

**National Company Law Appellate Tribunal**

**Principal Bench, New Delhi**

**COMPANY APPEAL (AT) (INSOLVENCY) No. 540 of 2021**

(Arising out of Order dated 24<sup>th</sup> March, 2021 passed by National Company Law Tribunal, New Delhi, Court IV, in IA 1588/ND/2020 in IB/777/(ND)/2019).

**IN THE MATTER OF:**

**DBS Bank India Pvt. Ltd.**

(Erstwhile Lakshmi Vilas Bank Ltd.)

Regt. Office at:

Ground Floor Nos. 11 & 12,  
FF Nos. 110 to 115, Capitol Point,  
BKS Marg, Connaught Place,  
New Delhi – 110001.

Also Branch Office at:

DBS Bank India Ltd.,  
(Erstwhile Lakshmi Vilas Bank Ltd.)  
L-11, Kalkaji, New Delhi – 110019.

Through Authorized Representatives:  
Mr. Rameshwari Dutt Mishra.

**...Appellant**

**Versus**

**1. Rakesh Kumar Jain**

Resolution Professional,  
Jiya Agro Pvt. Ltd.

**...Respondent No. 1**

**2. M/s. Shivalik Packaging Industries**

Flat – 102, Geeta Bhawan, 15A, NWA,  
Punjabi Bagh West, New Delhi – 110026.  
Through Authorized Representative:  
Not Known.

**...Respondent No. 2**

**For Appellant:**

**Mr. Ashish Mukhi & Ms. Madhurima Sarangi,  
Advocates.**

**For Respondent No. 1: Mr. Mohit Nandwani, Advocate for R-1.**

**J U D G E M E N T**

**[Per; Shreesha Merla, Member (T)]**

1. Aggrieved by the Impugned Order dated 24.03.2021, passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Court IV) in IA 1588/ND/2020 in IB/777/(ND)/2019 directing the

Appellant Bank to pay Rs.10,20,858/- to Mr. Rakesh Kumar Jain/the Resolution Professional, on an Application IA 1588/ND/2020 preferred by the Resolution Professional seeking the payment of his fees.

**2.** Learned Counsel for the Appellant submitted that the Appellant is the sole 'Financial Creditor' of the reconstituted CoC and cannot be saddled with the liability of payment of the costs and fees of the RP. It is submitted that the remuneration and the expenses of the RP was fixed and approved by the 'Operational Creditor' who was the sole Member of the earlier CoC and immediately thereafter the entire constitution of the CoC was changed and the said 'Operational Creditor' was no longer a part of the CoC. The Appellant Bank today is the sole Member of the reconstituted CoC and has never ratified the remunerations and expenses. It is submitted that the RP has not discharged his responsibilities for which he is now claiming fees and also that the fees of the RP is not commensurate to the work put in by him. The CIRP cost which includes the fees of the RP has been accorded priority of payment in Liquidation and that the Adjudicating Authority did not appreciate the import of Section 53 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code') which gives priority payment of CIRP costs out of the proceeds of Liquidation of the 'Corporate Debtor' over and above any payment to a 'Financial Creditor'.

**3.** Learned Counsel appearing for the first Respondent submitted that the first CoC Meeting held on 27.09.2019 approved the fees and expenses of the RP; despite knowing that the documents mortgaged by the 'Corporate Debtor' were fake, the Appellant Bank filed its claim of Rs.2.69Crores/- on 30.09.2019 with an intent to participate in the CIRP and recover his dues;

the CoC was reconstituted on 12.10.2019 with the Appellant Bank as the sole 'Financial Creditor'; that the Appellant participated in all the CoC Meetings and even passed a Resolution to liquidate the 'Corporate Debtor' in the fourth CoC Meeting dated 10.02.2020. The CIRP costs were approved by the CoC prior to the inclusion of the Appellant in the CoC and hence, as per proviso to Regulation 12(3) of CIRP Regulations, 2016, the Appellant cannot state that since it had not ratified the CIRP costs and expenses, it cannot be saddled with the liability.

**Assessment:**

4. The brief point which falls for consideration in this Appeal is whether the Appellant Bank, which is the sole 'Financial Creditor' of the reconstituted CoC be made liable to pay the fees of the CIRP Cost and RP, which the earlier CoC had ratified. The 'Operational Creditor' who had initiated the CIRP was initially the sole CoC Member which had ratified the fees and expenses at Rs.1Lakh per month. The total liability to be paid by the 'Operational Creditor' towards CIRP Cost was Rs.2,07,000/- till 12.10.2019. Subsequently, the Appellant Bank filed its claim and the CoC was reconstituted and the Bank became the sole CoC Member. It is not in dispute that the Appellant participated in all the CoC Meetings and even passed a Resolution seeking Liquidation of the 'Corporate Debtor' in the fourth CoC Meeting dated 10.02.2020. It is also not disputed that the fees and the cost incurred, claimed by the RP is only till the date, the Resolution for the Liquidation was passed. The contention of the Learned Counsel for the Appellant that the Promoters and Directors of 'Corporate Debtor' are absconding and no hypothecated goods were available and the mortgaged

properties for which the debts were deposited were fraudulent, and hence the Bank is not liable to pay any CIRP Cost, is completely unsustainable as the liability to bear the CIRP expenses by any 'Financial Creditor' cannot have a nexus to the mortgaged documents being fake or otherwise, in fact if that is the case of the Bank, the question also arises with respect to the due diligence duty regarding the mortgaged documents etc., which ought to have been conducted by the Bank. Be that as it may, being the sole 'Financial Creditor' of the reconstituted CoC and having participated in all the Meetings and also admittedly having passed the Resolution seeking Liquidation of the 'Corporate Debtor', the Appellant Bank cannot now turnaround and say that they are not liable to pay the CIRP Costs and Fees. Regulation 12(3) of CIRP Regulations, 2016, reads as follows:

*"12. Submission of proof of claims.*

*(3) Where the creditor in sub-regulation (2) is (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 validity of any decision taken by the committee prior to such inclusion."*

**5.** The proviso in this Regulation clearly stipulates that if any decision is taken by the committee, prior to the reconstitution, which in this case is the ratification of the fees and the expenses, its validity will not be affected. Admittedly the CIRP Costs were approved by the COC prior to the inclusion of the Appellant Bank and hence as per the proviso to Regulation 12(3) of CIRP Regulations, 2016, it is the liability of the Appellant Bank to pay the expenses. The quantum of costs and fees was ratified by the earlier CoC and the Appellant has not objected to any such issues having participated in the

Meetings and specifically being the sole CoC. The Adjudicating Authority has only very fairly bifurcated the expenses to be paid by the 'Operational Creditor' and Rs.10,20,858/- to be paid by the Appellant Bank for the subsequent period till the Liquidation Resolution was passed.

6. Hence, we do not see any substantial reasons to interfere with the well-considered Order of the Adjudicating Authority and hence this Appeal fails and is accordingly dismissed. No order as to costs.

**[Justice Anant Bijay Singh]  
Member (Judicial)**

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

**NEW DELHI**  
**15<sup>th</sup> September, 2022**  
*Himanshu*