NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 269 of 2025
&
I.A. No. 1037, 1038 of 2025

IN THE MATTER OF:

The Committee of Creditors of P.M. Cold Storage Pvt. Ltd., Through the West Bengal Financial Corporation ...Appellant(s)

Versus

Monotrone Leasing Pvt. Ltd. (Financial Creditor) & Ors. ...Respondent(s)

Present:

For Appellant(s) : Mr. Kuldip Mallick, Adv. Sannidhya Datta and Adv. Subhasish Bhowmick, Advocates.

For Respondent(s) : Mr. Rishav Banerjee, Adv. Aishwarya Kumar and Mr. Daksh Sharma, Advocates for R3.

Mr. Suraj Kumar Singh, Advocate for R4.

O R D E R
(Hybrid Mode)

06.10.2026 The Appellant before us is the CoC of M/s PM Cold Storage Pvt. Ltd., wherein the Appellant while invoking our Appellate Jurisdiction under Section 61 of the I&B Code, 2016, challenges the impugned order dated 17.10.2024, as it has been passed by the Ld. NCLT, Kolkata Bench in I.A.(IBC) No. 1758/KB/2024 arising out of C.P.(IB) No. 142/KB/2019.

2. The controversy at hand could be summarized in a very precise manner, exclusively confined to the interpretation to be given to law, for the

purpose of determining the rights, which were claimed in I.A.(IBC) No. 1758/KB/2024, which has been adjudicated upon by the impugned order.

3. To resolve the said controversy, reference would have to be made to Section 27 of the I&B Code, 2016, under which the application, being I.A.(IBC) No. 1758/KB/2024 was preferred. Section 27 of I&B Code reads as under: -

> "27. *Replacement of resolution professional by committee of creditors.*
>
> *(1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.*
>
> *(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.*
>
> *(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.*
>
> *(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.*
>
> *(5) where any disciplinary proceedings are pending*

against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another professional under the section."

4. On a simpliciter reading of aforesaid provision, what would be desired is that, the above provision is exclusively confined to dealing with to meet the contingent situations for the purpose of replacement of the Resolution Professional by the CoC. None of the parameters or the provisions prescribed therein under Section 27 of Code are in context to or even remotely related to the payment of any dues or fee payable to the Resolution Professional, nor does even the statute contemplate or even intents to apply any of the conditions calling for dealing with the crises for consideration of grant of any such relief while invoking the provisions contained under Section 27 of the Code. It's under the aforesaid principle that the application that was preferred under Section 27, wherein the relief clause was modulated and it was exclusively for the purpose taking on record the unanimous decision taken by the CoC of M/s PM Cold Storage Pvt. Ltd., and to replace the RP, and henceforth any other ancillary relief that was sought was in relation to the principal relief. Logically too any relief claimed in an application under Section 27 of the Code, cannot do beyond the judicial scope of the provision.

5. In the application itself, which was preferred on 17.08.2024, neither the pleadings nor the relief was even claimed to be in context of issue

pertaining to payment of the balance fees of the Resolution Professional nor any pleading oor evidence was even referred to in that, including the observations, which has been made in various meetings of the CoC pertaining to the aspect of the entitlement and determination of the RP for the payment of the fee and CIRP cost. These were not the facts pleaded nor considered even or even had been an issue of consideration before issuing directions contained in Para-9 of the impugned order.

6. It's this application made, when it came up for consideration before the Ld. Tribunal the same has been adjudicated, upon by the impugned order dated 17.10.2024. The grievance of the Appellant is that, so far as the impugned order is concerned, while referring to the analysis made therein was exclusively as regards to the pending matter that has recorded therein, the Ld. Tribunal has only burdened the Judgment with citations rather than venturing to consider vital factual issues and particularly the issue pertaining to the observations made in Para-9 of the impugned order for payment of the CIRP cost of Rs. 55, 69,453/- which has been directed to be paid to the Erstwhile RP, Mr. Bimal Kanti Choudhary.

7. Having heard the Ld. Counsels for the parties, we are of the view that since the statute under its provisions contained under Section 27 of the Code, that has been made as part of the statute, by the legislature was altogether legislated with different intention and an object to be achieved, and it had never intended to leave any avenue, open aspect for any aspect to

be considered under Section 27 of the Code, particularly pertaining to the payment of the CIRP costs to the RP, as it has been directed to be given, by virtue of the impugned order dated 17.10.2024. Particularly, when the said relief of payment of CIRP cost was not even be the basis of I.A. nor was claimed, nor pleaded in the application, nor even considered by the Ld. Tribunal, while coming to the conclusion, thus making observations in Para-9 of the impugned order for remittance for the CIRP costs would be uncalled for and beyond jurisdiction. The Ld. Tribunal in its analysis and findings too has not dealt with any of the rational to be attached to recording the finding justifying for issuing directions for payment of the cost as made in Para-9 of the Judgment.

8. First of all, the said observations are not in context and relevant to the subject issued and the proceedings, as contemplated under Section 27 of the Code, it ought not to have been enlarged upon by the impugned order dated 17.10.2024, being out of the subject, which was then under consideration before the Ld. Tribunal, in the shape of I.A.(IBC) No. 1758/KB/2024 and besides that, even if we take into consideration the Judgment in its entirety, the Judgment doesn't even make any observation, to the pleading or even any evidence. Which has recorded any findings to justify the remittance of the cost of Rs. Rs. 55, 69,453/- as observed in Para-9 of the impugned order.

9. On that ground itself that since the Ld. Tribunal has travelled beyond the issue and the scope of I.A., that was not even under consideration or addressed by any of the parties before the Ld. Tribunal because, since the issue being exclusively within the scope under Section 27 of the Code, hence there could not have been a direction for the remittance of cost of the CIRP which would be beyond the subject and besides that, when it's not being based upon any rationale finding that has been considered by the Ld. Tribunal, the impugned order cannot be sustained, the same would stand quashed, qua the observation made in Para-9 of the impugned Judgement as extracted hereunder:-

> *"9. We also direct the COC for payment of CIRP costs of Rs. 55, 69,453 to the erstwhile RP, Mr. Bimal Kanti Choudhury subject to verification of all expenditure incurred as CIRP costs within 2 weeks from the date of this order."*

10. Having said so, this order of ours will not disentitle the Erstwhile RP to agitate his independent cause for the remittance of the CIRP cost, as entitled to be paid to him under law, or on basis of the excerpts of the CoC meetings, which the Ld. Counsel for the Respondent has drawn our attention before us, to justify his stand, that the impugned order cannot be said to be bad because of the fact the CoC has already considered with regards to the entitlement of the RP be paid with the cost of the CIRP. As far as the issue pertaining to the entitlement of the Erstwhile RP to be paid with the CIRP cost, we are not making any observations on merits at this

juncture, all the question of his entitlement would be exclusively independent to the impugned order and independent of the findings recorded by us in our Judgment today, Subject to the aforesaid exceptions, leaving the rights open to the RP, i.e., the Erstwhile RP to resort to an appropriate remedy available to him, **we allow the Appeal and set aside the impugned order dated 17.10.2024.**

11. All interlocutory applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

Abhishek/Ravi