



# 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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**SUMIT BANSAL, INSOLVENCY PROFESSIONAL. VS. COMMITTEE OF CREDITORS OF JP ENGINEERS PVT. LTD. & ORS.**

**COMP. APP. (AT) (INS.) NO. 160 OF 2022**

**DATE OF NCLAT'S JUDGMENT: 18<sup>TH</sup> FEBRUARY 2022**

**"IBBI IS FULLY CLOTHED WITH JURISDICTION TO REGULATE PAYMENT OF REMUNERATION OF RP AND IRP BOTH BY FRAMING REGULATION OR BY ISSUING EXECUTIVE INSTRUCTIONS TILL REGULATION ARE NOT FRAMED TO REGULATE THE SUBJECT"**

### Facts of the Case: -

This Appeal was filed against the order dated 07.01.2022 passed by the NCLT-New Delhi (Adjudicating Authority 'AA') on an I.A. filed by the Appellant. The facts of the case are that Appellant was appointed as Interim Resolution Professional 'IRP' by the AA on 26.02.2020 of the Corporate Debtor and in the first CoC meeting, IRP had claimed that he should be paid Rs. 2 Lakhs per month. The matter of fee, however, could not be decided by the CoC and ultimately CoC ratified payment of Rs. 50,000/- per month only.

The Appellant claimed that he worked till 27.01.2021 after which he was replaced by the Resolution Professional (Respondent No.2). The Appellant thereafter filed above mentioned I.A. before the AA claiming the payment of fees at Rs. 2 Lakh per month whereby the AA decided to refer the matter to the Insolvency and Bankruptcy Board of India 'IBBI' to examine the claim of IRP and his agreement with the CoC. It further directed to submit their specific recommendations and thereafter the matter be directed to be listed again before the AA.

The Appellant challenged the order stating that the IBBI had no jurisdiction to decide the question of payment of his fees. He further submitted that the AA should not have asked for recommendation of the IBBI regarding his fee and should have itself decided the matter regarding fee.

The Respondents submitted that the amount as approved by the CoC has already been paid to the Appellant i.e. Rs. 50,000 per month and on the sufficiency of fee, it is the CoC which has jurisdiction to take a decision and Appellant should not have filed the I.A. before the AA.



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## **NCLAT's Observations: -**

The Appellate Tribunal referred to the judgment of Hon'ble Supreme Court in the matter of *"Alok Kaushik vs. Mrs. Bhuvaneshwari Ramanathan and Ors.- Civil Appeal No. 4065 of 2020"* and stated that there is no quarrel to the proposition that it is the AA which has power to take a final decision regarding payment of fee to which IRP or RP may be entitled.

Further, the issue which has been raised in this Appeal, that IBBI has no jurisdiction nor AA should have referred the matter for a recommendation. The Appellate Tribunal stated that from pursuing the order, it is clear that the ultimate decision regarding this issue raised in I.A was to be taken by the AA and the AA had not directed the IBBI to decide the issue and only recommendations were called for from IBBI and it did not agree with the submissions of the Appellant that IBBI has no jurisdiction with regard to question of fee which is entitled to be paid to the IRP/ RP, stating that the IBBI is clothed with Regulations making power under Section 240 of the IBC.

It further stated that as per the Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016, an IRP has to abide by the Code of Conduct specified in the First Schedule to these Regulations which requires an IP to provide services for remuneration which is charged in a transparent manner and is a reasonable reflection of the work.

## **Order: -**

The Appellate Tribunal in view of the above observations stated that IBBI has jurisdiction to regulate payment of remuneration of RP and IRP both by framing regulation or by issuing executive instructions till regulation are not framed to regulate the subject. Further, in the present case, it dismissed the appeal by stating that the AA may dispose of I.A immediately after receiving recommendations from the IBBI.

**Case Review: -** *Appeal Dismissed.*

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