

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.196/2022

(IA No.445/2022)

(Arising out of the 'Impugned Order' dated 25.02.2022 in
IA No.105/2021 of CP (IB) No.137/BB/2019, passed by the
'Adjudicating Authority', (National Company Law Tribunal',
Bengaluru Bench, Bengaluru)

In the matter of:

Rajendra Prasad Tak,

Interim Resolution Professional of
Corporate Debtor (now replaced)
K.G. Somani & Co., 3/15, 4th Floor,
Asaf Ali Road, New Delhi – 110 002.

.... Appellant

v.

Sh. Giridhari Lal Sharma,

Resolution Professional of Noble Ispat &
Energies Ltd.
Regd. Office: Behind Monsanto Limited
Moka Road, Sirivar, Bellary,
Karnataka – 583 103.

... 1st Respondent

Canara Bank,

Through Authorised Representative,
Registered Office at 112, JC Road,
Bangalore, Karnataka – 560 002.

... 2nd Respondent

Indian Renewable Energy Development Agency Limited,

Through Authorised Representative,
Regd. Office: Indian Habitat Centre,
East Court, Core 4-A,
1st Floor, Lodhi Road,
New Delhi – 110 003.

... 3rd Respondent

Present:

For Appellant : Mr. Kinshuk Chatterjee, Advocate

For Respondent No.2 : Mr. M.L. Ganesh, Advocate

WITH

Company Appeal (AT) (CH) (Ins) No.222/2022
(IA No.477/2022)

(Arising out of the 'Impugned Order' dated 02.12.2020 in
IA No.447/2020 of CP (IB) No.137/BB/2019, passed by the
'Adjudicating Authority', ('National Company Law Tribunal',
Bengaluru Bench, Bengaluru)

In the matter of:

Rajendra Prasad Tak,

Interim Resolution Professional of
Corporate Debtor (now replaced)
K.G. Somani & Co., 3/15, 4th Floor,
Asaf Ali Road, New Delhi – 110 002.

.... Appellant

v.

Sh. Giridhari Lal Sharma,

Resolution Professional of Noble Ispat &
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Through Authorised Representative,
Regd. Office: Indian Habitat Centre,
East Court, Core 4-A,
1st Floor, Lodhi Road,
New Delhi – 110 003.

... 3rd Respondent

Present:

For Appellant	:	Mr. Kinshuk Chatterjee, Advocate
For Respondent No.2	:	Mr. M.L. Ganesh, Advocate

JUDGMENT
(Hybrid Mode)

[Oral Judgment : Justice Sharad Kumar Sharma, Member (Judicial)]

These are two Company Appeals which had been respectively preferred by the Appellant under Section 61 of I & B Code, 2016. The respective details of the appeals are given hereunder.

- 1) The **Company Appeal being CA (AT) (CH) (Ins) No.222/2022**, is challenging the Impugned Order dated 02.12.2020, as it has been rendered by the learned National Company Law Tribunal, Bengaluru Bench in IA No.447/2020 in C.P. (IB) No.137/BB/2019, wherein it had directed the Canara Bank / Respondent No.2, herein to pay its proportional share out of Rs.4,00,000/- for 30 days, i.e., the agreed fee payable to the Appellant till he is actually replaced by new RP.
- 2) The other Company Appeal being **CA (AT) (CH) (Ins) No.196/2022**, is challenging the Impugned Order dated 25.02.2022, as it has been rendered by the learned National Company Law Tribunal, Bengaluru Bench in IA No.105/2021 in C.P. (IB) No.137/BB/2019, whereby a clarification has been sought to the order dated 02.12.2020 which was passed in IA No.447/2020, which was consequentially dismissed while observing that there was no clerical or typographical error in the order dated 02.12.2020.

Brief facts which are involved in consideration in these two Company Appeals are identical. The Appellant in both these appeals is the Interim Resolution Professional (IRP), appointed by NCLT in CP (IB) No.137/BB/2019, vide its order dated 26.08.2019. The Indian Renewable Energy Development Agency Limited (IREDA) being Respondent No.3 in these instant Appeal, had filed a Section 7 of I & B Code, application for initiation of CIRP proceedings as against the “Noble Ispat and Energies Limited (the Corporate Debtor)”. The 3rd Respondent while preferring an application under Section 7 of I & B Code, had proposed the Appellant herein as an IRP. The appointment of this Appellant as IRP was decided based on the letter bearing 221/419/EEC/2007/IREDA/4403 dated 15.11.2018 (herein referred to as IREDA letter). As per this letter, it was unanimously decided by Respondent No.3 that Rs.4,00,000/- shall be payable to the Appellant for a period of 30 days upon his appointment as IRP, and the same shall continue to be paid at the said agreed rate till the Appellant herein continues as IRP. Thus, the Section 7 application which was being CP (IB) No.137/BB/2019, filed by Respondent No.3 stood allowed vide order dated 26.08.2019, of which the Appellant, Mr. Rajendra Prasad Tak was appointed as IRP.

The Appellant has pleaded that, he took up his role as an IRP on 05.09.2019. Upon his appointment, IRP has acted in compliance of the code and he had performed duties as such as, the publication of the public announcement

of CIRP on 06.09.2019, collation and verification of claims from all the creditors, and a comprehensive and an analytical visit to the plan of Corporate Debtor, and meeting to the promoters of Corporate Debtors on 20.09.2019. The Appellant collated the claim and formed the Committee of Creditors, wherein he had also convened the first CoC meeting on 04.10.2019. It is pertinent to note at this juncture, that CoC comprised of members viz., Canara Bank, Respondent No.2, with a voting share of 83.15%, and the IREDA (Respondent No.3) with a voting share of 16.85%. Subsequently, the 2nd CoC meeting was also conducted on 18.10.2019 wherein many agendas were resolved, one among them was that the appointment of new RP was discussed. The Respondent No.2 decided to replace the Appellant with different RP and to file an application for the same before Learned Adjudicating Authority. The resolution for the same was passed by CoC by approval of 83.15% of voting share. For the appointment of a new RP, the Respondent No.2 is said to have filed an IA No.562/2019, under Section 22(3)(b) of I & B Code, 2016, to be read with Rule 11 of NCLT Rules, 2016, to appoint Shri Girdhari Lal Sharma as new RP. The said application which was filed by Respondent No.2 was allowed vide order dated 27.11.2019. Its during the pendency of the said IA No.562/2019, an Interim Order was passed on 08.11.2019, wherein the Learned NCLT had directed the present IRP (i.e., the Appellant herein) to continue the process of CIRP. The said order is extracted hereunder: -

*“Heard Shri Hemanth R Rao, learned Counsel for the Applicant in IA No.562 of 2019. **IRP is directed to continue the process of CIRP.** Post the case on 15.11.2019”.*

On a simpliciter reading of the above extracted order, the IRP would be deemed to continue to discharge his duties until the new RP is appointed. As per the pleadings of the Appellant, it is noted that its only on 06.12.2019, that the present IRP has handed over all the records to the new RP, who was appointed vide order dated 27.11.2019. Subsequently, IA No.447/2020, on which the Impugned Order which is under challenge in the CA (AT) (CH) (Ins) No.222/2022, was filed by the Appellant herein, where he has sought a directions against the Respondent to pay him a legitimate dues of Rs.14,29,126/- for the duties which he had carried out as IRP. The said IA was decided vide order dated 02.12.2020, wherein the Learned Adjudicating Authority, has directed to pay Rs.4,00,000/- fee to the IRP till he was actually replaced by new RP, said order was directed to be complied within 30 days from the date of the receipt of the order. It is to be noted that, consequent to the order the Respondent Bank had remitted a sum of Rs.3,67,523/- on 19.01.2021 as their proportional share to pay to the amount thus determined. Subsequently, the Appellant has filed a clarification application being IA No.105/2021, seeking the clarification of order dated 02.12.2020, i.e, with respect to para 4 of the said order which is extracted hereunder: -

“4. As stated supra, the Applicant was admittedly chosen by the Petitioner, (IREDA who has filed the main Company petition, to appoint

him as IRP, on agreeing the terms of payment, in terms of letter dated 15.11.2018 agree for payment of Rs. 4,00,000/- (Rupees Four Lakh only) for 30 days towards fees. It is not in dispute that the Applicant was fully paid by (IREDA) in terms of said letter. The point for consideration is whether the agreement made between the Applicant and IREDA, would automatically binds on the Respondent herein, without its approval, and the Applicant is entitled for fees as per his claim. It is not in dispute that the Applicant was replaced by new RP, as per law, and he has no objection for the same. Canara Bank with more than 83% voting share did not agree for continuation of the Applicant as RP. The record shows that Canara Bank has already considered the claim of Applicant but did not agree for the same by approving some expenses as deemed fit. Principles of natural justice demands that IRPs chosen by Petitioners, who have filed Company Petitions, are entitled to receive agreed fee and expenses subject to approval COC for his/her continuation as RP, after COC constituted. Though the Applicant has not cited any rule or agreement in support of the instant claim, but it would not just and proper for Canara Bank to deny him bare minimum agreed fee of Rs. 4 lakhs till he was actually replaced by new RP. Therefore, it would be just and proper to direct the Respondent (Canara Bank) to pay the Applicant proportionate fee out of Rs. 4 lakhs till he was actually ceased to be IRP and replaced by new RP”.

The clarification that has been sought by the appellant is as to whether he is only entitled to the amount, that was to be paid for the performance of his duties is Rs.4,00,000/- as a whole or Rs.4,00,000/- thereafter too for each subsequent 30 days till the new RP was appointed.

The Learned Counsel for the Appellant contends that 30 days from the date of his appointment as IRP expires on 05.10.2019, and he argues that he is entitled to be paid for his fees from the date he took charge of IRP i.e., 05.09.2019 till the date of appointment of the new RP. Therefore, his

professional fees, which ought to be paid would have been from 05.09.2019 to 27.11.2019 i.e., he actually worked as IRP, wherein it happens to be total 83 days, for which he was to be paid at the rate of Rs.4,00,000/- for each 30 days, was to be paid to the IRP. But the said contention is being vehemently opposed by the 2nd Respondent, wherein he states that, at no point of time, he has accepted to bear the cost to pay the IRP fees. Also, because since the IRP has not submitted any supporting documents so as to prove that he has actually discharged the duties as IRP till the appointment new RP. Additionally, he pleads that in the 2nd CoC meeting, which was held on 18.10.2019, wherein the Agenda (B2) for reimbursement of IRP fees of Rs.19,00,000/- was placed, the same was rejected by the CoC. This Respondent only had filed an application for appointment of new RP, and the same was also allowed and consequentially the Appellant herein was discharged from his duties only on 27.11.2019.

After hearing parties at length and after perusing the orders passed by NCLT, this Appellate Tribunal is of the view that, the amount of Rs.3,67,523/- (proportionate of shares) remitted by Respondent No.2 on 19.01.2021 will account to the payment for the first 30 days (i.e., from 05.09.2019 to 05.10.2019) of his appointment.

By venturing into the observations which has been made by Learned NCLT in IA No.447/2020, wherein it had directed Respondent No.2 to pay a proportional share of Rs.4,00,000/-, the agreed fee which would be payable to

the Appellant would be till the new RP has replaced him. Because from records till his date of replacement had worked as IRP, which is fact apparent from records. The fact to be noted is that, the new RP was appointed on 27.11.2020 as per order passed in IA No.562/2019. From the date of expiry of the first slab of 30 days of his appointment as IRP (i.e., on 05.10.2019) till the date of appointment of new RP (i.e., 27.10.2020) wherein it happens to be 53 days, the Appellant is shown to have worked as IRP and would be entitled to receive the payment of Rs.4,00,000/- for each 30 days, and for the additional 53 days which amounts to Rs.6,49,290/-.

IA No.105/2021, has been filed before the Learned NCLT for clarification of the IA No.447/2020. As observed above, the actual amount to be received by IRP is at the rate of Rs.4,00,000/- for each 30 days, which would be as determined above that is till 27.10.2020. The amount of Rs.6,49,290/- is directed to be paid to the Appellant within 30 days from the date of this Judgment.

Owing to the aforesaid and the reasons stated, the CA (AT) (CH) (Ins) No.196/2022 and CA (AT) (CH) (Ins) No.222/2022 stand partly allowed. Pending Interlocutory Applications, if any, stand disposed of.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

16.12.2024
VG/TM/MS