

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

Company Appeal (AT) (Insolvency) No. 177 of 2022

IN THE MATTER OF:

IndusInd Bank Ltd.

...Appellant

Versus

**Mr. Rajendra K. Bhuta,
Resolution Professional of
Trust House Commerce Centre Pvt. Ltd. & Ors.**

...Respondents

Present:

For Appellant: Mr. Rohit Gupta, Ms. Rubina Khan, Advocates.

For Respondent: Mr. Rajeev K Pandey, Mr. Rajeev M Roy, Advocates
for R-2
Mr. Mayank Kshirsagar, Darryl Pereira ,Advocates for
IRP/R1

ORDER
(Virtual Mode)

26.04.2022: This Appeal has been filed against the Order dated 16th December, 2021 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-II). By which Order, I.A. No. 3251/MB/C-II/2019 filed by the Resolution Professional for reimbursement of Rs. 30,81,719/- has been allowed. The ‘Corporate Insolvency Resolution Process’ were initiated in the present case by Order dated 05th March, 2018 passed by the Adjudicating Authority in C.P. (IB) No. 1264/MB/C-II/2017. ‘Committee of Creditors’ was formed on 26th June, 2018 and the Insolvency Resolution

Professional was appointed. On 11th July, 2018, the Suspended Board of Directors filed Company Appeal (AT) Ins. No. 372 of 2018 before this Tribunal which Appeal was ultimately dismissed by this Tribunal against which the Matter was taken to the Hon'ble Supreme Court i.e. Civil Appeal No. 11020 of 2018. Hon'ble Supreme Court on 26th November, 2018 passed an Interim Order which is to the following effect:

“Application seeking exemption from filing certified copy of the impugned order is allowed.

Issue notice.

There shall be stay of insolvency proceedings in the meantime.”

2. Subsequently the Civil Appeal No. 11020 of 2018 was allowed by the Hon'ble Supreme Court vide Judgment dated 02nd September, 2019 and the Application filed by the Financial Creditor was held to be barred by time. Appeals were allowed and the Orders passed by the Adjudicating Authority as well as this Appellate Tribunal were set aside.

3. The Adjudicating Authority in the Impugned Order has calculated the fee of the Resolution Professional and during the period 13th June, 2018 to 02nd September, 2019. The Order passed by the Adjudicating Authority in Paragraph 17 is to the following effect:

“17. Having considered, the submission of the Counsel appearing for the Applicant and on perusal of the records placed before this Tribunal, we are of the considered

view that the fees of the RP during the CIRP period of the Corporate Debtor for the time period from 13.06.2018 to 02.09.2019 as indicated at page 11, Item A of the IA 3251 of 2019, constituting to Rs. 30,81,719/- (Rupees Thirty Lakhs Eighty-One Thousand Seven Hundred and Nineteen Only) is to be paid by the Financial Creditors i.e. Indusland Bank and Abhyudaya Co-operative Bank Limited proportionately as per their total share as members of the CoC i.e. Indusland Bank holding 93.96% to pay Rs. 28,95,583/- (Rupees Twenty-Eight Lakhs Ninety-Five Thousand Five Hundred and Eighty Three Only) and Abhyudaya Co-operative Bank Limited holding 6.04% to Rs. 1,86,136/- (Rupees One Lakh Eighty Six Thousand One Hundred Thirty Six Only)."

4. Learned Counsel for the Appellant submits that when the Hon'ble Supreme Court of India has stayed the insolvency proceedings, there is no entitlement of fee to be paid to the Resolution Professional. Learned Counsel for the Resolution Professional refuting the submissions of the Learned Counsel for the Appellant contends that even when Insolvency Proceedings were stayed, certain expenses were incurred by the RP which payment cannot be denied.

5. We have heard Learned Counsel for the parties and perused the record.

6. The Operative part of the Impugned order is Paragraph 17 and 18. We have already extracted above the Paragraph 17 and the Paragraph 18 is to the following effect:

"18. Further apart from the above fees, the other expenses as indicated at page no. 13, Item B, C, D and

E of the IA 3251 of 2019, aggregating to Rs. 5,34,119/- (Rupees Five Lakhs Thirty-Four Thousand One Hundred and Nineteen Only) is to be paid by the Corporate Debtor)”

7. When the Hon'ble Supreme Court by Interim Order dated 26th November, 2018 has stayed the insolvency proceedings which proceedings ultimately were set aside by the final Judgment dated 2nd September, 2019, we are of the view that Resolution Professional is not entitled for any fee after 26th November, 2018. The RP is entitled for fee from 13th June, 2018 to 25th November, 2018 hence the Order of the Adjudicating Authority in Paragraph 17 is modified to the above extent that RP fee shall be entitled to fee from the period 13th June, 2018 to 25th November, 2018. No fee shall be entitled with effect from 26th November, 2018. The order passed in paragraph 17 is modified to this extent. In regard to the Order of expenses as ordered in paragraph 18 of the Impugned Order, we affirm the Order of the Adjudicating Authority in paragraph 18 and the same be paid as directed by the Adjudicating Authority in paragraph 18. The Appeal is partly allowed to the above extent.

[Justice Ashok Bhushan]
Chairperson

[Ms. Shreesha Merla]
Member (Technical)

Basant/nn