

LEGAL UPDATES

NCLAT: RP CAN NOT CLAIM FEES TILL THE REPLACEMENT DATE, ABSENT NCLT ORDER TO CONTINUE AS IRP

In the instant case, NCLAT opined that the Adjudicating Authority had erred in permitting Respondent's claim of the fee until October 9, 2018, i.e., when IRP was replaced. Accordingly, NCLAT set aside NCLT order to the degree that it instructed CoC to pay the fees and expenditures to the previous Insolvency Resolution Professional up until the date of appointment of new Resolution Professional.

The Hon'ble NCLAT observed that the issue on appeal is whether the Respondent was entitled to his fee up until the date he was replaced.

The, facts in brief, that led to this controversy were that at its first meeting, the CoC decided to replace the IRP, following which an application was made to the NCLT for the appointment of a new RP.

Accordingly, after the proceedings in the first meeting of the CoC, the Respondent-IRP did not perform any work.

Referring to the pertinent IBC provisions, NCLAT concluded that when the CoC passes a resolution to replace the IRP, the requirement of an order to continue the IRP in such cases is a statutory scheme defined by the provisions, and conversely, when the NCLT fails to pass an order for the IRP to continue under section 22(5), the claim of continuation will violate the statutory scheme.

Therefore, NCLAT denied Respondent's assertion that he wants to continue to serve as RP through October 9, 2018, while observing *"...after 10 days of sending the name of Resolution Professional to the Board by the Adjudicating Authority, there being no order of the Adjudicating Authority to continue...the Interim Resolution Professional has no right to continue to function as the Resolution Professional after such date"*

The Hon'ble Appellate Tribunal held that *"The effect of the Resolution of CoC to replace the Interim Resolution Professional as well as the effect of the filing of the Application before the Adjudicating Authority had not been considered by the Adjudicating Authority at all."*

The amount of Rs. 10 lakhs provided to the Respondent under interim orders which according to NCLAT is appropriate compensation, and no more payment is necessary.