

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1386 of 2023

[Arising out of order dated 27.07.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Court-IV in IA/1275/ND/2022, IA/5608/ND/2022 in IB/697/ND/2018]

IN THE MATTER OF:

**M/s State Trading Corporation of India Limited
Jawahar Vyapar Bhawan, New Delhi-110001**

...Appellant

Versus

- 1. Mr. Devinder Arora,
Erstwhile Interim Resolution Professional,
1203-1205, Vijaya Building,
17, Barakhamba Road, Connaught Place,
New Delhi-110001**
- 2. Mr. Rakesh Prasad Khandelwal,
Liquidator of Spacevision Impex Pvt. Ltd,
E-504, Ispatika Apartments,
Plot-29, Sector-4, Dwarka, South West,
New Delhi-110078**
- 3. M/s IDBI Bank Limited,
IDBI Tower, WTC Complex,
Cuff Parade, Mumbai-400005,
With branch office at NMG, 7th Floor,
IDBI Tower, WTC Complex,
Cuff Parade, Mumbai-400005**

...Respondents

Present:

**Appellant: Mr. Dhiranjan Malvey, Advocates.
Dr. Maurya Vijay Chandra.**

**For Respondents: Mr. Devender Arora, Advocate for R-1.
Mr. Ashok Juneja, Advocate.**

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**'IBC'** in short) by the Appellant arises out of the Impugned Order dated 27.07.2023 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Court-IV, New Delhi) in IA/1275/ND/2022, IA/5608/ND/2022 in CP/IB/697/ND/2018. By the Impugned Order, the Adjudicating Authority has directed the Appellant- State Trading Corporation to make payment of Rs 33 lakhs as fees to the Interim Resolution Professional - Respondent No. 1 and reimbursement of Rs 9 lakhs as CIRP expenses. Aggrieved by this impugned order, the present appeal has been preferred by the Appellant.

2. The Learned Counsel for the Appellant giving the factual background stated that following the admission of M/s Spacevision Impex Pvt Ltd – Corporate Debtor into Corporate Insolvency Resolution Process (**'CIRP'** in short), the Interim Resolution Professional (**'IRP'** in short) was appointed to conduct the CIRP proceedings. Since, the CIRP proceedings could not be concluded, an application was filed before the Adjudicating Authority for liquidation of the Corporate Debtor which was allowed on 21.02.2022. Following the passing of the liquidation order, the IRP filed IA No. 1275 of 2022 seeking approval of IRP fees and CIRP expenses aggregating Rs.77,91,974/-. It was contended that the Adjudicating Authority in deciding the fees of Rs. 33 lakhs @ Rs.1 lakh per month for 33

months to be paid to the IRP committed a mistake as it was fixed on the higher side and not in sync with the work performed by the IRP. It was further stated that while deciding the fees of the IRP, the Adjudicating Authority failed to apply the test of reasonability and proportionality which should have been done in terms of Clause 25 of the Code of Conduct for Insolvency Professionals as laid down in the First Schedule of the IBBI (Insolvency Professionals) Regulations, 2016. It was also added that instead the Adjudicating Authority had wrongly placed reliance on Regulation 34(B) of IBBI (Insolvency Professionals for Corporate Persons) Regulations, 2016 which Regulation was applicable only in cases where IRP were appointed on or after 01.10.2022 while in the present case the IRP-Respondent No. 1 had been appointed on 08.05.2019.

3. Assailing the impugned order for wrong fixation of IRP fees, the Appellant contended that though the remuneration to be provided to the IRP should be a reasonable reflection of the work necessarily and properly undertaken by the IRP, the fees fixed in the present case exceeded the volume of work performed by the IRP. During the entire CIRP period of 270 days from 08.05.2019 to 02.02.2020, the IRP had held only three meetings of the Committee of Creditors (**‘CoC’** in short) which testifies the non-seriousness on the part of the IRP. Further, fee has been claimed for the period 02.02.2020 till the handing over of CIRP records to the Liquidator on 08.03.2022 while no significant work was completed during this time. It is also the contention of the Appellant that the CIRP expenses of Rs.9 lakhs as allowed by the Adjudicating Authority is again on the higher side,

more particularly, the expenses shown under the heading of Advocate fees.

4. It was vehemently contended that the IRP failed to adhere to the timeline of IBC which stipulates the completion of CIRP within 180 days. Since the IRP could not conclude the CIRP process within 180 days, the CoC was compelled to seek further extension of 90 days. The non-serious disposition of the IRP is also borne out by the fact that the CIRP proceedings could not be completed even during the extended period of 90 days leading to liquidation and that the IRP was keen to get appointed as the Liquidator. This clearly shows that the IRP was not serious in completing the CIRP and was more interested in dragging the proceedings with the ulterior objective of unjust enrichment by claiming hefty fees. It was also submitted that the IRP to justify his fees has submitted a long list of 106 activities but most of these items indicated in the list are of trivial and mundane nature which deserves to be ignored. The IRP therefore deserves to be paid fees far less than Rs.1 lakh per month and for a period not exceeding 6 months.

5. The Learned Counsel for the IRP – Respondent No. 1 refuting the submissions made by the Appellant stated that the IRP had made best possible efforts to complete the CIRP process within the stipulated time. It was the indecision and non-cooperation on the part of the Appellant, who constituted the sole member of the CoC, which delayed the process of CIRP. Further it was not the fault of the IRP that inspite of publication of Form G, no Resolution plan had been received from any resolution applicant. The CoC was therefore

left with no option but to move towards liquidation. It was added that the IRP has submitted a list of 106 activities performed by him since his appointment and emphatically asserted that all these activities were necessary, critical and unavoidable for conduct of CIRP. It was also pointed out that the IRP had attended several hearings before the Adjudicating Authority; before this Tribunal and before the Hon'ble Supreme Court. Furthermore, the IRP had submitted the detailed chart of CIRP expenses before the Adjudicating Authority. It has also been submitted that the IRP had suo motu reduced their fees to Rs. 1 lakh per month and that this reduction was in consonance with Regulation 34B of IBBI (Insolvency Professionals for Corporate Persons) Regulations, 2016 which prescribes the minimum fees to be charged by the IRP. Even the CIRP expenses has been reduced from Rs.11.91 lakhs to Rs.9 lakhs and includes payment to be made to other professionals engaged by the IRP. It was therefore vehemently contended that the Adjudicating Authority had not committed any error in directing the payment of IRP fees and CIRP expenses.

6. We have duly considered the arguments advanced by the Learned Counsels for both parties and perused the records carefully.

7. It is the case of the Appellant that the lack of earnestness and proficiency on the part of the IRP is writ large and therefore the fees/expenses allowed by the Adjudicating Authority needs to be rationalised. In support of their case, it was articulated that the IRP had conducted only one meeting of the CoC during the entire period of 180 days which came to an end on 04.11.2019. IRP failed to

adhere to the timeline of IBC which stipulates the completion of CIRP within 180 days. Even during the extended period of 90 days the CIRP could not be concluded. This clearly shows that the IRP was not serious in completing the CIRP. It is also the case of the Appellant that the list of 106 activities drawn up by the IRP comprises of inconsequential activities and that the IRP has deliberately exaggerated his role and that the list is the product of the creativity and imagination of IRP. Most of the items indicated in the list are of trivial and mundane in nature which deserves to be ignored. The IRP had made no worthwhile contributions and therefore deserves a fee far less than Rs.1 lakh per month and for a period not exceeding 6 months.

8. To the contrary, it is the contention of the IRP – Respondent No. 1 that the IRP had made best possible efforts to complete the CIRP process within the stipulated time. The Appellant was the only member of the CoC and it was the indecision and non-cooperation on the part of the Appellant as the sole member of the CoC which delayed the process of CIRP. On the list of 106 activities performed by him since his appointment, it was emphatically asserted that all these activities were necessary, critical and unavoidable for conduct of CIRP. Moreover, it is submitted that they had attended 48 hearings before the Adjudicating Authority; 13 hearings before this Tribunal and once before the Hon'ble Supreme Court.

9. To come to our findings, we have gone through the minutes of the three CoC meetings. We notice that during each of the CoC meetings, the IRP had meticulously listed out the entire gamut of

activities carried out by him for the smooth conduct of CIRP. In the 1st CoC meeting at Agenda item 4, the IRP had explained in details to the CoC of the steps taken by the IRP which included public announcements in the newspapers; communications entered into with the suspended management; visits undertaken to the office of the Corporate Debtor; collection, verification and filing of documents with Registrar of Companies; verification of claims received; constitution of CoC and filing of status reports with the Adjudicating Authority. This finds place at pages 72-74 of Appeal Paper Book (**'APB'** in short).

10. Similarly, the IRP has detailed out the steps taken by the IRP at the time of the 2nd CoC meeting which included filing of application under Section 19 of IBC; appearances before Adjudicating Authority and this Tribunal; collection of financial documents of the Corporate Debtor and correspondence with the bankers; appointment of registered valuers; preparation of Information Memorandum, Request for Resolution Plan and Evaluation Matrix and publication of Form-G as may be seen at pages 78-84 of the APB. Similarly, in the 3rd CoC meeting too, the IRP also apprised the CoC of the steps undertaken by him as placed on record at pages 86-92 of APB. The detailed list of all these 106 activities have been placed at pages 106-119 of the APB. Though the Appellant has held that only a few of these activities out of the entire list to be essential and the rest as superfluous and trivial, nevertheless we also notice that the Appellant has not outrightly denied that these activities were not performed. We are not swayed by the opinion of the Appellant of their

categorisation of these activities as essential and non-essential. We are clear in our mind that the IRP had carried out all the requisite steps which was necessary to conduct the CIRP proceedings.

11. This brings us to the contention of the Appellant that the IRP had held only three CoC meetings during the entire CIRP period of 270 days which shows the non-serious nature of the IRP. The counter-contention of the IRP is that the minutes of the CoC meetings will show that it is not the IRP who can be blamed for negligence and inefficiency but it is the Appellant who was responsible for not showing the optimal level of interest and decisiveness in furthering the CIRP process and taking it to its logical culmination and for procrastination in deciding on the IRP fees and CIRP expenses. Attention was adverted to the IBBI circular No. IBBI/CIRP/016/2018 dated 10.08.2018 which requires that the CoC members must be represented in the CoC meeting by such persons who are competent and authorised to take decisions and that this was clearly being breached.

12. When we look at the materials on record, we find that there is no dispute over the fact that only three CoC meetings were held. The 1st, 2nd and 3rd meetings of the CoC were held on 24.06.2019, 13.11.2019 and 31.01.2020 respectively and all the three meetings were attended by the Authorised Representatives of the Appellant. However, when we analyse the decision-making process therein, it is noticed that that there were clear signs of lethargy and tendency on the part of the Appellant to defer decisions. Coming to the subject matter of ratification of CIRP expenses incurred by the IRP and

appointment of legal counsel; to approve fees to be paid to the IRP @ Rs. 2 lakhs per month and appointment of Resolution Professional and to fix his fees, we find that this had figured in the agenda for discussion in the first CoC meeting itself but remained inconclusive since the Appellant had informed that they would convey the approval only after securing internal approval from their competent authority. The same paralysis in decision-making continued in the second CoC meeting wherein though the extension of the 90 days of the CIRP of the Corporate Debtor was agreed to by the CoC, on the issue of IRP fees and CIRP expenses it was informed that they would convey the approval within 15 days after securing internal approval from their competent authority. When we come to the subject matter of initiation of liquidation, it is again noticed that even after the IRP in the 3rd CoC meeting had apprised the CoC that inspite of Form-G publication, no Resolution plan had been received from any resolution applicant, leaving no option but to move forward towards liquidation, even at this stage, the Appellant continued to remain slow and lethargic in taking a decision and the liquidation resolution was approved after a lapse of 6 months 11 days since the holding of the 3rd CoC meeting. We also find that the Authorised Representative of the Appellant had informed the 3rd CoC meeting that a decision on the appointment of the IRP as a Liquidator would require the approval of the competent higher authority. The minutes of the three CoC meetings have been placed on record from pages 70-97 of the APB.

13. It is pertinent to mention here that when the IRP had filed IA No. 806/ND/2021 before the Adjudicating Authority for issuance of directions for liquidation of the Corporate Debtor, the Adjudicating Authority while allowing the said application on 21.02.2022 has also noted:

“That the application for liquidation of the Corporate Debtor has been delayed due to the following reason:

- 1. Late receipt of written approval from the sole CoC member;*
- 2. A number of approvals regarding appointment of IRP, fixation of fees of IRP/RP, approval of CIRP expenses including fees of valuers are still pending;*
- 3. That Mr. Devinder Arora suffered Covid 19 which was detective positive as per test report dated 20.11.2020.” This order clearly shows that the Adjudicating Authority had pinned the delay on the Appellant in filing the liquidation application and for procrastinating on the fees of IRP. This order finds place at pages 98-106 of the APB. This order not having been challenged, the Appellant cannot now claim that they are not responsible for the delay in deciding on the fees of the IRP and CIRP expenses.”*

This order finds place at pages 98-106 of the APB. Clearly the Adjudicating Authority has attributed delay on the part of the Appellant in approving the liquidation proposal and in the fixation of IRP fees and CIRP expenses and this order not having been challenged by the Appellant has therefore attained finality.

13. CoC members represented in the CoC meetings are expected to be such persons who are competent and authorised to take decisions rather than keep them in abeyance for want of approval from higher authorities. However, the CoC minutes show that the Appellant did not approve these resolutions and the Authorised Representative each time informed that they will convey the approval after getting

internal approval from their competent authority. In such circumstances, it was clearly the Appellant which had been delaying the CIRP process by deferring to take decisions in the CoC meetings on the ground that approval of higher authorities was required. We are therefore persuaded to hold that there is substance in the contention of the IRP that the Appellant displayed non-responsive behaviour and lackadaisical approach in the CoC meetings inspite of being the sole CoC member.

14. This now brings us to the question of how the Adjudicating Authority has determined the IRP fees and CIRP expenses. The relevant findings from the impugned order is as reproduced below:

“It has been admitted by the Appellant that the Liquidator- Respondent No. 3 has made a provision for Rs.42 lakhs as provisional CIRP cost subject to the outcome of this appeal.

In the reply filed by State Trading Corporation of India Limited in Para No.13, the State Trading Corporation of India Limited has submitted that the fee quoted by IRP/RP in this case is excessive and Hon’ble Court may fix a reasonable amount as per the circumstances of the case. The erstwhile Resolution Professional has claimed a fee of Rs.66 lakhs at the rate of Rs.2 lakhs per month for 33 months. However, the erstwhile Resolution Professional as well as his counsel have submitted that they are agreeable for a fee @ Rs.1 lakh a month which fits in terms of Regulation 34B of IBBI (Insolvency Professional) for CP Regulations, 2016. Since the erstwhile IRP has reduced the fee to 50% of what he has claimed, we find the same as reasonable and also in consonance of Rs.33 lakhs with fee schedule prescribed by the IBBI. Over and above the fees reimbursement of expenses incurred also to be made. Having considered the facts and circumstances of the matter, the expenses have been reduced from 10,91,000/- to a sum of Rs.9,00,000/- and The State Trading Corporation of India Limited being the CoC is directed to pay the said amount within three weeks and compliance of payment may be reported to this Tribunal. Present application stands disposed

of in all respects. We have also heard the submissions made by the Liquidator.”

15. It is the grouse of the Appellant that in deciding the fees of the IRP, the Adjudicating Authority should not have relied on Regulation 34(B) of IBBI (Insolvency Professionals for Corporate Persons) Regulations, 2016 and instead should have evaluated the reasonability and proportionality of the work claimed to have been performed by the IRP as mandated by the Code of Conduct for Insolvency Professionals as laid down in the First Schedule of the IBBI (Insolvency Professionals) Regulations, 2016. We have already noted in the preceding paragraphs that the IRP was not found wanting in the proper conduct of the CIRP proceedings despite constraints faced on account of indecisiveness on the part of the sole CoC member. During the entire CIRP process, the CoC neither approved the fees of the IRP nor did it raise any objection to the quantum of fees claimed by the IRP. It is therefore disconcerting to find the Appellant to now raise the bogey of unjust enrichment by the IRP at such a belated stage. Furthermore, we also notice that though the IRP had pegged its fees initially at Rs.2 lakhs per month, it has now suo motu reduced the same to Rs. 1 lakh per month. Thus, when the IRP has on his own reduced his fees by 50% shows that his endeavours has been to keep his fees reasonable, there was no error on the part of the Adjudicating Authority to agree to the reduced quantum of fees. The IRP had also submitted the detailed chart of CIRP expenses before the Adjudicating Authority. Even the CIRP expenses has been reduced from Rs.11.91 lakhs to Rs.9 lakhs.

Hence, we do not find any cogent ground to entertain any doubt on the application of mind on the part of the Adjudicating Authority in finding the IRP fees and CIRP expenses to be reasonable.

16. We see no reason to interfere in the impugned order passed by the Adjudicating Authority. The Appellant is directed to pay the erstwhile IRP/Respondent No.1 the fees of Rs 33 lakhs within one month from the date of the order. In so far as, payment of Rs 9 lakhs CIRP expenses is concerned, in terms of orders of this Tribunal dated 01.11.2023, any dues thereof which still remain payable maybe made directly to the bank accounts of those who have incurred the expenses as per details to be provided by the IRP. The appeal is accordingly dismissed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 19.04.2024

Ashok Kr