

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 871 of 2023

&

I.A. No. 2962 of 2023

IN THE MATTER OF:

Khozim Yusuf Nagarwala

...Appellant

Versus

Satyendra Prasad Khorania

Erstwhile RP of Raj Buildhome Pvt. Ltd.

...Respondent

Present:

For Appellant : Present but appearance not marked.

For Respondent : Mr. Amol Vyas, Advocate.

O R D E R
(Hybrid Mode)

02.07.2024: Heard Counsel for the Appellant as well as Learned Counsel appearing for the Respondent.

2. This appeal has been filed against an order dated 22.02.2023 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Jaipur Bench) in I.A. No. 71/JPR/2021 & Contempt Petition No. 168/JPR/2020 in C.P. (IB) No. 83/JPR/2018.

3. Brief facts necessary for deciding this appeal are:

- i. The Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor commenced by Order dated 03.05.2019.
- ii. The application was filed by the Appellant who was the Financial Creditor under Section 7. An appeal was filed before this Tribunal against the order passed by the Adjudicating Authority dated 03.05.2019, which appeal came to be allowed by order dated

11.12.2019 in *Comp. App. (AT) (Ins.) No. 558 of 2019*. This Appellate Tribunal while allowing the appeal issued following directions in paragraphs 18 & 19, which are as follows:

“18. We conclude that there is no default. For the aforesaid reasons, we allow the appeal, quash and set aside the impugned order dated 03.05.2019 and the Corporate Debtor is released from rigour of ‘Corporate Insolvency Resolution Process. The Interim Resolution Professional/Resolution Professional will hand over the management, assets and records to the Corporate Debtor/Promoter/Board of Directors. Henceforth the Corporate Debtor will function independently through its Board of Directors.

19. Financial Creditor is liable to pay the CIRP cost and fees of the Interim Resolution Professional/Resolution Professional. The Interim Resolution Professional/Resolution Professional will file report before the Adjudicating Authority with regard to his fee, CIRP cost and the Adjudicating Authority is requested to pass orders to recover the same from the Financial Creditor. No costs.”

- iii. Subsequent to the aforesaid order, the Adjudicating Authority took up the Company Petition on 12.12.2019 and taking note of the order of the Appellate Tribunal, the Company Petition was dismissed on 12.12.2019.
- iv. Adjudicating Authority while dismissing the Company Petition observed that Financial Creditor may take note of the order of the Appellate Tribunal and invite the client’s attention to the same and ensure compliance.
- v. It appears that subsequent to the order of the Adjudicating Authority the Resolution Professional (RP) send an email to the Financial Creditor conveying the sum expenses and claim of the fee which ran into Rs. 17,68,67,767/-.

- vi. It appears that any payment was not made by the Financial Creditor, Contempt Petition No. 168/JPR/2020 was filed by the RP before the Adjudicating Authority to which I.A. No. 71/JPR/2021 was also filed by the Financial Creditor praying for dismissal of the Contempt Petition.
- vii. Adjudicating Authority by the impugned order has taken the view that no case for any contempt has been made out on the part of the Financial Creditor and by the said order has dismissed the Contempt Petition. No appeal having been filed against the order dismissing the Contempt Petition the said direction has become final between the parties.

4. Learned Counsel for the Appellant challenging the order contends that in the contempt jurisdiction, Adjudicating Authority ought not to have proceeded to compute the fee and expenses of the RP. He further submits that as per the order of this Appellate Tribunal dated 11.12.2019, the Report ought to have been filed by the RP before the Adjudicating Authority and it was the Adjudicating Authority who was to determine the fee and expenses and no Report having been filed by the RP, order of the Adjudicating Authority is unsustainable. He further submits that the directions issued by the Adjudicating Authority in paragraph 15.3 with regard to expenses of Rs. 3,01,427/- is unsustainable. Since, there was no material before the Adjudicating Authority with regard to the aforesaid amount and liberty was given to the RP to submit Bill subsequently. He further submits that most of the Bill which are in the expenses of Rs. 3,01,427/- were the same bills which are submitted for expenses for Rs. 2,41,512/-.

5. Sh. Amol Vyas, Learned Counsel appearing for the RP refuting the submission of the Appellant submits that the Adjudicating Authority was well within its jurisdiction to issue direction for computing the fee and expenses in compliance of the order of this Appellate Tribunal. He further submits that Financial Creditor has not paid the amount to the RP and only meagre amount has been paid to the RP and most of the amounts is still balance. He denies that the bills which are in the expenses of Rs. 3,01,427/- are the same bills which cover the expenses of Rs. 2,41,512/-.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. Insofar as jurisdiction of the Adjudicating Authority to determine the fees and expenses, we are not agreeable with the submission of the Appellant that the Adjudicating Authority has no jurisdiction to proceed for computation of fee and expenses. When the Appellate Tribunal vide its order dated 11.12.2019 has specifically directed in paragraph 19 that Financial Creditor is liable to pay the CIRP cost and fees which was to be reported to the Adjudicating Authority and which was to be determined, the Adjudicating Authority has ample jurisdiction to proceed to examine the entitlement of the fee and expenses.

8. The submission of the Counsel for the Appellant is that in exercise of power under Regulation 33(2) of CIRP Regulations 2016, the Adjudicating Authority could have been determined but not in the contempt jurisdiction. The direction of the Appellate Tribunal has been substantially complied by the Adjudicating Authority by determining the fee and expenses. The order

passed by this Appellate Tribunal on 11.12.2019 is final and binding between the parties and the Financial Creditor cannot escape from liability to pay fee and expenses.

9. Adjudicating Authority has determined the fee of Rs. 1,00,000/- per month totalling Rs. 7,30,000/- which we are of the view that need to be paid by the Financial Creditor. CIRP expenses has also been approved for Rs. 2,41,512/- which finds approval by us also. However, the direction issued in paragraph 15.3 is uncalled for and we set aside the direction in paragraph 15.3. Adjudicating Authority could have decided the fee and expenses only on the basis of material which was before the Adjudicating Authority.

10. We thus are of the view that the Appellant is liable to pay the amount of Rs. 7,30,000/- plus Rs. 2,41,512/- minus any amount if already paid which payment shall be made to the RP within four weeks from today by a Bank Draft or by R.T.G.S payment.

The appeal is disposed of with aforesaid directions.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

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