



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

**I.A.(I.B.) No. 582 (KB)/2022
IN
C.P.(IB) No. 1573(KB)/2019**

*An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 and 43 of NCLT Rules, 2016*

In the matter of:

Vinod Kumar Agarwal

.....Operational Creditor

Versus

Quantum Concrete LLP

.....Corporate Debtor

And

In the matter of:

Satish Patodia, Erstwhile Resolution Professional

.....Applicant

Versus

Sushil Agarwal, Liquidator

.....Respondent No.1

Date of Hearing:07.09.2022

Date of pronouncing the order: 18.11.2022

Appearances (through Video Conferencing/physical hearing)

For the Applicant

:Mr.Rahul Parasrampur, PCS

: Mr. Satish Patodia, Erstwhile Resolution Professional

For the Liquidator

:Mr. Rachit Lakhmani, Advocate

:Mr.SiddhantMakkar, Advocate

Coram:

Rohit Kapoor: Member (Judicial)

Balraj Joshi: Member (Technical)



ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This IA has been filed under section 60(5) of IBC Code 2016 by erstwhile resolution professional of Corporate Debtor seeking payment of Rs. 6,19,196/- from the respondents as the balance fee of resolution professional. Further direction has been sought to direct the respondent to produce the documents and information relating to liquidation process and the services being availed from IPE.
2. Vide order dated 22 January 2021, an order of liquidation of Corporate Debtor was passed by this adjudicating authority in view of the decision of COC to liquidate the Corporate Debtor. As IRP appointed by this adjudicating authority did not wish to continue as the liquidator, one Shri Sushil Agarwal was appointed as the liquidator.
3. While claiming the reliefs, the applicant in this IA has contended in para 5 that an amount of Rs.35.40 lacs of rupees was incurred as the cost of IPE. Applicant has further contended that the liquidator did not carry out his task properly and the amount of IPE expenses incurred by the liquidator is highly inappropriate.
4. This Adjudicating Authority on 5 August 2022 vide its order sought details of this amount of Rs. 35.40 lacs. Pursuant to this order, the liquidator has filed his affidavit. It is stated in para 15 of this affidavit that considering the asset position and complexity of assignment, the applicant refused to be appointed himself as the liquidator while filing the application seeking liquidation of CD, whereas the liquidator with the help of IPE team successfully identified the assets and sold the assets of Corporate Debtor as per the applicable provisions and regulations of code 2016. It is also contended in para 16 by the liquidator that he is a resident of Jharkhand whereas the registered office of Corporate Debtor is at Kolkata, West Bengal. Suffice it to say the liquidator has tried to justify the appointment of IPE and incurring the expenses thereof. It is also



stated by liquidator in para 19, that he realized an amount of ₹40 lacs from sale of assets of Corporate Debtor and this was higher than average liquidation value arrived at by the registered valuers. It is further stated by the liquidator that liquidation cost was more than the realization from the sale of assets of Corporate Debtor and stakeholders did not contribute to the excess cost, therefore, the liquidator had to make proportionate payment to the professionals including the IRP/applicant, IPE and himself. An amount of Rs. 23,44,804 was distributed amongst the professionals at the proportionate rate of 41.03%. The IPE received an amount of Rs.14,52,425 at a proportionate rate as his fee for services provided.

5. Be that as it may, a question may arise as to why in the first instance liquidator should incur much high expense in the liquidation process when the realizable value of the assets in a case is low and, in this case, it was even less than the expense of professionals engaged plus other costs. Regulation 4(2)(b) of Insolvency and Bankruptcy Board of India (Liquidation process) regulations 2016 contains a provision regarding *liquidator's fee* only which stipulates limits on payment of liquidator fees proportionate. A similar proportionate cap on the fee to be paid by the liquidator to the professionals hired by him as per Section 35(4)(i) may require to be incorporated in the regulations by IBBI.
6. However, presently considering the application of the applicant, affidavit referred above filed by the liquidator and scope of this Adjudicating Authority of intervention, we do not find any substance in this application and therefore this application is **rejected**.

Balraj Joshi

Member (Technical)

Rohit Kapoor

Member (Judicial)

The order is pronounced on the 18th day of November, 2022