

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 160 of 2022**

In the matter of:

Sumit Bansal, Insolvency Professional

....Appellant

Vs.

**Committee of Creditors of JP Engineers Pvt. Ltd. &
Ors.**

...Respondents

For Appellant: Mr. Abhishek Garg, Mr. Ayush Kuchhal, Advocates.

**For Respondents: PBA Srinivasan, Mr. Parth Tandon, PS Chandralekha, Ms. Nikitha Ross, Ms. Sneha Iyer, Advocates for R1.
Mr. K.D. Sharma, Advocate for R2.**

ORDER

(Through Virtual Mode)

18.02.2022: Heard Shri Abhishek Garg, Learned Counsel for the Appellant, Shri PBA Srinivasan, Learned Counsel for Committee of Creditors and Shri K.D. Sharma, Learned Counsel for the Resolution Professional. With the consent of the parties, the Appeal may be disposed of at the stage of admission.

2. This Appeal has been filed against the order dated 07.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-II on the Application being I.A 5274 of 2021 filed by the Appellant. Appellant before us was appointed as Interim Resolution Professional (IRP) by the Adjudicating Authority by its order dated 26.02.2020. In the first CoC meeting, he claimed that he should be paid Rs.2 Lakhs per month. The matter

of fee, however, could not be decided by the CoC and ultimately CoC ratified payment of Rs. 50,000/- per month only. The Appellant's claim that he worked up to 27.01.2021 when he was replaced by the Resolution Professional-Respondent No.2. The Appellant thereafter filed an Application I.A 5274 of 2021 before the Adjudicating Authority claiming the payment of fees @ Rs.2 Lakh per month on which Application the Adjudicating Authority took a decision to refer the matter to the Insolvency and Bankruptcy Board of India (IBBI) to examine the claim of Ex-IRP vis-à-vis his agreement with the CoC and to submit their specific recommendations and thereafter the matter be directed to be listed again before the Adjudicating Authority on 22.02.2022.

3. Learned Counsel for the Appellant challenging the order submits that IBBI has no jurisdiction to decide the question of payment of fees of the Appellant. He further submits that the Adjudicating Authority ought not to have asked for recommendation of the IBBI with regard to fee of the Appellant. He submits that the Adjudicating Authority ought to have itself decided the matter regarding fee.

4. Learned Counsel for the Respondent No.2 as well as Learned Counsel for the CoC submit that whatever amount was approved by the CoC has already been paid to the Appellant i.e. Rs. 50,000 per month and on the sufficiency of fee, it is the CoC which has jurisdiction to take a decision and Appellant ought not to have filed an Application before the Adjudicating Authority regarding his fee.

5. We have considered the submissions of the Learned Counsel for the Appellant and perused the record.

6. There is no quarrel to the proposition that it is the Adjudicating Authority which has power to take a final decision with regard to payment of fee to which IRP or RP may be entitled. In this context, judgment of the Hon'ble Supreme Court is referred in ***"Alok Kaushik vs. Mrs. Bhuvaneshwari Ramanathan and Ors.- Civil Appeal No. 4065 of 2020"***. It is thus settled law that the Adjudicating Authority is clothed with jurisdiction to take a final decision regarding entitlement of IRP or RP claiming his fee because i.e. part of the CIRP costs.

7. However, the issue which has been sought to be raised in this Appeal is that IBBI has no jurisdiction nor Adjudicating Authority ought to have referred the matter for a recommendation. From tenor of the order, it is clear that the ultimate decision regarding this issue raised in I.A 5274 of 2021 is to be taken by the Adjudicating Authority and the Adjudicating Authority has not directed the IBBI to decide the issue and only recommendations have been called for from the IBBI.

8. We do not agree with the submissions of the Counsel for the Appellant that IBBI has no jurisdiction with regard to question of fee which is entitled to be paid to the IRP/ RP. The IBBI is clothed with Regulations making power under Section 240 of the Code. Section 240(1) is to the following effect:-

“240. Power to make regulations.- (1) *The Board may, by notification, make regulations consistent with this Code and the rules made thereunder, to carry out the provisions of this Code.*”

9. The general power of framing regulations to carry out the provisions of this Code encompasses in itself the power to regulation regarding Insolvency Professionals. The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 has already been framed where as per Regulation 7(2)(h), the Insolvency Resolution Professional has to be abide by the Code of Conduct specified in the First Schedule to these Regulations. In the First Schedule, Item 25 requires an Insolvency Professional to provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work. Item 25 of the First Schedule is 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.”

10. We thus are of the view that IBBI is fully clothed with jurisdiction to regulate payment of remuneration of RP and IRP both by framing regulation or by issuing executive instructions till regulation are not framed can regulate the subject. We thus are of the view that IBBI till necessary regulations are not framed regulating fee is empowered to issue executive instructions in this

regard. The issue of payment of fee to the IRP/RP occur very frequently which needs to be regulated by Regulating Authority who is clothed with the power. The mere fact that IBBI has been asked to submit its recommendations by the Adjudicating Authority, in the present case, we see no reason to question the jurisdiction of IBBI to submit a recommendation. The recommendations may be helpful to determine the issue in accordance with guidelines and circulars issued by the IBBI in this respect, if any. We however, looking into the facts of the present case, observe that the Adjudicating Authority may dispose of I.A 5247 of 2021 immediately after receiving recommendations from the IBBI so that the issues raised before the Adjudicating Authority may come to an end.

11. With these observations, the Appeal is disposed of.

**[Justice Ashok Bhushan]
Chairperson**

**[V.P. Singh]
Member (Technical)**

Anjali/nn