

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 103 OF 2018

S3 ELECTRICALS AND ELECTRONICS PRIVATE LIMITED Appellant(s)

VERSUS

BRIAN LAU & ANR. Respondent(s)

WITH

CIVIL APPEAL NO. 835 OF 2018

O R D E R

C.A. No. 835/2018:

We have been shown Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which reads as follows:-

“33. Costs of the interim resolution professional.- (1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.

(2) The Adjudicating Authority shall fix expenses where the applicant has not fix expenses under sub-regulation (1).

(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

[Explanation.- For the purposes of this regulation, “expenses” include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any,

and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional.]”

A bare reading of Regulation 33(3) indicates that the applicant is to bear expenses incurred by the RP, which shall then be reimbursed by the Committee of Creditors to the extent such expenses are ratified. We are informed that, in this case, no Committee of Creditors was ever appointed as the interim resolution process did not reach that stage. In these circumstances, it is clear that whatever the Adjudicating Authority fixes as expenses will be borne by the creditor who moved the application.

In this view of the matter, the impugned judgment dated 02.08.2017 is set aside only to the extent that these expenses are to be paid by the Corporate debtor. The appeal is allowed to the aforesaid extent.

C.A. No. 103/2018:

We find no merit in this Civil Appeal, which is accordingly dismissed.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(SURYA KANT)

New Delhi;
August 05, 2019.

ITEM NOS.47+59 COURT NO.5 SECTION XVII
 S U P R E M E C O U R T O F I N D I A
 RECORD OF PROCEEDINGS

Civil Appeal No(s). 103/2018

S3 ELECTRICALS AND ELECTRONICS PRIVATE LIMITED Appellant(s)

VERSUS

BRIAN LAU & ANR. Respondent(s)

(IA No. 3221/2018 - STAY APPLICATION)

WITH

C.A. 835/2018

(IA No. 4435/2018 - Stay application)

Date : 05-08-2019 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
 HON'BLE MR. JUSTICE SURYA KANT

For Appellant(s) Mr. Puneet Sharma, AOR

For Respondent(s) Mr. Rajiv Shankar Dvivedi, AOR
 Mr. S.K. Sarkar, Adv.

Caveator-in-person

UPON hearing the counsel the Court made the following
 O R D E R

C.A. No. 835/2018:

The appeal is allowed to the extent as indicated in the signed order.

C.A. No. 103/2018:

We find no merit in this Civil Appeal, which is accordingly dismissed in terms of the signed order.

Pending applications in both the matters stand disposed of.

(R. NATARAJAN)
 COURT MASTER (SH)

(RENU DIWAN)
 ASSISTANT REGISTRAR

(Signed order is placed on the file)