an application for replacement of Mr. Agarwal with Mr. Gupta as RP had been filed before this Tribunal under Section 22 (3)(b) r/w 60 (5) of the IBC, 2016. This order was not complied with and thus, the same directions were again given by this Tribunal v.o.d 01.02.2022. The IRP also stated that he continued to perform his duties until an order by the tribunal confirming the appointment of Mr. Bhoopendra Gupta as the RP would be passed.

- 6.** In the fifth CoC meeting dated 01.02.2022, the IRP placed the invoices which included legal fees (Rs.3,82,000) and e-voting expenses (Rs. 5,900). While the COC accepted the full e-voting expenses, it reduced the legal fees to Rs. 54,950.
- 7.** On 07.02.2022, the matter of I.A-19/2022 was brought up for compliance with prior directives from this Tribunal. As being the single member of the Committee of Creditors (CoC) the Canara Bank failed to adhere to earlier orders dated 24.01.2022 and 01.02.2022 and therefore, this tribunal decided to reserve judgment on the issue. However, the case was reopened for clarification on 16.02.2022. Subsequently, on March 2, 2022, the NCLT, through its order, dismissed the CoC's application

(I.A No.-19/2022) filed by Canara Bank seeking the replacement of the Insolvency Resolution Professional (IRP). Instead, the Adjudicating Authority upheld the IRP's role as the Resolution Professional (RP) with a monthly remuneration of Rs.1,00,000 and determined the Corporate Insolvency Resolution Process (CIRP) costs in line with the guidelines outlined in circular no. IBBI/IP/030/2018 dated June 12, 2018, issued by the Insolvency and Bankruptcy Board of India (IBBI). This order dated 02.03.2022, was not contested by the CoC and has thus, attained finality.

- 8.** In the 6th COC meeting dated 11.03.2022, the Applicant placed the details of expenses incurred by IRP till that date before the COC. These expenses were not ratified. However, the same were approved in the 7th meeting dated 20.04.2022. In the 9th meeting dated 27.07.2022, the agenda of ratifying the CIRP expenses of Rs.9,08,170/- was rejected by COC stating that the advocate expenses had to be ratified as per bank's policy.
- 9.** The Applicant further stated that till 30.09.2022, the CIRP expenses incurred were Rs.35,16,756 out of which only Rs. 23,61,001 were approved by COC. Based on the aforementioned

events, the Applicant had submitted this application to request compliance of the order of this Tribunal dated March 2, 2022, and to facilitate the payment of compensation to the Resolution Professional (RP), covering all costs and expenses accrued during the Corporate Insolvency Resolution Process (CIRP). Additionally, the Applicant seeks to overturn the resolutions passed by the sole member of the Committee of Creditors (COC) that rejected expenses incurred during the CIRP period, including legal fees owed to the Legal Counsel as outlined in the appointment letter, pursuant to the Insolvency and Bankruptcy (I&B) Code and associated Regulations.

- 10.** A counter affidavit was filed by the legal manager of Canara Bank (financial creditor) on behalf of the financial creditor. The Ld. Counsel for Financial Creditor/Respondent states that the financial creditor has consistently opposed the appointment of the legal counsel from the outset, as the legal counsel was selected by the Resolution Professional (RP) without the financial creditor's consent, and contrary to its established norms. As a result, it is not obligated to cover legal fees and expenses.

- 11.** The Respondent also stated that the RP's office operates within a statutory framework governed by rules and regulations. But in this case, no specific rules regarding the appointment of legal counsel were followed, leaving it to the discretion of the legal counsel to set their own fees.
- 12.** The Respondent further stated that the RP has a responsibility to minimize the costs of the Insolvency Resolution Process (IRP) and maximize profitability when approving resolution plans, in line with the objectives of the 2016 Code. Further since the beginning, the financial creditor had rejected both the appointment and remuneration of the legal counsel so what actions has the RP taken to seek applications from other legal professionals to reduce IRP costs. Numerous legal professionals in the state are willing to work according to the financial creditor's terms. Therefore, there should be established criteria for appointing legal counsel, such as advertising through newspapers or websites, rather than solely relying on the RP's choices.

- 13.** The Respondent stated that except for the legal fees, all bills from the Resolution Professional (RP) have been settled up to 03/02/2023. However, regarding the legal bills, they do not align with the criteria set by the Committee of Creditors (COC). In the initial meeting, the COC made it clear that all legal expenses must adhere to the COC-approved schedule, as sanctioned by the Circle.
- 14.** The Respondent further stated that the order dated 24.01.2022 which emphasized the clearance of the RP's professional fees has indeed been paid. Additionally, as per the order dated 01/02/2022, the COC was directed to cover both the RP's professional fees and legal fees. The legal fees amounting to Rs.54,950/- was duly ratified and paid in accordance with the COC's schedule.
- 15.** The Respondent further stated that the COC represents the financial creditor and manages public funds, and considering that NPAs pose significant obstacles to economic development, the COC cannot justify paying the exorbitant amount demanded for legal fees.

16. The Respondent also averred that the petitioner does not merit any relief from this Tribunal due to its failure to advertise the appointment of the advocate before appointing the designated legal counsel. This action allows the RP to benefit beyond the professional fees already compensated. Consequently, the Committee of Creditors (COC) cannot justify disbursing such a substantial sum for legal expenses, especially considering it contradicts the established COC schedule for legal fee payments. The schedule also has no criteria for payment of appearance fees.

17. A rejoinder affidavit was filed by the Resolution Professional wherein except for reiterating the facts as mentioned in the application, the RP additionally stated that after being appointed as the Interim Resolution Professional (IRP) by this Tribunal, the applicant initiated an expression of interest to solicit quotations for the engagement of legal counsel, in accordance with the provisions of section 20(2) of the IBC, 2016. The COC-Respondent's assertion that the IRP arbitrarily selected the legal counsel is thus incorrect. Following extensive efforts, the IRP selected the Legal Counsel in

Allahabad to effectively execute the necessary tasks for the Corporate Insolvency Resolution Process (CIRP) of Pratishta Dairy Farms Pvt Ltd.

18. It should be clarified that the Committee of Creditors (COC) never requested the Resolution Professional (RP) to change the legal counsel. The assertion made by the Respondent in their affidavit, regarding the change of legal counsel and the efforts undertaken by the RP, seems to be an afterthought. The applicant diligently fulfilled its duties as mandated by law, without any grievances.

19. The Applicant also stated that it is incorrect to claim that the COC has been rejecting the appointment of the legal counsel since the first CoC meeting. In reality, the Interim Resolution Professional (now RP, as per the Tribunal's order) declined the offer from the sole COC member, Canara Bank, during the first meeting. Canara Bank proposed the Applicant to work under the bank's internal circular remuneration for the remaining 150 days of the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor (CD). When the Applicant

refused to do so, the sole COC member called for a vote to replace the IRP with another RP, a decision that was endorsed during the second COC meeting.

20. The IRP also stated that he continued to perform his duties until an order by the tribunal confirming the appointment of Mr. Bhoopendra Gupta as the RP would be passed. Subsequently, on March 2, 2022, the NCLT, through its order, dismissed the CoC's application (I.A No.-19/2022) filed by Canara Bank seeking the replacement of the Insolvency Resolution Professional (IRP). Instead, the NCLT upheld the IRP's role as the Resolution Professional (RP) with a monthly remuneration of Rs.1,00,000/-

21. The Applicant further averred that following the submission of the current Interlocutory Application, the RP-Applicant received an email dated 16.11.22 from the respondent-CoC. In this email, the applicant was urged to retract the present application, citing that the CoC had recommended the Legal Counsel's fee to their competent authority for approval. The applicant claims that this action demonstrates the CoC's

desperate attempt to avoid payment of legal professional fees, as well as the associated costs and expenses incurred by the legal counsel in diligently pursuing various reports, applications, and daily representations within the mandated time-frame to achieve the objectives outlined in the Code.

22. It is further submitted by RP that the bank's circular dated 3/2021, issued on 12.10.21, as presented by the Respondent in their counter affidavit, is not applicable to the current case at hand. It cannot supersede the provisions of the Insolvency and Bankruptcy Code (IBC) and be enforced in an insolvency process governed by the Code, particularly in matters related to proceedings initiated under section 9 of the IBC, 2016 at the behest of the operational creditor. The IRP was duly appointed by virtue of the order dated 11.08.2021 of this tribunal initiating CIRP proceedings against the Corporate Debtor. Subsequently, the IRP was confirmed to act as a Resolution Professional (RP), rejecting the application filed by the Respondent (sole member of the CoC) under section 22(3)(b) of the IBC, 2016, seeking replacement of the IRP with another RP. This order has attained finality. Therefore, the

aforementioned circular does not hold relevance to the proceedings governed by the IBC.

23. While hearing the matter on 03.08.2023, Learned Counsel representing the Bank requested a brief adjournment to submit an affidavit from the relevant Assistant General Manager (AGM) or Circle Head clarifying about the Competent Authority to approve the legal fees as well as the amount being paid to the Counsel representing the Bank in routine. This request was made in light of the prolonged pending status of the legal counsel fees. This Adjudicating authority granted five days time for filing the same.

24. Thus, a supplementary affidavit was filed by the Assistant General Manager of Canara Bank wherein he submitted that the Bank had made payments for legal counsel fees corresponding to bills dated 27.09.2021, 21.10.2021, 14.12.2021, and 13.01.2022, totaling an amount of Rs.54,950/-. It was also stated that the bank is prepared to remit a fair and reasonable sum as determined by the court.

- 25.** We have perused the application and the prayers sought therein for consideration of the request of the applicant for payment of CIRP costs including payment of Legal Professionals hired by RP to initiate and pursue various applications filed from time to time.
- 26.** The Applicant i.e. Mr. Ankit Agarwal was appointed by the IRP vide the admission order dated 11.08.2021. In the first COC meeting dated 10.09.2021, the Applicant's expenses till the 1st meeting were ratified by the Single member COC, i.e., Canara Bank. But his appointment as RP was rejected. Nonetheless, the IRP continued to work as deemed RP until he would have been replaced by this tribunal's order. Finally, on 02.03.2022, he was appointed as RP by this Tribunal when the IA for replacement of RP was rejected. Meanwhile, the CoC kept on rejecting the proposal of payment of CIRP costs including the fees of legal professional in every COC meeting despite the IRP making substantial point about hiring and continuance of the Legal Professional in the CIRP.
- 27.** The COC in its defense stated that it could only make payments

in accordance with its internal bank policy and during the 5th

COC meeting dated 01.02.2022, it agreed to pay only Rs.54,950/- as opposed to the invoices worth Rs.3,82,000 placed before it. The minutes of the the 5th COC meeting dated 01.02.2022 have been reproduced hereunder:-

“B. RESOLUTIONS TO BE PASSED AT THE MEETING

Following Resolutions are placed at the Fifth Meeting of the Committee of Creditors of M/s. Pratishtha Dairy Farms Private Limited held on Tuesday, 1.02.2022 at 04:30 P.M. through Video Conferencing (Zoom Meeting).

Item No B-1: To ratify the expenses incurred by IRP till date

The Chairman informed the CoC Members that as per Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 “Insolvency resolution process costs” under Section 5(13) (e) shall include expenses incurred on or by the Interim Resolution professional to the extent ratified under Regulation 33 & 34.

Thereafter the Chairman placed before the COC the cost sheet prepared till the date of the Meeting as follows:

S. No.	Particulars Of Expenses	Amount
1.	E-voting Services for 4th CoC Meeting	5,900
2.	Fees for legal Counsel Mr. Krishna Dev Vyas (Invoices No. 1, 2, 3, 4, 5 attached as Annexure “B” –Reduced fees suggested by CoC – Rs. 54,950)	54,950
	TOTAL	60, 850

The Chairman further apprised the CoC Members that the IRP had not received any reimbursement of the CIRP Expenses till date. Hence the Chairman requested FC members to kindly release the payment.

The members of the COC discussed the matter and Chairman placed before the COC members the following Resolution for approval:

“RESOLVED THAT pursuant to Regulation 31 and 33 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other relevant provisions of Insolvency and Bankruptcy Code, 2016, the consent of the Committee of Creditors be and is hereby accorded to ratify expenses incurred by IRP for the CIRP of Corporate Debtor up to the date of the Meeting, amounting to Rs. **60,850/-** (Rupees Sixty Thousand Eight Hundred and Fifty Only) as per the details placed before the Committee and initialed by the IRP shall be treated as Corporate Insolvency Resolution Process Cost.”

The Sole member of CoC approved the Resolution No. B-1 by 100% voting through postal ballot.”

28. The Ld. Counsel representing the RP vehemently submitted that there is no rationale in granting a release of an amount of Rs.54,950/- (Fifty-Four Thousand Nine Hundred Fifty) which is not commensurate to the amount of efforts, professional expertise and initiatives taken in pursuing various applications during the process of CIRP.

29. Later, a supplementary affidavit was also filed by the Assistant General Manager of Canara Bank wherein the following

depositions were made:-

“... 4. That it is submitted that the Bank has paid legal counsel fees bills dated 27.09.2021, 21.10.2021, 14.12.2021 and 13.01.2022 for an amount of Rs. 54,950/- is being filed and marked as Annexure 2.

...

6. That it is further submitted, that the Bank is willing to pay a reasonable amount as the Hon'ble Court deems fit.”

Thus, the sole member of COC has agreed to pay the amount ordered by this adjudicating authority.

30. The Supreme Court in **Gujarat Urja Vikas Nigam Limited v Amit Gupta and Others, REED 2021 SC 03533**, opined that the NCLT under Section 60(5)(c) of the IBC has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. In the present case, the relief sought is payment of CIRP costs including fees of legal professional appointed by the IRP during CIRP. Hence, the Adjudicating Authority is sufficiently empowered under Section 60(5)(c) of the IBC to decide the amount which is payable to a legal professional as an intrinsic part of the CIRP

costs. Further, Regulation 34 of the IRP Regulations also defines 'insolvency resolution process cost' to include the fees of other professionals appointed by the RP.

31. On perusal of the record and upon hearing the rival contentions of the parties, we find that an odd amount of Rs.54,950/- (Fifty Four Thousand Nine Hundred Fifty) does not in any manner justify the legal professional fees appointed by the RP. We are also not able to appreciate the contention of the Ld. Counsel representing the Bank that the payment is to be made as per the internal norms of the Bank because in the matter of IBC, the legal professional is appointed by the RP, and therefore the legal fees to be paid would not be governed by the internal bank policy in view of the fact that it is not a case of engagement of legal professional by the Bank directly but the legal professional is appointed by RP to pursue various applications and to take defence in the complexities of the CIRP under the Code and it becomes part of the CIRP Cost as a whole

32. Conceding the overall situation and without going into the details of the invoices/assessment of the work, we deem it

appropriate that the Bank would consider paying RP/Legal Professional an amount of Rs.10 Lakh as a lump-sum measure. In this context, we may also take note of the supplementary affidavit filed by the Bank to the effect that it is willing to pay a reasonable amount as this Court deems fit.

33. The above IA No.392 of 2022 is thus disposed off in terms of the above directions.

34. Ordered accordingly.

-Sd-

**(Ashish Verma)
Member (Technical)**

-Sd-

**(Praveen Gupta)
Member (Judicial)**

Date: 16th April, 2024