

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA (IB) No. 72/CB/2023

In

CP (IB) No. 135/CTB/2019

In the matter of:

An application under Rule 11 of the NCLT Rules, 2016;

-And-

In the matter of:

Mr. Gagan Bihari Bhuyan, Liquidator of Maa Tarini Industries Limited, Flat No-2162, 15th Floor, 2nd tower, DN Oxy Park, Dumduma, Bhubaneswar (M.C) , Khordha, Dumuduma, Housing Board Colony, Odisha- 751 019;

...Applicant/Liquidator

-Versus-

PEC Limited, through its Director Authorized Signatory, F Block, 3rd Floor, Flatted Factory Complex, F&G Block, Jhandewalan Jewellery Company, Rani Jhasi Road, New Delhi- 110 055.

...Respondent/Financial Creditor

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances:

For the Applicant : Mr. Gayan Bihari Bhuyan, Liquidator,
Party in Person

For the Respondent : Set ex-parte (on 16.05.2023)

Order reserved on: 31.07.2023

Order pronounced on: 05.09.2023

ORDER

Per: P. Mohan Raj, Member (Judicial)

1. This is an application filed under Rule 11 of NCLT Rule 2016, by the Liquidator for approval of Liquidation cost, and determination of liquidator's fee.



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2. The corporate debtor was ordered to Liquidation and the applicant was appointed as Liquidator by order of this Adjudicating Authority dated 13.07.2022 passed in I.A.No.176/CB/2022. In the said order it is mentioned that the fee of the Liquidator to be determined under Regulation 4 of Insolvency and Bankruptcy Board India (Liquidation process) Regulation 2016.
3. The applicant stated that the fee of liquidator not determined by the COC as provided under Regulation 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016. The consultation committee also not fixed the fee of the liquidator.
4. The applicant after assuming the office submitted estimated cost of liquidation as follows:

S.No.	Particulars	Estimated Cost (in Rs.)
1.	Newspaper Publication	25,500
2.	Travelling & Conveyance	35,000
3.	Xerox, Printing & Stationery, Courier, Speed Post and other Expenses.	15,000
4.	Legal Advisors (Professional Fee)	50,000
5.	Application to the NCLT for directions and other legal expenses	10,000
6.	Audit Fees (for Two Years)	20,000
7.	Other Miscellaneous Expenses	15,000
8.	IPE Fees (Lumpsum)	1,00,000
9.	Liquidation Fess (Lumpsum)	2,00,000



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	TOTAL	4,70,500
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5. The applicant relies upon the amendment in IBBI (Resolution Process for corporate persons) Regulation 2016. The said amendment came to an effect from 01.10.2022 but here the applicant was appointed as liquidator on 13.07.2022, the amendment has no retrospective effect.
6. The COC is consisting of a single member, the respondent herein. The total admitted claim of the creditors of corporate debtor is Rs.57,65,72,179/-The applicant claims amount in this application as mentioned in the email dated 12.01.2023 (Annexure-7) to the total extent of Rs.6,17,796/- The amount recovered from assets of the corporate debtor is Rs.2,69,344/-.
7. After filing this application, the applicant filed an affidavit on 25.06.2023 with invoices, in the affidavit the applicant submitted the consolidated claims till the end of May 2023. The details of the amount claimed in the affidavit are as follows:

S.No.	Particulars	Actual expenses up to May 23 (Rs)
1.	Public announcements	12096
2.	Xerox & Stationary (Rs2074) Postage (Rs.666)	2740
3.	Conveyance charge @Rs. 14/km & T.E*	18200
4.	Legal Charges (67500) & filing fees (5000)	72500
5.	IPE charges with GST	1,18,000
6.	Liquidator fees @ 96000 p.m** for 11 months (up to May 2023)	10,56,000
	Total Liquidation Cost	1,279,536



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8. From the comparison of estimated expenses and the expenses particulars furnished in the affidavit shows substantial variance in respect of legal charges and liquidator's fees.
 9. In respect of legal fee, the applicant estimated at Rs.50,000/- and claimed in his email dated 12.1.2023 at Rs.25,000/- but in the affidavit filed on 22.07.2023 raised the claim amount in respect of legal charges to Rs.72,500/-and liquidator fee at Rs.10,56,000/-. The liquidator submitted invoices for legal professional fee from the law firm. In fact, in this case, there is no dispute exist to engage an advocate, the invoices indicates that for preparation of progress report, the liquidator had engaged an advocate, of course, preparation of the progress report, and stakeholders list are part of the work of the liquidator. Except for the drafting and filing fee for early dissolution application, the engagement of advocate for the preparation and filing of progress report is overburdened the liquidation cost.
 10. In respect of liquidator's fee, the applicant given a total estimated fee of Rs.2,00,000/- but in an email dated 12.01.2023, he claims monthly remuneration of Rs.75,000/-for six months amounting to Rs.4,50,000/- In the affidavit, the liquidator claims a sum of Rs.96,000/- per month, for eleven months amounting to Rs.10,56,000/-.
 11. The amended regulation fixed a minimum fee of Rs.1 Lakh per month to the liquidator, but the amended regulation came into effect only from 01.10.2022, the said amendment is not applicable to the present case. The COC consists of single member the respondent, who has to bear the entire cost, the liquidation expenses is more than the amount recovered. The fee to be determined after considering the quantum of work involved and quantum of amount recovered. In this case compare with the quantum of work and recovered amount, the fee claimed by the applicant is on higher side.
 12. The applicant claims a sum of Rs.67,5000/- towards professional fee of an advocate, as mentioned earlier there is no contentious issue, only for



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preparation of progress report the services of an advocate availed, hence the legal fee claimed is reduced and fixed at Rs.50,000/- as claimed in the estimated cost.

13. The applicant claims a sum of Rs. 10,56,000/- towards his fee for the eleven months. The liquidator claimed liquidation fee at Rs.2,00,000/- in lumpsum, but now claims a sum of Rs.10,56,000/- this is more than five times of fee quoted in the estimated cost. In this case the recovered amount is Rs.2,69,364/- it does not even enough to meet the liquidation cost, hence the work of distribution of amounts to the stakeholders does not arise. The amount of Rs.2,69,364/- was available with the corporate debtor in cash even on the date of commencement of liquidation. No amount was recovered during the liquidation period. Thus, considering the quantum of work involved in this regard, the fee of liquidator is to be determined.
14. The liquidator estimated his fee in lumpsum at Rs.2,00,000/- with rider clause, the above amount is applicable, if the liquidation process is completed within four months. Now the liquidation period exceeds four months hence the fee is to be increased. The liquidation started on 13.07.2022 and the applicant prepared the early dissolution application and signed on 31.03.2023 and presented into the Tribunal on 11.04.2023, thus the liquidation period took nine months. The liquidator estimated his fee at Rs.50,000/- per month and claimed Rs.2,00,000/- for four months, now the applicant claims Rs.96,000/- per month it appears high, considering the nature of work carried out by him and quantum of work involved, the initial claim of applicant at Rs.50,000/- per month is reasonable. In the circumstances considering all the facts and circumstances cumulatively it is decided to fix a monthly fee of Rs.50,000/- for nine months accordingly liquidator fee is fixed at Rs.4,50,000/- in lumpsum.
15. From the above discussion the total liquidation amount arrived is at Rs.6,06,036/- after deducting the amount of Rs. 2,69,364/- available in the account of corporate debtor, the balance liquidation cost payable by the financial creditor is Rs.3,46,672/- rounded @ Rs.3,47,000/-

