NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT)(Insolvency) No. 266 of 2020

[Arising out of order dated 6th December, 2019 passed by the Adjudicating Authority, National Company Law Tribunal, Kolkata Bench, Kolkata, in Misc. A. (IB) No. 622/KB/2019 in CP(IB) No. 421/KB/2017]

IN THE MATTER OF:

Punjab National Bank
(Through Mr. Sachin Rathi, Sr. Manager)
Hill Cart Road Branch,
Siliguri
Darjeeling- 734 001 .. **Appellant**

Versus

1. **Kamalesh Kumar Singhania**
Erstwhile Interim Resolution Professional
And the erstwhile Resolution Professional
In the matter of M/s Mintri Tea Co. Pvt. Ltd.,
Room No. 412 & 413
4th Floor, Bajrang Kunj
2B Grant Lane
Kolkata – 700 012 .. **Respondent No. 1**

2. **Dr. Pintso T. Namgyal**
Chief Manager, Punjab National Bank
Hill Cart Road Branch, Siliguri
Ward No. 6, Hill Cart Road, Siliguri
West Bengal- 734 001 .. **Respondent No. 2 (Proforma Party)**

3. **Mr. Pritam Ghosh,**
Senior Manager, Punjab National Bank,
Hill Cart Road Branch, Siliguri
Ward No. 6, Hill Cart Road, Siliguri
West Bengal- 734 001 .. **Respondent No. 3 (Proforma Party)**

4. **Mr. M.K. Thakur**
Chief Manager, Punjab National Bank,
Circle Office, Burdwan
2nd Floor, Shri Durga Market,
Grand Trunk Road, Police Lane Bazar
P.O. Sripally, Burdwan- 713 103
West Bengal .. **Respondent No. 4**
(Proforma Party)

5. **Mr. S.P. Das**
Chief Manager, Punjab National Bank,
Circle Office, Burdwan
2nd Floor, Shri Durga Market,
Grand Trunk Road, Police Lane Bazar
P.O. Sripally, Burdwan- 713 103
West Bengal .. **Respondent No. 5**
(Proforma Party)

6. **Mr. M.K. Singh**
Circle Head, Punjab National Bank
Circle Office, Burdwan
2nd Floor, Shri Durga Market,
Grand Trunk Road, Police Lane Bazar
P.O. Sripally, Burdwan- 713 103
West Bengal .. **Respondent No. 6**
(Proforma Party)

7. **Mr. Chandan Chakraborty**
Chief Manager, Punjab National Bank
Circle Office, Burdwan
2nd Floor, Shri Durga Market,
Grand Trunk Road, Police Lane Bazar
P.O. Sripally, Burdwan- 713 103
West Bengal .. **Respondent No. 7**
(Proforma Party)

8. **Mr. Rajeev Mishra,**
Chief Manager, Punjab National Bank
Circle Office, Burdwan

2nd Floor, Shri Durga Market,
Grand Trunk Road, Police Lane Bazar
P.O. Sripally, Burdwan- 713 103
West Bengal .. **Respondent No. 8 (Proforma Party)**

9. Mr. Amit Sorin
Manager, Punjab National Bank
Circle Office, Burdwan
2nd Floor, Shri Durga Market,
Grand Trunk Road, Police Lane Bazar
P.O. Sripally, Burdwan- 713 103
West Bengal .. **Respondent No. 9 (Proforma Party)**

10. Mr. Om Prakash
Manager Law, Punjab National bank
Kolkata Zonal Office
18A, Brabourne Road,
Chitpur, B.B.D. Bagh
Kolkata, West Bengal- 700 001 .. **Respondent No. 10 (Proforma Party)**

11. Mr. L.K. Malhotra
Zonal Manager, Kolkata Zonal Office,
Punjab National Bank
18A, Brabourne Road,
Chitpur, B.B.D. Bagh
Kolkata, West Bengal- 700 001 .. **Respondent No. 11 (Proforma Party)**

12. Mr. Sunil Mehta
Managing Director
Punjab National Bank
Plot No. 4, Sector 10, Dwarka
New Delhi- 110 075 .. **Respondent No. 12 (Proforma Party)**

13. Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan
Shankar Market

Cannaught Circus
New Delhi- 110 001. .. **Respondent No. 13 (Proforma Party)**

Present:

For Appellant: **Mr. Rajesh Kr. Gautam, Advocate**

For Respondents: **Mr. Pranay Agarwal, Ms. Anikita Baid, Advocates for R-1**

J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

The Present Appeal has been preferred by the Appellant-Bank against the impugned order dated 06.12.2019 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata (**Adjudicating Authority**) in Misc. A. (IB) No. 622/KB/2019 in CP(IB) No. 421/KB/2017 titled as "*Mr. Kamalesh Kumar Singhania Vrs. M/s Punjab National Bank & Ors.*". The Appellant-Bank has sought the following reliefs:

a) Set aside the direction of the National Company Law Tribunal, Kolkata Bench in the impugned order dated 06.12.2019 passed in Misc. A. (IB) No. 622/KB/2019 in CP(IB) No. 421/KB/2017'

b) Make any other order as may be just and proper in the facts of the present case.

Submission of the Appellant:

2. The Appellant-Bank preferred an Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (in short '**Code**') against Mintri Tea Company Pvt. Ltd./Corporate Debtor which was admitted by the Adjudicating Authority on 20.09.2017. Mr. Kamalesh Kr. Singhania was appointed as Interim Resolution Professional. The Appellant-Bank being 100% sole Financial Creditor approved the appointment of the Resolution Professional in Committee of Creditors (in short '**CoC**') meeting. It was also submitted by the learned Counsel for the Appellant-Bank that the Guarantor/Director of the Corporate Debtor/Mintri Tea Company Pvt. Ltd. paid total amount of Rs. 10.56 Crores to the Appellant-Bank towards the settlement of dues. They also agreed to pay Insolvency Resolution cost as part of the settlement. An application under Section 12A of the Code filed before the Adjudicating Authority for withdrawal of the Application, was dismissed by the Adjudicating Authority vide order dated 03.08.2018. Thereafter, an appeal was preferred by the Guarantor/Director of the Corporate Debtor before this Appellate Tribunal in Company Appeal (AT)(Insolvency) No. 456 of 2018 in the matter *Krishna Kumar Mintri vs. Kamlesh Kumar Singhania & Anr.* This Tribunal, vide its order dated 27.02.2019 allowed the Appeal of the Guarantor/Director and also directed the Corporate Debtor to pay the amount of the Resolution Professional within three weeks thereof. The only direction that the

Appellant-Bank will check the bills submitted by the Resolution Professional and approve the amount payable to him towards fees and resolution cost within two weeks. The Resolution Professional submitted a bill of Rs. 45,05,519/- and the Appellant-Bank paid a sum of Rs. 7,46,294/-. Learned Counsel for the Appellant-Bank submitted that they went through the bills produced by the Resolution Professional which were highly inflated for most part and did not reflect the true picture of actual expense incurred during Corporate Insolvency Resolution Process (in short '**CIRP**'). List of dates and events against the same are submitted below for having brevity and clarity on the subject:

20.09.2017	Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 registered as CP(IB) 421/KB/2017 and titled as "*Punjab National Bank v. Mintri Tea Company Pvt. Ltd* was admitted by Ld. National Company Law Tribunal, Kolkata.", whereby outstanding dues amounting to Rs. 10.38 Crores as on 31.05.2017 were claimed by the Appellant Bank. Sh. Kamlesh Kumar Singhania, i.e., Respondent No. 1 herein was appointed as the Interim Resolution Professional.
	A Committee of Creditors was constituted by the Respondent No. 1, with the Appellant Bank as

the sole Financial Creditor.

17.10.2017	First meeting of the Committee of Creditors was held, held, wherein, Respondent No. 1 was appointed as the Resolution Professional.
	Directors and Guarantors of the Corporate Debtor, namely Sh. K.K. Mintri, Ms. Shiwaani Mintri, Ms. Purnima Mintri and Mrs. Jyoti Mintri paid a sum of Rs. 10,56,22,944/- to the Appellant Bank towards settlement of the dues/liabilities of the Corporate Debtor.
16.06.2018	The extended period for the Corporate Insolvency Resolution Process came to an end.
22.06.2018	Letter Director and Guarantors of the Corporate Debtor to the Appellant Bank, undertaking to pay a sum of Rs. 30 lacs along with the Fee of the Resolution Professional towards settlement.
11.07.2018	The Guarantors/Directors of the Corporate Debtor made the payment of Rs. 30 lacs to the Appellant Bank towards settlement of the dues and liabilities of the Corporate Debtor.
	Appellant Bank, having 100 percent voting share in the Committee of Creditors, preferred an Application under Section 12-A of the Code for withdrawal of CP(IB) 421/KB/2017 before the Ld. Adjudicating Authority.

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03.08.2018	Application under Section 12-A of the Code, registered as C.A. (IB) No. 648/KB/2018 in C.P. (IB) No. 421/KB/2017 was dismissed by the Ld. Adjudicating Authority. Sh. Krishna Kumar Mintri, the Director of the Corporate Debtor, preferred an Appeal before this Hon'ble Tribunal, registered as Company Appeal (Insolvency) (AT) No. 456/2018 against the order dated 03.08.2018 passed by Ld. Adjudicating Authority, whereby C.A. (IB) No.648/KB/2018 in C.P. (IB) No. 421/KB/2017 was dismissed.
25.09.2018	Hearing before the Ld. Adjudicating Authority in CA (IB) No. 427/KB/2018 and CA (IB) No. 525/KB/2018 in CP (IB) No. 421/KB/2017, when upon an oral request of the Respondent No. 1 herein, the Ld. Adjudicating Authority was pleased to direct the Appellant Bank to consider the request of Respondent No. 1 towards provision of interim funds as as to continue the process till the approval or rejection of the Resolution Plan under consideration.
19.11.2018	The Ld. Adjudicating Authority observed that despite its Order dated 25.09.2018, the Appellant Bank herein had not paid the amount found due to Respondent No. 1 herein and direct the same to be paid without any further delay, failing which the Respondent No. 1 shall be at a liberty to initiate proceedings against the Appellant Bank.

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11.01.2019 Appellant Bank submitted before the Ld. Adjudicating Authority that the Bank has not yet paid the amount to Respondent No. 1, as in terms of the agreement entered between the Guarantors/Directors of the Corporate Debtor and the Appellant Bank, the Resolution Cost is to be paid by the Guarantors/Directors of the Corporate Debtor. The letter of Sh. Krishna Kumar Mintri, undertaking to pay the Cost as part of the settlement was also produced before the Adjudicating Authority. The submission of the Appellant Bank, however, was rejected by the Ld. Adjudicating Authority and Respondent No. 1 was given liberty to proceed against the Appellant Bank for disobedience of the directions of the Adjudicating Authority.

Aggrieved by the Order dated 19.11.2018 and 11.01.2019 passed by the Ld. Adjudicating Authority, the Appellant Bank herein preferred Company Appeal (AT) (Insolvency) No. 198-199 of 2019 before this Hon'ble Appellate Tribunal titled as "*Punjab National Bank v. Kamlesh Kumar Singhania & Anr.*", inter alia on the ground that the directions issued by the Ld. Adjudicating Authority are in contravention of the provisions contained in Insolvency and Bankruptcy Code, 2016 as well as run contrary to the terms of settlement entered between the Appellant Bank and the Directors and Guarantors of the Corporate Debtor.

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27.02.2019	Order of this Hon'ble Appellate Tribunal in Company Appeal (Insolvency) (AT) No. 456/2018, whereby it was directed that the fee of the Resolution Professional as well as payment of CIRP Cost, as approved by the Committee of Creditors, will be made by the Corporate Debtor.
01.03.2019	Respondent No. 1 submitted his bills amounting to Rs. 45,05,519/- towards CIRP cost incurred upto 13.03.2019 with the Appellant Bank
11.03.2019	The Appellant Bank herein, very diligently went through the bills produced by the Resolution Professional, which were highly inflated for most part and did not reflect the true picture of the actual expenses incurred during CIRP. After a careful analysis, a sum of Rs. 7,46,294/- was approved as the amount payable to the Resolution Professional towards CIRP cost. A sum of Rs. 4,72,000/- that was received by the Resolution Professional on account of non-refundable Earnest Money Deposit, was deducted from the the net payable amount and it was communicated to the Corporate Debtor that the remaining sum of Rs. 2,74,294/- was be paid to the Resolution Professional.
12.03.2019	The decision of the Committee of Creditors was communicated to the Resolution Professional, along with reasons for rejection of the bills which were found to be inflated and/or not approved by the Committee of Creditors or running contrary to the Regulations prescribed under the

Code of 2016.

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22.03.2019	Letter by Sh. Krishna Kumar Mintri, i.e., Director of the Corporate Debtor to the Appellant Bank, informing therein that Respondent No. 1 has been paid a sum of Rs. 2,74,294/- vide a Banker's Cheque dated 13.03.2019. The letter further stated that the Corporate Debtor is ready to make payment of any further or other amount approved by the Appellant Bank towards costs of the Resolution Process and/or the fees of the Resolution Professional.
23.04.2019	Misc. A. (IB) No. 622/KB/2019 in CP(IB) No. 421/KB/2017, titled as *Mr. Kamalesh Kumar Singhania v. M/s Punjab National Bank & Ors.*, filed by the Respondent No. 1 herein, inter alia, praying for directions to the Appellant herein to pay the CIRP Cost to Respondent No. 1 herein without any deductions
	Reply filed by the Appellant Bank herein to the Application preferred by Respondent No. 1 herein
06.12.2019	Order of the Ld. Adjudicating Authority in Misc. A. (IB) No. 622/KB/2019 in CP(IB) No. 421/KB/2017, whereby the Ld. Adjudicating Authority has been pleased to direct the Appellant herein to pay a sum of Rs. 25 lacs to the Resolution Professional, minus the amount that has already been paid to the Resolution Professional, as fees and expenses incurred

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	during the period of Corporate Insolvency Resolution Process. In addition to the afore-mentioned sum, amounts towards the fees of advocates and other professionals for appearing before various authorities have been directed to be paid directly to those professional's bank accounts as and when claimed, within 15 days of receipt of the Order.
17.01.2020	Hence, aggrieved by the Order dated 06.12.2019 of the Ld. Adjudicating Authority, the Appellant Bank has preferred this present Appeal.

3. Learned Counsel for the Appellant-Bank has submitted that the inflated bills so produced (a few examples are given below)

...

A. The Respondent No. 1 raised bills of his own company, AV Insolvency Professional Pvt. Ltd., for functions such as preparation of the report of list of Creditors, preparation of report on constitution of the Committee of Creditors, preparation of progress report, preparation of report on decision of Committee of Creditors etc., which normally form part of the duties performed by the Resolution Professional. (page 519 & 520 Volume –III of the Appeal Paper Book).

B. *The Respondent No. 1, despite claiming for good, lodging, conveyance and other out of pocket expenses separately, also claimed a daily allowance of Rs. 5000/-, which on the fact of it is unreasonable.(para 3.2 of Written Submission of the Appellant)*

C. *The Respondent No. 1 charged an exorbitant amount of Rs. 3250/- per certified copy of the Orders acquired from the Ld. Adjudicating Authority. (Page 521 also pat page 569 Volume –III of the Paper Book)*

D. *The Respondent No. 1 engaged professional for a fee of Rs. 1,00,000/- for vetting the report on resolution plans"* (page 622 volume – IV of the paper book).

4. It was also stated by the learned Counsel for the Appellant-Bank that CoC approved Rs. 4,50,000/- towards the Professional Fee and Rs. 2,96,294/- towards the expensed incurred. It was also stated by the learned Counsel for the Appellant-Bank that a sum of Rs. 4,72,000/-, was received by the Resolution Professional on account of non-refundable earnest money deposit received from Resolution Applicant who had submitted EOI, Corporate Debtor paid Rs. 2,74,294/- to the Resolution Professional after deducting said amount of Rs. 4,72,000/-. It stated by the Appellant-Bank that after accepting the aforesaid amount, without any protest or demur, filed in Misc. Application No. (IB) No. 622/KB/2019 in CP(IB) No. 421/KB/2017 praying for direction to the Appellant-Bank to pay CIRP cost to the Respondent No. 1 without any deduction. It was also

stated by the Appellant-Bank that the Insolvency Professional has even made 11 senior Officials from Managing Director of the Nationalised Bank, i.e., Punjab National Bank downward to the Law Officer of the Bank as the Respondents in the above stated application both at Adjudicating Authority & this Tribunal and has sought the following reliefs from Adjudicating Authority (page 80 -81 of the appeal paper book):

..

a) *Issue necessary direction/orders on the Respondents herein to pay to the Applicant herein, severally and/or jointly, in full, the insolvency resolution process costs, including the fees of the IRP and the RP and the expenses incurred by him during the CIRP of Mintri Tea Co. Pvt. Ltd., without any deduction.*

b) *Issue necessary direction/orders of the Respondents herein to pay to the Applicant herein, severally and/ or jointly, in addition to the CIRP cost, damages amounting to equivalent to 100% of the CIRP cost for the various losses suffered by him including loss of reputation, loss of business and for causing mental agony among other things.*

c) *Issue necessary directions/orders on the respondents herein to pay to the applicant herein, severally and/or* *jointly, the cost of litigation, on actuals, incurred to file and proceed with this instant application.*

d) *Issue necessary directions/orders on the Respondents herein to pay to the Applicant herein, severally and/or jointly, an interest @ 12% p.a. on the above dues and costs, till the actual payment.*

e) *Issue necessary directions/orders on the Respondent No. 1 herein to approve the CIRP cost as incurred by the Applicant herein without any deductions and to arrange and facilitate the payment of the same along with an interest of 12% till payment.*

f) *Issue necessary direction/orders to impose penalties on the Respondents herein to deter them and others from such actions in future.*

g) *Issue necessary directions/orders for initiating investigation in the instant matter against the Respondents herein.*

h) *Pass such other Order/directions as this Hon'ble Bench may deem fit and necessary in the facts and circumstances of the case."*

SUBMISSION OF RESPONDENT NO. 1/RESOLUTION PROFESSIONAL

5. The learned Counsel for the Resolution Professional has stated that the PNB/Appellant has made unjustifiable demand and reduction/deduction, some of which are as under:

a. *Legal fees and fees payable to other professionals, amounting to Rs. 7,18,797/- (approx..), citing them to be included in the professional fee of the RP. Further, in addition to this, numerous out of pocket expenses were considered to be part professional fee of the RP.*

b. *PNB has declined payment of any and all fees and expenses, amounting to Rs. 15,54,169/-(approx..) (pg 299 onwards in the Appeal), incurred by the RP beyond calendar 270 days citing CIRP to be inoperative from the calendared 271st date, despite the CIRP coming to a conclusion after a period of 526(approx..) days due to the long drawn litigation initiated by Appellant-Bank itself and the promoters/guarantors of CD.*

c. *PNB has declined numerous expenses citing non-availability of details instead of seeking clarification on such points or details of such expensed.*

6. It was also stated by the Resolution Professional that it is the Appellant-Bank who sent the Demand Draft for Rs. 2,74,294/- by registered post to the Respondent No. 1/Resolution Professional which was never encashed. The learned Counsel for the Respondent No. 1/Resolution Professional has also, in its Written Submission, produced a tabular information enumerating number of litigations that were initiated in course of the CIRP which is reproduced below (Extract from para 2 of the Written Submission of R1/RP):

> *"In the agreement with the Guarantors of CD, PNB agreed that the guarantors will make payment of CIRP cost as approved by PNB, which shows that PNB has assumed the role of CoC for which it has no legal authority under the Code."*

Petition/Application/ Appeal no.	Filed by	Filed against	Court/ Tribunal	Reasons for filing
CA (AT) (Ins.) 237 of 2017	KK Mintri (directors/ promoters of CD)	PNB (main FC)	National Company Law Appellate Tribunal, New Delhi	Filed by promoters/ directors of CD challenging the order initiating CIRP dated 20.09.2017. **Appeal was dismissed as having no merit** vide order dated 22.12.2017
CA (IB) No. 518/KB/2017	KK Singhania (RP/R1)	K.K. Mintri&Ors. (directors/promoters of CD)	Adjudicating Authority, Kolkata Bench	**Filed u/s. 19(2)** of the Code seeking cooperation from the directors/ promoters of CD. Application allowed vide order dated 28.10.2017.
CA(IB)No. 427/KB/2018	K.K. Singhania (RP/R1)	K.K. Mintri&Ors. (directors/promoters of CD)	Adjudicating Authority, Kolkata Bench	**Filed u/s. 66, 68(1)(b), 68(ii), 69(a) and (b), 74(1) read with sections 14(b), 70 & 236 of the Code**& ors. under the Code against the promoters/ directors of CD seeking to stop the illegal actions of the promoters/ directors of CD **during the CIRP Period,** such as: 1. entering into MoU for sale of tea estate of CD (including receiving approx. 1 Cr. in cash in contravention of PMLA) 2. sale of tea leaves without recording such sale 3. conducting board meetings and passing board resolutions, 4. renewal of security documents with Federal Bank, 5. Removal of machinery from the plantation without authorisation, 6. Inciting the workers at the tea garden to forcefully throw out the manager appointed by the RP. etc. The said interim application was heard on various dates but no judgement could ever be passed in the matter.
WP No. 7023(W) of 2018	K.K. Mintri (directors/ promoters of CD)	Vs. Union of India & Ors. (RP/R1 was a respondent)	Hon'ble High Court at Calcutta (Vacation bench)	Filed by guarantor/ promoter of CD seeking declaration of Insolvency and Bankruptcy Code, 2016 as ultra vires and seeking a stay on the CIRP and proceedings as the dues of the Financial Creditor had been paid by the Guarantor/ Promoter of the CD. Only limited relief was granted to the Petitioners.
CA(IB) No. 462/KB/2018	K.K. Mintri&Anr. (directors/ promoters of CD)	K.K. Singhania (RP/R1)	Adjudicating Authority, Kolkata Bench	Filed by the promoter/guarantor of CD **as a reply** to CA (IB) No. 427/KB/2018 filed by RP. This application was dismissed on 03.08.2018.
CA(IB) No. 525/KB/2018	Luxmi Township & Holdings Ltd.	K.K. Singhania &Ors. (RP/R1)	Adjudicating Authority, Kolkata Bench	Filed by the Luxmi Township & Holdings Ltd. seeking consideration of its resolution plan.
CA (IB) No. 648/KB/2018	PNB	Mintri Tea Co. Pvt. Ltd.	Adjudicating Authority, Kolkata	Filed by PNB u/s. 12A of the Code to withdraw the CP **after approving the**

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		& Ors	Bench	**<u>resolution plan</u>** <u>by 79.82% voting share.</u>This application was dismissed on 03.08.2018. **<u>(much beyond 270 days of CIRP).</u>**
CA (AT) (Ins.) No. 456 of 2018	K.K. Mintri (directors/ promoters/ guarantor of CD)	K.K. Singhnia (RP/R1)	Hon'ble National Company Law Appellate Tribunal, New Delhi	Filed by promoter/ guarantor of CD against the impugned order dated 03.08.2018 in **<u>CA (IB) No. 648/KB/2018</u>**wherein the AA had disallowed the withdrawal of the main petition. The Hon'ble Appellate Tribunal heard the matter and vide order 27.02.2019 allowed the withdrawal of the main CP.

7. It was stated by the counsel for the R1/RP that initially AV Insolvency Pvt. Ltd is an IPE of R1/RP from whom support services were taken by RP. As on the date those services IPEs were only permitted to provide services only to its members and therefore, R1 not being a member of any other IPE could not have taken support services from any other IPE. Thus, the argument on the Appellant counsel that an arm's length basis was not followed is unjustified and misguided.

(Kindly refer to pages 9 – 15 of the Reply Affidavit)

DATE	EVENT	Page No. in Appeal	SUMMARY/ EXTRACTS
16.10.2017	1st CoC meeting (adjourned)	p. 197, V- I	The meeting was adjourned to be held on 17.10.2017 as no one from the Corporate Debtor was present and the Appellant herein requested IRP to adjourn the meeting to next day to allow a final opportunity to the Directors to be present in the CoC meeting and contribute to the CIRP.
17.10.2017	1st CoC meeting held	p.198-204, V–I& II, particularly p202 - 203	In this meeting there was discussion about IRP fees and reimbursement of expenses in Agenda Items 5,6,7 & 8.
01.11.2017	2nd CoC meeting held	Pg. 206 – 212, V – II particularly p. 207,208, 209	The resolutions were taken up in the CoC meeting in Agenda Items 3,4,5,6 & 7 regarding fees and expenses which was passed by 100% voting share.
15.01.2018	3rd CoC meeting held	p. 214 – 218, V – II,	The legal expenses in Agenda Item No. 8, incurred in application filed u/s. 19 was approved by 100% majority

		particularly p. 217	
02.02.2018	4th CoC meeting held	p. 220 – 224, Vol – II, particularly p. 222	There was discussion regarding approval of expenses in relation to conduct of CIRP in Agenda Item No. 6, **which was deferred to the next CoC meeting.**
06.03.2018	5th CoC meeting held	p. 226 – 232, V–II, particularly p. 227, 228, 229 & 230	The resolutions in Agenda item no. 6,8, 10 & 12 regarding appointing its team member at the tea plantation in Siliguri and the cost involved, raising of interim finance and the payment of Rs. 50000/- p.m. to the RP were passed with 100% majority: The RP also informed the CoC in Agenda Item No. 11 regarding estimated expenses incurred on CIRP till 28.02.2018..
27.03.2018	6th CoC meeting held	p. 234 – 238, V–II, particularly p. 237.	The resolution regarding opening of CIRP bank account was passed by the CoC with 100% majority
16.04.2018 to 17.04.2018			**Guarantors of the Corporate Debtor deposited Rs. 10,26,22,944/- with Punjab National Bank as informed by Punjab National Bank, Respondent No. 1 herein.**
27.04.2018	7th CoC meeting (adjourned till 07.05.2018))	p. 239 – 241, V–II, particularly p. 240	The decision regarding the RP to raise Interim finance of Rs. 2 Cr. taken in the 5th CoC meeting and the resolution passed regarding opening a current bank account by the CoC was objected by PNB/ CoC member stating that the persons present in the last two meetings were not authorized to take decisions without approval of a higher authority. RP objected to the same as no queries/objections were raised after the circulation of the minutes and the RP had already taken actions based on such approvals.
07.05.2018	Adjourned 7th CoC meeting held (adjourned till 16.05.2018)	p. 243 – 246, V–II, particularly p. 245	No discussion/voting regarding CIRP cost took place as the meeting was adjourned.
16.05.2018	7th CoC meeting held	p. 248 – 256, V–II, particularly p. 250 & 255	The discussion regarding resolution process cost in Agenda Item No. 9 took place.
24.05.2018	8th CoC meeting held	p. 258 – 262, V–II,	Respondent No. 2, 8 and 10 were present among others. No discussion/ resolution with regard to CIRP cost took place.
31.05.2018	9th CoC meeting held	p. 264 – 269, V–II, particularly p. 266.	The CoC declined all resolutions in connection to CIRP cost and expenses in Agenda Item No. 5 & 6 with 79.62% voting share i.e PNB, but approved the resolution plan of Terai Tea Co. Pvt. Ltd. of Rs. 21.45 Cr. with 79.62% voting share by e – voting*(kindly see pg 31 – 35 of the Reply)*

It may be noted that how after entering into a settlement with the guarantors of CD, PNB not only approved the resolution plan of Terai Tea Co. Pvt. Ltd. but also started to **decline the CIRP costs and expenses including revisiting the decisions taken in earlier CoC meetings. These actions of PNB are outright contrary to the provisions of IBC and the principles of equity and natural justice. Infact the action of PNB** entering into a settlement with the guarantors

8. The Resolution Professional has stated that the Appellant-Bank did not approve the Resolution Plan of a Resolution Applicant with a value of Rs. 21.54 Crores and they got Rs. 10.53 Crores from settlement.

9. The Resolution Professional has levelled counter charges that

> a) *"In the agreement with the Guarantors of CD, PNB agreed that the guarantors will make payment of CIRP cost as approved by PNB, which shows that PNB has assumed the role of CoC for which it has no legal authority under the Code."*
>
> b) *"An insolvency Pvt. Ltd. is an IPE for R1 from whom support services were taken by R1. As on the date of those services IPEs were only permitted to provide services only to its members and therefore R1 not being a member of any other IPE could not have taken support services from any other IPE. Thus the argument of the Appellant Counsel that an arm's length basis was not followed is unjustified and misguided."*

10. The Adjudicating Authority has stated the following reasons and has approved the fees of full amount of the claim of Rs. 25 crores.

> "14. *We are of the considered view that a professional who has worked hard to make the CIRP successfully, should not be deprived of his lawful and reasonable and realistic, if not liberal, while assessing the expenses incurred by the IRP/RP*

particularly when the work was required to be done at odd place, odd times and odd situations.

15. Instead of once again sending the request of the R.P. to the COC for reconsideration on the fees and expenses incurred by the R.P., and thereby causing a further delay in the matter, we think it appropriate to make a reasonable assessment of the fees and expenses. On a bare look of the method adopted by the COC while assessing and approving the fees and expenses of the R.P., we find that the COC has allowed only those expenses which have been supported by bills. The travel expenses have been approved but the other expenditures incurred during travel like hotel bills and food etc., have been disallowed. It has been seen that various expenses relating to local conveyance, expenses relating to obtaining certified copies on various dates, expenses relating to drafting and filling of applications, preparation and printing of information memorandum and various out of pocket expenses have been refused. All the claims relating to fees paid to the advocates for attending hearings before the NCLAT and expenses incurred have been disallowed. It is quite astonishing that the time consumed and efforts made in doing and having things done has not been evaluated at all. It appears to be illogical that a claim of Rs. 45,05,519/- has been reduced to Rs. 7,46,294/-. The whole process of Resolution started somewhere in 22.09.2017 and then R.P. continued to work till February, 2019 but the feeds and expenses of the R.P. have not so far been paid to the R.P.

16. We have gone through the statement of expenses and fees submitted by the R.P. to the COC which includes the fees of the R.P. fees paid by the R.P. to various advocates for appearance and expenses made by the R.P. from time to time.

17. Having considered the whole record, and in the facts of the present case, we assess the fees and expenses incurred by the RP, at a sum of Rs. 25.00 lakhs and direct the Respondents to pay the said amount minus the amount that has already been paid by the Respondents to the R.P. In addition to this the various amounts included in the statement towards the fees of advocates and other professionals for appearing before various authorities including the Appellate Authority should also be paid directly to those professionals' bank account as and when claimed, within 156 days of receipt of this order.

18. With these directions this Misc. Application No. 622/KB/2019 is disposed of."

11. We have carefully gone through submissions made by the parties, & the records produced before us and the relevant provisions of law and are having following observations:

a) The settlement of dues between the Appellant/ PNB and Corporate Debtor is for an amount of Rs. 10.53 crores (approximately) against the claim filed by Appellant/PNB of Rs. 10,37,69,840/- in Petition No. 421/KB/2017. The CIRP process which was initiated on 20.09.2017 got closed between the Appellant-Bank and the Corporate Debtor and was settled on 22.06.2018 and the Appellant-Bank preferred Application under Section 12A of the Code for withdrawal of CIRP proceeding vide CP(IB)/421/KB/2017 before the Adjudicating Authority on 11.07.2018. This Tribunal vide its order dated 27.02.2019 in Company Appeal (AT)(Insolvency) No. 456 of 2018, in the matter of *Krishna Kumar Mintri vs. Kamlesh Kumar Singhania & Anr.* approved the settlement of the Bank with the Corporate Debtor and also this Tribunal amplified the issue of payment of fees and resolution cost to the Resolution Professional in a manner elaborately explained as given hereunder:

> *"11. So far as payment of fees and resolution cost to the Resolution Professional is concerned, the Corporate Debtor will pay the full amount as approved by the Committee of Creditors in terms of their agreement. The Punjab National Bank will check the bills submitted by the Resolution Professional and approve the amount payable to him towards fee and resolution cost within two weeks. The Corporate Debtor will pay the approved amount in favour of the Resolution Professional within three weeks thereof."*

b) The available laws on the subject are enumerated below:

Section 5(13) of IBC

*"(13) "**insolvency resolution process costs"** means—*

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

(e) any other costs as may be specified by the Board;"

Section 208(2) of IBC

"(2) Every insolvency professional shall abide by the following code of conduct:—

(a) to take reasonable care and diligence while performing his duties;

(b) to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;

(c) to allow the insolvency professional agency to inspect his records;

(d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and

(e) to perform his functions in such manner and subject to such conditions as may be specified."

c) Relevant portion of the Code of Conduct under the IBBI (Insolvency Professionals) Regulation, 2016 are depicted below:

Regulation 16

"16. An insolvency professional must ensure that he maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions."

Regulations 25, 25A, 26 & 27

"Remuneration and costs.

25. An insolvency professional must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations"

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Regulations 25A

"25A. An insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website."

Regulations 26

"26. An insolvency professional shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing his remuneration."

Regulations 27:

"27. An insolvency professional shall disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must endeavour to ensure that such costs are not unreasonable."

IBBI -Insolvency Resolution Process for Corporate Persons Regulation 2016 are reproduced below:

INSOLVENCY RESOLUTION PROCESS COSTS

"31. Insolvency resolution process costs. "Insolvency resolution process costs" under Section 5(13)(e) shall mean-

(a) amounts due to suppliers of essential goods and services under Regulation 32; 41[(aa) fee payable to authorised representative under 42[sub-regulation (8)] of regulation 16A; (ab) out of pocket expenses of authorised representative for discharge of his functions under 43[section 25A];]

(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);

(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33; (d) expenses incurred on or by the resolution professional fixed under Regulation 34; and (e) other costs directly

relating to the corporate insolvency resolution process and approved by the committee."

"33. Costs of the interim resolution professional.
(1) The applicant shall fix the expenses 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. 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.

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

Disclosure of Costs.

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."

d) IBBI Circular No. IP/004/2018 dated 16.01.2018 also amply made clear on the subject of Resolution Professional's fee ___

Circular No. IP/004/2018 dated 16th January, 2018

"3. In view of the above, it is clarified that an insolvency professional shall render services for a fee which is a reasonable reflection of his work, raise bills/invoices in his name towards such fees, and such fees shall be paid to his bank account. Any payment of fees for the services of an insolvency professional to any person other than the insolvency professional shall not form part of the insolvency resolution process cost.

4. Similarly, any other professional appointed by an insolvency professional shall raise bills/invoices in his/its (such as registered valuer) name towards such fees, and such fees shall be paid to his/its bank account."

e) Also pertaining to point out that IBBI Regulatory Authority has also issued a circular vide No. IBBI/IP/013/2018 dated 12.06.2018 on fee and other expenses in regard to CIRP

Sub: Fee and other expenses incurred for Corporate Insolvency Resolution Process

….

"3. An IP is obliged under section 208(2)(2)(a) of the Code to take reasonable care and diligence while performing his duties, including incurring expenses. He must, therefore, ensure that not only fee payable to him is reasonable, but also other expenses incurred by him are reasonable. What is reasonable is conte3xt specific and it is not amenable to a precise definition. An illustrative list of facts considered in determination of what is reasonable is given in ***Annexure B****."*

6. Keeping the above in view, the IP is directed to ensure that:-

(a) the fee payable to him, fee payable to an Insolvency Professional Entity, and fee payable to Registered Valuers and other Professionals, and other expenses incurred by him during the CIRP are reasonable;

(b) the fee or other expenses incurred by him are directly related to and necessary for the CIRP.

(c) the fee or other expenses are determined by him on an arms' length basis, in consonance with the requirements of integrity and independence;

(d) Written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained;

(e) supporting records of fee and other expenses incurred are maintained at least for three years from the completion of the CIRP;

(f) approval of the Co0mmittee of Creditors (CoC) for the fee or other expense is obtained, wherever approval is required; and

(g) all CIRP related fee and other expense3s are paid through banking channel. "

8. It is clarified that the IRPC shall not include:

(a) any fee or other expense not directly related to CIRP;

(b) any fee or other expense beyond the amount approved by CoC, where such approval is required;

(c) any fee or other expense incurred before the commencement of CIRP or to be incurred after the completion of the CIRP;

(d) any expense incurred by a creditor, claimant, resolution applicant, promoter or member of the Board of Directors of the corporate debtor for non-compliance with applicable laws during the CIRP;

(e) any penalty imposed on the corporate debtor for non-compliance with applicable laws during the CIRP;

*[**Reference**: Section 17(2)(e) of the Code read with Circular No. IP/002/2018 dated 3rd January, 2018.]*

(f) any expense incurred by a member of CoC or a professional engaged by the CoC;

(g) any expense incurred on travel and stay of a member of CoC; and

(h) any expense incurred by the CoC directly;

*[**Explanation**: Legal opinion is required on a matter. If that matter is relevant for the CIRP, the IP shall obtain it. If the CoC requires a legal opinion in addition to or in lieu of the opinion obtained or being obtained by IP, the expense of such opinion shall not be included in IRPC.]*

(i) Any expense beyond the amount approved by the CoC, wherever such approval is required; and

(j) Any expense not related to CIRP.

f) It is unfortunate to record that it is in the fitness of things when this Tribunal has already decided the issue naturally then there is no need to revive the issue again. This Tribunal in its order dated 27.02.,2019 has fixed responsibility on Punjab National Bank to check the bills submitted by the Resolution Professional and approve the amount payable to RP/R1 towards fees and Resolution cost within two weeks. This Tribunal has also amply made clear that the full amount, as approved by the CoC-its fees and Resolution Cost be paid to the Resolution Professional. It is also amply made clear from the IBBI circular dated 12.06.2018, vide para -8(b) Insolvency Resolution cost shall not include any fee or other expenses beyond the amount approved by CoC.

g) All these suggest that when IBBI Rule itself reflects Insolvency Resolution cost be paid to RP(R1) to the extent of fee or other expenses approved by CoC and so also approved by this Tribunal, we are unable to uphold the view of the Adjudicating Authority. Hence, we are setting aside the order of the Adjudicating Authority.

However, in order to put the matter quietus, it is in the fitness of things, we are referring the matter to IBBI to determine the fees and cost of expenses after considering the submission of both sides – Appellant Bank & RP/R1 and whatever is approved by IBBI is to be paid by CD/PNB in terms of settlement with CD to Insolvency Resolution Professional or otherwise; if IBBI decides & agree with CoC then RP/R1 is to abide by the same in accordance with law laid down on the subject.

With these observations, we dispose of the Appeal. No order as to costs.

The Registry is directed to send a copy of this Judgment to the 'Chairman' IBBI.

(Justice M. Venugopal)
Member(Judicial)

(Dr. Ashok Kumar Mishra)
Member(Technical)

25th May, 2022

Akc