

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 119 of 2024 & I.A. No. 380 of
2024

IN THE MATTER OF:

Sanjeev Goel

...Appellant(s)

Versus

Uday Bhaskar Bhatt Erstwhile IRP of Nirmiti Stampings Pvt. Ltd.

...Respondent(s)

Present:

For Appellant : Mr. PBA Srinivasan, Ms. Nidhi Saini, Mr. Dhruv Parwal, Srishti Bansal, Sumit Swami, Pooja Kumari, V. Arvind, Advocates

For Respondents : Mr. Akshay Petka, Mr. Pranav Shah, Mr. Aniket Malu, Mr. Aditya Nair, Advocates for RP, Mr. Uday Kumar Bhaskar Bhat, RP

ORDER
(Hybrid Mode)

17.01.2024: I.A. No. 380 of 2024. This is an application praying for condonation of 11 days delay in filing the Appeal.

2. Ground taken in the Affidavit is that the Order was passed on 29th November, 2023 which was uploaded on 13th December, 2023 and the Appellant applied for certified copy on 21st December, 2023 which was received on 29th December, 2023. Sufficient cause has been shown in Para 3 and 4.

3. Sufficient cause shown. Delay is condoned.

4. Heard Learned Counsel for the parties.

5. This Appeal has been filed against the Order dated 29.11.2023 passed in I.A. No. 1252 of 2023 and I.A. No. 4224 of 2023 where the Adjudicating Authority has issued contempt notice against the Appellant and other directors of the Corporate Debtor for non-compliance of Order dated 13.09.2023.

6. In the present case, CIRP commenced on 01st December, 2022 where the Respondent No. 1 was appointed as IRP. In the meeting held on 02.01.2023 of the CoC, Resolution was passed for replacement of IRP with the new one and on the said ground application was filed for replacement which could be approved by the Order dated 2nd June, 2023. The Financial Creditor informed the IRP that invoice sent with respect to the professional fees and other expenses has not been ratified by the CoC on 07th July, 2023. Application was filed seeking direction to CoC to ratify and remit the fee and expenses of the IRP incurred thereafter time was taken by the Financial Creditor to file a Reply. A Reply was filed to the I.A. No. 1252 of 2023 on 19th August, 2023. On 13.09.2023, the Adjudicating Authority issued a show cause notice for violation of order dated 01st December, 2022.

7. The Appellant's case is that an Affidavit was filed on 28th November, 2023 which was uploaded on the same day however Impugned Order was passed issuing contempt notice on 29th November, 2023 and the explanation which was submitted in the Affidavit filed on 28th November, 2023 has not been adverted to.

8. Learned Counsel for the IRP submits that before the Adjudicating Authority the Appellant has undertaken to clear the fees and expenses and under Order dated 01st December, 2022 they were required to deposit Rs. 5 Lakh which has not been deposited. It is submitted that IRP is entitled for fee till the order is passed by the Adjudicating Authority approving the Replacement. Learned Counsel for the Appellant submits that Appellant has already paid Rs. 1,10,000/- to cover fees and expenses incurred by the IRP.

9. Learned Counsel for the IRP submits that out of Rs. 1,10,000/-, Rs. 60,000/- has been transferred to existing IRP. He submits that the Adjudicating Authority has rightly issued contempt notice since there is wilful disobedience.

10. We have considered the submissions of Learned Counsel for the parties and have perused the record.

11. The issue between the parties is regarding entitlement of fees of the IRP whereas Appellant submits that IRP is not entitled to receive his fee till the date when order was passed however Appellant has always been ready and willing to pay reasonable fees to the IRP. CoC has not ratified any fee amount to the IRP. Learned counsel for the Respondent submits that IRP is entitled for fee till order is passed by the Adjudicating Authority and minimum fee is Rs. 1 Lakh per month hence the amount communicated by the IRP i.e. Rs. 7,00,762/- which is professional fee, expenses, etc. is in accordance with law.

12. There is no denial that in pursuance of order dated 01.12.2022, Rs. 5 Lakh has not been deposited. The stand taken by the Appellant is that said amount is towards fee and expenses for the IRP and expenses are being regularly paid. He submits that appellant is always ready to pay the reasonable fees to the IRP and the Affidavit which was filed on 28th November, 2023, explanation has not been adverted to. Had the Adjudicating Authority adverted to the Affidavit filed by the Financial Creditor on 28th November, 2023, there would not have been any observation that there has been wilful disobedience of the Order. We thus are of the view that ends of justice be served in setting aside the order dated 29th November, 2023 and remitting the matter to the Adjudicating Authority for hearing afresh considering the affidavit dated 28th November, 2023 filed by the Appellant and pass the order.

13. I.A. No. 1252 of 2023 filed by the IRP praying for his fee being still pending. Let the Adjudicating Authority take final decision on I.A. No. 1252 of 2023 after hearing both the parties.

We dispose of the Appeal accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Basant/nn