

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 453 OF 2022

IN

COMPANY PETITION (IB) NO. 3540/MB/2018

*Application u/s 60(5)(c) of the Insolvency and
Bankruptcy Code, 2016.*

In the matter of:

Mr. Pankaj Sham Joshi,

Resolution Professional of M/s. GRL Tires Private
Limited **...Applicant**

v/s

Park Chambers Limited Respondent

In the matter of

Park Chambers Limited ...Financial Creditor

v/s.

GRL Tires Private Limited ...Corporate Debtor

Order pronounced on 07.06.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearances (in physical mode):

For the Applicant : Adv. Rafeeq Peermohideen a/w Adv. Tasneem
Zariwala

For the Respondent : Adv. Ibrahim.

ORDER

Per: Coram.

1. This is an application filed by the Resolution Professional of the Corporate Debtor (hereinafter referred to as “the RP”) invoking the residuary jurisdiction of this Tribunal under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) for recovery of his outstanding fees from the Respondent, who is a sole member of the Committee of Creditors (‘CoC’) of the Corporate Debtor.

Case of the Applicant (in brief):

2. The Applicant was appointed as the Interim Resolution Professional (‘IRP’) of the Corporate Debtor by virtue of Order dated 20.12.2019 passed by this Tribunal u/s 7 of the Code. The Applicant was thereafter confirmed as the Resolution Professional of the Corporate Debtor by the CoC in its 02nd meeting which was held on 07th February, 2020. The Respondent being the sole CoC member has 100% voting rights in the CoC meetings of the Corporate Debtor.
3. In the 02nd CoC Meeting held on 07th February 2020, the Respondent had fixed and approved the monthly fees payable to the Applicant to act as the Resolution Professional of the Corporate Debtor at INR 1,25,000/- + GST, which was effective from the date of appointment of the Applicant as the RP.
4. For the months of April, May, June and July of the Year 2020, the Applicant on his own volition and in complete good faith had fully waived his professional fees for the four months and thereafter, the said fee was later reduced by 60% to INR 50,000/- + GST per month with effect from August, 2020 at the sole request of the Respondent. The CoC took note of the same in its 04th Meeting held on 07th September, 2020.

5. The Corporate Debtor was not a going concern. It had ceased its operations since FY 2016-17, it had no inventory, tangible assets, employees, workers or staff. Thus, there is no chance of revival of the Corporate Debtor and hence, the CoC during its 7th CoC meeting held on 23rd September, 2021 resolved by a 100% vote in favour of initiating liquidation process of the Corporate Debtor and directed the Applicant herein to file an application for initiating liquidation process against the Corporate Debtor. In the 7th CoC meeting held on 23rd September 2021, it was further resolved that the RP will continue to remain in office till an order initiating liquidation process against the Corporate Debtor is passed by the Tribunal.
6. The Applicant had moved two applications, viz. I.A. No. 873/2021 for exclusion of lockdown from 23.03.2020 to 31.03.2021 while computing the CIRP period of the Corporate Debtor and I.A. No. 860/2021 for extending the CIRP period by 90 days. This Tribunal by its Order dated 13th July, 2021 in I.A. No. 860/2021, allowed the application by excluding the period of lockdown from 23.03.2020 to 31.03.2021 and extended the CIRP period by 90 days, thereby making 23rd September, 2021 as the 270th day of CIRP of the Corporate Debtor.
7. Pursuant to the resolutions passed by the Respondent-Sole CoC member in the 7th CoC meeting held on 23rd September 2021, the Applicant filed I.A. No. 2767/2021 on 23.11.2021 u/s 33 of the Code for initiating liquidation process against the Corporate Debtor and for appointment of a liquidator from the panel of insolvency professionals. The said liquidation application is pending for adjudication.
8. The Applicant on 03rd November, 2021 wrote to the authorised officer of the Respondent Mr. Ashish Kumar Bhoot to pay his fees and submitted the invoice for his professional fees for the month of October, 2021. In response, Mr. Bhoot

by way of an email dated 16th November, 2021 informed the Applicant that Respondent will not be in a position to pay fees for the period after September, 2021. By way of an email dated 08th December 2021, the Applicant responded to the Respondent's email dated 16th November 2021, informing the Respondent through Mr. Bhoot that while the CoC becomes functus officio upon the expiry of CIRP period, the office of the RP does not. The RP is required to manage the affairs of the Corporate Debtor until an order for resolution plan or liquidation is passed. Therefore, the Applicant urged the Respondent to kindly honour the pending payment towards the Applicant's fees, failing which the Applicant shall be constrained to seek appropriate orders from the Tribunal in this regard. The Applicant vide emails dated 05.01.2022 and 03.02.2022, repeatedly reminded and requested the Respondent to clear the arrears of fees since September, 2021. However, no response or payment was forthcoming from the Respondent. Hence this application.

9. Given below in the table are the details of the invoices raised by the Applicant for his professional fees which are due and unpaid by the Respondent from the month of September, 2021 to January, 2022:

<u>Invoice Date</u>	<u>Invoice Details</u>	<u>Month for which the Invoice is issued</u>	<u>Amount in INR (inclusive of GST @ 18%)</u>
01.10.2021	JP/GRL/2021-22/061	September, 2021	59,000/-
01.11.2021	JP/GRL/2021-22/068	October, 2021	59,000/-
08.12.2021	JP/GRL/2021-22/076	November, 2021	59,000/-
04.01.2022	JP/GRL/2021-22/087	December, 2021	59,000/-
03.02.2022	JP/GRL/2021-22/095	January, 2022	59,000/-
		TOTAL	2,95,000/-

10. The Applicant states that he has already paid GST at the rate of 18% on all the outstanding invoices mentioned in the table above, however, no monies have been received against the said invoices. The Applicant submits that the professional fees payable to the Applicant in his capacity as the Resolution Professional, is a CIRP cost as defined u/s 5(13) of the Code read with Regulation 34 of the CIRP Regulations, 2016. In addition to clearing the payment of INR 2,95,000/-, the Applicant has also sought directions from the Bench to the Respondent to make payment at the rate of INR 50,000/- per month along with the applicable GST from February, 2022 till the date of liquidation order to be passed in respect of the Corporate Debtor, on or before 07th day of the month.

Reply of the Respondent: The Respondent has filed its reply on affidavit dated 23rd March, 2022. The reply is briefly recapitulated hereinunder:

11. Since the CIRP period ended on 23.09.2021, neither is the Applicant entitled to any further professional fees nor is the Respondent-Financial Creditor liable to make payment of the same, as the CoC has become functus officio after the expiry of CIRP. The costs, even if any, incurred by the Applicant-Resolution Professional beyond 23.09.2021 does not and cannot be deemed to form part of the CIRP costs.
12. The Respondent in its affidavit-in-reply at Para 5(iv) admits that a resolution professional in a given case may also be entitled to fees/charges after the expiry of CIRP period for managing the operations of a corporate debtor as a going concern until an order approving a resolution plan u/s 31(1) or appointing a liquidator u/s 33/34 is passed by the Adjudicating Authority. However, in the present case, the Applicant failed and/or neglected to carry the preparation, finalizing and auditing of the Financial Accounts of the Corporate Debtor as

on 31st March, 2021. The Applicant did not file the returns with the RoC and Income Tax Authorities for such period which clearly demonstrates that the Corporate Debtor is not a going concern and rather became a paper company. Therefore, the RP is not entitled to any fees as the Corporate Debtor was not continued as a going concern as it ceased to carry on its business operations since FY 2016-17.

13. The Respondent states that in the 7th CoC meeting dated 23.09.2021, it was made clear that the CoC did not have any intention to incur any further costs towards the CIRP which was duly ratified and accepted by the Applicant. The CoC in the aforesaid meeting did not approve any further remuneration payable in favour of the Applicant beyond the cessation of CIRP period.
14. In the facts and circumstances of the present case, the only service rendered by the Applicant after 23rd September, 2021 is that of approval/finalization of liquidation application u/s 33 of the Code for liquidation of the Corporate Debtor and affirming the same. Accordingly, the Applicant is not entitled to charge or accept any fee or charges other than those which are disclosed and approved for the period post 23.09.2021.
15. Furthermore, as recorded in the 7th CoC meeting, a sum of INR 13,83,261/- was approved as CIRP costs, out of which a sum of INR 13,55,261/- has already been paid and the Respondent/Financial Creditor undertakes to make payment of the balance amount within such period as the Tribunal may deem fit. The Respondent also undertakes to make payment of a sum of INR 50,000/- +GST in favour of the Applicant for the services rendered by him for the period from 01.09.2021 to 23.09.2021 i.e. till the expiry of CIRP period immediately subject to passing of such directions by this Tribunal.
16. It is pertinent to mention that as per the circulars issued by the IBBI, which are binding on the resolution professional, the resolution professional is only

entitled to charge fees and/or expenses for the services actually rendered by him and which is a reasonable reflection of his work necessarily and properly undertaken.

Affidavit-in-Rejoinder filed by the Applicant:

17. Though the CoC in its 7th Meeting dated 23rd September, 2021 passed a resolution to initiate liquidation of the Corporate Debtor, the same does not end the insolvency resolution process against the Corporate Debtor. The CIRP period may expire in 180 or 270 or 330 days, however, the insolvency resolution process only expires either when a resolution plan is approved or a liquidation order is passed by the Adjudicating Authority.
18. The Resolution Professional cannot be expected to work for free and only charge for the expenses incurred by him after the expiry of statutory period of CIRP. It is not true to say that the Applicant-Resolution Professional has not worked after the expiry of CIRP period.
19. In the present case, post the CIRP period of 270 days, the Resolution Professional has carried out many work and performed various duties some of which are stated below:
 - a. Filing Form CIRP 7 every 30 days till date;
 - b. Attending the hearings of liquidation application on 30.11.2021, 10.12.2021, 19.01.2022 and 02.03.2022;
 - c. Following-up with the CoC for payment to auditor for statutory audit and monthly rental payments for registered office of Corporate Debtor;
 - d. Making multiple physical visits to Bank of Baroda's Branch at Fort owing to the account having become dormant which caused hindrances in funds transfer;

- e. Processing a delayed claim received from one Mr. Vijay Badhwar in June, 2022. Engaging lawyers at personal expense and liaising with them to draft and file a reply to IA No. 1773/2022 filed by the aforementioned person before the NCLT and attending hearing in the IA on 05.07.2022, 08.08.2022 and 24.11.2022;
 - f. Responding to the queries raised by the Directorate of Enforcement in relation to the Corporate Debtor in August 2022. Collating and supplying all information sought by ED.
20. Considering the aforesaid facts and circumstances, it is not correct to state that the Applicant/Resolution Professional is not entitled to his fees after the CIRP period is over.

FINDINGS

21. We have heard the Counsel for the parties and have gone through their pleadings and documents.
22. This is an application filed by the Resolution Professional of the Corporate Debtor invoking the residuary jurisdiction of this Tribunal under Section 60(5)(c) of the Insolvency and Bankruptcy Code for recovery of his outstanding fees from the Respondent, who is a sole member of the CoC of the Corporate Debtor.
23. Counsel for the Applicant submits that the Applicant, acting of his own volition and in complete good faith, fully waived his professional fees for the four months from April 2020 to July 2020 due to the Covid-19 pandemic. Subsequently, at the sole request of the Respondent, the Applicant's fees were reduced by 60%, amounting to INR 50,000/- plus GST per month, effective

from August 2020. Therefore, the learned Counsel for the Resolution Professional (RP) submits that the Committee of Creditors (CoC) cannot now evade its obligation to pay the agreed fees to the RP by citing the expiration of the statutory Corporate Insolvency Resolution Process (CIRP) period of 270 days on September 23, 2021, as an invalid pretext.

24. On the other hand, the Counsel for the Respondent/CoC submits that the CIRP period of 270 days has expired on 23.09.2021 after which the CoC becomes functus officio and hence, cannot be held liable to make payments to the RP. Counsel for the Respondent further submits that as per the IBBI circulars cited by the Applicant, the fees charged by the RP have to be commensurate with the work done and since in the instant case no work after expiry of CIRP has been done to keep the Corporate Debtor running as a going concern, neither any fee is payable to the RP nor is such fee payable as the CIRP cost after the expiry of statutory period for completion of CIRP. Learned Counsel for the CoC/Respondent finds fault with the RP/Applicant for not having been able to complete the CIRP within the statutory time frame and thus, the CoC cannot be saddled with the purported CIRP costs due to the RP's faults and failures.

25. We have heard the rival submissions canvassed across the bar by the learned Counsels for the Applicant and the Respondent and we have examined the matter on its merits and we have also perused the records.

26. On perusal of records, we find that in the Minutes of the 04th CoC meeting held on 07th September 2020, it was agreed at Item No.05 of the aforementioned minutes as follows:

“ITEM NO.05

TO TAKE NOTE OF THE REQUEST MADE BY THE COC FOR REDUCTION OF FEES OF THE RESOLUTION PROFESSIONAL AND THE ACCEPTANCE OF THE SAME BY THE RESOLUTION PROFESSIONAL.

The Chairman informed the CoC that the Resolution Professional had communicated to the member of CoC that he would not be charging any professional fees for the months of April, May, June and July on account of no work being done in respect of the CIRP of the Corporate Debtor owing to the nationwide lockdown in the wake of COVID-19.

The member of CoC acknowledged the same and appreciated the actions of the Resolution Professional. The Chairman further informed that during the 2nd CoC meeting, the CoC had resolved to pay a monthly professional fee of Rs. 1,25,000/-+GST for the Resolution Professional. However, on the request of the member of CoC, the Resolution Professional has, by way of his e-mail dated 27th August, 2020 agreed to charge only Rs. 50,000/-+GST with effect from the month of August 2020. The same was accepted and acknowledged by the member of CoC vide its e-mail dated 27th August, 2020. Annexed hereto and marked as Annexure- “A-Colly” is a copy of the e-mails exchanged between the Resolution Professional and the sole member of CoC on 27th August 2020.

The CoC took note of the same.”

Thus, we see that a fee of INR 1,25,000/- (+GST) per month was initially fixed in the 02nd CoC meeting held on 07th February, 2020. It is also an admitted position that the Applicant/Resolution Professional had voluntarily waived off his fees in entirety for a period of four months from April, 2020 to July, 2020 in the wake of Covid-19 pandemic and thereafter, it was mutually agreed between the Applicant and the CoC that the fees of the Resolution Professional shall be INR 50,000/- (+GST) per month with effect from August, 2020. The Respondent has admitted in its affidavit-in-reply that no fees have been paid to the Applicant since September, 2021.

27. Under Regulation 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 (“CIRP Regulations”), the Committee shall fix the expenses to be incurred on

or by the resolution professional and the expenses shall constitute insolvency resolution process costs. It is pertinent to take note that under the Explanation to Regulation 34 of the CIRP Regulations, the word “expenses” shall include the fee to be paid to the resolution professional, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional. Thus, the fees payable to the RP, as approved by the CoC, is a part of CIRP costs as per Regulation 34 (supra). Even otherwise, the fees payable to any person acting as a resolution professional is an insolvency resolution process costs as defined u/s 5(13)(b) of the Code.

28. We shall now advert to the Minutes of the 7th CoC Meeting held on 23rd September, 2021 and more particularly to Item No.07, wherein it was, *inter-alia*, agreed and resolved that the RP will continue to remain in office till an order initiating liquidation process against the Corporate Debtor is passed by the NCLT, Mumbai Bench. It is therefore unreasonable and impractical as also unjust to expect from the Resolution Professional to remain in office after the insolvency resolution process period until the liquidation process is initiated against the Corporate Debtor, without being paid any fees/remuneration. Thus, we find no force in the submission advanced on behalf of the CoC that after the expiry of insolvency resolution process period, the RP is not entitled to any fees. In view of the aforesaid resolution and in the light of Regulation 34 of the CIRP Regulations, we cannot allow the CoC to wriggle out of its obligation to pay the fees to the RP as CIRP costs.

29. 29.1. The learned Counsel for the Respondent has drawn our attention to the IBBI Circulars dated 16th January, 2018 and 12th June, 2018. The Circular dated 16th January, 2018 requires that an insolvency professional must provide

services for remuneration which is charged in a transparent manner and is a reasonable reflection of the work necessarily and properly undertaken. The Circular further states that the insolvency professional shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing his remuneration. The Circular dated 12th June, 2018 states that an IP while performing his duties must ensure that not only fee payable to him is reasonable, but also other expenses incurred by him are reasonable.

29.2. In the facts of the present case, after the expiry of statutory period of 270 days for completing the CIRP on 23rd September 2021, the RP has moved an application u/s 33 of the Code vide I.A.(I.B.C.) No. 2767/2021 on 23rd November, 2021. We also observe that the RP/Applicant had not only processed a delayed claim received from one Mr. Vijay Badhwar in June, 2022 but also engaged lawyers to file his reply and defend the Corporate Debtor in IA No. 1773/2022 moved by Mr. Vijay Badhwar for admission of his claim. Further, the RP had personally attended the hearings in the aforementioned IA on 05.07.2022 and 08.08.2022. Apart from the work as culled out in the facts above and in the foregoing paragraphs, there has been no significant work carried on by the RP. Considering the fact that no substantial work, except to the extent stated above, has been carried out by the RP/Applicant, we deem it appropriate to further reduce the fee payable to the RP/Applicant to INR 30,000/- +GST per month with effect from 01.09.2021 till the liquidation order u/s 33 of the Code is passed. Accordingly, we deem it appropriate to pass the following orders:

ORDER

- i. **I.A. No. 453/2022 is partly-allowed;**

- ii. The Respondent is hereby directed to make payment of INR 11,68,200/- (Rupees Eleven Lakhs, Sixty-Eight Thousand and Two Hundred Only) towards the outstanding fees inclusive of GST payable to the Applicant calculated at the rate of INR 35,400/- per month for the period of 33 months from 01st September, 2021 to 31st May, 2024, within 30 days from the date of this order;
- iii. In case the Respondent is desirous of further availing the services of the Applicant, then the Respondent is further directed to remit payment of fees to the Applicant at the rate of INR 30,000/- plus applicable GST per month, for the period commencing from 01st June 2024, and continuing until the date on which a liquidation order pursuant to Section 33 of the Code is passed by this Tribunal concerning the Corporate Debtor. Such payments are to be made on or before the 7th day of the immediately succeeding month. The Respondent too shall be at liberty to appoint another Resolution Professional in case they are not desirous of continuing the services of the Applicant at the aforesaid rate for the aforesaid period;
- iv. The Applicant shall also be at liberty to withdraw from the engagement in case he is not willing to continue at the fees of INR 30,000/- per month +GST with effect from 01st June, 2024.
- v. Accordingly, this application stands disposed of on above terms.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)