

**Insolvency and Bankruptcy Board of India**  
**7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi - 110001**

25<sup>th</sup> May, 2021

**Subject: Summary<sup>1</sup> of judgment dated 15<sup>th</sup> March 2021 of the Hon’ble Supreme Court of India in the matter of Alok Kaushik Vs. Mrs Bhuvaneshwari Ramanathan and Others [Civil Appeal No 4065 of 2020]**

## **1. Background**

Hon’ble NCLT, Bengaluru bench vide its Order dated 21<sup>st</sup> March 2019 initiated the Corporate Insolvency Resolution Process (“**CIRP**”) of Kavveri Telecom Infrastructure Limited (“**CD**”). Through the order dated 26<sup>th</sup> August 2019, Mrs. Bhuvaneshwari Ramanathan was appointed as Resolution Professional (“**RP**”). The RP appointed Mr. Alok Kaushik as Registered Valuer (“**RV**”) on 16<sup>th</sup> September 2019 under Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) for which a fee of Rs. 7.50 lakh plus applicable GST was ratified by the Committee of Creditors (“**CoC**”). The NCLAT vide Order dated 18<sup>th</sup> December 2019 set aside the CIRP against the CD and remanded the matter back to the NCLT to decide on the issue of CIRP costs. The RP accordingly cancelled the appointment of RV on 19<sup>th</sup> December 2019 and later on informed the RV that the fee ratified by the CoC could not be paid to him and instead paid a sum of Rs. 50,000/- only to the RV. The NCLT while disposing the remanded matter did not comment on fee payable to the RV.

## **2. Legal battle**

The RV filed an application under Section 60(5) of the Insolvency and Bankruptcy Code (“**Code**”), before the NCLT, praying for directions to be issued to the RP for payment of approved professional fee along with applicable GST, towards the valuation exercise. The NCLT observed that the NCLAT in its Order dated 18<sup>th</sup> December 2019 had directed that – *“all actions taken by the ‘Interim Resolution Professional/Resolution Professional and ‘Committee of Creditors’, if any, are declared illegal and set-aside.”* The NCLT stated that since the Hon’ble NCLAT has set aside the admission order and also the NCLT has already passed the Order with regard to the CIRP costs, it is *functus officio* and thereby dismissed the application vide Order dated 29<sup>th</sup> June 2020. It advised the RV that in case he feels that the RP has failed to discharge her statutory duties as resolution professional, he may approach Insolvency and Bankruptcy Board of India (“**IBBI**”).

Since the appeal preferred by the RV was dismissed by Hon’ble NCLAT, he approached the Hon’ble Supreme Court of India for relief.

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<sup>1</sup> Prepared by Registered Valuer Division for the sole purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. A person must do his own research or read the original text of the judgment or seek professional advice, if he intends to take any action or decision using the material covered here.

### **3. Examination by the Hon'ble Supreme Court of India**

The Hon'ble Supreme Court observed that 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.

It further observed that the Code does not specifically make provision for entertaining claim in such circumstance, wherein the CIRP is set aside by the NCLAT. However, it agreed that there must be a forum, within the ambit and purview of the Code, which has the jurisdiction to make a determination on a claim of the present nature. The observation of the NCLT, as being rendered *functus officio* to entertain application of RV, is an incorrect reading of the jurisdiction of NCLT as an Adjudicating Authority ("AA") under the Code. Under Section 60(5)(c) of the Code, the NCLT has jurisdiction pertaining to any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution of the corporate debtor or corporate person under the Code. It is to be noted that the fees payable to professionals is included as insolvency resolution process costs under Regulation 34 of the CIRP Regulations.

### **4. Judgment of the Hon'ble Supreme Court of India: Key takeaway**

The Hon'ble Supreme Court, in exercise of its jurisdiction under Article 142 of the Constitution, ordered and directed that in a situation such as the present case, the AA is sufficiently empowered under Section 60(5)(c) of the Code, to make a determination of the amount which is payable to an expert valuer as an intrinsic part of the CIRP costs. It is noted that, the AA shall assess whether any work has been done, as claimed, and if so, the nature of the work done by the valuer.

The Hon'ble Supreme Court also held that the availability of a grievance redressal mechanism under the Code against an insolvency professional does not divest the NCLT of its jurisdiction under Section 60(5)(c) of the Code, to consider the amount payable to the RV (applicant). 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.

Accordingly, the proceeding was 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.

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