

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.106 of 2023

[Arising out of order dated 07.12.2022 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench in I.A.(IBC) No.788(MB)/2022 in CP (IB) No.3630/2019]

IN THE MATTER OF:

**Shri Guru Containers
Through its Sole Proprietor,
Mr. Som Prakash Jhunjhunwala,
N-288, G & F Floor, Pkt-O,
Sector-1, DSIIDC, Bawana,
New Delhi – 110 039**

....Appellant

Versus

**Jitendra Palande
Residing at: 38, 5-3/D,
New Ajanta Avenue, Paud Road,
Kothrud, Pune-411038**

...Respondent

Present:

For Appellant: Ms. Shreya Munoth and Ms. Aswathi Menon, Advocates

**For Respondent: Mr. Shikhil Suri, Ms. Madhu Suri, Ms. Komal Gupta and
Ms. Mahima Aggarwal, Advocates.**

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**‘IBC’** in short) by the Appellant arises out of the Order dated 07.12.2022 (hereinafter referred to as **‘Impugned Order’**) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in

I.A. No. 788(MB)/2022 in C.P. (IB) No. 3630/2019. By the Impugned Order, the Adjudicating Authority directed Shri Guru Containers, the present Appellant to reimburse the Interim Resolution Professional (“**IRP**” in short) the total costs of Rs.5,62,000/- which was incurred by the IRP in the discharge of his duties. Aggrieved by this impugned order, the present appeal has been preferred.

2. The factual matrix of the present case as briefly put forth by the Learned Counsel for the Appellant is that a Section 9 petition was admitted against Tarang Exports Private Limited, the Corporate Debtor by the Adjudicating Authority vide its order dated 17.02.2020, subsequently modified vide corrigendum dated 24.02.2020. Since the Operational Creditor/Appellant while filing the Section 9 application did not propose the name of the IRP, hence the Adjudicating Authority while bringing the Corporate Debtor under the rigours of CIRP appointed the IRP. Accordingly, the Operational Creditor/Appellant, through legal counsel, intimated the IRP vide email dated 09.03.2020 regarding his appointment.

3. It was further submitted that following his appointment, the IRP had issued a public announcement on 11.03.2020. It has been submitted by the Learned Counsel for the Appellant that soon thereafter Covid-19 pandemic made ingress and because of the consequential lock-down, the Operational Creditor could not follow up on the progress of the CIRP of the Corporate Debtor with the IRP until end-September 2020. It has been further submitted by the Learned Counsel for the Appellant that on 30.09.2020, the Appellant

through legal counsel, contacted the IRP seeking status of the CIRP of the Corporate Debtor to which the IRP re-sought details of the Operational Creditor though it had been already shared earlier. The legal counsel of the Operational Creditor thereafter re-sent the contact details on 30.09.2020 and also sought information on CIRP progress but no response was received from the IRP. Another follow-up email was thereafter sent to IRP by the counsel on 09.10.2020 seeking an update on the CIRP of the Corporate Debtor. The IRP responded on 12.10.2020 to the legal counsel requesting him to refrain from entering into further correspondence with him in the absence of any authorisation to represent the Appellant, though previously the IRP had been communicating with the legal counsel.

4. It was further added that while the Operational Creditor continued to follow up with the IRP for update on CIRP but did not get any information, in the meantime, the IRP filed an application before the Adjudicating Authority on 16.10.2020 under Section 19 of IBC for issue of directions to the suspended directors of the Corporate Debtor and the Appellant to furnish requisite information for proceeding with the CIRP of the Corporate Debtor and reimbursement of the CIRP costs. It has been submitted that the IRP did not however pursue the Section 19 application seriously and hence the application still remains pending.

5. Subsequently on 21.03.2022, the IRP filed an application under Section 60 of the IBC before the Adjudicating Authority, inter-alia, seeking the termination of the CIRP initiated against the Corporate Debtor; seeking his

discharge from duties as IRP and reimbursement of costs amounting Rs.5,62,000/- for duties performed. It is submitted by the Learned Counsel for the Appellant that the application filed under Section 60 of IBC was heard by Adjudicating Authority on 07.12.2022 and reserved for orders. However, the impugned order was issued carrying the date of 07.12.2022 though uploaded on 10.01.2023. It was added that this impugned order suffered from three irregularities. Firstly, it was passed without considering the submissions of the Appellant. Secondly, it was passed in violation of Rule 150 of NCLT Rules as it was not pronounced in the open court. Thirdly, the impugned order does not contain reasons for allowing the fees and expenses claimed by the IRP. The Learned Counsel for the Appellant strenuously contended about dereliction of duty on the part of IRP and stated that the Appellant was, therefore, not obligated to reimburse the IRP for his fees/expenses.

6. It has been further submitted that the IRP had failed to disclose the detailed item wise break-up of the fees and expenses claimed by him which is required in terms of the Code of Conduct in terms of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 34-A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (“**CIRP Regulation**” in short). It has also been pointed out that the fees charged by the IRP is exorbitant.

7. The Learned Counsel for the Respondent making the rival submissions stated that on receipt of email dated 09.03.2020 from the Operational Creditor

regarding his appointment as IRP, he sought the contact details of the Operational Creditor and sought information from the suspended management for conduct of CIRP. However, no response having been received from the suspended management, the public announcement was published by the IRP on 11.03.2020. However, no claims were received pursuant to the publication of the public announcement. In the absence of books of accounts, financial statement and other relevant records of the Corporate Debtor and in the absence of any claim having been received by the IRP from either financial creditors or operational creditors, it was submitted that the IRP was not able to constitute a Committee of Creditors (“**CoC**” in short). Further, the Operational Creditor had neither submitted claim nor paid IRP fees as well as other related CIRP costs. The Learned Counsel for the Respondent made mention of the apathy and non-cooperation by the Appellant and their disinterest in the revival of the Corporate Debtor. Further, in the given circumstances, when the CIRP could not progress and the IRP could not function due to reasons beyond his control, IRP was therefore, constrained to file an application under Section 19 seeking directions from the Adjudicating Authority to the suspended management to extend assistance and cooperation besides reimbursement of expenditure incurred on CIRP.

8. It is further the contention of the Respondent that in terms of CIRP Regulation 33(3), the person filing the application under Section 7, 9 or 10, as the case may be, is required to bear the expenses incurred by the IRP which shall then be reimbursed by the CoC to the extent such expenses are ratified. In the present case since the CoC was not formed, the expenses has to be

borne by the Operational Creditor/Appellant who moved the Section 9 application. Further, it was contended that the counsel of the Operational Creditor had promised to pay the cost of CIRP to the IRP in their email dated 09.03.2020. In the absence of further progress of CIRP, the IRP had filed a Section 60 application before the Adjudicating Authority seeking reimbursement of his fees and termination of CIRP.

9. We have duly considered the detailed arguments and submissions advanced by the Learned Counsel for both the parties and perused the records carefully.

10. The short question before us to be answered is whether in the given facts of the present case, the IRP is entitled to claim fees and expenses incurred in the CIRP proceedings and, if so, whether it is incumbent upon the Operational Creditor/Respondent to bear such fees/expenses subject to their being reasonable.

11. To begin with, we may start by going through the relevant provisions of the IBC Code, IBBI (Insolvency Professionals) Regulations, 2016 and CIRP Regulations, 2016: -

“Section 5(13) of IBC reads as under:

(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) reads as under:

208. (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 byelaws 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.*

The IBBI (Insolvency Professionals) Regulations, 2016

Relevant Paras of the Code of Conduct specified in the First Schedule under the IBBI (Insolvency Professionals) Regulations, 2016 reads as under:

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.

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.

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.

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.

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.

The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The relevant portions of Chapter IX of the CIRP Regulations in the context of the present matter reads as under:

Insolvency Resolution Process Costs.

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

- (a) amounts due to suppliers of essential goods and services under Regulation 32;
- (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.

Costs of the interim resolution professional.

33. (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 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.

Disclosure of Costs.

34 A. 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.”

12. Given the back-drop of afore-mentioned statutory provisions and the regulations contained thereunder relating to the fees/expenses of the IRP, for a better appreciation of the matter at hand, we may also take note of some of the significant dates of the present case. It is an admitted fact that the CIRP commencement date was 24.02.2020. The IRP was appointed on 09.03.2020 on which date he had sought details from the Operational Creditor and suspended management to proceed with CIRP. IRP had issued a public announcement on 11.03.2020 in accordance with CIRP Regulation 6. It is also an admitted fact that no claims were filed by the Operational Creditor or any other creditor till the time of filing of Section 19 application. The date of filing Section 19 application before the Adjudicating Authority was 16.10.2020. It is also an admitted fact that IRP did not receive any fees/expenses at the time of filing of Section 60 application on 21.03.2022.

13. We may now go into the factual matrix to find out whether the IRP had discharged his duties as IRP with due diligence in furthering the CIRP and therefore entitled to CIRP fees/expenses or not. It is the case of the Appellant that the IRP had failed to carry out his duties under the IBC and had filed the

Section 60 application to cover up his non-performance as IRP. It has also been contended that the Respondent /IRP had undertaken limited work as he had only issued the public announcement. From the material on record and the submissions made by the IRP before the Adjudicating Authority, it is clear that on receipt of email dated 09.03.2020 from the Operational Creditor regarding his appointment as IRP, on the same date he sought the contact details of the Operational Creditor and also sent a communication to suspended management requesting other related particulars, documents and books of accounts of the Corporate Debtor so as to effectively conduct the CIRP and manage the affairs of the Corporate Debtor. Neither the Operational Creditor nor the suspended management had provided access to the books of accounts, financial statement, bank account details or any other related information to the IRP. It is also noticed that the Operational Creditor was not in contact directly with the IRP. Instead, an advocate Mr. Saurabh Pandya was seeking status of CIRP from IRP without any authorisation from the Operational Creditor. The IRP had clarified that he was not bound to respond to mails to Mr. Pandya in absence of receipt of any authority letter from the Operational Creditor.

14. We notice that the IRP continued with his efforts to obtain information and in terms of Sections 13 and 15 of IBC had also taken steps to issue public announcement in two newspapers. The issue of public announcement has not been controverted by the Appellant. It is also the claim of the IRP that the details of the public announcements were communicated to the Operational Creditor by emails dated 18.03.2020 and 16.09.2020 as placed at pages 170-

171 of APB. The receipt of the emails has however been questioned by the Appellant by contending that the Respondent has failed to place on record duly delivered version of the said emails. This is a weak defence raised by the Appellant since the emails are found to have been addressed on the same email address at which the IRP had been addressing other emails. There is also force in the contention of the IRP that since the Operational Creditor had initiated the CIRP against the Corporate Debtor, it was incumbent upon the Operational Creditor to be vigilant about the public announcement and it was his duty to check with the IRP and submit his claim.

15. It has been further submitted by the Learned Counsel for the Respondent that the IRP had visited the office of the Corporate Debtor on 17.03.2020. However, the suspended directors were not available at the office during the visit and were not traceable. It is also pointed out that the office was in the custody and possession of the Court Receiver appointed by the High Court of Bombay as placed at page 116-118 of APB. It is submitted by the Learned Counsel for the Respondent that the IRP had also made endeavours to search documents available with the Registrar of Companies (RoC) in Mumbai to ascertain the presence of financial creditors. Steps were also taken to seek the approval of RoC to change the status of the Corporate Debtor on the MCA Portal. In the absence of financial records, the IRP was hamstrung in determining the financial position of the Corporate Debtor and hence his inability to constitute the CoC. The CIRP had come to a standstill due to want of information and lack of claims. As no claims had been received

from either the Operational Creditor or Financial Creditors, the IRP was not able to form the CoC for no fault on his part.

16. We do not hesitate to add that though the scope of CIRP related work became limited and restricted by the fact that progress got stonewalled due to lack of flow of information and lack of claims, diligence on the part of the IRP in proceeding with the CIRP cannot be found to be wanting. Shifting the entire blame on the IRP on grounds of non-performance of duty and making him the scapegoat does not appear to be justified. It is equally important for the creditors to play a catalytic role in the insolvency resolution process given the present regime of creditor-driven IBC. The rigours of similar standards of discipline should also apply on the creditors. This is clearly a case where the CIRP process was being hindered due to want of cooperation and participation from the creditors. The conduct of the Operational Creditor in the present case is deprecatory in that once the CIRP process had commenced, the Operational Creditor went into a sleeping mode. This position has been further aggravated by the fact that it was the Appellant/Operational Creditor who had triggered this judicial process and then abdicated himself from all responsibilities. That the Operational Creditor did not seem interested in resolution of the Corporate Debtor is evident from the fact that till date no claim has been filed with the IRP.

17. Further we are of the considered view that Section 217 of the IBC empowers any person aggrieved by the functioning of a Resolution Professional to file a complaint before the IBBI. The Operational Creditor was

at liberty to report any dereliction of duty on the part of the IRP and that not having been done, the denial to pay fees and expenses is not acceptable. In the present case, we do not find that the Appellant has at any stage made any complaint that the IRP had contravened the provisions of the IBC or the Rules framed thereunder or complained about the errant conduct of the IRP. The Operational Creditor has failed to substantiate any lapses or deficiency in the performance of duties by the IRP. It is an admitted fact that CoC could not be constituted by the IRP but that does not seem to be on account of any inefficiency or laxity or leniency on the part of the IRP. We are thus of the considered view that the IRP was entitled in this case to claim his fees/expenses incurred on CIRP and needs to be compensated for his professional services.

18. This brings us to the question as to who will bear the CIRP expenses in the present case. CIRP Regulation 33 clearly provides that the applicant shall bear the expenses to be incurred by or on the IRP. In the present case, when the Operational Creditor had initiated the CIRP proceedings which had led to the appointment of the IRP, it is incumbent upon the Operational Creditor to pay for the CIRP expenses. For the Operational Creditor to claim that it is not obligatory to reimburse the fees/expenses of IRP squarely contravenes the Regulations and therefore cannot be countenanced. The CIRP Regulation 33 of course also provides that the reimbursement would be to the extent it is ratified by the CoC. Ratification of fees by CoC does not arise in the present case because no CoC could be formed for reasons already noted earlier. Given these peculiar circumstances, we are of the considered view that in terms of

the statutory construct of IBC, it is the Operational Creditor who is liable to bear the expense/fees of IRP in the present case.

19. It is the contention of the Learned counsel for the Respondent that in the absence of further progress of CIRP due to reasons beyond the control of the IRP, he was left with no choice but seek reimbursement of his fees and termination of CIRP. It is further claimed that the counsel for the Operational Creditor on 09.03.2020 had advised IRP to raise CIRP related invoices with the Operational Creditor as placed at page 49 of APB and having given this assurance cannot shirk from paying the same now. On the other hand, the Learned Counsel for the Appellant contended that the IRP has not charged his fees in a transparent manner and that he claimed disproportionately high fees as compared to the limited work undertaken by him having only issued the public announcement. Attention was also adverted to circular of IBBI dated 21.06.2018 on fee and other expenses incurred for Corporate Insolvency Resolution Process and the need of fees having to meet the reasonability quotient which is as reproduced hereunder:

CIRCULAR

No. IBBI/IP/013/2018

12th June, 2018

To

All Registered Insolvency Professionals
All Recognised Insolvency Professional Entities
All Registered Insolvency Professional Agencies
(By mail to registered email addresses and on website of the IBBI)

Dear Madam / Sir,

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

When a corporate debtor undergoes corporate insolvency resolution process (CIRP), an Insolvency Professional (IP) is vested with the management of its affairs and he manages its operations as a going concern. He complies with the applicable laws on behalf of the corporate debtor. He conducts the entire CIRP. Such responsibilities of an IP require the highest level of professional excellence, dexterity and integrity. He needs to be compensated for his professional services commensurate to his ability, duties and responsibilities. He also needs to pay fee or incur other expenses for various goods and services required for conducting the CIRP and or managing the operations of the corporate debtor as a going concern.

2. The relevant provisions of the Insolvency and Bankruptcy Code, 2016 (Code) and regulations made thereunder having a bearing on fee and other expenses of CIRP are at Annexure A.

3. An IP is obliged under section 208(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 context specific and it is not amenable to a precise definition. An illustrative list of factors considered in determination of what is reasonable is given in **Annexure B**.

4. Para 16 of the Code of Conduct for IPs in the Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides that an IP must maintain 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.

5. The IBBI had put out a discussion paper titled “Regulation of fee payable to insolvency professionals and other process costs under Corporate Insolvency Resolution Process” on its web site on 1st April, 2018 seeking comments thereon. The comments received from stakeholders have been considered in consultation with the Insolvency Professional Agencies.

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 Committee of Creditors (CoC) for the fee or other expense is obtained, wherever approval is required; and
- (g) all CIRP related fee and other expenses are paid through banking channel.

7. The Code read with regulations made thereunder specify what is included in the insolvency resolution process cost (IRPC). The IP is directed to ensure that:-

- (a) no fee or expense other than what is permitted under the Code read with regulations made thereunder is included in the IRPC;
- (b) no fee or expense other than the IRPC incurred by the IP is borne by the corporate debtor; and
- (c) only the IRPC, to the extent not paid during the CIRP from the internal sources of the Corporate Debtor, shall be met in the manner provided in section 30 or section 53, as the case may be.

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

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

[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 the 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.

9. Further, the IP is directed to disclose fee and other expenses in the relevant Form in Annexure C to the Insolvency Professional Agency of which he is a member:

- (a) for all concluded CIRPs by 15th July, 2018, and
- (b) for ongoing and subsequent CIRPs within the time as specified in the relevant Form.

10. An Insolvency Professional Agency shall –

- (a) disseminate the disclosures made by its IPs on an appropriate electronic platform within three working days of receipt of the same;
- (b) monitor disclosures made by its IPs and submit a monthly summary of non-compliance by its IPs with this circular to the IBBI by 7th of the succeeding month;
- (c) take appropriate measures to ensure compliance by its IPs.

11. This circular is issued in exercise of the powers conferred under clause (h) of sub-section (1) of section 196 read with regulation 34A of the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in consultation with all the three registered Insolvency Professional Agencies.

Yours faithfully,

-Sd-

(Dilip Arjun Khandale)
Deputy General Manager
Email: dilip.khandale@ibbi.gov.in

Annexure B

What is Reasonable ‘Cost’ and Reasonable ‘Fee’

I. As regards reasonable costs, the Society for Insolvency Practitioners of India, in its statement of best practices on “PAYMENT OF CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS” observes:

“Insolvency professionals must ensure that the costs incurred are reasonable. To determine the reasonability of these costs, they should consider if the costs are-

- (a) directly related to the insolvency resolution process,*
- (b) necessary for meeting the objectives of the insolvency resolution process, and the Code,*
- (c) proportional to the work required to be done and the assets of the corporate debtor, and*
- (d) determined on an arms’ length basis, in consonance with the requirements of integrity and independence.”*

[http://www.insolindia.com/uploads_insol/draft_best_practices/files/-1013.pdf]

II. As regards reasonable fee, the Society for Insolvency Practitioners of India, in its statement of best practices on “PAYMENT OF FEE AND REIMBURSEMENT OF OUT-OF-POCKET EXPENSES” suggests:

“Factors to be considered while charging fee

(i) An insolvency professional may charge a fixed or variable fee to reasonably remunerate him/her for the work that he/she necessarily and properly undertakes for an appointment under the Code. In determining what is necessary and proper, the insolvency professional should consider if the work is-

- (a) directly related to the insolvency resolution process,*
- (b) in furtherance of the exercise of the powers and functions under Code, professional standards, and the terms of agreement, and*
- (c) in consonance with his/her duties under the Code and the Regulations thereunder.*

(ii) An insolvency professional may use one or a combination of bases to charge fee for carrying out different tasks or discharging different duties. The bases of charging fee include:

- (a) time based charging,*
- (b) prospective fee (up to a cap),*
- (c) fixed fee,*
- (d) percentage based charging,*
- (e) success or contingency fee, only to the extent that it is consistent with the requirements of integrity and independence of insolvency professionals.*

Illustration: X is appointed as an IRP. She can charge a cumulative of fixed fee to suspend the board of directors and have the public announcement made, fee per hour spent on collecting and verifying claims, and a fee based on the percentage of assets handled for running the business as a going concern.

(iii) An insolvency professional should consider the following factors while determining the quantum of fee to charged:

- (a) value and nature of the assets dealt with,*
- (b) time properly given by the insolvency professional and her staff in attending to the affairs of the debtor,*
- (c) the complexity of the case,*
- (d) exceptional responsibility falling on the insolvency professional,*
- (e) the effectiveness with which the insolvency professional carries out her duties.*

Illustration: X, an insolvency professional, may choose to charge higher fee if-

- (a) the properties of the corporate debtor are in multiple locations all over the country (nature of property),
- (b) key trade suppliers are also unpaid creditors and thus hostile (complexity of the case), or
- (c) if the existing management is not capable which requires him to expend unusual effort to run the business as a going concern (exceptional responsibility).

(iv) An insolvency professional should not increase the fee charged without the prior approval of the authority fixing his/her fee.”

[http://www.insolindia.com/uploads_insol/draft_best_practices/files/-1008.pdf]

20. It has been pointed out by the Learned counsel for the Appellant that the Adjudicating Authority in the impugned order has simply endorsed the CIRP cost claimed by the IRP and directed the Operational Creditor to reimburse the total costs of Rs. 5,62,000/- without analysing whether the claim made was proportionate to the work done and the reasonableness of the claim. It has been further submitted that the IRP has not provided any supporting bills to substantiate his claim of expenses and that the fees charged were therefore not transparent. It is pertinent to add here that during oral hearing when the Learned Counsel for the Operational Creditor was pointedly asked by this Tribunal to indicate what to their mind in the present case constituted reasonable fees, it was stated that any amount beyond

Rs.50,000/- would become excessive. An opportunity was also offered to the IRP to submit detailed break-up of expenditure incurred along with bills to which the Learned Counsel for the IRP submitted that this Tribunal may take a considered view on the reasonable quantum of fees.

21. To dwell on the reasonability aspect, we may first take note of the details of duties carried out and corresponding expenditure incurred as claimed by the IRP before the Adjudicating Authority which is as extracted in the tabular chart below:

Particulars	Total CIRP Cost (in Rs.)
IRP Fee	4,00,000
RP Fee Public Announcement	12,000
Legal Expenses	50,000
Company Secretary	50,000
Out of pocket expenses	50,000
Total	5,62,000

We also take note that the entire amount as claimed by the IRP in the chart above has been approved by the Adjudicating Authority in the impugned order.

22. The provisions as appearing in IBC and Regulations framed thereunder read with the Code of Conduct of IRP all indicate that although quantum of fees has not been fixed, the quantum of fees payable is context specific. Thus, what fee is reasonable is context specific but what is context specific is not amenable to a precise definition. However, the fee should be a reasonable

reflection of the work necessarily and properly undertaken by IRP. Further the fees should not be inconsistent with the applicable regulations and should be charged in a transparent manner. Keeping these broad parameters in mind, we may now look into the reasonability of the fees/expenses which has been allowed by the Adjudicating Authority in the present case.

23. The IRP has claimed Rs.4,00,000/- only towards fixed fee for the period for which the CIRP had continued and this entire amount has been allowed by the Adjudicating Authority. It is an admitted fact that a substantial portion of this period was hit by the lockdown arising out of the Covid outbreak. Further, we cannot lose sight of the fact that the CIRP proceedings were stymied on account of the fact that the IRP could not lay hand on the information required to undertake various steps of CIRP like preparation of Information Memorandum, Expression of Interest etc. The IRP had also not succeeded in constituting the CoC and therefore no possibility to collate claims. It is, therefore, felt that the reasonability of the fees payable to the IRP may be determined keeping in mind that CIRP had not made much progress beyond its preliminary phase and there was no occasion to carry out any exceptional responsibility. On this basis, it may suffice to restrict the expenditure to Rs.2,00,000/- only on account of fees. We agree with the Adjudicating Authority that the expenditure incurred on public announcement amounting to Rs. 12,000/- deserves to be reimbursed fully since this work was completed. As regards expenditure incurred on Legal expenses, Company Secretary and Out of pocket expenses which have been claimed by the IRP at the rate of Rs.50,000/- each and so allowed by the

Adjudicating Authority, we are of the view that it needs to be rationalized by reducing it by one half. The basis of this rationalisation is that not much work complexity was involved as is borne out by the facts of the case and that it would suffice to restrict expenditure on the two aforementioned professional services and miscellaneous costs at the rate of Rs.25,000/- each. We therefore hold that payment of a consolidated amount of Rs.2,87,000/- plus GST to the IRP would suffice towards payment of fees/expenses.

24. In result, we do not find merit in the Appeal to set aside the impugned order. However, while we concur in the directions of the Adjudicating Authority to the Operational Creditor /Respondent to reimburse costs to the Appellant for discharge of his duties as IRP, we modify the quantum of fees/expenses payable to a consolidated amount of Rs.2,87,000/- plus GST instead of Rs.5,62,000/- The same amount should be paid within one week from the date of uploading of this order. The appeal stands disposed off with the above observations. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 22.02.2023

PKM