

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 569 of 2020

IN THE MATTER OF:

M/s. Kotak Resources

... Appellant

Versus

Dharmendra Dhelaria & Ors.

...Respondents

Present:

For Appellant : Mr. Rasesh Parikh, Advocate

O R D E R
(Through Virtual Mode)

26.06.2020 The only issue raised in this appeal preferred by the 'Financial Creditor' – 'M/s. Kotak Resources' is in regard to reimbursement of the 'corporate insolvency resolution process cost', liability in respect whereof has been laid by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench upon 'Committee of Creditors' consisting of the Appellant and another 'financial creditor' namely 'ARCIL' in equal proportion in terms of the impugned order dated 24th February, 2020. It is urged on behalf of the Appellant that the Adjudicating Authority had no jurisdiction to pass the impugned order and that the Appellant could not be visited with the 'corporate insolvency resolution process cost' in view of the fact that the 'corporate insolvency resolution process' was not only for the benefit of the members of the 'Committee of Creditors'.

2. After hearing the learned counsel for the Appellant, we find that the impugned order directing the 'Committee of Creditors' consisting of both, 'Kotak Resources' and 'ARCIL', to reimburse the 'corporate insolvency resolution process cost' of Rs.12,12,831/- in equal proportion to the 'Resolution

Professional' came to be passed on the application of 'Resolution Professional' of 'M/s. Raninga Ispat Private Limited' under Section 60 of the 'Insolvency and Bankruptcy Code, 2016' (**'I&B Code'**, for short). It further appears that the 'corporate insolvency resolution process' had been initiated on an application filed under Section 7 of the 'I&B Code' by the Appellant. The Adjudicating Authority admitted the application by virtue of its order dated 21st February, 2018 and appointed Mr. Dharmendra Dhelaria as the 'Interim Resolution Professional' who was subsequently appointed as 'Resolution Professional' by 'Committee of Creditors' in its meeting held on 22nd March, 2018. It further appears that one of the erstwhile Director of the Corporate Debtor preferred an appeal against the order of admission which came to be allowed by this Appellate Tribunal vide judgment rendered on 29th August, 2018 setting aside the impugned order and all consequential actions taken pursuant thereto. Admittedly, Mr Dharmendra Dhelaria was nominated as 'Interim Resolution Professional' by the Appellant (Financial Creditor) who was subsequently confirmed as 'Resolution Professional' by the 'Committee of Creditors'. He managed the operations of the 'Corporate Debtor' as a going concern. ARCIL was included in the 'Committee of Creditors' upon its constitution by the 'Resolution Professional' with its consent. The 'resolution cost' of Rs.12,12,831/- was ratified and approved by the 'Committee of Creditors' in its meeting dated 7th August, 2018. Viewed in this background, it is fallacious to contend that the Adjudicating Authority lacked jurisdiction to provide for the resolution costs while closing the case in consequence of the order of admission of application under Section 7 of the 'I&B Code' being set aside by this Appellate Tribunal in appeal preferred by the erstwhile Director of the 'Corporate Debtor'. Since the

‘Committee of Creditors’ comprised of both, Appellant and ARCIL, the ‘corporate insolvency resolution process costs’ had necessarily to be borne by them in equal proportion. It is indisputable that the ‘Corporate Debtor’ could not be saddled with the liability of the ‘corporate insolvency resolution process costs’. It would be preposterous to hold that the whole amount of the ‘corporate insolvency resolution process cost’ should have been reimbursed by the ARCIL alone to the ‘Resolution Professional’.

For the forgoing reasons, we are of the considered opinion that the issue raised in this appeal lacks merit. We find no legal infirmity in the impugned order. The appeal is dismissed at the very threshold stage.

[Justice Bansi Lal Bhat]
Acting Chairperson)

[V.P. Singh]
Member (Technical)

[Alok Srivastava]
Member (Technical)

/ns/gc/