

ALOK KAUSHIK

A

v.

MRS BHUVANESHWARI RAMANATHAN AND OTHERS

(Civil Appeal No. 4065 of 2020)

MARCH 15, 2021

B

**[DR. DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

Insolvency and Bankruptcy Code, 2016: s.60(5)(c) – Dispute regarding fee of valuer – Pursuant to the initiation of CIRP against corporate debtor, first respondent was appointed as the Resolution Professional (RP) – RP appointed appellant as a registered valuer of the Plant and Machinery of the corporate debtor of 115 sites and a fee of Rs.7.50 lakhs and other expenses were ratified by the Committee of Creditor (CoC) – Appellant claims to have conducted valuation work of 84 sites and he paid for expenses of Rs.52,000 – NCLAT set aside the CIRP against the corporate debtor and remanded the matter to NCLT on the issue of CIRP costs – NCLT decided on the fee of RP and reduced it by 20% from the fee ratified by CoC – In view of order of NCLAT, RP cancelled the appointment of the appellant and requested appellant for waiver of fee – In return, appellant agreed to reduce his fee by 25% along with the expenses – However, RP informed appellant that the fee as ratified cannot be paid and paid a sum of Rs.50,000 – Appellant filed application under s.60(5) before the NCLT challenging non payment of fees – However, the NCLT dismissed the application on the ground that it had been rendered functus officio – NCLAT declined to exercise its appellate jurisdiction – Hence the instant appeal – Held: Though the CIRP was set aside later, the claim of the appellant related to the period when he was discharging his functions as a registered valuer appointed as an incident of the CIRP – NCLT ought to have exercised its jurisdiction under s.60(5)(c) of the IBC – In exercise of jurisdiction under Art.142 of the Constitution, it is directed that in a situation such as the present case, NCLT is sufficiently empowered under s.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 – Regn.34 of the IRP Regulations defines ‘insolvency resolution process cost’ to include the fees of other

C

D

E

F

G

H

- A *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 NCLT – The availability of a grievance redressal mechanism under the IBC against an insolvency professional does not divest the NCLT of its jurisdiction under*
- B *s.60(5)(c) of the IBC to consider the amount payable to the appellant – In any event, the purpose of such a grievance redressal mechanism is to penalize errant conduct of the RP and not to determine the claims of other professionals which form part of the CIRP costs – The impugned judgment and order of the NCLAT is set aside – The*
- C *proceedings accordingly is remitted back to the NCLT for determining the claim of the appellant for the payment of the professional charges as a registered valuer appointed by the RP in pursuance of the initiation of the CIRP.*

- Allowing the appeal and remitting the matter to NCLT,**
- D **the Court**

- HELD : 1.1 Where an application for withdrawal is filed under Section 12A of the IBC, a provision has been made in Regulation 30A(7) in regard to the deposit of expenses. Regulation 30(A) would not apply specifically to the present**
- E **situation, since it deals with a case where an application is withdrawn under Section 12A of the IBC. The appellant is justified in contending that there must be a forum within the ambit and purview of the IBC which has the jurisdiction to make a determination on a claim of the present nature, which has been instituted by a valuer who was appointed in pursuance of the**
- F **initiation of the CIRP by the RP. After the NCLAT set aside the CIRP and remitted the proceedings to the NCLT to decide on the CIRP costs, the NCLT held that it was rendered *functus officio* in relation to the appellant’s claim. This would be an incorrect reading of the jurisdiction of the NCLT as an Adjudicating**
- G **Authority under the IBC. [Paras 16, 18][528-G-H; 529-F-H]**

1.2 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

H

incident of the CIRP. The NCLT would have been justified in A
exercising its jurisdiction under Section 60(5)(c) of the IBC. In
exercise of jurisdiction under Article 142 of the Constitution, it
is directed 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 B
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 C
which need not detain this Court, since it is purely a factual
matter to be assessed by the Adjudicating Authority.
[Para 19][530-D-G; 531-A]

*Gujarat Urja Vikas Nigam Limited v. Amit Gupta and
Others* 2021 SCC OnLine SC 194 – relied on.

2. The NCLT in its order while dismissing the application D
of the appellant for the payment of fees had observed that the
Insolvency and Bankruptcy Board of India (‘IBBI’) is the
competent authority to deal with allegations against the RP
relating to their failure to discharge statutory duties (paragraph
7). Section 217 of the IBC empowers a person aggrieved by the E
functioning of an RP to file a complaint to the IBBI. If the IBBI
believes on the receipt of the complaint that any RP has
contravened the provisions of IBC, or the rules, regulations or
directions issued by the IBBI, it can, under Section 218 of the
IBC, direct an inspection or investigation. Under Section 220 of F
the IBC, IBBI can constitute a disciplinary committee to consider
the report submitted by the investigating authority. If the
disciplinary committee is satisfied that sufficient cause exists, it
can impose a penalty. The availability of a grievance redressal
mechanism under the IBC against an insolvency professional does
not divest the NCLT of its jurisdiction under Section 60(5)(c) of G
the IBC to consider the amount payable to the appellant. In any
event, the purpose of such a grievance redressal mechanism is
to penalize errant conduct of the RP and not to determine the
claims of other professionals which form part of the CIRP costs.
[Para 20][531-A-E]

H

A **3. The impugned judgment and order of the NCLAT is set aside. The proceedings accordingly stood remitted back to the NCLT for determining the claim of the appellant for the payment of the professional charges as a registered Valuer appointed by the RP in pursuance of the initiation of the CIRP. [Para 21] [531-E-F]**

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4065 of 2020.

From the Judgment and Order dated 21.03.2019 of the National Company Law Tribunal in Company Appeal (AT) (I) No. 857 of 2020.

C Manish Paliwal, Vikas Kumar, M/S Corporate Legal Partners, Advs. for the appellant.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

D 1. Admit.

2. The present appeal arises out of proceedings relating to the insolvency of a company by the name of Kavveri Telecom Infrastructure Limited (“**Corporate Debtor**”). The National Company Law Tribunal, Bengaluru (“**NCLT**” or “**Adjudicating Authority**”) initiated the Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor by its order dated 21 March 2019. By an order dated 26 August 2019, the first respondent was appointed as the Resolution Professional (“**RP**”).

3. By a letter dated 16 September 2019, the first respondent appointed the appellant as a registered valuer of the Plant and Machinery of the Corporate Debtor, under Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**IRP Regulations**”). The appellant was appointed to value the plant and machinery at 115 sites of the Corporate Debtor across India. The appellant’s appointment fee (Rs 7.50 lakhs plus applicable GST) and other expenses were ratified by the Committee of Creditors (“**CoC**”), led by the second respondent, in its meeting held on 9 December 2019.

4. The appellant claims to have conducted valuation work of over eighty-four sites and to have visited forty sites. Further, several outstation

H

meetings were also stated to have been conducted between the appellant and the first respondent. The appellant has stated that he paid for expenses in the sum of Rs 52,000. A

5. The National Company Law Appellate Tribunal (“NCLAT” or “Appellate Authority”) set aside the initiation of CIRP against the Corporate Debtor by an order dated 18 December 2019. The NCLAT remanded the matter back to the NCLT to decide on the issue of CIRP costs. By an order dated 20 December 2019, the NCLT decided on the fee of the RP and reduced it by 20% from the fee ratified by the CoC. B

6. In view of the order dated 18 December 2019 of the NCLAT, the first respondent cancelled the appointment of the appellant on 19 December 2019. In relation to the fee payable to the appellant, the first respondent requested him to consider a waiver. In return, the appellant agreed to reduce his fee by 25% from the fee ratified by the CoC, along with the expenses payable. However, on 2 March 2020, the first respondent informed the appellant that the fee as ratified could not be paid, and paid a sum of Rs 50,000. C D

7. The appellant then filed an application¹ under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“IBC”) before the NCLT challenging the non-payment of the fees. However, the NCLT dismissed the application by an order dated 29 June 2020 concluding that it had been rendered *functus officio*. In appeal, the NCLAT by an order dated 13 October 2020 rejected the contention of the appellant, noting that an amount of Rs 50,000 had already been paid over. The appellant moved this Court in an appeal under Section 62 of the IBC, for challenging the order of the NCLAT. E

8. On 11 January 2021, this Court issued notice in the appeal and, while doing so, passed the following order: F

“1. Mr Manish Paliwal, learned counsel appearing on behalf of the appellant submits that:

- (i) The appellant was appointed as a Registered Valuer on 16 September 2019, and that his professional fees and other expenses in the amount of Rs 7.50 lakhs were ratified by the Committee of Creditors on 19 December 2019; G

¹ CA No 192 of 2020

- A (ii) The NCLAT by its order dated 18 December 2019 set aside the corporate insolvency resolution process and the proceedings were remitted to the NCLT to decide on the CIRP costs;
- B (iii) On 20 December 2019, the NCLT determined the fees which were payable to the Interim Resolution Professional; and
- (iv) However, despite the order of the NCLAT, no determination was made by the NCLT of the amount which was due and payable to the appellant for the work which was done as a Registered Valuer, recording that an amount of Rs 50,000 has been paid.
- C
2. Issue notice, returnable in four weeks.
3. Dasti, in addition, is permitted.”
9. The Office Report indicates that all the respondents have been served. By an order dated 19 February 2021, fresh notice was directed to be served on the Corporate Debtor, returnable in three weeks. Service has since been completed.
- D
10. The issue in the present appeal relates to the costs, charges, expenses and professional fees payable to a registered valuer appointed after the initiation of the CIRP under the IBC, in a situation where the CIRP is eventually set aside by the Adjudicating Authority or, as the case may be, Appellate Authority.
- E
11. The submission of the appellant is that neither the NCLT nor the NCLAT have applied their mind to the professional charges payable to him in his capacity as a registered valuer. According to the appellant, he had completed the valuation of eighty-four sites and undertaken expenses of Rs 52,000 in the valuation exercise. During the course of the hearing Mr Manish Paliwal, learned counsel appearing on behalf of the appellant, also submits that an amount of Rs 35,000 was paid towards GST by the appellant. But the real issue which has been sought to be canvassed in the appeal is that in a situation such as present, where the CIRP was set aside by the Appellate Authority, there has to be within the framework of the IBC, a modality for determining the claim of a professional valuer such as the appellant. The NCLT came to the conclusion that it was *functus officio*. The NCLAT declined to exercise its appellate jurisdiction.
- F
- G
- H

12. The expression ‘insolvency resolution costs’ has been defined A
in Section 5(13) of the IBC in the following terms:

“(13) “insolvency resolution process costs” means—

- (a) the amount of any interim finance and the costs incurred B
in raising such finance;
- (b) the fees payable to any person acting as a resolution
professional;
- (c) any costs incurred by the resolution professional in
running the business of the corporate debtor as a going
concern; C
- (d) any costs incurred at the expense of the Government to
facilitate the insolvency resolution process; and
- (e) any other costs as may be specified by the Board;”

13. Regulation 31 of the IRP Regulations is contained in Chapter D
9, which is titled ‘Insolvency Resolution Process Costs’. Regulation 31
is in the following terms:

“31. **Insolvency resolution process costs.**— “Insolvency
resolution process costs” under Section 5(13)(e) shall mean—

- (a) amounts due to suppliers of essential goods and services E
under Regulation 32;
- (aa) fee payable to authorized representative under sub-
regulation (7) of regulation 16A;
- (ab) out of pocket expenses of authorized representative for
discharge of his functions under section 25A; F
- (b) amounts due to a person whose rights are prejudicially
affected on account of the moratorium imposed under
section 14(1)(d);
- (c) expenses incurred on or by the resolution professional
to the extent ratified under regulation 33; G
- (d) expenses incurred on or by the resolution professional
fixed under regulation 34; and
- (e) other costs directly relating to the corporate insolvency
resolution process and approved by the committee.” H

A 14. Of the clauses of Regulation 31, of particular importance to the present case is clause (c) which enunciates expenses incurred on or by the IRP to the extent ratified under Regulation 33. Clause (e) refers to other costs directly relating to the CIRP and approved by the CoC. Regulation 33 provides for the costs of the IRP:

B “33. **Costs of the interim resolution professional.**– (1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.

C (2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).

C (3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

C (4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

D *Explanation.*– For the purposes of this regulation, “expenses” include the fee to be paid to the interim 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 interim resolution professional.”

E 15 “Resolution professional costs” are defined in Regulation 34:

F “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.

G *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.”

G 16. Where an application for withdrawal is filed under Section 12A of the IBC, a provision has been made in Regulation 30A(7) in regard to the deposit of expenses. Regulation 30A(7) provides as follows:

H “30A. **Withdrawal of application.**

[...] A

(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.” B C

17. Clause 2 of Regulation 30A, which is referred to in clause 7, is as follows:

“(2) The application under sub-regulation (1) shall be made in form-FA of the Schedule accompanied by a bank guarantee– D

- (a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1); or
- (b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).” E

18. Regulation 30(A) would not apply specifically to the present situation, since it deals with a case where an application is withdrawn under Section 12A of the IBC. The appellant is justified in contending that there must be a forum within the ambit and purview of the IBC which has the jurisdiction to make a determination on a claim of the present nature, which has been instituted by a valuer who was appointed in pursuance of the initiation of the CIRP by the RP. After the NCLAT set aside the CIRP and remitted the proceedings to the NCLT to decide on the CIRP costs, the NCLT held that it was rendered *functus officio* in relation to the appellant’s claim. This, in our view, would be an incorrect reading of the jurisdiction of the NCLT as an Adjudicating Authority under the IBC. In a recent judgment in **Gujarat Urja Vikas Nigam** F G H

- A **Limited vs Amit Gupta and Others**², this Court clarified the jurisdiction of the NCLT/NCLAT under Section 60(5)(c)³ of the IBC in the following terms:

B “71. The institutional framework under the IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora... **Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor.** However, in doing do,

C we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.”

D (emphasis supplied)

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. The NCLT would have been justified in exercising its jurisdiction under

E 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

F 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

² 2021 SCC OnLine SC 194

G ³ “**Section 60 (5) (c) – Adjudicating Authority for Corporate Persons: (5)** Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

.....

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”

H

which need not detain this Court, since it is purely a factual matter to be assessed by the Adjudicating Authority. A

20. The NCLT in its order dated 29 June 2020, while dismissing the application of the appellant for the payment of fees, observed that the Insolvency and Bankruptcy Board of India (“IBBI”) is the competent authority to deal with allegations against the RP relating to their failure to discharge statutory duties (paragraph 7). Section 217 of the IBC empowers a person aggrieved by the functioning of an RP to file a complaint to the IBBI. If the IBBI believes on the receipt of the complaint that any RP has contravened the provisions of IBC, or the rules, regulations or directions issued by the IBBI, it can, under Section 218 of the IBC, direct an inspection or investigation. Under Section 220 of the IBC, IBBI can constitute a disciplinary committee to consider the report submitted by the investigating authority. If the disciplinary committee is satisfied that sufficient cause exists, it can impose a penalty. The availability of a grievance redressal mechanism under the IBC against an insolvency professional does not divest the NCLT of its jurisdiction under Section 60(5)(c) of the IBC to consider the amount payable to the appellant. In any event, the purpose of such a grievance redressal mechanism is to penalize errant conduct of the RP and not to determine the claims of other professionals which form part of the CIRP costs. B C D

21. We accordingly allow the appeal and set aside the impugned judgment and order of the NCLAT dated 13 October 2020. The proceedings shall accordingly stand remitted back to the NCLT for determining the claim of the appellant for the payment of the professional charges as a registered Valuer appointed by the RP in pursuance of the initiation of the CIRP. In order to facilitate a fresh determination by the NCLT, the order passed by the NCLT on 18 December 2019 is also set aside and CA No 192 of 2020 shall stand restored to the file of the NCLT for determination afresh in the light of the above observations. E F

22. Pending applications, if any, stand disposed of.