

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 48 of 2020

IN THE MATTER OF:

**Committee of Creditors,
M/s. Smartec Build Systems Pvt. Ltd. ...Appellant**

Vs.

B. Santosh Babu & Ors. ...Respondents

Present: For Appellant: - Mr. Divyanshu Sahay and Mr. Shradha Narayan, Advocates.

For Respondents: - Mr. Rohan Saluja, Advocate.

O R D E R

10.01.2020— The ‘Committee of Creditors’ recommended for liquidation of ‘M/s. Smartec Build Systems Private Limited’- (‘Corporate Debtor’), pursuant to which order of liquidation has been passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad.

2. Mr. B. Santosh Babu, who was the ‘Interim Resolution Professional’, having not been paid his fees and cost, moved an application before the Adjudicating Authority for payment of his fees and cost incurred by him, company having been ordered to undergo liquidation by impugned order dated 13th November, 2019.

3. The Adjudicating Authority by impugned order dated 13th November, 2019 while passed the order of liquidation, directed the ‘Committee of Creditors’ (Appellant herein) to pay the fees and cost incurred by the ‘Interim Resolution Professional’.

Contd/-.....

4. Learned counsel appearing on behalf of the Appellant submits that the Appellant ('Committee of Creditors') has grievance with regard to the direction to the 'Committee of Creditors' to pay the fees and cost incurred by the 'Interim Resolution Professional'.

5. According to the Appellant ('Committee of Creditors'), the fees and costs of the 'Interim Resolution Professional' is to be borne by the Applicant who filed application under Section 9. However, such submission cannot be accepted as 'Operational Creditor' who moved application, may not receive any amount during liquidation being not 'Secured Creditor' cannot be asked to pay the dues.

6. Admittedly, Mr. B. Santosh Babu performed the duty of the 'Interim Resolution Professional' and constituted the 'Committee of Creditors' and thereafter, continued to function even beyond 30 days with designation of the 'Interim Resolution Professional' and as he moved an application for liquidation (though designated "continue as Interim Resolution Professional"), we agree with the observations made by the Adjudicating Authority that the 'Committee of Creditors' is to pay the fees and cost incurred by Mr. B. Santosh Babu, 'Interim Resolution Professional', who also acted during the resolution process beyond 30 days till the date of liquidation having not allowed to continue as Liquidator.

7. If Mr. B. Santosh Babu- 'Interim Resolution Professional' who continued till the order of impugned order of liquidation was passed, would have been allowed to continue as Liquidator and only in such case, the payment could have been made to him as Liquidator in terms of Section 34(8) of the 'I&B Code'.

8. At this stage, learned counsel for the Appellant submits that the 'Resolution Professional' having charged high fee, we specifically asked the counsel whether the 'Committee of Creditors' is agreeable to the fees, we may determine and to be paid by them, it is submitted that he is having no such instructions.

As the plea taken by the 'Committee of Creditors' is frivolous, we dismiss the appeal with cost of Rs.1,00,000/- (Rupees One Lac Only).

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

Ar/g