

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

**IA (IBC)/323/KOB/2023
IN
CP (IBC)/20/KOB/2021**

*(Under Section 35(1)(n) of the Insolvency and
Bankruptcy Code, 2016 read with Regulation
21A of IBBI (Liquidation Process) Regulations
2016)*

Memo of Parties

K Easwara Pillai

Liquidator of M/s.Periyar Agro Food
Industries Private Limited (under liqn)
6th Floor, Amrita Trade Towers,
SA Road, Pallimukku, Kochi- 682016
IP Regn: IBBI/IPA-001/IP-
P00448/20172018/10791

...Applicant/ Liquidator

Versus

Union Bank of India

Having Regional Office at:
2nd Floor Union Bank Bhavan,
M.G Road, Ernakulam, Pin 682015

...Respondent

In the matter of:

M/s ITC Limited : Operational
Creditor

Versus

M/s Periyar Agro Food : Corporate
Industries Pvt Ltd Debtor

Order delivered on: 08.02.2024

Coram:

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Shri. Shyam Babu Gautam

TMT. (Retd.) Justice T Krishna Valli

Appearances:

For the Applicant : Mr. K. Easwara Pillai, Liquidator

Mr. Dhananjaya Sud, Advocate

For the Respondent : Mr. V A Ajaikumar, Advocate

ORDER

Per: Coram

1. The present application is filed by the Mr K Eashwara Pillai, Liquidator of M/s Periyar Agro Food Private Limited (hereinafter referred to as the 'Corporate Debtor') under Section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') read with Regulation 21A of IBBI (Liquidation Process) Regulations 2016 for directing the Respondent to pay a sum of Rs. 55,52,097/- after deducting Rs. 5,00,000/- already

- paid by the Respondent to the Applicant in accordance with Regulation 21A (2) (a) of the IBBI (Liquidation Process) Regulations, 2016.
2. The Corporate Debtor entered the CIRP on 21.12.2021. This Tribunal issued an order on 17.02.2023, initiating the Liquidation Process for the Corporate Debtor and appointing the Applicant as the Liquidator. Acting in the capacity of the Financial Creditor, the Respondent submitted its claim under Form D to the Applicant on 15.03.2023. Utilizing the authority granted by Regulation 21A (2) (a) of the Liquidation Regulations, the Applicant, after deducting the Respondent's payment of Rs.5,00,000/-, requested Rs.55,52,097/- (Rupees Fifty-Five Lakh Fifty-Two Thousand and Ninety-Seven Only) for Estimated Liquidation Costs and the Liquidator's Fee.
 3. Upon receiving no response from the Respondent for over a month, the Applicant, through a letter dated 26.06.2023, reminded the Respondent of the obligation to provide information on the status of the sale of the Corporate Debtor's asset.
 4. In a letter dated 04.07.2023, the Applicant informed the Respondent that it must realize its Security Interest within the specified timelines. Failure to do so would result in the Respondent surrendering custody of the Corporate Debtor's asset to the Applicant, incorporating it into the Liquidation Estate. In response, the Respondent, via an email on 12.07.2023, stated that it had taken possession of the Corporate Debtor's asset and

- initiated actions under the SARFAESI Act, 2002. The Respondent indicated a need to wait for 60 days from the acknowledgement of the demand notice dated 25.05.2023, as per SARFAESI Act provisions. However, the Respondent failed to comply with the timelines outlined in Regulation 21A (2) (a) of the Liquidation Regulations and neglected to pay Rs.55,52,097/-, deducting Rs.5,00,000/- already paid to the Applicant. Consequently, the Applicant filed this application.
5. The respondent submitted a reply affidavit indicating that the Corporate Insolvency Resolution Process for M/s. Periyar Agro Food Industries Pvt Ltd was initiated by the Tribunal, appointing Mr. George Varkey as the Resolution Professional. Mr. Varkey estimated the total liquidation cost at Rs. 34,47,000/- including a Liquidator fee of Rs. 10,00,000. The Committee of Creditors , finding this cost unaffordable, decided not to appoint him as Liquidator. After discussions, Mr. K. Easwara Pillai was proposed and, based on his estimated liquidation cost of Rs. 5,00,000 for six months, the Financial Creditor, Union Bank of India recommended him as the Liquidator, which the CoC approved.
 6. During the liquidation proceedings, the Liquidator constituted the Stakeholders Consultation Committee per Regulation 31A of IBBI (Liquidation Process) Regulations. In the second committee meeting's agenda, the Liquidator included notes on his fees. During the meeting on 01.03.2023, he informed members about his fixed fee of Rs. 5 lakhs for six months, which was approved

without further discussion or voting. However, the subsequent minutes inaccurately recorded that the fee was decided as per Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, a decision that was never made during the meeting held on 01.03.2023. The Stakeholder Consultation Committee meeting was held on 01.03.2023. However, the minutes were prepared on 24.03.2023. i.e. several days after the meeting with ulterior motives.

7. Liquidation proceedings commenced on 17.02.2023, and the Liquidator allowed the Respondent/Financial Creditor to realize its security interest on secured property. The communication about this was delayed until 23.05.2023, even though the intention to realize the security interest was communicated to the Liquidator on 15.03.2023. On 22.04.2023, the Liquidator demanded a fee of Rs. 55,52,097/- without prior permission. Immediately the Respondent under the SARFAESI Act issued Demand Notice dated 25.05.2021 demanding the Corporate Debtor to pay the secured debt within 60 days from the receipt of notice which is mandatory under the said Act.
8. The Liquidator's arbitrary fixing of the fee at Rs. 55,52,097/- without providing reasonable time for the Respondent to sell the secured property, is contested in this application. The Respondent submits that if the fee is fixed by the CoC under Section 39D, Regulation 21A of IBBI (Liquidation Process) Regulations is not applicable, and the Liquidator cannot claim

fees under Regulation 4(2). Furthermore, the calculation of the claimed fee is deemed incorrect and not in accordance with Rule 4(2) of IBBI (Liquidation Process) Regulations.

9. The Respondent on 14.11.2023 filed an additional reply affidavit along with the sale notices as Additional Annexure R7, R8 and R9. It was further submitted that a joint meeting between the Respondent and Applicant took place, during which the Respondent proposed a payment of Rs. 1,67,000 for an additional 2-month period until 16.10.2023. This proposed sum was in line with the fee previously established by the CoC under Regulation 39D of IBBI (IRP) Regulations, which was accepted by the liquidator and has issued a letter dated 28.10.2023 to the Respondent/ Financial Creditor accepting the said proposal and claiming the said amount along with Rs. 1,20,000/- toward 18% GST. Accordingly, the Respondent has initiated payment of a total Rs. 2,87,000/- to the liquidator.
10. Having considered the arguments presented by the learned counsels and reviewed the available materials, we note that the Respondent/Financial Creditor submitted Additional Annexure R14, comprising an email letter and an invoice dated 28.10.2023 issued by the Applicant/Liquidator to the Respondent/Financial Creditor. It is observed that both the Applicant and Respondent mutually agreed to the Respondent's proposal for the payment of the Liquidator fee. Consequently, the Liquidator, upon accepting the proposal, issued Additional Annexure R14 on 28.10.2023 to the Respondent/Financial Creditor.

11. In light of the compromise reached between the parties regarding the liquidator's fee, and considering that the relief sought in this Application has become infructuous, the issue is deemed settled. Therefore, this **Application is dismissed as infructuous.**
12. Let the certified copy of the order be issued upon compliance with requisite formalities.
13. File be consigned to records.

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this the 8th day of February, 2024.

Krishna