

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

**Company Appeal (AT) (Insolvency) No. 1074 of 2022**

**IN THE MATTER OF:**

**Bharat Hotels Ltd.**

**...Appellant**

**Versus**

**Tapan Chakraborty  
Resolution Professional of RDG Interior  
Decoration Exterior Architecture Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant: Ms. Purnima Maheshwari and Mr. Alok Gupta,  
Advocates.**

**For Respondent: Mr. A. Tripathi and Ms. Sreenita Ghosh Tahkker,  
Advocates.**

**ORDER**

**05.09.2022:** Heard learned counsel for the Appellant as well as learned counsel appearing for the Resolution Professional. This Appeal has been filed against order dated 26.08.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench-I, Kolkata by which order the Adjudicating Authority has rejected I.A. No. 656/KB/2022. The Appellant is a Financial Creditor holding 33.07% voting share in the CoC. The CoC in its 7<sup>th</sup> meeting held on 28.06.2022 passed resolution for liquidation. The approval was with majority of 66.93% vote share. On the next day, the Appellant filed I.A. 656 of 2022 praying for following reliefs:

- “a. *Direct the Resolution Professional to disclose item wise insolvency resolution process costs; and/or;*

*Cont'd.../*

- b. *Call for the entire records of the Resolution Professional maintained with respect to the present petition;*
- c. *Direct the Resolution Professional to follow the steps needed under Section 18 and Section 20(2)(a) of the IBC including Forensic Audit Report before proposing liquidation of Corporate Debtor; and/or;*
- d. *Change the Resolution Professional, if needed;”*

2. The Adjudicating Authority after considering the application of the Appellant has rejected the same, in Para 5 and 6 of the order following has been observed:

*“5. This interlocutory application has been filed the Applicant under Section 18 of the Code read with Regulation 34A of the Insolvency Resolution Process for the Corporate Person. Whereas, Section 18 of the Code envisaged the Duties of the Interim Resolution Professional and Regulation 34A of the Insolvency Resolution Process for Corporate Person says that the interim resolution professional or the resolution professional, as the case may be, shall disclose item wise insolvency resolution process costs in such manner as may be required by the Board. The Board herein refers to the Insolvency and Bankruptcy Board of India.*

*6. Hence, we do not find that this instant Application has any right or locus under section 18 of the Code read with Regulation 34A of the Insolvency*

*Resolution Process for the Corporate Person or any other provisions under the Code. The Application is hereby rejected.”*

3. Learned counsel for the Appellant challenging the order contends that the Appellant had wanted to know steps taken by the Resolution Professional in the insolvency resolution process. It is stated that no steps for any audit were taken nor any valuation Report was obtained, hence, there was no occasion for taking any decision for liquidation.

4. Section 33(2) of the I&B Code provides as follows:

*“33(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors <sup>1</sup>[approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*

*<sup>2</sup>[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]”*

5. In the present case, the CIRP had commenced on 19.12.2019 and after more than two years, resolution was passed on 28.06.2022 for liquidation. The Application which was filed by the Appellant on the very next day of passing of the resolution was indirectly for challenging the liquidation. The Appellant who is a minority shareholder in the CoC cannot resist the passing of the resolution. The Adjudicating Authority has rightly rejected the application filed under Section 18 of Code and Regulation 34A, which was not to be entertained. The Appellant asked Resolution Professional to disclose item wise insolvency resolution process costs in such manner as required by the Board (IBBI). Question of cost and its approval lays in the domain of the CoC. The CoC may ratify, modify or set aside the cost claimed. These issues may be decided in the meeting of the CoC and are not to be examined by the Adjudicating Authority even before the CoC takes a decision. It shall be always open for the appellant to raise issue regarding the cost in the meeting of the Committee of Creditors. With reference to the grievance of the Appellant with regard to obtaining valuation report, it is always open to the Appellant to request the Liquidator to obtain a valuation report, if not already obtained. With these observations, the Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

***Archana/nn***