

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**NEW DELHI****I.A. NO.3049 OF 2020****IN****COMPANY APPEAL (AT)(INSOLVENCY) NO.631 OF 2020****In the matter of:****Kumud Shekhar, Resolution Professional
Of Hospitech Management Consultants Pvt Ltd****Applicant****Vs****Avtar Singh Rahi & Anr****Respondents****For Appellant: Mr. Ashok Juneja and Mr Kumud Shekhar for RP.****For Respondent: Mr. Vikas Singh, Sr. Advocate with Mr. Lakshay Dhamija and Pawanjit Singh Bindra, Advocates for R1.****ORDER****(29th January, 2021)**

1. The brief facts of the case are that the Operational Creditor, Mr. Nawal Kishore Prasad, initiated insolvency proceedings against the Corporate Debtor, M/s Hospital Management Consultants Pvt Ltd. During the course of proceedings a settlement was arrived at between the Operational Creditor and the Corporate Debtor and the Tribunal vide order dated 13.7.2020 approved the settlement and directed the Corporate Debtor to file bank guarantee of Rs.17,75,638/- in favour of RP and the RP was directed to file withdrawal application.

2. Being aggrieved by the said order dated 13.7.2020, the suspended director of the Corporate Debtor filed an appeal before this Appellate Tribunal challenging the orders of the National Company Law Tribunal New

Delhi dated 13.7.2020 praying therein that the order dated 13.7.2020 be set aside as the fee and expenses of Rs.17,75,638/- of Resolution Professional is unreasonable, excessive and arbitrary as the Resolution Professional has only worked for 39 days i.e. from 27.1.2020 to 5.3.2020.

3. The matter was heard at on 29.7.2020 and with the consent of both the parties the following order was passed:

“Heard the Learned Sr. Counsel for the Appellant as well as the Learned Counsel for the 1st Respondent. By consent, this Appellate Tribunal allows (1) Clause A Expenses (Ratified in 1st COC) only to an extent of Rs.24,785/-, (B) Clause B Expenses Outside Professionals (Ratified in 1st COC) only to an extent of Rs.2,28,500/- (3) Clause C Expenses (Ratified in 2nd COC) only to an extent of Rs.47,353/- and in respect of (4) Clause D Expenses Insolvency Professional Entity Charges (Ratified) limited to an extent of Rs.1,00,000/- and in respect of (5) Clause E Expenses Resolution Professional Fess(Ratified) is restricted to Rs.2,50,000/- only.

For determining the aforesaid amounts, the Learned Sr. Counsel appearing for the Appellant as well as the Learned Counsel for the 1st Respondent has agreed and upon acceptance this Appellate Tribunal, to prevent an aberration of Justice and to secure the ends of Justice directs the Appellant to make the aforesaid payments by 14th August, 2020.

Before parting with the case, it is made lucidly clear that the 1st respondent/Resolution Professional cannot lay a claim other than the amounts granted by this Appellate Tribunal as stated supra.

With the aforesaid observations and direction(s), the Appeal Stands disposed of.

IA No.1686/2020 (for stay) is closed.”

4. Being aggrieved by this order dated 29.7.2020, the Resolution Professional approached the Hon’ble Supreme Court by filing Civil Appeal No.3288 of 2020 and the Hon’ble Supreme Court while disposing off the appeal directed the Resolution Professional to pursue his interim application

before the NCLAT has granted liberty to the Resolution Professional to move afresh, if it is aggrieved by the order of the NCLAT.

5. The IA No.3049/2020 filed by the Resolution Professional was heard at length. Applicant stated that COC appointed IRP as RP and the fees was also ratified by COC with 100% voting. RP further stated that the fees of the RP can only be decided by the COC as per Section 34 of IBC. Resolution Professional further stated that the NCLT has passed a well reasoned order after hearing the parties and perusal of record and the order passed by the Appellate Tribunal is not a reasoned order and it has incorrectly recorded a consent of concession by the proxy advocate of the PP on the very first date of hearing without giving the opportunity to the RP to be present.

6. Learned counsel for the Respondent No.1 stated that the present application has been filed by misusing Section 420 of the Companies Act, 2013 and the same is not maintainable as there is no mistake apparent on the fact of record for which RP is seeking amendment. Learned counsel stated that the rectification of order as per Rule 154 of the NCLT Rules 2016 provides for any clerical or arithmetical mistakes in the order which is not the case of the RP in the entire application. Learned counsel further stated that the present application is the classic example of greediness of RP to extort more money from the Corporate Debtor despite entire proceedings of CIRP against the Corporate Debtor been put to rest vide order dated 9.9.2020. Learned counsel for the Corporate Debtor further submitted that no affidavit has been filed on behalf of the Mr. Rituraj Biswas, Advocate detailing that consent as recorded in order dated 29.7.2020 was given by him without been authorised by the RP and further no document as to date

of travel of the RP to Bihar(place unspecified) from Delhi, date of return from Bihar to Delhi. It is further stated that the RP actually performed the duties only for the period of 39 days i.e. from 27.1.2020 till 5.3.2020 and payment of fee and expenses of Rs.17,75,638/- as claimed is highly unreasonable, excessive and arbitrary as the same is even more than the settled amount of Rs.12,50,000/-.

7. We have heard the parties at length and perused. It is admitted fact that the RP worked for only 39 days and the settled amount is Rs.1250000/- and the expenses for 39 days is Rs.17,75,638/- which seems unreasonable and excessive on the face of it. Further the order was passed after consent of both the sides. Further when the order was dictated the counsel appearing on behalf of the RP did not object and also did not brought the fact before the Appellate Tribunal that he is proxy counsel. The argument of the RP that the counsel was proxy counsel and he was not authorised, is an after thought. Further the RP has not made any complaint against the counsel Mr. Rituraj Biswas to the Bar Council of India. As the order has been passed with the consent of both the parties, no interference is required. Hence the IA No.3049/2020 filed by the RP is dismissed.

(Justice Venugopal M)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

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