

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 360 of 2023

IN THE MATTER OF:

Sunil Kumar Agarwal

...Appellant

Versus

HDFC Bank Ltd. & Ors.

...Respondents

Present:

**For Appellant : Ms. Honey Satpal and Mr. Nipun Singhvi,
Advocates**

For Respondents :

ORDER

12.04.2023: This appeal is against the order dated 13.01.2023 by which the Adjudicating Authority (NCLT, Ahmedabad) has rejected I.A. No. 885 of 2020 filed by the Appellant claiming payment of Fee as IRP.

2. CIRP was initiated on 15.10.2019 and Appellant was appointed as IRP and continued till resolution was passed by CoC to relieve the Appellant and new IRP was appointed on 08.09.2020, who thereafter has been conducting the proceeding. There were certain issues with regard to fee by the Appellant. Appellant earlier had filed I.A. No. 449 of 2020 which was decided by the Adjudicating Authority by an order dated 08.09.2020 wherein the COC was directed to pay the CIRP cost of the IRP. Subsequently to that, there was further application which was filed by the Appellant being I.A. No. 885/2020. While hearing I.A. No. 885/2020, the Adjudicating Authority passed the following order on 17.02.2022:

“ORDER

IA/853 of 2021

Order Reserved.

IA/885/2020

The Learned Counsel for erstwhile IRP states that in compliance of the order dated 27th September, 2021 an amount of Rs. 21.00 lacs as directed, being undisputed amount, stands paid by CoC as on date. The issue now limited in this Application is the amount which though approved by CoC, but not being paid by present RP on the ground that the CoC had not approved/ratified it.

Since, there is already a complaint filed before IBBI pending consideration, let this matter also be considered by the IBBI along with that complaint and report be filed before the next date of hearing.

List the matter on 18.04.2022.”

3. After the order passed by the Adjudicating Authority dated 17.02.2022, a complaint which was filed by the Appellant against the new IRP which was examined by IBBI and a report has been submitted dated 20.05.2022 opining that the complained filed by IRP/Appellant lacks merit. It was noted in the Report that IRP has been paid Rs. 20,89,068/- towards Fee and further amount of 13,70,699/- which was claimed by the Appellant was not approved by the CoC. The said Report was noted by the Adjudicating Authority and Adjudicating Authority relying on the said Report had rejected the I.A. No. 885 of 2020 on 13.01.2013. Aggrieved by the said order, this appeal has been filed.

4. Learned Counsel for the Appellant challenging the order contended that the amount of Rs. 20,89,068/- was undisputed and hence the rest amount was to be paid to the Appellant.

5. We have heard the Appellant and perused the records. There is no dispute that the Appellant has received the amount towards Fee which was as per earlier order of the Adjudicating Authority upto Rs. 20,89,068/-. Insofar as claim of Rs. 13 lakhs and odd, the same was examined by the Board (IBBI) and Board by its detailed report dated 20.05.2022, has noted the complaint of the Appellant, obtained inputs from the IRP, against whom the complaint was filed and Board in its Report in paragraphs 10 to 14 made the following observations:

“10. That upon perusal of resolution 1 of summary of e-voting, on approval/ratification of insolvency resolution process cost incurred by erstwhile IP, of the 13th CoC meeting, it is observed that –

a) An amount of Rs. 20,89,068/- detailed as under, was approved by the CoC.

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount in Rs.</i>
1.	<i>Advertising Expense</i>	<i>2,95,492.00</i>
2.	<i>Professional Fee of Advocate</i>	<i>1,60,000.00</i>
3.	<i>Professional Fee of Valuer</i>	<i>2,50,086.00</i>
4.	<i>Verification of assets/ transfer of buses</i>	<i>1,28,760.00</i>
5.	<i>Electricity Expenses</i>	<i>87,730.00</i>
6.	<i>Professional Fees of erstwhile IP</i>	<i>11,67,000.00</i>
Total		20,89,068.00

b) An amount of Rs. 13,70,699/- detailed as under, was not approved by the CoC-

Sr. No.	Particulars	Amount in Rs.
1.	Out of Pocket Expenses	1,05,000.00
2.	Professional Accounting Firm Fee for FY 2019-20	35,000.00
3.	Forensic Auditor Fee	3,54,000.00
4.	CoC meeting expenses	23,000.00
5.	Salary of Staff	3,52,333.00
6.	Rent for Warehouse (Parking of 7 Buses)	2,25,246.00
7.	Security Expenses	2,76,120.00
Total		13,70,699.00

11. That Hon'ble NCLT vide its order dated 17.02.2022, records that an amount of Rs. 21 lakh stands paid to the erstwhile IP.

12. That regulation 34 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 clearly provide that the CoC shall fix the expenses of the resolution professional and such expenses shall constitute insolvency resolution process cost.

13. That in the instant matter, CoC has deliberated on the fees and expenses of the erstwhile IP, in detail, and has accordingly ratified the expenses after its detailed deliberations. CoC observed that the expenses which are claimed by the erstwhile IP other than what is ratified by the CoC, are not substantiated with proper

information/document. Accordingly, these expenses are not paid to the complainant.

14. That accordingly, IBBI examined the issue of unpaid fees/expenses to the erstwhile IP and has disposed of the complaint of erstwhile IP without any further action as it lacks merit.”

6. Appellant was admittedly relieved from the CIRP proceeding after the resolution of CoC which was accepted by Adjudicating Authority and new IRP has been taking steps in the CIRP. The Appellant has been filing application only for Fee and expenses. The Appellant has filed a complaint against the new IRP that he is not paying his Fee, which complaint was taken cognizance by the IBBI and noticed by Adjudicating Authority and Adjudicating Authority had observed that IBBI may look into the said complaint and take appropriate decision.

7. When IBBI considered the complaint of the IRP and held that the said complaint has no merit since whatever Fee approved by CoC have been paid, we see no reason to find error in the order of the Adjudicating Authority rejecting I.A. No. 885/2020. IBBI, with whom complained has been made, examined the claim of the Appellant and found no merit in the complaint by holding that the Appellant has been paid Fee of Rs. 21 lakhs.

8. In the present case we see that Section 9 application, the claim by the Operational Creditor was about Rs. 50 lakhs and odd. The Appellant has

admittedly received Fee of Rs. 21 lakhs and he is still unsatisfied and litigating the matter further.

We see no merit in the appeal. Appeal is dismissed with cost.

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Barun Mitra]
Member (Technical)**

akc/nn