

(2022) 02 NCLT CK 0091

In the National Company Law Tribunal

Case No : IA No.05/ALD/2021 in CP (IB) No.344/ALD/2018

Sarvesh Kashyap Liquidator

APPELLANT

Vs

Bank Of India

RESPONDENT

Date of Decision : 22-02-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 60(5)
Insolvency and Bankruptcy Board of India, (Liquidation Process) Regulations, 2016 — Regulation 21A(2)

Citation : (2022) 02 NCLT CK 0091

Hon'ble Judges : Rajasekhar V. K., Member (J); Virendra Kumar Gupta, Member (T)

Bench : Division Bench

Advocate : Anil Kumar, Prabodh Kumar Bajpai

Final Decision : Disposed Of

Judgement

Rajasekhar V.K., Member (Judicial)

1. This is an application filed by the liquidator under section 60(5) of the IBC, 2016 read with regulation 21A(2) of the Insolvency and Bankruptcy Board of India, (Liquidation Process) Regulations, 2016, seeking directions against the sole member of the Committee of Creditors (CoC) – Bank of India – to release the CIRP cost and the liquidation cost for smooth conduct of the liquidation process.
2. The CIRP against the corporate debtor commenced on 10.01.2019 and the applicant was appointed as the IRP. He was later confirmed as the RP vide order dated 26.02.2020.
3. It is stated in the application that the CoC in its 9th meeting held on 10.07.2019 approved the estimated CIRP cost of ₹ 15 lakh due for the CIRP period, which was extended for a further period of 90 days. Then, in the 12th CoC meeting which was held on 05.09.2019, the CoC has rejected the plan

submitted by Aastha Garments, observing that the plan was submitted by the resolution applicant was not commercially feasible and viable. It approved the amount of ₹ 10,24,321/- as CIRP costs incurred by RP till 09.09.2019 and has also approved the liquidator fees at ₹ 50,000/- per month for all stages of liquidation. The application seeking liquidation of the corporate debtor was filed before this Adjudicating Authority, which was allowed vide order dated 05.02.2020.

4. It is stated that the CIRP cost was increased from last date of approval, i.e., 05.09.2019 till the liquidation order was passed, i.e., on 05.02.2020, from ₹ 10,24,321/- to ₹ 14,41,971 (excluding fees of IRP paid by operational creditors) which the CoC has not paid. It is further stated that the liquidator has incurred various expenses of ₹ 33,02,817.58 towards CIRP and liquidation cost, out of which ₹ 16,33,385.68 has been recovered and the balance amount of ₹ 16,69,431.90 is still pending for payment. It is submitted that on the date of hearing, i.e., 08.02.2022, the respondent bank has credited an amount of ₹ 2,74,000/- towards CIRP cost.

5. In reply, the counsel appearing for the Bank of India submitted that the total cost which was approved in the last CoC meeting held on 05.09.2019 was ₹ 10,24,321/-, which the bank has already paid. So far as liquidation cost is concerned, the applicant has opted not to join the liquidation process for which Form D was also submitted on behalf of the bank. Therefore, the bank is not liable to pay the liquidation costs.

6. We have heard the learned counsel appearing for the parties and perused the records. We are of the considered opinion that the corporate debtor is undergoing liquidation process on the recommendation of CoC, in which the applicant was the sole CoC member and further the resolution for payment of the liquidator fees @ ₹ 50,000/- per month for all stages of liquidation was also approved by the CoC. The CIRP and liquidation processes are creditor-driven processes and the same cannot be expected to be financed by the insolvency professional who acts as the focal point for these processes. The creditors sitting on the CoC and later on the Stakeholders Consultation Committee are not expected to shirk their basic obligations to meet the CIRP costs and the liquidation costs. This is the least that is expected of the financial creditors.

7. Thus, we hold that the applicant is liable to pay the cost incurred during liquidation process as well as to pay the cost incurred by Resolution Professional is protecting the corporate debtor till the date liquidation order was passed. The respondent bank is directed to pay the amount of ₹ 13,95,431.90 outstanding towards the CIRP and liquidation costs within seven days from the date of order.

8. Before parting with the subject, there are certain things that should be called out. We are pained to note that in many cases, the creditors sitting on the CoC and on the Stakeholders Consultation Committee do not loosen their purse strings easily to meet even the bare minimum CIRP costs. In the vast majority of

the cases, the insolvency professional and the professional team assembled by him for various activities have to wait for months on end to get reimbursements or their fee, even after the CoC had already approved incurring the expense in question. After patiently waiting for several months, the desperate and hapless insolvency professional is constrained to knock on the doors of the Adjudicating Authority for his basic fee and expenses, again entailing a legal cost which could have been avoided had the fee been paid on time.

9. All this not only entails additional costs all round, but the Adjudicating Authority also expends precious judicial time in issuing directions to the members of CoC, who in most cases come back with instructions after several weeks that the CoC will make the payment. This is not a very happy augury. The time spent in such matters can be more profitably utilised by the Adjudicating Authority in determining questions that really require some application of mind and interpretation of the various provisions, instead of on issuing directions in matters that ought not to have crossed into the courthouse in the first instance. Delay defeats the very purpose of the IBC.

10. A copy of this order is being marked to the IBBI, who may like to consider issuing appropriate instructions to the banks, who are important cogs in the IBC wheel.

11. IA No.05/ALD/2021 shall stand disposed of with the above directions.

12. List the main CP for reporting progress on 30.03.2022.

13. The Registry shall e-mail a copy of this order to the Counsel on record for the Applicant and for the CoC, for information and for taking further necessary steps.

14. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.