

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 430 of 2025

**[Arising out of the Order dated 10.12.2024 passed by the
'Adjudicating Authority' (National Company Law Tribunal,
New Delhi Bench) in I.A. No. 343 of 2021 in C.P.(IB) No.
889(ND) of 2019]**

IN THE MATTER OF:

Mohd Nazim Khan

Erstwhile IRP of International
Trenching Private Limited
IBBI Regn No IBBI/IPA-002/IP-N00076/
2017-18/10207
MNK House, 9A/9-10, Basement East Patel Nagar,
New Delhi-110008

...Appellant

Versus

1. **HDFC Bank Limited**
Ansal Classique Tower (5th Floor),
Rajouri Garden, J Block, New Delhi-110027 **...Respondent No.1**
2. **Mr. Amrit Pal Bedi**
A-3/69, Second Floor, Paschim Vihar,
West Delhi, New Delhi- 110063 **...Respondent No.2**
3. **Blueplanet Infradevelopers Private Limited**
40/16, East Patel Nagar New Delhi – 110008 **...Respondent No.3**
4. **Indusind Bank Limited**
House No. 499 First Floor, Kohat Enclave,
Pitampura New Delhi – 110034 **...Respondent No.4**
5. **Deutsche Bank**
A.G. Ground & 14th Floor,
Hindustan Times House, 18-20 K G Marg, New
Delhi – 110001 **...Respondent No.5**
6. **Dewan Housing Finance Corporation Limited**
Plot No. 6, Block-A, Sector-2, Noida,
UP-201301 **...Respondent No.6**

7. **International Trenching Private Limited**
Represented by Narendra Singh Chhabra,
Liquidator
CIN: U45203DL2002PTC115418 301 309
Third floor Vardhman Plaza-I, J Block, Rajouri
Garden, New Delhi-110027

...Respondent No.7

Present:

For Appellant : Mr. Nilotpal Shyam, Ms. Shivali, Mr. Tejas Mishra
and Mohd. Nazim Khan, Advocates

For Respondent : Ms. Niti Jain, Nitai Agarwal, Advocates for R-1
Ms. Shivani Chawla, Advocate for R-3
Mr. Sanjay Kumar, Advocate for R-5

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present appeal is filed against the impugned order dated 10.12.2024 passed by Hon'ble Adjudicating Authority ("National Company Law Tribunal") New Delhi Bench, New Delhi. The impugned order was passed in IA 343/2021 filed by the Appellant i.e. Erstwhile IRP of the Corporate Debtor to order the Respondents Committee of Creditors of the Corporate Debtor for payment of ₹29,23,308/- to Committee of Creditor (CoC) of the Corporate Debtor towards the payment CIRP cost under Section 60(5)(b) of Insolvency and Bankruptcy Code, 2016 along with Section 425 of the Companies Act, 2013 and appropriate proceedings in connection with.

2. The Appellant had sought the following reliefs from the Adjudicating Authority:

“a. Order the Respondents to deposit the total amount of Rs. 29,23,308/- (Rupees Twenty-Nine Lakh Twenty Three Thousand Three Hundred Eight) in the Bank Account as mentioned below:

Name of Beneficiary: Mohd Nazim Khan
Name of Bank: ICICI Bank
Branch: Karol Bagh, New Delhi
Saving A/c No: 629101104907
IFSC Code: ICIC0006291

b. Punish the COC Members with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees or with both as specified under Section 12 of the Contempt of Courts Act, 1971; and

c. Any other order that the Hon'ble Tribunal may deem fit in the facts and circumstances of the case.”

3. The Adjudicating Authority in its impugned order dated 10.12.2024 in I.A. No. 343 of 2021 in C.P.(IB) No. 889(ND) of 2019 has come to the following findings:

“vi. Admittedly, in the present application, the CoC subsequent to the filing of the present application passed a Resolution in 10th COC meeting dated 24.02.2021. This resolution suddenly decided that the fees of Rs. 1,50,000/ were only for one month. For the remaining 15 months, the RP shall be paid a lump sum amount of Rs. 1,50,000/-, totalling Rs. 3,00,000/- payable to the IRP for the work undertaken over 16 months.

vii. The Hon'ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors. in Civil Appeal No. 10673 of 2018** has held that the commercial decision of CoC is non-justiciable.

viii. In light of the above-quoted judgement, it is clear that the "Commercial wisdom of CoC" is given paramount status. This Adjudicating Authority does not have the jurisdiction or authority to analyze or evaluate the commercial decisions of the CoC. The CoC, in its commercial wisdom, has decided and is willing to pay Rs. 3,00,000/- to the Applicant as remuneration for the entire period the Applicant has acted as an IRP for the Corporate Debtor. Therefore, this Adjudicating Authority cannot interfere with this decision of the CoC.

ix. In view of the above, the CoC members are directed to make a payment of Rs. 3,00,000/- to the Applicant as remuneration. This amount shall be considered as the CIRP cost and must be paid within 30 days from the date of this order, minus any amount already paid by the CoC Members. Failing this, the amount shall be realized through the due process of law.

x. With respect to the reimbursement of the expenses incurred from the 6th CoC meeting until the handover by the Erstwhile IRP to the New RP, we further direct the CoC Members to pay INR 91,308/-directly to the bank account of the stakeholders/professionals after due verification of the proper bills for the services rendered/received by the Applicant/IRP. This amount shall be considered as the CIRP cost and must be paid within 30 days from the date of this order, minus any amount already paid by the CoC Members. Failing this, the amount shall be realized through the due process of law."

Submission of Appellant

4. The Appellant was appointed as the IRP in Sonal Anand vs. M/s International Trenching Pvt Ltd vide order dated 08.08.2019 bearing CP (IB) 889/ND/2019, filed under Section 9 of Insolvency and Bankruptcy Code,

2016 ("IBC") before Hon'ble NCLT and continued to discharge his statutory duties until 20.11.2020, i.e., for more than 15 months, in compliance with the provisions of IBC. ***Duration of appointment as IRP of the Appellant is from 08.08.2019 to 20.11.2020. It is noteworthy that the Appellant was replaced vide order dated 20.11.2020.***

5. In the first meeting of the Committee of Creditors ("COC") held on 21.09.2019, the COC approved the modified remuneration of the Appellant from the proposed amount of ₹200,000 per month to ₹1,50,000/-. At no point was the said amount described or resolved to be a lump-sum for the entire tenure, however, the theme of the IBC is to remunerate the IRP/RP on monthly basis and the new RP was also paid monthly ***remuneration (Item No. 12 of the said minutes at Pg 102 of Volume I of the Main Appeal).***

6. The Appellant after expiry of tenure of thirty days from the date of his appointment as Interim Resolution Professional discharged all the functions of the Resolution Professional till his replacement vide order dated 20.11.2020 in terms of Section 16(5) of the Code. The relevant extracts of Section 16(5) of the IBC are reproduced as under:

"Section 16:

(1) ---

(2) ---

(3) ---

(4) ---

(5) The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under section 22"

7. The Appellant continued to perform all duties as IRP, as his proposed replacement was not approved by the Hon'ble NCLT. Accordingly, in terms of Section 22(3)¹ of the IBC, the Appellant lawfully discharged his functions as RP until a replacement is approved by the COC and confirmed by the Hon'ble NCLT. During his tenure, he conducted six COC meetings in his capacity as an officer of the Court.

8. The Appellant also brings to our notice that besides discharging his lawful duties in the capacity of IRP, it also fulfilled the role of Legal Counsel and represented the Corporate Debtor in various Courts, Tribunal and

¹ **Section 22:**

(1) ----

(2) The committee of creditors, may, in the first meeting, by a majority vote of not less than [sixty-six] per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(3) Where the committee of creditors resolves under sub-section (2):

(a) to continue the interim resolution professional as resolution professional, it shall communicate its decision to the interim resolution professional, subject to a written consent from the interim resolution professional in the specified form it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

(b) **to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional** (along with a written consent from the proposed resolution professional in the specified form). *[Emphasis Supplied]*

(4) ----

(5) ----“

Governmental Departments without charging a single penny in order to save the CIRP costs.

9. The Appellant further states that in discharge of his duties as IRP, it strictly complied with the timelines prescribed under the IBC and the IBBI (CIRP) Regulations, 2016 and performed all statutory functions diligently and without any delay.

10. In view of Section 16(5) read with Section 22(3) of the IBC, where the Committee of Creditors does not appoint another RP and no replacement is confirmed by the Adjudicating Authority, the IRP continues to function and discharge the duties of the RP. In such circumstances, the IRP is treated in law as a “Deemed Resolution Professional” (“Deemed RP”) for the period during which he continues to manage the Corporate Debtor until a duly appointed RP takes charge.

11. Upon his appointment as IRP vide order dated 08.08.2019, the Corporate Debtor was a going concern, and the Appellant made continuous efforts to preserve its status as such throughout his tenure. The Appellant also undertook and completed pending projects of the Corporate Debtor, including TCIL (Navy & Army), and successfully generated revenue therefrom.

12. During the course of CIRP, the Appellant, while discharging his statutory functions as IRP, was compelled to file an application under Section 19(2) and 19(3) of IBC on 31.10.2019 before the Hon’ble NCLT bearing

Company Application No. 107/2019 connected in CP (IB) 889/ND/2019, seeking assistance, co-operation and information from the management of Corporate Debtor and handover of the management of Corporate Debtor to IRP as per the provisions of IBC.

13. In discharge of his statutory duties under the IBC had filed an application on 16.11.2019 under Sections 43, 45, 50, 66 and Section 60(5) of the Code read with Regulation 35A of the IBBI (CIRP) Regulations, 2016 before the Hon'ble NCLT bearing Company Application No. 872/2019 connected in CP (IB) No. 889/ND/2019, seeking appropriate reliefs for declaring the transaction as undervalued identified by the IRP during the CIRP. It is further submitted that the said application was withdrawn without providing any justification, and accordingly, the same was withdrawn without any adjudication on merits, despite the issues identified therein remaining unexamined.

14. The Appellant brings to our notice that Ms. Deepika Bhugra Prasad, was appointed Resolution Professional vide order dated 20.11.2020 passed by the Hon'ble NCLT, and subsequently, an order of liquidation was passed on 04.10.2023. During her tenure, unwarranted allegations have been levelled against the Appellant, which appear to be an attempt to deflect from her own shortcomings. At the time of handover on 07.12.2020, the Corporate Debtor was a going concern, owing to the efforts of the Appellant in preserving

and maximizing the value of its assets. It is further pertinent to note that the liquidation process remains ongoing and has not yet reached conclusion.

15. After completion of his tenure, the Appellant sought payment of his dues by filing IA No. 343/2021 connected in CP (IB) No. 889/ND/2019. Upon issuance of notice in the said application, the CoC convened its 10th meeting on 24.02.2021 and, for the first time—and notably after the replacement of the IRP—passed a resolution reinterpreting the earlier approved remuneration of ₹1,50,000/- as a one-time consolidated amount, thereby substantially restricting the Appellant's remuneration. No such interpretation had ever been recorded during his tenure. Adverse observations were also introduced at that stage, despite there being no contemporaneous record of any dissatisfaction. Simultaneously, the successor RP was granted remuneration on a monthly basis at a higher rate. The sequence of events demonstrates that the impugned decision was retrospective and arbitrary. The said decision in 10th COC meeting dated 24.02.2021 was taken once the Ld. Adjudicating Authority issued notice in the impugned IA vide order dated 16.02.2021.

16. Further, the objections recorded in the 10th COC meeting is *ex facie* malafide as the same relates to the earlier period and no such objections were ever recorded by the COC in the earlier COC member. Further, while recording such observations, the COC was well aware that the Appellant was not there to respond to such allegations or such allegations was never put

before the Appellant for his response. Therefore, it is ex facie arbitrary and malafide.

17. The Respondents have selectively interpreted the Minutes of the 1st COC Meeting dated 21.09.2019 to wrongly contend that ₹1,50,000/- was a one-time consolidated amount. The resolution merely approved remuneration of ₹1,50,000/- (exclusive of taxes) without any stipulation that it was a lump-sum for the entire tenure.

18. In the present case, the COC's later interpretation restricting the remuneration to ₹3,00,000/- for the entire tenure is inconsistent with its earlier approval and unsupported by any express stipulation of a lump-sum arrangement. The issue pertains to statutory entitlement and fairness in fixation of CIRP costs, not a commercial assessment of viability. The impugned order, by treating the matter as falling within unreviewable commercial wisdom, has therefore erred in law and warrants interference. The Respondents have selectively interpreted the minutes of the 1st COC meeting to arbitrarily restrict the Appellant's remuneration. Remuneration payable to an IRP/RP is a statutory CIRP cost under Section 5(13) of the IBC, read with Regulations 33 and 34 of the IBBI (CIRP) Regulations, 2016 and is not governed by the commercial wisdom of the COC.

19. To remove ambiguity regarding remuneration of IRP/RP, the Insolvency and Bankruptcy Board of India introduced Regulation 34B along with Schedule II to the IBBI (CIRP) Regulations, 2016 vide notification no.

IBBI/2022-23/GN/REG091 dated 13.09.2022, prescribing minimum monthly fixed fee linked to the quantum of admitted claims. The Schedule provides that where admitted claims are $\leq$ ₹50 crore, the minimum fee payable is ₹1,00,000/- per month and the same is as under:

“Minimum Monthly Fixed Fee

Minimum fixed fee as per the table -1 below shall be paid to the interim resolution professional or the resolution professional, as the case may be, for the period mentioned in clause 2:

Quantum of Claims Admitted		Minimum Fee Per Month (Rs. lakh)
(i)	Less than or equal to Rs. 50 crore	1.00
(ii)	More than Rs.50 crore but less than or equal to Rs.500 crore	2.00
(iii)	More than Rs.500 crore but less than or equal to Rs.2,500 crore	3.00
(iv)	More than Rs.2,500 crore but less than or equal to Rs.10,000 crore	4.00
(v)	More than Rs.10,000 crore	5.00

Hence, as per the list of claims as on 03.12.2023, as reflected on the IBBI Portal, the claims admitted are amounting to INR 3,68,232,159 therefore, the minimum remuneration of IRP is INR 1 lakh per month.”

20. Though introduced subsequently, Regulation 34B clarifies that remuneration of an IRP/RP is inherently time-based and payable on a monthly basis. The Respondents’ interpretation treating the approved amount as a one-time consolidated fee is contrary to the regulatory scheme governing CIRP costs.

21. The Appellant claims that he is not seeking any extraordinary benefit and would be satisfied if the same monthly remuneration as approved for the successor RP is extended to him for the period during which he lawfully discharged the functions of IRP, that is, for 15 months. The grievance is limited to ensuring parity and a legally consistent interpretation of the resolution passed by the COC.

22. The Appellant, without prejudice to his rights and contentions, would be satisfied if he is granted remuneration at the same monthly rate as approved for the successor Resolution Professional, for the period during which he discharged the functions of the Interim Resolution Professional, so as to ensure parity and consistency in treatment.

Submissions of Respondent No. 1 – HDFC Bank Limited

23. The Appellant is challenging the order dated 10.12.2024, vide which the Adjudicating Authority was disposed of the IA. No. 343/2021 filed by the Appellant- Ex- IRP, for payment of liabilities of ₹29,23,308/- by holding that the Adjudicating Authority does not have the jurisdiction or authority to analyse or evaluate the commercial decisions of the COC and directing the COC members to make a payment of ₹3,00,000/- to the Appellant as remuneration.

24. The impugned order passed by the Ld. Adjudicating Authority is a well-reasoned order passed in accordance with the statutory provisions and guiding rules and regulations and hence, warrants no interference.

25. Appellant cannot take advantage of his own wrong and take refuge under Section 16 (5) read with Section 22 of IBC. Appellant's contention that he should be paid and compensated for the entire period till the time Adjudicating Authority has approved the appointment of the new Resolution Professional i.e. on 20.11.2020, cannot be considered in isolation. The same has to be seen along with the conduct of the Appellant in thwarting every effort of the COC to replace him. Reliance is placed upon the order dated 06.08.2021 passed by Co-ordinate bench of this Hon'ble Court in an appeal filed by Appellant titled as **"Mohd Nazim Khan v COC & Ors" bearing case No. Company Appeal (AT) (Ins.) No. 1040 of 2020** challenging the order passed by NCLT for his replacement. Vide order dated 06.08.2021, the coordinate bench of this Appellate Tribunal in CA (AT) Insolvency No. 1040 of 2020 observed that *"Appellant does not have any vested right to continue on the post of IRP/ Resolution Professional"*. Right from the inception when the decision was initially taken to replace the Appellant, every possible effort is taken by the Appellant to delay the process. In fact, when order was passed by the Adjudicating Authority on 27.11.2019, permitting the COC to seek appointment of new RP after passing a Resolution under Section 22(2) of IBC and upholding that the COC has resolved to disprove the appointment of the Appellant as RP, the Appellant had purposely not convened the COC meeting only to stall and delay the process of replacement of RP. Therefore, it is stated that now the Appellant cannot take refuge under statutory provisions of the

Code. Appellant's conduct does not justify him to seek reliefs as sought forth in the Appeal.

26. The CoC, in exercise of its statutory powers under the Insolvency and Bankruptcy Code, 2016 ("the Code") and the applicable regulations, is vested with the exclusive authority to determine the fees and expenses of the IRP. The commercial wisdom of the CoC, which represents the collective decision of Financial Creditors, is paramount and has consistently been held to be non-justiciable except on very limited grounds. In the present case, the CoC, with 100% voting share, consciously approved a consolidated remuneration of ₹1,50,000/- for the entire tenure of the IRP, which was subsequently enhanced to ₹3,00,000/- considering the period of engagement. Such determination, being a commercial decision, is not amenable to judicial review.

27. The Appellant was fully aware, from the very inception, of the nature and quantum of remuneration payable to him as IRP. A conjoint reading of the notice, agenda and minutes of the first CoC meeting unequivocally establishes that the remuneration was fixed as a lump sum amount and not as a recurring monthly payment. The Appellant himself had proposed a remuneration structure distinguishing between the role of IRP and that of Resolution Professional ("RP"), wherein a monthly remuneration was envisaged only upon his appointment as RP. Having participated in the CoC

meeting and acquiesced to the decision taken therein, the Appellant is now estopped from contending otherwise.

28. The contention of the Appellant that he is entitled to a monthly remuneration of ₹1,50,000/- is based on a deliberate misreading of the record. The CoC, in its commercial wisdom, specifically modified the proposed remuneration and approved a consolidated amount for the IRP's tenure. The distinction between remuneration and salary is well recognised in law. Remuneration refers to compensation for services rendered and does not necessarily imply periodic payment, whereas salary denotes a fixed periodic payment. In the present case, the CoC consciously approved remuneration and not salary, thereby negating any claim of monthly entitlement.

29. The fee claimed by the Appellant is not only contrary to the decision of the CoC but is also in violation of the guidelines issued by the Insolvency and Bankruptcy Board of India ("IBBI") vide circular dated 12.06.2018. The said circular mandates that an insolvency professional must charge a reasonable fee, having regard to factors such as the complexity of the case, value of assets, time devoted and effectiveness in discharging duties. The Appellant's claim is wholly disproportionate and fails to meet the standard of reasonableness envisaged under the regulatory framework.

30. The conduct of the Appellant during his tenure as IRP disentitles him from claiming any enhanced remuneration. The record demonstrates a consistent pattern of delay, non-cooperation and conduct contrary to the

objectives of the Code. The Appellant failed to convene timely CoC meetings despite repeated requests, thereby impeding the CIRP process. Even after the CoC expressed its intent to replace him, the Appellant adopted obstructive tactics and delayed the process, necessitating repeated follow-ups by the Respondent. the Appellant acted in complete disregard of the commercial decisions of the CoC by opposing the extension of the CIRP period and instead proceeding to file an application for liquidation, contrary to the express instructions of the majority CoC member. Such conduct not only undermines the statutory scheme of the Code but also demonstrates a clear conflict of interest, as the Appellant simultaneously proposed himself as the liquidator. This mala fide conduct has been duly noted in the proceedings and clearly disentitles the Appellant from claiming any equitable relief.

31. The Appellant's challenges to his replacement and other decisions of the CoC have already been rejected by the Hon'ble Appellate Tribunal, thereby affirming the primacy of the CoC's commercial wisdom and the lack of merit in the Appellant's grievances. The present Appeal is nothing but a continuation of the Appellant's attempts to reopen settled issues and extract unjustified financial gain.

32. The CoC, despite the Appellant's conduct, has acted fairly and reasonably by approving a total remuneration of ₹3,00,000/- for the entire period of his engagement, along with reimbursement of verified expenses. This itself demonstrates the bona fide approach of the Respondent and the

CoC in ensuring that the Appellant is adequately compensated for his services, without permitting unjust enrichment at the cost of the creditors.

33. The Impugned Order does not warrant any interference by this Hon'ble Tribunal. The findings of the Ld. Adjudicating Authority are in complete alignment with the statutory framework and the settled position of law regarding the non-interference with the commercial wisdom of the CoC. The Appeal, being devoid of merit and based on an erroneous interpretation of facts and law, deserves to be dismissed with costs.

Appraisal

34. We have heard the counsels of both sides and also perused the material on record.

35. In the present case Section 9 petition was admitted against Tarang Exports Private Limited – the Corporate Debtor vide order dated 17.02.2020, which was subsequently modified vide corrigendum dated 20.02.2020. The Adjudicating Authority appointed the Appellant as the IRP on 08.08.2019.

36. The Appellant – ex-IRP contends that the decision of the Committee of Creditors (CoC) while fixing the remuneration of ₹1,50,000/- for remaining 15 months should be set aside. It further claims that the Adjudicating Authority has wrongly interpreted the judgment of **K. Sashidhar Vs. Indian Overseas Bank & Ors. in Civil Appeal No. 10673 of 2018**. The Hon'ble Supreme Court's decision addressed the critical issue in CIRP i.e. scope of judicial scrutiny over a commercial decision taken by the CoC to approve or

reject a resolution plan but not for fixing the remuneration of Insolvency Resolution Professional (IRP). This decision has put the issue beyond doubt that the commercial decision of the CoC is non-justiciable and will not be open to scrutiny by the NCLT. However, this judgment does not make all decisions or duties entrusted upon the CoC under the Code as non-justiciable. As the control of the Corporate Debtor shifts to the creditors in insolvency, the decisions taken by the CoC in the course of the resolution process impacts and effects the rights of stakeholders. The CoC during the resolution process must therefore balance responsibilities towards all such stakeholders. The payment of the remuneration for the IRP falls in such category. In the above background, it is the claim of the Appellant, the Adjudicating Authority has erroneously relied on the judgment of Hon'ble Supreme Court in the case of **K. Sashidhar (supra)** and has not allowed the claim of the IRP for paying the fees as per its claim.

37. Furthermore, Appellant claims that in order to remove the gaps with regard to monthly remuneration of IRP/RP, the IBBI inserted Regulation 34B and Schedule II in the IBBI (CIRP) Regulations, 2016 vide notification no. IBBI/2022-23/GN/REG091 dated 13.09.2022 by fixing the minimum monthly remuneration of IRP/RP

IRP as deemed RP

38. The Appellant also relies on Section 16(5) of the Code, which provides that the term of the IRP shall continue till the date of appointment of the Resolution Professional under Section 22 of the Code. As such the fees

approved by CoC is only for 30 days as and when IRP took the post as deemed RP functions likewise and fees will also be paid for period of deemed RP. As per Section 22 of the Code the first CoC meeting shall be held within 30 days from the insolvency commencement date and the CoC may in the first meeting either resolve to by the IRP as RP auto replace the IRP by another RP. The Appellant claims that combined reading of Section 16(5) and Section 22 clarifies that the term of IRP is 30 days. However, if IRP is not confirmed as RP at the first CoC he will be deemed as RP and will be remunerated on the basis of monthly remuneration.

39. Respondent No.1 claims that it is holding 80.64 % of the voting share in the CoC. It claims that the first meeting took place on 21.09.2019 wherein agenda item No. 12, it was resolved that the IRP will be paid ₹1,50,000/- with 100% voting. It is worthwhile to note that the Agenda for item 12 which was proposed by the IRP had stated that the remuneration for the IRP to be ₹2,00,000/-. The relevant portion of the draft Agenda Item No. 12 is as follows:

"ITEM NO. 12

TO RATIFY AND APPROVE THE REMUNERATION OF IRP INCURRED BY THE IRP AS PER REGULATION 33 OF IBBI (CIRP) REGULATION 2016.

The Chairman to present before the COC the amount of remuneration to be paid to Mohd. Nazim Khan of Rs. 200,000 (Two Lakh) to act as IRP of Corporate Debtor for the purpose of ratification by COC.

The COC may consider and approve the following resolutions:

"RESOLVED THAT pursuant to the Regulation 33 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the remuneration of Rs. 200,000 (Two Lakh) (exclusive of applicable taxes) for the Interim Resolution Professional be and is hereby approved.

RESOLVED FURTHER THAT Interim Resolution Professional be and is hereby authorised to do all such acts, deeds and things as may be required or considered necessary or incidental thereto."

40. In the same meeting, there was an Agenda Item No. 14 relating to fix the remuneration of the resolution professional which is noted as below:

"ITEM NO. 14

TO FIX THE REMUNERATION OF RESOLUTION PROFESSIONAL

The COC may fix the remuneration of Resolution Professional, which shall constitute Corporate Insolvency Resolution Process costs:

The following resolution is accordingly proposed which may, if thought fit, be passed, with or without modification(s):

RESOLVED THAT pursuant to Section 22(2) of Insolvency and Bankruptcy Code, 2016, appointment of Mohd. Nazim Khan, having IBBI Registration No. IBBI/IPA-002/IP-N00076/2017-18/10207, Interim Resolution Professional as Resolution Professional at a monthly remuneration of Rs.1,50,000 (One Lakh Fifty Thousand only) (exclusive of applicable taxes) be and is hereby approved by the members of Committee of Creditors of International Trenching private Limited (Under CIRP)"

41. We note that the above Agenda Item No. 14 was not approved by the COC per the minutes of the meeting noted at page 104 of the APB.

"The CoC members considered the matter and the dissented the following resolution:

RESOLVED THAT pursuant to Section 22(2) of Insolvency and Bankruptcy Code, 2016, appointment of Mohd. Nazim Khan, having IBBI Registration No. IBBI/IPA-002/1P-N00076/2017-18/10207, Interim Resolution Professional as Resolution Professional be and is hereby approved by the members of Committee of Creditors of International Trenching Private Limited (Under CIRP).

RESOLVED FURTHER THAT Resolution Professional be and is hereby authorised to do all such acts, deeds and things as may be required or considered necessary or incidental thereto."

DISAPPROVED WITH 100% VOTING rights

Thus, a combined reading of the notice agenda and the minutes of the first CoC meeting makes it abundantly clear that the Appellant was fully aware of the fact that the payment as an IRP would be made cumulatively. Therefore, the averment of the Appellant that he was entitled to a monthly payment of ₹150000/- is an erroneous interpretation of facts.

42. We also observe that in the first CoC meeting itself, the appointment of the IRP as an RP was rejected by 100% voting and accordingly an application for seeking replacement of the IRP with another RP was preferred. However, the said application was rejected by the Adjudicating Authority on the grounds that the CoC had not yet approved the appointment of Mr. Ashok Kumar Juneja as the RP. Therefore, the Adjudicating Authority was giving primacy to CoC in the appointment or removal of the IRP/RP.

43. Thereafter, the Respondent sent an email dated 30.11.2019 to the Appellant requesting him to convene the CoC, so that the resolution for their replacement can be considered. This request was repeated by the Respondent No. 2 vide their email dated 05.12.2019, 10.12.2019 and 12.12.2019. However, the Appellant kept on delaying the holding of the CoC meeting. Only on 17.12.2019 a meeting was held wherein the replacement of the Appellant with Ms. Deepika Bhugra Prasad was approved by the CoC. Accordingly, basis the approval of the 4th CoC meeting an application bearing IA No. 766/2019 was filed before the Adjudicating Authority seeking the replacement of the IRP.

44. During the 5th CoC meeting which was held on 29.01.2020 the Appellant informed the committee members that an Expression of Interest has been received for submitting their resolution plan. However, as the stipulated period 180 days as per Section 12 of the Code was to expire on 04.02.2020 and one of the resolution applicants had failed to submit its resolution plan, the Respondent No. 1 bank voted for liquidation of the Corporate Debtor as no rehabilitation plan had come forward. However, an opportunity was considered to be given to the prospective applicants. Accordingly, the Respondent bank wrote an email on 13.02.2020 to the Appellant to take appropriate steps for filing an application for exclusion or in the alternative for extension as per Regulation 40. However, the Appellant refused to file an application seeking extension of time for revival and rehabilitation of the Corporate Debtor. Therefore, the respondent was

constrained to file an application bearing IA No. 1381/2020 seeking exclusion of a period of 144 days from the period of CIRP or in the alternative to extend the CIRP for a period of 90 days as per law.

45. Respondent also brings to our notice that when the CoC was deliberating whether the Corporate Debtor should be liquidated in the absence of resolution plan or seek extension of CIRP, the IRP strongly opposed the said extension/ exclusion application. Respondent claims that the Appellant just wanted to stall his replacement and reap the benefits from liquidation process by being the liquidator as he had proposed his name for appointment as Liquidator, even though the CoC never agreed to the appointment of the Appellant as a Liquidator. Despite the objection of the Respondent, the Appellant went ahead and filed an application seeking liquidation of the Corporate Debtor bearing CA No. 1640/2020, thereby proposing himself as the liquidator, even though the Respondents had clearly directed the Appellant herein to file an application for seeking extension.

46. Despite all this Hon'ble NCLT allowed the extension sought by the Respondent in IA No.1381/2020. Further, thereafter, vide 6th meeting held on 13.10.2020 it was resolved to extend the CIRP period and vide 7th meeting held on 26.10.2020, it was resolved to replace the IRP with a different RP. Subsequently, NCLT in IA No. 766/2020 confirmed the replacement of the Appellant.

47. The Respondent brings to our notice that the Appellant has made every possible effort to frustrate the rehabilitation of the stressed Corporate Debtor. The Appellant had also filed two Appeals before NCLAT with a malafide intent, one appeal against the order of extension of CIRP process and second the order of replacement of IRP. Both the appeals were rejected by the Hon'ble Appellate Tribunal being devoid of merit.

48. The Respondent also brings to our notice that even till date, the Appellant has not provided all details sought from him and this fact is recorded in the 10th CoC meeting at Agenda No. 7.

49. Despite the above-noted history of the working of the IRP, keeping in mind that the IRP has worked for more than a month, the CoC considered the initial amount of ₹150,000/- as a remuneration for the first month and for the remaining period, though IRP not working for the benefit of the Corporate Debtor as an IRP, the CoC had ratified for an amount of ₹150,000/- to be paid to the IRP/Appellant. As such the CoC had approved a total payment of ₹300,000/- to be payable to the Appellant IRP for the entire period, it has tendered his services as IRP. This has been notified also to the Appellant vide email dated 28.02.2021 and 30.08.2021.

50. We find that the appellant contends that the word remuneration is claimed to be periodic in nature and same has to be taken as monthly in the context of CIRP. On the other hand, Respondent contends that the Appellant

has erroneously interpreted the word remuneration and salary to be one and the same thing. The two words are different and such difference has been acknowledged by Courts across globally. While remuneration is for a service that someone has performed, whereas as a salary is an agreed compensation for services especially professional or semi-professional services usually paid at regular intervals. Thus, from the minutes of the meeting of the first CoC as well as from the agenda, it is clear that remuneration of ₹150,000/- was decided qua the Appellant and not a salary.

51. Basis the combined reading of the agenda, minutes and the resolutions passed by the CoC, we find that the Appellant was fully aware that he would be entitled only for an amount of ₹150,000/- for the entire length of his term and he would receive monthly remuneration only if he was appointed as the RP.

52. It is noted from agenda Item No. 14 that the Appellant was entitled to a monthly payment of ₹150,000/- only if he was appointed as a RP. We note that the confirmation of the IRP as RP was not approved in the very first CoC meeting and the majority shareholder i.e. Respondent No.1 had clearly brought on record that they wanted the IRP to be replaced with some other RP. However, due to various reasons, which have been noted herein earlier, the approval of the replacement of IRP with a Resolution Professional took time and was ultimately replaced by a new RP.

53. We also note that IRP was not fully cooperating with the CoC. IRP cannot function independent of the CoC and has to carry out the decisions of the CoC. In this case we find that the IRP was at loggerheads with the CoC. IRP doesn't have a vested right to continue as IRP against the wishes of CoC. There were no illegal demands placed by CoC and therefore, there was no justification for the IRP not to cooperate with the functioning of the CoC. Since it took some time for a RP to be appointed as a replacement of IRP, therefore, the CoC and later on the Adjudicating Authority has allowed it to be paid ₹150,000/- as remuneration and for the remaining period ₹150,000/- for the services performed by the IRP.

54. We observe that the CoC was justified in the facts and circumstances, of the case as noted herein, to fix the monetary compensation which should be paid to the IRP. We find that CoC was well within its rights to assess the quantum and quality of the work done by the IRP. Even though we agree with the final conclusion of the Adjudicating Authority in confirming the decision of the CoC for payment of the amount to the IRP, we do not agree on the justification provided by the CoC in placing their reliance on **K. Sashidhar (supra)** and giving primacy to CoC in making payment to IRP for the professional duties performed by it.

55. We observe that the core legal framework for fixing fees for Interim Resolution Professionals (IRPs) and Resolution Professionals (RPs) is mainly governed by the Insolvency and Bankruptcy Code, 2016 (IBC), specifically

Section 60(5) and Regulations 33 and 34 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Furthermore, the Hon'ble Supreme Court in **Devarajan Raman vs. Bank of India Limited [Civil Appeal No. 3160 of 2020]** has clarified that the NCLT, as the Adjudicating Authority, possesses jurisdiction under Section 60(5)(c) of the IBC to determine the fees and costs payable to professionals appointed during the Corporate Insolvency Resolution Process (CIRP), even if the CIRP order is subsequently set aside. This judgment emphasizes that fee fixation cannot be an ad hoc exercise; it requires proper scrutiny of the factual basis, work done, and any agreements. Similarly, in **Alok Kaushik vs. Bhuvaneshwari Ramanathan and Ors. [Civil Appeal No. 4065 of 2020]**, the Hon'ble Supreme Court held that the NCLT retains jurisdiction under Section 60(5)(c) to determine professional fees incurred during CIRP, even if the CIRP is later set aside, as these constitute 'insolvency resolution process costs'. We thus observe that the judgment relied upon by the CoC and by the Adjudicating Authority is distinguishable and therefore this cannot be relied upon by both COC and Adjudicating Authority. We note that the Supreme Court in **K. Sashidhar (supra)** primarily dealt with the powers of the Committee of Creditors (CoC) regarding the approval of a resolution plan and the limited scope of judicial review by the Adjudicating Authority (NCLT) and Appellate Authority (NCLAT) in such matters.

56. Appellant has also placed reliance on a circular of IBBI dated 13.09.2022 for fixing of minimum monthly fees payable to the IRP. This may

not be of any assistance to the IRP for the reason that this was not issued at the time when IRP was appointed.

Order

57. Bases above Analysis, we agree on the total amount payable to the IRP, which is on its own merits and therefore we do not find any infirmity in the order of the Adjudicating Authority, except for the reliance placed on the judgment of **K. Shashidhar (supra)**, which we have noted as above. Accordingly, we dismiss the Appeal. All related IAs are also disposed of. No orders as to costs.

[Justice N Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
June 30, 2026.

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