

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

4th March, 2023

Subject: Judgment¹ dated 22st February 2023 of National Company Law Appellate Tribunal, New Delhi in the matter of Shri Guru Containers Vs. Jitendra Palande [CA (AT) (Ins.) No. 106 of 2023]

I. Brief Background

Adjudicating Authority(AA) vide orders dated 17th February, 2020 had initiated CIRP on the application of OC against Tarang Exports Private Limited, the Corporate Debtor (CD). CIRP was initiated and IRP was appointed. As the CoC could not be constituted for want of submission of claims, further processes could not be conducted in the absence of financial records. The steps taken by IRP to get the information from the OC and the suspended directors of CD, including filing application under section 19 of the Code, did not yield any results. Consequently the IRP filed an application for termination of CIRP against CD and seeking discharge from the duties and reimbursement of costs towards the duties performed. AA allowed the application of IRP and directed OC to reimburse IRP, the total CIRP costs incurred in the discharge of his duties. The OC has filed appeal before the Appellate Tribunal.

Issues

Whether the IRP is entitled to claim fees and expenses incurred in the CIRP proceedings and, if so, whether it is incumbent upon the OC to bear such fees/expenses subject to their being reasonable?

II. Observations

NCLAT, while disposing of the appeal observed that the IRP has taken steps to secure information in terms of provisions of the Code and the details were communicated to the OC. The IRP despite being diligent in his duty, the scope of CIRP related work was limited due to information getting stonewalled and consequently no claims submitted. It was noted that *“Shifting the entire blame on the IRP on grounds of non-performance of duty and making him the scapegoat does not appear to be justified.”* In the creditor driven Code, the creditors play a catalytic role in the resolution with discipline and responsibility.

On the issue of payment of IRP’s fees, NCLAT allowed the payment of IRP’s with modification in the quantum of fee and observed that non reimbursement of fee/ expenses of IRP squarely contravenes Regulations. The reasonableness of fee is context specific, but the fee claimed should be commensurate and consistent with work properly undertaken by the IRP as per the provisions of law.

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