

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 566 of 2025

[Arising out of the Order dated March 04, 2025, passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Chandigarh Bench) in IA 893/2020 in CP(IB) No.67/CHD/PB/2017]

IN THE MATTER OF:

Bhupesh Gupta, Ex-Liquidator,
Supreme Tex Mart Limited, 2181,
Sector 38-C, Chandigarh-160036

...Appellant

Versus

Mr. Ravinder Kumar Goel, Liquidator,
Regd office: Supreme Tex Mart Limited,
B-72, Focal Point, Phase VIII,
Ludhiana -141010
Having office at Flat No.211,
Platinum Tower, Peer Muchalla,
Dhakoli, Sahibjada Ajit Singh Nagar,
Punjab - 160104.

...Respondent

Present:

For Appellant : Dr. Rajansh Thukral, Dr. Surekha Thukral, Mr.
Sidharth Thukral and Mr. Shubham Gupta,
Advocates.

For Respondent : Mr. Atul U Sood, Advocate for Liquidator.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal is filed by Mr Bhupesh Gupta, Ex-Liquidator of Supreme Tex Mart Limited, under Section 61(1) of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rules 11 and 19 of the NCLAT Rules, 2016, challenging the Order dated 04.03.2025 passed by the NCLT, Chandigarh (AA), in IA No. 893/2020. The Impugned Order denies the

Appellant any remuneration for his tenure as Liquidator, despite undisputed service of over a year, substantial recoveries made during going concern operations, and absence of any allegations of misconduct or inefficiency.

Brief facts of the matter

2. Before proceeding further, we are bringing the chronology of events as captured below, leading to the present Appeal:

Date	Particulars
29.09. 2017	Admission of Corporate Debtor into CIRP
11.10. 2017 to 07.08. 2018	Appellant served as IRP / RP
08.08. 2018 to 31.10.2019	Appellant served as liquidator
01.11.2019	By order of NCLT Chandigarh, Appellant was replaced as liquidator on health grounds and present Respondent, Ravinder Kumar Goel, was appointed as Liquidator, taking the place of Appellant.
18.11.2020	IA 893/2020 filed by Appellant before NCLT Chandigarh for claiming liquidation fees from 08.08.2018 -31.10.2019
28.09. 2022	NCLT Chandigarh dismissed IA 893/2020 with the observations: “No case has been made out by the Ex-Liquidator in the present case regarding any realization or distribution beyond the sale of one asset i.e. Toyota C.ar, and released an amount of Rs.2,60,000/-.”
11.03. 2024	NCLAT New Delhi vide order dt. 11.03.2024 set aside NCLT order dt. 28.09. 2022, by directing as follows: “The matter is remanded back to the Learned Tribunal which restoring the application I.A. No. 893 of 2020. The parties are directed to appear before the Tribunal on 20.03.2023. It is made clear that the appellant shall give a break-up of the sales that has been made during the period of liquidation i.e. within six months, next 6 months, next one year etc. and the Tribunal shall take into consideration the sales effected by the Liquidator in terms of Clause 2.1 of the circulars dated 28.09.2023 and pass an appropriate order in accordance with law”.

25.04. 2024	Appellant filed an Affidavit (vide diary no.01810/4 dt. 25.04.2024) in furtherance of Hon'ble NCLAT order dt. 11.03.2024 and as per the consequent direction by NCLT Chandigarh dt. 20.03.2024.
27.05. 2024	In response to the Appellant's Affidavit, a Counter Affidavit was filed by the present Liquidator vide diary no. 01810/6 dt. 27.05.2024.
08.07.2024	Then the Appellant filed a Response affidavit to the Counter Affidavit filed by the present Liquidator / Respondent.
12.11.2024 17.12.2024	Part arguments were heard on 12.11.2024. Remaining arguments heard on 17.12.2024 and matter was reserved.
04.03.2025	NCLT Chandigarh passed Impugned order dt. 04.03.2025

3. Earlier, the AA had dismissed the same application by Order dated 28.09.2022, which was set later aside by this Appellate Tribunal in its Order dated 11.03.2024, in Company Appeal (AT) (Ins) No. 1434 of 2022. The NCLAT remanded the matter with a specific direction to consider the breakup of sales of approximately ₹ 278.47 crores affected during liquidation and to re-adjudicate the application accordingly. The orders of this Appellate Tribunal are extracted as follows:

“....

2.

3. The appellant has thus worked as a Liquidator of the Corporate Debtor from 08.08.2018 to 01.11.2019 (for one year and 84 days).

4. ...

5. ..

6. ..

7. Counsel for the appellant has submitted that the case of the appellant is covered by the pre-amended Regulation 4 of the Regulations as his claim starts from 08.08.2018 and ends on 01.11.2019 whereas the amendment in Regulation 4 came into effect from 25.07.2019.

8. Counsel for the appellant has submitted that as per the un-amended provision of Regulation 4 (3), the Liquidator is entitled to a fee as a percentage of the amount realized, He has also referred to a circular of the IBBI dated 28.09.2023 in which the word 'amount realized' has been explained/clarified. Clause 2.1 of the said circular read as under:

“2.1 Amount realised: Regulation 4(2)(b) provides that the fee shall be “as a percentage of the amount realised net of other liquidation costs, and of the amount distributed for the balance period of liquidation....”

"Amount realised means an amount that is being realised from the sale of an asset where the asset changes form.
.....

Clarification: ‘Amount realised’ shall mean amount realised from assets other than liquid assets such as cash and bank balance including term deposit mutual fund, quoted share available on start of the process after exploring compromise and arrangement, if any.”

9. On the basis of the aforesaid, it is contended that it has now been clarified by the IBBI that ‘amount realized’ would mean the amount realized from the sale of the asset where the asset changes form. He has been candid enough to submit that where the asset is already liquid such as cash and bank balance including term deposits, mutual funds and quoted shares, then it would not be the realisation of the asset because it is already available for the purpose of distribution to the stakeholders.

10. ...

11. ...

12. We have heard counsel for the parties and after perusal of the record are of the considered opinion that there is an error in the approach of the Tribunal while rejecting the application filed by the appellant which deserves to be reconsidered in terms of the order being passed herein. The issue in the present case is that the appellant effected various sales during the period he remained the liquidator of the Corporate Debtor which has been set up by the appellant in the claim application filed before the present Liquidator in which it is shown that total amount of sale is Rs. 78,47,31,778/- and the appellant is accordingly entitled to the percentage of fee in respect of the sales effected in the first six months, next 6 months, next one year and thereafter etc.

13. However, this aspect of the matter has not been taken into consideration either by the present Liquidator or by the Ld. Tribunal whereas it is very much clear not only from Regulation 4 (3) (unamended provision) that the amount realized is to be considered but also from Circular dated 28.09.2023 by which the term “amount realized” has been further clarified which we have already mentioned hereinbefore.

14. Thus, in view of the aforesaid facts and circumstances, the present appeal succeeds and the impugned order is hereby set aside whereby the application filed by the appellant bearing I.A. No. 893 of 2020 has been dismissed. The matter is remanded back to the Learned Tribunal which restoring the application I.A. No. 893 of

2020. The parties are directed to appear before the Tribunal on 20.03.2023. It is made clear that the appellant shall give a break-up of the sales that has been made during the period of liquidation i.e. within six months, next 6 months, next one year etc. and the Tribunal shall take into consideration the sales effected by the Liquidator in terms of Clause 2.1 of the circular dated 28.09.2023 and pass an appropriate order in accordance with law.”

Submissions made by the Appellant

4. The amended definition of “liquidation cost” under Regulation 2(1)(ea), as inserted via notification dated 25.07.2019, cannot be taken with retrospective effect based on an IBBI circular dated 28.09.2023. A subordinate legislation such as a circular cannot operate retrospectively to alter vested rights or obligations unless expressly permitted by the parent statute. In the present case, the Corporate Debtor ceased to carry on business as a going concern on 31.03.2019 — well before the amendment came into force — and, thus, all relevant facts, conduct, and financial events had already crystallised under the then existing legal framework. Applying the amended Regulation 2(1)(ea) retrospectively to include operational expenses prior to 25.07.2019 as liquidation cost and, consequently, reducing the Appellant’s entitlement to zero, amounts to altering accrued benefits ex-post facto and is legally untenable.

5. Appellant has relied on the decision of the Hon’ble Supreme Court in **(1987) 3 SCC PD Aggarwal and Ors vs State of UP and Ors**, wherein it was served that there is no cavil with the proposition that the government has the power to make and amend rules giving retrospective effect.

6. There were clear and binding directions issued by the NCLAT in its Order dated 11.03.2024, wherein the Tribunal was specifically directed to consider the sales revenue of ₹ 78.47 crores generated during the going concern period as part of “realisation” for the purpose of calculating the Appellant’s remuneration under Regulation 4(3) of the IBBI (Liquidation Process) Regulations, 2016. Despite the said direction, the AA rejected the Appellant’s claim solely on the ground that there was no “realisation,” save for a nominal amount from sale of a vehicle, thereby violating the scope and spirit of the Remand Order. In para 19 of the Impugned Order dated 04.03.2025, the AA once again held that the only realisation was ₹ 2.6 lakhs from the sale of a car, ignoring the entire turnover generated from operations, contrary to the clear direction and ratio of the NCLAT. This constitutes non-compliance with the binding Appellate Order and misapplication of Regulation 4(3).

7. The Impugned Order, dated 04.03.2025, has overstepped the scope of remand as laid down by the NCLAT in its Order dated 11.03.2024. The NCLAT had clearly directed that the AA reconsider the Appellant’s claim for fees in light of the ₹ 78.47 crores realisation during the going concern period, treating the same as “realisation” under Regulation 4(3). Instead of complying with the remand direction, the AA has dismissed the application based on a new ground, that operational costs exceeded revenues, which was never raised earlier nor permitted by the Appellate Order. By introducing a fresh basis for adjudication and ignoring the binding remand scope, the AA has effectively

re-written the NCLAT's judgment, which is impermissible in law and amounts to exceeding its jurisdiction. It is well settled that a court or tribunal, while exercising powers post-remand, cannot travel beyond the confines of the remand order [***KL Tripathi vs State Bank of India, AIR 1984 SC 273; Narinder Nath vs Union of India, (1996) 8 SCC 54***]. The Impugned Order, therefore, deserves to be set aside on this ground alone.

8. The AA has interpreted the term “realisation” under Regulation 4(3) to mean only proceeds from sale of assets in liquidation and has ignored the substantial revenue generated by the Corporate Debtor during the period it was operated as a going concern. Such a narrow interpretation defeats the purpose of Regulation 4(3), which permits computation of the Liquidator’s fee based on realisation net of other liquidation costs, which includes sales revenue generated from continuing operations. The Appellate Tribunal had already held that the sales turnover of ₹ 78.47 crores must be treated as "realisation." The AA’s rejection amounts to non-compliance with the law laid down by the Appellate Tribunal. Regulation 4(3) of the Liquidation Regulations provides for the computation of Liquidator's fees as a percentage of “amount realised net of other liquidation costs.” The term “realisation” includes all receipts earned during the liquidation period, including sales generated through going concern operations. However, the AA in para 19 erroneously disregarded this sales turnover and misapplied Regulation 4(3). Further, for the purpose of computation of realisation, neither the IBC nor Rules/Regulations made thereunder, nor the IBBI (Liquidation Process)

Regulations, 2016, intend to create a distinction between the classes or types of assets under the liquidation estate of the Corporate Debtor. The distinction between the current and the fixed assets under the IBC propounded by the Respondent is purely fictional and non-est in the eyes of law. This restrictive interpretation of “realisation” defeats the purpose of incentivising Liquidators to operate the CD efficiently and maximise value.

9. The Appellant had specifically prayed that in the event Regulation 4(3) is deemed inapplicable, the Tribunal may be pleased to lay down an alternative criterion for determining the Appellant’s fees for the period he served as the Liquidator. However, the AA has completely failed to return any finding or exercise its discretion in this regard. This amounts to non-application of mind and denial of natural justice. It is a settled law that judicial authorities must adjudicate upon all material prayers raised before them. The Appellant had specifically prayed that if Regulation 4(3) is held inapplicable, the AA may be pleased to lay down an alternative criterion for fee computation. There is no discussion or finding regarding any alternative mechanism for computing the Liquidator's fees. It is a settled principle, as held in ***Union of India vs Mohan Lal Capoor [(1973) 2 SCC 836]*** and ***SN Mukherjee vs Union of India [(1990) 4 SCC 594]***, that judicial orders must deal with all material contentions and prayers. Failure to do so amounts to non-application of mind and denial of natural justice.

10. The Appellant was appointed as the Liquidator and, under express directions of the Tribunal, served as Liquidator of the CD for over a year and

eighty-four days, managing substantial business operations, employees, compliances, and stakeholders. During this period, he operated the CD as a going concern under the direction of the AA, managed business operations, coordinated with employees and vendors, ensured compliance, and safeguarded assets. Despite this, he has been denied any remuneration merely because the company incurred operational losses. Such a denial is unjust and violates the Principle of Quantum Meruit under Section 70 of the Indian Contract Act, 1872, which entitles a person to reasonable compensation for non-gratuitous services. It is submitted that the main idea behind the Principle of Quantum Meruit is that a person who has done certain work deserves to be paid for that work. It does not matter whether there is a legally enforceable contract or not. In this case the work has been assigned by none other than AA, through an order of appointment, inter alia, to keep the CD as a going concern and, AA, being the court of law, was bound to award some compensation in some manner at least, if it felt that the remuneration could not be paid as per Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016.

11. In ***Mulamchand vs State of MP (1968) 3 SCR 214***, the Supreme Court held that the provisions of Section 175 (3) of the Government of India Act are mandatory in character and based on public policy. Therefore, the formalities that are stipulated when contracts are entered into on behalf of the government cannot be waived or dispensed with. In dealing with a claim made under Section 70 of the Contract Act, this Court then went on to hold:

“..... In other words, if the conditions imposed by Section 70 of the Indian Contract Act are satisfied then the provisions of that section can be invoked by the aggrieved party to the void contract. The first condition is that a person should lawfully do something for another person or deliver something to him; the second condition is that doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third condition is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. If these conditions are satisfied, Section 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered. The important point to notice is that in a case falling under Section 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach of the contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something”.

12. The Appellant claims that it is incorrect to hold that the entire operational expenses incurred during the going concern period (eg, purchase of raw materials, salaries, utilities, etc) constitute “liquidation costs” under Regulation 2(1)(ea), without offsetting the substantial sales revenue generated during that period. It is respectfully submitted that the true cost of keeping the CD as a going concern is the net operational loss, i.e, operational costs minus sales revenue, not the gross expenses alone. Including the gross expenditure without adjusting for income grossly inflates the liquidation cost and misrepresents the actual economic burden on the estate. This approach is inconsistent with the value maximisation objective of the IBC and violates the principle of Proportionality and Fairness. The interpretation with respect to true cost of keeping CD as going concern is aligned with Regulation 2(1)(ea) and the logic of Regulation 4(3), which speaks of netting liquidation cost

against realisation. Treating gross operational expenses as liquidation costs without adjusting for revenue creates a distorted picture of value and unfairly penalises the Liquidator.

13. The Appellant also claims that there were opening balances of finished stocks and debtors lying in the custody of CD on the date of commencement of liquidation and even the realisation of the same has been arbitrarily ignored. These opening balances of finished stocks and debtors have been realised by the Appellant during the liquidation period for an amount of about ₹ 52 crores, and there is no element of cost incurred during the liquidation period on the realisations of such stocks and debtors. The AA has failed to appreciate on merits that the Liquidator is entitled to fee on realisation of such assets, forming a part of the liquidation estate of the CD.

14. The Appellant also contends that the fundamental purpose of the IBC is to maximise the value of assets for the benefit of stakeholders. Running the company as a going concern pursuant to the directions of AA itself, was intended to preserve asset value and employee livelihood. Denying fees to the Liquidator simply because the operations resulted in a net loss discourages future Liquidators from undertaking going concern operations, thereby undermining the very objective of the Code. Sections 20 and 35(1)(e) of the IBC stress the importance of preserving the Corporate Debtor as a going concern to ensure value maximisation. The Liquidator's actions were in furtherance of this objective. Denying the fees amounts to a punitive action and punishing the Liquidator for a bona fide effort to preserve and enhance

value is solely because the operations resulted in a net loss this sets a regressive precedent and undermines the Code's purpose.

15. Regulation 4(3) does not make the payment of Liquidator's fee contingent upon net profitability or surplus realisation. Even in cases of lower or no realisation, the Appellant is entitled to remuneration in accordance with:

- the slab-based structure of fees in the regulations
- the value of services rendered, and
- judicial directions that guided the Appellant's efforts
- to deny fees based on the outcome, despite full compliance with duties, is unjust and inequitable.

To deny fees entirely based on the outcome, despite full compliance with responsibilities and directions, is unfair, contrary to law, and will discourage qualified professionals from accepting liquidation assignments in the future.

16. The Appellant claims that it had a legitimate expectation that his appointment and continued performance as the Liquidator were governed by the framework of the IBC and the Liquidation Regulations with respect to payment of remuneration and he would be duly compensated for his unblemished efforts. He undertook the assignment with the legitimate expectation that his fees would be determined in accordance with the prescribed slab under Regulation 4(3) and based on the realisations generated during the liquidation, including from running the CD as a going concern and other recoveries. Further, after the remand by the NCLAT vide Order dated 11.03.2024, which attained finality, the Appellant was entitled to expect that the remand would be adjudicated strictly within the directions issued therein

— namely, by treating the ₹ 78.47 crores as “realisation” for the purposes of Regulation 4(3). However, by introducing an altogether new ground and denying the Appellant any fee, the AA has violated the Appellant’s legitimate expectation of fair adjudication, undermining both his economic interest and the trust placed in the statutory process.

17. Supreme Court in Civil Appeal Nos. 7256-7259 of 2024 in the matter of ***Army Welfare Education Society New Delhi vs Sunil Kumar Sharma & Ors etc***, in its judgment dated 09.07.2024 has dwelled at length on the law relating to the Doctrine of Legitimate Expectation part (ii) of the judgment in para 43 onwards and in para 48 culled out the features regarding the Doctrine of Legitimate Expectation as under:

“48. A reading of the aforesaid decisions brings forth the following features regarding the doctrine of legitimate expectation:

- a. First, legitimate expectation must be based on a right as opposed to a mere hope, wish or anticipation;
- b. Secondly, legitimate expectation must arise either from an express or implied promise; or a consistent past practice or custom followed by an authority in its dealings;
- c. Thirdly, expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be treated as a legitimate expectation;
- d. Fourthly, legitimate expectation operates in relation to both substantive and procedural matters;
- e. Fifthly, legitimate expectation operates in the realm of public law, that is, a plea of legitimate action can be taken only when a public authority breaches a promise or deviates from a consistent past practice, without any reasonable basis;

f. Sixthly, a plea of legitimate expectation based on past practice can only be taken by someone who has dealings, or negotiations with a public authority. It cannot be invoked by a total stranger to the authority merely on the ground that the authority has a duty to act fairly generally.”

18. The Appellant claims that its case squarely falls in the ambit of law summarised by the Supreme Court with respect to payment of remuneration for having worked for the CD on the directions of AA for a long period of one year and eighty-four days, for which he is being denied any remuneration.

19. The Appellant also furnished a detailed statement of the various duties, actions, and responsibilities performed during his tenure as Liquidator, including:

- i. Running the Corporate Debtor as a going concern for over a year
- ii. Managing business operations, employees, vendors, and customers
- iii. Ensuring compliance with statutory and regulatory obligations
- iv. Safeguarding and maintaining the asset base
- v. Coordinating with stakeholders and filing requisite reports

20. Appellant also claims that despite the comprehensive record of these efforts, there was no rebuttal or challenge to the Appellant’s submissions either by the successor Liquidator or any of the stakeholders. Furthermore, the AA did not make any adverse findings or observations regarding the performance, conduct, or bona fides of the Appellant. In view of this, the unchallenged record of services rendered stands admitted, and it clearly establishes that the Appellant acted diligently and in good faith to preserve the Corporate Debtor as a going concern and to maximise value for all stakeholders. It is a settled principle of law that unchallenged and unrebutted averments are deemed to be admitted, and where services have been rendered

in accordance with the directions of the Tribunal and objectives of the IBC, the Appellant is entitled to be reasonably and fairly compensated, regardless of the eventual profitability or realisations. Failure to award any compensation under these circumstances amounts to grave injustice and denial of natural justice and warrants intervention by this Appellate Tribunal.

21. Appellant also claims that the basis for dismissal of the Appellant's claim in the Impugned Order dated 04.03.2025 namely, that the operational costs exceeded the realisations and therefore no fee is payable, was neither a ground raised by the Respondents in the earlier round before the AA nor argued before the NCLAT in the prior Appeal. This new basis was never considered in the AA's earlier Order dated 28.09.2022, and there was no Appeal against the NCLAT's Order dated 11.03.2024, which attained finality and specifically remanded the matter for reconsideration of the Appellant's fee in light of the ₹78.47 crores sales realisation. By entertaining and adjudicating a fresh ground post-remand, the AA has exceeded its jurisdiction and committed a grave procedural illegality that undermines the finality of appellate directions and opens the door to endless litigation.

22. In addition to running the CD as a going concern, the Appellant claims to be actively and successfully pursuing the recovery of various outstanding government dues for the benefit of the liquidation estate. These include:

- (1) Recovery of outstanding GST refunds amounting to ₹1,39,75,410/-
- (2) Recovery of outstanding duty drawback of ₹ 4,60,386/-
- (3) Recovery of insurance claim amounting to ₹ 8,30,77,161/-
- (4) Recovery from PM Yojna Fund of ₹ 22,920/-

These recoveries were directly attributable to the Appellant's efforts and have been recorded in the Liquidation Progress Reports. However, the AA, in the Impugned Order dated 04.03.2025, failed to make any reference to these substantial realisations and recorded no reasoning as to why the Appellant is not entitled to fees on such recoveries. These sums qualify to the assets of the CD and qualify as "amount realised" within the meaning of Regulation 4(3) of the IBBI (Liquidation Process) Regulations, 2016. Therefore, the Appellant is rightfully entitled to Liquidator's fees as per the prescribed percentage slab. The omission to adjudicate upon this critical component of the claim renders the Impugned Order incomplete and unjust.

Submissions made by the Respondent

23. Respondent claims that the main contention of the Applicant in the present Application is regarding his claim regarding fee/remuneration during the period when the Applicant acted as Liquidator. In this regard it is pertinent to note that the Applicant was appointed as Liquidator on 08.08.2018. The Applicant continued to hold office as the Liquidator up to 31.10.2019 for one year and eighty-four days, ie, from 08.08.2018 to 31.10.2019. During this period, the Applicant drew an amount of ₹ 31.09 lakhs as remuneration for acting in the capacity of Liquidator of the CD out of the funds of the CD in liquidation.

24. The Appellant, while acting as Liquidator, drew his remuneration of ₹31 lakhs for the liquidation period out of the liquidation estate. It is pertinent to mention here that no resolution was approved by the COC in

COC meeting pertaining to the Liquidator's fee. However, the Appellant continued to draw the same fee that he was charging in the capacity of Resolution Professional without any authorisation from the COC.

25. IBBI had also issued show cause notice to the Appellant, Mr Bhupesh Gupta, based on the findings of an inspection conducted by Inspecting Authority in respect of the conduct of the Appellant as Liquidator of Supreme Tex Mart Limited for drawing fee as Liquidator without any approval from the COC in contraventions to Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016, and various other provisions of the Code. IBBI observed that where the Liquidator fees has not been decided by the COC during CIRP, then the Liquidator is entitled to fee as per Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016. The IBBI further observed that by continuing to draw same fees in the capacity of Liquidator, as he was taking in the capacity of RP, the Applicant has acted in contravention of the above said regulation. Further, the IBBI ordered that the Applicant must deposit an amount of ₹ 31,09,000/- in the liquidation estate of the CD. The IBBI also observed that the Applicant is at liberty to claim Liquidator fee in accordance with the provisions of Regulation 4(3) of the IBBI (Liquidation Process) Regulations, 2016.

26. There is no explicit provision in IBC pertaining to any payment of monthly remuneration to the Liquidator. Sections 34 (8) and (9) of the Code deal with the fee to be paid to the Liquidator. The Liquidator shall be paid for the conduct of liquidation proceedings in proportion to liquidation estate

assets decided by the Board. Relevant portion of Section 34 of the Code has been reproduced herein as under:

“Section 34. Appointment of Liquidator and fee to be paid-
(8) An Insolvency Professional proposed to be appointed as a Liquidator shall charge such fee for the conduct of liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

(9) The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53.”

27. It is further submitted that Regulation 4 of IBBI (Liquidation Process) Regulations, 2016, specifically pertains to Liquidator's fee. As per this provision, the set mechanism for determining the Liquidator's fee has been given. Firstly, the Liquidator's fee shall be decided by the COC. Secondly, in cases where the fee of the Liquidator has not been decided by the COC, the Liquidator should draw the fee in accordance with Regulation 4 of IBBI (Liquidation Process) Regulations, 2016, which deals with the Liquidator's fee. The relevant provision has been reproduced herein:

“Regulation 4. Liquidator's fee-

(1) The fee payable to the Liquidator shall form part of the liquidation cost

(2) The Liquidator shall be entitled to such fee and in such manner as has been decided by the COC before a liquidation order is passed under Sections 33 (1) (a) or 33 (2)

(3) In all cases other than those covered under sub-regulation

(4) The Liquidator shall be entitled to a fee as a percentage of the amount realised net of other liquidation costs, and of the amount distributed

(5) 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. Therefore, it is clear from the above provisions that where COC fails to approve the Liquidator's fee, the fee payable to the Liquidator for his services shall be ascertained in

the manner provided in the table given under Regulation 4(3) IBBI (Liquidation Process) Regulations, 2016.”

28. In the present application, where Liquidator fee was not decided by COC, the Applicant is entitled to fee as a percentage of amount realised net of liquidation cost as per Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016. And the Applicant shall be paid on realisation of entire assets of the CD as per Section 53 (3) of the IBC.

29. Appellant claims a fee of ₹ 111.11 lakhs presuming the CD is liquidated for ₹ 159.17 crores. However, as per Respondent the said claim does not have any legal basis. As per the regulations mentioned above, the Appellant is entitled to be paid as per the amount realised from the assets of the CD during his period of acting as Liquidator. However, factually during the tenure of Appellant only one asset being a Toyota car was sold and an amount of ₹ 2,60,000/- was realised for the same.

30. The Appellant further claims a fee based on the sales and realisation made in due course of business during the period when CD was being run as a going concern. However, it is submitted that there is no provision in law for any fee to be paid to a Liquidator for sales and realisation made during the period of CD being run as a going concern, including current assets, if any. The Code and the regulations only provide for fee to Liquidator pursuant to sale and realisation of assets of CD, where the provision for sale of assets is provided in Regulation 32 of IBBI (Liquidation Process) Regulations, 2016.

31. In any case, the IBBI Order dated 21.04.2020 against the Applicant has not been set-aside by any authority till date and the same still holds ground. By way of present application, the Applicant is trying to question the legality and validity of the said IBBI Order.

32. In this regard the present Liquidator also sent an email on 19.11.2020 requesting the Applicant to deposit the amount of ₹ 31,09 lakhs pursuant to IBBI Order dated 21.04.2020, however, the same has not been deposited till date. It is further submitted that the present Liquidator is only acting as an officer of the Tribunal to assist in the best possible manner by apprising this Tribunal with the applicable legal provisions and the present Liquidator is not denying the claim of Applicant for any personal gain or for any reason which is not as per law. This Tribunal may decide the present application as per the applicable laws.

Appraisal:

33. In this case the Appellant-Ex-liquidator had sought determination of his fee for the period he was working as Liquidator, as nothing was being paid to him even after the case was remanded by this Appellate Tribunal to the AA. Appellant-Ex-liquidator's prayers are noted as below:

“1. Set aside the impugned order dated 04.03.2025 passed by the Hon'ble NCLT.

2. Declare that the sales revenue of Rs. 78.47 crore together with other recoveries made by the Appellant constitutes "realisation" under Regulation 4(3) and pass an appropriate order directing the Respondent (successor Liquidator) to pay the Appellant liquidator's fee out of the liquidation estate, based on realizations attributable to the Appellant's tenure and recoveries made by him.

3. Alternatively, lay down a fair and reasonable basis for computing the Appellant's fees for the services rendered that may be identical with the fees paid to the Appellant and his team during CIRP.

4. Pass such other orders as may be just and proper in the facts and circumstances of the case.”

34. Both Appellant-ex-Liquidator and the present liquidator have made claims and counterclaims with respect to fees for ex-Liquidator which are being summarised in tabular form as below:

Claims of the Appellant-ex Liquidator	Claims of the Respondent-Liquidator
<p>NCLAT in its Order dated 11.03.2024, had directed to consider the sales revenue of ₹ 78.47 crores generated during the going concern period as part of “realisation” for the purpose of calculating the Appellant’s remuneration under Regulation 4(3)</p> <p>AA rejected the Appellant’s claim solely on the ground that there was no “realisation,” save for a nominal amount from sale of a vehicle.</p> <p>Impugned Order dated 04.03.2025, has overstepped the scope of remand as laid down by the NCLAT in its Order dated 11.03.2024.</p> <p>AA dismissed the application based on a new ground, that operational costs exceeded revenues, which was never raised earlier nor permitted by the Appellate Order.</p> <p>AA has effectively re-written the NCLAT's judgment.</p>	<p>Appellant claims a fee of ₹ 111.11 lakhs presuming the CD is liquidated for ₹ 159.17 crores. However, the said claim does not have any legal basis.</p> <p>Appellant is entitled to be paid as per the amount realised from the assets of the CD during his period of acting as Liquidator. And during the tenure of Appellant only one asset being a Toyota car was sold and an amount of ₹ 2,60,000/- was realised for the same.</p>

<p>AA has interpreted the term “realisation” under Regulation 4(3) to mean only proceeds from sale of assets in liquidation and has ignored the substantial revenue generated by the CD during the period it was operated as a going concern. Such a narrow interpretation defeats the purpose of Regulation 4(3) which permits computation of the Liquidator’s fee based on realisation net of other liquidation costs, which includes sales revenue generated from continuing operations.</p> <p>The Appellate Tribunal had already held that the sales turnover of ₹ 78.47 crores must be treated as "realisation."</p> <p>Net realization was ₹81,38,63,787.</p>	<p>There is no provision in law for any fee to be paid to a Liquidator for sales and realisation made during the period of CD being run as a going concern, including current assets, if any.</p> <p>The Code and the regulations only provide for fee to Liquidator pursuant to sale and realisation of assets of CD, where the provision for sale of assets is provided in Regulation 32 of IBBI (Liquidation Process) Regulations, 2016</p> <p>IBBI had also issued show cause notice to the Appellant based on the findings of an inspection conducted by Inspecting Authority in respect of the conduct of the Appellant as Liquidator of CD for drawing fee as Liquidator without any approval from the COC in contraventions to Regulation 4(3) of IBBI & other provisions of the Code.</p> <p>IBBI further observed that by continuing to draw same fees in the capacity of Liquidator, as he was taking in the capacity of RP, the Applicant has acted in contravention of the abovesaid regulation. IBBI also ordered that the Applicant must deposit an amount of ₹ 31,09,000/- in the liquidation estate of the CD. IBBI Order dated 21.04.2020 against the Applicant has not been set-aside by any authority till date and the same still holds ground.</p> <p>By way of present application, the Applicant is trying to question the legality and validity of the said IBBI Order.</p>
<p>Claims that liquidation cost is not ₹ 1,25,11,89,961.02.</p>	<p>As per the Tally Data provided by the Appellant, it has failed to</p>

	<p>take into account the following Liquidation costs:</p> <ul style="list-style-type: none"> ▪ Amount paid towards total Purchases made: ₹ 98,24,35,228.63 ▪ Indirect expenses incurred by Appellant: ₹ 20,46,30,993.35 ▪ Direct expenses incurred by Appellant: ₹ 6,41,23,739.04 ▪ Total: ₹ 1,25,11,89,961.02.
Relying on Audit Report (placed on record by IA 1323 / 2023) claims that liquidation cost is just ₹7,97,02,365	Reliance is misconceived as the Audit Report pertains to only unpaid liquidation cost. Claims that it is unpaid amount out of total purchases made during liquidation period for ₹98,24,35,228.63.
<p>The true cost of keeping the CD as a going concern is the net operational loss, ie, operational costs minus sales revenue, not the gross expenses alone.</p> <p>Including the gross expenditure without adjusting for income grossly inflates the liquidation cost. Treating gross operational expenses as liquidation costs without adjusting for revenue creates a distorted picture of value and unfairly penalises the Liquidator.</p>	<p>If the version of Appellant is to be considered, i.e., Net realization is ₹81,38,63,787 and the Liquidation Cost is only ₹7,97,02,365, then it will amount to a Profit of ₹ 73,41,61,422, which it claims to be highly unrealistic.</p>
Opening balances of finished stocks and debtors have been realised by the Appellant during the liquidation period for an amount of about ₹ 52 crores, and there is no element of cost incurred during the liquidation period on the realisations of such stocks and debtors. Liquidator is entitled to fee on realisation of such assets, forming a part of the liquidation estate of the CD	Even if it is assumed that the said sales can be considered as Realisation for the purpose of Regulation 4 as aforesaid to determine the fees of Liquidator, then also the same can be determined only after excluding the Liquidation Cost, which in present case is ₹1,25,11,89,961.02 and once this is deducted from the purported realisations stated to be made by Applicant, then nothing remains as realisation for which any fees can be paid in terms of Regulation 4.

35. Appellant claims that the amended definition of “liquidation cost” under Regulation 2(1)(ea), as inserted vide notification dated 25.07.2019, cannot be taken with retrospective effect based on an IBBI circular dated 28.09.2023. It is also claimed that a subordinate legislation such as a circular cannot operate retrospectively to alter vested rights or obligations unless expressly permitted by the parent statute. In the present case, the Corporate Debtor ceased to carry on business as a going concern on 31.03.2019 — well before the amendment came into force — and, thus, all relevant facts, conduct, and financial events had already crystallised under the then existing legal framework. Applying the amended Regulation 2(1)(ea) retrospectively to include operational expenses prior to 25.07.2019 as liquidation cost and, consequently, reducing the Appellant’s entitlement to zero, amounts to altering accrued benefits ex-post facto and is legally untenable. It is also claimed by the Appellant that the AA was specifically directed by this Appellate Tribunal to consider the sales revenue of ₹ 78.47 crores generated during the going concern period as part of “realisation” for the purpose of calculating the Appellant’s remuneration under Regulation 4(3) of the IBBI (Liquidation Process) Regulations, 2016. Despite the said direction, the AA rejected the Appellant’s claim solely on the ground that there was no “realisation,” save for a nominal amount from sale of a vehicle, thereby violating the scope and spirit of the Remand Order. It is claimed by the Appellant that the AA has interpreted the term “realisation” under Regulation 4(3) to mean only proceeds from sale of assets in liquidation and has ignored the substantial revenue generated by the Corporate Debtor

during the period it was operated as a going concern and such a narrow interpretation defeats the purpose of Regulation 4(3), which permits computation of the Liquidator's fee based on realisation net of other liquidation costs, which includes sales revenue generated from continuing operations. Furthermore, it is the claim of the appellant that the term "realisation" includes all receipts earned during the liquidation period, including sales generated through going concern operations. It also claims that the AA disregarded this sales turnover and misapplied Regulation 4(3). It is also claimed that for the purpose of computation of realisation, neither the IBC nor Rules/Regulations made thereunder, nor the IBBI (Liquidation Process) Regulations, 2016, intend to create a distinction between the classes or types of assets under the liquidation estate of the Corporate Debtor. The distinction between the current and the fixed assets under the IBC propounded by the Respondent is purely fictional and non-est in the eyes of law. This restrictive interpretation of "realisation" defeats the purpose of incentivising Liquidators to operate the CD efficiently and maximise value. Appellant also claims that the basis for dismissal of the Appellant's claim in the Impugned Order dated 04.03.2025 namely, that the operational costs exceeded the realisations and therefore no fee is payable, was neither a ground raised by the Respondents in the earlier round before the AA nor argued before the NCLAT in the prior Appeal.

36. The respondent which is the present liquidator claims that herein Liquidator fee was not decided by COC, therefore, the Appellant is entitled to fee as a percentage of amount realised net of liquidation cost as per

Regulation 4(3) and the Appellant shall be paid on realisation of entire assets of the CD as per Section 53 (3) of the IBC. Appellant claims a fee of ₹ 111.11 lakhs presuming the CD is liquidated for ₹ 159.17 crores. However, as per Respondent the said claim does not have any legal basis. The Appellant is entitled to be paid as per the amount realised from the assets of the CD during his period of acting as Liquidator. However, factually during the tenure of Appellant only one asset being a Toyota car was sold and an amount of ₹ 2,60,000/- was realised for the same. There is no provision in law for any fee to be paid to a Liquidator for sales and realisation made during the period of CD being run as a going concern, including current assets, if any. The Code and the regulations only provide for fee to Liquidator pursuant to sale and realisation of assets of CD, where the provision for sale of assets is provided in Regulation 32 of IBBI (Liquidation Process) Regulations, 2016.

37. After re-hearing of the matter as per remand of this Appellate Tribunal the Appellant was denied any remuneration for his tenure as Liquidator in the impugned order passed by the AA [NCLT, Chandigarh (AA)] dated 04.03.2025 in IA No. 893/2020. The Adjudicating Authority, after noting the definition of “liquidation cost” as per the Code and several amendments in the Regulations relating to “liquidation cost” and also amendments relating to Regulation 4 of the Liquidation Regulations for payment of “liquidators fees” and also after noting the clarifications issued by IBBI, after the judgement of ***Hon'ble High Court of Bombay in case of Amit Gupta Vs. Insolvency and Bankruptcy Board of India & Anr. [Writ Petition (Lodging) No. 34701 of 2023, Judgement dt. 04.04.2024]*** came to the following conclusion:

“...

21. In view of the above, we are of the considered view that the cost of purchase, direct, indirect and other costs need to be considered in working out the liquidation cost in the present matter. Accordingly, the liquidation cost in the present case works out as under:

	Rs
Amount paid towards total purchases made	98,24,35,228.63
Indirect expenses incurred by Mr. Gupta	20,46,30,993.35
Direct expenses incurred by Mr. Gupta	6,41,23,739.04
Liquidation cost as determined by Audit Report (placed on record by IA 1323/2023)	7,52,81,004.00
Total liquidation cost	1,32,64,70,965.02

22. Since the Sales realization as per the submission of both the Applicant and Respondent are significantly less than the liquidation cost, nothing remains as realization for which any fees can be paid in terms of Regulations 4 of the Liquidation Regulations.

23. As a sequel to the discussion above, we are of the considered view that the Applicants’ claim for fees amounting to Rs,188,02,261/- is not tenable under Regulation 4 read with 2(1) (ea) of the Liquidation Regulations read with section 5(16) of the IBC.

24. As a result, the present IA is dismissed, however without any costs, and disposed of accordingly.”

[Emphasis supplied]

38. We further note that the Appellant was appointed as Liquidator on 08.08.2018 and continued to hold office as the Liquidator up to 31.10.2019.

During this period, the Appellant drew an amount of ₹ 31.09 lakhs as remuneration for acting in the capacity of Liquidator of the CD, out of the funds of the CD in liquidation, which was drawn out of the liquidation estate. It is pertinent to mention here that no resolution was approved by the COC in its meeting pertaining to the liquidation proceedings. However, the Appellant continued to draw the same fee that he was charging in the capacity of Resolution Professional without any authorisation from the COC. IBBI had also issued show cause notice to the Appellant based on the findings of an inspection conducted by Inspecting Authority in respect of the conduct of the Appellant as Liquidator of the CD for drawing fee as Liquidator without any approval from the COC in contraventions to Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016, and various other provisions of the Code. IBBI in its order on 21.04.2020 ordered that the Applicant must deposit an amount of ₹ 31,09,000/- in the liquidation estate of the CD. The IBBI also observed that the Applicant is at liberty to claim Liquidator fee in accordance with the provisions of Regulation 4(3) of the IBBI (Liquidation Process) Regulations, 2016. Moreover, this order has not been set aside by any authority so it has attained finality.

39. Before proceeding further, we note the amendment with respect to Regulation 2 for determination of liquidation cost, which was issued by IBBI on 25.07.2019¹, with its comparison with un-amended version in a tabular format, as below:

¹ Substituted by Notification No. IBBI/2019-20/GN/REG047 dated 25th July, 2019 (w.e.f. 25-07-2019).

Regulation 2(1) (ea)¹ for liquidation cost under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016	
Prior to 25.07.2019	Post amendment of 25.07.2019
<p><u>"Liquidation cost"</u> under sub-section (16) of section 5 means-</p> <p>(a) fee payable to the liquidator under regulation 4; (b) remuneration payable by the liquidator under regulation 7; (c) cost incurred by the liquidator under regulation 24, and (d) 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</p>	<p><u>"Liquidation cost"</u> under clause (16) of section 5 means-</p> <p>(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^{1[***]} under sub-regulation (3) of regulation 2A; (viii) any other cost incurred by the liquidator which is essential for completing the liquidation process:</p> <p>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.</p>

Comparative picture reveals that the above amendment expanded the items of cost to be considered for determination of Liquidators fees. Before amendment dated 25th July, 2019¹ in the Liquidation Regulations, the liquidation cost under Regulation 2(1)(ea) had four components. IBBI issued another Circular on 28.09.2023² only to clarify the position, on the four new components of liquidation cost, which are discussed hereinafter.

40. It is also to be noted that vide the same notification of 25.07.2019¹, IBBI modified the Regulation 4 with respect to liquidator's fees, which is noted as below with both amended and amended version in a tabular form:

Regulation 4 for liquidator's fees¹ under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016	
Prior to 25th July, 2019	Post 25th July, 2019
<p>4. Liquidator's fee.</p> <p>(1) The fee payable to the liquidator shall form part of the liquidation cost.</p> <p>(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 sections 33(1)(a) or 33(2).</p> <p>(3) In all 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:</p> <p>.....</p> <p>.....</p>	<p>4. Liquidator's fee.</p> <p>(1) The fee payable to the liquidator shall be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.</p> <p>²[(1A) Where no fee has been fixed under sub-regulation (1), the consultation committee may fix the fee of the liquidator in its first meeting.]</p> <p>(2) In cases other than those covered under sub-regulation (1) ²[and (1A)], the liquidator shall be entitled to a fee-</p> <p>(a) at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and</p> <p>(b) <u>as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation, as under:</u></p> <p>.....</p> <p>.....</p> <p>³[Clarification: For the purposes of clause (b), it is hereby clarified that where a liquidator realises any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realised by him. Where a liquidator distributes any amount, which is not realised by him, he shall be entitled to a fee corresponding to the amount distributed by him.]</p> <p>(3) <u>Where the fee is payable under clause (b) of sub-regulation (2), the liquidator shall be entitled to receive half of the fee payable on realisation</u></p>

² Inserted by Notification No. IBBI/2022-23/GN/REG094, dated 16th September, 2022 (w.e.f. 16-09-2022).

³ Inserted by Notification No. IBBI/2020-21/GN/REG062 dated 5th August, 2020 (w.e.f. 05-08-2020).

	<p><u>only after such realised amount is distributed.</u></p> <p>Clarification: Regulation 4 of these regulations, as it stood before the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 shall continue to be applicable in relation to the liquidation processes already commenced before the coming into force of the said amendment Regulations.]</p>
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It is to be noted that both in amended as well as unamended provisions the fees payable to the Liquidator shall be as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation. For further clarification with respect to “other liquidation cost” as noted in Regulation 4(2)(b), IBBI issued another circular on 28.09.2023⁴, the relevant extract of which are noted as below, which provides detailed clarification for determination of Liquidators fees, as extracted below:

“The term **“Amount of Realisation (exclusive of liquidation costs)”** given in the table in Regulation 4(2)(b) mandates that all liquidation costs are to be deducted from the realisation amount. However, as per regulation 4(2)(b), **“other liquidation cost”** is to be deducted from realisation. There is a gap in understanding in the market about what components of the liquidation cost are to be excluded from the liquidation cost to derive “other liquidation cost”.

The term “Amount of Realisation (exclusive of liquidation costs)” given in the table in Regulation 4(2)(b) mandates that all liquidation costs are to be deducted from the

⁴ Clarification w.r.t. Liquidators’ fee under clause (b) of sub-regulation (2) of Regulation 4 of IBBI (Liquidation Process) Regulations, 2016 dated 28.09.2023.

realisation amount. However, as per regulation 4(2)(b), “other liquidation cost” is to be deducted from realisation. There is a gap in understanding in the market about what components of the liquidation cost are to be excluded from the liquidation cost to derive “other liquidation cost”.

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In few cases, liquidators are only considering process cost as “other liquidation cost” and thereby, exclude the cost incurred in preserving and protecting the assets of the CD, and running the CD as a going concern to calculate “other liquidation cost”. Before amendment dated 25th July, 2019 to the Liquidation Regulations, the liquidation cost under Regulation 2(1)(ea) had four components. To clarify the liquidation cost, through aforesaid amendment four new components of liquidation cost were added. In some cases, it is being wrongly interpreted that these newly added four components, *inter-alia*, such as going concern costs etc., are to not be considered as the liquidation cost in respect of all those cases where the liquidation process commenced before the aforesaid amendment. Since these four components are paid in priority to payment to stakeholders as per section 53 of the Code by virtue of it being liquidation cost under section 53(1)(a), these newly added components were always part of the liquidation cost irrespective of the date of commencement of liquidation process. Any other interpretation would create uncertainty about the priority of payment of these components of liquidation cost over payment to stakeholders.

Furthermore, the term “other liquidation cost” existed right from the inception of liquidation regulations and thus could not have meant to exclude certain components of

liquidation costs from “liquidation costs” which were added by a subsequent amendment in 2019.

Clarification: The “other liquidation cost” in regulation 4(2)(b) shall mean liquidation cost paid in priority under section 53(1)(a), after excluding the liquidator’s fee.”

[Emphasis supplied]

41. On the contrary, the Appellant has tried to argue that it is incorrect to hold that the entire operational expenses incurred during the going concern period (eg, purchase of raw materials, salaries, utilities, etc) constitute “liquidation costs” under Regulation 2(1)(ea), without offsetting the substantial sales revenue generated during that period. It claims that the true cost of keeping the CD as a going concern is the net operational loss, ie, operational costs minus sales revenue, not the gross expenses alone. It also claims that by including the gross expenditure without adjusting for income grossly inflates the liquidation cost and misrepresents the actual economic burden on the estate. We don’t find any ambiguity in the above clarifications in the IBBI circular that, since these four new components are paid in priority to payment to stakeholders as per Section 53 of the Code by virtue of it being liquidation cost under Section 53(1)(a), these newly added components were always part of the liquidation cost irrespective of the date of commencement of liquidation process.

42. In the light of above clarification issued by IBBI on 28.09.2023 the issue is settled with respect to the cost being incurred to keep the CD as a going concern during liquidation process. As a result, we don’t agree with the

arguments presented by the Appellant and go along with the arguments of the present Liquidator-Respondent on this count. Basis clarifications noted above we agree with the Respondent that the term “*other liquidation cost*” could not have meant to exclude certain components of liquidation costs from “liquidation costs” which were added by a subsequent amendment in 2019¹.

43. The Appellant has relied upon the decision of Hon’ble Supreme Court reported as **(1987) 3 SCC - PD Aggarwal and Ors vs State of UP and Ors**, wherein it was observed that there is no cavil with the proposition that the government has the power to make and amend rules giving retrospective effect. Nevertheless, such retrospective amendments cannot take away the vested rights, which have accrued, and the amendments must be reasonable and conform to the provisions of the Constitution. The Appellant claims that he is, therefore entitled to have his fee determined in accordance with Regulation 4(3), based on realisations and liquidation cost as understood prior to 25.07.2019. This judgment is of no avail to the Appellant as we had noted earlier that there was no ambiguity in the above clarifications in the IBBI circular that since these four components are paid in priority to payment to stakeholders as per Section 53 of the Code by virtue of it being liquidation cost under Section 53(1)(a), these newly added components were always part of the liquidation cost irrespective of the date of commencement of liquidation process.

44. Now we proceed to go into the meaning of “amount realized” as per Code and Regulations and test it to find whether it has to be seen in broader sense

and not limiting to sales realisation of only fixed assets. From the materials placed on record, we find that the Corporate Debtor had ceased operations on 31.03.2019, and all recoveries and turnover relied upon by the Appellant for claiming Liquidator's fees, occurred prior to the amendment dated 25.07.2019. The Appellant contends that rights had already crystallised under the unamended regime, which was preserved for ongoing liquidation processes as per the clarification in the 2019 amendment itself. Appellant claims that during the liquidation period from 08.08.2018 to 31.10.2019, the Appellant oversaw business operations that generated a turnover of approximately ₹ 278.47 crores and effected recoveries from various government authorities, including over ₹ 81 crores in GST refunds and ₹ 28 crores in insurance claims. These sums were duly included in the liquidation estate and reported in progress reports. The Appellant had sought determination of his fee under Regulation 4(3), which permitted computation on the basis of realisations net of liquidation costs. Alternatively, the Appellant had sought to lay down an equitable and reasonable basis for computation of remuneration and grant such other reliefs as may be just and proper in the facts and circumstances of the case. The main contention of Appellant before this Appellate Tribunal as well as NCLT has been that his entitlement to fee cannot be based only on the sale of Asset (car which was sold for ₹ 2,60,000/-), but should also include realizations from the sale of goods during the period the Corporate Debtor was being run as a going concern. Appellant has also stated that he has effected the sales of goods amounting to ₹ 78,47,31,773/- during the Corporate Debtor being run as a

going concern, upon which he is entitled to fee as a percentage, as provided in Regulation 4(3). To support his contention, the Appellant also relied upon the Circular dated 28.09.2023⁴ issued by IBBI, and strongly relied upon Clause 2.1 of the said Circular, where the phrase 'amount realised' was explained in the said IBBI Circular.

45. It was brought to our notice that the Division Bench of Hon'ble High Court of Bombay in ***Amit Gupta Vs. Insolvency and Bankruptcy Board of India & Anr. [Writ Petition (Lodging) No. 34701 of 2023, Judgement dt. 04.04.2024]*** had struck down Clause 2.1 and Clause 2.5 of the IBBI Circular dated 28.09.2023 as being ultra vires the IBBI (Liquidation Process) Regulations, 2016, and the IBC, 2016, which has been relied heavily by the Appellant. Thereafter, IBBI vide their circular dated 18.04.2024, has also partially modified their earlier circular dated 28.09.2023 and has withdrawn para 2.1 and 2.5 of their original Circular dated 28.09.2023. Thereafter, the very basis of the argument of the Appellant has been struck down. On that basis only the AA has come to conclusion as in the impugned order that:

"22. Since the Sales realization as per the submission of both the Applicant and Respondent are significantly less than the liquidation cost, nothing remains as realization for which any fees can be paid in terms of Regulations 4 of the Liquidation Regulations.

23. As a sequel to the discussion above, we are of the considered view that the Applicants' claim for fees amounting to Rs,188,02,261/- is not tenable under Regulation 4 read with 2(1) (ea) of the Liquidation Regulations read with section 5(16) of the IBC."

[Emphasis supplied]

46. The Appellant relies on ***KL Tripathi vs State Bank of India, AIR 1984 SC 273; Narinder Nath vs Union of India, (1996) 8 SCC 54*** and claims that the law is well settled that a court or tribunal, while exercising powers post-remand, cannot travel beyond the confines of the remand order. The Impugned Order, therefore, deserves to be set aside on this ground alone. In this particular case the Order of this Appellate Tribunal dated 11.03.2024, remanding the case to the Adjudicating Authority noted as follows:

“Thus, in view of the aforesaid facts and circumstances, the present appeal succeeds and the impugned order is hereby set aside whereby the application filed by the appellant bearing I.A. No. 893 of 2020 has been dismissed. The matter is remanded back to the Learned Tribunal which restoring the application I.A. No. 893 of 2020. The parties are directed to appear before the Tribunal on 20.03.2023. It is made clear that the appellant shall give a break-up of the sales that has been made during the period of liquidation i.e. within six months, next 6 months, next one year etc. and the Tribunal shall take into consideration the sales effected by the Liquidator in terms of Clause 2.1 of the circular dated 28.09.2023 and pass an appropriate order in accordance with law.”

[Emphasis supplied]

Post the order of this Appellate Tribunal dated 11.03.2024, the Division Bench of ***Hon'ble High Court of Bombay in case of Amit Gupta (supra)***, in its judgment dated 04.04.2024 struck down Clause 2.1 and Clause 2.5 of the IBBI Circular dated 28.09.2023 as being ultra vires the IBBI (Liquidation Process) Regulations, 2016, and the IBC, 2016. It is to be noted that clause 2.1 was as follows:

“2.1 Amount realised: Regulation 4(2)(b) provides that the fee shall be “as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation....”

“Amount realised” means an amount that is being realised from the sale of an asset where the asset changes form. Where the asset is already liquid such as cash and bank balance including term deposits, mutual funds, and quoted shares, there is no ‘realisation’, and funds are readily available

for distribution. The amount realised, thus, implies the proceeds from the sale/realization from the liquidation of assets which are not liquid. Therefore, the liquidator is not entitled to a fee on realisation for these liquid assets and is entitled to a fee only on distribution.

Clarification: *“Amount realised” shall mean amount realised from assets other than liquid assets such as cash and bank balance including term deposit, mutual fund, quoted share available on start of the process after exploring compromise and arrangement, if any.”*

Thereafter, IBBI vide their circular dated 18.04.2024, had partially modified their earlier Circular dated 28.09.2023 and had withdrawn para 2.1 and 2.5 of their original Circular dated 28.09.2023. Appellant had relied very heavily on clause 2.1 and once the limb of the argument goes, then the claim of the ex-liquidator also cannot be sustained. The Adjudicating Authority looked into these changed circumstances, while passing the Order dated 04.03.2025 and with which we also concur with and therefore we do not find any infirmity in the orders of the AA, which had gone into the issue afresh basis new developments.

47. Looking into the legal provisions for the payment of liquidators' fees we find that Sections 34 (8) and (9) of the Code deal with the fees to be paid to the Liquidator. Relevant portion of Section 34 of the Code is reproduced herein as under:

“Section 34. Appointment of Liquidator and fee to be paid-

...

(8) An Insolvency Professional proposed to be appointed as a Liquidator shall charge such fee for the conduct of liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

(9) The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53.”

48. Further, when we look into the provisions of the Regulation which governs the payment of Liquidator's fees, we note that remuneration can be paid to Appellant only in terms of Regulation 4 (3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, as applicable to the Corporate Debtor, i.e., the unamended Regulation which stood before the amendment on 25.07.2019, i.e.,

“Regulation 4. Liquidator's fee.

(1)The fee payable to the liquidator shall form part of the liquidation cost.

(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 sections 33(1)(a) or 33(2).**

(3)In all 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.

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XXXX

(4)The Liquidator shall be entitled to receive half of the fee payable on realization under sub- regulation (3) only after such realized amount is distributed.”

[Emphasis supplied]

As per this provision, the set mechanism for determining the Liquidator's fee is that firstly, the Liquidator's fee shall be decided by the COC. Secondly, in cases where the fee of the Liquidator has not been decided by the COC, the Liquidator should draw the fee in accordance with Regulation 4 of IBBI (Liquidation Process) Regulations, 2016, which deals with the Liquidator's fee as noted above. In the present case, where Liquidator fee was not decided by COC, the Applicant was entitled to fee as a percentage of amount realised net of liquidation cost as per Regulation 4 of IBBI (Liquidation Process)

Regulations, 2016. And the Applicant shall be paid on realisation of entire assets of the CD as per Section 53 (3) of the IBC.

49. Without going into the details of calculations for determining fees ***“as a percentage of amount realized net of other liquidation costs”*** as provided in Regulation 4, we note that in any of the situations, nothing is payable to the Liquidator basis total amount realized, taken at the maximum and gross costs incurred. This has been noted by the AA as noted by us earlier and we don't find any infirmity in this finding.

50. The Appellant had sought determination of his fee under Regulation 4(3), which permitted computation on the basis of realisations net of liquidation costs. In the facts and circumstances of the case, we find that the Sales realization of ₹ 78.47 crs are significantly less than the liquidation cost of ₹132 crs, and nothing remains as realization for which any fees can be paid in terms of Regulations 4 of the Liquidation Regulations. Therefore, we find that the Applicants' claim for fees amounting to Rs,188,02,261/- is not tenable under Regulation 4 read with 2(1) (ea) of the Liquidation Regulations read with section 5(16) of the IBC and we don't find any infirmity of order of the Adjudicating Authority.

51. In the present case, where Liquidator fee was not decided by COC, the Appellant was entitled to fee as a percentage of amount realised net of liquidation cost as per Regulation 4 of IBBI (Liquidation Process) Regulations, 2016, which is found to be not payable. The alternative prayer of the

appellant that a fair and reasonable basis may be laid for computing the Appellant's fees for the services rendered, which may be identical with the fees paid to the Appellant and his team during CIRP Is not tenable, in the light of the facts and legal provisions, as has been discussed herein earlier.

Orders:

52. We therefore conclude that nothing is found payable to the Liquidator as Liquidator's fees. Appeal is dismissed. No orders as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

**New Delhi.
May 30, 2025.**

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