IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(Through Physical Hearing / VC Mode (Hybrid))

I.A.No.167/2022
Under Section 54 (1) of the Insolvency & Bankruptcy Code, 2016
Read with Regulation 45 (3) (b) of the Insolvency Bankruptcy
Board of India (Liquidation Process) Regulations 2016
C.P. (IB) No.28/BB/2017
Under Section 9 read with Rule 6 of the
Insolvency & Bankruptcy Code, 2016

In the matter of:

Mr. Anil Kumar Birla,
Liquidator of,
M/s. Karuturi Foods Private Limited,
No.176, Hollywood Town,
Sadahalli,
Bengaluru - 562110 ... Applicant/Liquidator

Order delivered on: 15th February, 2024

Coram: 1. Hon'ble Shri K.Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Applicant : Shri Tushar Tyagi

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. The present Application is filed on 03.05.2022 by **Shri Anil Kumar Birla, the Liquidator** of **M/s. Karuturi Foods Private Limited** (hereinafter referred as the **'Applicant'**) under Section 54 (1) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the '**Act')** read with Regulation 45 (3) (b) of the Insolvency and Bankruptcy Board of India (Liquidation Process) *interalia* seeking to pass an order under Section 54 (2)

of the IBC 2016 for dissolution of the Corporate Debtor; pass an order to discharge Mr. Anil Kumar Birla as Liquidator of Corporate Debtor and from all his responsibilities, duties and obligations under the Code and to fix an appropriate amount to be payable as remuneration for the liquidation for conducting the liquidation of the Corporate Debtor including the assignment of the claims to Axis Bank limited and direct the sole Financial creditor Axis Bank Limited to pay the same.

2. Brief facts of the instant Application, which are relevant to the issue in question, are as follows:

   (1) It is submitted that this Adjudicating Authority, vide, its order dated 10.10.2017 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor by imposing moratorium etc. Thereafter, the Committee of Creditors (CoC) at its meeting held on 27.06.2018 recommended that the Corporate Debtor be liquidated since no expression of interest was received by the Applicant. Accordingly, the Applicant filed an application before the Adjudicating Authority under Section 33 of the Code for seeking liquidation of the Corporate Debtor. This Adjudicating Authority allowed the said application, vide, order dated 05.07.2018 by initiating liquidation process and appointed Mr. Anil Kumar Birla, the Applicant in herein as Liquidator.

   (2) Pursuant to the same, the Applicant in compliance of Section 33 (b) (ii) of the Code read with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 made a public announcement on 27.07.2018 in Form B in the newspapers and the last date for submission of claims was stipulated as 22.08.2018.

   (3) It is stated that the claims received from claimants were verified and accordingly a consolidated list of stakeholders was prepared as per Regulation 31 of the Liquidation Process Regulations and filed before this Adjudicating Authority on 05.10.2018. As per the list of

stakeholders, the Corporate Debtor has only a single financial creditor, Axis Bank Limited with an admitted claim of Rs. 13,02,64,461.43/-. The table showing the summary of stakeholders is as under:

Sl. No.	Category of stakeholders	No. of claims	Amount	Amount of claims admitted
1.	Secured Financial Creditors	1	13,02,64,461	13,02,64,461
2.	Unsecured Financial Creditors	0	0	0
3.	Operational Creditors (Workmen)			
4.	Operational Creditors (Employees)			
5.	Operational creditors (other than workmen, and employees)	1.	18,53,314	18,53,314
6.	Other stakeholders if any (other than financial creditor and operational creditors)	6	9,14,79,108	9,14,79,108
	Total	8	22,35,96,883.43	22,35,96,883.43

(4) It is further submitted that with the limited details available with the Applicant in accordance to Section 36 (1) of the Code, the Applicant has formed a liquidation estate. Upon forming the liquidation estate, the Applicant prepared an asset memorandum of the Corporate Debtor in terms of Regulation 5 (1) (b) and 34 of the Liquidation Regulation with the information available and the same was updated based on additional details as and when discovered. The Applicant filed the asset memorandum before this Adjudicating Authority on 05.10.2018. The assets of the Corporate Debtor are:

i. An amount of Rs. 1,96,506/- in lien marked account with Axis Bank;

ii. Receivable of an amount of Rs.4,10,17,431/- under current assets, the details of which are as follows:

   a. M/s. Chandru and Co. Rs. 3,56,00,000/-

   b. M/s. Fresco Foods Private Limited : Rs. 54,17,431/-

   c. An amount of Rs.24,32,022.90/- proceeds of the fixed deposit, SBI.

   d. Balance of Rs. 951.90 in Yes Bank (Kasturba Road Branch)

(5) Further, the Corporate Debtor had ceased to carry on business since January 2015 as recorded in the minutes of 1st Meeting of the CoC conducted by IRP, as the same was found unviable by it even prior to the commencement of CIRP and hence the Applicant did not deem fit to recommence the same. Further submitted that the instant provision is not completely applicable in the instant case, as there were no tangible assets of the Corporate Debtor and only assets of the Corporate Debtor were recoveries from Chandru and Co. And Fresco Foods Private Limited, amount lying in the Axis Bank and fixed deposits in the State Bank of India. Thus, a public auction for the distribution of the said assets is not applicable in the instant case and the same were distributed as per the provisions of the Code and Regulations made thereunder. The Applicant submits that the assets of the Corporate Debtor were distributed in the manner prescribed under the Liquidation process Regulations.

(6) The Liquidator continued with the case filed under Section 138 of the Negotiable Instrument Act, 1881 by Karuturi Foods Private Limited against Fresco Food Private Limited before the Small Causes Court, Bengaluru which convicted Fresco Foods Private Limited and it was directed to pay a fine of Rs. 55,00,000/- or if in default, simple imprisonment for one year. Fresco Foods Private Limited challenged the said order vide Criminal Appeal No.685 of 2019 before the Hon'ble XXI Additional Chief Metropolitan Magistrate Court on 06.08.2018 and

the same is dismissed vide order dated 30.12.2022 (as mentioned in Affidavit dated 03.02.2023).

(7) The Applicant upon noticing the anomalies regarding the affairs of the corporate Debtor and failure of the ex-directors to furnish the requisite information has appointed G.D Apte & Co., Chartered Accountants to conduct a forensic audit of the Corporate Debtor on the basis of the limited information available. The findings of the report have disclosed that the forensic audit could not generate definite conclusion due to lack of significant information through company's books of account and corresponding voucher of payments/collections of certain transactions.

(8) It is further submitted that the assets of the Corporate Debtor were recoveries from Chandru and Co., and Fresco Food Private Limited along with amount lying in the Axis Bank and fixed deposits in the State Bank of India. The Applicant submits that the assets of the Corporate Debtor were distributed in the manner prescribed under the Liquidation Process Regulations.

(9) It is further submitted that the Applicant filed an application I.A No. 64 of 2021 for seeking distribution of unsold assets of the Corporate Debtor by assignment to the only Financial creditor of the corporate Debtor i.e., Axis Bank having total claim of Rs. 13,02,64,461.43/-, having priority over all the creditors as per the "Waterfall Mechanism" under Section 53 of the Code. Thereafter this Adjudicating Authority vide order dated 24.02.2022 allowed the application and permitted the Applicant to assign the claims due from M/s. Chandru and Co. Amounting to Rs.3,56,00,000/- and due from Fresco Food Private Limited amounting to Rs. 55,00,000/- and also the balance lying in the Corporate Debtor bank account amounting to Rs.1,96,506.35/- to Axis Bank Limited. Accordingly, the Applicant had taken appropriate steps to execute the assignment deed with respect to each claim with the Axis Bank on behalf of the Corporate Debtor. The said assignment

deed has been approved by the legal office of Axis Bank Limited, but is pending for clearance from its internal committee. The I.A NO.68 of 2023 filed by the Axis Bank for modification of the order dated 24.02.2022 was dismissed vide order dated 11.09.2023.

(10) The Liquidator has prepared and submitted the preliminary report and Asset Memorandum on 05.10.2018 and held consultation with the stakeholders from time to time on 23.07.2019 and 10.11.2020. Further, the Liquidator confirms that the necessary registers and books in relation to the liquidation have been maintained and will be preserved for a period of 8 years from the date of dissolution. The Liquidator confirms that the necessary receipts for all expenses and payment are available and maintained.

(11) It is further submitted that the Liquidator opened a bank account in accordance with Regulation 41 of the Liquidation Process Regulation with Axis Bank Cunningham Road Branch, Bengaluru on 24.04.2019 and all proceeds of the Liquidation estate were credited to this account and the Liquidator made such payments as authorised under the code from the liquidation account.

(12) It is further submitted that the Applicant has made several efforts to recover the amount of Rs. 3.56 crores due to the Corporate Debtor from Chandru & Co. In this regard, the Chandru and Co. Offered Rs. 2 crores on 28.08.2019 to Axis Bank Limited directly. The said offer was declined by Axis Bank Limited. Recently, another offer of Rs. 3 crores was also made by a suspended director of the Corporate Debtor on 07.08.2020 to Axis Bank Limited directly. However, Chandru and Co. has failed to pay the amount of Rs. 3.56 crores to the Applicant directly till today. The Axis Bank Limited holds security in terms of a mortgage over the factory land which is not a party of the liquidation estate. Hence the Applicant has been unable to act upon the MOU dated 29.12.2016 with the requirement of transfer of factory land and

release of security interest on the said land. Accordingly, despite best efforts no payments have been received by the Applicant.

(13) It is submitted that the details of the expenditure in the Liquidation of the Corporate Debtor are provided in the payments and receipts accounts of the Liquidation Account. The same has been regularly filed by the Applicant in the progress reports. Further the Applicant is entitled to cost for the discharge of his duties as per Regulation 2A of the Liquidation Regulations. Also the CoC of the Corporate Debtor has not fixed any fee of the Liquidator in pursuant of Regulation 4 (1) of the Liquidation Regulations. It is submitted that the Liquidation has been discharging his duties as the Liquidator of the corporate Debtor since the commencement of liquidation for a period of more than 45 months diligently., Accordingly, in pursuance of the proposed assignment by the Applicant, the Applicant fee payable provided in the chart under Regulation 4 (2) (b) of the Liquidation Regulations for as per the lowest slab for the amount is only Rs. 18,583 for realisation and Rs. 9,291/- for distribution aggregating Rs.27,874/-. It is submitted that this fees is not commensurate to the time and effort made by the Applicant for the assignment. Further submitted that the no fee has been paid to the Applicant in respect of assignment of receivable of Rs.3,56,00,000/- and Rs. 55,00,000/ Thus, the Applicant has sought necessary directions from this Adjudicating Authority to Axis Bank Limited being the only financial creditors to pay the Liquidator's fees.

3. Heard the learned Counsel for the Applicant. We have carefully perused the pleadings of the Party.

4. On 14.12.2023, the Applicant was directed to file a Memo regarding amount payable to the Liquidator basing on the Guidelines issued by the IBBI. Pursuant to the same, the Applicant has filed a Memo vide Dy. No. 6357 dated 18.12.2023 and the same is taken on record. It is stated in the memo that the Liquidator process has run for about 65 months and during the

CIRP the Liquidator was paid Rs.1,50,000 per month. However, a reasonable fees is claimed to be Rs.25,000/- to Rs.50,000/- during the liquidation process. In the memo, the Applicant stated that in terms of Regulation 4 (2) (b) of the Liquidation Regulations, the fees of the Liquidator will be Rs.9,45,485/-. However, the Liquidator prays that an aggregate fee of Rs. 15,00,000/-+applicable GST be considered as a reasonable fees of the liquidator, however, the Liquidator also stated that he will accept any amount directed by this Adjudicating Authority. Though the Amendment in regulation of Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 brought on 25th July 2019 and is not retrospective, however it gives guidance for determining the Liquidator's fees for the case. Therefore, we are of the opinion that as per the guidelines in these amended regulations a sum of Rs. 9,45,485/- + GST be paid to the Liquidator as Liquidator fee.

5. From a perusal of the details narrated supra, it appears that the Liquidator has complied with all the conditions and procedural requirements, as specified under various provisions of Section 54 of the Insolvency & Bankruptcy Code, 2016 and also the extant IBBI Regulations. We have also considered the manner in which the available assets have been dealt with prior to the dissolution of the Corporate Applicant. In view of this factual matrix, we are of the view that the said I.A. No.167 of 2022 seeking dissolution of the Corporate Applicant deserves to be allowed, as prayed. As the I.A.No.167 of 2022 is disposed of allowing dissolution of the Corporate Applicant, consequently the C.P. (IB) No.28/BB/2017 also stands disposed of.
6. In the result, in exercise of the powers conferred under Section 54 of the Code, the Adjudicating Authority is hereby disposing of the Interim Application bearing **I.A.No.167of 2022 and C.P.(IB)No.28/BB/2017** with the following directions:

(1) The Corporate Debtor, namely, **M/s. Karuturi Foods Private Limited** is dissolved with immediate effect;

(2) The Financial Creditors Axis Bank is directed to pay the fees of Rs. 9,45,485/-+GST to the Liquidator for discharging his duties as the Liquidator of the Corporate Debtor.

(3) The Registry is directed to forward a copy of this Order to the Registrar of Companies Karnataka, Bangalore within a period of two weeks from the date of receipt of this order for further necessary action as prescribed under Law;

(4) The Ld. Liquidator is directed to forward copies of this Order to all other Statutory Authorities connected with the affairs of the Company, for further necessary action as prescribed under Law.

7. Accordingly, the instant **I.A. No.167 of 2022** and the Company Petition bearing **C.P. (IB)No.28/BB/2017** also stands **disposed of**.

Sd/-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-

(K.BISWAL)
MEMBER (JUDICIAL)