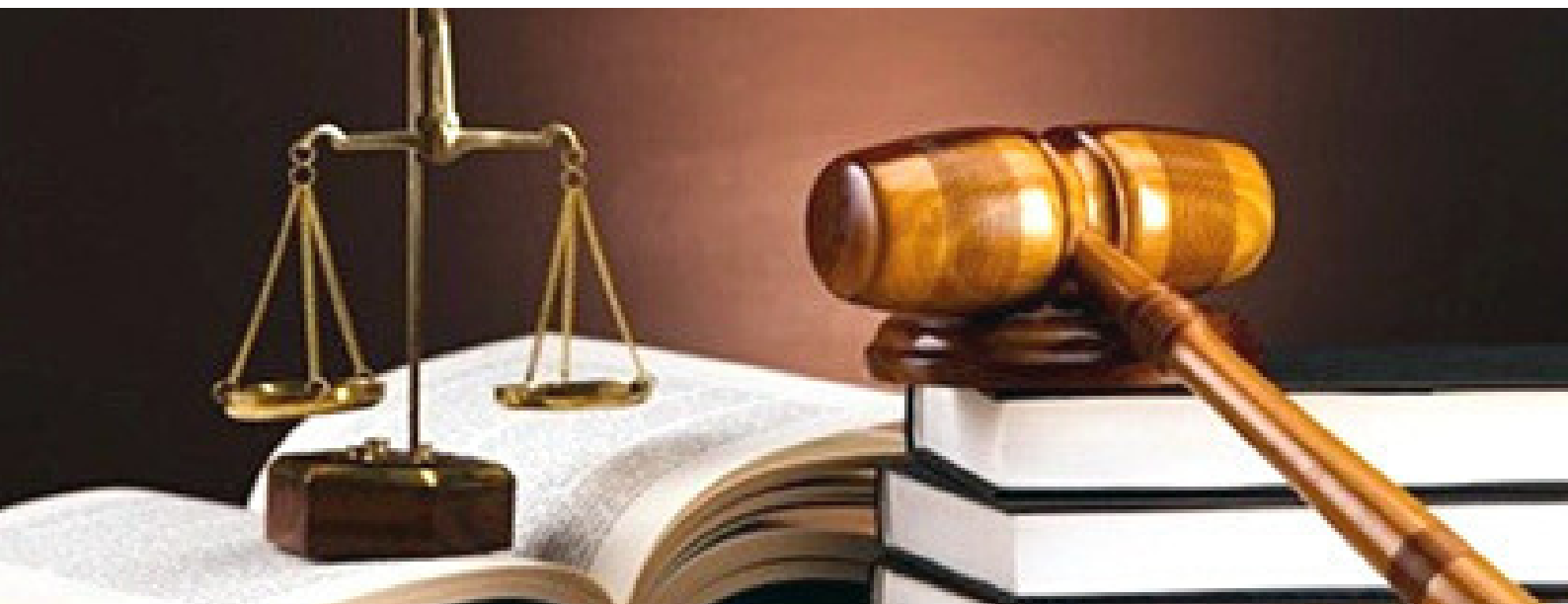


# IBC DOSSIER

A Bulletin on Landmark Judgements under IBC, 2016



## **M/S. SMARTEC BUILD SYSTEMS PVT. LTD. V/S. B. SANTOSH BABU & ORS COMPANY APPEAL (AT) (INSOLVENCY) NO. 48 OF 2020**

### **Brief Facts**

Mr. B. Santosh Babu was appointed as an Interim Resolution Professional (“IRP”) for conducting the corporate insolvency resolution process of Smartec Build Systems Pvt. Ltd. (“Smartec”) under Section 9 of IBC,2016. Mr. Babu performed the duty of IRP, constituted Committee of Creditors (“CoC”) and continued to function beyond 30 days with designation of IRP without receiving any fees and reimbursement of the expenses incurred during the process. Accordingly Mr. Babu moved an application before the Adjudicating Authority for payment of his fees and cost incurred by him during his appointment as IRP since Smartec has been ordered to undergo liquidation of NCLT Bench of Hyderabad vide order dated 13th November, 2019 and he was not appointed as liquidator by CoC.

### **Decision**

Hon’ble NCLAT ordered the CoC of Smartec to pay the fees & cost incurred by Mr. Babu for the tenure he acted as an IRP. Though it was an operational creditor who moved the application under Section 9 of IBC, 2016 but cannot be asked to pay the dues as he may not receive any amount during liquidation being an unsecured creditor. Hon’ble NCLAT also held that if IRP would have been allowed to continue as Liquidator in the said case, then only the payment of fees and expenses incurred by him could have been made in terms of Section 34(8) of the IBC, 2016.

Also learned Counsel for the Appellant submitted that IRP has charged his fees on higher side. Counsel on being asked whether the Committee of Creditors is agreeable to the fees charged by IRP then the fees to be paid to the IRP can be determined accordingly, to which Counsel submitted that he is having no such instructions. Considering the plea taken by the Committee of Creditors as frivolous, Hon’ble NCLAT dismissed the appeal with cost of Rs.1,00,000/- (Rupees One Lakh Only).

### **Link to the Order**

<https://ibbi.gov.in/uploads/order/c98db1934f7ee5868b600c21e1ec672e.pdf>

