

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Insolvency) No. 232 of 2022**

In the matter of:

Antriksh Vyapaar Ltd.

....Appellant

Vs.

Kamal Nayan Jain

...Respondent

For Appellant: Mr. Jishnu Choudhury, Ms. Aritra Basu, Ms. Soumya Dutta, Advocates.
For Respondent: Mr. Shaunak Mitra, Advocate.
Mr. Kamal Nayan Jain (RP in person)

Comp. App. (AT) (Insolvency) No. 133 of 2022

In the matter of:

Antriksh Vyapaar Ltd. & Ors.

....Appellants

Vs.

Kamal Nayan Jain

...Respondent

For Appellants: Mr. Jishnu Choudhury, Ms. Aritra Basu, Ms. Soumya Dutta, Advocates.
For Respondent: Mr. Shaunak Mitra, Advocate.
Mr. Kamal Nayan Jain (RP in person)

ORDER

(Through Virtual Mode)

09.03.2022: Company Appeal (AT) (Ins.) No. 232 of 2022 has been filed against the order dated 06.04.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in I.A 196(KB)2021 by which I.A was filed by the Committee of Creditors (CoC) for replacing the Resolution Professional- Respondent No.1. The I.A was allowed by the Adjudicating Authority by order dated 06.04.2021 permitting the replacement

of Respondent with another Resolution Professional Shri Anang Kumar Shandilya. While passing the said order, Adjudicating Authority also in para 5 directed that fees of the Resolution Professional (RP), a sum of Rs.20,16,667/- consisting of RP's fee plus fee for support services upto 31.03.2021 be also paid. The Appellant is aggrieved of only part of the order of the Adjudicating Authority insofar as direction for payment of fees.

2. Company Appeal (AT) (Ins.) No. 133 of 2022 has been filed against the order passed by the Adjudicating Authority by which Adjudicating Authority has directed in Contempt Application filed by the Resolution Professional to make the payment of fee as per order dated 06.04.2021 within two weeks. Aggrieved by the order dated 17.12.2021 passed by the Adjudicating Authority in Contempt Application No. 6(KB)2021, Company Appeal (AT) (Ins.) No. 133 of 2022 has been filed.

3. Learned Counsel for the Appellant in support of the Company Appeal (AT) (Ins.) No. 232 of 2022 submits that at the time when the I.A 196(KB)2021 was filed, there was no issue regarding payment of fee of the Resolution Professional and the Adjudicating Authority directed for payment of fees without Appellant having any opportunity to submit their case. It is submitted that the Resolution Professional was not doing any substantial work and due to actions of the Resolution Professional, the Corporate Debtor stopped working as a going concern and there were certain issues which were placed before the Adjudicating Authority. It is further submitted that when the Resolution was passed for replacement, there was no occasion to direct for any payment thereafter.

4. Learned Counsel for the Resolution Professional submits that on the date when the order was passed, Learned Counsel for the CoC was present and no objection was raised at that time and even after 06.04.2021, there has been communication by CoC that payment shall be made as per order dated 06.04.2021.

5. We have heard the Counsel for the parties and perused the record.

6. The order passed by the Adjudicating Authority in para 5 indicates that the Adjudicating Authority on the basis of 2nd CoC meeting dated 25.08.2020 computed fee and directed for payment till 31.03.2021. It is further relevant to note that the Adjudicating Authority itself noted that in the I.A 196(KB)2021, there are certain remarks against the Resolution Professional which was sought to be expunged. Whether the remarks were relevant with regard to functioning of the Resolution Professional and have any bearing on the fees are the issue which need to be considered by the Adjudicating Authority. Further, when Resolution was taken to replace the Respondent in January, 2021 whether any claim should be accepted after the said period also to be gone into. The submission of the Counsel for the Respondent that the Counsel for the other side was present and he ought to have raised objection cannot be ground to reject all the pleas which have been raised by the Appellant before us. The Adjudicating Authority having noticed that there are remarks against the Resolution Professional opportunity ought to have been given to CoC to put their claim with regard to entitlement of fee.

7. We, thus, are of the view that the ends of justice be served in setting aside the part of the direction in para 5 of the order dated 06.04.2021 by which

the direction was issued to make payment of Rs. 20,16,667/-. We make it clear that we are not expressing any opinion on the merits of the claim which is to be considered and decided by the Adjudicating Authority after hearing both the parties. The Appeal is partly allowed. The matter is remitted to the Adjudicating Authority to pass fresh order. Both the parties are permitted to file their appropriate affidavit along with materials before the Adjudicating Authority regarding entitlement of RP fees plus support fee within four weeks from today. On filing of the said materials by both the parties, the Adjudicating Authority shall fix a date and after hearing the parties, dispose of the matter. The matter being pending from long time, we request the Adjudicating Authority to take a decision at an early date preferably within three months from materials filed by both the parties.

8. In view of the order passed in Company Appeal (AT) (Ins.) No. 232 of 2022, Company Appeal (AT) (Ins.) No. 133 of 2022 is allowed and impugned order passed by the Adjudicating Authority on 17.12.2021 is set aside. Both the Appeals are disposed of.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

Anjali/nn