

Committee of Creditors to bear expenses of Insolvency Resolution Professional (IRP)

On 6th March, 2018, the NCLAT, in the matter SBI VS SKC Retails Ltd. through IRP & anr., held that the Applicant is liable to incur the expenses of resolution professional as per sub-regulation (1) of Regulation 33 of Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016. Thus the applicant is liable to bear all the expenses as explained in sub-regulation 4 of Regulation 33, and he can get the amount reimbursed by the Committee of Creditors to the extent the amount ratified by the Committee.

Issue

Whether the Committee of Creditors are liable to bear the expenses incurred by the Insolvency Resolution Professional or not.

NCLAT's Decision

The NCLT Chennai stated in its orders on 26th October, 2017 and 14th November, 2017, passed in Company Appeals, that Committee of Creditors shall bear all the expenses of IRP in addition to the public announcement expenses incurred by the IRP to invite claims under Regulation 6 and these expenses have to be paid irrespective of the fact that no securities are available with the creditors. The NCLAT recently modified the NCLT orders and held that applicant, who has filed the application under Section 7 or 9 of the I & B code, is required to bear the expenses as per sub-regulation (1) of Regulation 33.

The expenses will include fee to be paid to the interim resolution professional and other expenses, including the cost of engaging professional advisors. Where the applicant has not fixed expenses under sub-regulation 1 of Regulation 33, the Adjudicating Authority is required to fix expenses.

Thus, it is fair to say that the applicant who files the application for initiation of Corporate Insolvency Resolution Process has to undertake other expenses of the Insolvency Resolution Professional, like his fees and cost of engaging Professional Advisors, along with the cost of public announcement, which he can get reimbursed later by the Company of Creditors.