

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 08 & 43 of 2018**

**IN THE MATTER OF:**

**State Bank of India**

**...Appellant**

**Versus**

**SKC Retails Ltd.  
Through IRP & anr.**

**...Respondents**

**Company Appeal (AT) (Insolvency) No. 09 of 2018**

**IN THE MATTER OF:**

**State Bank of India**

**...Appellant**

**Versus**

**Tech Magacorp International Pvt. Ltd.  
Through IRP & anr.**

**...Respondents**

**Present:**

**For Appellant :           Mr. P.V. Dinesh and Mr. Rajendra Beniwal,  
Advocates**

**For 2<sup>nd</sup> Respondent :   Mr. Preet Pal Singh, Advocate**

**O R D E R**

**06.03.2018**       All these appeals have been preferred by the State Bank of India (Financial Creditor), who is a member of the Committee of Creditors against

different orders passed by the Adjudicating Authority (National Company Law Tribunal, Chennai).

2. *Company Appeal Nos. 8 and 43 of 2018* arises out of two different orders dated 26<sup>th</sup> October, 2017 and 14<sup>th</sup> November, 2017. By the first order dated 26<sup>th</sup> October, 2017, the Committee of Creditors have been directed to bear the rest of the expenses in proportion to the amount claimed by the Insolvency Resolution Professional (IRP) and reads as follows:

*“Counsel for Petitioner present. Ms. V. Santhiya, representative of IRP present. It relates to the order that has been passed on 12.07.2017 wherein the Corporate Insolvency Resolution process was initiated against the Corporate Debtor, moratorium was declared and the IRP was appointed. The IRP has made the public announcement and performed his duties. But the expenses incurred for public announcement/other expenses have not been paid by the Petitioner. Counsel for the Petitioner submitted that to the extent of public announcement the bill has already been received. The said expenses shall be paid by the Petitioner to the IRP on 10.11.2017. However, an issue has been raised by the Counsel for the Petitioner that the CoC did not ratify the other expenses to be paid to the IRP, rather the same has been refused by the CoC, which reflects from the*

*Minutes of the first meeting of the CoC held on 05.10.2017.*

*In view of the above, we hereby direct the CoC to bear the rest of the expenses in proportion to their amount claimed within two weeks. The IRP shall take copy of this order and deliver it to the Coc for compliance.*

*In terms of the above, the memo filed by the IRP stands **disposed of.***

3. The Financial Creditors thereafter moved before the Adjudicating Authority with regard to the said payment and by the impugned order dated 14<sup>th</sup> November, 2017 the order of 26<sup>th</sup> October, 2017 was reiterated, which reads as follows:

*“Mr. V. Mahesh, IRP in person present. Counsel for Applicant/Operational Creditor present. Counsel for SBI/Financial Creditor present. The counsel for the Financial Creditor has filed memo praying therein that the Applicant/Operational Creditor moved Application under section 9 of the IBC, 2016 despite knowing that no securities are available as to pay fee to the IRP. Based on this plea, the Financial Creditor prayed to recall the order dated 26.10.2017. The plea made by the Financial Creditor is devoid of merits for the reasons that even if no securities are available, the IRP has to be paid. In that*

*event it is the duty of the CoC to make payment of the remuneration in proportion to their total credit. The Applicant/Operational Creditor has already paid expenses for public announcement and he is also ready to share the burden of the remuneration to the extent of 1/4<sup>th</sup> of the total. Therefore, in the circumstances, the Applicant cannot be burdened for payment of whole of the remuneration to the IRP. In view of this, we reiterate the order dated 26.10.2017 and direct the members of the CoC to pay the remuneration of the IRP within time provided in the order dated 26.10.2017. Consequently, the memo filed by the Financial Creditor stands **rejected.**"*

4. In the other *Company Appeal (AT) (Insolvency) No. 09 of 2018* almost similar order dated 14<sup>th</sup> November, 2017 has been passed, which reads as follows:

*"Counsel for Petitioner present. Mr. V. Mahesh, IRP present and Counsel representing SBI present. It relates to the order that has been passed on 28.09.2017 wherein the corporate Insolvency Resolution process was initiated against the corporate debtor, moratorium was declared and the IRP was appointed. The IRP has made the public announcement and performed his duties.*

*Counsel for the Petitioner submitted that the cost of public announcement has been reimbursed by the operational creditor who has initiated insolvency process. But other expenses/ like the fees to the IRP has not been paid, rather the same has been refused by the CoC, which reflects from the minutes of the first meeting of the CoC held on 12.10.2017. Perused the application filed by the IRP for fixing the fee and for issuing necessary directions to the CoC.*

*In view of the above and considering the prayer in the application, I hereby direct the CoC to bear the fees of the IRP in proportion to the amount claimed within 2 weeks. The IRP shall deliver a copy of this order to the Coc for compliance.*

*In terms of the above, the application filed by the IRP stands **disposed off.**"*

5. The main plea taken by the appellant is that the Committee of Creditors are not liable to bear any fees of the Insolvency Resolution Professional.
6. The question arises for consideration in this Appeal is whether the Committee of Creditors are liable to bear the expenses incurred by the Insolvency Resolution Professional or not.

7. Learned counsel appearing on behalf of the appellant reiterated the argument that the Committee of Creditors are not liable to pay the expenses of the Insolvency Resolution Professional.

8. Learned counsel appearing on behalf of the 2<sup>nd</sup> Respondent –IFFCO TOKIO General Insurance Co. Ltd., another member of the Committee of Creditors submitted that the expenses of Resolution Professional should be borne by the Committee of Creditors and thereby supported the impugned order(s).

9. Regulation 33 of the “*Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*” relates to “cost of the interim resolution professional”, which reads as follows:

**“33. *Costs of the interim resolution professional.***

(1) *The applicant shall fix the expenses to be incurred on or by the interim resolution professional.*

(2) *The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).*

(3) *The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.*

(4) *The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.*

*Explanation- For the purposes of this Regulation, “expenses” mean the fee to be paid to the interim resolution*

*professional and other expenses, including the cost of engaging professional advisors, to be incurred by the interim resolution professional.”*

10. As per Regulation 33, the applicant means the person who files the application under Section 7 or 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “I&B Code”) who generally proposes the name of the ‘interim resolution professional’. Such applicant negotiates the fee to be charged and paid to the interim resolution professional. As per the provision aforesaid, the Adjudicating Authority is required to fix the expenses where the applicant has not fixed expenses under sub-regulation (1) of Regulation 33. In such case, the applicant, who has filed the application under Section 7 or 9 of the I & B Code, is required to bear the expenses which is to be reimbursed by the committee of creditors to the extent the Committee of Creditors ratifies the same.

11. In the present case, the application was filed by the respondent(s) under Section 7 of the I & B Code, 2016 in *Company Appeal (AT)(Insolvency) Nos. 08 & 43 of 2018* and under Section 9 of the I & B Code, 2016 in *Company Appeal (AT)(Insolvency) No. 09 of 2018*. The name of resolution professional were suggested by the applicant of such application. Therefore, as per sub-regulation (1) of Regulation 33, the applicant is liable to incur the expenses of resolution professional. Thereafter, the applicant will get the amount reimbursed by the Committee of Creditors to the extent the amount as is ratified by the Committee.

The expenses will include all expenses as explained above in clause (4) of Regulation 33.

12. The impugned orders dated 26<sup>th</sup> October, 2017 and 14<sup>th</sup> November, 2017 passed in *Company Appeal Nos. 8 and 43 of 2018* and the order dated 14<sup>th</sup> November, 2017 passed in *Company Appeal No. 9 of 2018* stand modified to the extent above. All the appeals are disposed of with the aforesaid observations and directions. However, in the facts and circumstances of case there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

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