

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 896 of 2022

[Arising out of order dated 30.05.2022 passed by the Adjudicating Authority, National Company Law Tribunal, Chandigarh Bench in IA Nos. 510/2021, 527/2021, 591/2021 & 605/2021 in C.P.(IB) No. 352/Chd/CHD/2018]

IN THE MATTER OF:

**Shri Alok Kaushik
Erstwhile Resolution Professional of
Cheema Spintex Ltd.,
G-105, Sai Baba Apartment, Sec-9, Rohini,
New Delhi – 110085.**

...Appellant

Versus

- 1. Cheema Spintex
House No. 176/2, Sector-41A,
Chandigarh – 160036.**

.... Respondent No.1
- 2. Kotak Commodity Services Pvt. Ltd.
Nirlon House, 1st Floor,
Dr. Annie Besant Road, Near Old Passport Office,
Worli, Mumbai – 400030.**

....Respondent No.2
- 3. IDBI Bank Limited
NPA Management Group, IDBI Bank,
7th Floor, IDBI Tower, WTC Complex,
Cuffe Parade,
Mumbai – 400005.**

....Respondent No.3
- 4. State Bank of India,
Stressed Assets Management Branch (SAMB),
SCO 99-107, First Floor, Sector 8C,
Chandigarh – 160018.**

....Respondent No. 4
- 5. Punjab National Bank
Zonal Sastgra Centre, SCO 60-61, Sector 17 B,
Bank Square,
Chandigarh – 160017.**

....Respondent No. 5

Present:

Company Appeal (AT)(Insolvency) No. 896 of 2022

**For Appellant: Mr. Rajendra Beniwal and Mr. Aman Singhania,
Advocates.**

For Respondents: Mr. Kshitij Kumar, Advocate for R-1.

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

The present appeal, filed under Section 61 of the IBC Code, 2016 (**‘IBC’** in short) by the Appellant arises out of order dated 30.05.2022 (hereinafter referred to as ‘Impugned Order’) passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench) in I.A. No. 510/2021 in CP(IB) No. 352/Chd/CHD/2018. By the Impugned Order, the Adjudicating Authority dismissed the main petition filed under Section 9 of the IBC bearing CP(IB) No. 352/Chd/CHD/2018 as withdrawn, released the Corporate Debtor from the rigors of the IBC subject to payment of Rs. 8,36,001/- towards reimbursement of the expenses incurred by the IRP. The present appeal has been preferred by the Appellant, being aggrieved that CIRP cost and fees payable to him as Interim Resolution Professional (**‘IRP’** in short) have been rejected and erroneous remarks passed with respect to duties and functions carried out by him as IRP.

2. The Learned Counsel for the Appellant has also filed I.A. No. 2497 in Company Appeal (AT)(Ins.) No. 896 of 2022 seeking condonation of delay of 05 days in curing defects and refiling of the present appeal citing sufficient cause. The I.A. is allowed and delay in refiling after curing defects is allowed.

Company Appeal (AT)(Insolvency) No. 896 of 2022

3. The brief facts of the case, as stated by the Learned Counsel for the Appellant, is that a petition under Section 9 of IBC was filed before the Adjudicating Authority by Kotak Commodity Services Pvt. Ltd., Operational Creditor for initiating Corporate Insolvency Resolution Process (**'CIRP'** in short) against M/s Cheema Spintex Ltd., the Corporate Debtor / Respondent No. 1 in the present matter. The Adjudicating Authority commenced CIRP proceedings and Appellant was appointed as IRP. In pursuance of the duties and responsibilities cast upon IRP by the IBC, public announcement was made under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**'CIRP Regulations'** in short). However, before the expiry of the last date of submission of claims, a settlement was arrived on 12.10.2021 between Respondent No. 1 and the Operational Creditor and the latter submitted Form FA to the IRP seeking withdrawal from the CIRP. The Appellant/IRP moved an application before the Adjudicating Authority vide IA No. 510/2021 on 18.10.2021 for withdrawal of CIRP under Section 12A of the IBC including discharge from duties as IRP and restoration of the suspended Board of Directors of the Corporate Debtor.

4. Learned Counsel for the Appellant has further admitted that the ex-management of the Corporate Debtor had also filed I.A.. No. 527/2021 on 22.10.2021 seeking withdrawal of CIRP and I.A. No. 591/2021 on 17.11.2021 seeking stay on the CIRP of the Corporate Debtor. It is also claimed that IRP

appeared before the Adjudicating Authority in respect of the aforementioned three IAs on 26.10.2021, 18.11.2021, 04.01.2022, 17.02.2022, 22.03.2022, 30.03.2022 and 05.04.2022. It has been further pointed out by Learned Counsel for the Appellant that one of the Financial Creditors filed a petition on 20.10.2021 seeking initiation of CIRP against the Corporate Debtor under Section 7 of the IBC. Submission has also been made that since the Adjudicating Authority had not put a stay on the CIRP proceedings nor passed any substantive directions on any of the IAs filed by the IRP and the ex-management of the Corporate Debtor, the IRP proceeded to constitute the Committee of Creditors (**'CoC'** in short) in line with the duties and obligations of IRP under the IBC and CIRP Regulations.

5. It is further submitted that faced with non-cooperation from the ex-management of the Corporate Debtor to provide custody of the assets of the Corporate Debtor, the IRP had also filed an application before the Adjudicating Authority under Section 19(2) of the IBC seeking directions for co-operation from the ex-management of the Corporate Debtor. It has also been urged that with a view to ensure that the Corporate Debtor could run as a going concern, the Appellant had incurred expenses which had been placed before the CoC and duly ratified by the CoC. It has been claimed that as part of this CIRP exercise, 6 CoC meetings were conducted by the IRP and 10 progress reports filed before the CoC including steps undertaken for valuation of the assets of the Corporate Debtor. It has also been claimed that the Adjudicating Authority on 30.03.2022 while

considering the stay application of the Corporate Debtor had also directed the Appellant/IRP to file the details of his fee charged for conducting the business of the Corporate Debtor.

6. Learned Counsel for the Appellant has further stated that the withdrawal application bearing No 510/2021 was finally heard by the Adjudicating Authority on 05.04.2022 and in the impugned order as issued on 30.05.2022 the Adjudicating Authority held that CIRP process be closed and that the withdrawal application having been filed prior to constitution of the CoC, there is no requirement to obtain the consent of the members of the CoC in this regard. Feeling aggrieved by this impugned order, the Learned Counsel for the Appellant has mentioned that the Adjudicating Authority wrongly disallowed the fees and expenses payable to the IRP for conduct of the CIRP and for making erroneous remarks about conduct of IRP that it was not in sync with the spirit of IBC. In defence of IRP's conduct, it has been argued by Learned Counsel for the Appellant that mere filing of the withdrawal application does not lead to automatic stay of CIRP proceedings and, therefore, as IRP he is duty-bound under the CIRP Regulations to complete the CIRP proceedings and for this purpose he had to engage other professionals and deploy resources thereby incurring expenses. It has also been claimed that the CIRP costs and IRP's fee was placed before the CoC and duly ratified by CoC. It has been therefore contended by the Learned Counsel for the Appellant that classification of activities undertaken during the CIRP as "essential" and "non-essential" by the

Adjudicating Authority in the impugned order is an artificial creation which is not in terms of the IBC. Further as proof of bonafide on the part of the Appellant/IRP, the Learned Counsel for the Appellant has claimed that the IRP appeared regularly before the Adjudicating Authority on each assigned date which testify that he had been diligent in pursuing the CIRP withdrawal application filed by him. Hence, despite the best possible efforts put in by the IRP, the Adjudicating Authority has been wrong in not appreciating the conduct of the IRP and made adverse remarks without cogent reasons which should therefore be expunged.

7. The relevant paragraph of the impugned order which has aggrieved the Appellant/IRP is reproduced below:

“15. At the outset, it is noted that the Interim Resolution Professional has himself filed IA. No. 510/2021 only after 12 days of commencement of the CIRP but has chosen to continue with normal functions under CIRP without pursuing the IA. No. 510/2021 with this Adjudicating Authority. Even if it may be technically correct, it does not sync with the spirit of the Code. It is also noticed that the Directors have not handed over the records and assets to the IRP subsequent to their settlement with the Operational Creditor. This Bench, therefore, proceeds to categorize the activities for which expenses have been claimed as mentioned in Para 14 into two different categories:

essential and non-essential. We are of the view that activities mentioned in Sr. No. 1 to 7 of the afore-mentioned table in Para 14, consisting of expenses on account of e-voting agency, security services, publishing house, payments to advocates and transaction auditor as essential and allow the expenses incurred on those activities. The expenses relating to the valuation are disallowed because the Directors have admittedly not handed over the records and assets. Similarly, the payment to advocate for a PUFÉ transaction for application under preparation is disallowed because in the absence of records, it is difficult to justify any payment for the preparation of such an application. While, we allow the expense of the IRP amounting to Rs. 1,48,237/-, the payment towards his fees is restricted to Rs. 2 lakhs as we strongly disapprove his conduct in not pursuing the present application filed by himself only and unnecessarily adding to the costs by carrying out non-essential activities. In the result, the CIRP costs are allowed to the extent of Rs. 8,36,001/- and the same is to be reimbursed by the corporate debtor i.e. M/s Cheema Spintex Limited.”

8. We have duly considered the detailed arguments advanced by the Learned Counsel for the Appellant and perused the records carefully.

9. The issues for determination before us is ***(a) whether in light of the admitted fact that the IRP himself filed the CIRP withdrawal application on 18/10/2021 which was just 12 days after commencement of the CIRP, whether it was justified on the part of the IRP to still continue with the CIRP proceedings; (b) whether the Adjudicating Authority had erred in disallowing certain CIRP expenses claimed by the Appellant/IRP by treating them as “non-essential”; and (c) whether the remarks disapproving the conduct of the IRP in the present matter by the Adjudicating Authority stands to reason.*** As the issues outlined above clearly overlap each other, we have chosen to examine them conjointly.

10. As a preface to our analysis, we have noted that the Adjudicating Authority has emphasized upon a few important timelines as abstracted in a tabular chart which forms part of the impugned order as reproduced below:-

DATES	PARTICULARS
06.10.2021	CIRP commenced.
18.10.2021	IA 510/2021 was filed by the IRP under Section 12A of the IBC read with Regulation 30A Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for withdrawal of the CIRP process on account of the settlement between the OC and the CD.
22.10.2021	IA 527/2021 was filed by the Suspended Director of the CD, Mr. Hardyal Singh Cheema under Rule 11 of the NCLT Rules, for withdrawal of the CIRP as per the decision of the Hon’ble Supreme Court in Swiss Ribbons.

	<i>Both I.A. 610/2021 and IA 527/2021 were admittedly filed before the constitution of the CoC.</i>
<i>06.11.2021</i>	<i>The first meeting of the CoC takes place.</i>

11. Coming to the factual matrix, it is an undisputed fact that the Operational Creditor having entered into a settlement with the Corporate Debtor, he had informed the IRP on 12.10.2021 in the prescribed format, seeking withdrawal of CIRP. Within six days, on 18.10.2021, the IRP had also filed the CIRP withdrawal application before the Adjudicating Authority. The Corporate Debtor also had taken steps on his part before the Adjudicating Authority on 17.10.2021 for stay on the CIRP and also filed an application on 22.10.2021 for withdrawal of the CIRP. It is therefore amply clear that all the important stakeholders in the process were in unison in seeking closure of CIRP and awaiting final directions of the Adjudicating Authority. It is also pertinent to note that the withdrawal applications were filed by the stakeholders before the constitution of CoC which had its first meeting on 06.11.2021. It is also observed that the IRP had been present before the Adjudicating Authority as and when the matter came up for hearing on the related IAs and that details of the expenses incurred on CIRP was filed by the IRP in pursuance to the orders dated 30.03.2022 passed by the Adjudicating Authority. Yet another crucial point to be borne in mind is that while examining the expense-details filed by the IRP, the Adjudicating Authority took cognizance of the fact that records and assets were not handed over to the IRP by the ex-management of the Corporate Debtor consequent upon their

settlement with the Operational Creditor and therefore only the expenses found essential have been allowed while the remaining disallowed and treated as non-essential. The Adjudicating Authority after categorizing the costs as essential and non-essential have allowed the CIRP costs to the extent of Rs. 8,36,001/- to be reimbursed by the Corporate Debtor. The Adjudicating Authority has also allowed certain amount as the expenses of the IRP and for payment towards his fees as contained in Para 15 of the impugned order as excerpted in Para 7 above.

12. Given the material on record and the facts and circumstances in the present matter, we are inclined to agree with the finding of the Adjudicating Authority that since the Section 12A application was filed by the IRP before the Adjudicating Authority well before the constitution of CoC, the IRP's continuance with the CIRP process without making adequate efforts to seek pointed clarification from the Adjudicating Authority on whether to proceed with the CIRP or not, does not reflect well on his conduct. IRP cannot afford to be unmindful of the fact that he is the driving force and the nerve-center in the resolution process and is expected to assist in the CIRP process in a fair and objective manner in the best interest of all stakeholders. Simply by registering presence on each date of hearing before the Adjudicating Authority without seeking clear guidance on CIRP modalities cannot in itself become a sufficient ground for the IRP to proceed with the CIRP full throttle. As an officer of the Court, it was incumbent upon the IRP to highlight before the Adjudicating Authority the special and peculiar circumstances that he was confronted with in

the matter. Instead of pursuing the withdrawal application with greater vigour, he has rather chosen to mechanically proceed with CIRP by taking the plea of adherence to CIRP Regulations. We therefore agree with the Adjudicating Authority that the conduct of the IRP though may be technically correct, the same cannot be countenanced given the attendant circumstances.

13. As regards the CIRP expenses claimed by the Appellant/IRP, we have observed that the Adjudicating Authority had directed the IRP to file the details of expenses and IRP had accordingly submitted the expense details. The Adjudicating Authority in the impugned order has carefully examined in details the expenses and given cogent reasons for disallowing several items of expenditure by treating them as “non-essential”. We find that the grounds cited in the impugned order for disallowing expenses incurred on valuation exercise and payment to advocate is justified particularly because these tasks were contingent upon the records and assets being handed over to the IRP by the ex-management of the Corporate Debtor which in fact had not happened. That these records and assets were not available with the IRP is substantiated by the fact that the Appellant/IRP on his own had filed an application before the Adjudicating Authority for non-cooperation on the part of the former management of the Corporate Debtor on 30.10.2021. The contention of the Learned Counsel for the Appellant that creation of an artificial classification by the Adjudicating Authority of essential and non-essential activities during CIRP is ultra vires the provisions of the IBC is not a tenable argument since the

Adjudicating Authority has used these terms more as an easy reckoner to decide on whether to allow or disallow the item of expenditure and not acted in any manner contrary to the form and spirit of IBC. In sum, we find no reasons to differ with the evaluation exercise of CIRP expenses filed by the IRP as carried out by the Adjudicating Authority in allowing some expenses and disallowing some.

14. We now dwell on the remarks made by the Adjudicating Authority, strongly disapproving the conduct of the IRP in unnecessarily adding to the CIRP costs by carrying out non-essential activities. In the IBC framework, the IRP is the fulcrum of the CIRP process and is obligated to act as the bridge between the Adjudicating Authority, the CoC and other stakeholders including the Corporate Debtor. As an officer of the court vested with administrative powers, the IRP as the facilitator of the resolution process needs to conduct the process with fairness, diligence, forthrightness and highest sense of responsibility. This aspect squarely finds place in Section 208(2)(a) of the IBC which subjects the insolvency professionals to abide by a code of conduct which, inter-alia, obligates the IRP to take reasonable care and diligence while performing his duties. Further, Regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 clearly stipulates that the registration of an insolvency professional is subject to various conditions, one of them being to abide by the Code of Conduct specified in the First Schedule to these Regulations. Article 25 of the Code of Conduct under the sub-title

“Remuneration and Costs” in the First Schedule to these Regulations reads as follows:

“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.”

15. From a reading of the above Article in the Code of Conduct, it is clear that what is reasonable, is not amenable to precise definition and therefore is context specific. Given that CIRP withdrawal application before the Adjudicating Authority was a known factor, it would only have been fair on the part of the IRP, if instead of pressing the accelerator on the CIRP process, he had pursued in serious earnest with the Adjudicating Authority for its clear directions and guidance on proceeding with the CIRP. On the contrary, the IRP acted in great hurry to push forward the CIRP exercise on the specious plea that he was acting as per the mandate given by the IBC and CIRP Regulations, and, in the process carried out certain activities which have added to the CIRP costs. The Adjudicating Authority has therefore based on cogent grounds expressed disapproval of the unseemly conduct of the IRP in strong terms. We concur with the impugned order and are of the considered opinion that the IRP seems to have taken advantage of the fluid situation and unnecessarily added to the costs by

carrying out activities which could have otherwise been put on hold and find the conduct of the IRP deprecatory.

16. In the light of the above discussions, we do not find any substance in the submission raised by the Learned Counsel for the Appellant to warrant any interference in the impugned order. The impugned order passed by the Adjudicating Authority, not suffering from any infirmities, is hereby affirmed. The Appeal being devoid of merit is dismissed. No order as to costs.

(Justice Ashok Bhushan)
Chairperson

(Barun Mitra)
Member(Technical)

Place: New Delhi

Date: 05.09.2022

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