

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

IA No.580/2025

in

Company Appeal (AT) (CH) (Ins) No.165/2023
(IA No.539/2023)

In the matter of:

**The Chief Manager,
Canara Bank (Sole Financial Creditor)
Chinna Waltair Branch,
7-1-73A, University Road,
Anoop Apartments, Chinna Waltair,
Vishakapatnam,
Andhra Pradesh - 530 017.**

...Appellant

V

**Mr. Kantipudi Venkata Raju,
Erstwhile Interim Resolution Professional of
S.V.K. Shipping Services Pvt. Ltd, (CD)
R/o.4-198, Manikya Nagar, Valasapakala,
Kakinada, East Godavari,
Andhra Pradesh - 533 005.**

**Mr. Kalvakolanu Murali Krishna Prasad,
Resolution Professional of
S.V.K. Shipping Services Pvt. Ltd.,(CD)
Flat No.303, Krishnanjali Towers,
8-1-7/1, Balaji Nagar, Waltair Uproads,
Siripuram, Visakhapatnam,
Andhra Pradesh - 530 017.**

...Respondents

Present:

For Appellant : Mr. M.L. Ganesh, Advocate

For Respondents : Mr. Sriram Venkatavaradan, Advocate for R1

JUDGMENT
(Hybrid Mode)

[Per : Justice Sharad Kumar Sharma, Member (Judicial)]

This Company Appeal is listed for orders on an urgent listing application being IA No.580/2025, preferred by the Respondent No.1. As we are proceeding

to hear the Company Appeal on merits, no independent orders are required to be passed on the same. Hence, **IA No.580/2025** would stand closed.

2. The instant Company Appeal has been preferred by the sole Financial Creditor (The Canara Bank) of the Corporate Debtor namely, M/s. S.V.K. Shipping Services Pvt. Ltd. in which the Respondent No.1 contends that he had functioned as an IRP and therefore he is entitled to get his professional fee as per the resolution, which has been passed by the Committee of Creditors and that denial of the same would be unethical and contrary to provisions of law. The Respondent No.1 had filed an Interlocutory Application being, IA(IBC)/347/2022 in CP(IB)/202/9/AMR/2019, invoking the provisions contained under Section 60(5) of I & B Code, to be read with Rule 11 of the NCLT Rules, 2016, wherein, he had prayed for that, he would be entitled to receive a sum of Rs.9,05,058/- in respect of the amount payable towards fee and expenses, which has been incurred during the tenure of his functioning as an IRP.

3. Brief facts of the case are that a proceedings by way of Company Petition, stood instituted by invoking the provisions contained under Section 9 of I & B Code by M/s. Tricon Energy (India) Pvt. Ltd., being the Operational Creditor as against the Corporate Debtor. Upon culmination of the proceedings, the Corporate Debtor was admitted to the CIRP Proceedings by an order dated 13.05.2022, which simultaneously resulted in an appointment of the Respondent No.1 herein as IRP. The various processes as contemplated that were emanating from the order of admitting the Corporate Debtor into the CIRP Proceedings were

carried out and ultimately, the controversy, which is now at hand for consideration before us as regards to the quantification of the amount of fee and expenses, that Respondent No.1, would be entitled to receive, owing to his appointment as an IRP by an order of 13.05.2022, which is the prime bone of contention as agitated by the Counsels. The Appellant has argued that, the determination, which has been made by the Learned Adjudicating Authority by the Impugned Order dated 28.03.2023 holding thereof that, Respondent No.1 would be entitled to receive the amount towards fee and expenses to the tune of Rs.9,05,058/- to be paid by the CoC is not correct. The contention of the Appellant is that the said determination that has been made by the impugned order would be bad in law and contrary to the process contemplated under the Regulations framed under the I & B Code, and that, until and unless the parameters laid down by the statutory regulations for fixing of the fee and expenses, payable to the IRP and satisfied and the amount payable is arrived at in accordance with the Regulations, the Respondent No.1 would not be entitled to the fee and expenses as claimed by him.

4. The grounds which have been agitated by the Appellant in the instant Appeal is that there has to be a satisfaction of the compliance of the provisions contained under IBBI (Insolvency Resolution Process for Corporate Persons), Regulation 2016, in determining the fee and expenses to be paid to the IRP and in the absence of there being a justified determination in accordance with Regulation 33(3) of IBBI Insolvency Resolution Process for Corporate Persons),

Regulation 2016, on which much stress has been placed by the Learned Counsel for the Appellant during the course of the argument, the determination, that has been made by the Learned Adjudicating Authority while quantifying the fee payable to the Respondent No.1 is contrary to the Regulations of 2016 and hence it deserves to be interfered with by this Appellate Tribunal in the exercise of its Appellate Jurisdiction. For the aforesaid purpose, the Learned Counsel for the Appellant had drawn the attention of this Appellate Tribunal to the provisions contained under Regulation 33 of IBBI (Insolvency Resolution Process for Corporate Persons), Regulation 2016, which is extracted hereunder: -

“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.

96[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.]”

5. In order to substantiate his contention the Learned Counsel for Appellants has further contended that the determination of the fee payable to the IRP has to be done in accordance with the stipulations contained under Sub-Regulation (4) of Regulation 33 of IBBI (Insolvency Resolution Process for

Corporate Persons), Regulation 2016 and because the so-called determination of the fee payable to the IRP, i.e., the Respondent No.1 herein, is not satisfying the stipulations required to be complied with prior to the fixation of the fee or expenses payable to the IRP, the entire determination would be in violation of Regulation 33 to be read with Regulation 34. Regulation 34 IBBI (Insolvency Resolution Process for Corporate Persons), Regulation 2016, is being extracted hereunder: -

“34. Resolution professional costs.

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

97 [Explanation. - For 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”.

6. The Learned Counsel for the Appellant has submitted that all the expenses, which are shown to be incurred by the IRP has had to be reimbursed by the Committee, to the extent **“It is ratified”**. Similar intention has been expressed in Sub-Regulation (4) of Regulation 33, which prescribes that only the amount of expenses that are ratified by the committee shall be treated as to be the Insolvency Resolution Process cost.

7. Thus the issue which is required to be dealt by us, and also to be answered by the Learned Counsel for the Appellant, is as to what implication and the bearing the word **“ratify”** will have so far when it relates to determination of cost of CIRP as contemplated under Regulation 33.

8. The Learned Counsel for the Appellant has submitted that, if a harmonious construction is to be assigned, to Regulations 33 & 34, the ratification becomes a precondition for the purpose of conclusively determining the payability of the cost and expenses, which are also inclusive of the fee to be made payable to the IRP. In fact, in its literal connotation, the word “**ratifies**”, it simpliciter means, a formal approval to be granted to a decision already taken, in order to provide the decision with a strength of enforceability. The mode of ratifying, that is, the affirmation which is to be accorded of the previous decision taken, is only for the purposes as involved in the instant case with regards to the determination of the fee and expenses payable to the IRP, and for justifying of a previous decision already taken and to attach sanctity to it.

9. A decision to pay has had to be prior in time, which is to be subsequently ratified, and only then it would be deemed to have been approved to be made as an entitlement to the IRP for conducting the process. The word “**ratification**” has been widely considered under Section 196 of the Indian Contract Act, 1872, which means that, it is a confirmation or an adoption of a decision already made on behalf of someone, which is observed to be a mandatory condition. From the very outset, there has to be a prior decision. Meaning thereby, the prime obligation for taking the decision to do an act is an obligation, but ratification in itself is only procedural in nature, which provides an affirmation to a decision which has already been taken, and which could be either in writing or by way of words, or even orally. It contemplates that a ratification once it is even orally

accepted by a conduct or even by an act, it will have the same implication as to be an original authority so as to bind the principal, not only with regard to the act of an agent but also with regards to the act of the third party.

10. The Learned Counsel for the Appellant submits that, in the absence of there being a ratification in the instant case by the CoC, the claim for payment of the fee and expenditure as made by the IRP may not be sustainable, which was directed to be paid by the Impugned Order, and that, on the aforesaid ground itself, the Impugned Order cannot be sustained and deserves to be quashed. In further elaboration of his argument, he has drawn the attention of this Appellate Tribunal to the various minutes of the meeting of the Committee of Creditors, particularly, that as carried in the 1st CoC meeting which was held on 09.06.2022. He has submitted that, if the Agenda B is taken into consideration, it provided that the IRP during the course of the First Agenda meeting of CoC, the IRP has extended a consent that he would be willingly functioning as an IRP on a fee of Rs.3,00,000/- per month along with reimbursement of actual expenses incurred. But, the decision of the 1st CoC, which was ultimately analysing the aspect of quantification of the fee, which would be payable to the IRP at that juncture itself does not speak about whether it should be ratified except when it was take into consideration, in the 2nd CoC meeting, which was conducted on 13.07.2022, wherein according to the Clause B Sub-Clause 1, it shows that the previous Agenda Meeting of the 1st CoC stood approved, and that is the observation which has been made in clause 7 which is extracted hereunder:-

“7. Settlement of expenses of IRP till 09.06.2022:

IRP informed that he has received Rs.1 lac towards advance for his expenses from the applicant M/s. Tricon, Mumbai. He has sent the details of the expenses with proofs and a cheque for Rs.17,757,30 towards refund of surplus by registered post to Ms. Rupal Waghela, VP-Finance, M/s. Tricon on 13.06.2022 at her office address. But the cover had been returned unclaimed. At the request of Madam Rupali, the IRP would be sending the same by courier. Also M/s. Tricon representative is requested by him to kindly arrange to remit the TDS amount of Rs.20,000/- made from his fee and send him TDS Certificate under his PAN AENPK1153M”.

11. On perusal of the record, it does not show that the decision taken in the 1st CoC meeting in respect of amount payable to IRP for the services rendered by him was not ratified in the subsequent 2nd CoC meeting. When the issue, cropped up, before the Learned Adjudicating Authority, it considered the issue and recorded the finding that the minutes of the CoC meeting as held on 09.06.2022, shows that it contained the agenda item, where the clarification was sought with regard to the emoluments of IRP and his continuance in the office and the CoC took a decision, that the IRP would be appointed and would continue to function on the basis of the fee which stood determined to be made payable as per the Agenda of the 1st CoC meeting. The minutes of the 1st CoC meeting was placed for ratification in the 2nd CoC meeting, and it was ratified, and that is what has been observed in the conclusion which has been arrived at by the Tribunal, and particularly, the finding which has been recorded in para 5, 6 & 7 in the impugned order, while answering the question as argued for by the Learned Counsel for the

Appellant herein before the Learned Tribunal with regards to the implication of non-ratification of expenses and the fee payable to the IRP.

12. It was held by Learned Adjudicating Authority that, under the Item No.2 of the Agenda of the 1st CoC meeting, the Financial Creditor, who had 100% voting share, has consented for the remittance of the fee to the IRP, which was to be paid for functioning in the said capacity until the regular RP is appointed and therefore the IRP, would be entitled to be paid the fee and other expenses incurred by him for the period worked till 24.08.2022 at the rate agreed to in 1st CoC meeting as it has been determined, in accordance with the Regulations. The observations which has made by the Tribunal for remitting the amount of Rs.9,05,058/- in respect of fee and expenses incurred by the IRP during his tenure is absolutely justified if it is read in context of the finding, which has been recorded in the minutes of the 2nd CoC meeting as it was held on 13.07.2022, which has approved the minutes of the meeting of the 1st CoC meeting which was held on 09.06.2022. Hence, under the given set of circumstances, the issue of ratification do not come into the picture, in order to deprive Respondent No.1 i.e., the IRP of the fees, and other expenses payable to him as it has been determined to be paid.

13. It could be further borne out from the record that, the professional fee as claimed by the Respondent No.1, also stood approved by the Appellant itself holding 100% voting rights of the CoC, and the claim made that it was unilaterally fixed, is contrary to the facts as borne out by the minutes of the 1st CoC meeting.

In that view of the matter, since the solitary issue which has been argued by the Learned Counsel for the Appellant with regard to the non-ratification of the fees & expenses of the IRP by the CoC as per Regulation 33(3) now stands settled with ratification of the mistakes of 1st CoC meeting, there is no such anomaly in the direction, as it has been issued by the Learned Adjudicating Authority for the remittance of the claimed amount by the IRP/Respondent herein, which would call for interference by this Appellate Tribunal. The Appeal lacks merit, and the same is dismissed. All Interlocutory Applications would hereby stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

08.07.2025
VG/MS/RS