

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 161 of 2019

IN THE MATTER OF:

Muthoot Finance Ltd.

...Appellant

Vs

Southern Investments Pvt. Ltd. & Ors.

....Respondents

Present:

**For Appellant: Ms. Priyanka Ghorawat and Mr. Raghav Marwaha,
Advocates**

**For Respondents: Mr. Arshit Ananand and Mr. Ajitesh Soni,
Advocates for Respondent No. 1.**

**Mr. Ishaan George, Advocate for Respondent No.
2.**

**Mr. Goutham Shivshankar and Mr. Shantanu
Singh, Advocates for Respondent No. 3.**

ORDER

14.11.2019 Heard learned Counsel for the Appellant. The Appellant claims that the Appellant was one of the Financial Creditors, who filed claim with the Interim Resolution Professional when Corporate Insolvency Resolution Process (in short '**CIRP**') was initiated against Southern Investment Private Limited (Respondent No. 1 – Corporate Debtor). The matter had gone to the Hon'ble Supreme Court and the Company Petition came to be disposed as per the orders of Hon'ble Supreme Court in the matter of "**Fehmida Shaheen & Ors. Vs. Union of India & Ors.**" – W.P.(C) No. 452 of 2018 dated 20th November, 2018 (page-27). It is stated that in the impugned order, the Adjudicating Authority (National Company Law Tribunal- Single Bench) Chennai has, on 21.01.2019, directed the Appellant to pay Rs. 6,61,200/- as share of the Appellant towards remuneration of the Interim Resolution Professional/Resolution Professional (Respondent No.

2). The contention of the learned Counsel is that the Appellant was only a Financial Creditor, who filed claim and was part of Committee of Creditors (in short 'CoC') and liability to pay remuneration does not come from Appellant. When Corporate Debtor is available, the Corporate Debtor should have been directed to pay the amount towards remuneration.

2. Learned Counsel for the Respondent No. 2- Resolution Professional refers to his reply filed vide diary No. 11485 wherein all details are recorded as to the developments which took place in the CIRP. It is pointed out that in decision taken on 25.04.2018, the first meeting of CoC (Annexure-A2 of the Reply Affidavit), the fee of the Resolution Professional was fixed. Learned Counsel has referred to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 as reproduced in Reply. He also referred to the reply affidavit for the procedure followed in such proceedings. It is stated that the CoC takes the decision with regard to fees to be paid to Interim Resolution Professional/Resolution Professional which initially CoC members contribute in proportion of their voting share and the same procedure was followed in the present matter. It is argued that other than the Appellant, no other CoC member has raised any question regarding initial contribution towards fees and have paid their shares. The fee paid by the Financial Creditors is recoverable by the Financial Creditor from the Corporate Debtor. The fees of Interim Resolution Professional cannot be left in suspense and the IBC ensures priority to the payment of fees of Interim Resolution Professional/Resolution Professional.

3. Learned Counsel for the Appellant submits that the Appellant was merely a member of CoC and in the present case has not benefitted anything but is saddled with the burden of payment and then recovery.

4. In response, the learned Counsel for the Resolution Professional – R2 is submitting that the record shows that various benefits have accrued to the Appellant because of the CIRP where even agreements were entered letting the Appellant retain some flats and the Appellant cannot say that he has not been benefitted anything from the process.

5. We are not concerned whether the Appellant benefitted or not. Under Section 25(2)(c) of Insolvency and Bankruptcy Code, 2016, it is the duty of the Resolution Professional to take actions during CIRP to raise interim finances subject to the approval of the CoC under Section 28. When it is shown in the present matter that CoC has fixed fees and other members of CoC have contributed towards fees of the Resolution Professional in proportion of their voting shares, the Appellant cannot be heard saying that it will not contribute especially when the same is recoverable.

6. In the facts of the matter, we do not find any error with the impugned order directing the Appellant to first pay and then make recovery from the Corporate Debtor. In the circumstances, we do not interfere with the impugned order. Appeal is dismissed.

[Justice A.I.S. Cheema]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Md