

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

**COMPANY APPEAL (AT) (Insolvency) No. 401 of 2022**

**(Arising out of the Order dated 02.03.2022 passed by the National Company Law Tribunal, New Delhi (Court-III) in CA- 871/2019 in IB-979/ (ND)/2019.**

**IN THE MATTER OF:**

**1. Rakesh Gupta**

H No. – C-7, Pushpanjali Enclave,  
Pitampura, Delhi – 110034.

**...Appellant No. 1.**

**2. Nidhi Gupta**

H No. - C-7, Pushpanjali Enclave,  
Pitampura, Delhi – 110034.

**...Appellant No.2.**

**Versus**

**Mahesh Bansal**

Erstwhile Resolution Professional  
Of Gupta Marriage Halls Pvt. Ltd. (Now in  
Liquidation)  
Through Mr. Nitin Narang  
Liquidator of M/s Gupta Marriage Halls Pvt. Ltd.  
B-101, Ground Floor, Old Gupta Colony, Model  
Town, New Delhi – 110009.

**...Respondent**

**Present**

**For Appellants: Mr. Ashish Choudhury, Mr. S C Das,  
Advocates.**

**For Respondent: Mr. Mohak Sharma, Mr. Supriyo Banerjee,  
Advocates.**

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

**(19.10.2023)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

1. The instant Appeal under Section 61 of the Insolvency & Bankruptcy Code, 2016 (in short "**Code**") has been preferred by the Appellants against the

Impugned Order passed by the National Company Law Tribunal, New Delhi Bench (in short '**Adjudicating Authority**') on 02.03.2022 in C.A. 871/2019 IN CP (IB) No.979 (ND) of 2019, vide which the Adjudicating Authority imposed a fine of Rs. 5 lacs on each of the Appellants.

**2.** M/s Gupta Marriage Halls Pvt. Ltd. (Corporate Debtor) is a private limited company incorporated under the provisions of Companies Act, 1956. The Appellants are the suspended Directors of the said Corporate Debtor.

**3.** The Corporate Debtor was engaged in the business of hiring Hotels, Restaurants, Marriage Halls and doing the business of running the Hotels, Restaurants and Marriage Halls. The Corporate Debtor was having on Lease the Property/Hotel namely Hotel Samrat Heavens at Meerut and for the upkeeping and to run its day-to-day business affairs, the Corporate Debtor had availed certain credit facilities from Punjab National Bank.

**4.** Punjab National Bank filed a Petition in the capacity of Financial Creditor under Section 7 of the Code. The Adjudicating Authority admitted the Section 7 application of Punjab National Bank vide order dated 03.09.2019 and appointed Mr. Mahesh Bansal as the Interim Resolution Professional.

**5.** The Resolution Professional during the pendency of CIRP had filed an application being CA-871/2019 ("**subject application**") under Section 19(2) of the Code alleging non-cooperation from the suspended board of directors.

**6.** Vide order 04.01.2021, the Adjudicating Authority passed an order of liquidation of the Corporate Debtor and Mr. Nitin Narang was appointed as the liquidator as the then Resolution Professional did not give consent to be appointed as liquidator. In the order dated 04.01.2021, it was mentioned that

the liquidator shall follow up with the pending applications for its disposal during the liquidation process and thus the subject application was followed by the liquidator.

7. During the pendency of the subject application, the liquidator filed a fresh application being I.A. No. 3588/2021 under Section 34(3) of the Code read with Regulation 9 of the IBBI (Liquidation Process) Regulations 2016 seeking similar between the same parties on the same cause of action a similar application being C.A. 871/2019 is already pending before the Adjudicating Authority.

8. The subject application along with I.A. No. 3588/2021 was heard by the Adjudicating Authority, wherein the Adjudicating Authority vide order dated 02.03.2022 held that the "conduct of the ex-management calls for appropriate action in terms of Section 70 of the Code" and imposed a fine of Rs. 5 lacs on the Appellants.

9. It is the case of the Appellant that the issue is no more res integra the present impugned order is squarely covered by the judgment of this Appellate Tribunal in the case of **Lagadapati Ramesh V. Mrs. Ramanathan Bhuvaneshwari**, *Company Appeal (AT) (Ins.) No. 574/ 2019* which has been further followed in **Union of India v. Maharashtra Development Corporation**, *Company Appeal (AT) (Ins.) No. 964-965 of 2019* wherein it has been specifically held that "The 'offences and penalties' as prescribed and dealt with in Chapter VII and appropriate order of punishment can be passed only by way of trial of offences by a Special Court in terms of Section 236 of the Code.

**10.** It is the case of the Appellant that the Respondents contention that costs has been imposed upon the appellant and not fine is baseless. In this case, the Appellant pleaded that admittedly, the Adjudicating Authority has under Section 70 of the Code imposed a fine of Rs. 5 lacs upon the Appellants and any Imposition of fine is always in the nature of punishment. The Appellant drew to our attention that P Ramanatha Aiyar, Advanced Law Lexicon, 6th Edition defines the term 'fine' as a pecuniary punishment imposed by the judgment of a Court upon a person convicted of crime.

**11.** It is further the case of the Appellants that this Appellate Tribunal in the matter of ***Writer Business Services Pvt. Ltd. & Anr. v. Mr. Ashutosh Agrawala Resolution Professional for Cox & Kings Ltd., Comp App (AT) (Ins) No. 956 of 2021***, while defining the scope of fine under the Code, held that punishment of fine is a fine which is imposed on a delinquent for an offence and therefore, fine can only be imposed for an offence and as such the jurisdiction to impose fine after convicting the accused rests only with Special Court established under Chapter XXVIII of Companies Act, 2013 and the Adjudicating Authority does not have any jurisdiction to impose fine.

**12.** The Appellants also refuted the plea of the Respondent that the Adjudicating Authority has power to impose costs under section 149 of companies act, 2013 and the same power has been utilised here. The Appellants stated that admittedly, the Adjudicating Authority has under Section 70 of the Code, 2016 imposed a fine of Rs. 5 lacs upon the Appellant and nowhere, in the entire impugned order, the word 'cost' has not been used even once.

**13.** It is argument of the Appellants that this Appellate Tribunal held in the case of ***Mr. Ashish Chaturvedi & Anr. v. Inox Leisure Ltd. & Ors.*** that since the I.A. was filed under the provisions of Code, it would have served the requirement of law if any order regarding the penalty was imposed under the provisions of Code.

**14.** The Appellants submitted that in the present case since the I.As were filed under the provisions of Code, hence, the punishment, if any, could also be imposed only under the provisions of Code and not Companies Act, 2013.

**15.** The Appellants submitted that being aggrieved by the Impugned Order dated 02.03.2022, filed an Appeal before this Appellate Tribunal (the instant Appeal) whereby, this Appellate Tribunal vide Order dated 11.04.2022 while issuing notice has granted a stay on the deposit of fine of Rs. 5 lakhs as imposed by the Adjudicating Authority.

**16.** Concluding their arguments, the Appellants submitted that the Impugned Order deserves to be set aside and therefore, urged this Appellate Tribunal to allow their Appeal.

**17.** Per-contra, the Respondent refuted all the averments of the Appellants treating these as weak and baseless pleas, only to derail the Liquidation Process.

**18.** While elaborating background of the case, the Respondent apprised this Appellate Tribunal that on 02.11.2020, the Resolution Professional convened 6<sup>th</sup> meeting of CoC, wherein it was resolved as under :-

“RESOLVED THAT, since no Resolution Plans were received, CoC recommends that the Corporate Debtor should be liquidated u/s 33 IBC, 2016 and RP be and is hereby authorised to file an Application before the

Hon'ble NCLT to obtain necessary orders.” and in pursuance of the resolution passed by the CoC in its 6<sup>th</sup> meeting, the Resolution Professional (Mr. Mahesh Bansal) filed an Application under Section 33(2) of the Code, seeking liquidation of the Corporate Debtor.

**19.** The Adjudicating Authority passed an order for liquidation of the Corporate Debtor, M/s Gupta Marriage Halls Private Limited, on an application filed by the erstwhile Resolution Professional bearing IA No. 5289 of 2020 seeking an order under section 33 of the Code pursuant to the decision of the CoC of the Corporate Debtor to liquidate the Corporate Debtor. The Adjudicating Authority appointed the Respondent, Mr. Nitin Narang, as the Liquidator for the Corporate Debtor vide order dated 04.01.2021.

**20.** It is submitted by the Respondent that during the CIRP, the erstwhile Resolution Professional had filed an Application before the Ld. Adjudicating Authority under Section 19(2) of the Code bearing C.A. 871 of 2019 in C.P. (IB) No. 979(ND)/2019 seeking necessary directions against the suspended director to assist and cooperate with Resolution Professional.

**21.** The Respondent further submitted that on 01.06.2021 the Respondent also wrote two letters to the Appellants, highlighting, inter alia, that despite the filing of the Application under Section 19(2) of the Code by the erstwhile Resolution Professional, pending adjudication, the Lease Deed entered into between the Corporate Debtor and State Bank of India (Lessee) has not been provided and accordingly, the Liquidator sought the same from the suspended board of directors.

**22.** The Respondent brought out that since the commencement of the CIRP proceedings, the Appellants have time and again failed to comply with the directions of the Adjudicating Authority and have deliberately decided not to assist and cooperate with the Resolution Professional and Liquidator. The Appellants have till date failed to provide the relevant documents and information.

**23.** The Respondent also filed an Appeal bearing Company Appeal (AT) (INS) 595 of 2021 before this Appellate Tribunal seeking an order directing the Adjudicating Authority to decide C.A. No. 871 of 2019 in C.P. No. (IB) 979 (ND) of 2019 filed under Section 19(2) of the Code expeditiously and preferably in a time bound manner. The Appeal was allowed by this Appellate Tribunal vide order dated 17.8.2021.

**24.** The Respondent submitted that the present appeal filed by the Appellant is neither maintainable nor tenable under the provisions of the Code and there is no infirmity in the Impugned Order dated 02.03.2022, as the Adjudicating Authority clearly observed that the Appellants herein have completely failed to extend cooperation with the Erstwhile Resolution Professional and now to the Respondent who is the Liquidator of the Corporate Debtor. The Respondent submitted that the Adjudicating Authority after due consideration of material on record and after observing that an Order which dated back to 03.03.2020 has not been complied with by the Appellants whereby, the Section 70 of the Code provides for punishment for misconduct in course of CIRP. The Respondent further submitted that Section 236(2) of the Code clearly stipulates that Chapter VII of the Code i.e., "OFFENCES AND PENALTIES" have to be dealt with Special

Courts and the Adjudicating Authority did not take any action in so far as the powers of the Special Courts are concerned and has only imposed costs. The Respondent argued that the Appellants by a way of challenging the imposition of cost are also challenging the intent of Section 70 of the Code.

**25.** It is the case of the Respondent that if the Adjudicating Authority cannot impose costs on the Appellants who are admittedly not co-operating with the Liquidator, then the intent of Section 19(2), 34(3) of the Code, stands defeated which provides a remedy to the Resolution Professional & Liquidator respectively for seeking directions against the personnel of Corporate Debtor to extend cooperation. Furthermore, if the Ex-management fails to defy the orders of the Adjudicating Authority which direct the Ex-management to cooperate will have no binding effect upon the Ex-management and the orders will be flouted.

**26.** The Respondent submitted that Section 60(1) of the Code provides that the Adjudicating Authority shall have jurisdiction in relation to Insolvency Resolution & Liquidation of Corporate Persons including the Corporate Debtor.

Rule 149 of the National Company Law Tribunal Rules, 2016 provides as under:-

**"149. Power to impose Costs- The Tribunal may, in its discretion, pass such order in respect of imposing costs of the defaulting party as it may deem fit."**

*(Emphasis Supplied)*

**27.** The Respondent also submitted that this Appellate Tribunal in the matter of **Committee of Creditors of Amtek Auto Ltd. through**



***Corporation Bank v. Mr. Dinkar T. Venkatasubramanian & Ors.***

*Company Appeal (AT) (Ins.) No. 219 of 2019* held that when Section 74(3) of the Code is triggered, the Resolution Professional or the Committee of Creditors or any other Creditor can file an Application under Section 213 of the Companies Act, 2013 read with Section 74(3) of the Code before the Adjudicating Authority and pursuant thereto, the Adjudicating Authority can decide as to whether the matter is required to be referred to Insolvency and Bankruptcy Board of India or Central Government for taking any action under Section 74(3) of the Code and Section 213 read with Section 447 of the Companies Act, 2013 after following procedure as laid down in Section 213 of the Companies Act, 2013.

**28.** The Respondent pleaded that aforesaid view in ***Committee of Creditors of Amtek Auto Ltd. through Corporation Bank (supra)*** has also been affirmed in another decision of this Appellate Tribunal in the decision of ***Mr. Lagadapati Ramesh v. Mrs. Ramanathan Bhuvaneshwari*** *Company Appeal (AT) (Ins.) No. 574 of 2019*, wherein, the this Appellate Tribunal held that the Adjudicating Authority after giving a reasonable opportunity of hearing, finds that a prima facie case exists, it may refer the matter to Central Government for investigation by an Inspector or Inspectors as appointed by the Central Government. Furthermore, if upon such investigation, authority reports that a person has committed any offence punishable under Section 213 read with Section 447 of the Companies Act, 2013 of Sections 68, 69, 70, 71, 72 and 73 of the Code, in such case, the Central Government is competent to refer the matter to the Special Court itself or may ask the Insolvency and Bankruptcy Board

of India or may authorise any person in terms of sub-section (2) of Section 236 of the Code to file a complaint.

**29.** The Respondent relied upon the judgment of the Hon'ble Supreme Court in the matter of ***Ramrameshwari Devi & Ors. v. Nirmala Devi and Ors.*** [(2011) 8 SCC 249], where it was held that costs should be imposed on the parties who adopt obstructionist and delaying tactics before the Courts. It is the case of the Respondent that the Appellants have obstructed the CIRP of the Corporate Debtor and further the Liquidation Process of the Corporate Debtor as the main assets of the Corporate Debtor has not been handed over yet.

**30.** The Respondent argued that IA 3588 of 2021 is not bad in law basis of 'res subjudice' as claimed by the Appellants for the reason that Liquidator stepped into the shoes of the Corporate Debtor and was managing the affairs of the Corporate Debtor and furthermore, the Liquidation process of the Corporate Debtor is governed by Chapter III of the and an express provision being Section 34(3) of the Code has been provided for seeking directions against the personnel of the Corporate Debtor during the Liquidation Process. The Appellants have failed to handover the main asset of the Corporate Debtor being Hotel Samrat Heavens situated at Meerut. Therefore, in order to discharge duties envisaged upon, Respondent, the Respondent filed I.A. 3588 of 2021.

**31.** The Respondent stated that the Impugned Order which is under challenge in the instant Appeal has no infirmity as the Adjudicating Authority only imposed fine upon the Appellants and the said power vests with the Adjudicating Authority it terms of the Companies Act as well as the

I&B Code, 2016, therefore, the Appeal is liable to be dismissed at the first instance by this Appellate Tribunal.

**32.** Concluding his pleadings, the Respondent urged this Appellate Tribunal to dismiss the present appeal with exemplary cost.

**33.** After hearing all the averments and cited judgments by the Appellants and Respondent, we will like to refer to relevant sections of the Code, which reads as under :-

**"19. Personnel to extend cooperation to interim resolution professional**

*(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.*

*(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.*

*(3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.*

**"Section 70: Punishment for misconduct in course of corporate insolvency resolution process.**

70. (1) On or after the insolvency commencement date, where an officer of the corporate debtor—

(a) does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or

(b) does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver; or

(c) does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver; or

(d) fails to inform there solution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process; or

(e) prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or

(f) accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

*Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to do so in relation to the state of affairs of the corporate debtor.*

(2) If an insolvency professional deliberately contravenes the provisions of this Part the shall be punishable with imprisonment for a term which may extend to six months, or with fine which shall not be less than one lakh rupees, but may extend to five lakhs rupees, or with both.

**Section 236: Trial of offences by Special Court.**

236. (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.

(2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.

(3) The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in case of a complaint under sub-section (2), the presence of the person authorised by the Central Government or the Board before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial.

*(Emphasis Supplied)*

**34.** We will also like to refer to Rule 11 of the NCLT Rules, 2016 which describes the inherent powers of the Tribunal and clearly states that:

"11. Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of Justice or to prevent abuse of the process of the Tribunal."

*(Emphasis Supplied)*

**35.** We will like to refer to the relevant portion of the Impugned Order dated 02.03.2022 which reads as under: -

**"CA-871/2019:-**

*Counsel for the Liquidator present. Counsel for the Respondent Nos. 1 & 2 is present. Counsel for the Respondent No. 3 is present. Upon going through the previous order as passed in this IA, it is observed that vide order dated 03.03.2020, the ex-management was directed to provide tally data with respect to working of the Corporate Debtor to the then RP, now succeeded by Liquidation in the matter. It is seen that the said order is yet to be complied with by the Respondents (Respondent Nos. 1 & 2) has taken us through the affidavit dated 26.10.2020 stated to be filed in compliance with the aforesaid order. Counsel for the Respondents (1&2) have taken us through Para 8 of the affidavit filed by his client wherein the details/inventory documents provided by the Respondents to the Resolution Professional is mentioned. It is seen from the said details that the Respondents (1&2) have claimed to have handed over the data balance-sheet to the Corporate Debtor for the year ending 31.03.2016, 2017, 2018 and 2019 along with various other documents. As regards production of tally data in the very same affidavit, the Respondent (1&2) have taken plea that macbook computer containing the tally data of the Corporate Debtor was stolen way back in the year January 2019 and police complaint dated 04.01.2019 was also filed with SHO, Paschim Vihar, West Police Station Paschim Vihar, Delhi a copy of which is available at para 18 of the said affidavit (Annexure-6) Upon looking at the balance-sheet for the year ending 2018-19, it is seen that the same has been signed by the Ex-director on 15.05.2019. From this, it is very clear that the statement made by the Ex-director vide present affidavit to the effect that tally data of the Corporate Debtor was stolen on*

*04.01.2019 is patently false and misleading as this Tribunal cannot believe that a balance sheet for the year ending 2019 could have been made out without having access to the tally data of the Corporate Debtor for the entire financial year. Therefore, the submission made by the Respondents through the present affidavit is completely contradictory and not reliable at all.*

*The conduct of Ex-management as brought out above is very much within the purview of Section 34(3) of the Code read with Regulation 9 of the IBBI (Liquidation Process) Regulations, 2016.*

*The said provisions of the Code as well as Regulations make it obligatory on the part of the ex-management to cooperate with the Liquidator. The said provisions are reproduced below:-*

*Accordingly, we hereby impose fine of Rs. 5 lakhs on the Respondents (No. 1&2) in the present Application. The Respondents are directed to make the payment of the said fine within two weeks to the credit of Central Government (Pay Account Officer, Ministry of Corporate Affairs), New Delhi. Counsel for Respondents (1&2) is directed to file a compliance affidavit along with proof of payment as directed above within one week.”*

*(Emphasis Supplied)*

**36.** Now, we will examine the judgments of this Appellate Tribunal in the matter of **Vivek Prakash(Suspended Director & MD) v. Dinesh Kr. Gupta, Liquidator of M/s Jarvis Infratch Pvt. Ltd. C.A.(AT)(Ins.) No. 169 of 2022** , wherein it was held :-

“8. Thus, prosecution under Section 70 has to be on complaint filed by the Board or Central Government or person authorized by the Central Government. The submission of the Learned Counsel for the Appellant that Resolution Professional is not empowered to initiate the prosecution is correct. Learned Counsel for the Resolution- Resolution Professional has however, explained that no prosecution has been initiated under Section 70 by the Resolution Professional and he has only sent the information to the Board and it is for the Board to take appropriate action. We, thus, clarify that any prosecution under Section 70 can be initiated only in accordance with the procedure as provided under Section 236(2) and not by the Resolution Professional. However, with regard to any other offences including the offences under Indian Penal Code, if any complaint is filed by the Resolution Professional before a Police Station that is separate issue and has no concern with the offences under Section 70 and the order impugned shall have no bearing on such proceedings by a Police Station and they are independent proceedings which has to be considered and decided in accordance with law.”

*(Emphasis Supplied)*

**37.** Another case i.e. **Lagadapati Ramesh v. Mrs. Ramanathan Bhuvaneshwari [(2019) SCC OnLine NCLAT 1153]** is also decision of this Appellate Tribunal, wherein it was held that :-

“37. In view of the aforesaid position of law, we hold that the Tribunal/ Adjudicating Authority, on receipt of application/complaint of alleged violation of the aforesaid provisions and on such consideration and being Company Appeal (AT) (Insolvency) Nos. 574 & 592 of 2019 satisfied that there are circumstances suggesting that defraud etc. has been



committed, may refer the matter to the Central Government for investigation by an Inspector or Inspectors as may be appointed by the Central Government. On such investigation, if the investigating authority reports that a person has committed any offence punishable under Section 213 read with Section 447 of the Companies Act, 2013 or Sections 68, 69, 70, 71, 72 and 73 of the 'I&B Code', in such case, the Central Government is competent to refer the matter to the Special Court itself or may ask the Insolvency and Bankruptcy Board of India or may authorise any person in terms of subsection (2) of Section 236 of the 'I&B Code' to file complaint."

*(Emphasis Supplied)*

**38.** We also refer to yet another decision of this Appellate Tribunal in the matter of in the matter of ***Union of India v. Maharashtra Tourism Development Corporation [(2019) SCC OnLine NCLAT 1414]***, wherein the Appellate Tribunal had referred the matter to Central Government for investigation through 'Inspector(s)' for finding out whether persons related to the company in question has violated the provisions of Section 70 of the Code, further directed that the procedures under Section 213 of the Companies Act, 2013 has to be followed.

**39.** In another decision of this Appellate Tribunal in the matter of ***Vikram Puri v. Universal Buidwell (P.) Ltd. [(2022) SCC OnLine NCLAT 306]*** it was observed that the prosecution under Section 70 of the Code is a separate and independent proceedings, which in no manner fetter power upon the Tribunal to invoke the Section 70 of the Code.

40. We will also refer to the judgment passed by this Appellate Tribunal in the matter of **Sapan Mohan Garg, Resolution Professional of Sort India Enviro Solution Ltd. v. Manish G Patel & Anr. C.A. (AT) (Ins.) No. 837 of 2021**, wherein it has been held that in order to initiate prosecution under Section 70 of the Code the complaint has to be filed by the Insolvency and Bankruptcy Board of India (IBBI) or Central Government or person authorized by the Central Government.

41. Finally, we find that in another decision of this Appellate Tribunal in the matter of **Writer Business Services (P.) Ltd. v. Ashutosh Agrawala, Resolution Professional for Cox & Kings Ltd. [(2022) SCC OnLine NCLAT 2234]**, it was held that :-

*"24. After we have come to the conclusion that Section 235A is a provision for awarding a punishment of fine and the provision is for punishment of an offence. The trial of such offence has to be as per Section 236 on taking cognizance by Special Court by complaint made by the Board or Central Government for punishment of a person. For any offence law prescribe a procedure which broadly requires framing of charges and opportunity to answer the same. In event, it is accepted that power under Section 235A can be exercised by the Adjudicating Authority while passing orders on an LA filed for different reliefs pertaining to CIRP, the person punished with fine may be deprived of his right to answer charge of an offence."*

*"27. When the allegation of Resolution Professional was that Appellant has contravened the Moratorium there was allegation of commission of an offences on which punishment could have been awarded after following the*

*procedure under Section 236. An act which is termed as offence within Comp. App. (AT) (Ins) No. 956 of 2021 specific provision of Chapter VII of Part-II could not have been indirectly dealt with by the Adjudicating Authority by imposing a fine.”*

*(Emphasis Supplied)*

**42.** The Respondent has argued vehemently that the Adjudicating Authority only imposed the cost and not the fine, whereby wrongly allegedly by the Appellants of violating Section 70 and Section 236 of the Code and therefore urged this Appellate Tribunal to allow the Impugned Order. In this connection, we have already noted and discussed the submissions of the Appellants regarding distinction between the fine and the cost (discussed in preceding paragraphs) and in view of clear distinction between the cost and fine, we cannot accept that the word “fine” and the cost to be synonyms.

We are clear that the intent and legal basis of cost is different from intent and legal basis of penalty which includes “fine”. Therefore, we do not have any hesitation in holding that the word “fine”, used consciously by the Adjudicating Authority in the Impugned Order, is covered in penalty which is required to be dealt under Section 70 and 236 of the Code and which further is not within jurisdiction of the Adjudicating Authority.

**43.** After careful perusal of all above discussions and judgments which are on similar facts, we without any hesitation, conclude that clearly the Adjudicating Authority erred in passing the Impugned Order overlooking the law of the land through the Code and also ignoring the precedent cases

settled by this Appellate Tribunal earlier, as discussed in preceding paragraphs.

**44.** Based on above detailed analysis, we are unable to sustain the Impugned Order. In fine, the Appeal succeeds and the Impugned Order is set aside and remanded back to the National Company Law Tribunal, New Delhi Bench to have a fresh look and decide in accordance with the law.

**45.** The Appellants and the Respondent are directed to appear before the NCLT, New Delhi Bench, Court- III on 8<sup>th</sup> November, 2023. No Costs. Interlocutory Application(s), if any, are Closed.

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

**[Mr. Naresh Salecha]  
Member (Technical)**

*Sim*