

## **Case Snippets**

**Volume 03, Number 27 (July 1, 2020)**

### **M/s. Kotak Resources Vs Dharmendra Dhelaria & Ors**

**(Company Appeal (AT) (Insolvency) No. 569 of 2020) (Dated 26/06/2020)(NCLAT)**

**If the admitted application was rejected by the Appellant Tribunal, CIRP cost will be borne by the members of CoC**

Corporate Insolvency Resolution Process' was initiated on an application filed under Section 7 of the 'I&B Code' by the Appellant. The Adjudicating Authority admitted the application by virtue of its order dated 21st February, 2018 and appointed Mr. Dharmendra Dhelaria as the 'Interim Resolution Professional'. Subsequently meeting of COC held on 22nd March, 2018 and Mr. Dharmendra Dhelaria appointed as 'Resolution Professional'.

One of the erstwhile Director of the Corporate Debtor preferred an appeal against the order of admission which came to be allowed by this Appellate Tribunal vide judgment rendered on 29th August, 2018 setting aside the impugned order and all consequential actions taken pursuant thereto.

In the present case the only issue raised in the appeal was in regard to reimbursement of the 'corporate insolvency resolution process cost',





liability in respect whereof has been laid by the Adjudicating Authority upon 'Committee of Creditors' consisting of the Appellant and another 'financial creditor' namely 'ARCIL' in equal proportion in terms of the impugned order dated 24th February, 2020. ARCIL was included in the 'Committee of Creditors' upon its constitution by the 'Resolution Professional' with its consent. The 'resolution cost' of Rs.12,12,831/- was ratified and approved by the 'Committee of Creditors' in its meeting dated 7th August, 2018.

### **NCLAT held as follow:-**

Since the 'Committee of Creditors' comprised of both, Appellant and ARCIL, the 'corporate insolvency resolution process costs' had necessarily to be borne by them in equal proportion. It is indisputable that the 'Corporate Debtor' could not be saddled with the liability of the 'corporate insolvency resolution process costs'. It would be preposterous to hold that the whole amount of the 'corporate insolvency resolution process cost' should have been reimbursed by the ARCIL alone to the 'Resolution Professional'.

