

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT NEW DELHI
(APPELLATE JURISDICTION)
Company Appeal (AT) (Insolvency) No. 786 of 2023

(Arising out of the Impugned Order dated 18.04.2023 in CP
(IB) No. 201/Chd/2018, passed by the National Company
Law Tribunal, Chandigarh Bench, Chandigarh)

In the matter of:

Ashok Kumar Gulla

Liquidator for SRS Limited

Having Regn. No.: IBBI/IPA-003/IP-N00024/2017-2018/10174

Office at: RBSA Restructuring Advisors LLP

23, 2nd Floor, IAPL House

South Patel Nagar, New Delhi -110008

Email id: ip.srs@rbsa.in

Mobile No.: 9674713222

...Appellant

Versus

1. State Bank of India

Stress Assets Management Branch-I

12th Floor, Jawahar Vyapar Bhawan,

STC Building, 1, Tolstoy Marg,

Janpath, New Delhi- 110001

Email ID: team1samb1.del@sbi.co.in;

agmliquid.sarge@sbi.co.in

...Respondent No.1

2. Bank of India

Large Corporate Branch, 36,

Janpath, 10th Floor, Chanderlok

Building, New Delhi- 110001

Email ID: largecorporatebr.newdelhi@bankofindia.co.in

...Respondent No.2

3. Union Bank of India

Overseas Branch, M-93,

Connaught Circus, New Delhi- 110001

Email ID: ubin0906069@unionbankofindia.bank;

Cb0606@unionbankofindia.com

...Respondent No.3

4. Punjab National Bank

(Earlier Oriental Bank of Commerce)

M-1,2,3, M Block, Connaught Place,

New Delhi- 110001

Email ID: zs8343@pnb.co.in

...Respondent No.4

- 5. Canara Bank**
(Earlier Syndicate Bank)
4, Nehru House, Bahadur Shah Zafar Marg,
Near ITO Metro Gate No.4,
New Delhi- 110002
Email ID: cb19066@canarabank.com;
ravis@canarabank.com
...Respondent No.5
- 6. Mr. Abhinav Garg**
House No. 1026, Urban Estate, Sector-4,
Gurgaon- 122001
Email ID: abhinav_garg05@yahoo.com
...Respondent No.6
- 7. Mr. Baljit Kapoor**
D-38, Gulmohar Park
New Delhi- 110049
Email ID: baljitkapoor@indiacub.com; bkpkic@gmail.com
...Respondent No.7
- 8. Mr. Naveen Kwatra**
House No. 1976, Sector 16
Faridabad- 121002
Email ID: naveenkwatra007@gmail.com
...Respondent No.8
- 9. Excise & Taxation Officer-cum Assessing Authority**
Excise and Taxation Department
Excise and Taxation Bhawan, Sector- 12
Near Sports Complex, Faridabad- 121001
Email ID: detceastfbd@gmail.com; sharma.dinesh@haryanatax.gov.in
...Respondent No.9
- 10. Knight Watch Security Pvt. Ltd.**
A-7, Green Avenue Street, Vasant Kunj
New Delhi- 110070
Email ID: corporate@knightwatchindia.com;
dgmaccounts@knightwatchindia.com
...Respondent No.10

Present :

For Appellant : Ms. Shweta Dubey & Mr. Kanishka Prasad, Advocates.
For Respondents : Mr. Kunal Tondon and Ms. Bhavna Vijay, Advocates.

J U D G M E N T

(Hybrid Mode)

[Per: Ajai Das Mehrotra, Member (Technical)]

1. The present appeal has been filed by the appellant who is the liquidator of M/s SRS Limited, against the impugned order dated 18.04.2023 of National Company Law Tribunal, Chandigarh in IA No. 307 of 2021 and IA No. 1260 of 2022 in CP (IB) No. 201/CHD/2018. The appellant has claimed following relevant reliefs in the present appeal :-

- (a) Pass an order allowing the present appeal and setting aside the Impugned Order dated 18.04.2023 passed by National Company Law Tribunal, Chandigarh Bench in IA No. 307/2021 & IA No. 1260/2022 in CP (IB) No. 201/Chd/2018;*
- (b) Fix the remuneration of the Appellant at Rs. 4 lakh + OPE+GST monthly from 29.01.2020 up to 31.05.2022 and Rs. 2 lakh + OPE+ GST per month from 01.06.2022 till the closure of the Liquidation Process, to be distributed between Liquidator and his team from IPE in the ratio of 25:75 or such other fees as this Hon'ble Tribunal may deem appropriate; and*
- (c) Pass any other order(s) or direction as this Hon'ble Tribunal may deem fit and proper in facts and circumstances of the present case.*

The facts of this case as enumerated in the order dated 18.04.2023 of the Adjudicating Authority, along with the decision are reproduced below for ready reference:-

"IA No. 307/2021 & 1260/2022

- 1. IA No. 307/2021 & 1260/2022 are taken up together being interconnected and interlinked.*
- 2. IA No. 307/2021 is being filed by Mr Ashok Kumar Gulla, Liquidator of Mis SRS Limited (herein referred to as 'Liquidator/Applicant') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016. IA No. 1260/2022 is being filed by Mir Ashok Kumar Gulla, Liquidator of M/s SRS Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.*

3. It is prayed by the applicant in IA No. 307/2021 to fix the remuneration of the applicant at 1/3rd of the fees fixed during CIRP, i.e. Rs. 5,00,000/- p.m. + GST + Out of pocket expenses) for the period during which the applicant is unable to sell the asset for the corporate debtor due to the attachment on the assets of the CD by the Directorate of Enforcement and Income Tax Department. IA No. 1260/2022 is filed for placing on record a supplementary affidavit in IA No. 1260/2022 to fix the remuneration of the Applicant at Rs. 4 Lahks + GST monthly from 29.01.2020 up to 31.05.2022 and Rs. 2 Lahks + GST per month from 01.06.2022 for next 2 years till 31.05.2024 or till the closure of the Liquidation Process, whichever is earlier, or such other fees. The fees be paid to Liquidator and IPE in the ratio of 25:75.

4. The brief facts of the case, as stated in the application, are that the CIRP has been initiated by order dated 21.08.2018, and the liquidation has been commenced by order dated 15.10.2019. The applicant is appointed as the Liquidator of SRS Ltd. (Corporate Debtor). After the commencement of the liquidation, the Liquidator invited claims, and after verification of the claims from various stakeholders, he formulated the Stakeholders' Consultation Committee (SCC). A public advertisement has been issued on 13.12.2019 inviting Expressions of Interest for the scheme of compromise or arrangement under Section 230 of the Companies Act, 2013. Thereafter, the liquidator received three schemes within the period of 90 days. It is further submitted that the sale of the corporate debtor as a going concern could not take place as the assets of the corporate debtor have been attached by ED by order dated 08.01.2020. The Income Tax Department has also provisionally attached the assets, i.e. all the Cinema assets by order dated 20.12.2018, which was further extended on 21.06.2019, 06.01.2020 and 15.07.2020. The Income Tax Attachment Order was finally vacated on 12.01.2021. The liquidator has released advertisement for the sale of cinema at 12 locations between 15.01.2021 to 30.09.2021 through e-auction. The liquidator has sold the cinema, and the sale proceeds have been used to meet the pending Insolvency Resolution Process Cost and Liquidation Cost towards pending rent, cam, security, salaries, etc. After meeting these costs, the liquidator has also distributed Rs. 2 crores to the stakeholders.

5. It is mentioned that the applicant has been carrying on the duties of the corporate debtor as per the Code and in accordance with Regulation 4 (2)(b) of the Liquidation Process, the applicant is entitled to the fees as a percentage on the proceeds released from the sale of the corporate debtor. The applicant has made various efforts to seek a vacation of attachment from the ED. The applicant has also approached various PMLA Tribunals, Appellate Tribunals, and Punjab & Haryana High Court on several occasions, and the applicant is also addressing the queries of two thousand deposit holders and other Creditors with the help of his team. The applicant and his team have been carrying out all the activities to manage the affairs of the Corporate Debtor that, includes dealing with various stakeholders, developers, vendors, and deposit holders; attending various legal cases filed against or for the corporate debtor etc. The assets of the CD remained attached with the ED and ITD, and the applicant has not been able to earn any fees since 29.01.2020. The

applicant has also taken up this concern with Secured Financial Creditor in the meeting but no fees has been approved.

6. The applicant has filed a supplementary affidavit by Diary No. 02378 dated 27.09.2022 stating that there has been subsequent development with the stakeholders' committee. In pursuance of the order dated 28.07.2022 of this Bench, the liquidator has conducted the 18th SCC meeting dated 08.08.2022, 19th SCC Meeting dated 22.08.2022 and 20th SCC meeting on 15.09.2022, wherein the Members of SCC have submitted that Fees will be paid as per Regulation 4(2)(b) of the Liquidation Process Regulation, 2016.

7. We have heard learned counsel for the applicant and respondents and have perused the record carefully.

8. In the 20th Meeting of SCC held, the following discussion took place which is reproduced below:-

2. "The Liquidator thereafter sought views of all the members of SC present in the meeting.

Mr Rakesh Verma, AGM, SBI mentioned that they had already submitted their views that the fees be paid as per Reg 4 (2) (b) of the IBBI Liquidation Process Regulation, 2016 and will submit further details on justification through email latest by 16 September 2022.

• Ms. Anubha Mathur, Senior Manager, BOI and Ms. Meenindra S.R, Chief Manager, Union Bank of India stated that they are in discussion with higher authorities & will convey decision through email latest by the 16th September 2022. Subsequently, Bank of India vide mail dated 16.09.2022 stated that "We are of the opinion that fee payment may be made in terms of regulation 4 (2)(b) of the IBBI (Liquidation Process) Regulations, 2016 as a percentage of Liquidation Proceeds.

• Mr. Kuppanna M Dakulagi, Manager (Credit), Punjab National Bank stated and also reiterated through email and the extract of mail send by PB is reproduced here "In the absence of any explicit provision for ring the liquidator fees by the SC we as a part of SCC can't decide over the issue. As such we will be able to pay in terms of Regulation 4 (2b) of the IBBI (Liquidation Process) regulations 2016"

• Mr Abhinav Garg, representative of Deposit Holders stated that they do not have any comments and Secured Financial Creditors decide in the matter. The representatives from Statutory Authority and Operational Creditor also did not offered any view in the matter and were of the view that Secured Financial Creditor decide the matter.

*3. The Liquidator in response to the queries from Mr. Rakesh Verma, AGM, SBI stated that last meeting of CoC was held on 10th May 2019 (i.e. 13** meeting) wherein approval of the Resolution Plan submitted by Resolution Applicant was put up for approval through voting from 14th May 2019 to 16th May 2019 (till 8 PM) and the same was rejected. Hence, Resolution Professional had filed application under section 33 (1) of the IBC, 2016 on 17th May 2019, seeking approval for liquidation Process from Hon'ble NCLT Chandigarh, before the expiry of CIRP period which ended on 18th May 2019. No approval for fee of Liquidator as per Regulation 39 D of IBBI (Insolvency Resolution Process for Corporate Process) Regulation, 2016 was*

sought from members of CoC as such Regulation was introduced subsequently through amendment on 25th July 2019. The CD was admitted into liquidation vide order dated 15th October 2019 from Hon'ble NCLT, Chandigarh.

4. The Liquidator further informed in response to the observation of PNB, that Secured Financial Creditors were earlier members of CoC and hence have powers to approve fee as per the Regulations. He further stated that in the event, member of CoC does not approve the fee of the liquidator, the fee payable is as per regulation 4(2)(b) of IBBI (Liquidation Process) Regulation 2016 based on net realisation and distribution. Hence, Secured Financial Creditor has not provided any approval and did not consider the fact that due to PAO of ED, the liquidator will not be able to recover any fees as per Regulation 4(2)(b) of IBBI (Liquidation Process) Regulation, 2016 and have not appreciated the situation presently prevailing.

The Liquidator stated that approval of Liquidator fee as per Regulation 4(2)(b) of IBBI (Liquidation Process) Regulation, 2016 is defacto available. The members were requested to approve fixed fee considering the specific circumstances of the matter. The Liquidator and his team continues to discharge role without any fees since 29th January 2020 and this situation may continue."

9. We have carefully considered the views of the members of the SCC on the issue of payment of fees to the Liquidator. it is also noted that they have taken into account the work done by the liquidator and also the quantum of work which remains to be completed by the liquidator. While acknowledging the uncertainties of the duration of the liquidation process, we see no reason to disagree with the considered view of the member of SCC on payment of remuneration to the liquidator as per Regulation 4 (2) (b) of the IBBI Liquidation Process Regulation, 2016. In the result, the prayer for fixing a particular amount as the remuneration of the liquidator for the liquidation period is not acceded to.

10. In view of the aforesaid discussion, IA Nos.307/2021 and 1260/2022 are dismissed and disposed of accordingly."

2. In its oral and written submissions, the learned counsel for the liquidator submitted that the liquidator was unable to sell the assets of corporate debtor due to attachment of the assets by the Enforcement Directorate (ED). The Regulation 4(2)(b) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter called 'Liquidation Process Regulations') prescribed fees for the liquidator on the basis of percentage of realisation and distribution and that since no sale could take place due to attachment by the ED, the liquidator is not getting

fees to perform his services. It was submitted that in this case the liquidation of the corporate debtor commenced on 15.10.2019 and the assets of the corporate debtor were attached by the Enforcement Directorate on 08.01.2020 and that liquidator has not been paid any fees since 29.01.2020. It was submitted that liquidator had diligently persued with the relevant authorities regarding lifting of attachment and has also been carrying out various functions on behalf of the corporate debtor during the liquidation process. On 28.07.2022, the learned Adjudicating Authority had directed the liquidator to raise the issue of remuneration before the Stakeholders Consultation Committee (SCC) Members and accordingly, in the 18th, 19th, and 20th SCC Meetings the issue was raised, wherein the members of the SCC took the stand that fees shall be paid as per Regulation 4(2)(b) of the 'Liquidation Process Regulation'. It was submitted that the Adjudicating Authority had acknowledged the uncertainties of the duration of the liquidation process but had failed to direct the SCC to remunerate the liquidator for his services. It was submitted that as per the provisions of Section 60(5)(c) of IBC 2016, learned NCLT has jurisdiction to entertain or dispose of any issue arising out of or in relation to the Insolvency Resolution or Liquidation proceedings of the Corporate Debtor. The appellant cited decision of Hon'ble Supreme Court in *Alok Kaushik v. Bhuvaneshwari Ramanathan* reported as (2021) 5 SCC 787, wherein it has been held as follows:

18. In a recent judgment in Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta this Court clarified the jurisdiction of NCLT/NCLAT under Section 60(5)(c) of the IBC in the following terms: (SCC para 69)

"69. The institutional framework under IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. Therefore, considering the text of Section 60(5) (c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor. However, in doing so, we issue a note of caution to NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and para when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor. The nexus with the insolvency of the corporate debtor must exist."

(emphasis supplied)

19. Though the CIRP was set aside later, the claim of the appellant as registered valuer related to the period when he was discharging his functions as a registered valuer appointed as an incident of the CIRP NCLT would have been justified in exercising its jurisdiction under Section 60(5)(c) of the IBC and, in exercise of our jurisdiction under Article 142 of the Constitution, we accordingly order and direct that in a situation such as the present case, the adjudicating authority is sufficiently empowered under Section 60(5)(c) of the IBC to make a determination of the amount which is payable to an expert valuer as an intrinsic part of the CIRP costs. Regulation 34 of the IRP Regulations defines "insolvency resolution process cost" to include the fees of other professionals appointed by the RP. Whether any work has been done as claimed and, if so, the nature of the work done by the valuer is something which need not detain this Court since it is purely a factual matter to be assessed by the adjudicating authority.

3. The counsel for the liquidator submitted that Regulation 39D of IBBI (Resolution Process for Corporate Persons) Regulations, 2016 was not in existence when the application for liquidation was filed on 17.05.2019, because of which the CoC was not requested to fix the fees of the liquidator. The learned counsel for the liquidator further submitted that under Regulation 31A(1)(c) of the Liquidation Process Regulations, the SCC has power to fix the fees of Liquidator. It was requested that the Appellate Tribunal may direct the SCC Members to determine the fees on monthly basis.

4. In its oral and written submissions, the learned counsel on behalf of the respondent no.1 averred that the learned Adjudicating Authority has rightly dismissed the applications filed by the debtor after considering the views of the Stakeholders' Consultation Committee (SCC) on the issue of payment of remuneration to the liquidator that it is payable only as per Regulation 4(2)(b) of 'Liquidation Process Regulation'. It was submitted that the liquidator has been paid from the proceeds of the sale conducted so far in terms of Regulation 4(2)(b) of the 'Liquidation Process Regulation' and that liquidator is not entitled to any additional remuneration in addition to the percentage which SCC is paying as per the said Regulation. It was submitted that in the 18th, 19th and 20th SCC Meetings, the SCC Members were unanimous in their opinion that the liquidator should be paid only as per the provisions of the law i.e; as per Regulation 4(2)(b) of 'Liquidation Process Regulation'. Reliance was placed on the judgment passed by learned NCLT in the case of *Bank of India v. Sahyadri Argo Industries & Food Pvt. Ltd.*, 2020 SCC OnLine NCLT15874, wherein it was held that the liquidator is entitled to fees as per provisions of Regulation 4(2)(b) of 'Liquidation Process Regulation'. In its oral and written submissions, the learned counsel for respondent no.2 i.e; Bank of India supported the reply given by the respondent no.1. They further submitted in para-7 of the reply as under:-

"That the Secured Financial Creditors were earlier members of CoC and hence, had powers to approve the fee as per the Regulation 39D of IBBI (Insolvency Resolution Process for Corporate Process) Regulation, 2016. That the Appellant-Liquidator chose the mechanism provided under the Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016 which contemplates that in the event, members of CoC

do not approve the fee payable to the liquidator, the fee payable is based on net realization and distribution. Therefore, the Appellant- Liquidator now cannot approach this Hon'ble Tribunal to change the methodology for determination of fee, having made no efforts/ attempts for determination of its professional fee, as per its convenience."

5. In the rejoinder to the said reply, the liquidator submitted as under:-

"It is submitted that the facts and circumstances of the present case are peculiar in a way that when the Application for Liquidation of the Corporate Debtor under Section 33 of the Code was filed, till that time, there was no mechanism to fix the fees of the liquidator by the CoC members as provided in the Regulation 39D of CIRP Regulations by way of an amendment w.e.f. 25.07.2019. The only mechanism under the law for the fees of the Liquidator available was under Regulation 4(2)(b) of the Liquidation Process Regulations. Thus, it is wrong to say that the Appellant cannot approbate and reprobate."

6.1 In its written submissions the Respondent no.1 submitted that the present appeal deserves to be dismissed on the grounds of maintainability, on the ground that liquidator is not entitled to any fees beyond the fees prescribed under Regulation 4(2)(b) of the IBBI (Liquidation Process Regulation), 2016 and on the ground that no work has been done by the liquidator for release of the attached properties. On the issue of maintainability, the respondent no.1 has submitted as under:-

"The appellant had preferred an application bearing IA No. 307/2022 before the Ld. Adjudicating Authority under section 60(5) of the IB Code, 2016 seeking additional payment in the form of monthly remuneration. However, it is most pertinent to mention that the issue of monthly remuneration of the liquidator does not fall within the ambit of section 60(5) of the IB Code, as section 60(5) of the IB Code clearly states that the National Company Law Tribunal shall have jurisdiction to entertain or dispose of '(a) any application or proceeding by or against the corporate debtor or corporate person; (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries

situated in India; and (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.” Accordingly, the Ld. AA vide order dated 28.07.2023 directed the Appellant to file the application before SCC for considering the fee of the liquidator and subsequently dismissed the application and conferred with the decision of the SCC members (decided in the 20th SCC meeting on 15.09.2022) that the fees of the liquidator has to be paid as per Reg 4 (2) (b) of the IBBI Rules, 2016.

6.2 Reliance was placed by the respondent no.1 on the judgment titled as “*J.P. Bansal vs. State of Rajasthan & Anr. 2003 (5) SCC 134*” in para 14 wherein the Hon’ble Apex Court observed that the courts and judicial authorities cannot innovate the provisions of the statute and take upon themselves the task of amending or altering statutory provisions. The relevant para of J.P. Bansal (Supra) is reproduced herein below:

“14. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by “an alert recognition of the necessity not to cross it an instinctive, as well as trained reluctance to do so”. (See : Frankfurter : Some Reflections on the Reading of Statutes in “Essays on Jurisprudence”, Columbia Law Review, p. 51.)

6.3 It was submitted by Respondent No.1 that this Tribunal does not have the jurisdiction to adjudicate the present appeal and that in absence of any power granted under the IB Code, 2016, the present petition cannot be entertained. It was submitted that fee payable to the liquidator for his services falls within the domain/ power of SCC members, who in their

commercial wisdom have passed the resolution for payment of fee to the Liquidator as per Regulation 4(2)(b) of the liquidation process.

6.4 It was further submitted by respondent no.1 that the liquidator is not entitled to any remuneration beyond Regulation 4(2)(b) of Liquidation Process Regulation, 2016 as the fees of the liquidator is either decided by the CoC as per Regulation 39D of CIRP Regulations or in the first SCC Meeting after the liquidation is initiated as per Sub-Regulation 1(A) of Regulation 4 of Liquidation Process Regulations. However, in the present matter neither the fee of the liquidator was fixed by the CoC nor by the SCC Members in the first SCC meeting and as such fee of the liquidator is payable in terms of Regulation 4(2)(b) of the 'Liquidation Process' Regulations.

6.5 It was further submitted that as per Regulation 4(2)(b) liquidator is entitled to fees as percentage of amount realised for each sale of the property and the percentage varies with time consumed. It was further submitted that IBBI had recently issued Circular No. IBBI/LIQ/61/2023 dated 28.09.2023 wherein it has been clarified that the liquidator can seek exclusion of various time periods where stay is granted by court on a particular property or for any other action which hindered the liquidation process. It was submitted that the clarification entitles the liquidator to seek exclusion of periods during which the properties have been attached by Enforcement Directorate, but in no circumstances, he could be paid both monthly remuneration and fees determined as per Regulation 4(2)(b).

Respondent No.1 also submitted that liquidator failed in his duty to get the property released from the Enforcement Directorate.

7. We have carefully considered the submissions made by the appellant and respondents and have perused the records. The issue for decision in this case is whether any remuneration is to be paid to the liquidator for the services being rendered by him, when the assets of the corporate debtor are under attachment and cannot be auctioned.

8. At this stage, we consider it expedient to refer to the regulations relating to fixation of the fees of the liquidator. While the present liquidation process was going on, the regulations relating to liquidator's fees have undergone change. Prior to its substitution by IBBI (Liquidation Process) (Amendment) Regulations 2019 w.e.f. 25.07.2019 the Regulation 4 of 'Liquidation Process Regulation' read as under:-

"4. Liquidator's fee- (1) The fee payable to the liquidator shall form part of the liquidation cost.

(2) The liquidator shall be entitled to such fee and in such manner as has been decided by the committee of creditors before a liquidation order is passed under section 33(1)(a) or 33(2)

(3) In all cases other than those covered under sub-regulation (2), the liquidator shall be entitled to a fee as a percentage of the amount realized net of other liquidation costs, and of the amount distributed, as under:

Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realized / distributed			
	in the first six months	in the next six months	In the next one year	Thereafter
Amount of Realisation (exclusive of liquidation costs)				
On the first 1 crore	5.00	3.75	2.50	1.88

<i>On the next 9 crore</i>	3.75	2.80	1.88	1.41
<i>On the next 40 crore</i>	2.50	1.88	1.25	0.94
<i>On the next 50 crore</i>	1.25	0.94	0.68	0.51
<i>On further sums realized</i>	0.25	0.19	0.13	0.10
<i>Amount Distributed to Stakeholders</i>				
<i>On the first 1 crore</i>	2.50	1.88	1.25	0.94
<i>On the next 9 crore</i>	1.88	1.40	0.94	0.71
<i>On the next 40 crore</i>	1.25	0.94	0.63	0.47
<i>On the next 50 crore</i>	0.63	0.48	0.34	0.25
<i>On further sums distributed</i>	0.13	0.10	0.06	0.05

(4) The liquidator shall be entitled to receive half of the fee payable on realization under sub-regulation (3) only after such realized amount is distributed.

9. After the amendment, w.e.f. 25.07.2019 the said Regulation 4 reads as under:-

4. Liquidator's fee.- (1) The fee payable to the liquidator shall be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) In cases other than those covered under sub-regulation (1), the liquidator shall be entitled to a fee –

(a) at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and

(b) as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation, as under:

Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realized / distributed		
	in the first six months	in the next six months	Thereafter
<i>Amount of Realisation (exclusive of liquidation costs)</i>			
<i>On the first 1 crore</i>	5.00	3.75	1.88
<i>On the next 9 crore</i>	3.75	2.80	1.41
<i>On the next 40 crore</i>	2.50	1.88	0.94
<i>On the next 50 crore</i>	1.25	0.94	0.51
<i>On further sums realized</i>	0.25	0.19	0.10
<i>Amount Distributed to Stakeholders</i>			
<i>On the first 1 crore</i>	2.50	1.88	0.94
<i>On the next 9 crore</i>	1.88	1.40	0.71
<i>On the next 40 crore</i>	1.25	0.94	0.47
<i>On the next 50 crore</i>	0.63	0.48	0.25
<i>On further sums distributed</i>	0.13	0.10	0.05

(3) Where the fee is payable under clause (b) of sub-regulation (2), the liquidator shall be entitled to receive half of the fee payable on realisation only after such realised amount is distributed.

Clarification: Regulation 4 of these regulations, as it stood before the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 shall continue to be applicable in relation to the liquidation processes already commenced before the coming into force of the said amendment Regulation.]

10. With effect from 05.08.2020, vide Insolvency and Bankruptcy Board of India (Liquidation Process) (Third Amendment) Regulations, 2020 following clarification was inserted below the table in sub-regulation- (2) of the above Regulation:

Clarification : For the purpose of clause (b), it is hereby clarified that where a liquidator realises any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realised by him. Where a liquidator distributes any

amount, which is not realised by him, he shall be entitled to a fee corresponding to the amount distributed by him.

11. Vide IBBI (Liquidation Process) (Second Amendment) Regulations, 2022, Sub-Regulation 1(A) was inserted, w.e.f. 16.09.2022, which reads as under:-

1(A) Where no fee has been fixed under sub-regulation (1), the consultation committee may fix the fee of the liquidator in its first meeting.

Also, sub-regulation- 2 was amended to add the words [*and 1(A)*] after the words sub-regulation-1 to give effect to the said amendment.

12. Regulation 31(A) of ‘Liquidation Process Regulations’ was revised and substituted by IBBI (Liquidation Process) (Second Amendment) Regulations, 2022 w.e.f. 16.09.2022. The substituted Regulation 31A provides that the Stakeholders Consultation Committee constituted by the Liquidator shall advise him on “fees of the liquidator” as per Clause (c) of sub-regulation (1). Thus, Stakeholders Consultation Committee has been empowered to advise the liquidator regarding fees of the liquidator w.e.f. 16.09.2022. In IBBI (Resolution Process for Corporate Persons) Regulations 2016, Regulation 39D was inserted by IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022 w.e.f. 16.09.2022. The said Regulation 39D reads as under:-

Fee of the liquidator:

39D. *While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for –*

- (a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;
- (b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and
- (c) the balance period of liquidation.

13. In the subsequent amendments to the 'Liquidation Process Regulations', Stakeholders Consultation Committee has been provided a role in fixation of fees of liquidator. While deciding the issue of liquidation fees, we have to restrict ourselves to examination of Liquidation Process Regulations as they stood on the date when the liquidation order was issued in this case. The liquidation order was issued on 15.10.2019. The Regulation 4, as it existed on the date of passing of order of liquidation is reproduced below for reference:

4. Liquidator's fee.- (1) The fee payable to the liquidator shall be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) In cases other than those covered under sub-regulation (1), the liquidator shall be entitled to a fee –

(a) at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and

(b) as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation, as under:

Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realized / distributed		
	in the first six months	in the next six months	Thereafter
<i>Amount of Realisation (exclusive of liquidation costs)</i>			
<i>On the first 1 crore</i>	5.00	3.75	1.88

<i>On the next 9 crore</i>	<i>3.75</i>	<i>2.80</i>	<i>1.41</i>
<i>On the next 40 crore</i>	<i>2.50</i>	<i>1.88</i>	<i>0.94</i>
<i>On the next 50 crore</i>	<i>1.25</i>	<i>0.94</i>	<i>0.51</i>
<i>On further sums realized</i>	<i>0.25</i>	<i>0.19</i>	<i>0.10</i>
<i>Amount Distributed to Stakeholders</i>			
<i>On the first 1 crore</i>	<i>2.50</i>	<i>1.88</i>	<i>0.94</i>
<i>On the next 9 crore</i>	<i>1.88</i>	<i>1.40</i>	<i>0.71</i>
<i>On the next 40 crore</i>	<i>1.25</i>	<i>0.94</i>	<i>0.47</i>
<i>On the next 50 crore</i>	<i>0.63</i>	<i>0.48</i>	<i>0.25</i>
<i>On further sums distributed</i>	<i>0.13</i>	<i>0.10</i>	<i>0.05</i>

(3) Where the fee is payable under clause (b) of sub-regulation (2), the liquidator shall be entitled to receive half of the fee payable on realisation only after such realised amount is distributed.

Clarification: Regulation 4 of these regulations, as it stood before the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 shall continue to be applicable in relation to the liquidation processes already commenced before the coming into force of the said amendment Regulation.]

Sub-regulation (1) of Liquidation Process Regulation as it existed on the date of liquidation order, prescribed that fee payable to the liquidator shall be in accordance with the decision taken by the Committee of Creditors (CoC) under Regulation 39D of IBBI (CIRP) Regulations, 2016. Sub-regulation (2) on the other hand, gave entitlement to the liquidator to be paid fee as a percentage of amount realised and distributed and covered only cases where fees was not decided by the CoC. In the instant case no fee was decided by the CoC and therefore Sub-Regulation (2), as it existed then, shall be applicable.

14. From perusal of the regulations as they existed on the date of liquidation order, it appears that the fees of the liquidator was to be either the fees decided by the CoC under Regulation 39D of IBBI (CIRP) Regulations, 2016 or a percentage of fee on the amount that is realised/ distributed during the liquidation process. The Regulations, as it existed at the time on the date of the liquidation order, do not envisage payment of any fees or remuneration to the liquidator on a monthly basis, if such fee is not fixed by the CoC under Regulation 39D of IBBI (CIRP) Regulations, 2016.

15. Considering the regulations as they existed at the time when liquidation order was issued in this case, and that no fees was fixed by the CoC, we are of the opinion that fees to be paid to the Liquidator in this case shall be as per the percentage prescribed in Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016 on realization and distribution of proceeds from auction of assets. We find no reason to interfere in the order of the Adjudicating Authority. The appeal is dismissed. All pending IAs, if any, are closed. No order as to cost.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Ajai Das Mehrotra]
Member (Technical)

10th April, 2024
New Delhi
Harleen