

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

Company Appeal (AT) (Insolvency) No. 2023 of 2024
&
I.A. No. 7595 of 2024

**[Arising out of the Order dated 30.08.2024, passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Mumbai Bench-IV) in I.A. No. 785(MB)/2024 in CP(IB)
3212(MB)/2019]**

IN THE MATTER OF:

Shikshak Sahakari Bank Ltd.

Itwari Branch

HO, Gandhisagar Mahal

Nagpur – 440018

Through its Chief Executive Officer

Alpeshkumar Dolatrai Joshi

...Appellant

Versus

Mr. Jagdish Kumar Parulkar

Liquidator Narendra Solvex Private Limited

B-56, Wallfort City, Bhatagaon Ring Road No.1

Raipur, Chattisgarh – 492001

...Respondent

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Sarthak Gaurav, Advocates.

For Respondent : Mr. Anirban Bhattaharya, Mr. Nipun Gautam, Mr. Rajeev Chowdhary and Ms. Priyanka B., Advocates

JUDGMENT
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal has been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter "the IBC" or "the Code") against the Order dated 30.08.2024 (hereinafter "Impugned Order") passed by the passed by the Ld. National Company Law Tribunal, Mumbai Bench-IV in L.A. 785 (MB) IN CP (IB) No. 3212(MB)/2019. The said Application being

I.A. No. 785 (MB)/2024 was preferred by the Liquidator of the Corporate Debtor under Section 60(5) of the IBC seeking direction against the Appellant to pay the Liquidator's fee for an amount of Rs 25,47,229/- (rupees twenty-five lakhs, forty-seven thousand, two hundred and twenty-nine only).

Brief facts of the case

2. NCLT, Mumbai, initiated Corporate Insolvency Resolution Process (CIRP) proceeding against the Corporate Debtor (Narendra Solvex Private Limited) on 16.09.2021. Since CIRP did not result in fruitful result, the NCLT passed orders for liquidation of the Corporate Debtor vide Orders dated 27.01.2024 along with Rectification Order dated 28.03.2023.

3. The Respondent / Liquidator made public announcement in compliance with Regulation 12 of the Liquidation Process Regulation on 06.04.2023. The last date for submission of claims was 06.05.2023. The Appellant, Shikshak Sahakari Bank Ltd., filed its claim in 'Form D' for an amount of Rs 5,95,45,557/- (rupees five crores, ninety-five lakhs, forty-five thousand, five hundred and fifty-seven only) as on the liquidation commencement date.

4. Further, the Appellant also mentioned in its claim form that it is not relinquishing security interest over the secured asset, which is a piece of land at Survey No. 20, Khate No. 31, Mouza: Dabha, Tehsil: Nandagaon, Khandeshwer, District: Amravati, Maharashtra.

5. The Respondent / Liquidator accepted the claim of the Appellant in full and intimated the Respondent. The Appellant had opted to realise its security interest through its own proceedings under the SARFAESI Act, 2002, in the manner provided under Section 52(1)(b) of the Code and decided the reserve price to be Rs 2,24,15,000/- (rupees two crores, twenty-four lakhs and fifteen thousand only).

6. The Respondent / Liquidator raised Rs 14,48,965/- (rupees fourteen lakhs, forty-eight thousand, nine hundred and sixty-five only) as fee of the Liquidator vide email dated 15.05.2023. The Appellant, Shikshak Sahakari Bank Ltd., paid sum amount of Rs 58,424/- (rupees fifty-eight thousand, four hundred and twenty-four only) and Rs 59,130/- (rupees fifty-nine thousand, one hundred and thirty only) to the Liquidator and sought clarification on the calculation of the Respondent's fee on 07.06.2023. The Respondent gave the breakup on 12.06.2023 and provided the provision of law on the basis of which it was claiming this fee. The Appellant sought clarification on 14.06.2023 again for the basis of the fee which was replied by the Respondent / Liquidator on 17.06.2023.

7. On 27.06.2023, the Appellant, Shikshak Sahakari Bank Ltd., once again wrote to the Respondent / Liquidator about their intent to sell the secured asset and assured them that their share of costs shall be paid, except the baseless and exorbitant fee of the Respondent. The Appellant disputed the Respondent's fee vide email dated 31.07.2023 as it was not under the provisions of the law.

8. The Respondent / Liquidator filed an I.A. No. 3791 of 2023 before the NCLT for stay on the realisation of the amounts by the Appellant after auctioning the asset. The NCLT, Mumbai, dismissed this I.A. as withdrawn on 31.10.2023, to be read with order in I.A. No. 107 (MB) / 2024 in CP (IB) No. 3212 (MB) /2019 dated 12.01.2024.

9. The Respondent / Liquidator filed another I.A. No. 785 (MB) /2024 before the NCLT on 19.01.2024 praying for the Appellant herein (Shikshak Sahakari Bank Ltd.) to pay the Liquidator's fee i.e. Rs 25,47,229/- (rupees twenty-five lakhs, forty-seven thousand, two hundred and twenty-nine only) to the Liquidator. The NCLT, Mumbai, allowed the I.A. with the order, relevant paras are quoted herein:

“.....

9. Without going into the merits of the case, this Bench notes that this Application has made out due to non-compliance of order dated 15.09.2023, wherein this Bench specifically directed the Respondent to pay the dues of the liquidator. It is the case of the Respondent that the Liquidator is entitled for fees under Regulation 4 sub-regulation 2(b), only when he has actually realized or distributed any amount,

However, on bare perusal of Regulation 4 of the IBBI (Liquidator Process) Regulations, 2016, this Bench is of the view that as per Regulation 4, the fee payable to the liquidator has to be decided by the Committee of Creditors under Sub-Regulation (1) or the Stakeholders' Consultation Committee under Sub-Regulation (1A), as the case may be. If the fee is not so fixed, the formula prescribed under Regulation 4(2)(b) would come into play.

11. In view of above facts and circumstances of the case, the Respondent is hereby directed to pay the Liquidator fees as per Regulation 4(1A) of the IBBI (Liquidation Process) Regulations, 2016 within three-weeks from the date of receipt of order.

12. Accordingly, the present Application i.e. IA-785/2024 is allowed and disposed of.”

10. It is claimed by the Appellant that the Respondent had not played any role in realising the asset and the Appellant had itself set the recovery machinery in motion under the provisions of the SARFAESI Act and recovered its amount by auction of the secured asset. It is contended that the Respondent / Liquidator is illegally demanding a fee contrary to the provisions of law which has not accrued in the first place. It is submitted that the term 'amount realised' means an amount that is being realised from the sale of an asset where the asset changes. Secondly, in cases where the funds are readily available for distribution, the Liquidator is entitled to a fee only on distribution.

11. Appellant also contends that the Respondent has not attached any document before the NCLT, Mumbai, demonstrating that he had realised any amount or distributed any sum to the creditors. And, as such, the demand made by the Respondent qua his fee, towards realisation and distribution of proceeds qua the secured asset, was not adhered to by the Appellant in regard to the provisions of law.

12. Appellant also contends that the Respondent is only eligible for entitlement of fee under Regulation 4 Sub-Regulation 2(b), only when the Liquidator has actually realised or distributed any amount. However, in the present case, there has neither been any distribution nor any realisation of amounts by the Respondent, in so far as the secured asset of the Appellant is concerned. The fee demanded by the Liquidator is in teeth of Sub-Regulation 2(b) of Regulations 4 of the IBBI (Liquidation Process) Regulations,

2016 (Liquidation Process Regulations). The clarification to Sub-Regulation 2(b), which has been relied upon, is reproduced herewith for convenience:

“Clarification: For the purpose of clause (b), it is hereby clarified that where a Liquidator realizes any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realized by him. Where a Liquidator distributes any amount, which is not realized by him, he shall be entitled to a fee corresponding to the amount distributed by him.”

13. Further, it is claimed by the Appellant that this is hit by res-judicata, on account of the disposal of I.A. 3791/2023 filed by the Respondent on the basis of identical facts pleaded in Application No. I.A 785 (MB)/ 2024. And, therefore, the Impugned Order dated 30.08.2024 is liable to be set aside.

14. The Respondent / Liquidator for the Corporate Debtor in its Reply had noted that it accepted the claim of the Respondent in full as per its claim in Schedule-I and intimated the same to the Respondent on 03.06.2023.

15. Respondent / Liquidator contends that the Appellant did not comply with Regulation 21-A of the Liquidation Process Regulations, 2016, within the 90 days of the liquidation commencement date. The Appellant was required to pay the following costs in order to comply with Regulation 21-A(2) of the Liquidation Process Regulations .

Particulars	Amounts
CIRP Cost	60,231
Liquidation cost (excluding the fee of Liquidator)	59,130
fee of Liquidator	14,48,965
Total	15,68,326

16. It is admitted position that the Appellant had consented it will realise the secured asset in the manner provided under Section 52(1)(b) of the Code,

and decided the reserve price to be Rs 2,24,15,000/- (rupees two crores, twenty-four lakhs and fifteen thousand only). The Respondent / Liquidator, on 15.05.2023, requested the Appellant to remit the pending CIRP / liquidation cost, including the fee of the Liquidator, which is a condition precedent as mandated under Regulation 21-A(2) of the Liquidation Process Regulations, 2016. Two emails dated 11.05.2023 and 15.05.2023 are relevant and are reproduced as follows:

“11.05.2023 – From Appellant to Respondent - Liquidator:

We hereby intimate you that the reserve price for the Auction of 1.10 Hectare of land at Survey No. 20, Khate No. 31, Mouza Dabha, Tehsil: Nandagaon, Khandeshwer, District: Amravati, Maharashtra is to be kept at Rs. 2,24,15,000/-. We hereby request you to inform us within 21 days of the receipt of this intimation under Regulation 37(1) whether any person is willing to buy the said assets before the Expiry of thirty at a higher price. If no such intimation is received from you within 21 days, we would continue the Auction process and realize our security interest.

15.05.2023 – From Respondent – Liquidator to Appellant:

Furthermore, please be advised that as per Regulation 21A(2) of Liquidation Regulations, 2016 [(2) where a secured creditor proceeds to realise its security interest, it shall pay (a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date.....

Once the amount is received and we have verified the claim submitted by you, will intimate our decision on realization of security interest.”

17. The Appellant sought clarification on 07.06.2023 regarding the calculation of the fee and the same was duly replied on 12.06.2023 by the Respondent / Liquidator explaining the import of Regulation 21-A(2) and Regulation 2(ea) of the Liquidation Process Regulations, 2016. The Liquidator again requested the Appellant to remit the liquidation cost.

18. The matter was also discussed in the 2nd Stakeholder's Consultation Committee (SCC) Meeting held on 26.07.2023 regarding the non-relinquishment of the security interest by the Secured Creditors. The relevant extract is as follows:

“Liquidator apprised the members that he has received claim from 6 (six) secured Financial Creditors of which 2 (two) Financial creditors i.e. Shikshak Sahakari Bank Limited and UCO Bank, have not relinquished their security interest to the liquidation estate and therefore, they have not been included in the Stakeholders Consultation Committee as per the provisions of Regulation 31A.”

19. The matter relating to the sharing of the cost as per the mandate of Regulation 21-A of the Liquidation Process Regulations, 2016, was once again discussed through emails. The Appellant once again took up the matter with the Liquidator on 27.06.2023 about their intent to sell the secured asset and assured that their share of cost shall be paid as per the mandate of Regulation 21A. On 19.07.2023, the Liquidator informed the Appellant that the 90-day period as per Regulation 21A has expired.

20. On 31.07.2023, the Appellant wrote to the Liquidator again, disputing the fee of the Liquidator.

21. The Respondent relies upon this Tribunal's judgment in '**State Bank of India Vs. Navjit Singh in Company Appeal (AT) (Insolvency) No. 151 of 2022**' and also another judgement of this Tribunal in 'Comp. App. (AT)(Ins) No. 1027 of 2021 in **Small Industries Development Bank of India (SIDBI) v. Shri Vijender Sharma.**'

22. The Respondent / Liquidator vehemently opposes the Appeal and contends that the fee payable is as per the Regulations and Orders of the Adjudicating Authority need not be interfered.

Appraisal

23. We have gone through the material on record and heard both parties on 27.11.2024.

24. The Appeal arises from the direction by the NCLT to the Appellant, Shikshak Sahakari Bank Ltd., to pay the Liquidator's fee amounting to Rs 25,47,229/- (rupees twenty-five lakhs, forty-seven thousand, two hundred and twenty-nine only). The Corporate Insolvency Resolution Process (CIRP) against Narendra Solvex Pvt. Ltd. commenced on 16.09.2021 but yielded no resolution, resulting in the Liquidation Order dated 27.01.2024. The Respondent / Liquidator issued a public announcement under Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016, on 06.04.2023. The Appellant filed its claim under 'Form D' for Rs 5,95,45,557/- (rupees five crores, ninety-five lakhs, forty-five thousand, five hundred and fifty-seven only) while explicitly opting not to relinquish its security interest over certain assets. The Liquidator requested the Appellant to pay CIRP costs, liquidation

costs, and the Liquidator's fee as per Regulation 21A. The Appellant disputed the Liquidator's fee, asserting that the Respondent had not realised or distributed the assets and that the fee claimed contravened Regulation 4 of the Liquidation Process Regulations, 2016.

25. The issues which arise from the facts of the case are as follows:

- I. Whether the Liquidator's fee is payable even if the Liquidator did not directly realise or distribute the secured asset?
- II. Whether the Appellant has complied with Regulation 21A of the Liquidation Process Regulations, 2016?

26. The Appellant / Shikshak Sahakari Bank Ltd. is a Secured Creditor who decided not to relinquish security interest and opted to realise its security interest through its own proceedings under the SARFAESI Act. On 11.05.2023, the Appellant intimated the Respondent / Liquidator its intent to realise the secured asset in the manner as provided under Section 52(1)(b) of the Code and decided the reserve price to be Rs 2,24,15,000/- (rupees two crores, twenty-four lakhs and fifteen thousand only). Accordingly, the Appellant sent an email to the Respondent / Liquidator intimating about their intent to realise the secured asset in the manner provided under Section 52(1)(b) of the Code. The Liquidator in turn, on 15.05.2023, requested the Appellant, Shikshak Sahakari Bank Ltd., to remit the CIRP/liquidation cost including the fee of the Liquidator which is a condition precedent as mandated under Regulation 21-A(2) of the Liquidation Process Regulations, 2016. The Appellant has been seeking clarifications with respect to the

calculation of the liquidation cost, which has been duly replied to time and again by the Respondent / Liquidator, along with the provision of Regulation 21-A(2) and also Regulation 2(ea) of the Liquidation Process Regulations, 2016.

27. The Adjudicating Authority has directed the Appellant to release the money and pay the liquidation fee as per Regulations 4(3) and 4(4) of the Liquidation Rules, 2016.

28. Regulation 21-A of the Liquidation Process Regulations, 2016, mandates Secured Creditors to inform the Liquidator of their decision to realise their security interest and to pay their share of the liquidation costs¹ within 90 days. It was agreed by the Appellant that the liquidation cost will

¹ **Liquidation cost** provided in Section 5(16) of IBC 2016 to be read with Regulation 2(ea).

Section 5(16) of IBC 2016: 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.

Regulation 2(ea) (ea): “liquidation cost” under clause (16) of section 5 means-

- (i) fee payable to the liquidator under regulation 4;
- (ii) remuneration payable by the liquidator under sub-regulation (1) of regulation 7;
- (iii) costs incurred by the liquidator under sub-regulation (2) of regulation 24;
- (iv) costs incurred by the liquidator for preserving and protecting the assets, properties, effects and actionable claims, including secured assets, of the corporate debtor;
- (v) costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern;
- (vi) interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower;
- (vii) the amount repayable under sub-regulation (3) of regulation 2A;
- (viii) any other cost incurred by the liquidator which is essential for completing the liquidation process:

Provided that the cost, if any, incurred by the liquidator in relation to compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013), if any, shall not form part of liquidation cost.

be shared as per Regulation 21-A but was raising clarifications regarding its calculations and which was clarified also by the liquidator again and again and this exchange was going on for quite some time.

29. We have looked into the import of Regulation 21-A(2) and also Regulation 2(ea) of the Liquidation Process Regulations, 2016, and Section 5(16) (definition of liquidation cost) of IBC. For its better appreciation, the relevant Liquidation Process Regulations, 2016, of Regulation 21-A(2) is extracted as follows:

“21-A. Presumption of security interest. (1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:

Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

(2) Where a secured creditor proceeds to realise its security interest, it shall pay -

(a) as much towards the amount payable under clause (a) and sub- clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and

(b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date:

Provided that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator:

Provided further that any difference between the amount payable under this sub regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.

(3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.

Explanation. It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019.”

30. It will be clear from this provision that the Secured Creditor is mandatorily obligated to pay its share as per Section 53(1)(a) and 53(1)(b)(i) of the Code which provides for distribution of assets from the sale of liquidation assets in the order of priority. (waterfall mechanism). Further, Regulation 21A (3) of Liquidation Process Regulations, 2016, provides that where a Secured Creditor fails to comply with Sub-Regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.

31. The Appellant failed to comply with this mandate. The protracted email exchange between the parties confirms that despite repeated reminders, the Appellant neither paid full liquidation costs nor demonstrated compliance with Regulation 21A(2). The 90-day period from the liquidation commencement date also lapsed without payment of the requisite costs.

32. The Adjudicating Authority vide its Order dated 15.09.2023 had specifically directed the Appellant to pay the dues of the Liquidator, which is justified as per Regulation 21-A.

33. The Appellant has tried to place reliance upon the clarification issued by IBBI as noted at page 109 of appeal paper book in the form FAQ.

"Question 9. Suppose the Liquidator did not sell any assets of the corporate debtor but has merely distributed the assets (including cash or bank balance) available with the corporate debtor. Is the Liquidator still eligible for fee based on the amount realised as well as the amount distributed separately as per the table provided under regulation 4(2)(b) of the Liquidation Regulations?"

Answer. Since there was no realisation of assets by the Liquidator, he / she is not eligible for the fee based on the amount realised, i.e., first part of the table provided under regulation 4(2)(b) of the Liquidation Regulations. However, since the Liquidator has made distribution to the stakeholders, he/she is eligible for the fee based on the distribution as per second part of the said table."

This clarification may not be applicable in this case as this refers to a situation wherein the Liquidator did not sell assets of the Corporate Debtor but has merely distributed the assets. Further, in the facts of the case, the Respondent / Liquidator is taking care of the realisation of the assets through the Secured Financial Creditor and, for that reason, he has to coordinate for all the activities and it is his overall responsibility to take care of the realisation. In such a situation, as argued by the Appellant, the clarification provided under Sub-Regulation 2(b) may not be helpful for the Appellant.

34. The Respondent/Liquidator relies upon this Tribunal's judgment in

'State Bank of India Vs. Navjit Singh (supra) wherein it was held:

“.....

6. We have considered the submissions of Learned Counsel for the parties and perused the record. In so far as the claim of the Appellant is concerned of Rs. 29,34,54,879.59/- it has been admitted by the Liquidator the said claim is the claim admitted in the Liquidation Process and no further adjudication was called for with regard to the said claim. In the present case, the admission of the claim is not sought to be challenged by State Bank of India. In so far as the payment of Liquidator's Fee in paragraph 13 as noted above, Adjudicating Authority has disposed of the application with the direction to make payment of Liquidator's Fee and ensure compliance of Regulations 2(ea), 2A, 21A, 37 of the Liquidation Regulations and Section 52/53 of the Code. The order passed by the Adjudicating Authority does not warrant any interference. What was directed was as per Liquidation Regulation 21A as extracted in Paragraph 10 of the Judgment from which it is clear, even if the secured creditor proceeds to realise its security interest it is liable to pay fee as contemplated under Regulation 21A (2)(a). The Adjudicating Authority has only directed the Applicant to follow the regulations as noted in paragraph 13.”

35. The Respondent/Liquidator also relies upon this Tribunal's judgment in **Small Industries Development Bank of India (SIDBI) v. Shri Vijender Sharma (supra)** wherein it was held that:

“21. It thus becomes quite clear that compliance of regulations 2(ea), 2-A, 21-A and 37 of the Liquidation Process Regulations and Section 52/53 of the IBC are absolutely necessary even if the secured creditor proceeds to realise its security interest.

22. We thus, find that the liquidator has carried out his responsibility with due diligence and without any prejudice to Appellant or any other stakeholder, and therefore, cannot be held responsible for delay that has taken place in pursuing the liquidation of the corporate debtor. Therefore, we come to the conclusion that the Adjudicating Authority has not committed any error in excluding period from 30.11.2018 to 24.2.2020 from the liquidation process for calculation of liquidator's fees slab under Regulation 4 of the Liquidation Process Regulations. Being devoid of merit, the appeal is dismissed.”

36. Both the above judgements support the case of the Respondent/liquidator.

Conclusions and Order:

37. In brief, with respect to the Secured Financial Creditor, the situation is clearly enumerated in Regulation 21-A(2)(a), which is applicable in this case. The Liquidator's fee is also prescribed under Regulation 4. Regulations 4(1) and 4(1A) provides primacy to CoC and consultation Committee. The Respondent's claim that the Liquidator is entitled for a fee under Regulation 4(2)(b) only when he has actually realised or distributed any amount is not tenable in the light of Regulation 21A. We don't find any infirmity in the orders of the Adjudicating Authority. The Appeal is, therefore, dismissed. All related IAs pending, if any, are closed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
11th December, 2024.**

pawan