

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT NEW DELHI
(APPELLATE JURISDICTION)
Company Appeal (AT) (Insolvency) No. 1425/2023

(Arising out of the Impugned Order dated 01.09.2023 in CP
(IB) No.340/Chd/Pb/2018, passed by the National Company
Law Tribunal, Chandigarh Bench, Chandigarh)

In the matter of:

Stakeholders Consultation Committee of Punjab Basmati Rice Ltd.

(Under liquidation)

through its Authorized Representative Sh. Satish Kothiyal,
Chief Manager, DS Market Amritsar, Punjab.

Email ID: cb0166@canarabank.com, advrakeshgupta44@gmail.com

...Appellant

Versus

Mr. Sanjay Kumar Aggarwal,

Liquidator of M/s Punjab Basmati Rice Ltd,
Resident of H.No.C-20, Block C, Wave Estates,
Sector 85, SAS Nagar, Mohali - 160055, Punjab.
Email ID: sanjayaggarwal.fcs@gmail.com

...Respondent

Present :

For Appellant : Mr. Rakesh Gupta, Advocate.

For Respondents : Ms. Eshna Kumar and Mr. Akshat Maheshwari,
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 Stakeholder Consultation Committee of M/s Punjab Basmati Rice Ltd., which is under liquidation. The appeal is filed against the impugned order dated 01.09.2023, wherein the National Company Law Tribunal (NCLT), Chandigarh had allowed the

application IA No. 1551 of 2023 filed by the liquidator and dismissed application IA-1245 of 2023 filed by the Stakeholder Consultation Committee.

2. The brief facts of this case are that an application under Section 10 of Insolvency and Bankruptcy Code, 2016 was filed by the Corporate Person, M/s Punjab Basmati Rice Limited, for initiation of Corporate Insolvency Resolution Process (CIRP) which was admitted by NCLT, Chandigarh vide order dated 18.02.2019. In absence of any viable resolution plan, the liquidation order was passed on 18.12.2019. The liquidator initially attempted sale of assets through auction. Subsequently, the liquidation estate was sold as such by way of open auction held on 01.04.2023 for a sum of Rs.26.77 Crores against the reserve price of Rs.25.00 Crores.

3. The issue in the impugned order, and the present appeal, is regarding the fees eligible to the liquidator. The fees of the liquidator is governed by Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 which is reproduced below for ready 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) ¹⁸[and (1A)], 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

¹⁹(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

[Clarification: For the purposes 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.]

(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 Regulations.]

As can be seen from Regulation 4 referred above, the liquidator's fees is contingent upon the time taken to realise/ distribute the amounts amongst stakeholders. In the present case, the liquidation order was passed on 18.12.2019 and the distribution was completed on 02.05.2023. These dates

are not disputed by either side. The dispute in this appeal is regarding the time period taken by the Liquidator in realizing and distributing assets, considering various exclusions and stay granted by the Adjudicating Authority.

4. In its submission before the Adjudicating Authority, the liquidator had given the following working days and stated that the total period taken in liquidation was 157 days.

<i>Sr. No.</i>	<i>Calculation of the liquidation process period of the corporate debtor</i>	<i>No. days</i>
1.	<i>Liquidation order passed on 18.12.2019</i>	
2.	<i>Time period of days calculated from 18.12.2019 to 14.03.2020 for the purpose of process of liquidation process the CD.</i>	86 days
3.	<i>The exclusion of Liquidation Process period out of the total liquidation process period of the corporate debtor granted by this Hon'ble Adjudicating Authority from 15.03.2020 to 02.10.2021. Annexed R-1 (Colly)</i>	0
4.	<i>The exclusion of Liquidation Process Period out of total liquidation process period of corporate debtor granted by this Hon'ble Adjudicating Authority from the period consumed in the adjudication of IA No. 471/2021 and IA 550/2021 in 1A 471 of 2021 vide order dated 02.02.2023 Annexed R-1 (Colly)</i>	0
5.	<i>Time period of days calculated from 03.02.2023 to 101.04.2023 i.e., date of E-auction conducted successfully on 01.04.2023 in terms of E-auction Sale Notice 07.03.2023 issued by Liquidator as per directions of Hon'ble NCLT vide order dated 01.03.2023</i>	58 days
6.	<i>Time period of days calculated from 01.04.2023 to 13.04.2023 i.e., the date on which full amount of liquid assets realized from successful bidder in terms of E-auction conducted successfully on 01.04.2023.</i>	13 days

7.	<i>Total no. of days taken in account in liquidation process of the CD since liquidation order to till the date of full realization of the assets of CD</i>	<i>157 days</i>
8.	<i>Distribution made to the stakeholders/ banks on 02.05.2023</i>	

While working the above calculations, the liquidator has stated that:

“Vide Orders dated 01.11.2021, 30.03.2022 and 02.02.2023 passed by this Hon'ble Adjudicating Authority, the following period has been excluded and extended, respectively, in the liquidation process:

a. Exclusion of period from 15.03.2020 to 02.11.2021 and extended the period upto 31.03.2022

b. Exclusion of period from 09.11.2021 to 30.03.2022 and extended the period upto 31.03.2023

c. Exclusion of period from 31.08.2021 to 02.02.2023.

5. In support of its contentions the liquidator had relied upon decision of Hon'ble NCLAT in the matter of *Small Industries Development Bank of India v/s Shri Vajender Sharma Company Appeal (AT) (INS) No. 1027 of 2021* and decision of Hon'ble NCLAT in the case of *Ashish Arjun Kumar Rathi, Company Appeal (AT) (CH) (INS) No. 139 of 2021*.

6. On the other hand, in its submission before the Adjudicating Authority the Stakeholders Consultation Committee had calculated the time which is consumed in the liquidation process as 213 days as per table reproduced below:-

Sr. No.	Calculation of the liquidation process period of the corporate debtor	No. of days
1.	Liquidation order passed on 18.12.2019	
2.	Time period taken into account from 18.12.2019 to 14.03.2020 for the purpose of process of liquidation process period (Dec-12, Jan-31, Feb-29, March-14= 88 days)	86 days
3.	Time period excluded since 15.03.2020 to 02.10.2021 from the total liquidation process period as per order dated 01.11.2021 passed by Hon'ble NCLT (AA). Copy of order 01.11.2021 attached Annexure A-1	0

4.	Time period for liquidation extended upto 31.03.2023. Period between 09.11.201 to 30.03.2022 excluded because of stay granted. Time spent for liquidation 03.10.2021 to 08.11.2021. (Copy of order attached Annexure A----). Effect taken in order 02.02.2023.	37 days
5.	Time period excluded vide order dated 02.02.2023, 09.11.2021 to 02.02.2023 excluded from the total liquidation process period as per order dated 02.02.2023 passed by Hon'ble NCLT (AA) Copy of order 02.02.2023 attached Annexure A The Order has to be read as a whole	0
6.	Time period taken into account from 03.02.2023 to 01.04.2023 for the purpose of sale of assets and 13.04.2023 for the process of realisation of proceeds of the assets properties of the CD. (Feb-26, March-31, April01 days= 58 days Date of realization of full consideration to complete sale. 01.04.2023 to 13.04.2023= 13 days	71 days
	Distributed made on 02.05.2023 (14.04.2023 to 02.05.2023) with next 19 days	19 days
	Total days taken in liquidation process till sale of liquidation assets	213 days

7. After considering the submissions of the liquidator and the Stakeholder's Consultation Committee the NCLT, Chandigarh had calculated the liquidation process period as 174 days. The relevant portion of the Order of NCLT, Chandigarh dated 01.09.2023 is reproduced below:-

"10. We have carefully considered the reasons for which the extensions have been granted by this Adjudicating Authority. The first exclusion by the order dated 01.11.2021 was granted for the period from 15.03.2020 to 02.10.2021 due to the time lost in the lockdown period of Covid-19. The second exclusion was granted by our order dated 30.03.2022 on account of the delay caused by the stay/deferment for e-auction dated 10.11.2021, and the third

exclusion was granted by our order dated 02.02.2023 on account of time consumed in the adjudication of IA No. 471/2021 & IA No. 550/2021 (applications filed by ex-director).

11. Subsequently, the liquidator has successfully conducted the e-auction for the sale of assets, and the entire amount of sale proceeds of the liquid assets/property of the corporate debtor has been realised in the liquidation account of the corporate debtor by 13.04.2023.

12. We note that no case has been made out by the respondent, i.e., regarding any shortcoming on the part of the liquidator which contributed to this delay in liquidation proceedings. We, thus, found that the liquidator has carried out his responsibility with due diligence and without any prejudice to the applicant or any other stakeholder. A reference is also made to the decision in the case of SIDBI (Supra) and Ashish Arjun Kumar Rathie (Supra), wherein on similar facts, the Hon'ble NCLAT, Delhi and Chennai, respectively, have allowed exclusion of period of the said liquidation process of the corporate debtor from the calculation of the time taken for realisation and distribution of the assets of the corporate debtor in terms of Regulation 44 read with Regulation 4(3) of the IBBI (Liquidation Process) Regulations 2016.

13. In view of the same, we direct that the period of exclusions allowed by this Adjudicating Authority in the orders dated 01.11.2021, 30.03.2022, and 02.02.2023 be also excluded for the computation of the liquidation period for the purpose of calculating the liquidator's fee slab under Regulation 4 of the Liquidation Process) Regulations 2016.

14. The applicant-liquidator and the respondents have given different computations for computing the time spent on the liquidation process for computing the liquidation process period. The same has been perused closely. The correct in our view, is under:

- Total No. days of exclusion as per the order of this Adjudicating Authority.

Date of order	Period
01 .11.2021	15.03.2020 to 02.10.2021
30.03.2022	09.11.2021 to 31.03.2022
02.02.2023	31.08.2021 to 02.02.2023*

* The application bearing IA No. 471/2021 was filed on 31.08.2021 and disposed of by the order of this Adjudicating Authority on 02.02.2023.

In our order dated 02.02.2023 it is directed as under:

"due to the fact that e-auction has been deferred by order dated 09.11.2021 passed in IA No. 550/2021, it is directed to exclude the period consumed in the adjudication of IA No. 471/2021 and IA No. 550/2021 for the computation of period of liquidation process."

(Emphasis Supplied)

Thus, the period excluded as per the aforementioned three orders, i.e., dated 01.11.2021, 30.03.2022 and 02.02.2023, excludes the period from 15.03.2020 to 02.02.2023.

There is no ambiguity about the fact that the liquidation process ended with the distributions made to the stakeholders/banks on 02.05.2023.

The correct liquidation process period is re-computed as under:

<i>Sr. No.</i>	<i>Calculation of the liquidation process period of the corporate debtor</i>	<i>No. of days</i>
<i>1.</i>	<i>Liquidation order passed on 18.12.2019</i>	
<i>2.</i>	<i>Time period of days calculated from 18.12.2019 to 14.03.2020 for the purpose of process of liquidation process of the CD.</i>	<i>86 days</i>
<i>3.</i>	<i>The exclusion of Liquidation Process period out of the total liquidation process period of the corporate debtor granted by the orders of this Adjudicating Authority dated 01.11.2021 30.03.2022 and 02.02.2023, i.e., for the period from 15.03.2020 to 02.02.2023.</i>	<i>0</i>
<i>4.</i>	<i>Time period of days calculated from 03.02.2023 to completion of Distribution among the stakeholders/banks on 02.05.2023</i>	<i>88 days</i>
	<i>Total days taken in liquidation process till distribution of assets among the stakeholders</i>	<i>174 days</i>

Thus, the period consumed in liquidation process has been calculated at 157 days by the liquidator and 213 days by the Stakeholders Consultation Committee and has been determined by the Adjudicating Authority as 174 days. As per computation determined by the Adjudicating Authority, Liquidator is eligible for higher percentage of fees, as liquidation process is completed within six months, as per Regulation 4 of IBBI (Liquidation Process) Regulations, 2016.

8. Learned counsel for the appellant, in oral arguments before us submitted that their objection is mainly regarding the period from 03.10.2021 to 08.11.2021 which was not covered by any order of exclusion of the Adjudicating Authority. It was submitted that the liquidator had sought exclusion of period of stay, namely 09.11.2021 till 02.02.2023. The Adjudicating Authority has erred in excluding the period consumed in the

adjudication of IA No. 471/ 2021 and 550/2021 for the computation of period of liquidation process, that is from 31.08.2021 and not from 09.11.2021 when the stay was granted. The learned counsel for the appellant explained that period up to 02.10.2021 was already excluded by the Adjudicating Authority vide order dated 01.11.2021 and they are mainly challenging the exclusion from 03.10.2021 till 08.11.2021.

9. Learned Counsel for the respondent drew our attention to order dated 02.02.2023 of the Adjudicating Authority wherein the Adjudicating Authority has recorded that the e-auction was deferred through order dated 09.11.2021 passed in IA No. 550 of 2021 and it was directed to exclude the period consumed in the adjudication of IA No. 471 of 2021 and IA No. 550 of 2021 from the computation of period of Liquidation Process. It was submitted that even the period 03.10.2021 to 08.11.2021 is also covered by the exclusion granted by the Adjudicating Authority. The learned Adjudicating Authority had followed its order dated 02.02.2023 while computing the period of liquidation in the impugned order dated 01.09.2023.

10. The issue of calculation of fees of liquidator has been clarified recently by IBBI vide their circular no. IBBI/LIQ/61/2023 dated 28.09.2023, wherein in para 2.5 the IBBI has clarified as under:-

***“2.5 Period of calculation of fee: It has been observed that the liquidators are suo-moto excluding various time periods such as stay by court on sale of particular asset, delay in relinquishment by secured creditor, for the purpose of calculating the fee. However, since the liquidator works under the overall guidance of the Adjudicating Authority, any such exclusion should have stamp of judicial authority and should be only for the asset for which such exclusion has been granted.*”**

Clarification: *Exclusion for purpose of fee calculation is to be allowed only when the same has been explicitly provided by the Hon'ble NCLT/ NCLAT or any other court of law and will operate only for the asset which could not have been realised during the excluded period.*

11. The learned counsel for the appellant, submitting his clarification on the above stated circular of IBBI stated that the Adjudicating Authority has erred in granting exclusion of the period consumed in adjudication whereas prayer of the Liquidator in IA No. 196/2022 was as under:-

“(c) Exclude the period of stay imposed vide Order dated 09.11.2021 passed by this Hon'ble Adjudicating Authority till the date of vacation of stay/ disposal of I.A. 471/2021, I.A. 550/2021, I.A. 620/2021 and I.A. 46/2022 pending before this Hon'ble Adjudicating Authority.”

12. The learned counsel for the appellant submitted that Adjudicating Authority has erred in granting relief larger than what was prayed for. He also submitted that the exclusion of Covid period is also not appropriate as several e-auctions were carried out during the Covid period.

13. The learned counsel for the respondent liquidator submitted that it is clear from the clarification issued by the IBBI referred above that the liquidator cannot *suo moto* exclude various periods for calculation of fees but Adjudicating Authority can do so. In the instant case, the Adjudicating Authority had ordered various exclusions and has computed the liquidation period at 174 days after considering the exclusions ordered by it. It was also submitted that if the appellant was aggrieved by the order dated 02.02.2023 of the Adjudicating Authority, excluding period consumed in adjudication proceedings of IA No. 471 of 2021 and IA No. 550 of 2021, they should have filed appeal under Section 61 before National Company Law Appellate

Tribunal. It was submitted that the periods were finally excluded by order dated 02.02.2023, and had attained finality as no appeal was filed against them, whereas the impugned order was passed on 01.09.2023. It was submitted that the appellant cannot now challenge the order dated 02.02.2023, after the period of appeal (including the condonation period) is already over. Since the exclusions are specifically granted by the AA and even the period of liquidation is calculated by the AA, in view of latest clarification dated 28.09.2023 of IBBI, there is no error in computation of fees payable to the respondent liquidator.

14. The learned counsel also submitted that the exclusion granted in order dated 02.02.2023 is in IA No. 620/2021 and not in IA No.196/2021, though the prayers were similarly worded.

15. We have gone through the documents and pleadings submitted by both the sides as well as the oral arguments made before us. The limited issue for decision in this appeal is the time period consumed by the Liquidator in the liquidation process, after considering the eligible exclusions granted by the Adjudicating Authority. The dispute, during the oral arguments narrowed down to the period of 37 days, being the period from 03.10.2021 to 08.11.2021. The facts relating to this period are that IAs bearing Nos. 471 of 2021 and IA 550 of 2021 were filed by the Ex-Management of the Corporate Debtor before the Adjudicating Authority wherein a stay on e-auction of properties was granted by the Adjudicating Authority on 09.11.2021.

16. The Adjudicating Authority, while considering the application by liquidator for extension/ exclusion of liquidation period in IA No. 196 of 2022 directed on 30.03.2022, as under:-

“The present application has ben filed by the liquidator for extension of liquidation period of 12 months which is expiring on 31.03.2022to enable the applicant to successfully complete the liquidation process and also exclude the period of stay granted vide order dated 09.11.2021 passed by this Bench. The application is supported by an affidavit. Keeping in view the facts and circumstances mentioned in the application, the liquidation period which is expiring on 31.03.2022 is further extended for 12 months and period of stay granted vide order dated 09.11.2021 till today is excluded from the period of liquidation process. Thus, IA No. 196/2022 is allowed and disposed of accordingly.

17. In another IA No. 620 of 2021 filed by the Liquidator, prayer was made to the Adjudicating Authority to permit issue of fresh e-auction notice and to exclude the period of stay imposed by order dated 09.11.2021 till the date of vacation of stay/ disposal of IA No. 471 of 2021 and IA No. 550 of 2021 in computing the period of liquidation process. The Adjudicating Authority made the following order:

24. The present application is filed by Mr Sanjay Kumar Aggarwal, Liquidator of M/s Punjab Basmati Rice Limited against Kulwinder Singh Makhni (Suspended Boards of Director under Section 60(5) of Insolvency and Bankruptcy Code, 2016.

25. It is prayed to allow the applicant to issue a fresh e-Auction Notice for assets/properties of the Corporate Debtor in terms of the Liquidation Process Regulations at the Reserve Price as per Regulation 35 of the IBBI (Liquidation Process) Regulations, 2016 as already approved by the Stakeholders and to exclude the period of stay imposed by Order dated 09.11.2021 till the date of vacation of stay/disposal of IA 471/2021 and IA 550/2021 filed by the respondent in the computation of the period of the liquidation process.

26. In view of the detailed order passed in IA No. 471/2021 and 1383/2022, the prayer with regard to the issuance of fresh e-notice is already allowed subject to the conduct of the SCC Meeting which will decide the reserve price and date of auction However, due to the fact that e-auction has been deferred by Order dated 09.11.2021 passed in IA No. 550/2021, it is directed to exclude the period consumed in the adjudication of IA No. 471/2021 and IA 550/2021 for the Computation of period of Liquidation Process. The liquidator is further directed to complete the liquidation process within the stipulated time frame after excluding the period consumed in the adjudication of Applications. The present application is allowed with the aforesaid direction and disposed of accordingly.

18. We note that there is a discrepancy in the two orders of the Adjudicating Authority quoted above. While disposing IA No. 196 of 2022 on 30.03.2022 the Adjudicating Authority has excluded the period of stay granted vide order dated 09.11.2021 till 30.03.2022, whereas while disposing IA No. 620 of 2021, while deciding the same issue, the Adjudicating Authority has directed, “to exclude the period consumed in the adjudication of IA- 471/2021 and IA- 550/2021 for computation of period for liquidation process.” The later order dated 02.02.2023 in IA No. 620 of 2021 has been relied upon by the Adjudicating Authority while computing the liquidation process period in the impugned order. The relevant extract of this order we have already reproduced in para-7 above.

19. Since two different exclusion orders have been made, we consider it expedient to examine as to which of the order has correctly given the exclusion period. We note that the application in IA- 471 of 2021 and IA- 550 of 2021 was filed much earlier, but since the Adjudicating Authority vide order dated 01.11.2021 has already granted exclusion of the period from 15.03.2021 to

02.10.2021, the fresh exclusion to be determined was for the period 03.10.2021 onwards. We find that the incapacity of the liquidator in putting the properties to auction due to stay granted, which was subject matter of IA- 471 of 2021 and IA- 550 of 2021, arose only from 09.11.2021, when the order of stay was granted by the Adjudicating Authority. No valid restriction was available to the Liquidator to not to act during the period 03.10.2021 to 08.11.2021 and there was no hindrance to the liquidation process during this period. We are of the opinion that the Adjudicating Authority erred in granting exclusion the period consumed in adjudication of subject IAs, instead of period consumed while auction was under stay. If this period of 37 days from 03.10.2021 to 08.11.2021 is not excluded and is added to the liquidation period of 174 days determined by the Adjudicating Authority, it can be said that the liquidation process period was 211 days. The period consumed in the liquidation process in this case is accordingly determined as 211 days. The Stakeholder's Consultation Committee is directed to compute and pay the Liquidator's fees accordingly. A compliance affidavit may be filed within three weeks. Company Appeal (AT) (Insolvency) No. 1425 of 2023 is disposed accordingly. All IAs pending, if any, are closed. No orders as to cost.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Ajai Das Mehrotra]
Member (Technical)

01.04.2024
Harleen/ Kam