



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

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**DEVARAJAN RAMAN VS. BANK OF INDIA LIMITED**  
**CIVIL APPEAL NO 3160 OF 2020**  
**DATE OF SUPREME COURT'S JUDGMENT: 05<sup>TH</sup> JANUARY 2022**

### Facts of the Case: -

This Appeal challenged the order passed by the National Company Law Appellate Tribunal 'NCLAT'. The issue of the case arises in dispute related to the payments of costs and expenses incurred by the Resolution Professional (Appellant). The Facts of the case are that pursuant to respondent (Financial Creditor of Poonam Drums and Containers Private Limited (Corporate Debtor 'CD')), the appellant had submitted his technical and financial bid for appointment as an Interim Resolution Professional 'IRP' in the CIRP of CD which was initiated by respondent by filing a petition under Section 7 of IBC, 2016 and the same was admitted by Adjudicating Authority 'AA'.

Later, the order of AA was set aside in appeal by the NCLAT at the behest of the Directors of the CD. The NCLAT remitted the proceedings to AA to decide upon the fee and costs of the CIRP incurred by the appellant which was to be borne by the respondent. An amount of Rs 14,75,660/- was payable as fee and costs and the Respondent had reimbursed an amount of Rs 5,66,667 leaving Rs 9,08,993/- in balance, according to the appellant. Hence, the appellant moved AA for obtaining the release of the remaining fee and costs. The respondent confirmed the details of the fee and costs as stated by the appellant and stated that it would release the payment, upon receipt of an order of AA. Subsequently, AA in its order disposed of the application directing the Respondent to pay all the expenses incurred by RP and Rs. 5,00,000 /- plus GST towards the fee of the RP.

Aggrieved by the above order, the Appellant filed an Appeal before NCLAT stating that AA passed the impugned order reducing the CIRP cost and fee quoted by the appellant, without citing any reasons for the same. However, NCLAT upheld the order of AA stating that the appellant had worked for about three months as RP. Further, the expenses had been allowed in full and the consolidated amount of Rs 5,00,000/- plus GST allowed as fee of the RP for the entire period was not unreasonable and fixation of the fee is not a business decision depending on the commercial wisdom of the CoC.

Hence, the appellant filed this appeal.



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## Supreme Court's Observations: -

The Apex Court was of the view that after the NCLAT set aside the order of the AA initiating the CIRP, the proceedings were remitted back for determining the insolvency resolution costs. The Court materially noted that the appellant had addressed a letter to the respondent prior to the filing of the application to which the respondent, upon verification had stated that the costs and fees were in conformity with both the technical and financial bid, based on which the assignment was awarded. Further, in the application, which was filed by the appellant before the AA, the appellant annexed a statement of costs, the amount, which was reimbursed with the balance dues, however, the order of the AA reveals that none of the submissions of the appellant were considered. The AA merely directed the respondent to pay the expenses incurred and an amount of Rs 5,00,000 plus GST towards the fee of the RP. Neither the basis of the claim nor its reasonableness was considered by the AA. Further, the NCLAT merely proceeded in an ad hoc manner on the ground that the amount of Rs 5,00,000 as fee, in addition to the expenses, appears to be reasonable. The Apex Court stated that both the orders suffer from an abdication in the exercise of jurisdiction and in the absence of any reasons in both the order, it is impossible to deduce the basis on which the payment of an amount of Rs 5,00,000 together with expenses has been found to be reasonable and an order of remand becomes necessary.

## Order: -

The Apex Court in view of the above observations allowed the appeal and set aside the impugned judgment and order of the NCLAT and AA. Further it restored the misc. appeal of the AA for a fresh decision and directed AA to expedite the disposal of appeal and to complete the process within a period of one month from the date of receipt of a certified copy of this order on its record.

**Case Review: - Appeal Allowed**