

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 469 of 2022

IN THE MATTER OF:

**Khushvinder Singhal,
Erstwhile Resolution Professional of Bestways
Transport (India) Pvt. Ltd.**

...Appellant

Versus

**Reena Tiwari,
Financial Creditor,
Bestways Transport (India) Pvt. Ltd. & Ors.**

...Respondents

Present:

For Appellant: Mr. Abhishek Anand, Mr. Viren Sharma, Mr. Karan Kohli, Advocates.

For Respondent:

**ORDER
(Virtual Mode)**

04.05.2022: Heard Mr. Abhishek Anand, Advocate for the Appellant.

2. This Appeal has been filed against the Order dated 24th February, 2022 passed by the Adjudicating Authority in I.A. No. 341 of 2021 in CP(IB) No. 30/Chd/Hry/2019. I.A. No. 341 of 2021 was filed under Section 27(3) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'The Code') for the appointment of Mr. Vijay Kumar Gupta as Resolution Professional by replacing Mr. Khushvinder Singhal, Resolution Professional. The Committee of Creditors vide its meeting held on 17th May, 2021 approved the replacement of the Appellant with Mr. Vijay Kumar Gupta. One of the Resolutions taken in the CoC meeting was also that Professional Fee shall be paid to Appellant, the

Resolution Professional and other expenses that has been incurred till the reappointment of the new Resolution Professional.

3. The Application was filed consequent to the Resolution of the CoC which could be decided by the Adjudicating Authority only on 24th February, 2022. The Adjudicating Authority after approving the replacement issued direction in paragraph 12 to the following:-

“Accordingly, I.A. No. 341/2021 is disposed of with the following directions:

- a. Mr. Khushvinder Singhal, Resolution Professional, shall hand over the entire record and the assets of the corporate debtor, if any, in his possession to the newly appointed Resolution Professional immediately;*
- b. Mr. Vijay Kumar Gupta shall take over the charge of the entire records and assets of the corporate debtor and perform his duties, as required under the Code and the Regulations;*
- c. The new Resolution Professional, is directed to file his written consent along with an affidavit within 7 days, stating therein that no disciplinary proceedings have been initiated against him by the Board or the Insolvency Professional Agency;*
- d. The new Resolution Professional, is directed to file regular progress reports to this Tribunal every fortnight.*
- e. The reconstituted Committee of Creditors is directed to consider the CIRP fees of Mr. Khushvinder Singhal, Resolution Professional in its first meeting after the replacement of Resolution Professional.”*

4. Mr. Abhishek Anand, Advocate for the Appellant submits that there was no occasion for issuing direction to reconstituted CoC to consider the CIRP fees of the Appellant which having already been approved in the earlier CoC meeting held on 17th May, 2021.

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

6. A perusal of the Order especially paragraph 8 of the Order indicates that in different item the Professional Fee and CIRP cost from 31st March, 2021 to 31st January, 2022 has been claimed in a tabular form. The paragraph indicates that CIRP cost also includes cost which has been incurred subsequent to the decision of the CoC on 17th May, 2021. We do not find any error in the Direction of the Adjudicating Authority for considering CIRP costs since major portion of the CIRP as claimed is subsequent to the resolution dated 17th May, 2021. It is the CoC which is to examine the factual aspects of the claim and take an appropriate decision, the Adjudicating Authority has not committed any error in directing the CoC to consider the CIRP cost and pass appropriate order.

7. Mr. Abhishek Anand, Advocate further submits that in view of the Regulation 12 (3) proviso, the decision taken by CoC could not affect the validity of any decision taken by the Committee. Regulation 12 of CIRP Regulation, 2016 is as follows:

“12. Submission of proof of claims.

(1) Subject to sub-regulation (2), a creditor shall submit 21[claim with proof] on or before the last date mentioned in the public announcement.

(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.

(3) Where the creditor in sub-regulation (2) is 23[a financial creditor under regulation 8], it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.”

8. In the present case, the decision of the CoC on which reliance is placed are of 30th April, 2021 and 17th May, 2021 where fee has been approved. It is submitted that the validity of such decision cannot be questioned subsequently. In the CIRP process, the CoC is fully competent to revise the fee even if it was earlier approved by any earlier CoC decision. The entitlement of fee depends on several factors including the change of circumstances, the length of CIRP proceeding hence we are of the view that Regulation 12(3) proviso does not fetter the CoC to consider the fee and expenses especially when we have noticed that the expenses claimed are also of subsequent period to the first and second CoC.

We thus do not find any error in the order of the Adjudicating Authority directing the reconstituted CoC to consider the CIRP cost.

We do not find any merit in the Appeal, the Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Ms. Shreesha Merla]
Member (Technical)**

Basant/nn