



**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.201  
(MP) Co.Appeal 62 of 2020  
in  
TP 33 of 2019 [CP(IB) 67 of 2018]

**Order under Section 42 IBC**

**IN THE MATTER OF:**

Amresh Shukla

V/s

Rajesh Jhunjhunwala Liquidator of Siddharth Tubes Ltd

.....Applicant

.....Respondent

**Coram:**

Hon'ble Shri Brajendra Mani Tripathi, Member (J)

Hon'ble Shri Man Mohan Gupta Member (T)

**PRONOUNCEMENT OF ORDER**  
**Delivered on 17/04/2026**

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**MAN MOHAN GUPTA**  
**MEMBER (TECHNICAL)**

Tomar

Sd/-

**BRAJENDRA MANI TRIPATHI**  
**MEMBER (JUDICIAL)**



**NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT INDORE**

**Co. Appeal/62(MP)2020**  
**IN**  
**TP 33 of 2019**  
**[CP(IB)/67(MP)2018]**

*[An Application filed under Section 42 of the IBC, 2016]*

**1. Mr. Amresh Shukla,**  
F-05, Jaideep Complex,  
112, Zone-II, M.P. Nagar,  
Bhopal-462011

**.....Appellant**

**Versus**

**1. Rajesh Jhunjunwala,**  
Liquidator of Siddharth Tubes Limited  
A51, AashitChs, Azad Road,  
HB Gawde Marg, Stanburg Estate, Juhu Koliwada,  
Mumbai, Maharashtra – 400049

**2. Asset Reconstruction Company India Limited,**  
The Ruby 10 tr' floor, 29 senapatibapat Marg,  
Dadar (West), Mumbai-400028.

**3. Assets Care & Reconstruction Enterprise Limited**  
2<sup>nd</sup> Floor, Mohandev Building,  
13, Tolstoy Marg,  
New Delhi-10001

**.....Respondents**

**Coram: Brajendra Mani Tripathi, Hon'ble Member (J)**  
**Man Mohan Gupta, Hon'ble Member (T)**

**Order Pronounced On 17.04.2026**

**Appearance:**

For the Appellant : Mr. Shantnu Chourasia, Adv. a.w  
Mr. Amresh Shukla  
For the Respondent : Mr. Arjun Sheth, Adv. a.w  
Mr. Rishabh Shah



**ORDER**

1. This is an Application under Section 42 of the IBC, 2016 with the following prayers:

- i. Your Lordship may be pleased to direct the Respondent, Rajesh Jhunjhunwala, Liquidator of Siddharth Tubes Limited to consider and admit the claim of the Appellant to the tune of Rs 35,67,039/- as Insolvency Resolution Process Cost;*
- ii. Your Lordship may be pleased to quash and set aside the decision dated 19.11.2020 taken by the liquidator whereby the claim of the appellant is rejected;*
- iii. Your Lordship may be pleased to direct the Respondent, Rajesh Jhunjhunwala, Liquidator of Siddharth Tubes Limited to consider and give precedence in payment to the outstanding dues to the Appellant to the tune of Rs 35,67,039/-;*
- iv. Your Lordship may be pleased to grant any other relief or relief as PAL may deem fit in the interest of justice.*

**2. The Appellant's case in brief:**

- i. The Appellant submits that the Tribunal vide order dated 24.01.2019 in TP No. 33 of 2019 [CP (IB) No. 67 of 2018] admitted the petition filed by Madhya Pradesh State Industrial Development Corporation Limited for initiation of Corporate Insolvency Resolution Process against Siddharth Tubes Limited and appointed the Appellant as the Interim Resolution Professional.
- ii. Thereafter, vide order dated 12.06.2019 passed in IA No. 202 of 2019, the Respondent was appointed as the Resolution Professional of the Corporate Debtor. Subsequently, upon



filing of IA No. 674 of 2019 under Sections 33(1), 33(2) and 34(1) of the Insolvency and Bankruptcy Code, 2016, the Tribunal vide order dated 24.06.2020 ordered liquidation of the Corporate Debtor and appointed the Respondent, Mr. Rajesh Jhunjhunwala, as the Liquidator.

- iii. The Appellant submits that during the 1<sup>st</sup> and 2<sup>nd</sup> meetings of the Committee of Creditors held on 28.02.2019 and 14.03.2019, it was duly ratified that a sum of Rs. 5,00,000/- per month shall be paid to the Interim Resolution Professional and that all expenses incurred by the Appellant in discharge of his duties shall be borne by the Committee of Creditors. It is further submitted that one of the financial creditors, namely Madhya Pradesh State Industrial Development Corporation Limited, remitted an amount of Rs.2,10,000/-, however, the total outstanding professional fees and expenses as on 25.06.2019 amount to Rs.35,67,039/-, which remains unpaid and is liable to be paid to the Appellant.
- iv. The Appellant submits that despite repeated requests and communications addressed to the members of the Committee of Creditors and the Respondent for disbursement of the said professional fees and expenses incurred during his tenure as Interim Resolution Professional, the financial creditor refused to make payment of the same. Being aggrieved by such refusal, the Appellant filed IA No. 611 of 2019 seeking directions for payment of the outstanding amount of



Rs.35,67,039/- as part of the Insolvency Resolution Process Cost.

- v. The Appellant further submits that after initiation of liquidation, he preferred IA No. 147 of 2020 seeking impleadment of the Liquidator and praying for consideration and priority payment of his claim. The Hon'ble Tribunal vide order dated 22.10.2020 permitted the Appellant to submit his claim before the Liquidator and directed the Liquidator to consider the same with priority, and accordingly disposed of IA No. 147 of 2020. In view of the said direction, IA No. 611 of 2019 was also disposed of vide order dated 06.11.2020 as infructuous, reiterating that the Appellant may lodge his claim before the Liquidator.
- vi. The Appellant submits that in compliance with the aforesaid directions, he duly submitted his claim in Form G on 31.10.2020 before the Respondent and also furnished all requisite supporting documents as sought by the Respondent vide email dated 05.11.2020, which were duly provided on 08.11.2020 along with detailed explanations, including further clarification vide email dated 19.11.2020. However, despite submission of all documents and compliance with procedural requirements, the Respondent vide email dated 21.11.2020 rejected the claim of the Appellant on the ground that the expenses and costs relating to the Interim Resolution Professional had not been approved by the Committee of Creditors and, therefore, could not be paid out of the estate of the Corporate Debtor.



- vii. The Appellant submits that he had duly incurred the said expenses while discharging his statutory duties as Interim Resolution Professional pursuant to his appointment by the Adjudicating Authority and is therefore entitled to reimbursement of Rs. 35,67,039/- as part of the Insolvency Resolution Process Cost. It is submitted that the rejection of the claim by the Respondent is arbitrary and contrary to the provisions of the Code and Regulations. Hence, being aggrieved by the rejection of his legitimate claim despite directions of the Tribunal and full compliance on his part, the Appellant has been constrained to prefer the present appeal seeking appropriate reliefs.

**2. Submissions of Respondent no. 1:**

- i. The Respondent submits that the present Interlocutory Application has been filed by the Applicant seeking release of payments for work allegedly carried out during the CIRP. It is contended that as per Regulation 33 of the CIRP Regulations, expenses incurred by the Interim Resolution Professional (IRP) are required to be fixed and ratified by the Committee of Creditors (CoC), and only such ratified amounts qualify as CIRP costs. In the present case, the CoC has not ratified the expenses claimed by the Applicant, and therefore such expenses cannot be treated as CIRP costs and cannot be paid from the liquidation estate of the Corporate Debtor.
- ii. The Respondent further submits that the Applicant was appointed as IRP pursuant to order dated 24.01.2019, and



CoC meetings were held on 28.02.2019 and 14.03.2019. In the 2<sup>nd</sup> CoC meeting, the CoC rejected the Applicant's appointment as Resolution Professional and also declined to ratify the expenses claimed by the Applicant, observing that such expenses incurred prior to the appointment of the Respondent were to be borne by Madhya Pradesh State Industrial Development Corporation Limited (MPSIDC). It is also alleged that the Applicant manipulated the minutes of the CoC meeting dated 14.03.2019 and failed to provide supporting documents such as voting sheets and records under the CIRP Regulations to substantiate the claimed expenses.

- iii. It is further submitted that despite directions of the Adjudicating Authority to consider the Applicant's claim, the Respondent placed the matter before the CoC in meetings held on 01.07.2019 and 19.07.2019. However, the CoC members expressed doubts regarding the necessity and genuineness of the expenses and did not grant approval for payment. The CoC maintained that any payment could only be made upon its approval, and in absence of such approval, no debit from the Corporate Debtor's account could be undertaken in terms of Section 28 of the Insolvency and Bankruptcy Code.
- iv. The Respondent asserts that he has acted in accordance with the provisions of the Code and made all efforts to facilitate consideration of the Applicant's claim. However, due to lack of ratification by the CoC and disputes regarding the



authenticity and quantum of the expenses, the claim was ultimately rejected. Accordingly, it is submitted that the Applicant's claim does not qualify as CIRP cost and is not payable from the liquidation estate, and therefore, the present application deserves to be dismissed.

**3. Submissions of Respondent no. 2 and 3:**

- i. The respondent has filed a reply dated 23.07.2021, contending that MPSIDC is one of the financial creditors of the corporate debtor. It is further submitted that MPSIDC, while recommending the name of the Interim Resolution Professional, had entered into an agreement with the appellant. On this basis, the respondent asserts that MPSIDC is a necessary party to the present appeal, but it has not been impleaded. Accordingly, the respondent has raised an objection of non-joinder of necessary parties and prayed that the appeal be rejected on this ground alone.
- ii. The respondent has contended that the appellant has placed reliance on the meeting dated 14.03.2019 and the review meeting dated 19.03.2019, wherein, as per the appellant, Agenda Item No. 5 records that the Committee of Creditors (CoC) decided and ratified the fee of the respondent at Rs.5lakh per month. However, the respondent disputes the said contention and submits that Agenda Item No. 5, as alleged, was never included in the notice of the meeting dated 14.03.2019, and therefore, the purported reliance on the same is misplaced and untenable.



- iii. The respondent submits that it is a Financial Creditor and a member of the Committee of Creditors (CoC) of M/s Siddharth Tubes Limited, whose financial assets were acquired from State Bank of India and Dena Bank under Deeds of Assignment. It is stated that the Hon'ble Tribunal, vide order dated 24.01.2019, admitted the petition and appointed the appellant as Interim Resolution Professional (IRP), pursuant to which the appellant made a public announcement on 30.01.2019 inviting claims. The appellant lodged its claim and provided clarifications sought by the respondent regarding stamp duty and assignment issues through emails dated 20.02.2019 and 22.02.2019. The appellant thereafter circulated notice dated 23.02.2019 for the 1<sup>st</sup> CoC meeting held on 28.02.2019 at Bhopal, wherein the respondent attended and clarified issues concerning registration of the Deed of Assignment and apprised the true state of affairs. However, the respondent contends that the appellant incorrectly recorded the minutes of the said meeting and deliberately ignored the respondent's claim despite repeated communications dated 01.03.2019 and 18.03.2019 seeking correction.
- iv. It is further submitted that the appellant issued notice dated 06.03.2019 for the 2<sup>nd</sup> CoC meeting initially scheduled for 12.03.2019 and later held on 14.03.2019. In the said meeting, the appellant acknowledged the debts of Dena Bank and ARCIL, adjudicated voting shares, and it was decided amongst secured creditors to replace the appellant as IRP. It



was also decided that expenses incurred by the appellant would be mutually determined between the ex-IRP and MPSIDC till appointment of a new RP. The respondent submits that the appellant, without circulating proper minutes of the 2nd CoC meeting, issued an email dated 15.03.2019 for a “review meeting” on 19.03.2019/20.03.2019, which was beyond the scope of the Code. The respondent objected vide email dated 18.03.2019 seeking agenda and clarification, and further objected on 22.03.2019 highlighting irregularities in recording of minutes of meetings dated 14.03.2019 and 19.03.2019.

- v. The respondent submits that the appellant manipulated the minutes of the meetings dated 14.03.2019 and 19.03.2019 and falsely introduced Agenda Item No. 5 to reflect that the CoC had ratified the appellant’s fees at Rs. 5,00,000/- per month, whereas no such agenda formed part of the notice of the meeting dated 14.03.2019 nor was any such discussion held. It is further submitted that the appellant determined voting shares arbitrarily and suppressed material facts. The respondent also filed I.A. No. 201 of 2019 seeking directions to admit the debt of Dena Bank and to implement correct minutes, pursuant to which the Hon’ble Tribunal vide order dated 12.06.2019 directed reconsideration of the claim, and subsequently the claim of the respondent was admitted, rendering the application infructuous vide order dated 17.07.2019.



- vi. It is further submitted that the appellant failed to take proper control and custody of the assets of the Corporate Debtor. The IRP only took symbolic possession without preparing inventory, and as per emails dated 20.06.2019, 24.06.2019 and status report dated 28.06.2019, instances of theft of plant and machinery and non-compliance with IBC procedures were recorded. Financial creditors, including ARCIL, lodged FIRs at Sarangpur Police Station (District Rajgarh) and Shajapur Police Station regarding theft of assets. The respondent also highlights non-cooperation and lackadaisical approach of the appellant in handing over charge, as informed by RP Mr. Rajesh Jhunjhunwala vide email dated 02.07.2019.
- vii. It is submitted that MPSIDC, one of the financial creditors, vide email dated 08.07.2019 informed that the appellant's claim of fees amounting to Rs. 50.54 lakhs were without basis and, considering his conduct and performance, no further payment be made. The respondent further submits that an agreement dated 31.07.2019 entered into by the appellant with a security agency (All India United Security Services), for an amount of Rs. 9,13,314/-, was done without approval of the CoC and without informing the CoC, thereby creating additional liabilities. The said application (I.A. 612/2019) filed by the security agency was later disposed of vide order dated 06.11.2020, and the claim was also rejected by the liquidator.



- viii. It is further submitted that the appellant failed to protect the assets of the Corporate Debtor, resulting in theft and heavy losses to creditors, and entered into unauthorized agreements with third parties. The respondent contends that the appellant's conduct disentitles him from claiming fees, and the CoC has not approved the fees claimed. It is also submitted that the appellant has relied upon an agreement with MPSIDC regarding fees; however, MPSIDC is not a party to the present proceedings, and on this ground alone the appeal suffers from non-joinder of necessary party and deserves rejection. Further, it is submitted that the dispute regarding fees is essentially between the appellant and MPSIDC and cannot be adjudicated by this Hon'ble Tribunal, and such fees cannot be paid out of the estate of the Corporate Debtor.
- ix. The respondent also submits that attempts for amicable settlement were made as suggested by the Tribunal, communicated via emails dated 04.02.2020 and 23.06.2020, however no resolution was reached. It is reiterated that since the CoC has not approved the fees of the appellant, the same cannot be paid from the liquidation estate. Accordingly, in view of the above facts, alleged manipulation of records, procedural irregularities, lack of due diligence, and absence of CoC approval, the present appeal deserves to be rejected.



#### **4. Rejoinder by Appellant:**

- i. The appellant filed the rejoinder denying all averments in the replies except those expressly admitted. It is submitted that in the 2nd Committee of Creditors meeting dated 14.03.2019, the statement of claim and cost sheet of the Interim Resolution Professional were placed with supporting documents, and the fees and expenses, including for the extended period, were duly ratified and approved with 100% voting share, with voting sheets signed by all members. The appellant denies that his claim was ever rejected by the CoC and refutes allegations of irregularities in recording minutes, asserting that the minutes were properly recorded and supported by documentary evidence, and that voting sheets were duly circulated, served, and uploaded in compliance with applicable regulations.
- ii. The appellant submits that once the IRP's fees and expenses are approved by the CoC under Regulation 33 of the CIRP Regulations, there is no provision for subsequent review or rejection, and thus the CoC lacks jurisdiction to revisit or deny such approved remuneration. It is further submitted that the meetings dated 01.07.2019 and 19.07.2019 were conducted in violation of Regulations 23 to 26, as proper procedure for attendance and e-voting was not followed, rendering the resolutions passed therein invalid and incapable of affecting the already ratified claim.



- iii. The appellant submits that the Resolution Professional acted under the influence of financial creditors and failed to discharge duties under Section 208(2) of the Code and the Code of Conduct, by not maintaining due diligence, proper procedure, and lawful conduct of meetings. It is submitted that the fee of Rs. 5,00,000/- per month was approved by 100% voting share, with proportionate allocation to creditors, and the respondent has wrongly denied payment despite such approval.
- iv. The appellant submits that post-commencement of liquidation, CoC approval is not required for release of payment and Section 28 of the Code is inapplicable. It is further submitted that the respondent has disobeyed the order in IA No. 147 of 2020, wherein the Adjudicating Authority permitted submission of the claim before the liquidator with a direction for priority consideration, which has not been complied with.
- v. The appellant submits that the claim constitutes insolvency resolution process cost, already approved in CoC meetings, and its denial is unjustified. It is further submitted that objections regarding non-joinder of parties are untenable, and that the agenda relating to IRP fees was duly included and ratified in the meeting dated 14.03.2019, with properly recorded minutes and signed voting sheets.
- vi. The appellant further submits that Respondent No. 2 was duly informed of CoC meetings through emails dated



26.02.2019 and 15.03.2019, but it was not included in the CoC as its claim was rejected due to an unstamped and unregistered assignment deed, rendering it invalid in law. It is submitted that such defective assignment does not confer financial creditor status under Section 5(7) of the Code, and reliance is placed on judicial precedent to support this contention. The appellant submits that the rejection of Respondent No. 2's claim was also raised before the IBBI and accepted.

- vii. The appellant denies allegations of manipulation of minutes or improper conduct of meetings dated 14.03.2019 and 19.03.2019, reiterating that the meetings were duly conducted and the IRP's fees were ratified therein. It is submitted that the fees were to be borne proportionately by CoC members, including MPSIDC based on its voting share, and that despite adjudication by the Adjudicating Authority directing priority consideration of the claim, the liquidator has failed to act accordingly.
- viii. The appellant denies allegations of non-cooperation, misconduct, or creation of unauthorized liabilities, asserting that full cooperation was extended and proper procedure was followed throughout CIRP. It is submitted that the dispute is essentially between the IRP and the liquidator, and the claim, being part of insolvency resolution process cost, ought to be admitted.



- ix. Accordingly, the appellant submits that the objections raised in the reply are baseless, the CIRP was conducted in compliance with law, the IRP's fees and expenses stand duly approved and ratified, and the present application deserves to be allowed.

## **6. Observation and Analysis:**

- i. This Adjudicating Authority has carefully considered the pleadings, documents placed on record, and the submissions advanced by both parties.
- ii. The present appeal raises a core issue regarding the entitlement of an Interim Resolution Professional (IRP) to receive fees and reimbursement of expenses as part of the Corporate Insolvency Resolution Process (CIRP) cost, and the extent to which such entitlement is contingent upon approval of the Committee of Creditor's (CoC), particularly when such approval is disputed.
- iii. At the outset, it is an admitted position that the Appellant was appointed as the IRP pursuant to the admission of the insolvency petition and had discharged functions during the initial phase of the CIRP. It is further undisputed that the CIRP subsequently culminated in liquidation, and the Respondent no. 1 came to be appointed as the Liquidator. The controversy, therefore, is not with respect to the appointment or tenure of the Appellant, but with respect to the quantification, approval, and admissibility of his fees and expenses.



- iv. The Appellant's case is premised on the assertion that the CoC, in its meetings dated 28.02.2019 and 14.03.2019, had ratified his fees at ₹5,00,000 per month along with reimbursement of expenses, and that such ratification was supported by voting sheets reflecting 100% approval. It is further contended that once such approval is granted under Regulation 33 of the CIRP Regulations, the same attains finality and cannot be subsequently revisited or denied. The Appellant also places reliance on the direction of the Adjudicating Authority in IA No. 147 of 2020, whereby the Liquidator was directed to consider his claim with priority, contending that rejection of the claim is in violation of such direction and contrary to the statutory framework.
- v. Per contra, the Respondent has challenged the very foundation of the Appellant's claim by disputing the alleged approval of fees by the CoC. It is specifically contended that Agenda Item No. 5, which purportedly records ratification of the IRP's fees, was never part of the notice for the meeting dated 14.03.2019 and was subsequently introduced through manipulated minutes. The Respondent has further alleged procedural irregularities in conduct of meetings, improper recording of minutes, and arbitrary determination of voting shares by the Appellant. On this basis, it is argued that there was no valid approval of the IRP's fees by the CoC, and consequently, such fees cannot be treated as CIRP cost payable from the estate of the Corporate Debtor.



- vi. In this backdrop, the first issue that arises for consideration is whether the fees and expenses claimed by the Appellant were duly approved by the CoC in accordance with law. The determination of this issue is fundamentally factual and hinges upon the authenticity and evidentiary value of the minutes of the CoC meetings, the agenda circulated prior to such meetings, and the voting records. While the Appellant asserts that the fees were approved with 100% voting share and supported by signed voting sheets, the Respondent has raised serious allegations of manipulation and has specifically denied the inclusion of such agenda in the meeting notice. In absence of clear, unimpeachable documentary evidence demonstrating that the approval was part of a duly convened meeting with proper notice and agenda, the claim of automatic finality of such approval becomes contentious.
- vii. The second issue pertains to the legal consequence of absence or dispute of CoC approval. Under Regulation 33 of the CIRP Regulations, the appellant is initially required to fix the expenses of the IRP, which are thereafter subject to ratification by the CoC. Judicial precedents have consistently held that CIRP costs, being essential to the conduct of CIRP, ordinarily form part of such costs and are to be paid in priority. However, such entitlement is not absolute and is subject to reasonableness and approval of the CoC. In the present case, where the very factum of approval is disputed, the Liquidator cannot be faulted, prima facie, for exercising caution in



admitting such claim, particularly when it is sought to be recovered from the liquidation estate.

- viii. The Appellant's contention that once approved, the CoC becomes functus officio with respect to IRP fees and cannot revisit the same, would hold merit only if the initial approval is established to be valid and in compliance with procedural requirements. If the approval itself is under cloud due to alleged procedural infirmities or manipulation, the principle of finality cannot be invoked to sanctify such approval.
- ix. The third aspect relates to the role and duty of the Liquidator in adjudicating such claims. The Adjudicating Authority, while disposing of IA No. 147 of 2020, directed the Appellant to submit his claim before the Liquidator for consideration with priority. Such direction cannot be construed as a mandate to mechanically admit the claim, but rather to consider it in accordance with law. The Liquidator is duty-bound to scrutinize the claim, verify supporting documents, and ensure that only legitimate CIRP cost is admitted, especially since such costs are paid in priority over other claims. Therefore, rejection of the claim on the ground of lack of CoC approval, if based on material on record, cannot ipso facto be termed as disobedience of the Tribunal's direction.
- x. The Respondent has also raised allegations regarding the conduct of the Appellant, including failure to take proper control of assets, alleged negligence leading to theft of assets, and entering into unauthorized agreements without CoC



approval. While these allegations have been denied by the Appellant, they are relevant in assessing the reasonableness and legitimacy of the claimed expenses. It is settled law that IRP/RP fees must be commensurate with the work performed and in compliance with statutory duties. Any dereliction of duty or unauthorized expenditure may disentitle the professional from claiming such costs as CIRP cost.

- xi. Another preliminary objection raised by the Respondent pertains to non-joinder of MPSIDC, with whom the Appellant allegedly had an agreement regarding fees. However, the nature of the present claim is not merely contractual but statutory, arising out of the Appellant's role as IRP under the Code. Therefore, the question of entitlement to CIRP cost can be adjudicated independently of such agreement, and non-impleadment of MPSIDC may not, by itself, be fatal to the maintainability of the appeal, unless it is shown that effective adjudication is not possible in its absence.
- xii. Further, the Appellant's contention that post-liquidation, CoC approval is not required for payment of CIRP cost is legally sustainable to the extent that once a cost is duly recognized as CIRP cost, it is payable in priority under Section 53 of the Code. However, the foundational requirement remains that such cost must first be established as valid CIRP cost. In the present case, that foundational determination itself is in dispute.
- xiii. In view of the above, the dispute essentially narrows down to (i) whether the Appellant has been able to substantiate that his



fees and expenses were duly approved by the CoC in accordance with law, and (ii) whether, in absence of such clear approval, the claim can still be treated as CIRP cost on the basis of reasonableness and necessity of expenses incurred during CIRP.

- xiv. On perusal of the email dated 22.03.2019 (annexed at page 33 of the reply), it is observed that Mr. Sanjay Behari from ACRE India addressed a communication to appellant regarding the draft minutes of the CoC meeting held on 14.03.2019. It was pointed out that the appellant incorrectly recorded a telephonic discussion dated 19.03.2019 as minutes of a CoC meeting, despite no such meeting having been convened or approved by the CoC members. Serious irregularities were highlighted in the recording of the minutes of the second CoC meeting dated 14.03.2019. With respect to Agenda Item No. 5, it was clarified that the CoC members did not ratify the expenses of the Interim Resolution Professional (IRP). Instead, it was decided that the IRP's expenses would be discussed and mutually agreed upon between MPSIDC and the IRP, and thereafter placed before the CoC in the subsequent meeting for voting.
- xv. On perusal of the email dated 24.06.2019, it is observed that the liquidator/respondent no.1 informed the financial creditors that the appellant had handed over custody of the corporate debtor's premises situated at Shahjapur and Sarampur on 22.06.2019. However, the appellant failed to provide the existing inventory list of assets pertaining to both the plants. It has also been observed from the documents on record that one



of the financial creditors, ARCIL, has lodged an FIR alleging theft of machinery.

- xvi. It is evident from the pleadings that Mr. Rajesh Junjunwala, vide email dated 20.06.2019, had duly intimated the Respondent and all members of the CoC regarding the proposed visit to Indore on 22.06.2019 for the purpose of taking charge/possession of the units from the Applicant. However, it is specifically noted that the IRP had only taken symbolic possession of the units, and no inventory list of the assets was prepared at the relevant time.
- xvii. Further, as reflected in the status report dated 28.06.2019, there is a categorical assertion regarding theft of plant and machinery, along with non-compliance of the procedures prescribed under the Insolvency and Bankruptcy Code, 2016. This raises a serious and material concern. Once the IRP had assumed control and had entered into a security agreement with a security agency for safeguarding the assets of the Corporate Debtor, the occurrence of such theft prima facie indicates lapses in due diligence, asset protection measures, and adherence to statutory responsibilities. However, the appellant has failed to produce any evidence of prior approval obtained from the CoC for the appointment of the security agency. Further, on perusal of the details of expenses incurred by the IRP, as annexed in Annexure E of the petition, it is observed that a substantial portion of the expenditure has been attributed to security services at the Sarangpur and Shahjapur factories.



- xviii. On a perusal of the minutes of the CoC meetings dated 04.07.2019 and 19.07.2019, it is evident that Respondent No. 1 placed the concerns of the appellant before the Committee. It was noted that in the 2<sup>nd</sup> CoC meeting held on 14.03.2019, it had allegedly been decided that all CIRP expenses incurred by the IRP up to the appointment of the new RP would be borne by MPSIDC. However, this was coupled with serious reservations regarding the conduct of the erstwhile IRP, including failure to discharge statutory duties under the IBC, 2016, and allegations of negligence and irregularity in the insolvency process. Consequently, the matter relating to such expenses was considered to fall within the domain of MPSIDC for appropriate decision.
- xix. Further, in the CoC meeting dated 19.07.2019, the claim of CIRP expenses amounting to Rs.50.54 lakhs for the period 29.01.2019 to 22.06.2019, as raised by the erstwhile IRP, was deliberated. The representative of MPSIDC informed the CoC that the members should decide upon the said claim, but the prevailing view among the CoC members was that the entire fees and expenses of the erstwhile IRP ought to be borne by MPSIDC. At the same time, concerns were reiterated that the IRP had not fulfilled responsibilities under the IBC and that the issue required determination by MPSIDC in light of such conduct.
- xx. Significantly, the representative of ACRE India raised objections regarding the credibility of the erstwhile IRP,



alleging manipulation of the minutes of the CoC meeting dated 14.03.2019 and inflation of the expenses claimed, including demands exceeding what had allegedly been agreed upon with MPSIDC. In view of these discussions and cumulative concerns, the CoC concluded that the matters pertaining to the CIRP expenses of the erstwhile IRP should be settled by MPSIDC.

- xxi. However, these proceedings raise serious doubts regarding the genuineness of the alleged 2<sup>nd</sup> CoC meeting dated 14.03.2019. The applicant has failed to place on record any cogent evidence, including voting results or authenticated minutes, to substantiate that such resolutions were validly passed. This lack of proof, coupled with inconsistencies in the Information Memorandum, allegations of theft of machinery from the corporate debtor, and contemporaneous email communications (notably dated 22.03.2019), casts significant doubt on the credibility of the applicant's claims.
- xxii. In light of the above, the Tribunal finds that the applicant has failed to discharge the burden of proving the legitimacy of the decisions purportedly taken in the 2<sup>nd</sup> CoC meeting dated 14.03.2019. The material on record indicates irregularities, including minutes unsubstantiated by COC and unsupported claims regarding CIRP expenses. Accordingly, the claims of the applicant are not substantiated and are liable to be rejected.



xiii. Therefore, the Co. Appeal 62 of 2020 is dismissed and disposed of.

Sd/-

**MAN MOHAN GUPTA**  
**MEMBER (TECHNICAL)**

Vanshika-LRA

Sd/-

**BRAJENDRA MANI TRIPATHI**  
**MEMBER (JUDICIAL)**