

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 100 of 2023

[Arising out of order dated 06.12.2022 passed by the Adjudicating Authority,
National Company Law Tribunal, Mumbai Bench Court-III in IA
No.1312/2022 in CP(IB) No.4065/MB/2018]

IN THE MATTER OF:

India Resurgence ARC Pvt. Ltd.
3rd Floor, Unit 304,
Piramal Tower, Peninsula Corporate Park,
Lower Parel, Mumbai - 400013

...Appellant

Versus

Rohit J. Vora,
Erstwhile Resolution Professional of
Jogma Laminates Industry (P) Ltd.
1103, Raj Sunflower Royal Complex,
Eksar Road, Borivali (West),
Mumbai-400092

...Respondent

Present:

For Appellant: Mr. Kaushik Mishra, Advocate

For Respondent: Mr. Partho Sarkar, Advocate

With

Company Appeal (AT)(Insolvency) No. 104 of 2023

IN THE MATTER OF:

Rohit J. Vora,
Erstwhile Resolution Professional of
Jogma Laminates Industry (P) Ltd.
1103, Raj Sunflower Royal Complex,
Eksar Road, Borivali (West),
Mumbai-400092

...Appellant

Versus

**Religare Finvest Ltd.
(India Resurgence ARC Pvt. Ltd.)
13 to 116, 1st Floor, B-Wing, Building Pride,
Silicon Plaza, Next to Chaturshringi Temple,
S. No.106A/2A/7, Senapati Bapat Road,
Pune -411016**

...Respondent No.1

**Dena Bank (Bank of Baroda)
WHC Road, Near Times of India Bldg.,
Dharampeth – 440010**

...Respondent No.2

**Star Orechem International Pvt. Ltd.
Amrata Manor, Bungalow No.1,
1st Floor, Opposite Axis Bank,
Rabindranath Tagore Road, Civil Lines,
Nagpur – 440001**

...Respondent No.3

**Zumberlal Bharat & Sons HUF
64/65, East Wardhawan Nagar,
Nagpur – 440008**

...Respondent No.4

**Poddar Telecom Private Limited
Tirupati Balaji Roadlines (India)
88, Jaideo Apartment, Chapru Nagar,
Central Avenue, Nagpur – 440008**

...Respondent No.5

**Ujwala Bharut
64/65, East Wardhawan Nagar,
Nagpur – 440008**

...Respondent No.6

Present:

For Appellant: Mr. Partho Sarkar, Advocate

For Respondent: Mr. Kaushik Mishra, Advocate

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

These two appeals filed under Section 61 of Insolvency and Bankruptcy Code, 2016 (“**IBC**” in short) arises out of the common order dated 06.12.2022 (hereinafter referred to as “**Impugned Order**”) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench Court-III) in IA No.1312/2022 of CP(IB) No. 4065/MB/2018 wherein the Adjudicating Authority has directed the Committee of Creditors (“**CoC**” in short) for payment of fees to the Resolution Professional (“**RP**” in short) of Rs.1 lakh per month + GST from 01.09.2019 to 24.04.2022 along with other actual expenses incurred by him on production of bills.

2. The relevant facts which are necessary for deciding the two appeals are as follows:

- Section 7 application had been admitted against the Corporate Debtor on 25.04.2019 for initiation of Corporate Insolvency Resolution Process (“**CIRP**” in short).
- After collating claims of the creditors, the CoC was constituted on which Religare Finvest became a member. The Religare Finvest had 69.02% of voting share and was the majority Financial Creditor. In terms of voting share, the next largest Financial Creditor was Dena Bank with 29.34% vote share as recorded in minutes of first CoC meeting. Later, India Resurgence Arc Pvt Ltd became a member on 24.12.2021 after replacing Religare Finvest as the predecessor in interest following a deed of assignment in their

favour. For convenience, this party will be referred to as Religare Finvest in this matter.

- The Interim Resolution Professional appointed to conduct the CIRP was later appointed as the RP with monthly remuneration of Rs.3.75 lakhs plus GST as approved in the 1st CoC meeting.
- The 3rd CoC meeting on 18.07.2019 decided to remove the RP subject to his continuance until replacement by a new person. However, the RP continued to function since no application was filed for change of RP.
- In the 4th CoC meeting held on 26.08.2019, the RP raised the issue of non-payment of his fees and expenses to the tune of Rs. 23,57,635/- and the non-contribution of fees by any CoC member. The CoC decided to go for liquidation of the Corporate Debtor and have a liquidator of own choice after changing the RP.
- The CoC in the 5th meeting held on 17.10.2019 had decided not to extend the time-limit for CIRP and not to approve Form G or invite EOI.
- Meantime, the RP had filed MA No. 3399/2019 on 16.10.2019 for payment of his fees and expenses amounting to Rs.24,25,143/- till 31.08.2019. This was allowed by the Adjudicating Authority on 10.11.2022. In this MA, the RP had also raised the issue of Religare Finvest not cooperating in CIRP and pushing the Corporate Debtor into liquidation.
- The RP had also filed an application MA No. 3668/2019 on 11.11.2019 before the Adjudicating Authority seeking liquidation of the Corporate Debtor which was allowed on 16.11.2022. Directions were also sought for release of fees of RP from 31.08.2019 to 01.11.2019 being Rs.12,63,393/-.

- IA No.2755/2021 was filed by the RP to allow the suspended management of the Corporate Debtor to submit their resolution plan; to direct the CoC to pay outstanding CIRP cost and debar CoC member from participation in CoC if it failed to contribute its share of CIRP cost. This application was dismissed by the Adjudicating Authority with liberty to file a fresh application after liquidation order is passed.
- IA No.1312/2022 was filed on 10.05.2022 by the RP claiming fees and other expenses from 25.04.2019 to 24.12.2022. The Adjudicating Authority vide impugned order on 06.12.2022 directed the CoC to pay the fees of the RP from 01.09.2019 to 24.04.2022 of Rs.1 lakh plus GST per month along with actual expenses against production of bills.
- Aggrieved by this impugned order both these appeals have been filed. Religare in CA(AT) Ins No.100/2023 has assailed the order on the ground that the Adjudicating Authority wrongly recorded their consent of having agreed to the payment of fees to the RP from 01.09.2019 to 24.04.2022. The RP has filed CA(AT) Ins No.104/2023 challenging the impugned order for having reduced their fees and for making disparaging remarks on his professional conduct.

CA(AT) Ins No.100/2023

3. The Learned Counsel for the Appellant/Religare Finvest vehemently contended that it had never consented to payment of fees of the RP beyond 31.08.2019. It was submitted that when the RP had filed MA No.3399/2019 seeking payment of fees and expenses till 31.08.2019, the Appellant had agreed to the same so as not to prolong litigation. However, the consent was with the

caveat of allowing fees and expenses only for the period till 31.08.2019. However, the Adjudicating Authority misconstrued that consent by recording in the present impugned order that the consent was till 24.04.2022.

4. Attention was adverted to the fact that in the impugned order, the Adjudicating Authority has correctly noted that the RP had failed to perform his duty and acted prejudicially to the interests of the Corporate Debtor by joining hands with the suspended management. Besides committing grave dereliction of duty, it was argued that the RP had caused harm to the Corporate Debtor by handing over the control of its assets to the erstwhile management. Under such circumstances, it was contended that the RP did not deserve payment of fees as the same had been sought solely for his personal benefit and not for making any contribution to the CIRP process. In any case, it was emphasized that the RP could not have performed much work during the period after August 2019 on account of outbreak of Covid pandemic. Quite apart from the fact that no substantial work had been done by the RP, keeping in view the fact that the Corporate Debtor was not capable of revival, the order of the Adjudicating Authority to continue paying such hefty fees was not justified. It has also been submitted that the Adjudicating Authority had lost sight of the fact that the RP had already been paid Rs.24,25,143/- following the orders dated 10.11.2022. Since then, the RP had not performed any work and therefore it is not justified to pay any further amount for the period 01.09.2019 onwards.

CA(AT) Ins No.104/2023

5. The Learned Counsel for the Appellant/RP has submitted that the CoC in its first meeting had ratified the fees of the RP of Rs. 3.75 lakhs p.m. plus GST.

The RP was therefore rightfully entitled to claim the same amount to be paid as his fees. While admitting that the CoC in its third meeting had decided to replace the RP, it was also asserted that the CoC did not move any application for his substitution and had resolved to pay the RP till the date of his demitting office. It was therefore contended by the RP that the CoC having further decided to continue on with him until the joining of the replacement RP, he remains entitled to his fees and expenses. However, since no fees was paid to him from 25.04.2019 onwards, he was compelled to file an I.A No.1312 on 10.05.2022. It has been submitted that the reduction of his fees by the impugned order from Rs.3.75 lakhs per month as approved earlier by the CoC, to Rs.1 lakh per month is unjustified and be set aside.

6. The RP has contended that he was discharging all his responsibilities appropriately. All steps had been taken to protect the assets of the Corporate Debtor for which purpose a person had also been appointed to supervise the assets. The RP has also contended that the impugned order contains certain deprecatory remarks about his professional conduct which deserves to be expunged. It has been vehemently contented that it was the conduct of Religare Finvest which was putting hindrances to the conduct of CIRP and pushing the Corporate Debtor into liquidation.

7. We have duly considered the arguments advanced by the respective Appellant in both the appeals and perused the records carefully. From the contentions raised by the concerned Appellants in their respective appeals, we find that the common thread is that they have both assailed the impugned order but by challenging it on different grounds and in doing so they have assumed

adversarial position against each other. That being so, we will collectively take up both the appeals and for this purpose outline the issues which need our consideration. The first issue for our consideration is whether the RP's fee and expenses is payable till 24.04.2022, and if so, whether reduction of fees to Rs.1 lakh per month was justified and tenable. The second issue for our consideration is whether in the given facts and circumstances, the adverse remarks made on the professional conduct of RP by the Adjudicating Authority is sustainable.

8. At the outset, we feel it necessary to extract relevant portions of the impugned order which constitute the basis of both these appeals:

*“4. The only contention of Mr. Partho Sarkar, counsel appearing for the RP is that even though the COC has resolved to replace the RP with Mr. Rajat Naidu in the third COC meeting held on 18.07.2019, **no such application was filed by the COC for change of RP and therefore the present RP is entitled for the agreed fee** till the RP was discharged through an order of this tribunal. In the present application, the RP is claiming an amount @ 3.75 lacs per month both for himself and his team besides expenses in a sum of Rs. 1,68,60,372/- without doing any work. **The RP cannot claim fee by taking advantage of the inaction of the COC in filing an application for his replacement nor on certain observations made in MA 3399/2019 as the above MA was filed for fee and expenses during the active period of CIRP.** This Bench made certain observations in M.A. 3399/2019 since the COC is objecting for payment of fee and expenses of the team of RP even during the active CIRP period which was the lis in M.A 3399/2019. The Applicant cannot claim the same amount for subsequent period even without considering Covid circumstances etc. by taking advantage of certain observations in M.A. 3399/2019.*

5. It is also pertinent to observe here that the Resolution Professional has already claimed his fee and expenses till 31.08.2019 in the earlier M.A. 3399/2019 and in the present I.A. 1312/2022, he claimed fee and expenses from 24.04.2019 to 24.04.2022 under Exhibit 'A' of the present application. The Resolution Professional has already claimed the expenses of Rs. 1,50,000/- for preferring M.A. 3399/2019 which was allowed by this Bench. Surprisingly, he claimed another 7,95,407/- towards legal fee and expenses for moving the present I.A. for the same relief of payment of fee. It is an admitted fact that human life was completely paralyzed, business

activities, production, transport everything has come to standstill all over globe due to COVID-19 pandemic from 25.03.2020 till the end of 2021 due to three waves of COVID. **This tribunal is unable to understand how the RP can claim fee not only for himself but also his team for the COVID period more so by creating a tussle between the COC and himself with regard to way forward of the CIRP process.** This bench also observes that the RP having filed an application for liquidation orally opposed for passing an order of liquidation contending that the Corporate Debtor is viable for resolution. The major COC member is alleging that the RP has handed over interim custody of the Corporate Debtor to the members of the suspended board which is not denied by RP. This Bench has taken a very serious note about the conduct as well as the way of charging fee by RP without doing any work.

6. Therefore, for the aforesaid reasons, this bench is of the considered opinion that the RP is merely **entitled for his fee of Rs. 1,00,000/-+GST per month from 01.09.2019 to 24.04.2022 as fairly agreed by M/s Relegere Finvest Ltd** who is a major COC member along with actual expenses like valuation expenses etc. incurred by Resolution Professional for protecting the property against production of bills till the property is handed over to liquidator as certified by COC. The COC is also at liberty to approve any other expenses incurred by RP as it deems fit without being influenced by any of the above observations made in this order. The CoC is hereby directed to act accordingly.”

(Emphasis supplied)

9. This brings us to the first issue of deciding whether the decision of the Adjudicating Authority to allow payment of fees to the RP for the period 01.09.2019 till 24.04.2022 is sustainable in the face of the contention raised by the major Financial Creditor on the CoC - Religare Finvest that it had not given any such consent.

10. It is well established that the fees of the RP are required to be ratified by the CoC. Coming to the facts of the present case, perusal of the minutes of the first CoC meeting reveals that it had ratified the appointment of the Interim Resolution Professional including payment of fees and in the second CoC meeting held on

14.06.2019 his appointment as RP was confirmed. It is also noticed that CoC in its third meeting had decided to replace the RP and also decided by name the person to be appointed. There is no quarrel over the fact that replacement of the RP falls within the prerogative of the CoC. Be that as may, in the present case, it is undisputed fact that the CoC even after deciding to replace the RP did not make any endeavours for effectuating the substitution of the RP. Hence the RP continued to remain in position. It is also an admitted fact that the third CoC had resolved to pay the RP on the existing terms and conditions till the date of his demitting office.

11. Given this backdrop, we may now examine the contention of Religare Finvest that it had given consent for payment of fees of RP only up to 30.08.2019 but the Adjudicating authority had wrongly recorded their consent for the period up to 24.04.2022. We do not find much force in their contention. Once the CoC in the third meeting had decided to continue with the RP on the same terms and conditions until the replacement was appointed and this decision was not subsequently modified by the CoC, the logical corollary is that the RP was entitled to claim fees/expenses. Any consent of Religare Finvest in this regard is redundant and inconsequential. When the CoC had itself ratified the fees and allowed the RP to continue to discharge the responsibilities of RP until a fresh RP was appointed, we find no reasons to disagree with the Adjudicating Authority in holding that the RP was well entitled to claim his fees along with actual expenses.

12. This brings us to the second related aspect as to whether the reduction of the fees from Rs. 3.75 lakhs to Rs 1 lakh plus GST by the Adjudicating Authority was reasonable or not. To analyse this matter, we need to first notice some

important dates. In the fourth CoC meeting held on 26.08.2019, the CoC had already deliberated and decided to initiate liquidation proceedings as the CIRP was not making satisfactory progress. We also notice that the RP had filed MA No. 3668/2019 on 11.11.2019 before the Adjudicating Authority seeking liquidation of the Corporate Debtor which was allowed on 16.11.2022. From the above chronicling of dates, it can be safely inferred that by end of August 2019, the active CIRP proceedings had reached a dead end.

13. Present is a case where the Adjudicating Authority has scaled down the fees from Rs 3.75 lakhs to Rs 1 lakh plus GST which has been challenged by the RP. All that we need to see is whether the Adjudicating Authority had taken this decision arbitrarily or whether it was a reasoned and justified decision.

14. Stating his claim for payment of full fees, the Learned counsel for the RP has relied on the judgment of this Tribunal in ***Committee of Creditors vs. Sonu Jain, Resolution Professional for Marina Projects Pvt. Ltd. and Ors. 2019 SCC OnLine NCLAT 1194***. The facts are distinguishable in that it did not deal with tenability of reduction in the fees of the RP but on whether the CoC or the Corporate Debtor is to pay the fees in view of section 14 of the IBC. The other judgement relied upon is ***Alok Kaushik vs. ASREC (India) Ltd. 2018 SCC OnLine NCLAT 822*** of this Tribunal. However, it does not assist the RP since this judgment was again not on the reduction in the fees but whether the fees can be paid only at the time of liquidation. Similarly the facts of the case in the judgement of this Tribunal in ***Sajeve Bhushan Deora vs. Axis Bank Ltd. & Ors. 2019 SCC OnLine NCLAT 1437*** being different do not come to the aid of the RP.

15. It has been observed by the Adjudicating Authority that it was unreasonable for the RP to claim fees for himself and his team for the period when all work was at a standstill due to Covid pandemic. Another reason cited is that while the RP had already claimed legal expenses of Rs. 1,50,000/- in MA No.3399/2019, he has claimed yet another amount of Rs.7,95,407/- in IA No.1312/2022 though both these applications were for seeking the same relief of payment of fees. It has also been observed that at a time when the CoC had already decided to replace the RP, he was taking advantage of the fact that replacement application was not filed on time before the Adjudicating Authority. Moreover, some of the actions of the RP were not in sync with the decisions of the CoC. Hence the RP had failed to assist in the CIRP process in a fair and objective manner in the best interest of all stakeholders.

16. The above findings of the Adjudicating Authority of deficiency in the performance of the RP are not far from truth. RP admittedly was unable to publish Form G. Neither could Expression of Interest be invited. The RP was also unable to elicit any successful resolution plan for the Corporate Debtor within 180 days from the initiation of CIRP. We find that the Adjudicating Authority had also taken notice of the fact that the RP had entered into a tussle with the CoC which put hurdles in the progress of the CIRP. That resolution of the Corporate Debtor had not taken place due to ongoing tussle between the Appellant and CoC is writ large. In fact, the Adjudicating Authority while considering the liquidation application filed vide MA 3668/2019 had been constrained to note of serious misunderstanding between the RP and the CoC causing a deadlock in the CIRP process leaving no option but for liquidation. Given the material on record and

the facts and circumstances in the present matter, we are therefore inclined to agree with the finding of the Adjudicating Authority that the active CIRP period having expired with no substantial work to be taken up further and the Covid pandemic also having generally disrupted work, the scaling down of the fees to Rs 1 lakh was not discriminatory or unfair. The Adjudicating Authority was therefore well within its rights in exercising its wisdom in adjudicating on the reasonability quotient of fees payable to the RP. We find no error in the proportionate reduction of fees/expenses as carried out by the Adjudicating Authority as the rationalization has been done with proper application of mind.

17. Having answered the first issue, we now come to the next point for determination as to whether the deprecatory remarks on the professional conduct of the RP were appropriate or they deserve to be expunged.

18. It has been submitted by the Learned Counsel of the RP that several steps had been taken by RP towards conduct of CIRP like making of public announcement, formation of CoC, holding of CoC meetings, appointment of security guards to protect the assets of the Corporate Debtor, appointment of statutory auditor, physical visits to the asset site, making appearances for hearings before the Adjudicating Authority etc. We also take cognizance of the submission made that the RP in the CoC meetings had repeatedly raised the issue of non-cooperation from the Corporate Debtor in securing books of accounts and statutory registers. Further information memorandum preparation had suffered since valuers could not be appointed on time as CoC was not confirming payment of valuer's fees. The RP had been suffering on account of non-release of fees by the CoC. It was vehemently contended that the derogatory remarks made against

the RP are unwarranted and that there is sufficient material on record to prove to the contrary and hence these observations ought to be expunged.

19. While we take cognizance of the steps having been taken by the RP as summated above, we are also mindful of the expectations from the RP in the conduct of CIRP proceedings in the IBC framework. It is well settled that the RP plays a pivotal role in the CIRP process and acts as the bridge of balance and harmony between the CoC and other stakeholders including the Corporate Debtor. As an officer of the court, the RP as the facilitator of the resolution process is expected to conduct the CIRP process with fairness, diligence, forthrightness and highest sense of responsibility. Judged against this backdrop, we need to find out how the RP measured up to the occasion.

20. What stares at our face is that even after a lapse of nearly three years, the CIRP process had failed to make any tangible headway. The insolvency resolution was impeded because the RP often did not abide by the directions of the CoC which is not in consonance with the IBC and the tenets of commercial wisdom of the CoC. To cite a few illustrative instances, as borne out from the CoC meeting minutes, we find that the RP had insisted on forensic audit though the CoC wanted only a statutory audit. The CoC had recommended liquidation but RP had orally opposed liquidation of the Corporate Debtor before the Adjudicating Authority even after having filed the liquidation application. The RP had also not acted on the suggestion of the CoC to file a petition before the Adjudicating Authority against the suspended management for non-cooperation in submitting statutory registers and other documents etc. The CoC was of the view that much harm was caused to the Corporate Debtor by handing over the control of its assets

to the erstwhile management. These actions of the RP do not reflect well on his professional conduct and cannot be countenanced. Given the attendant circumstances we find that RP was more focused on claiming his fees/remuneration and other expenses than discharging his responsibilities of completing CIRP in a time bound manner. Hence, we are of the considered view that on the whole the Adjudicating Authority has been justified in taking a serious note of the conduct of the Resolution Professional.

21. In the result, given the sequence of events and the facts and circumstances of the case, for the reasons discussed above, we find no reasons to interfere with the impugned order. We find no merit in both the appeals. The appeals are accordingly dismissed. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 09.08.2023

PKM