NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1900 of 2024

IN THE MATTER OF:

ODAT GmbH **...Appellant**

Versus

CA Santanu Brahma,
IRP of Darjeeling Organic Tea Estate Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant :	Ms. Purti Gupta, Ms. Henna George, Ms. Sunidhi Sah, Ms. Pooja Aggarwal, Adv.
For Respondents :	Mr. Santosh K Ray, Ms. Zebe Khan, Adv. for R3 to 6
	Mr. Shaunak Mitra, Dripto Majumdar, Akash Agarwal, Adv. for R1

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is filed by the single largest (Financial Creditor/FC) i.e. ODAT GmbH against the Corporate Debtor/CD, namely, M/s Darjeeling Organic Tea Estates Pvt. Ltd., being aggrieved against the order dated 24.09.2024 passed by the NCLT, Kolkata Bench in I.A (IBC)/1187 (KB)/2024 in CP (IB)/1382(KB)/2020, by the Resolution Professional, seeking contribution from the Appellant towards CIRP costs, raised in the 08th CoC meeting, has been allowed and the Appellant has been directed to pay the amount as apportioned by the RP, within a period of 10 days and also asked for the report regarding payment made by each of the CoC members to be filed in the Court.

2. Notice in the appeal was issued on 04.10.2024 and in the meantime, operation of the impugned order qua the Appellant was stayed.

3. In brief, UCO Bank filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short ‘ Code’) before the Tribunal against the CD which was admitted on 28.10.2022.

4. The Appellant, being a financial creditor, filed its claim of Euros 1,77,40,328 equivalent to Rs. 158,97,81,751/- on 20.09.2023 which was duly accepted by the IRP/RP.

5. Initially, the Appellant was not allowed to vote in the CoC on the allegation of being a related party.

6. The Appellant filed an application bearing I.A No. 1649 of 2023 to challenge that classification, claiming a right of vote being the member of CoC. The Application was dismissed by the Tribunal on 11.12.2023 but the appeal filed by the Appellant bearing CA (AT) (Ins) No. 1683 of 2023 was allowed by this Court on 13.02.2024 holding that the Appellant is not a related party of the CD and was given right to vote in the CoC.

7. Shorn of unnecessary details, the RP of the CD filed an application bearing I.A No. 1187 of 2024 in which he alleged that he had convened the following meetings of the COC before filing the application:-

30.09.2023	1st CoC Meeting convened
15.12.2023	2nd CoC Meeting convened
10.01.2024	3rd CoC Meeting convened
16.02.2024	4th CoC Meeting convened
15.03.2024	5th CoC Meeting convened

22.04.2024	6th CoC Meeting convened
15.05.2024	7th CoC Meeting convened
28.05.2024	8th CoC Meeting convened

8. He further mentioned in para 5 of the said application that in the 08th CoC meeting held on 28.05.2024 he had mentioned the CIRP Costs and expenses incurred till then. He proposed a contribution of Rs. 1 Cr. (in the first phase) towards CIRP costs to be raised for the time being to meet the requisite costs and expenses out of the estimated CIRP costs of around Rs. 1,85,00,000/- and also alleged that the available fund is of Rs. 35,00,000/-. The details of CIRP costs alongwith further estimation was mentioned in the application which read as under:-

Head	Particulars	CoC Approval / Ratified	Total CIRP Cost (INR)	O/s for Payment (INR)
IRP Fees	Remuneration for the period 28.10.22 to 21.09.23 @ INR 1,00,000 p.m. + GST	1st CoC dtd. 30.09.23	12,77,826	12,77,826
	Remuneration for the period 22.09.23 to 30.09.23 @ INR 2,00,000 p.m. + GST		70,800	70,800
IRP - Out of Pocket Expenses	a) Expenses on account of Clerkage, NCLAT and NCLT filing etc incurred by IRP	1st CoC dtd. 30.09.23	27,500	27,500
	b) Expenses incurred by IRP towards the cost of flight tickets for attending the hearing at Hon'ble NCLAT, New Delhi		41,076	41,076
	c) Expenses incurred by IRP towards the cost of retrieving the report of ODAT GmbH from Dun & Bradstreet		14,160	14,160
RP Fees	Remuneration for the period 01.10.23 to 19.12.23 @ INR 2,00,000 p.m. + clerkage @10% + GST. Note: a) Admitted Claim 228.06 Cr w.e.f. 22.09.23 b) Admitted Claim 375.23 Cr w.e.f. 14.12.23	1st CoC dtd. 30.09.23	6,78,310	6,78,310
	Remuneration for the period 20.12.23 to 31.05.24 @ INR 3,00,000 p.m. + clerkage @10% + GST [Note] a) Admitted Claim 635.06 Cr w.e.f. 20.12.23		20,97,735	20,97,735
RP - Out of Pocket Expenses	a) For the outstation visit to Darjeeling from 03.10.23 to 04.10.23 along with 2 nos. associates namely Mr. Dipanjan Das and Mr. Kapil Tiwari	3rd CoC dtd. 10.01.24	34,353	34,353

	b) For the outstation visit to Assam from 15.11.2023 to 17.11.2023		58,509	58,509
	c) Insurance Premium for 13 Tea Estates		6,69,930	*Paid*
	d) Venue charges for 1st CoC meeting at Oberoi Grand conference room		12,809	12,809
	IT Related expenses – e) Google Workspace subscription for the month of Oct'23		4,560	4,560
	f) Domain Charges for 1 year [www.doteplcirp.co.in]		3,384	3,384
	g) Outstation traveling expenses of advocate and self-incurred by RP for attending physical hearing before Hon'ble NCLAT, New Delhi Principal Bench (includes airfare and local traveling conveyance)	4th CoC dtd. 16.02.24	99,244	99,244
		Sub-Total (A)	**50,90,197**	**44,20,267**
Advertisement Expenses	a) Public Announcement in 5 (five) nos. newspaper	1st CoC dtd. 30.09.23	17,472	*Paid*
	b) Notice for Engagement of Marketing Consultant dtd. 17.11.23	4th CoC dtd. 16.02.24	6,384	*Paid*
	c) Notice for Engagement of Operating Agency dtd. 23.12.23		13,759	*Paid*
	d) Form G dtd. 20.01.24 [1st Time]		26,208	*Paid*
	e) Form G dtd. 25.02.24 [2nd Time]	5th CoC dtd. 15.03.24	26,208	26,208
	f) Notice for Engagement of Operating Agency dtd. 25.02.24 [2nd Time]		13,835	13,835
Legal Fees	a) Fees payable to Mr. Abhijeet Sarkar, Advocate for appearance (2 nos) in Hon'ble NCLAT, New Delhi [1323/2022]	1st CoC dtd. 30.09.23	1,42,498	1,42,498
	b) Legal Fees for appearance before Hon'ble NCLAT, New Delhi (20 times) and Hon'ble NCLT, Kolkata Bench (4 times), legal drafting etc.		7,31,000	7,31,000

Legal Fees	c) Legal Fees payable to Mr. Shaunak Mitra for appearance on various matters before Hon'ble NCLAT, New Delhi and NCLT, Kolkata for the period from 01.10.2023 to 31.05.2024 + 10% Clerkage	Based on Fees Chart approved in 1st CoC	11,22,000	11,22,000
	d) Legal Fees payable to AoR for appearance on various matters before Hon'ble NCLAT, New Delhi and NCLT, Kolkata for the period from 01.10.2023 to 31.05.2024		9,67,500	9,67,500
Legal Opinion	e) Professional Fees payable to Sharma & Sharma Law Firm for Legal Opinion obtain for multiple resolution plan	3rd CoC dtd. 10.01.24	35,000	35,000
RP's Assistant	a) Remuneration payable to Mr. Kapil Tiwari for the period 01.10.23 to 31.05.24 @45,000 p.m.	3rd CoC dtd. 10.01.24	3,60,000	2,70,000
	b) Remuneration payable to Mr. Partha Halder for the period 15.10.23 to 31.05.24 @15,000 p.m.	2nd CoC dtd. 20.12.23	1,12,500	75,000
Professional Accountant	Professional Fees payable to Mr. Ritesh Dugar, Chartered Accountant for the period 01.10.2023 to 31.05.2024 @INR 30,000 p.m. plus GST	1st CoC dtd. 30.09.23	2,83,200	2,83,200
IT Related Expenses	Google Workspace Subscription for the month of Nov'23 (INR 4,560/-) and subsequently for one year from 01.12.23 to 30.11.24 (INR 22,796/-)	3rd CoC dtd. 10.01.24	27,356	*Paid*
	Cost of Virtual Data Room service to be obtained from NeSL (INR 5,000 plus GST @18% for 6 months)	4th CoC dtd. 16.02.24	35,400	*Paid*
	Cost of data storage service (upto 15 GB) to be obtained from NeSL for 8 years (INR 11,000 plus GST @18% for 8 years)	Proposed for approval in this 5th CoC	12,980	12,980
E-Voting Charges	E-voting charges for 1st CoC meeting payable to Right2Vote	3rd CoC dtd. 10.01.24	5,900	*Paid*
	E-voting charges for 2nd CoC meeting payable to Right2Vote		5,900	*Paid*

	E-voting charges for 3rd CoC meeting payable to Right2Vote	4th CoC dtd. 16.02.24	5,900	*Paid*
	E-voting charges for 4th CoC meeting payable to Right2Vote	5th CoC dtd. 15.03.24	5,900	5,900
	E-voting charges for 5th CoC meeting payable to Right2Vote	Proposed for approval in this 8th CoC	5,900	5,900
	E-voting charges for 6th CoC meeting payable to Right2Vote		5,900	5,900
	E-voting charges for 7th CoC meeting payable to Right2Vote		5,900	5,900
E-Auction Charges	E-Auction charges for engagement of Operator Licensee for Cheraideo Purbat TE (1st Time) payable to Right2Vote	4th CoC dtd. 16.02.24	7,080	-
Bank Charges	Bank Charges	Proposed for approval in this 8th CoC	90	-
		Sub-Total (B)	**39,81,772**	**37,02,821**
IBBI Regulatory Fees	IBBI Fees @1% on above [Subtotal B], in terms of Reg. 31A(2) of CIRP Reg.	**Sub-Total (C)**	**39,818**	**39,818**
		CIRP Cost incurred till 28.05.2024	**91,11,786**	**81,62,905**
Further CIRP COST (estimation)				
Registered Valuer Fees			16,57,900	-
Transaction Auditor Fees			2,36,000	-
Tea Estate Visit cost (adhoc for 10 nos. Tea Estate)			5,00,000	-
Legal Cost			15,00,000	-
RP Fees [Jun'24 to Aug'24]			11,68,200	
Marketing Consultant Fees (adjustable against the final fees as approved in the 2nd CoC meeting)			5,00,000	-
Further CIRP Cost (Estimated as per 8th CoC Minutes)			**55,62,100**	-
Legal Expenses – Drafting Charges (Bill yet to be received)			5,50,000	-
Legal Expenses – For matters before Hon'ble Supreme Court and Hon'ble High Court			15,00,000	-
Contingency Fund (Adhoc estimation)			17,76,114	
Additional Estimation of CIRP Cost			**38,26,114**	-
TOTAL CIRP COST			**1,85,00,000**	

9. It was further mentioned in the application that the contribution of Rs. 1 Cr. has to be apportioned amongst all the 6 members of the CoC. The averment made in this regard in para 6 of the application read as under:-

COC MEMBERS	UCO BANK (R-4)	INDIAN BANK (R-5)	SBI (R-6)	UNION BANK (R-3)	ICICI BANK (R-2	ODAT GmbH (R-1)
Voting share	29.1%	28.8%	2.3%	0.1%	0.3%	39.4%
Contribution amount (INR)	29,10,000	28,80,000	2,30,000	10,000	30,000	39,40,000

10. The RP further averred in para 7 of the application that the resolution plan has failed to meet the requisite majority of 66% because the Appellant

had voted against the resolution. The Averment made in para 7 is also reproduced as under:-

> "7. Despite the ratification and approval of the CIRP Cost and expenses in the earlier CoC Meetings as more fully stated hereinabove, the Respondent no 1 and 2 have wrongfully voted against the resolution for approval and ratification of CIRP costs and expenses to be contributed in proportion to the percentage of voting share of the CoC members and Respondent No.3 has abstained from voting and thereby the resolution failed to meet the requisite majority of at least 66% (sixty-six). Copies of the minutes of the 8th CoC Meeting and e-voting results the 8th CoC Meeting are collectively annexed hereto and marked Annexure "A-3"

11. In para 13 of the said application, the RP averred that as per Regulation 33 and 34 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short 'Regulations") it is the duty of the members of the CoC including the Appellant to pay the fee and costs incurred by the RP. The said averment is also reproduced as under:-

> "13. As per Regulation 33 and 34 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 it is the duty of the members of the CoC which includes the Respondents and particularly the Respondent nos. 1 to 3 herein to pay the fees and costs incurred by the Resolution Professional, once the same has been ratified by the CoC by passing a resolution to that effect. The Respondents by virtue of being Financial Creditors participating and voting in the CoC of the Corporate Debtor play a pivotal role in the insolvency resolution process under the IBC and have significant powers in deciding the fate of the insolvent entity (especially considering that Respondent No.1 holds the highest percentage of voting share."

12. In view of the aforesaid averments made, the following relief was prayed for:-

> a) An order be passed by this Hon'ble Tribunal directing the Respondents to contribute towards the CIRP costs forthwith in

proportion to their voting share i.e. Rs. 39,40,000/- (39.4%) for Respondent No.1, Rs. 30,000/-(0.3%) for Respondent No.2 and Rs. 10,000/- (0.1%) for Respondent No.3.

13. It is alleged by the Appellant that the Tribunal without issuing notice in the application and granting opportunity to file the reply and also without assigning any reason allowed the prayer of the RP.

14. Counsel for the Appellant has submitted that the Tribunal has used the term contribution in the impugned order which is not defined in the Code and hence the contribution is nothing else but interim finance which can be raised only with 66% voting by the CoC in compliance with the provisions of Section 28 of the Code. It is further argued that the Appellant holds 39.4% stake in the CoC and did not vote in favour of contributing interim finance of Rs. 1 Cr. as proposed by the RP, therefore, it does not meet the requisite percentage of 66% and as such the impugned order is patently illegal and void. Counsel for the Appellant has further submitted that in the 8th CoC meeting, the RP had raised the issue of CIRP costs (mentioned in the earlier part of this order) and relied upon Regulation 33 and 34 of the Regulations which talks about the costs of the interim resolution professional and resolution professional costs. It is submitted that the word contribution is conspicuous by its absence in Regulation 33 and 34 of the Regulations. Counsel for the Appellant has further submitted that Section 5(13) of the Code defines insolvency resolution process costs and Section 5(15) defines interim finance. It is submitted that since the interim finance is a financial debt, raised by the RP during the insolvency resolution process, therefore, it has been provided in Section 28 of the Code that the interim finance can

be raised only after approval by vote of 66% of the voting share of the CoC which is not the case in hand because the voting share of the Appellant is 39.4% which has voted against the resolution passed in the 8th CoC meeting for raising finance as proposed by the RP.

15. On the other hand, Counsel for the Respondent has submitted that though there is no dispute that for the purpose of raising interim finance, the condition of the 66% voting in favour of the resolution is a sine qua non but the impugned order has only directed the Appellant to contribute CIRP costs and not towards interim finance for which a simple majority was required and not as provided in Section 28(1) r/w Section 28(3) of the Code. He has further submitted that fee to be paid to the IRP in terms of Regulation 34B includes expenses which may be paid from the contribution of the CoC members. It is further submitted that pursuant to inclusion in the CoC, the Appellant had been participating in the voting of the CoC meetings i.e. in the 6th CoC meeting held on 22.04.2024 the Appellant having 39.4% voting share, voted in favour of extension of the CIRP period and extension of timeline to submit resolution plans, in the 7th CoC meeting held on 15.05.2024, the Appellant further voted in favour of extension of timeline to submit resolution plans, in the 10th CoC meeting held on 24.07.2024 the Appellant approved exclusion of 232 days from CIRP period and in the 13th CoC meeting held on 07.10.2024 the Appellant approved the resolution for issuance of Form G for the third time. It is submitted that the Appellant while voting in favour of the cost entailing resolutions cannot be permitted to argue that it will not contribute towards the CIRP costs.

16. We have heard Counsel for the parties and perused the record with their able assistance.

17. In the application bearing I.A No. 1187 of 2024 filed by the RP, he has prayed for a direction to the Appellant to contribute towards CIRP costs in proportion to its voting share i.e. Rs. 39,40,000/-, however, the Tribunal as alleged by the Appellant, without issuance of notice and without seeking reply to the application directed the Appellant to pay to the RP the aforesaid amount within 10 days. In this regard, the Appellant has made the following averments in the grounds of appeal which are as under:-

> "20. It is submitted that IA (I.B.C)/1187(KB)2024 was listed before the Ld. Adjudicating Authority on 01.07.2024, 12.08.2024, 04.09.2024, 12.09.2024 and 17.09.2024 however, notice was not issued in the application. Copies of orders dated 01.07.2024, 12.08.2024, 04.09.2024, 12.09.2024 and 17.09.2024 passed by the Ld. Adjudicating Authority are annexed herewith as Annexure A-3 (Colly).
>
> 21. It is submitted that IA (I.B.C)/1187(KB)2024 was then listed on 24.09.2024. On the said date, without issuing notice and without assigning any reasons, without hearing the Appellant the Ld. Adjudicating Authority directed the Appellant to make the payment, as apportioned by the Resolution Professional as indicated in the Minutes of the 8th CoC Meeting held on 28.05.2024, within a period of ten days.
>
> Thus, IA (I.B.C)/1187(KB)2024 was allowed by the Ld. Adjudicating Authority vide unreasoned order dated 24.09.2024."

18. The Respondent No.1 has though filed the reply to the appeal but the reply is not filed parawise and there is no denial to this fact that the application bearing I.A No. 1187 of 2024 has been allowed by the Tribunal without issuance of notice.

19. Be that as it may, the issue involved in this case is as to whether the CIRP costs can be claimed by the RP in violation of the provision of Section 28 or in the garb of contribution which is so provided in regard to fee only in Regulation 34(B)(5)?

20. In order to answer this question, it would be relevant to refer to certain provisions of the Code and Regulations. Section 5(13) of the Code which defines insolvency resolution process costs and Section 5(15) defines interim finance. Section 28 deals with the approval of CoC for certain actions which include raising the interim finance. Section 28 is reproduced as under:-

> "**Section 28. Approval of committee of creditors for certain actions**
>
> (1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely:—
>
> (a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;
>
> (b) create any security interest over the assets of the corporate debtor;
>
> (c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
>
> (d) record any change in the ownership interest of the corporate debtor;
>
> (e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;
>
> (f) undertake any related party transaction;
>
> (g) amend any constitutional documents of the corporate debtor;
>
> (h) delegate its authority to any other person;

(i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;

(j) make any change in the management of the corporate debtor or its subsidiary;

(k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;

(l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or

(m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

(2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions under sub-section *(1)*.

(3) No action under sub-section *(1)* shall be approved by the committee of creditors unless approved by a vote of [1] [sixty-six] per cent. of the voting shares.

(4) Where any action under sub-section *(1)* is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.

(5) The committee of creditors may report the actions of the resolution professional under sub-section *(4)* to the Board for taking necessary actions against him under this Code."

21. Regulation 33 of the Regulations deals with the cost of Interim resolution professional and Regulation 34 deals with resolution professional costs which are reproduced as under:-

"Regulation 33: Costs of the interim resolution professional.

33. (1) The applicant shall fix the expenses[1] to be incurred on or by the interim resolution professional.

(2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).

(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

[2][*Explanation.* – For the purposes of this regulation, "expenses" include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional.]

Regulation 34: Resolution professional costs.

34. The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses[1] shall constitute insolvency resolution process costs.

[2][*Explanation.* – For the purposes of this regulation, "expenses" include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.]"

22. Regulation 34(A) and 34(B) inserted in the Regulations w.e.f. 13.09.2022 are reproduced as under: -

Regulation 34A: Disclosure of Costs.

[1][**34A.** The interim resolution professional or the resolution professional, as the case may be, shall disclose item wise insolvency resolution process costs in such manner as may be required by the Board.]

"**Regulation 34B: Fee to be paid to interim resolution professional and resolution professional.**

[1][**34B.** (1) The fee of interim resolution professional or resolution professional, under regulation 33 and 34, shall be decided by the applicant or committee in accordance with this regulation.

(2) The fee of the interim resolution professional or the resolution professional, appointed on or after 1st October 2022, shall not be less than the fee specified in clause 1 for the period specified in clause 2 of Schedule-II:

Provided that the applicant or the committee may decide to fix higher amount of fee for the reasons to be recorded, taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating economic activity of corporate debtor and complexity related to process.

(3) After the expiry of period mentioned in clause 2 of Schedule-II, the fee of the interim resolution professional or resolution

> professional shall be as decided by the applicant or committee, as the case may be.
>
> (4) For the resolution plan approved by the committee on or after 1st October 2022, the committee may decide, in its discretion, to pay performance-linked incentive fee, not exceeding five crore rupees, in accordance with clause 3 and clause 4 of Schedule-II or may extend any other performance-linked incentive structure as it deems necessary.
>
> (5) The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way of interim finance and shall be included in the insolvency resolution process cost.]"

23. There is no dispute that the RP had claimed the CIRP costs from the Appellant in proportion to its voting share right in the CoC which has been allowed by the Tribunal as contribution. The Respondent has failed to refer to definition of contribution in the Code or Regulations. However, the definition of interim finance has been provided in Section 5(15) which means any financial debt raised by the RP during the insolvency resolution process period. Section 5(13)(a) also provides that insolvency resolution process costs means the amount of any interim finance and the costs incurred in raising such finance. Since it would be a financial debt to be raised by the RP during the insolvency resolution process, therefore, a mechanism has been provided in the Code to ensure that the RP may not misuse the finances of the CD which is already in distress. In this regard, Section 28(1)(a) provides that the RP, during the insolvency resolution process, shall not raise any interim finance in excess of the amount as may be decided by the CoC in their meeting and Section 28(3) further provides that no action under sub-section (1) shall be approved by the CoC unless approved by a vote of 66% of the voting share.

24. In so far as the present case is concerned, it is an admitted fact that the Appellant has 39.4% voting share in the CoC and had voted against the resolution for raising of finance of Rs. 1 Cr. by the RP which clearly means that the resolution has not been passed by 66% voting share of the CoC. In the absence of the resolution having been negatively voted upon by none else than the largest voting share held by the Appellant, the CIRP costs as claimed by the RP through the application could not have been allowed.

25. Before Regulation 34(B) was inserted on 13.09.2022, there was no such provision of contribution towards fee of the RP. However, Regulation 34(B) (5) talks of the fee which may be paid from the funds available with the CD, contributed by the applicant or members of the committee and / or raised by way of interim finance and shall be included in the insolvency resolution process costs.

26. The interpretation of Regulation 34(B) is that the RP can only ask for his fee which may be paid from the available funds of the CD which has been already contributed by the applicant or members of the Committee or by raising interim finance which shall be included in the insolvency resolution process costs. As the respondent has already averred in the application filed before the Tribunal that available funds are to the extent of Rs. 35 lakh as against the CIRP cost of Rs. 1.85 Cr., therefore, he had tried to raise an interim finance of Rs. 1 Cr. to meet the CIRP costs which he had incurred during the period.

27. If the CIRP cost is to be incurred or even the fee as provided in Regulation 34(B), it has to be by way of interim finance for which the

resolution has to be voted by 66% voting share of the CoC. However, with the negative voting of the Appellant having 39.4% voting share of the CoC the said resolution has failed, therefore, in such circumstances, the Tribunal has committed an error in passing the impugned order in a slipshod manner which has resulted into a serious miscarriage of justice to the Appellant.

28. Thus, in view of the aforesaid discussion, the appeal is hereby allowed and the impugned order is set aside though without any order as to costs.

I.As, if any, are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

New Delhi
04th August, 2025
Sheetal