

DEVARAJAN RAMAN

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v.

BANK OF INDIA LIMITED

(Civil Appeal No. 3160 of 2020)

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JANUARY 05, 2022

**[DR. DHANANJAYA Y CHANDRACHUD AND
A.S. BOPANNA, JJ.]**

Insolvency and Bankruptcy Code, 2016 – Costs and expenses incurred by Resolution Professional (RP) – In pursuance to an email of the respondent, the appellant submitted his bid for appointment as an Interim Resolution Professional – Corporate Insolvency Resolution Process (CIRP) was initiated by the order of NCLT and the appellant was appointed as Interim Resolution Professional – The order of NCLT was set aside in appeal and the proceedings were remitted back to determine fee and costs of the CIRP incurred by appellant – Appellant addressed the letter to respondent showing the amount payable as fees and cost – The total amount was of Rs 14,75,660/- – Amount of Rs. 5,66,667/- was reimbursed by the respondent leaving the balance amount Rs 9,08,993/- – Respondent replied to the appellant's letter stating that upon verification, the costs and fees were found in conformity with both the technical and financial bid, based on which the assignment was awarded – Appellant filed application before NCLT for obtaining release of remaining cost and fees – NCLT directed the respondent to pay the expenses incurred and an amount of Rs 5,00,000 plus GST towards the fee of the RP – Appeal was filed by appellant for challenging reduction in cost and fees by NCLT – NCLAT dismissed the appeal of appellant and held that the amount of Rs 5,00,000/- as fee, in addition to the expenses, appears to be reasonable – Before the Supreme Court, the appellant submitted that both NCLT and NCLAT erroneously have not scrutinized the factual position and awarded the ad hoc amount – On appeal, held: Considering the respondent's reply to the letter of appellant and absence of consideration of submissions made by appellant by the NCLT – Neither the basis of the claim nor its reasonableness was considered by the Adjudicating Authority – The Appellate Authority

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- A *proceeded in an ad hoc manner – Both the orders suffers from abdication in the exercise of jurisdiction – Remand ordered – The order and judgement of NCLAT and NCLT set aside – NCLT to decide the matter afresh – Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 – Regulation 34.*
- B **Allowing the appeal, the Court**

- HELD:** 1. In the present case, after the NCLAT set aside the order of the NCLT initiating the CIRP, the proceedings were remitted back for determining the insolvency resolution costs.
- C It is material to note that the appellant had addressed a letter to the respondent on 13 December 2019 prior to the filing of the application to which the respondent responded on 24 January 2020 stating that, upon verification, the costs and fees were found in conformity with both the technical and financial bid, based on
 - D which the assignment was awarded. In the application which was filed by the appellant before the NCLT, the appellant annexed a statement of costs, the amount which was reimbursed with the balance dues at Annexure 'D'. The order of the NCLT, however, reveals that none of the submissions of the appellant have been considered. The adjudicating authority merely directed the respondent to pay the expenses incurred and an amount of Rs 5,00,000 plus GST towards the fee of the RP. Neither the basis of the claim nor its reasonableness has been considered by the adjudicating authority. The appellate authority has merely proceeded in an ad hoc manner on the ground that the amount of
 - F Rs 5,00,000 as fee, in addition to the expenses, appears to be reasonable. Both the orders suffer from an abdication in the exercise of jurisdiction. In the absence of any reasons either in the order of the NCLT or the appellate authority, it is impossible for this Court to deduce the basis on which the payment of an
 - G amount of Rs 5,00,000 together with expenses has been found to be reasonable. Consequently, an order of remand becomes necessary. [Para 16][982-C-G]

*Alok Kaushik v Bhuvaneshwari Ramanathan (2021) 5
SCC 787 – referred to.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3160 A
of 2020.

From the Judgment and Order dated 30.07.2020 of the National Company Law Appellate Tribunal at New Delhi in Company Appeal (AT) (Insolvency) No. 646 of 2020.

Ms. Anjali Sharma, Ms. Shagun Matta, Deepak Bashta, Advs. B
for the Appellant.

Vadlamani Seshagiri, Shreyuss Shankar Joshi, Mrs. Bela Maheswari, Adv. for the Respondent.

The Judgment of the Court was delivered by C

DR. DHANANJAYA Y CHANDRACHUD, J.

1. This appeal arises from a judgment of the National Company Law Appellate Tribunal¹ dated 30 July 2020 in Company Appeal (AT) Insolvency No 646 of 2020². D

2. The issue in dispute relates to the payments of costs and expenses incurred by the Resolution Professional³. Pursuant to an email dated 4 February 2019 of the respondent, who was a financial creditor of Poonam Drums and Containers Private Limited (the Corporate Debtor), the appellant submitted his technical and financial bid on 5 February 2019 for appointment as an Interim Resolution Professional. On 8 March 2019, the respondent filed a petition under Section 7 of the Insolvency and Bankruptcy Code 2016⁴ against the Corporate Debtor. On 20 September 2019, the Corporate Debtor was admitted to the insolvency resolution process by the National Company Law Tribunal⁵ and the appellant was appointed as an Interim Resolution Professional. The order of appointment of the appellant is reflected in operative direction VI of the order of the NCLT, which reads as follows: E F

“VI. That this Bench at this moment appoints Mr Devarajan Raman, a registered Insolvency Resolution Professional G

¹ “NCLAT or appellate authority”

² **Mr Devarajan Raman, Resolution Professional Poonam Drums & Containers Pvt Ltd v. Bank of India Ltd**

³ “RP”

⁴ “IBC”

⁵ “NCLT or adjudicating authority” H

- A having Registration Number [IBBI/IPA-002/IP-N00323/2017-Number 18/10928] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.”
- B 3. On 19 December 2019, the order of the NCLT was set aside in appeal⁶ by the NCLAT at the behest of the Directors of the Corporate Debtor. By the order of the appellate authority, the proceedings were remitted to the NCLT to decide upon the fee and costs of the Corporate Insolvency Resolution Process⁷ incurred by the appellant which was to be borne by the respondent as a financial creditor.
- C 4. On 30 December 2019, the appellant addressed a letter to the respondent enclosing a statement showing the amount payable as fee and costs. The amount was quantified in the amount of Rs 14,75,660 until 19 December 2019. An amount of Rs 5,66,667 was reimbursed by the respondent leaving in balance, according to the appellant, an amount of Rs 9,08,993.
- D 5. The appellant moved the NCLT in an application on 17 January 2020 for obtaining the release of the remaining fee and costs. The principal relief which was claimed was in the following terms:
- E “1. That the Respondent Bank of India, be directed to make payment of the CIRP cost including fees of the Applicant Resolution Professional as per the details furnished in the Annexure D.”
- F 6. On 24 January 2020, the respondent replied to the appellant’s letter dated 30 December 2019 stating that it had verified the details of the fee and costs stated by the appellant and found them in conformity with the technical and financial bid based on which he had been awarded the assignment, together with the approval of the Committee of Creditors⁸. The respondent stated that it would release the payment to the appellant, upon receipt of an order of the NCLT. By its order dated 7 February 2020, the NCLT disposed of the application in the following terms:
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⁶ Company Appeal (AT) Insolvency No 1092 of 2019

⁷ “CIRP”

H ⁸ “CoC”

“MA 223/2020 is filed by the Resolution Professional for his fees. On hearing both sides, the Respondent Bank is directed to pay all the expenses incurred by RP and Rs.5,00,000/- plus GST towards the fee of the RP.

Accordingly, MA 223/2020 is allowed and disposed of.”

7. The appellant filed an appeal before the NCLAT. Among the grounds of appeal, the relevant ground of challenge is extracted below:

“(vi) That the abovementioned application filed by the appellant was taken up and heard by the National Company Law Tribunal, Mumbai Bench, on 7th February, 2020. On the said date, even though the appellant explained to the Hon’ble Bench that the financial creditor had duly accepted the fee quoted by him, and there was no contest whatsoever on the part of the respondent financial creditor to the payment of the c.i.r.p. cost incurred by the appellant, including his fee, the Hon’ble Mumbai Bench proceeded to pass the impugned order reducing the c.i.r.p. costs and fee quoted by the appellant, without citing any reasons for the same, or even noticing the appellant’s contentions in the said regard. In fact, the respondent bank affirmed during the course of the hearing on 7th February, 2020, that it was agreeable to paying the said amount. However, the same was also disregarded, and in fact, was not even noticed in the order. Copies of the minutes of meeting between the appellant and respondent financial creditor, and of the other documents evidencing their agreement as to the fee to be paid to the appellant, are annexed herewith and marked as Annexure - C (Collectively). Annexed as Annexure D is a statement showing the amount paid by the respondent to the appellant after the passing of the impugned order, which is a sum of Rs. 7,09, 154/. An amount of Rs. 1,99,839/- therefore yet remains to be paid, and this is reflected in the said statement as well.”

8. The NCLAT, while dismissing the appeal, observed that:

- (i) The appellant had worked for about three months as RP;
- (ii) The expenses had been allowed in full and the consolidated amount of Rs 5,00,000 plus GST allowed as fee of the RP for the entire period was not unreasonable; and

- A (iii) Fixation of the fee is not a business decision depending on the commercial wisdom of the CoC.

9 Ms Anjali Sharma, counsel appearing on behalf of the appellant, challenged the order of the NCLAT principally on the following grounds:

- B (i) The statement of fee and expenses submitted by the appellant was in terms of the technical and financial bid;
- (ii) It was categorically stated in the letter of the appellant dated 30 December 2019 that the fourth CoC meeting held on 10 December 2019 had ratified all the expenses up to 30 November 2019, after which no meeting took place;
- C (iii) The respondent, as a matter of fact, by its letter dated 24 January 2020, found, upon verification, that the fee and expenses as claimed were admissible;
- (iv) The NCLT did not scrutinize or verify the factual position and merely awarded an *ad hoc* figure of Rs 5,00,000 while the NCLAT has committed a similar error on the ground that an amount of Rs 5,00,000 was found to be reasonable;
- D and
- (v) The appellant worked as an IRP for three months which is half the period of one hundred and eighty days envisaged for completing the process.

- E 10. In this backdrop, counsel submitted that in terms of the decision of this Court in **Alok Kaushik v Bhuvaneshwari Ramanathan**⁹, the adjudicating authority would have jurisdiction under Section 60(5)(c) of IBC. In the present case, the jurisdiction has (it is urged) been improperly exercised in the sense that there has been no application of mind to the basis of the claim and the figures which were accepted by the financial creditor.

- F 11. On the other hand, Mr Vadlamani Seshagiri, counsel appearing on behalf of the respondent, submitted that the appellant accepted the order of the NCLAT dated 19 December 2019 remitting the proceedings back to the NCLT for determining the costs and fee payable to the RP. Moreover, it was sought to be urged that the payment which has been made to the RP is commensurate with the work which was done over a period of three months.

H ⁹ (2021) 5 SCC 787

12. Responding to the above submissions, it has been urged on behalf of the appellant that the appellant did not challenge the order of the NCLAT remitting the proceedings back to the NCLT for determination of the costs and fee because it was not necessary for the appellant to do so. Moreover, it has been submitted that the real grievance of the appellant is that the claim has not been assessed or analyzed in terms of what was agreed, when the appellant submitted his bid or in terms of the circular of the Insolvency and Bankruptcy Board of India dated 12 June 2018.

13. At the outset, it must be noted that the jurisdiction of the adjudicating authority to consider the claim of a registered valuer was considered in the judgment of this Court in **Alok Kaushik** (supra). In that case, the NCLT held that once the CIRP was set aside, it was rendered *functus officio*. The order of the adjudicating authority was upheld in appeal. In that context, this Court, after advertizing to the provisions of the relevant Regulations, observed as follows:

“19. Though the CIRP was set aside later, the claim of the appellant as registered valuer related to the period when he was discharging his functions as a registered valuer appointed as an incident of the CIRP. NCLT would have been justified in exercising its jurisdiction under Section 60(5)(c) of the IBC and, in exercise of our jurisdiction under Article 142 of the Constitution, we accordingly order and direct that in a situation such as the present case, the adjudicating authority is sufficiently empowered under Section 60(5)(c) of the IBC to make a determination of the amount which is payable to an expert valuer as an intrinsic part of the CIRP costs. Regulation 34 of the IRP Regulations defines “insolvency resolution process cost” to include the fees of other professionals appointed by the RP. Whether any work has been done as claimed and if so, the nature of the work done by the valuer is something which need not detain this Court, since it is purely a factual matter to be assessed by the adjudicating authority.

14. Regulation 34 of the the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides as follows :

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

- A 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.”
- B 15. The Insolvency and Bankruptcy Board of India has issued a circular on 12 June 2018. The circular, *inter alia*, requires the insolvency professional to ensure that the fees payable to him during the CIRP are reasonable and the approval of the CoC for the fee or other expenses is obtained, wherever approval is required.
- C 16. In the present case, after the NCLAT set aside the order of the NCLT initiating the CIRP, the proceedings were remitted back for determining the insolvency resolution costs. It is material to note that the appellant had addressed a letter to the respondent on 13 December 2019 prior to the filing of the application to which the respondent responded on 24 January 2020 stating that, upon verification, the costs and fees
- D were found in conformity with both the technical and financial bid, based on which the assignment was awarded. In the application which was filed by the appellant before the NCLT, the appellant annexed a statement of costs, the amount which was reimbursed with the balance dues at Annexure ‘D’. The order of the NCLT, however, reveals that none of
- E the submissions of the appellant have been considered. The adjudicating authority merely directed the respondent to pay the expenses incurred and an amount of Rs 5,00,000 plus GST towards the fee of the RP. Neither the basis of the claim nor its reasonableness has been considered by the adjudicating authority. The appellate authority has merely proceeded in an *ad hoc* manner on the ground that the amount of Rs
- F 5,00,000 as fee, in addition to the expenses, appears to be reasonable. Both the orders suffer from an abdication in the exercise of jurisdiction. In the absence of any reasons either in the order of the NCLT or the appellate authority, it is impossible for the Court to deduce the basis on which the payment of an amount of Rs 5,00,000 together with expenses
- G has been found to be reasonable. Consequently, an order of remand becomes necessary.
- H 17. We accordingly allow the appeal and set aside the impugned judgment and order of the NCLAT dated 30 July 2020. Similarly, the order of NCLT dated 7 February 2020 is set aside. MA No 223/2020 in CP (IB) 970/MB/2019 is restored to the file of the NCLT for a decision

afresh. The NCLT, upon remand, is requested to expedite the disposal of the MA and to complete the process within a period of one month from the date of receipt of a certified copy of this order on its record. A

18. The appeal is disposed of in the above terms.

19. Pending application, if any, stands disposed of. B

Ankit Gyan
(Assisted by : Arsh Choudhary, LCRA)

Appeal allowed.