

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**IA No. 317/2021, 535/2021, 893/2020,  
18/2021 and 574/2021  
in  
CP (IB) No.67/Chd/Pb/2017  
(Admitted)**

**In the matter of:**

Allahabad Bank ....Petitioner-Financial Creditor

Versus

M/s Supreme Tex Mart Limited ...Respondent-Corporate Debtor

And in the matter of:-

**IA No.317/2021** Under Section 60(5)(c) of the IBC, 2016  
Ravinder Kumar Goel, Liquidator of  
M/s Supreme Tex Mart Limited ....Applicant  
Vs.  
Deputy Commissioner of Income Tax, Punjab ....Respondent

And in the matter of:-

**IA No.535/2021** Under Section 60(5)(c) of the IBC, 2016  
Ravinder Kumar Goel, Liquidator of  
M/s Supreme Tex Mart Limited ....Applicant  
Vs.  
Deputy Commissioner of Income Tax, Punjab ....Respondent

And in the matter of:-

**IA No.893/2020** Under Section 60 (5) of the IBC, 2016 and read  
with Rule 11 of the NCLT Rules  
Bhupesh Gupta, Erstwhile Liquidator  
of M/s Supreme Tex Mart Limited ....Applicant  
Vs.  
Ravinder Kumar Goel, Liquidator of  
M/s Supreme Tex Mart Limited ....Respondent

And in the matter of:-

**IA No.18/2021**

Under Section 60(5)(c) of the IBC, 2016

Aditya Goel, Proprietor of  
M/s Aditya Goel & Associates  
Vs.

....Applicant

1. Ravinder Kumar Goel, Liquidator of  
M/s Supreme Tex Mart Limited
  2. Bhupesh Gupta, Ex-Liquidator
- ....Respondents

And in the matter of:-

**IA No.574/2021**

Under Section 60 (5) of the IBC, 2016 and read  
with Rule 11 of the NCLT Rules

State Bank of India  
Vs.

....Applicant

1. Ravinder Kumar Goel, Liquidator of  
M/s Supreme Tex Mart Limited
  2. Bhupesh Gupta, Ex-Liquidator
- ....Respondents

**Order delivered on: 28.09.2022**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present through video-conferencing:**

For the Applicant/Liquidator  
in IA Nos.535/2021 & 317/2021

- : 1. Mr. Atul V Sood, Advocate  
2. Mr. Nahush Jain, Advocate

For the respondent in  
IA No.535/2021 & 317/2021

- : 1. Mr. Rajesh Katoch, Senior Advocate

For the applicant/Ex-Liquidator  
in IA No.893/2020

- : Mr. Harimohana N, Advocate

For the applicant in IA No.18/2021 : Mr. Deepankur Sharma, Advocate

For the applicant in IA No.574/2021 : Mr. Rakshit Gupta, Advocate

For the Respondent/Liquidator :  
in IA No.893/2020, and  
Respondent No.1 in IA No.18/2021  
and 574/2021

1. Mr. Atul V Sood, Advocate  
2. Mr. Nahush Jain, Advocate

Respondent No.2/Ex-Liquidator in  
IA No.18/2021

- : Mr. Vaibhav Sharma, Advocate

**Per: Subrata Kumar Dash, Member (Technical)**

**ORDER**

**IA No.317/2021 & IA No.535/2021**

IA No.317/2021 & IA No.535/2021 are being taken up together, being interrelated and interconnected.

2. These applications are filed under Section 60(5)(c) of the IBC, 2016 by Ravinder Kumar Goel, Liquidator of M/s Supreme Tex Mart Limited (herein referred as "Applicant") against Deputy Commissioner of Income Tax, Punjab (herein referred as "Respondent").

3. In the IA No. 317/2021, the applicant/liquidator has prayed for declaring the actions of the respondent as Contrary to the Code and inter alia prayed for staying the Assessment Order of A.Y. 2018-19 year dated 13.05.2021 and notice under Section 274 read with Section 271 AAC(1) of the Income Tax Act, 1961 dated 13.05.2021 for A.Y. 2018-19. In IA No. 535/2021, the applicant/liquidator has prayed for declaring the actions of the respondent as Contrary to the Code and inter alia prayed for staying the show cause notice under Section 274 read with Section 270A of Income Tax Act, 1961 dated 29.09.2021 for A.Y. 2019-20 and notice under Section 274 read with Section 271 AAC(1) of the Income Tax Act, 1961 dated 29.09.2021 for A.Y. 2019-20.

4. The brief facts of the case as stated in the application are that Corporate Insolvency Resolution Process was initiated on the application by Financial Creditor-Allahabad Bank under Section 7 of IBC, 2016 by order dated 29.09.2017. Since, no resolution plan was approved by CoC, the Corporate Debtor was ordered to be liquidated by order dated 08.08.2018. After the

commencement of liquidation proceedings, the respondent filed a claim with the erstwhile liquidator and it was admitted to the extent of Rs.7,36,59,888/-.

5. It is submitted by the applicant that after passing of the liquidation order dated 08.08.2018, the respondent initiated scrutiny proceedings by notice dated 22.09.2019 under Income Tax Act, 1961 for the A.Y. 2018-19. The respondent passed an assessment order dated 13.05.2021 for the Assessment Year 2018-19 by adding an income of Rs. 33,24,40,712/- of the corporate debtor. In pursuant to said order, the respondent has also issued show cause notices dated 13.05.2021 under Section 274 read with Section 270A of the Income Tax, 1961. Subsequently, for Assessment Year 2019-20, notice under Section 274 read with Section 271AAC(1) of Income Tax Act, 1961 dated 29.09.2021 was also issued

6. It is stated by the applicant that the aforesaid demands and initiation of penalty proceedings by the Respondent-Income Tax Department is violative of the Code. The respondent cannot initiate any proceedings without the approval of this Bench after passing of the liquidation order. Section 33(5) of the Code expressly prohibits the institution of any legal proceedings against the Corporate Debtor on the passing of the liquidation order. It is further stated that the respondent has no right under the Code to initiate fresh assessment/demand/recovery proceedings against the corporate debtor and cannot claim any amount outside the waterfall mechanism as prescribed under Section 53 of the Code.

7. The respondent has filed its reply filed by Diary No.00680/1 dated 02.07.2021 (in IA No.317/2021) and by Diary No.01284/1 dated 25.11.2021 (in IA No.535/2021) wherein it has stated that the assessment proceedings and

penalty proceedings are initiated by the Income Tax Department under Income Tax Act, 1961, and have to be completed within a statutory time limit provided under the provisions of the Income Tax Act, 1961. It is averred that Section 33(5) of the Code does not probate assessment proceeding/penalty under Income Tax Act, 1961 and the assessment do not fall under the scope of the term “other legal proceedings” as mentioned in Section 33(5) of the Code. The Assessing Officer has determined the quantum of tax and penalty against the Corporate Debtor, and after determining the same, the ITD will be an “Operational Creditor”, and the same will be filed for recovery of dues in accordance with the provisions of IBC 2016. It is stated that a revised claim for total outstanding demand amounting to Rs. 32,72,05,065/- was lodged by the respondent before the liquidator by letter dated 08.03.2019

8. The Respondent has also referred to a judgment of the Hon'ble Allahabad High Court in ***Tika Ram and sons (Private) Ltd Vs. Commissioner of Income Tax (1964) 51 ITR 403 (All) Dated 24.10.1962***, wherein it was held that assessment proceedings do not fall within the scope of “other legal proceedings” and do not automatically come to a stop the moment the company goes into liquidation. Such proceedings have to be carried out in accordance with the provisions of the Income Tax Act, which is a complete code in itself. It is submitted that Section 446 of the Companies Act, 1956 has been interpreted by Hon'ble Allahabad High Court, which is in pari materia to Section 33 (5) of the Insolvency and Bankruptcy Code, 2016. The company in liquidation is still an assessee, and income-tax proceedings up to the stage of assessment do not fall within the scope of the words “other legal proceedings” as used in Section 446 of the Companies Act, 1961.

9. The applicant has filed its rejoinder filed by Diary No.00680/2 dated 07.12.2021(in IA No.317/2021), wherein it has been submitted that the respondent failed to appreciate that the aforementioned order of Hon'ble Allahabad High Court was passed in terms of Liquidation of Companies under the Companies Act, 1956 and the present Corporate Debtor company is undergoing Liquidation under the provisions of Insolvency and Bankruptcy code, 2016 and therefore the law propounded by the Hon'ble Allahabad High Court is not applicable to the present Corporate Debtor. The said interpretation of Section 446 of the Companies Act, 1956, by the Hon'ble Allahabad High Court was made in terms of Section 178 of the Income Tax Act, 1961, as existed at that time. However, Section 178 of the Income Tax Act, 1961, was amended pursuant to the enactment of the Insolvency & Bankruptcy Code, 2016. Moreover, Section 238 of IBC, 2016 provides for an overriding effect of the Code over all existing laws and the aforesaid amendment in Section 178(6) of the Income Tax Act, 1961, was carried out to give effect to the overriding nature of IBC Code 2016 over other prevailing laws, especially the Income Tax Act, 1961, pertaining to the Companies undergoing Liquidation.

10. We have heard the learned counsel for the liquidator and the respondent and perused the records carefully.

11. In the present case at hand, the Corporate Debtor was ordered to be liquidated by order dated 08.08.2018 and the Income Tax Department passed the assessment order on 13.05.2020 and issued a show cause notice on 29.09.2021. It is also seen that the respondent has filed the claim, and it was admitted to the tune of Rs. 7,36,59,888/-. The issue for our consideration is whether the Income Tax Department's action of initiating proceedings under the

Income Tax Act and raising demands after the initiation of liquidation is in conformity with the provisions of IBC, 2016.

12. In the present case, the assessment proceeding for assessment year 2018-19 and the penalty proceedings in assessment year 2018-19 and 2019-20 have been initiated after the order for liquidation. In this context, the provisions of Section 33(5) of the IBC, 2016 are relevant and are quoted below for the sake of clarity:

**\*\*Section 33. : Initiation of liquidation.**

XX XX XX

*(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:*

*Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.*

XX XX XX”

13. We are also conscious of the decision of Hon'ble High Court of Telangana and Andhra Pradesh in **Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) Income Tax Department, Hyderabad, and others [WP No. 8560 of 2018] dated 26.07.2018** which interpreted the provisions of the code in juxtaposition to the Income Tax Act, 1961 and held inter alia that

*“It may be noticed that insofar as an assessee company in liquidation is concerned, Section 178 of the Act of 1961 provides for a priority in appropriation of the amounts set aside by the liquidator for clearance of the tax dues. However, it may be noted that liquidation of a company could be under the provisions of different enactments. In so far liquidation of a company under the code is concerned, Section 178 of the Act of 1961 stands excluded by virtue of the amendment of Section 178(6) with effect from 01.11.2016, in accordance with the provisions of Section 247 of the Code read with the Third Schedule appended thereto. Therefore, in the event an assessee company is in liquidation under the Code, the Income Tax Department can no longer claim a priority in respect of clearance of tax dues of the said company, as provided under Section 178(2) and (3) of the Act of 1961. In the context of liquidation of an assessee company under the provisions of the Code, the Income- tax Department, not being a secured*

creditor, must necessarily take recourse to distribution of the liquidation assets as per Section 53 of the Code. Section 53(1) provides the order of priority for such distribution and any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State in respect of the whole or any part of the period of two years preceding the liquidation commencement date comes fifth in the order of priority under clause (e) thereof.

Significantly, Article 266 of the Constitution provides that all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled 'the Consolidated Fund of India', and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled 'the Consolidated Fund of the State'. It may be noted that this Article begins with the phrase 'Subject to the provisions of Article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India shall form the Consolidated Fund of India'.

It is therefore clear that tax dues, being an input to the Consolidated Fund of India and of the States, clearly come within the ambit of Section 53(1)(e) of the Code. If the Legislature, in its wisdom, assigned the fifth position in the order of priority to such dues, it is not for this Court to delve into or belittle the rationale underlying the same." (emphasis supplied)

14. The issue of priority of the provisions of IBC over the provisions of Income Tax Act, 1961 has been settled through the provisions of the Section 247 and Schedule-3 which are as under:-

*"Section 247: Amendments of Act 43 of 1961.*

*\*247. The Income- tax Act, 1961 shall be amended in the manner specified in the Third Schedule.*

xxxxxxx

*The Third Schedule*

*In sub-section (6) of section 178, after the words "for the time being in force", the words and figures "except the provisions of the Insolvency and Bankruptcy Code, 2016" shall be inserted." (emphasis supplied)*

15. In view of the above, the decision of Tika Ram and sons Private Limited (Supra) relied upon by the Income Tax Department does not advance their case. Hence, the Assessment Order of A.Y. 2018-19 year dated 13.05.2021



and notice under Section 274 read with Section 271 AAC(1) of the Income Tax Act, 1961 dated 13.05.2021 for A.Y. 2018-19 and the show cause notice under Section 274 read with Section 270A of Income Tax Act, 1961 dated 29.09.2021 for A.Y. 2019-20 and notice under Section 274 read with Section 271 AAC(1) of the Income Tax Act, 1961 dated 29.09.2021 for A.Y. 2019-20 have been initiated in the teeth of provisions of Section 33(5) of IBC and hence is violative of the Code. In the result, the present applications are allowed and disposed of accordingly.

**IA No.893/2020**

The present application is filed under Section 60(5) of the IBC, 2016 and read with Rule 11 of the NCLT Rules, 2016 by **Mr. Bhupesh Gupta, Ex-Liquidator, Supreme Tex Mart Ltd.** (herein referred as “Applicant”), against **Ravinder Kumar Goel, Liquidator of M/s Supreme Tex Mart Limited** (herein referred as “Respondent”).

16. The applicant has prayed to lay down a criterion based on which applicant may claim his fee for the tenure he served as Liquidator; and or (b) pass an order directing the Liquidator/respondent to accept the claim of the applicant for the services provided by him as Liquidator for the period 08.08.2018 to 31.10.2019. (c) direct the present Liquidator not to claim any fee pursuant to the sale of Corporate Debtor’s assets before proper adjudication and ascertainment of the claim of the applicant towards his fee for the tenure he served as Liquidator.

17. The brief facts of the case as stated in the application, are that the applicant was relieved as a Liquidator, and Mr. Ravinder Kumar Goel-respondent has been appointed as Liquidator by order dated 01.11.2019.

The applicant has provided professional services as a liquidator for 1 year and 84 days i.e. from 08.08.2018 to 31.10.2019. The IBBI has issued show cause notice to the applicant, which was disposed of by order dated 21.04.2020 wherein the applicant has been directed to deposit an amount of Rs.31,09,000/- in the liquidation estate of the corporate debtor and the liquidator is given liberty to claim liquidator's fee in accordance with the provisions of IBBI (Liquidation Process) Regulations, 2016.

18. It is submitted that the liquidator was occupied in the liquidation process of the corporate debtor during his tenure and performed various functions of corporate debtor such as public announcement, verification of claims, valuation of assets, convening the meetings of stakeholders, filing of progress report, issuance of public notices for e-auction, realization of GST refunds along with other measures taken to protect and preserve the assets of the corporate debtor. The liquidator has performed all duties and obligation to effectively implement and execute the liquidation process.

19. It is submitted that the applicant is entitled to the remuneration as a liquidator for the period i.e. from 08.08.2018 to 31.10.2019. It is also mentioned that neither the IBC, 2016 nor IBBI Regulations or any other circular contemplate a situation where the liquidator may have to vacate the office and consequent entitlement of his remuneration. The assets of the corporate debtor have been valued thrice, and as per the latest valuation of assets at Rs.159.17 Crores, the Liquidator may be entitled to a fee of Rs.111.11 Lakhs presuming the corporate debtor is liquidated for Rs.159.17 Crores.

20. The respondent No.1/Liquidator has filed its reply by Diary No.01810/01 dated 22.12.2021, wherein it is submitted that the applicant continues to hold

the office as the liquidator for one year 184 days i.e., from 08.08.2018 to 31.10.2019 and while acting as liquidator he withdrew a remuneration of Rs.31.09 Lacs for the liquidation period. It is stated that there is no explicit provision in IBC, 2016, pertaining to any payment of monthly remuneration to the liquidator. As per Section 34(8) & (9) of the Code read with Regulation 4 of IBBI (Liquidation Process) Regulation, 2016, firstly, the liquidator fees shall be decided by CoC, and in case it has not been decided, then the liquidator should draw the fees in accordance with Regulation 4 of IBBI (Liquidation Process) Regulation, 2016. The applicant has claimed a fee of Rs.111.11 Lakhs presuming the corporate is liquidated for Rs.159.17 crores. However, factually during the tenure of the applicant, only one asset being a Toyota Car was sold and an amount of Rs.2.60 Lakhs was released from the same and the applicant is entitled to be paid as per the amount released from the assets of the corporate debtor during his period of acting as liquidator. It is further added that the answering respondent-liquidator sent an email dated 19.11.2020 requesting the applicant to deposit an amount of Rs.31.09 Lakhs in pursuance of IBBI order dated 21.04.2020, and the same has not been deposited till date. It is stated that the liquidator has withdrawn the aforesaid amount out of the liquidation estates without any authorisation or without approval from the CoC. No sale of any fixed assets by the erstwhile liquidator was made except the sale of one Toyota Car, as mentioned above.

21. The applicant has filed its rejoinder by diary No.01810/2 dated 11.02.2022. wherein it is submitted that the fees of the applicant/erstwhile liquidators could not be ascertained as per the table of the fees under Regulation 4 of the Liquidation Regulation. At the time of the passing of the

liquidation order dated 08.08.2018, the corporate debtor was directed to be sold as a going concern. The company was being managed by the applicant as a going concern at the time of CIRP and also during the liquidation process of the Corporate Debtor. The applicant states that as per Regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, no specific structure has been provided by the regulator with respect to fees of the liquidator in case the Corporate Debtor is liquidated as a going concern. It is further mentioned that the applicant is willing to refund the amount of Rs.31.09 Lakhs.

22. We have heard the learned counsel for the applicant and learned counsel for the respondent/Liquidator and perused the record carefully.

23. In the present case, the Liquidation of the corporate debtor was initiated on 08.08.2018. The erstwhile liquidator has claimed remuneration for the period from 08.08.2018 to 31.10.2019. The CoC in the 9th meeting has not decided on the fees of the liquidator. In this context, it is noted that the Applicant - erstwhile liquidator has continue to draw the same fees in the capacity of the liquidator as he was withdrawing as RP. Despite the fact that no resolution was approved by CoC pertaining to the liquidator's fees. The IBBI had issued a Show Cause notice to Mr. Bhupesh Gupta-erstwhile liquidator, on various allegations and passed an order dated 21.04.2020 directing the liquidator to deposit an amount of Rs.31,09,000/- (Rupees Thirty-One Lakh Nine Thousand Only) with liberty to claim the liquidation fees for the period he had served as a liquidator. In Para 4.3 of order dated 21.04.2020 passed by IBBI (Disciplinary Committee), it has been observed as under:-

*“4.3 In this matter, the DC observed that Mr. Bhupesh Gupta displayed a negligent approach during the conduct of CIRP which can be elaborated as below:*

*4.3.1 The duties of IP and COC are clearly provided under the provisions of the Code. In the present case, the RP permitted conduct of third valuation upon the desire of CoC despite his disbelief in conducting the third valuation. He further incurred additional financial costs upon an over-burdened CD through conduct of such third valuation. Thus, he allowed the members of CoC to usurp his powers thereby putting additional burden on an already ailing corporate debtor.*

*4.3.2 Regulation 4(3) of IBBI(Liquidation Process) Regulations, 2016 clearly states that in cases where the liquidation fees has not been decided by the CoC, then the liquidator is entitled to a fee as per the table provided in the abovementioned provision. Despite such clear and unambiguous position of the law, the IP continued to charge the same fees during liquidation process which he was charging while acting as an RP.”*

24. As the matter at hand pertains to a period prior to the amendment introduced vide Notification No. IBBI/2019-20/GN/REG047 dated 25.07.2019 (w.e.f. 25.07.2019) to Regulation 2 and 4 of IBBI (Liquidation Process) Regulation, 2016. The relevant Section 5(16) and Regulations existing at the relevant time and applicable to this case are extracted hereunder:

The liquidation Cost is defined under Section 5 (16) is as follows:-

*“(16) **liquidation cost**“ means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board.”*

In pursuance of the aforesaid provision, the relevant Regulation 2 (1) of IBBI (Liquidation Process) Regulation, 2016 (Prior to amendment) is as follows:-

“Regulation 2 sub-regulation (1) (ea) defines ‘**liquidation cost**’ under Clause (16) of Section 5 means:

*“**liquidation cost**“ means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board;*

*(a) Fee payable to the liquidator under Regulation 4*

*(b)-----”*

.In this context, we refer to the clarification provided to Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, which is as follows:-

*“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.”*

Regulation 4 of IBBI (Liquidation Process) Regulation, 2016, Prior to the amendment and applicable to this case, is extracted hereunder:

**“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 cost)*

On the first 1 crore	5.00	3.75	2.50	1.88
On the next 9 crore	3.75	2.80	1.88	1.41
On the next 40 crore	2.50	1.88	1.25	0.94
On the next 50 crore	1.25	0.94	0.68	0.51
On further sum realized	0.25	0.19	0.13	0.10

*Amount Distributed to stakeholders*

On the first 1 crore	2.50	1.88	1.25	0.94
On the next 9 crore	1.88	1.40	0.94	0.71
On the next 40 crore	1.25	0.94	0.63	0.47
On the next 50 crore	0.63	0.48	0.34	0.25

On further sum realized	0.13	0.10	0.06	0.05
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(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

25. In this regard, we have placed reliance on the decision of Hon'ble NCLAT in the case of **Mr. Dhiren Shantilal Shah Liquidator of Meka Dredging Company Pvt. Ltd. Vs. Amma Lines Pvt. Ltd. passed by Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 791 of 2020** in which it has been held that:

**“39.** A combined reading of Regulation 2 (ea) read with Regulation 4 of IBBI (Liquidation Process) Regulation, 2016 shows that the fees of the Liquidator can be decided by the CoC before a liquidation order is passed by the Tribunal in terms of Section 33 of IBC, 2016 and in its absence sub-regulation (3) of Regulation 4 of the liquidation process Regulations shall come into play wherein it is provided that the liquidator shall be entitled to a fee both on a percentage of the amount realize net of other liquidation costs, and of the amount distributed as per the percentages given in the table provided under sub-regulation (3) of Regulation 4 itself. The parties are in concord that at the time of passing resolution under Section 33(2) of the IBC, 2016 seeking for liquidation of the Corporate Debtor, the Liquidator's fee being part of the Liquidation cost in terms of Section 5(16) read with Regulation 2(ea) and Regulation 4(2) had not been fixed by the CoC and in the circumstances, sub-regulation (3) of Regulation 4 of IBBI (Liquidation Process) Regulations comes into play.....” (Emphasis Supplied).

26. In view of the above discussion, we do not agree with the proposition of the applicant that there is no criteria for determining the liquidator's fee and hold that Regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, provides for the fees of the liquidator on the basis of realisation net of other liquidation costs or on the basis of the amount distributed to stakeholders. No case has been made out by the Ex-Liquidator in the present case regarding any realization or distribution beyond the sale of one asset i.e. Toyota Car, and released an amount of Rs.2,60,000/-. In view of the fact that very high amount of liquidation cost are

claimed giving the period under consideration, the realization net of other liquidation cost will be in the negative. Admittedly, no amount were distributed during the said period to the stakeholders. Thus, as per Regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, no fee is held to be due to the applicant.

27. In view of the above, the prayer of the applicant is rejected and the present application is dismissed and disposed of accordingly.

**IA No.18/2021**

The present application was filed under Section 60(5) of the IBC, 2016 by **Aditya Goel, Proprietor of M/s Aditya Goel & Associates** (herein referred as “Applicant”) against **Ravinder Kumar Goel, Liquidator of M/s Supreme Tex Mart Limited** (herein referred as “Respondent No.1”); and **Mr. Bhupesh Gupta, Ex-Liquidator of M/s Supreme Tex Mart Limited** (herein referred as “Respondent No.2”).

29. The applicant has prayed for directing the Ex-Liquidator to release the payment amounting to Rs.7,02,776/- which is related to the professional services provided by the present applicant to the Corporate Debtor during the Liquidation period.

30. The brief facts of the case, as stated in the application, are that the erstwhile Liquidator has appointed the applicant on a retainership basis for professional services rendered by him. The staff of the applicant has been performing all the work as assigned by the liquidator from time to time through e-mails which are attached as Annexure A-2 of the application. The applicant already raised several invoices amounting to Rs.11,81,817/- from time to time to



the liquidator. It is stated that out of the aforesaid raised invoices, the liquidator has made a part payment of Rs.5,63,170/- and rest of the amount is still pending along with applicable interest. The erstwhile liquidator was replaced by Sh. Ravinder Kumar Goel by order dated 01.11.2019. The applicant received an e-mail on 02.01.2020 disputing the invoices raised by the applicant of the professional charges for the month of November and December 2019. It was mentioned in the email that the liquidator denied the payment on the ground that no new assignment was assigned by the applicant to the liquidator. However, the applicant states that the professional charges were not paid with regard to any particular assignment but for the period consumed while completing the assignment. It is further stated that the payments for the services provided during the CIRP period and liquidation period shall be included in the CIRP cost, and the same would have priority before any other debt and would be paid entirely in all likelihood.

31. The respondent No.1/Liquidator has filed its reply by Diary No.00806/01 dated 12.03.2021, wherein it has been admitted that the Ex-liquidator had appointed the applicant to provide professional services and there was no written contract between the parties. The respondent interacted with the applicant only after he was appointed as liquidator. It is stated that after taking over the charge of the corporate debtor, the respondent pointed out that certain work assigned to the applicant was still pending and requested him to complete the same at the earliest. It is stated that even the communications between respondent No.2 and the applicant show that the work done by the applicant is either irregular or pending. The respondent has sent e-mails dated 02.01.2020 and 15.01.2020 asking the applicant to complete the pending work. As the

applicant could not perform their part of duty and there were various irregularities and flaws in the accounts maintained by the applicant, the answering respondent had to hire and engage the services of other professionals, which incurred further costs. The total amount payable to the applicant for the work assigned to the applicant is Rs.4,51,080/- upto 31.10.2019, out of which a sum of Rs.2,40,100/- has been paid to the applicant, and it was informed that the rest of the amount will be paid after completion of the pending work, but since the applicant did not complete that work, at last, the liquidator had to appoint another professional to complete that very work, hence the applicant is not entitled to claim any amount now.

32. We have heard the learned counsel for the applicant and respondent and pursued the record carefully.

33. In the present application, the applicant has prayed to release the payment of Rs. 7,02,776/- in lieu of professional services provided by them to the corporate debtor during the liquidation period. It is seen that there was no written contract between the applicant and the corporate debtor with regard to providing the services to the corporate debtor. The erstwhile Liquidator has appointed the applicant for his professional services and the present Liquidator has not assigned any new work to the applicant after taking over the charge of the corporate debtor. It is seen from the e-mail communications (attached as Page No. 39-42 of the application) that the present Liquidator asked the applicant to handover the complete records required for the effective operation of the corporate debtor by e-mail dated 05.12.2019. The present Liquidator has also sent an e-mail dated 02.01.2020 stating that no payment would be paid for November 2019 and December 2019 and appropriate balance payment will be

released only after completion of the entire assignment subject to the satisfaction of the new Chartered Accountant. Thereafter, the applicant has also sent a reminder claiming an amount of Rs. 3,40,780/- till 31.10.2019 by e-mail dated 15.01.2020 which includes adjustment of the payments made by the corporate debtor. It is observed that no payment for the month of November 2019 and December 2019 was claimed by the applicant by email dated 15.01.2020. In response to the email of the applicant, the present Liquidator has replied by e-mail dated 15.01.2020 pointing out that the auditor has failed to reconcile the various bank accounts as many entries of debtors are wrongly posted in the account of other parties or lying outstanding in the suspense account. Moreover, the sales within the units of the Corporate Debtor are shown as sales in the books of accounts instead of internal transfers. Apart from that the reconciliation of TDS has not been provided by the Auditor. It is also mentioned in the same e-mail that the applicant failed to complete the work assigned to them and the respondent had to engage some other professional to complete the pending work of the applicant.

34. In the present case, no written contract with the applicant-auditor for the performance of the work has been placed on record during the present proceedings. The financial creditor i.e. State Bank of India has also filed an application praying for directions to conduct the audit of the CIRP cost incurred by the erstwhile Liquidator which are stated to be abnormally high. Needless to say, such type of allegations would not have arisen if the Auditor had done his job diligently. We also take cognizance of the fact that the present Liquidator had to engage another professional and incur more expenses in order to complete the work which was initially assigned to the applicant. During the

current proceedings, the applicant failed to point out any particular assignment completed by him for which payment is pending. The emails between the Resolution Professional and the applicant point towards unsatisfactory work done by the applicant.

35. In view of the above, the claim of the applicant for his professional fees fails and the present application is dismissed and disposed of accordingly.

**IA No.574/2021**

The present application is filed under Section 60(5) of the IBC, 2016 and read with Rule 11 of the NCLT Rules by the **State Bank of India** (herein referred as “Applicant”), against **Ravinder Kumar Goel, Liquidator of M/s Supreme Tex Mart Limited** (herein referred as “Respondent No.1”) and **Bhupesh Gupta, Ex-Liquidator of Supreme Tex Mart Limited** (herein referred as “Respondent No.2”).

37. The applicant has prayed that appropriate directions may kindly be issued to respondents to appoint a competent person to get the CIRP costs audit conducted of the corporate debtor for the period 29.09.2017 to 31.10.2019. It is further prayed that appropriate directions may kindly be issued to respondents to place on record the CIRP costs which have been duly rectified by the CoC along with relevant evidence in this regard.

38. The brief facts as stated in the application are that the liquidation order of the corporate debtor was passed on 08.08.2018 and this Adjudicating Authority appointed Mr Bhupesh Kumar Gupta as the liquidator who was later replaced by Mr Ravinder Kumar Goel w.e.f. 01.11.2019. At the time of the passing of the liquidation order, there was no provision for the constitution of the consultation committee (SCC) but the members of the consortium of banks continued to

meet in order to safeguard their financial interests. The erstwhile liquidator was the Resolution Professional of the corporate debtor at the time of the Corporate Insolvency Resolution Process (CIRP). Meanwhile, this adjudicating authority passed an order for liquidation of the corporate debtor on 08.08.2018. Thereafter, the applicant had sought an explanation from the Resolution Professional vide email dated 14.09.2018 (Annexure A-5 of the application) with regard to the reduction of working capital of the corporate debtor by Rs.32 Crores and sought disclosure of the balance sheet for the year ending on 31.03.2018. The Corporate Debtor was having stock and receivables to the extent of Rs.63 Crores at the start of insolvency which was reduced to Rs.31 Crores. CA No.584 of 2018 was filed by the applicant for the removal of the erstwhile liquidator. Finally, the erstwhile liquidator/Resolution Professional was relieved from its duties by order dated 01.11.2019 in CA No.941/2019 on the grounds of his ill health and the CA No. 584/2018 was rendered infructuous vide order dated 22.11.2019.

39. It is further submitted that the erstwhile liquidator had shown Rs.22,64,87,510/- as CIRP cost though the same had not been approved by the CoC. The present liquidator had also communicated to the applicant that the Books Of Accounts prior to 01.04.2018 were not handed over on the grounds that the software on which the record was maintained had crashed. The liquidator examined the statements of accounts maintained in the books of accounts of corporate debtors and those of the creditors and debtors and found that there were discrepancies in the amounts and the entries. The actions initiated by the liquidator to authenticate the parties-wise amount for CIRP cost is mentioned in the minutes of the meeting held with financial creditors on

16.12.2020, (Annexure A-8 of the application). It is averred that the aforesaid CIRP cost of Rs. 22.00 Crores (Approx) was never approved by the CoC nor was there any occasion for the corporate debtor to incur such a huge additional liability as it was generating enough cash flow to meet its running expenses. After the change of the liquidator, a fresh valuation was conducted by the new liquidator and it is noted that the fair market value of the plant and machinery had also reduced from Rs.56.41 Crores to Rs.17.46 Crores in one year. As per Section 53 of IBC read with Regulation 42 of IBBI (Liquidation Regulations) 2016, the CIRP cost will be paid first and it is not possible to distribute the sale proceeds released from the sale of the liquidation estate of the corporate debtor. It is stated that because of various acts of omission committed by the erstwhile liquidator during his tenure as Resolution Professional and liquidator i.e. from 29.09.2017 to 31.10.2019, the CIRP cost is hugely inflated and an audit of CIRP cost is needed to be conducted.

40. The respondent No.1 i.e. present liquidator has filed the reply vide diary No.01361/2 dated 25.02.2022, wherein, the respondent has supported the facts narrated by the applicant. It has also been stated that the erstwhile liquidator has provided a list of creditors who supplied goods during liquidation amounting to Rs.14,10,11,331/- and the total amount payable of Rs.22,59,82,411/- as CIRP cost in addition to the unpaid electricity expense amounting to Rs.2.50 crores (approx) The list of details of liquidation costs given by the erstwhile liquidator has been annexed as Annexure A-2 of the reply.

41. The respondent No. 2 has appeared through its counsel and no reply has been filed despite granting several opportunities. The right of filing reply of

respondent No. 2 i.e. erstwhile Liquidator has been closed by order dated 31.08.2022

42. We have heard the learned counsel for the applicant and learned counsel for Respondent No.1/Liquidator and perused the file carefully.

43. In the present application, State Bank of India is one of the financial creditors during the CIRP Process and no Consultation Committee was constituted since the liquidation order was passed prior to the amendment. It is pointed out by the applicant that there is a huge gap in the fair market price of the corporate debtor as per the valuation conducted by the erstwhile Liquidator during the CIRP Process and the present Liquidator. It is noted that the erstwhile Liquidator has not handed over the books of accounts prior to 01.04.2018 to the present liquidator. It is also noted that the present Liquidator has taken steps to verify the list of creditors for the purpose of CIRP cost of Rs.22.60 Crores and the same has been discussed at Point 9 of Minutes of Meeting held on 16.12.2020 with the financial creditors of the corporate debtor. Furthermore, the IBBI has passed an order dated 21.04.2020 against the erstwhile Director wherein it has been held that respondent No. 2 has continued to withdraw the same fees as Liquidator as decided by CoC for the purpose of CIRP period and has also acted in contravention of Regulation 4(3) of the IBBI (Liquidation Process) Regulations, 2016.

44. In view of the aforesaid discrepancies and irregularities, we hold that there is a need to audit the Books of Accounts of the Corporate Debtor to ascertain the actual position. Furthermore, the reasons extended by erstwhile Liquidator for non production of books for the financial year ending on 31.03.2018 do not appear credible. In view of the above discussions, we allow

the prayer for audit of books of accounts of the corporate debtor. The liquidator is directed to appoint an independent Auditor for the purpose of audits of books of account and to ascertain the actual CIRP cost and the expenses incurred in the audit shall be included in the liquidation cost of the corporate debtor. This Adjudicating Authority further directs that the liquidator should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to him after taking charge of the corporate debtor. For retrieving relevant information, the liquidator may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required.

45. In the result, the present application is allowed and disposed of accordingly.

Sd/-  
(Subrata Kumar Dash)  
Member (Technical)

Sd/-  
(Harnam Singh Thakur)  
Member (Judicial)

September, 28, 2022

SK/SRV