

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1057 of 2024

**[Arising out of the Impugned Order dated 18.04.2024 passed by the
Adjudicating Authority, National Company Law Tribunal, Mumbai
Bench in I.A. No. 1435/2022 in C.P. (IB) No. 1567 of 2018]**

In the matter of:

RELIGARE FINVEST LIMITED

having its office at 406-407, 4th Floor,
So Lucky Corner Building, Chakala,
Andheri Kurla Road, Andheri (East), Mumbai - 99

...Appellant

Versus

**1. Resolve Support Services Private Limited
Through its authorized representative**

Mr. Hitesh Jain,

having its registered office at
Flat No. 1902, Plot No. 24 to 29,
D Wing Sector 4, Amey CHSL,
Palm Beach Road, Nerul,
Mumbai-706

2. Mr. Ashish Vyas

Liquidator of Orient Tourism Private Limited
Having address at
B-1 A, Viceroy Court CHS Thakur Village,
Kandivali (East), Mumbai- 101

3. Mr. Anurag Jain

Resolution Professional of Orient Tourism Pvt Ltd.

Regd. No. IBBI/IPA001/IP-P01049/2017-18/11732,
1401, Oriental Heights, Sector 44,
Plot No. 158, Seawoods West,
Navi Mumbai, Maharashtra - 400706

.... Respondents

Present:

For Appellant : Mr. Saahil Bahety, Advocate.

For Respondent : Mr. Aditya Gauri & Mr. Amar Vivek, for R1.

Mr. Dhananjaya Sud, for R-3.

WITH
Company Appeal (AT) (Insolvency) No. 1346 of 2024

[Arising out of the Impugned Order dated 18.04.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench in I.A. No. 1435/2022 in C.P. (IB) No. 1567 of 2018]

In the matter of:

**Resolve Support Services Private Limited
Through its Authorized Representative
Mrs. Dimple Jain**

Having its Reg. Off. at:
Flat No. 1902, Plot No. 24 to 29, D Wing
Sector 4, Amey CHSL, Palm Beach Road,
Nerul, Mumbai, Maharashtra - 400706
legal@resolvegroup.co.in

...Appellant

Versus

1. ASHISH VYAS

Liquidator of Orient Tourism Pvt. Ltd.

Having Address at:
B-1A Viceroy Court CHS,
Thakur Village, Kandivali (East),
Mumbai Suburban, Maharashtra-400101

2. Religare Finvest Limited

Having its office at: 406-407, 4th Floor,
So Lucky Corner Building, Chakala,
Andheri Kurla Road, Andheri (East), Mumbai - 99

3. Anurag Jain

ERSTWHILE RESOLUTION PROFESSIONAL
ORIENT TOURISM PVT. LTD.
Regd. No. IBBI/IPA-001/IP-P01049/2017-18/ 11732
R/o. 1401, Oriental Heights, Sector-44,
Plot-158, Seawoods West,
Navi Mumbai Maharashtra – 400706
ipanuragjain@gmail.com

.... Respondents

Present:

For Appellant : Mr. Aditya Gauri & Mr. Amar Vivek, Advocates.

For Respondent : Mr. Sahil Bahety, for R-2.

Mr. Dhananjaya Sud, for R-3.

WITH
Company Appeal (AT) (Insolvency) No. 1199 of 2024

[Arising out of the Impugned Order dated 18.04.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench in I.A. No. 1435/2022 in C.P. (IB) No. 1567 of 2018]

In the matter of:

ANURAG JAIN
ERSTWHILE RESOLUTION PROFESSIONAL
ORIENT TOURISM PVT. LTD.

Regd. No. IBBI/IPA-001/IP-P01049/2017-18/11732
R/o 1401, 1401, Oriental Heights, Sector-44,
Plot-158, Seawoods West, Navi Mumbai
Maharashtra – 400706
ipanuragjain@gmail.com

...Appellant

Versus

1. ASHISH VYAS

Liquidator of Orient Tourism Pvt. Ltd.
Having Address at:
B-1A Viceroy Court CHS,
Thakur Village, Kandivali (East),
Mumbai Suburban, Maharashtra-400101

2. Religare Finvest Limited

Having its office at: 406-407, 4th Floor,
Lucky Corner Building, Chakala,
Andheri Kurla Road, Andheri (East), Mumbai - 99

3. Resolve Support Services Private Limited
Through its Authorized Representative
Mr. Hitesh Jain

Having its Reg. Off. at:
Flat No. 1902, Plot No. 24 to 29, D Wing
Sector 4, Amey CHSL, palm Beach Road,
Nerul, Mumbai, Maharashtra - 400706

.... Respondents

Present:

For Appellant : Mr. Dhananjaya Sud, Advocate.

For Respondent : Mr. Aditya Gauri, Mr. Amar Vivek and Mr. Siddharth Sharma for R-3.

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

Per: Barun Mitra, Member (Technical)

The present set of three appeals filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated 18.04.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I) in I.A. No. 1435 of 2022 in C.P. (IB) No. 1567/MB/2018. By the impugned order, the Adjudicating Authority has allowed the I.A.No 1435 of 2022 filed by Resolve Support Services Pvt. Ltd. for repayment of Rs 67,74,109/- claimed by them as interim finance provided by them in the CIRP of the Corporate Debtor-Orient Tourism Pvt. Ltd. Aggrieved by the impugned order, three separate appeals have been filed.

2. Aggrieved by the above impugned order, three separate appeals have been filed viz Appeal No. 1346 of 2024 filed by interim finance provider-Resolve Support Services Pvt. Ltd. ("**Resolve**" in short); Appeal No. 1057 of 2024 filed by Religare Finvest Pvt. Ltd. ("**Religare**" in short)-CoC member and Appeal No. 1199 of 2024 filed by the Resolution Professional ("**RP**" in short). The prayer made in Appeal No. 1346 of 2024 by Resolve is for allowing modification of the impugned order so as to secure repayment of full amount of Rs 90,80,214/- to the Appellant with further interest of 15%p.a. and default interest of 2% p.m. till date of full repayment. The prayer urged in Appeal No. 1057 of 2024 by Religare is for setting aside of the impugned order; to declare that Resolve is not entitled to any refund of amount and to declare the interim finance raised by the RP to

be unauthorised; direct the RP to refund the amount appropriated towards his fees/expenses; declare the transfer of expenses towards fees of Vishal and towards processing fees as unauthorised. The prayer urged in Appeal No. 1199 of 2024 by the RP is for expunging the adverse remarks made by the Adjudicating Authority in para 4.4 of the impugned order describing the conduct of RP in raising the interim finance as deplorable.

3. Since all the three appeals arise out of one common impugned order and stems broadly from the same set of facts, for reasons of convenience, we will proceed to take up for consideration Appeal No. 1057 of 2024 and apply our findings on the other two appeals also while keeping in mind distinguishing facts, if any, in the other two appeals.

4. Coming to the brief factual matrix of the matter at hand, the Corporate Debtor-Orient Tourism Pvt. Ltd. was admitted into the rigours of CIRP on 17.09.2019 on a Section 9 application filed by the Operational Creditor. The RP constituted the CoC on 04.11.2019 comprising solely of Religare Finvest Pvt. Ltd. at the time of initial constitution. The RP held the first CoC meeting on 13.11.2019 in which the RP apprised the CoC to contribute to the Corpus Fund to meet the costs of CIRP including the fees/expenses of RP, fees of Legal Counsel, valuation fees etc. The CoC members indicated that they would not be able to provide any contribution to the Corpus Fund and proposed that RP may secure interim funding including interest upto @ 15% p.a. This resolution was put to vote and was voted 100% in favour. The Operational Creditor who had filed the Section 9 application meanwhile entered into a settlement with the Corporate Debtor following which the Operational Creditor had submitted an

application in Form-FA for withdrawal of the CIRP process. Accordingly, the RP filed IA No. 3595 of 2019 for withdrawal of the CIRP under Section 12A of the IBC. This application was dismissed by the Adjudicating Authority after nearly 2 years on 08.02.2021. After dismissal of the Section 12A application, the RP approached Resolve for raising interim finance of Rs 1 Cr. and a Loan Agreement dated 15.02.2021 was entered into between them. The RP on 16.02.2021 requested Resolve to disburse interim finance facility of Rs 50 lakhs and followed up with subsequent letters for additional disbursement of interim finance loan. The RP subsequently informed the CoC about the Loan Agreement to raise interim finance of Rs 1 Cr. at a rate of interest of 15% p.a. from Resolve during its second meeting held on 22.02.2021. The CoC in its third meeting held on 14.06.2021 unanimously passed the resolution for initiating liquidation process of the Corporate Debtor. The RP thereafter filed IA No. 1626 of 2021 seeking the liquidation of the Corporate Debtor which was allowed by the Adjudicating Authority on 05.08.2021 following which a Liquidator was appointed. The RP thereafter informed the Liquidator vide e-mail dated 27.08.2021 to repay to Resolve the interim finance alongwith interest and default interest @ 2% p.m. in case of delay. The RP sent further reminder e-mails on 05.09.2021, 18.09.2021 and 05.12.2021 in this regard. On 05.12.2021, the Liquidator informed the RP that Religare had disputed the interim finance and the CIRP cost. The Liquidator also requested the RP to share documents relating to the interim finance raised by him on 08.04.2022 to which the RP sent the Loan Agreement of 15.02.2021. As the Liquidator and CoC refused to repay the interim finance provided by the Resolve, hence, Resolve filed IA No. 1435 of 2022 before the Adjudicating

Authority for repayment of Rs 90.80 lakhs alongwith interest of 15% p.a. and default interest of 2% p.m. The Adjudicating Authority has passed the impugned order dated 18.04.2024 allowing refund of principal amount of Rs 64,74,109/- instead of Rs 90,80,214/- without allowing interest and processing fees. Aggrieved by this impugned order, the three separate appeals have been filed as noted above.

5. Making submissions on behalf of Appellant Religare in Appeal No. 1057 of 2024, Shri Rohit Gupta, Ld. Counsel submitted that the interim finance sanction of Rs 1 Cr. obtained by the RP from Resolve alongwith interest rate and default interest was without the final and formal approval of CoC as the RP had not taken any steps to seek the consent from the CoC on the specific terms and conditions recorded in the Loan Agreement. Both members of the CoC, namely, Religare and City Union Bank had raised this concern pertaining to fees of RP and CIRP costs. The RP had also not disclosed to the CoC the relationship it had with the interim finance provider and this non-disclosure violated the principles of transparency and fiduciary duty cast upon the RP under the IBC. The Adjudicating Authority erred in directing the Liquidator to repay the interim finance amount of Rs 64.74 lakhs to Resolve inspite of noticing clear conflict of interest between the RP and Resolve as also the inappropriate conduct of the RP in raising interim finance from a related party for own undue enrichment. It was also submitted that the RP had engaged Vishal, one of the directors of Resolve as the legal professional which was a clear case of a conflict of interest. Further, the interim finance was utilised for the fees of the RP during the Covid period when there was no activity undertaken towards conduct of insolvency

proceedings. This constituted a misuse of funds and a breach of trust. Reliance was also placed on the judgment of this Tribunal in ***IndusInd Bank Ltd. Vs Mr. Rajendra K. Bhuta, RP in CA(AT)(Ins) No. 177 of 2022*** to contend that when insolvency proceedings are stayed, the RP is not entitled for any fee. In the present case, since the Section 12A withdrawal application had been filed immediately after admission of the Corporate Debtor into CIRP, the CIRP proceedings was as good as stayed for which no fees could be claimed.

6. The Ld. Counsel making submissions on behalf of the Resolve refuted the contentions of Religare to submit that the RP had apprised the members of CoC to contribute to the Corpus Fund during the first meeting of CoC and it was only in pursuance of CoC's approved resolution by 100% vote-share that the RP had approached Resolve to provide interim finance and entered into a Loan Agreement on 15.02.2021. Further Religare cannot claim that it was unaware about raising of interim finance particularly when the minutes of the second CoC clearly record that the RP had apprised the CoC including Religare about the approval in the first CoC meeting to the raising of interim finance. The RP could also not have been faulted for raising interim finance and in support of their contention adverted attention to the judgement of this Tribunal in ***Sajeve Bhushan Deora Vs Axis Bank Ltd. & Ors. in CA(AT)(Ins) No. 741 of 2019*** wherein it was held that in terms of Section 25 of the IBC, interim finance can be raised by the RP subject to approval of CoC. On the issue of Resolve and RP being related party, it was asserted the IBC does not put any bar on the RP from taking interim finance from a related party and since the RP had made the relevant disclosure to the Corporate Debtor, there was no infirmity committed

by the RP. The Liquidator and the CoC had therefore arbitrarily refused to repay the interim finance advanced by Resolve at a time when the same had been availed and consumed by the Corporate Debtor. Reliance was also placed on the judgment of this Tribunal in **ODAT GmbH Vs CA Santanu Brahma (IRP) in CA(AT)(Ins) No. 1900 of 2024** wherein it has been held that of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulation**” in short). CIRP Regulation 34-B(5) clearly provided that the fee of the RP can be paid from the funds available with the Corporate Debtor and/or funds raised by way of interim finance and shall be included in the insolvency resolution process cost. The repayment of interim finance including the principal, interest and default interest constituted a valid CIRP cost which was payable by the Liquidator. It was also asserted that the amount of any interim finance and cost incurred in raising such finance being a part of CIRP cost must be accorded priority under the water fall mechanism before making payment to other stakeholders. The Adjudicating Authority by disregarding and denying their legitimate claim to refund of interim finance provided including processing fees, agreed interest and default interest amount as set out in the Loan Agreement had caused significant financial detriment to their interests and sought redressal on this score.

7. Making submissions on behalf of the RP, the Ld. Counsel submitted that RP had acted in accordance with the statutory construct of IBC in discharging his functions and obligations in the CIRP of the Corporate Debtor. It was asserted that the RP is duly authorised by Section 25(2)(c) and Section 28(1)(a) of the IBC to raise interim finance with the approval of the CoC and that RP had in the

present case acted in terms of the resolution passed by the CoC in the first meeting to enter into a Loan Agreement with Resolve to raise interim finance. It was strenuously contended that RP had made due related party disclosures in terms of IBBI circular for raising the finance from a related party. It was also stated that in the second CoC meeting, the Appellant had informed the CoC that the CIRP cost sheet had been circulated alongwith the meeting notice. It was asserted that the draw-down from the interim finance and its utilisation towards CIRP costs was in consonance with the cost sheet circulated with the second CoC meeting notice. Moreover, though Section 12-A application had been filed, as there was no stay on the CIRP of the Corporate Debtor, the RP was not prohibited legally from claiming his own professional fees and fees for the legal professional even for the period excluded from CIRP time-line by the Adjudicating Authority. It was therefore stated that when the RP had not violated the provisions of IBC in any manner, the Adjudicating Authority travelled beyond its jurisdiction in making adverse observations against the RP in the impugned order and prayed that these remarks need to be expunged.

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

9. The first issue which requires our consideration is whether the RP had raised interim finance with the prior approval of the CoC and in accordance with the statutory construct of IBC and Regulations framed thereunder.

10. It is the case of Religare that the interim finance sanction of Rs 1 Cr. was obtained by the RP from a related party-Resolve with interest rate of 15% p.a. and default interest of 2% p.m. without the approval of CoC. Submission was

pressed that though the minutes of first CoC meeting had authorised the RP to avail interim finance but the structuring of the terms of interim finance was never discussed or approved by the first CoC. Submission was pressed that Religare had addressed an e-mail to the RP conveying disagreement with the minutes of first CoC meeting as it did not properly record the deliberations on the aspect of the fees of RP and CIRP cost and that they had requested the RP to repropose the resolutions pertaining to fees of RP and CIRP costs during the next CoC meeting which was not done. Moreover, when the Loan Agreement with Resolve and the terms and conditions of the interim finance contained in the Agreement was discussed in the second CoC meeting, Religare as the principal constituent of the CoC had raised objections to the interim finance raised as well as on the manner of appropriation of sums therefrom by the RP. It was asserted that the Loan Agreement came to the knowledge of Religare for the first time only during the hearing of IA No. 1435 of 2022 before the Adjudicating Authority. When the RP had not taken the consent from the CoC prior to executing the Loan Agreement as is clearly borne out from the minutes of the second CoC, raising of interim finance was unauthorised and that being so any appropriation by the RP from the corpus of the interim finance lacked legitimacy and therefore need to be refunded by the RP.

11. Per contra, it is the case of Resolve that the minutes of the first CoC meeting clearly recorded that RP had apprised the members of CoC to contribute to the Corpus Fund towards meeting CIRP costs and it was the CoC which had not only ideated the proposal to raise interim finance but also passed a resolution to that effect with 100% vote share. It was submitted that Religare

cannot claim to have been unaware of the raising of interim finance until filing of IA No. 1435 of 2022 as the minutes of the second CoC clearly show to the contrary that the RP had apprised the CoC including Religare about the approval during the first CoC meeting for raising of interim finance. It was only in pursuance of CoC's approved resolution that the RP had approached Resolve to provide interim finance and entered into a Loan Agreement on 15.02.2021. Though admittedly Religare had declined to approve the minutes of the second CoC, it was asserted that Religare failed to explain how the RP had acted inconsistently with the decision taken by the CoC in its first meeting. Echoing similar contentions, it was contended by the RP that the first CoC had not only approved the appointment of RP as well as his fees but had resolved that interim finance at a maximum interest rate of 15% p.a. be raised to meet CIRP costs including the fees of RP and legal fees. It was emphatically asserted that in the second CoC meeting, the RP had also annexed the CIRP cost sheet with the meeting notice. The CoC never objected to the raising of the interim finance at that stage and only after commencement of liquidation, the Liquidator and the CoC have arbitrarily refused payment of interim finance.

12. Having noted the rival submissions, it will be useful for us to notice the relevant minutes of the first and second CoC meetings to see whether the CoC had approved the raising of interim finance as well as the terms of such interim finance. The first CoC meeting held on 13.11.2019 had recorded the following minutes:

“n. Providing corpus fund to run the process and more importantly to complying with various tax laws and other regulations;

The IRP informed the members the need for the CoC to contribute to the corpus fund to run the CIR process of the company and more importantly for complying with various tax laws and other regulations. A sheet detailing the calculation of amount of corpus fund was annexed to the notice and discussed at length by the CoC. The members stated that they will not be able to provide any such contribution and that the IRP can get interim funding at appropriate terms and that interest can be paid at 15% p.a. The CoC members however decided to put the issue for e-voting.”

13. When we look at the above minutes of first CoC meeting held on 13.11.2019, which minutes also find reflected in the impugned order at para 4.1 thereof, it is clear that the CoC in its first meeting had proposed the idea to secure interim funding at appropriate terms by the RP and had decided to put the resolution to voting. It is also an undisputed fact that the CoC including Religare had voted 100% in favour of this resolution. However, this resolution only authorised the RP to avail of interim finance in general terms. Clearly there was no discussion or approval of the final terms of the exact amount of interim finance to be raised; the interest rate; default interest etc. that was to be chargeable.

14. We now proceed to see what further steps were taken by the RP on the raising of the interim finance and the minutes of the second CoC meeting acquires special relevance. The second meeting of CoC was held on 22.02.2021 after a lapse of nearly 15 months from the holding of the first CoC meeting. More significantly we also notice that even before the convening of the second CoC meeting on 22.02.2021 the RP had already finalised the Loan Agreement with Resolve on 15.02.2021. The two relevant agenda items of the second CoC meeting are as extracted below:

“4. To table and approve the minutes of the 1st Meeting of the CoC held on 13th November, 2019:

The Chairman informed the members that the minutes of the 1st meeting of the CoC were duly circulated to the participants of the meeting. No objections/suggestions for any changes or inconsistencies were received from them and hence requested the members to take the same on record. City Union Bank stated that as they were not part of the 1st CoC they are not approving the minutes. Religare Finvest Limited stated that they also refrain from approving the minutes of 1st CoC. The RP clarified that since City Union Bank was not a participant, it cannot approve or disapprove taking the same on record. More so, the minutes had already been shared with them on 09.12.2019 and no observations were received from them. Religare Finvest Limited also did not point out any inconsistency in the minutes after circulation on 15.11.2019 till date and also during this meeting; so, it is not appropriate that the minutes are not taken on record without raising any particular inconsistency.

9. To table the details of approved/ratified Corporate Insolvency Resolution Process (CIRP) costs incurred till date:

The RP informed that he had circulated a sheet of CIRP cost incurred till date to the CoC members. City Union Bank queried that as no service is rendered by the RP after filing of withdrawal application, then what is the justification for payment of RP fees till date. They strictly objected to the fees of the RP for the excluded period. The RP clarified that the statement that there is no service is incorrect and that though a withdrawal application was filed, the RP is incharge of the affairs of the CD, until the application is allowed. The IRP/RP conducted the first meeting of the CoC inspite of the withdrawal application and also continued to be in charge of the operations of the Corporate Debtor. In the very first meeting the IRP was confirmed as the RP. Though as an IRP he had charged a fee of Rs. 3 lacs, the CoC noting well that since there are no or minimal business operations of the CD and in view of the impending withdrawal of CIRP, which they also approve for, they humbly requested the IRP/RP to reduce his fees to Rs. 2,00,000/- p.m and the fees of the legal advisor at Rs 50,000/- p.m. on retainership basis. The IRP had stated that such a fee of Rs. 2 lacs is the bare minimum fees charged by the RPs wherein there are no operations of the CD but since there are some operations in this CD, fee of Rs. 3 lacs is reasonable, and the applicant OC had also

agreed for the same fee, though not being an institutional creditor. However, at the insistence of the CoC, the IRP/RP had agreed for a lower fee of Rs. 2 lacs per month. So the fees were fixed commensurate with the work involved and at the bare minimum market rate.

Even after the first meeting, the RP had been carrying on the operations of the CD, but since there was no substantial revenue generation, and due to inability to pay the salaries, all the employees had left. The suspended directors were also not co-operating completely and the business suffered. Later on, lockdown was imposed and the whole tourism sector is gravely impacted till date.”

(Emphasis supplied)

15. When we look at the above minutes, it is quite clear that Religare had refrained from signing the minutes of the first CoC meeting. Admittedly, Religare had also sent a written communication earlier to the RP objecting to the proceedings recorded in respect of the first CoC meeting. It is pertinent to also notice that the gap between the first and second CoC meeting was nearly fifteen months but during this long intervening period, the RP took no steps to keep the CoC apprised about the negotiations being undertaken to finalise the Loan Agreement. Instead, the RP had executed the Loan Agreement even before convening the second CoC meeting on 22.02.2021. In other words, the Loan Agreement which contained the exact terms of interim finance arrangement had been decided unilaterally by the RP without the approval of CoC. This action on the part of the RP does not appear to be compatible with CIRP Regulations 34-A and 34-B which obligated the RP to disclose to the CoC insolvency resolution process costs including fees/expenses to be incurred by the RP.

16. A defence was taken by the RP that CIRP cost sheet was annexed to the notice of the second CoC meeting on which the terms of the interim finance was

predicated. It was pointed out that the minutes of the second CoC meeting also records that CIRP costs incurred till date was circulated by the RP to the CoC members. A pointed query was therefore made by this Bench to the Ld Counsel of RP to show the purported CIRP cost sheet which was annexed to the second CoC meeting notice. However, as the Ld. Counsel for the RP could not readily show the same, he was allowed to furnish copy of the same with his written submissions which has however not been complied to by the RP. This lends credence to the argument canvassed by Religare that the RP took undue advantage of the preliminary approval taken in the first CoC meeting to unilaterally enter into a detailed agreement with Resolve for interim finance and serving the same on the CoC as a *fait accompli* without fleshing out reasons as to why Resolve which was a related entity was chosen as the lender or why the RP had opted for a quantum of Rs 1 Cr. interim finance with interest of 15% p.a. and default interest. Mere receipt of a general and preliminary approval in the first CoC meeting to raise interim finance without the stamp of final approval by the CoC on the specific terms and conditions of interim finance cannot be read as compliance to the requirements outlined under Sections 25 and 28 of IBC and CIRP Regulation 34-B for obtaining the specific approval of CoC before entering into any actual interim finance transaction.

17. We next proceed to examine whether the remarks of the Adjudicating Authority describing the professional conduct of the RP as “deplorable” was unwarranted or not. This examination would need to be seen from the point of view whether the fees claimed by the RP was commensurate with the services performed and whether the funds appropriated from the interim finance was

used for the benefit of RP and alleged related parties as alleged by Religare or for furthering the beneficial interest of the Corporate Debtor.

18. From the sequence of events which has already been noticed at para 4 above, it is an indisputable fact that immediately after the admission of the Corporate Debtor into CIRP, the Operational Creditor had entered into a settlement with the Corporate Debtor and had decided to withdraw the Section 9 application. The RP thereafter filed the Section 12A withdrawal application which application got rejected by the Adjudicating Authority on 08.01.2021. During this period of nearly two years when the Section 12A application was pending before the Adjudicating Authority, we do not find any status report filed by the RP before the CoC on what action or efforts were taken by the RP. We also find that when the second CoC meeting was held which happened after the dismissal of Section 12-A application, City Union Bank which was one of the CoC members had objected to the payment of fees to the RP for the period excluded by the Adjudicating Authority and had questioned the reasonability and justification of the fees claimed by the RP.

19. It is equally pertinent to note that the second CoC meeting had also noticed that there was minimal business operation of the Corporate Debtor with no substantial revenue generation during this period when the Section 12-A withdrawal application remained pending as all employees had left and business was gravely impacted by lockdown. We also take cognisance of the fact that while rejecting the Section 12A application, the Adjudicating Authority had excluded the litigation period from 06.11.2019 to 08.01.2021 from the CIRP time-lines. We are therefore inclined to agree that though CIRP as such was not stayed,

however, the very fact that the RP had filed the Section 12A withdrawal application immediately after admission of the Corporate Debtor into the rigours of corporate insolvency, the CIRP proceedings remained in a moribund state and there is nothing on record to show that any significant work was undertaken by the RP during this period.

20. In such circumstances, when the CIRP remained practically in abeyance for almost a period of two years on account of filing of Section 12A application, the claim of the full fees of the RP is clearly unsustainable. The RP can charge fees only in a transparent manner and the fees should be a reasonable reflection of the work undertaken and should have been validly incurred. The hefty fees appropriated by the RP from the Corpus Fund raised through interim finance facility does not appear justified. The RP is expected to conduct the CIRP process with the highest sense of responsibility. Section 208(2)(a) of the IBC enjoins upon the RP to scrupulously abide by a Code of Conduct which Code at Article 35 clearly obligates the RP to charge his fees in a transparent and reasonable manner. We are therefore of the considered opinion that the Adjudicating Authority did not commit any error in disapproving the conduct of the RP for getting suddenly active in raising interim finance after dismissal of Section 12A application and appropriating the major chunk therefrom to recover their fees.

21. We now like to address the finding returned by the Adjudicating Authority that the RP, the legal professional-Vishal and Resolve as the entity from whom interim finance was raised were all related parties belonging to one common group and that these related parties acted in collusion to utilise the interim

finance arrangements for their own benefit and unjust enrichment rather than furthering the beneficial interest of the Corporate Debtor as a going concern.

22. It is the case of Religare that professional fees of RP accounted for 73%; legal fees payment accounted for 17%; the interest and processing fees payable to Resolve accounted for 7% and only 3% was for other expenses was appropriated out of the Corpus Fund raised. We find that this percentage-wise profile of appropriation of Corpus Fund is borne out by material on record and has not been denied or controverted either by the RP or Resolve. We also notice that besides the professional fees of RP which accounted for major part of the amount which was appropriated from the Corpus Fund, the fees of the legal professional, namely, Vishal, accounted for Rs 11.48 lakhs which was next big ticket of payment.

23. When we further look at the material placed on record, we find that Vishal who was a related party was appointed as the legal professional. This legal professional hired by the RP happened to be director of Resolve from whom interim finance was raised and interim finance was purportedly transferred from the HUF account of Vishal to the account of the Corporate Debtor which was being handled by the RP. Given this backdrop, this was a clear case of conflict of interest since Vishal, on the one hand, was financing the Corporate Debtor through the RP, and on the other hand, was dipping into the corpus of interim finance through the RP by claiming legal fees. The RP had also not disclosed to the CoC the relationship it had with the Resolve as the Loan Agreement had been executed by RP without placing the specific terms thereof for approval of the CoC. This non-disclosure to the CoC of appointment of related parties as interim

finance provider and legal professional by the RP clearly violated the principles of transparency and fiduciary duty exercisable by the RP under the IBC.

24. It was vehemently contended by Resolve that there was no bar on the RP from taking interim finance from a related party for and IBBI Regulation 34-B clearly provides that the fees of the RP can be paid from the funds available with the Corporate Debtor which fund can also be raised by way of interim finance and shall be included in the insolvency resolution process cost. Moreover, as the RP had made the relevant disclosure to the Corporate Debtor to the Indian Institute of Insolvency Professional of ICAI, there was no infirmity committed by the RP. The RP has also contended that he is duly authorised by Section 25(2)(c) and Section 28(1)(a) of the IBC to raise interim finance with the approval of the CoC and in the present case he had acted in terms of the resolution passed by the CoC to enter into a Loan Agreement with Resolve to raise interim finance and made due disclosures in terms of IBBI circular.

25. Be that as it may, it is well settled that RP is an administrator of the IBC and is expected to work under the directions of the CoC. The relationship between the RP and the CoC is required to be one characterised by trust, confidence and transparency. There is however nothing placed on record by the RP to substantiate that the CoC was also kept apprised of this aspect of related party arrangements which was required under Section 28(1)(f) of the IBC. The manner in which the RP has raised interim finance and appropriated amounts out of the same largely towards his own fees and fees of the legal professional who was a related party shows lack of transparency on the part of the RP. The Adjudicating Authority has therefore rightly observed that the RP had raised

interim finance from a related party for the purpose of clearing his own dues and that of related party. In this backdrop, the Adjudicating Authority was not off the mark in finding the conduct of the RP to be deplorable and deprecatory.

26. This now brings us to the directions contained in the impugned order by the Adjudicating Authority for refund of interim finance to the interim finance provider as both the fees of the RP and legal fees as well as the interim finance raised were in the nature of CIRP cost and required to be paid in priority with the caveat that no refund of interim finance to the interim finance provider be done in respect of payment of interest and processing fees since the funds had been raised from a related entity.

27. From the material placed on record and foregoing discussions, we find no good grounds to disagree with the Adjudicating Authority that the interim finance had been raised by the RP from a related party and has been used to clear his own fees as well as that of the legal professional. We have already noticed that the approval of the first CoC to the raising of interim finance was only preliminary and prefatory in nature and that the RP had gone ahead and inked the Loan Agreement with the interim finance provider without obtaining formal approval of the CoC on the terms and conditions of the Loan Agreement. It is for the CoC to ratify, modify or set aside the CIRP cost and in the present case when CIRP cost was not shown to have been placed before the CoC for its examination, consideration and decision, it was not open for the RP to expend on CIRP costs unilaterally. We therefore do not find any infirmity with the directions of the Adjudicating Authority in the impugned order not to allow refund of interim finance to the interim finance provider in respect of interest

payment and processing fees. We have however find sufficient basis in the contention of Religare that the interim finance has been misused by the RP to pay his own fees and that of the legal professional despite objections raised by the CoC that no substantial work was done during the period when the Section 12A application was pending. We are of the considered view that there is adequate justification for rationalising the fees appropriated by the RP for himself and the legal professional and to that extent disagree with the Adjudicating Authority for having allowed the entire amount of Rs 64,74,109/- to the RP and in directing the Liquidator to reimburse this amount in full. We are of the view that it would be reasonable to restrict this amount to Rs 50 lakhs only and hold that the impugned order passed by the Adjudicating Authority dated 18.04.2024 requires to be modified to that extent.

28. In sum, all the three Appeals are decided in following manner:

(i) Company Appeal Nos. 1346 and 1199 of 2024 are found to be devoid of merit and are dismissed.

(ii) Appeal No. 1054 of 2024 is allowed with the following directions:

(a) Out of the principal interim finance amount of Rs 64,74,109/- raised by the RP, the Liquidator shall pay an amount of Rs 50,00,000/- only to the interim finance provider within a period of 30 days from the date of the order.

(b) The balance amount of Rs 14,74,109/- shall be refunded by the RP to the Liquidator within a period of 30 days and thereafter this amount so refunded shall be paid to the interim finance provider within 7 days of receipt of the said amount.

(c) We also reaffirm the directions contained in the impugned order that interim finance shall not be refunded with any provision for interest and no processing fees shall be payable to the interim finance provider.

(d) We also uphold the findings of the Adjudicating Authority on the deplorable professional misconduct on the part of the RP and direct that a copy of this order be sent by this Registry to the Insolvency and Bankruptcy Board of India for initiating appropriate action.

(e) No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

**Place: New Delhi
Date: 14.01.2026**

Abdul