

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH  
INTERLOCUTORY APPLICATION 632/ 2023  
IN  
C.P. NO. 1499 (MB)/C-III/ 2017**

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

**MR. KSHITIZ GUPTA**

Liquidator of Abhishek Corporation Limited,

Centrium, Lokhandwala Township, Akurli Road,

Kandivali East, Mumbai -400101

...Applicant

IN THE MATTER OF

**M/S SHRI KARVIR NIVASINI MAHALAXMI ISPAT PVT LTD**

...Operational Creditor

Versus

**M/S ABHISHEK CORPORATION LIMITED**

...Corporate Debtor

**Order Pronounced on 17.04.2024**

**Coram:**

MS. LAKSHMI GURUNG, MEMBER (J)

SH. CHARANJEET SINGH GULATI, MEMBER (T)

**Appearances:**

For Applicant : Adv. Rohit Gupta i/b Dhir & Dhir Associates

**Per: SH. CHARANJEET SINGH GULATI, MEMBER (T)**

1. The above I.A. has been filed by the Liquidator under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, to fix a remuneration of the Liquidator with the following prayer:

a) *“Allow the instant application;*

b) *By an appropriate order or direction, be pleased fix a remuneration equivalent to the Resolution Professional charges for the period commencing from taking over the charge of the Corporate Debtor till date;*

*c) Any other or further order(s) that this Tribunal may deem fit and proper in the facts and circumstances of the present matter.”*

## **2. Applicant's Submission:**

- 2.1. Company Petition 1499 (MB)/ 2017, filed by an Operational Creditor against M/s Abhishek Corporation Ltd., (**Corporate Debtor**) under section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) was admitted by this Tribunal vide order dated **17.11.2017** and Mr. Sandeep Singhal was appointed as the Interim Resolution Professional (IRP).
- 2.2. The Resolution Plan was not approved by the Committee of Creditors (**CoC**) within the CIRP period and hence, the erstwhile RP filed the M. A. 887/2018 on 17.08.2018 seeking an order for the liquidation of the Corporate Debtor. Consequently, this tribunal passed the Liquidation order on **11.03.2019**. and appointed Mr. Ashish Mukund Chandak as the Liquidator for the Corporate Debtor.
- 2.3. Since Mr. Ashish Mukund Chandak failed to take charge of the Corporate Debtor as a Liquidator, the RP, Mr. Sameer Kakar, who was appointed by this Tribunal vide order dated 08.03.2018 looked after the Corporate Debtor as an interim caretaker since 11.03.2019 till the appointment of Applicant on **02.04.2019**.
- 2.4. The applicant Mr Kshitiz Gupta, Insolvency Professional having Registration No. IBBI/IPA-002/IP/N-00721/2018-2019/12140, email id [kshitiz.ca@gmail.com](mailto:kshitiz.ca@gmail.com), was appointed from the panel of Insolvency Professionals as the Liquidator of the Corporate Debtor vide order dated 02.04.2019. In compliance of the order the Applicant took charge of the assets and operations of the corporate debtor from the resolution professional on 12.04.2019.

- 2.5. The Tribunal did not fix the remuneration of the Liquidator while passing order dated 11.03.2019 and merely stated that the Liquidator shall charge fee in proportion to the amount realized as per Regulation 4 of the Liquidation Regulations and the same shall be paid to the Liquidator from the proceeds as per Sec. 53 of IBC.
- 2.6. At the time of initiation of liquidation, the period for completion of the liquidation process as per Regulation 44(1) of the Liquidation Regulations was 2 years. Subsequently, the Insolvency and Bankruptcy Board of India issued IBBI (Liquidation Process) (Amendment) Regulations, 2019 on 25.07.2019 wherein the period for completion of liquidation process was reduced to 1 year. Thereafter, IBBI issued circular dated 26.08.2019 wherein it was declared that the Amended Regulations of 2019 are not applicable to liquidation processes commenced before 25.07.2019. It is submitted that the Circular dated 26.08.2019 made the effect and operation of the Amended Regulations prospective in nature and not retrospective.
- 2.7. Since the liquidation process of the Corporate Debtor commenced on **11.03.2019** i.e. before the amendment regulations of 2019 came into force, it is submitted that the present liquidation process will be governed by old Liquidation Regulations of 2016 and therefore, the period of completion of liquidation process remains 2 years.
- 2.8. It is submitted that the liquidation proceedings in the present case have finished within 658 days (on an approximate basis including time consumed in disposal of the application approving sale as a going concern). The sale in the present case was concluded on 13.09.2023 i.e. within 477 days.
- 2.9. On 14.03.2019, M/S Mani Bhadra Polycot, the Resolution Applicant and Invent Securitization and Asset Reconstruction Co. Ltd. moved an appeal

before the Hon'ble National Company Law Appellate Tribunal ('**NCLAT**') challenging the Liquidation order dated 11.03.2019 passed by this Tribunal. On **11.04.2019** the Hon'ble NCLAT passed an order directing the resolution professional and the CoC to call for an urgent meeting and to provide their opinion regarding the resolution plan submitted by the said resolution applicant or any other resolution applicant. Further, the Appellate Tribunal directed the Liquidator to ensure that the company remains as a going concern and the liquidator shall not sell or transfer or alienate or lease or create any kind of third-party encumbrance on any movable and immovable property of the Corporate Debtor.

2.10. Thereafter, the Hon'ble NCLAT vide order dated **01.05.2019**, by setting aside the order of this Tribunal remitted the case back to the RP to place the resolution plan before the adjudicating authority under section 31 of the IBC. As the liquidation process was set aside vide the order of Hon'ble NCLAT dated 01.05.2019, the liquidator accordingly gave the charge of the Corporate Debtor back to the Resolution Professional on **10.05.2019**.

2.11. Meanwhile a civil appeal was moved by one of the dissenting financial creditors namely the State Bank of India before the Hon'ble Supreme Court challenging the order of the Hon'ble NCLAT. The Hon'ble Supreme Court in its final order dated **09.08.2019** has set aside the order of the Hon'ble NCLAT, and the order of this Tribunal dated **11.03.2019**, was restored thereby reinstating the Liquidation Process. In compliance of the Order, the Applicant took back the charge of the Corporate Debtor from the erstwhile RP on **21.08.2019**.

2.12. Pursuant to the said reinstatement of the order for liquidation of the corporate debtor, the applicant has carried on the duties as per the code by inviting schemes and issuing sale auction notices for selling the Corporate Debtor as going concern. However, auction could not be conducted due to the non-participation of bidders in various sale notices

at the original reserve prices. During the publishing of the 3rd Sale Notice on 16.03.2020, the Liquidator, with the concurrence of the secured financial creditors, reduced the Reserve price by 10%. Thereafter, multiple extensions were given due to Covid-19 pandemic.

2.13. Lastly, the 4th sale notice (second extension) was published on **12.10.2020** inviting bidders for the following options:

| Option | Description of Assets under Auction  | Reserve Price   | EMD   | Bid Incremental Value                          |
|--------|--|---|---|--|
| A.     | Corporate Debtor as Going Concern in accordance with directions of Hon'ble NCLAT dated 02.12.2019  | Rs. 40.45 Crores (Indian Rupees Forty Crores and Forty-Five Lakhs Only)   | Rs. 4.05 Crores (Indian Rupees Four Crores and Five Lakhs Only)   | Rs. 0.10 Crores (Indian Rupees Ten Lakhs Only) |
| B.     | Unit wise Sale <b>(Only if Bids are not received under Option A)</b>   |   |   |  |
| i.     | <b>Spinning:</b><br>Lease Hold Land admeasuring 8 Hectares, along with RCC Building (Construction Area ~ 15,800 sq. metres) and Plant & Machinery located at Gat no. 148, Tamgoan Kolhapur Hupari Road Tal - Karveer, Dist Kolhapur 416234 | Rs. 9.07 Crores (Indian Rupees Nine Crores and Seven Lakhs Only)          | Rs. 9.01 Crores (Indian Rupees Nine Crores and One Lakhs Only)    | Rs. 0.10 Crores (Indian Rupees Ten Lakhs Only) |
| ii.    | <b>Weaving:</b><br>Lease Hold Land admeasuring 17 Hectares 42R, along with GI Fabricated Building (Construction Area ~ 36,575 sq. metres) Plant  | Rs. 30.72 Crores (Indian Rupees Thirty Crores and Seventy-Two Lakhs Only) | Rs. 3.08 Crores (Indian Rupees Three Crores and Eight Lakhs Only) | Rs. 0.10 Crores (Indian Rupees Ten Lakhs Only) |

|      |  |  |  |   |
|------|--|--|--|---|
|      | Machinery located at Gat no. 149, Tamgoan Kolhapur Hupari Road Tal - Karveer, Dist Kolhapur 416234 |  |  |   |
| iii. | <b>Other Assets:</b><br>Comprising of Investment. Deposits & other Misc. assets.                   | Rs. 0.66 crores (Indian Rupees Sixty-Six Lakhs only) | Rs. 0.07 crores (Indian Rupees Seven Lakhs only) | Rs. 0.01 crores (Indian Rupees One Lakh only) |

2.14. The last date for submission of EMD along with bidding documents was 27.10.2020 and the proposed auction date was 31.10.2020. Two bidders had shown interest in the auction participation and had submitted requisite EMD with bid documents as per the following details:

| S No | Bidder Name                                 | Participation for Auction option                |
|------|---|---|
| 1    | Mahalaxmi Textile                           | Option A i.e. Corporate Debtor as going concern |
| 2    | Manibhadra Polycot (Prop. Deepak Choudhary) | Option b(i) i.e. Spinning Unit                  |

2.15 A **PIL [(ST) 93324 of 2020]** was filed before the Hon'ble Bombay High Court by Uttam R Mhetre against the Applicant and the Corporate Debtor, seeking stay on Liquidation Proceedings and more particularly auction process. The Hon'ble Bombay High Court had granted a stay on the auction proceedings till the disposal of the said petition on **28.10.2020**. The Hon'ble Bombay High Court extended the interim stay passed in the PIL No. 177 of 2020 on **08.01.2021**. After Interventions applications filed by the Financial Creditors and the Liquidator for urgent listing and hearing in the matter, further hearings took place in the matter on 08.12.2022, 09.12.2022 & 13.12.2022. However, after hearing all the parties. the Hon'ble High Court simpliciter adjourned the captioned matter to 17.01.2023. However, the case was finally

dismissed by the Hon'ble Court on 25.04.2023 and vacated the interim stay order dated 28.10.2020.

- 2.15. On 11.05.2023, a meeting of Stakeholders comprising of Secured Financial Creditors ("SFC") took place where all SFCs were of the opinion to conduct new valuations for the Corporate Debtor. Accordingly, Fresh Valuations were carried out by the short-listed valuers as per Regulation 35 of Liquidation Regulation on 04.08.2023.
- 2.16. On 12.09.2023, this Tribunal allowed the I.A. 4155 of 2023 which was filed by the Applicant to take on record new Valuation Report, minutes of Stakeholders Consultation Meeting dated 07.08.2023 and Liquidator's decision to continue with the sale process with existing bidders.
- 2.17. The Liquidator proceeded with conducting fresh valuations and continuing with the auction process, which was done with due consultation of the stakeholders (secured creditors). The auction was conducted on 13.09.2023 after consultation from stakeholders in which 'Mahalaxmi Textiles' emerged as the successful bidder for Option A "Sale as going concern". Payments in terms of the auction documents were duly paid by the successful bidder. The Successful Bidder paid balance of 25 % of the bid value i.e. Rs. 6,06,25,000/- (Rupees Six Crore Six Lakh and Twenty-Five Thousand Only) on 18.09.2023.
- 2.18. The Successful Bidder wrote a letter on 21.09.2023 to the Applicant for seeking certain relief and concessions in relation to Corporate Debtor being sold as a 'going concern'. On 27.09.2023, the Applicant entered into Memorandum of Understanding with the Successful Bidder.
- 2.19. On 04.10.2023, IA No. 4446 of 2023 was filed by the Liquidator before the NCLT seeking approval of sale of Corporate Debtor as a going concern along with certain reliefs, concessions, directions, dispensations and exemptions and IA No. 4554 of 2023 was filed by Successful Bidder i.e.

Mahalaxmi Textile before NCLT *inter alia* seeking certain reliefs, concessions, directions, dispensations and exemptions in relation to Corporate Debtor being sold as a 'going concern'. This application was subsequently disposed off by this Tribunal vide order dated 15.01.2024.

2.20. The Liquidator has sold the Corporate Debtor as a going concern in favor of the Successful Bidder i.e. Mahalaxmi Textile for a bid value of Rs. 40,45,00,000/- (Rupees Forty Crore Forty-Five Lakhs Only). The Successful Bidder on 11.12.2023 has deposited the entire sum of the sale proceeds together with interest @ 12% amounting to a total sum of **Rs. 41,04,85,000/-** (Rupees Forty-One Crores Four Lakhs Eighty-Five Thousand Only) to the dedicated liquidation bank account of the Corporate Debtor.

2.21. The important list of dates is as follows:

| <b>Date</b> | <b>Particulars</b>   | <b>Professional</b>   |
|-------------|--|---|
| 11.03.2019  | The liquidation Order was passed.  | Mr. Ashish Mukund Chandak   |
| 02.04.2019  | Since Mr. Ashish Mukund Chandak failed to take charge as Liquidation   | Kshitiz Gupta was appointed by this Tribunal from the panel of the professionals. |
| 12.04.2019  | Took the Handover from the RP  | Kshitiz Gupta   |
| 10.05.2019  | Thereafter, the Hon'ble NCLAT has vide order dated May 1, 2019, set aside the order of this Tribunal, the liquidator accordingly gave back the charge of the corporate debtor to the Resolution Professional on May 10, 2019 | Sameer Kakar  |
| 09.08.2019  | The Hon'ble Supreme Court restored the order of liquidation  | Sameer Kakar  |
| 21.08.2019  | The liquidator again took back the charge from the RP.   | Kshitiz Gupta   |

2.22. From the above table it can be seen that the Liquidator is in charge of the Corporate Debtor from August 2019 to this date i.e., the applicant has



been in charge for more than 1050 days. The Applicant has been in office and has been rendering professional services from the commencement of Liquidation of the Corporate Debtor and ensured that it remains a going concern and value maximization takes place for all the stakeholders and towards this the Applicant has provided the services which are beyond a role of a liquidator and if not more than it is equivalent to the role of the Resolution Professional or CEO/CFO. The Applicant has provided professional services, support, assistance and expertise so as to the ensure that the Corporate Debtor remains a going concern and Company continue derive the same returns despite the Liquidation of the Corporate Debtor.

2.23. The Applicant submits that he has been rendering his professional services to the Corporate Debtor in addition to the role of liquidator. Pursuant to Liquidation order, all the powers of the Board of Director, key managerial personnel and the partners of the Corporate Debtor was vested with the Liquidator.

2.24. Further the Applicant giving overview under heads Finance, Accounting & Reporting, Operational and Legal submitted that he has been carrying out following activities:

*a) keeping the company as going concern and on self-sustained mode  
with more than 500 work force;*

*b) Safeguarding the assets of the Company*

*c) All statutory compliances*

*d) Filing and defending all suits at various courts of law and tribunals*

*e) Reporting of all actions with IBBI, NCLT*

*f) Coordinating with various stakeholders*

2.25. The Applicant further tabulated relevant timelines as below:

|                                      |            |
|--------------------------------------|------------|
| <b>Liquidation Commencement Date</b> | 11.03.2019 |
| <b>Estimated Distribution Date</b>   | 31.01.2024 |

|   |     |             |
|---|-----|-------------|
| Total number of days since commencement of liquidation  |     | <b>1828</b> |
| <b>Less Exclusion of days allowed by NCLT</b>   |     |             |
| Exclusion allowed by order dated <b>14.10.2019</b> passed by NCLT Mumbai in MA 3158/2019 for proceedings with NCLAT & SC  | 100 |             |
| Exclusion allowed by order dated <b>27.10.2021</b> passed by NCLT Mumbai in IA 2498/2019- due to COVID-19 pandemic & stay on auction proceedings by Hon'ble Bombay HC in <b>PIL No. (St) No. 93324 of 2020 (PIL no. 177 of 2022)</b> (registered) | 504 |             |
| Exclusion allowed by order dated <b>21.01.2023</b> passed by NCLT Mumbai in IA no 62/2023 due to continuing stay on auction proceedings by Hon'ble Bombay HC in PIL   | 428 |             |
| Exclusion allowed by order dated <b>21.01.2023</b> passed by NCLT Mumbai in IA no 62/2023 due to continuing stay on auction proceedings by Hon'ble Bombay HC in PIL from 9-12-2022 to 25-04-2023  | 138 | <b>1170</b> |
| <b>Actual Days lapsed commencement since Liquidation</b>  |     | <b>658</b>  |

2.26. It is submitted that since the FY 2019-20, the Corporate Debtor has been functioning as a going concern and all the three units of the Corporate Debtor i.e. Spinning, Weaving and Sizing has been generating revenue each year. A table is produced hereinbelow demonstrating the functioning of the Corporate Debtor as a going concern and generation of revenue:

| Sr No | Period            | Qty Spinning Unit (Kg) | Qty Weaving (Mtr) | Qty Sizing (Kg) | Turnover (Amt in Lakhs) | No of workmen & Employees |
|-------|-------------------|------------------------|-------------------|-----------------|-------------------------|---------------------------|
| 1     | 2018-19           | 38,20,065.04           | 61,63,912.75      | 12,21,220.27    | 1,839.20                | 889                       |
| 2     | 2019-20           | 29,10,225.44           | 43,03,564.89      | 10,14,290.52    | 1,527.73                | 807                       |
| 3     | 2020-21           | 26,29,791.36           | 25,64,978.76      | 8,45,783.70     | 1,873.91                | 889                       |
| 4     | 2021-22           | 36,27,828.54           | 42,86,197.59      | 12,55,342.50    | 2,716.55                | 879                       |
| 5     | Qtr.- 1<br>22-23  | 5,98,737.64            | 13,51,066.59      | 2,34,359.70     | 488.04                  | 869                       |
| 6     | Qtr.- 2<br>22-23  | 41,901.30              | 12,60,393.06      | 1,19,756.50     | 132.19                  | 920                       |
| 7     | Qtr. - 3<br>22-23 | 5,90,051.34            | 12,49,176.82      | 1,69,090.40     | 458.60                  | 880                       |

\* Qtr. - 4 of FY 2022-23 is yet to be completed.

The details of the Production and Revenue of the Corporate Debtor for period 1<sup>st</sup> October 2023 to 31<sup>st</sup> December 2023 (Third Quarter of FY 2022-23) are as follows:

| <b>Production and Revenue details of Abhishek Corporation Ltd.</b> |                   |                 |
|--|-------------------|-----------------|
| <b>October, 2023</b>   | <b>Production</b> | <b>Turnover</b> |
| Dept. 1- Spinning  | 0.00              | 27,68,341.00    |
| Dept.2- Weaving  | 23,80,950.00      |                 |
| Dept. 3- Sizing  | 3,87,391.00       |                 |
| <b>November, 2023</b>  |                   |                 |
| Dept. 1- Spinning  | 0.00              | 25,59,671.00    |
| Dept. 2- Weaving   | 20,86,209.00      |                 |
| Dept.3- Sizing   | 4,73,462.00       |                 |
| <b>December, 2023</b>  |                   |                 |
| Dept. 1- Spinning  | -                 | 40,45,357.63    |
| Dept.2- Weaving  | 31,60,985.63      |                 |
| Dept. 3- Sizing  | 8,84,372.00       |                 |

2.27. From the above table it can be perused that from FY 2108-19 to FY 2021-22, the median production output quantity of the Spinning Unit is 32,46,977.59 Kgs, the median production output quantity of the Weaving Unit is 4329663.49 Mts and the median production output quantity of the

Sizing Unit is 10,84,159.24 Kgs. The table further shows that the Corporate Debtor has been functioning properly during the covid- 19 pandemic and has been manufacturing the goods. Furthermore, the turnover column in the table would show that the Corporate Debtor has generated revenue of Rs. 1839.20 Lakh in FY 2018 - 19, Rs. 1,527.73 Lakh in FY 2019 - 20, Rs. 1,873.91 Lakh in FY 2020-21 and Rs. 2,716.55 Lakh in FY 2021-22. A perusal of the above statistics would show that the Corporate Debtor has been witnessing increasing turnover each financial year except for the FY 2019-20 where the revenues dipped due to litigations pending before the Hon'ble NCLAT and Hon'ble Supreme Court, the onset of the Covid-19 pandemic in the last leg of the FY 2019-20 (March, 2020) and thereafter due to flood situation that arose in the State of Maharashtra.

2.28. Revenue of the Corporate Debtor from Financial Year 2018-19 to 2021-22 is as follows:

| <b>Financial Year</b> | <b>Revenue (in Rs.)</b> |
|-----------------------|-------------------------|
| 2018-19               | 1839.20 Lakh            |
| 2019-20               | 1,527.73 Lakh           |
| 2020-21               | 1,873.91 Lakh           |
| 2021-22               | 2,716.55 Lakh           |

2.29. It can be seen that turnover of the Corporate Debtor has increased for each financial year except for the FY 2019-20. It can be observed that the Liquidator not only manages the Corporate Debtor as a going concern but also increased the revenue of the Corporate Debtor.

2.30. The Applicant has stated that due to the efforts of the Applicant, the Corporate Debtor will be generating good self-sustaining revenues and have retained business which would have otherwise gone out of the hands of the Corporate Debtor on account of the initiation of Liquidation. It

becomes important that when the Corporate Debtor is having business which is generated by the Applicant then the Applicant must be paid for providing for additional services than the liquidator of the Corporate Debtor. It is submitted that the Applicant is praying for remuneration for the professional services rendered by the Applicant even during Covid-19 pandemic and lockdown restrictions, as the Applicant has managed to keep the Corporate Debtor operating and managed to earn revenues in such difficult times.

2.31. This claim of the Applicant is restricted only for the professional services provided by him during the liquidation period and to retain the Corporate Debtor as a going concern.

2.32. The Liquidator has submitted 3 options for determining his remuneration, which are as follows:

a) **Option 1:**

*The Tribunal may fix the remuneration of Liquidator same as that of the Resolution Professional which was approved by the Committee of Creditors i.e. Rs. 6 Lakhs per month.*

b) **Option 2:**

*The Tribunal may direct for payment of Liquidator's Fee as a combination of Liquidator's Fees calculated as per Reg. 4 of the Liquidation Regulations and a fix remuneration of Rs. 1.5 Lakh for running the Corporate Debtor as a going concern (the figure of Rs. 1.5 Lakh is an estimation taken by the Liquidator, however, the Tribunal may fix an amount which the Tribunal deems fit and proper and the same shall be acceptable to the Liquidator).*

c) **Option 3:**

*The Tribunal may fix the remuneration of the Liquidator for a reasonable amount of Rs. 3 Lakhs per month. It is pertinent to mention here that the fixed amount of Rs. 3 Lakhs is also the minimum fee structure prescribed by IBBI which is payable to a Resolution Professional as per Schedule - II read with Regulation 34B of the IBBI (Insolvency Resolution Process for Corporate*

*Persons) Regulations, 2016 for conducting Corporate Insolvency Resolution Process.*

*In the submission of the Applicant, the third option as mentioned hereinabove appears to be the most viable option for fixing the remuneration of the Liquidator as the same is the minimum fees prescribed by IBBI under its regulations and is exactly half of what the CoC of the Corporate Debtor had fixed as remuneration for the erstwhile Resolution Professional.*

### **ANALYSIS AND FINDINGS**

3. We have heard the learned counsel for the applicant and have perused the records available.
4. Liquidator has sold the Corporate Debtor as a going concern in favour of the Mahalaxmi Textile (Successful Bidder) for a bid value of Rs. 40,45,00,000/- (Rupees Forty Crore Forty-Five Lakhs Only). The Successful Bidder on 11.12.2023 has deposited the entire sum of the sale proceeds together with interest @ 12% amounting to a total sum of Rs. 41,04,85,000/- (Rupees Forty-One Crores Four Lakhs Eighty-Five Thousand Only) to the dedicated liquidation bank account of the Corporate Debtor.
5. The distribution of the sale proceeds of the Corporate Debtor is as follows:
  - a) Unpaid liquidation cost comprising outstanding fees of the valuers and Liquidator's advocates excluding Liquidator's fees has been distributed;
  - b) Subject to the extent of the information provided by the concerned workmen/employee, a partial gratuity amount has been distributed amongst the Employees who have claimed the unpaid gratuity amount;
  - c) The information of the provident fund including the workmen who have left the organization is collated the principal amount of the provident

fund shall be distributed accordingly in priority. The interest, penalty, etc. towards the provident fund, if any, shall be paid as per the waterfall mechanisms.

- d) A sum of Rs. 2,00,00,000/- (Rupees Two crore Only) has been withheld for future contingencies by the Liquidator for the purpose of meeting the requirements as per the provisions of Insolvency and Bankruptcy Code, 2016 and its Rules and Regulations therein.
- e) An amount of Rs. 35 crores out of total amount entitled to the secured financial creditors subject to the ratio (%) of said each creditor's claim based on the total admitted amount has been distributed except for one secured financial creditor whose undertaking with respect to refund of money as per Regulation 43 of the Insolvency and bankruptcy (Liquidation Process) Regulation, 2016 is pending.
6. The distribution of the sale proceeds is ongoing and an amount of Rs. 4.20 Crores (around 10.20% of the total proceeds) has been kept towards balance PF Dues, Liquidator's Fees and any liquidation costs that might be incurred till the closure of Liquidation Process. The said amounts shall be disbursed among the stakeholders as per extant laws.
7. It is pertinent to mention here that the liquidator provided 3 options which could be considered by this Tribunal while determining the Liquidator's Fee. However, we are inclined to reject the option 1 as the fee of Rs. 6 Lakhs per month was approved by the CoC for RP and there is no approval of CoC pertaining to the fee of the Liquidator.
8. Further this Tribunal does not find the option 3 acceptable because Rs. 3 Lakhs as a minimum fee structure is prescribed by IBBI for RP for conducting CIRP and not for Liquidator.

9. Applicant in option 2 has sought for Liquidator's fee as per Reg. 4 of Liquidation Regulations and also a fix remuneration of Rs. 1.5 Lakhs per month. However, the Tribunal while passing order dated 11.03.2019 had directed that the Liquidator shall charge fee in proportion to the amount realized as per Regulation 4 of the Liquidation Regulations and the same shall be paid to the Liquidator from the proceeds as per Section 53 of IBC. The relevant portion of the said order is reproduced hereunder as follows:

*“.....The Insolvency Professional appointed as Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the I&B Code.”*

10. In the present case the Liquidation process was commenced on 11.03.2019. According to IBBI (Liquidation Process) (Amendment) Regulations, 2019 dated 25.07.2019, the Regulation 4 of Liquidation Regulations, before the commencement of IBBI (Liquidation Process) (Amendment) Regulations, 2019 shall continue to be applicable in relation to the Liquidation processes which were already commenced before the coming into force of the said Amendment Regulations.

11. Regulations 4 (2) and (3) of IBBI (Liquidation Process) Regulations, 2016 was substituted vide notification no. IBBI/ 2019-20/ GN/ REG 047 dated 25.07.2019. Prior to substitution it is as under:

*“(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 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 realised/ distributed |                        |                      |            |
|---|---|------------------------|----------------------|------------|
|   | in the first six months                               | in the next six months | In the next one year | thereafter |
| <i>Amount of Realisation (exclusive of liquidation costs)</i> |   |                        |                      |            |
| 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 sums realized                                      | 0.25  | 0.19                   | 0.13                 | 0.10       |
| <i>Amount Distributed to Stakeholders</i>                     |   |                        |                      |            |
| 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 sums distributed                                   | 0.13  | 0.10                   | 0.06                 | 0.05       |

...”

12. Also, the IBBI issued circular **IBBI/LIQ/61/2023** dated 28.09.2023 issuing clarifications regarding the Liquidator's Fee under Reg-4(2)(b) of the Liquidation Regulations. Point 2.5 of the Circular dated 28.09.2023 states that for the purpose of calculation of the Liquidator's Fee, the period which has been explicitly excluded by the NCLT shall be allowed to be excluded from the liquidation period. The relevant portion of the circular is reproduced hereunder as follows:

**“2.5 Period for 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 a 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 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.”*

13. In the absence of Liquidator's fee approved by CoC, Remuneration of the Liquidator as per Regulations 4 (3) of IBBI (Liquidation Process) Regulations, 2016 is directed to be computed and paid after considering the periods specifically excluded by the NCLT/ NCLAT.
14. Further, this Tribunal has excluded 100 days, 504 days, 428 and 138 days from the Liquidation period. It can be seen from the facts of the case that during this period of total 1170 days, the Corporate Debtor was managed and run by the Liquidator efficiently & accordingly, it is deemed appropriate to suitably remunerate the Liquidator @ Rs. 75,000/- per month during the period excluded.
15. The total fee/ remuneration admissible as payable to the Liquidator may be computed in accordance with above direction.
16. The Liquidator would be entitled to receive his remuneration computed as above in accordance to the Regulation 4 (4) of IBBI (Liquidation Process) Regulations, 2016, prior to the notification dated 25.07.2019 which is reproduced below:
- “(4) The liquidator shall be entitled to receive half of the fee payable on realisation under sub-regulation (3), only after such realised amount is distributed.”*
17. Registry is directed to send the copy of the order to the IBBI.
18. The **I. A. 632/ 2023** is partly allowed and stands **disposed of** in above terms.

Sd/-

**CHARANJEET SINGH GULATI**  
**MEMBER (TECHNICAL)**

(Saayli, LRA)

Sd/-

**LAKSHMI GURUNG**  
**MEMBER (JUDICIAL)**