

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 461 of 2025

**[Arising out of the Order dated 05.02.2025, passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Kolkata Bench), Court-I in I.A (Companies Act) No. 1 of 2025 in
T.P (Companies Act) No. 20 of 2022]**

IN THE MATTER OF:

CA Santanu Brahma,

(Liquidator of The Corporate Debtor

M/s. Maheswary Ispat Limited

Having his office at

AH 276 Salt Lake,

Sector II, Kolkata 700091

...Appellant

Versus

1. Indian Bank

Having its Stressed Assets Management Large

Branch at 14 India Exchange Place,

1" Floor, Kolkata 700001

...Respondent No.1

2. State Bank of India

Having its Stressed Assets Management

(SAM-II Branch at 8th Floor, Nagaland House,

11 & 13 Shakespeare Sarani, Kolkata-700071

...Respondent No.2

Present:

For Appellant : Mr. Shounak Mitra & Mr. Ishan Roy Chowdhury,
Advocates

For Respondent : Mr. Krishnendu Datta, Sr. Advocate with Mr.
Santosh Kumar Ray, Ms. Zeba Khan, Ms. Ritika
Khanwar and Mr. Yash Tandon, Advocates.

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

[Per: Arun Baroka, Member (Technical)]

Introduction

The present Appeal is being filed by the Liquidator-Appellant of
Maheswary Ispat Limited – Corporate Debtor under Section 61(1) of the

Insolvency and Bankruptcy Code, 2016 (hereinafter, “IBC”) against the impugned order dated 05.02.2025 (Impugned Order) passed by National Company Law Tribunal, Kolkata Bench (hereinafter, “AA”/ “NCLT”) in IA (Companies Act) No 1 of 2025 in T.P (Companies Act) No. 20 of 2022.

2. The Appellant - Liquidator contends that it was denied fees as per the provisions of the IBC and Regulation 4(2)(b) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“Liquidation Process Regulations”) – LPR 2016 in short) and also the impugned order is in the teeth of the judgment passed by this Hon’ble Tribunal in **Shikshak Sahakari Bank Limited vs Mr. Jagdish Kumar Parulkar** (Company Appeal (AT)(Ins.) No. 2023 of 2024) where near identical issues of fact and law were involved. The judgment of this Hon’ble Appellate Tribunal has been upheld upto Hon’ble Supreme Court which has dismissed the Civil Appeal No. 1973 of 2025 therefrom on 24.02.2025.

Submissions of the Appellant-Liquidator

3. A Company Petition was filed by Tata Capital Limited (erstwhile Tata Capital Financial Services Limited) before the Hon’ble High Court at Calcutta numbered as C.P. No. 560 of 2011 against the Corporate Debtor under the provisions of Sections 433, 434 and 439 of the Companies Act, 1956. The Hon’ble High Court admitted the said petition on 12.10.2012 and subsequently, by order dated 21.06.2016 read with order dated 28.11.2016, the Corporate Debtor was directed to be wound-up. Accordingly, the Official Liquidator was directed to take the possession of the Corporate Debtor. By order dated 17.05.2022 the Hon'ble High Court at Calcutta transferred the winding up proceedings to NCLT. Thereafter, pursuant to an application (IA

No. 103/KB/2023) filed by one of the Secured Creditors, State Bank of India (“SBI”), liquidation was commenced under the provisions of the IBC and the Appellant was appointed as Liquidator by order dated 19.12.2023 passed by the NCLT. The said order was brought to the notice of the Liquidator only on 10.01.2024. On 15.01.2024, the Appellant / Liquidator made a Public Announcement in Form B in the newspaper namely ‘Business Standard’ in English and ‘Aajkaal’ in Bengali, inviting stakeholders of the Corporate Debtor to file their claims. Accordingly, Indian Bank, being Respondent No. 1 herein and State Bank of India being Respondent No. 2 herein submitted their claims in Form D, on 17.01.2024 and 09.02.2024 respectively wherein they expressed their intention to not relinquish their security interest being pari passu first charge in respect of the Corporate Debtor’s Panagarh Factory situated at Village Beldanga, Panagarh- Morgram State Highway, Opposite Amrit Chicken, PO- Chota Ramchandrapur, PS - Kansa, District- Paschim Burdwan, Pin-713148 (“Panagarh Factory”).

4. By order dated 28.02.2024, the Hon’ble Tribunal excluded a period of 27 days from the Liquidation period pursuant to an application pursuant to IA No. 27/KB/2024 filed by the Appellant / Liquidator.

5. The 1st (first) meeting of the Stakeholder’s Consultation Committee (“SCC”) was held on 07.03.2024 wherein the remuneration of the Liquidator was decided by the stakeholders through e-voting. However, no voting share was assigned to Indian Bank and SBI, the Respondents herein, in terms of Regulation 31A(2) of the Liquidation Process Regulations, 2016.

6. The Liquidator made email communication dated 11.01.2024 with the office of Official Liquidator (“OL”) attached to the Hon’ble High Court at Calcutta, to initiate the handover proceedings and met the OL on 17.01.2024 to decide the way ahead. Thereafter, the Liquidator visited the OL’s office on 18.01.2024, 19.01.2024 and 31.01,2024 for inspecting the files and records relating to the instant liquidation matter. With permission from the OL, the documents and records were obtained by the Liquidator from the office of OL which were vital for the instant Liquidation proceedings.

7. After thorough verification of the documents, the Liquidator made an independent visit (prior to takeover of possession) to the Panagarh Factory to understand the state of affairs and to ensure the presence of the Assets (as per the list obtained from OL’s record) in the factory premises. During the same, the Liquidator observed that certain assets appearing in the list (retrieved from OL’s record) were not present in the factory premises. The Liquidator summarised his findings and thereafter sent an email on 29.02.2024 to the OL for his record. The same was also reported and discussed during the 1st SCC meeting.

8. Upon scrutinization of the Status Report dated 14.01.2022 filed by the OL, the Appellant / Liquidator came to know that Respondent No. 2 SBI by letter dtd.19.01.2017 had informed the OL that SBI as a Secured Creditor and lead banker under consortium arrangement had taken physical possession of Cuttack Unit (another asset) of the CD on 09.12.2015 under SARFAESI Act, 2002 and had taken only symbolic possession of the Panagarh Factory. The report further enumerates that by a letter dated 31.12.2021 SBI intimated the

OL that the said Cuttack Unit was sold by them through e-auction. The matter was also reported in the 1st SCC meeting wherein the Respondent Banks were present.

9. Notably, no document (as retrieved from OL's office) suggests that SBI made any effort to obtain physical possession of the Panagarh Unit and thereafter to sell the unit in order to ensure 'value maximization' of the CD's asset. SBI instead left the assets in an inoperative state causing 'value erosion' of the assets. Finally, on 14.03.2024, as a result of the perseverance of the Appellant Liquidator and several personal follow-ups with OL's Office, the Appellant was able to obtain handover of physical possession of the Panagarh Factory from the authorized representatives of the Official Liquidator in the presence of authorized representatives of State Bank of India and Indian Bank, the Respondents herein.

10. Pursuant to an email communication dated 29.02.2024 from the Appellant for compliance of Regulation 37(1) of the Liquidation Process Regulations, 2016, the Respondents provided their proposed realization value for the Panagarh Factory. The Respondent No. 1 via email dated 02.03.2024 intimated the intended value of the sale of the Panagarh Factory of INR 20 crores to the Appellant and the Respondent No. 2 herein, after Appellant's reminder email dated 08.03.2024, intimated the intended value of the sale of the Panagarh Factory at INR 15.79 crores, via email dated 12.03.2024, to the Appellant.

11. On 15.03.2024, the Appellant requested the Respondents to contribute jointly towards the liquidation cost of Rs. 1,34,55,000/- (Rupees One Crores

Thirty-Four Lakhs and Fifty-Five Thousand only) in compliance of Regulation 21A (2) of the IBBI (Liquidation Process) Regulations within 14.04.2024 (i.e. 90 days from the liquidation commencement date of 16.12.2023 after considering exclusion period of 27 days). The details of the share of the estimated liquidation costs of the Respondents were also elaborated in the said email. Furthermore, on 09.04.2024, the Appellant sent a reminder mail to the Respondents herein to make payment of their share of liquidation cost of Rs. 1,34,55,000/- (Rupees One Crores Thirty-Four Lakhs and Fifty-Five Thousand only) in terms of Regulation 21A(2) of the Liquidation Process Regulations, 2016 within 14.04.2024. Further, the Appellant informed the Respondents that non-payment of the share of liquidation expenses within 14.04.2024 may cause the Panagarh Factory to become part of the Liquidation estate in terms of Regulation 21(A)(3) of the Liquidation Process Regulations, 2016 thereby alerting the Respondent Banks to act as per the provision of IBC in a time bound manner in their own interest as well as overall interest of the Code.

12. In response to the said emails issued by the Appellant, the Respondent No. 1 informed the Appellant via email dated 12.04.2024 that a sum of Rs.21,55,706/- (which was 100% of the estimated liquidation cost excluding the Liquidator's fee) had been remitted to the designated bank account towards their share of Liquidation costs. The Respondent No. 1 also requested the Appellant / Liquidator to handover the possession of the Panagarh Factory solely to Respondent No. 1 as there was no term loan outstanding of Respondent No, 2 in respect of Panagarh Factory.

13. Importantly, the Respondent No. 1 gave an undertaking to make payment of the Liquidator's fee as per Regulation 4(2)(b) of the Liquidation Process Regulations, 2016, to be determined after sale of the Panagarh Factory. The Respondent No. 1 requested the Appellant herein to handover the physical possession of the said Panagarh Factory solely to Respondent No.1.

14. The Respondent No. 2, in response to the emails of the Appellant as mentioned above, informed the Appellant via email dated 12.04.2024, that an ad-hoc lump-sum payment of Rs. 5,40,000/- (25% of Rs. 21.55 lakhs being estimated liquidation cost excluding the Liquidator's fee) had been paid towards their share of Liquidation costs. Additionally, the Respondent No. 2 also gave an undertaking to pay its share of Liquidator's fee after successful completion of sale of the Panagarh Factory and requested the Appellant herein to handover possession of the Panagarh Factory.

15. Thus, relying on the undertakings provided by the two nationalized banks i.e. Indian Bank and State Bank of India, and honoring the time essence of the liquidation proceedings and to avoid unnecessary litigations, the Appellant proceeded to hand over the physical possession of the said Panagarh Factory to the Respondents jointly, on 30.04.2024 and accordingly a handover document was executed between the Appellant and Respondents on the same date. Notably, in the handover document dated 30.04.2024 jointly executed and signed by both the Respondent Secured Creditors, being nationalized banks, also record the agreement and undertaking of the Respondents to pay the Liquidator's Fees on completion of the sale of

Panagarh Factory in accordance with the formula mentioned in Regulation 4(2)(b) of the Liquidation Process Regulations, 2016 along with clerkage @ 5% thereon.

16. The Appellant has undertaken several measures for the purpose of taking care of the realisation of the assets through the secured financial creditors and for that reason has also coordinated with third parties and the secured financial creditors in order to ensure successful completion of sale of the Panagarh factory. Brief particulars of some of the steps taken by the Appellant in coordination with third parties are mentioned below:

- a. The Appellant coordinated with the office of the Official Liquidator to get possession of the Panagarh factory from the Official Liquidator.
- b. The Appellant made independent visits to the Panagarh Factory to make ground level assessment of the state of affairs at the factory premises so that appropriate measure can be taken to protect the structures and the assets lying there.
- c. The Appellant took handover of possession of the Panagarh factory from the Official Liquidator and took all necessary measures to preserve the said asset. Upon taking possession the Liquidator immediately engaged a new Security Agency so that strict vigilance can be exercised on the premises and structures and assets there at. During the Lok Sabha Elections in the month of April 2024, the Liquidator, through the Security Agency, coordinated with the local Police Station so that Licensed Gunmen with firearms be allowed to continue their duty in the said premises and for protection of the premises. During ground assessment it was felt by the Liquidator that without proper security including deputation of Gunman the assets under security interest of the Respondent Bank could not be protected in its true spirit.
- d. The Appellant has coordinated with the Respondents to ensure handover of possession to the Respondents.
- e. The Appellant was approached by several interested buyers who wanted to participate in the auction of the Panagarh Factory. The

Appellant has held meetings with such prospective buyers and has duly explained to them about the status of the liquidation proceedings and the auction process. The Appellant assisted the Respondents in liaising with prospective buyers.

- f. The Appellant has informed prospective buyers that the Panagarh Factory is with the respondent banks since they invoked their security interest. The Appellant has also requested the prospective buyers to contact the respondent banks and has ensured coordination between the respondent banks and prospective buyers.
- g. The Appellant has also coordinated with the consultants of the prospective buyers and informed them regarding the Environmental Clearance License (ECL) which is part of the Liquidation estate and has not been transferred to the respondent banks. The ECL is a very important document in the relevant business sector of the corporate debtor. Though the ECL has expired, the relevance of such a license is very important for initiating operation of the corporate debtor which involves production of 'Sponge Iron'.
- h. The Appellant has coordinated with the respondent banks and has also advised the two banks and sought to resolve difference of opinion between the two banks in relation to possession of the said asset. Notably, the Respondent no.1 was desirous to obtain sole possession of the Panagarh factory as will be evident from its email dated 02.03.2024 and subsequently in the email dated 12.04.2024. Similarly, the Appellant Liquidator was also requested by Respondent No. 2 to handover the possession of Panagarh Factory in favour of Respondent No. 2 as the original deed was mortgaged with them, which is evident from the email received from Respondent No. 2 on 12.03.2024. It is only due to the Appellant's timely intervention and assistance that differences between the respondent banks were resolved in an amicable manner without any litigation.

17. Thereafter on 24.10.2024, the Respondent No. 1 communicated to the Appellant Liquidator by email that the Panagarh Factory has been sold to H1 bidder, Manbhum Ispat Private Limited ("Manbhum Ispat") and buyer has deposited the sale consideration amount of INR 55.10 Crores on 21.10.2024. Consequent thereto, the 'Certificate of Sale' and possession has been handed

over to Manbhum Ispat. The copy of 'Certificate of Sale' has been provided by Respondent No. 1 via email dated 25.10.2024.

18. Considering that 30.56 acres of land were sold by the Respondents, out of the total area of 35.6 acres which has been physically transferred to the said Manbhum Ispat, the Appellant filed an application being IA (Comp. Act) No. 189/KB/2024 praying, inter alia, for direction on Manbhum Ispat to hand over the unsold 5.04 acres of land, which was handed over by the Respondents over and above the land of 30.56 acres sold by them. The NCLT by order dated 17.12.2024 directed Manbhum Ispat to hand over the excess land of 5.04 acres to the Liquidator within 2 months from the date of the pronouncement of the order.

19. The Appellant Liquidator prayed for recalling of the order dated 17.12.2024 by application no. IA No. 18/KB/2025 filed before Hon'ble NCLT, Kolkata after it came to his attention that the application (i.e. IA No. 200/KB/2024) pursuant to which the order dated 17.12.2024 was passed by NCLT, was not served on Manbhum Ispat. Simultaneously, an appeal CA (AT) (Ins) No. 161 of 2025 was filed by Manbhum Ispat before this Hon'ble Tribunal which was heard on 28.01.2025 and accordingly, the order dated 17.12.2024 was set aside with consent of the Appellant Liquidator with direction to revive IA No.200 of 2024 and for fresh hearing on the matter. The Adjudicating Authority by order dated 28.01.2025 noted the direction of this Appellate Tribunal and directed accordingly. The recalling application IA No. 18/KB/2025 was disposed of as infructuous.

20. On 25.10.2024, the 1st SCC meeting was held wherein the details on the determination of the share of liquidation cost upon the sale of Panagarh Factory as well as the liquidator's fees was discussed and shared with all the stakeholders including the Respondents by an email dated 26.10.2024.

21. After the successful completion of the sale of the said Panagarh Factory, the Appellant by an email dated 28.10.2024 requested the Respondents for contributing additional amount of Rs. 1,87,76,133/- (Rupees One Crore Eighty-Seven Lakhs Seventy-Six Thousand One Hundred Thirty Three only), jointly, towards the share of liquidation cost, in terms of proviso to Regulation 21A(2). In the said email it was clarified that the liquidator's fees arising upon sale of the said Panagarh Factory was determined as per the undertaking provided by the Respondents in their emails dated 12.04.2024 (issued for initial compliance of Regulation 21A) which was also agreed and recorded in para 5 of the handover document dated 30.04.2025, related to Panagarh Factory. The determination of INR 1,87,76,133/- has been provided in the said email dated 28.10.2024. The summary of the same is as under: -

	Share of Secured FCs (Indian Bank & SBI i.e. Respondent Bank)	Consolidated share of all other stakeholders	Total (INR)
Total Liquidation Cost (Est.)	2,14,71,839	26,29,386	2,41,01,225
Less: Already paid (INR 21,55,706 + INR 5,40,000)	(-) 26,95,706	X	X
Additional Contribution Payable	1,87,76,33	X	X

22. On 19.11.2024, the Appellant issued a reminder email to the Respondents herein requesting for payment of the additional contribution of Rs. 1,87,76,133/- (Rupees One Crore Eighty-Seven Lakhs Seventy-Six Thousand One Hundred Thirty-Three only).

23. Thereafter, a Joint Lenders' Meeting (JLM) was called on 22.11.2024 to discuss the Liquidator's fees arising from the additional contribution towards Liquidation Cost wherein the Respondents requested the presence of the Appellant. The Appellant discussed and deliberated upon the compliance of Regulation 21A the IBBI (Liquidation Process) Regulations, 2016 and expressed that the Respondents had partly contributed towards the liquidation cost in terms of Regulation 21A prior to taking possession of the Panagarh Factory and had given an undertaking via email dated 12.04.2024 to pay the fees of the Liquidator in terms of Regulation 4(2)(b) of the IBBI (Liquidation Process) Regulations, 2016 on final determination of the proceeds from the sale of the Panagarh Factory. Furthermore, solely relying on the undertaking provided by two nationalized banks, the Respondents herein, the Appellant handed over the possession of the Panagarh Factory to the Respondents. After sale of the said Panagarh Factory, the Appellant requested the Respondents to comply with the undertaking and also adhere to the provisions of the Liquidation Process Regulations in this regard. The Appellant also submits that aforesaid facts shall also be explicitly evident from the emails dated 12.04.2024 issued by the Respondents respectively and the terms of the handover documents dated 30.04.2024 executed by the Respondents. After the aforesaid discussions and deliberations, the Respondents expressed that the matter needs to be discussed with their

respective competent authorities for approval/guidance for the payment of the liquidation costs.

24. The Appellant issued another reminder mail on 16.12.2024, requesting the payment of Rs. 1,87,76,133/- (Rupees One Crore Eighty-Seven Lakhs Seventy-Six Thousand One Hundred Thirty-Three only). Further, vide email dated 19.12.2024, the Appellant, requested the Respondents to contribute towards the balance Liquidation cost.

25. However, despite several reminder emails, the Respondents failed to pay the aforesaid liquidation cost and have failed to comply with the provisions Regulation 21A(2)(a) of the IBBI (Liquidation Process) Regulations, 2016, which provides for payment of Liquidation Costs including the fees of the liquidator as per Regulation 2(1)(ea)(i) which would be determined as per Regulation 4(2)(b) of the IBBI (Liquidation Process) Regulations, 2016 despite providing the undertakings via emails dated 12.04.2024 and executing the handover documents dated 30.04.2024 in respect of Panagarh Factory.

26. In the aforementioned facts and circumstances, the Appellant filed I.A (Companies Act) No 1 of 2025 in T.P 22 of 2022 before the NCLT, Kolkata Bench praying for, inter-alia, a direction on the Respondents to make payment of Rs. 1,87,76,133/- (Rupees One Crore Eighty-Seven Lakhs Seventy-Six Thousand One Hundred and Thirty-Three only) jointly towards the Liquidation Cost including the Liquidator's Fees in adherence to the provisions of Regulation 21A read with Regulation 2(ea) and 4(2)(b) of the IBBI (Liquidation Process) Regulations, 2016.

27. The said I.A (Companies Act) No 1/KB/2025 appeared in the cause list of the Hon'ble NCLT, Kolkata Bench on 13.01.2025 and was heard at length and was subsequently reserved for orders on the very same date i.e. 13.01.2025. No prayer was made by the Respondents to file any reply thereto and the matter was heard out on the basis of the application itself. Written Notes of Arguments were also filed by the Appellant. Thereafter, on 05.02.2025, the Adjudicating Authority, National Company Law Tribunal, Kolkata Bench passed the impugned order disposing of I.A. (Companies Act) No. 1/KB/2025, inter alia observing that:

“In this case, since the sale is conducted by the Secured Creditor under Section 52 of the Insolvency and Bankruptcy Code, 2016, the liquidator shall not be entitled to any fees from such realization, as the liquidator's fees are solely meant to compensate for actual work done in the process of realizing/selling assets. For all other assets, except those sold by the secured creditor, the liquidator's fees shall be payable as per the rates approved by the SCC in its meeting dated 07.03.2024 if any. Accordingly, this application being I.A. (Companies Act) No. 1/KB/20285 is disposed of.”

28. The NCLT has misconstrued and misinterpreted the dictum of **Shikshak Sahakari Bank Limited (supra)** as passed by this Hon'ble Tribunal. In fact, the impugned order passed is per incuriam. The ratio of *Shikshak Sahakari Bank Limited (supra)* is squarely applicable in the present case. Even in *Shikshak Sahakari Bank Limited (supra)* there was no separate “realisation” or “distribution” and despite that Appellate Tribunal ruled that irrespective of realization or distribution, the Liquidator will still be entitled to fee in terms of Regulation 21A of the Liquidation Process Regulations NCLT has perversely held that in the present case, the Appellant is not entitled to any fee from sale of the Panagarh factory.

29. Compliance of regulations 2(ea), 2-A, 21-A and 37 of the Liquidation Process Regulations is “absolutely necessary” as held by this Hon’ble Tribunal in **Small Industries Development Bank of India (SIDBI) v. Shri Vijender Sharma** (Company Appeal (AT) (Insolvency) No. 1027 of 2021). The refusal by the Respondent banks to pay the Appellant’s fee from sale of the Panagarh factory amounts to non-compliance on the part of the Respondents with the provisions of Regulation 4(2)(b) of the Liquidation Process Regulations.

30. The NCLT has failed to appreciate that a liquidator, who has coordinated with secured financial creditors, the prospective / interested buyers, the office of OL and has taken necessary steps to ensure sale of an asset is entitled to a fee in terms of Regulation 4(2)(b) of the Liquidation Process Regulations as has been held by this Hon’ble Tribunal in *Shikshak Sahakari Bank Limited (supra)*.

31. The Appellant played a crucial and vital role in facilitating the sale of the said factory. In fact, if the Appellant had not coordinated with the Official Liquidator, the Respondent banks and prospective buyers, no sale at all could have taken place, which ultimately led to maximization of value of the assets of the Corporate Debtor.

32. There is no embargo under Regulation 4(2)(b) of the Liquidation Process Regulations prohibiting payment of fee to a liquidator who has taken due care to preserve the asset and ensure coordination between secured financial creditors, prospective buyers as well as the successful auction purchaser.

33. The auction took place under the provisions of the SARFAESI Act, 2002 arising from the provisions of Insolvency and Bankruptcy Code, 2016 based on the prerequisite duties carried out by the Appellant Liquidator which involved obtaining and handing over peaceful possession of Panagarh Factory. The Appellant had coordinated and taken care for realization of the asset through the secured financial creditors by coordinating with the secured financial creditors, prospective buyers and Official Liquidator in the proceedings, in order to achieve 'value maximization' objective of IBC Laws in a time bound manner.

34. The NCLT erred in holding that Regulation 4(2)(b) of the Liquidation Process Regulations is not applicable to the present case. The NCLT erred in holding that the entire action to sell the Panagarh unit was conducted solely by the Respondent banks sans any involvement of the Appellant. Without the involvement of the Appellant, no sale at all could have taken place.

35. In this context it is imperative to mention that for the purpose of Regulation 37, the expected sale price of the Panagarh Factory was intimated by Respondent No. 1 namely Indian Bank, by email dated 02.03.2024, as INR 20 (Twenty) Crores and by Respondent No. 2 namely State Bank of India, vide email dated 12.03.2024 as INR 15.79 Crores and that the asset was sold at INR 55.10 Crores pursuant to a Sale Notice dated 06.09.2024 having Reserve Price at INR 51 Crores. Thus, the sale realization of Panagarh Factory has been nearly 3 (three) times more than the expected sale realization of the Respondent Secured Creditors. Such value maximization could not have been

possible without a team effort (including the Respondents) where the efforts of the Appellant Liquidator was vital and essential.

36. Appellant Liquidator played a crucial role in facilitating discussions between the two Respondent Secured Creditors. As reflected in the email dated 02.03.2024, Respondent No. 1 asserted exclusive first charge over the Panagarh Factory and similar contention was also made by Respondent No. 2 as evident from the email dated 12.03.2024. Without intervening in the shareholding arrangement among the Respondent Secured Creditors, the Appellant Liquidator apprised them of the relevant provisions of Regulation 21A, particularly the 180-day timeline, and requested the Banks to resolve the matter amicably to avoid litigation and ensure timely value maximization which is the spirit, object and the crux of IBC and its Rules and Regulations thereunder. Consequently, the Respondents reached a resolution, leading to the publication of the sale notice for the Panagarh Factory on 06.09.2024 by Respondent No. 1. While not a statutory obligation, the Appellant undertook this effort in good faith, guided by the principles of law.

37. Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, delineates the framework for determining the Liquidator's fees. Specifically, Regulation 4(2)(b) outlines a fee structure based on the amounts realized and distributed during the liquidation process. However, the regulation does not preclude the Liquidator from claiming fees in scenarios where assets of the Corporate Debtor is sold by Secured Creditors who have not relinquished their security interest. The

absence of restrictive language implies the Liquidator's entitlement to fees under such circumstances.

38. There has been non-compliance on the part of Respondents in respect of the provision of Regulation 21A(2) of the Liquidation Process Regulations, 2016 wherein it has been explicitly stated that the Secured Creditor who proceeds to realise its security interest shall pay towards the liquidation cost (as referred to in Section 53(1)(a) read with Section 5(16) of IBC, 2016 read with Regulation 2(1)(ea) of Liquidation Process Regulations, 2016) in the manner as it would have shared such cost in case it had relinquished the security interest. Further, the conjunctive reading of 1st and 2nd proviso to Regulation 21A(2) specifies that the Secured Creditor shall make good the difference between the amount already paid, on estimated basis, and certain amount payable arising from sale of the assets. The 'Liquidation Cost' includes fees payable to the Liquidator under Regulation 4 of the Liquidation Process Regulations, 2016. In the given instance, the Stakeholder's Consultation Committee (SCC) in its 1st meeting held on 07.03.2024 decided for payment of liquidator fees in accordance with the provision of Reg. 4(2)(b) where the Respondents were present but did not have any voting share. However, the Respondents confirmed their consensus with the decision taken by the SCC in their respective emails dated 12.04.2024 and also in the handover document dated 31.04.2024 of Panagarh Factory, by explicitly undertaking to pay liquidator fees in accordance with the provision of Reg.4(2)(b) of Liquidation Process Regulations, 2016. Respondents provided the undertaking prior to handover of the Panagarh Factory as a part of their statutory obligation to comply with the provision of Regulation 21A which has

been relied upon by the Appellant being undertakings made by officials of Nationalized Banks. Subsequently, the Respondents failed to make additional contribution towards liquidation cost including liquidator's fees, the basis of which was already agreed upon and was undertook to be paid, thereby blatantly contravening the provision of Regulation 21A.

39. Adjudicating Authority has failed and/or neglected to consider the provision of Regulation 21A in conjunctive reading with the provision of Regulation 4(2)(b) rather considered the provision of Regulation 4(2)(b) in isolation, The gamut of including the liquidator fees on realization of Corporate Debtor's assets by the Secured Creditor pursuant to non-relinquishment of security interest, initiates from the provision of Regulation 21A(2) extract of which is as follows —

“(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)....”

40. While determining the liquidation cost, as covered under Section 53(1)(a), for the purpose of Regulation 21A, the prerequisite condition in determination of such cost stands on the premise that the security interest have been relinquished by such secured creditor. By stretch of all practical assumption, it can be understood that 'realization' and 'distribution' of assets as envisaged in Regulation 4(2)(b) cannot be directly done by a Liquidator in the circumstance where the security interest has not been relinquished by the Secured Creditor. Thus, bare perusal of Regulation 4(2)(b) in isolation to Regulation 21A completely defeats its purpose and spirit, which has precisely

been done in the impugned order, as evident from inter alia, paragraph 16 of the impugned order.

41. Secured creditors are required to pay liquidation costs, including the Liquidator's fees, within a stipulated period to retain their security interests. Liquidator's fees are considered a part of the liquidation costs, irrespective of asset realization or distribution by the Liquidator.

42. The matter of **Shikshak Sahakari Bank Limited (supra)** was not on a different footing in comparison to the instant subject matter. The Adjudicating Authority has derived wrong inference that the Liquidator (in Shikshak Sahakari Bank Limited) did not sell the assets and realise any proceeds but has distributed the amount that was realized. In this context, the Appellant humbly submits that, this Hon'ble Tribunal at paragraph 12 of the order dated 11.12.2024 in the matter of Shikshak Sahakari Bank Limited has recorded the submission of the Appellant Bank (i.e. Shikshak Sahakari Bank Limited) as under —

“12. Appellant (i.e. Shikshak Sahakari Bank) also contended that the Respondent is only eligible for entitlement of fees under Regulation 4 Sub-Regulation 2(b), only when the Liquidator has actually realized or distributed any amount. However, in the present case, there has neither been any distribution nor any realization of amounts by the Respondent (i.e. the Liquidator), in so far as the secured asset of the Appellant is concern.”

43. The Adjudicating Authority has failed to recognize the identity of the instant matter with that of **Shikshak Sahakari Bank Limited (supra)** thereby rendering the impugned order per incuriam. In either of the matters the Secured Creditors did not relinquish their security interest and have not paid the liquidation cost vis-à-vis the liquidator's fees. However, the instant matter is on a higher footing to the extent that the Respondent Secured Creditors

have agreed upon and have given undertaking to the Appellant Liquidator before taking over the possession of the Corporate Debtor's assets being the Panagarh Factory. Further, the Appellant Liquidator provided detailed calculation of the Liquidator Fees as was initially estimated and thereafter upon final determination arising from sale of assets. Hence the subject of both the matters are identical with more weightage being on the instant subject matter being appealed for, on grounds that (a) the basis of determination of liquidator fees under Regulation 4(2)(b) was agreed by the Respondents Secured Creditors as evident from email dated 12.04.2024 received from Respondents and execution of handover document dated 30.04.2024 by the Respondents, for compliance of Regulation 21A(2); (b) the basis of determination of liquidator fees under Regulation 4(2)(b) were consented by the SCC in its 1st meeting held on 07.03.2024; and (c) subsequent contest on an agreed matter relating to basis of determination of liquidator fees under Regulation 4(2)(b) has been an after-thought and clear violation of the provision of Regulation 21A.

44. The Appellant Liquidator is not making a 'demand' of fees on the plea of having a blanket undertaking from the Respondents, as conceived from paragraph 27 of the impugned order. On the contrary, the Appellant Liquidator is making a rightful claim of the fee amount agreed upon by the Respondents in accordance with the provisions of Reg. 21A.

45. Secured Creditor is mandatorily obligated to pay its share as per Section 53(1)(a) and 53(1)(b)(i) of the Code for distribution of assets from the sale of liquidation assets in the order of priority (waterfall mechanism).

46. Liquidator's fees are liquidation costs, as prescribed under Regulation 2(1)(ea) and Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. These regulations do not make the Liquidator's fees contingent on realization or distribution of assets but recognize them as an essential part of the liquidation process.

47. Under Section 53(1)(a) of the Insolvency and Bankruptcy Code (IBC), 2016, liquidation costs, including the Liquidator's fees, are to be paid in priority before any other claims. The impugned order erroneously suggests that fees are only payable if the Liquidator realizes or distributes assets, which contradicts the statutory scheme of the IBC.

48. In determining the Liquidators fee pertaining to "realization and/or "distribution" the Adjudicating Authority failed to appreciate that the term "distribution" under the Insolvency and Bankruptcy Code, 2016 (IBC) is not confined merely to the final allocation of realized proceeds but inherently includes all preparatory and intermediary actions undertaken by the Liquidator leading to such distribution. The process of distribution begins much before the actual realization of assets and includes various statutory duties such as taking possession of the assets, securing, managing, valuing, and facilitating their sale. These activities are intrinsic to the liquidation process and are inextricably linked to the ultimate distribution of proceeds. To interpret "distribution" in an isolated and narrow sense would be contrary to the intent and framework of the IBC, which envisages liquidation as a holistic process rather than a mere disbursement of funds. In the given instance, the Appellant Liquidator, jointly, handed over the possession of the

Panagrah Factory on 30.04.2024 in compliance of the IBC Laws in effect to substantiate 'distribution' on the part of the Appellant Liquidator. Liquidator's act of taking possession of the assets, securing them, maintaining their value, and undertaking necessary legal and procedural steps for their realization form an essential and inseparable part of "distribution" as contemplated under the IBC. The very process of liquidation necessitates a structured approach wherein every action undertaken by the Liquidator—from possession to realization and eventual disbursement—is an element of distribution. Excluding such integral activities from the scope of "distribution" would not only be legally erroneous but would also defeat the purpose of maximizing value for stakeholders in a time-bound manner, as envisioned under the Code. By limiting the meaning of "distribution" solely to the final allocation of sale proceeds, it disregards the comprehensive nature of the Liquidator's role as defined under the IBC and the Liquidation Regulations. The Liquidator's functions, including taking control of assets, resolving disputes regarding ownership, ensuring compliance with legal mandates, and overseeing the entire liquidation process, are all fundamental components of distribution as well as realization within the broader statutory framework. Any restrictive interpretation that severs these essential activities from the scope of distribution would create ambiguity, disrupt the settled principles of liquidation, and unfairly undermine the Liquidator's statutory duties and entitlement to fees.

49. The breakup of Sharing of the Liquidation Costs was placed and discussed at the 8th SCC meeting convened on 25.10.2024 and it was in compliance with Regulation 21-A of the Liquidation Process Regulations,

2016. Segregating the assets which formed part of the Liquidation estate with those not forming part of the Estate in deciding the Liquidators fee payable is de hors the provision of law and IBC. The segregation of assets forming part of the Liquidation Estate from those that do not, for the purpose of determining the Liquidator's fee, is contrary to the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC), as well as the established legal framework governing liquidation proceedings. The IBC provides a comprehensive mechanism for the liquidation process, including the manner in which the Liquidator's fee is to be computed, without permitting arbitrary exclusions or artificial classifications of assets within the Liquidation Estate. By undertaking such segregation, the Adjudicating Authority has acted beyond the scope of the statutory provisions and established judicial precedents, thereby creating an inconsistency with the principles of law governing liquidation. The Liquidation Estate, as defined under the IBC, comprises all assets, properties, and rights of the corporate debtor, and any attempt to selectively classify or exclude certain assets from this Estate while determining the Liquidator's fee is legally untenable. This approach not only disregards the express provisions of the IBC but also undermines the objective of ensuring a fair and transparent liquidation process in accordance with law. Such an interpretation adversely affects the rights of the Liquidator, who is entitled to fees in accordance with the framework prescribed under the IBC and the Liquidation Regulations. It also sets an incorrect precedent that could lead to unwarranted complications in future liquidation proceedings. Therefore, the impugned decision warrants reconsideration, as it is not only

inconsistent with the legal provisions but also detrimental to the efficient and orderly conduct of the liquidation process.

50. A holistic interpretation of the Insolvency and Bankruptcy Code (IBC) and its associated regulations suggests that the Liquidator's fees are integral to the liquidation costs. The regulations aim to ensure that the Liquidator is fairly compensated for the duties performed, regardless of the outcome concerning asset realization. This interpretation aligns with the broader objectives of the IBC to facilitate an effective and equitable insolvency resolution process. By failing to recognize the Liquidator's entitlement to fees, effectively penalizes the Liquidator for circumstances beyond his control. Further, it violates the principle of natural justice, as it deprives the Liquidator of due compensation for his work.

51. IBC does not differentiate between liquidation processes with assets and those without. Even where a corporate debtor has no assets, a Liquidator is still required to complete the process, file reports, and ensure compliance. In multiple cases it has been upheld that the Liquidator's fees must be paid as part of the liquidation cost, regardless of realization or distribution. The impugned order, by holding otherwise, introduces an artificial distinction that has no legal basis. If the Liquidators are not compensated unless they recover assets, many cases where the corporate debtor has no, or limited assets will go unattended. This would frustrate the objectives of the IBC, which seeks to provide a time-bound resolution mechanism. In the facts and circumstances as stated herein above, the Appellant states and respectfully submit that there is just cause to forthwith set aside the order dated 05.02.2025 in I.A

(Companies Act) No 1 of 2025 in T.P (Companies Act) No. 22 of 2022, to the extent challenged herein.

52. The impugned order to the extent that it decides that the Appellant is not entitled to any fee from the sale of Panagarh unit is contrary to the ratio of State Bank of India v. Navjit Singh as held by this Hon'ble Tribunal.

53. NCLT failed to appreciate that in the present case in the absence of the Appellant's fee remaining unpaid, there has not been absolute compliance of regulations 2(ea), 2-A, 21-A and 37 of the Liquidation Process Regulations and sections 52/53 of the IBC as held by this Hon'ble Tribunal in Small Industries Development Bank of India (SIDBI) v. Shri Vijender Sharma.

Counter of R1- Indian Bank

54. The Respondent No. 1 claims that are secured financial creditor of the Corporate Debtor, M/ s. Maheshwary Ispat Limited, with a valid security interest over the Panagarh Factory. The Respondent No. 1 had submitted its claim in Form D on 17.01.2024, clearly expressing its intention not to relinquish its security interest in the Panagarh Factory. This was in accordance with the provisions of Section 52 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), which grants secured creditors the right to realize their security interest outside the liquidation process.

55. The Respondent No. 1 submits that the Appellant's contention regarding entitlement to liquidator's fees on the sale proceeds of the Panagarh Factory is misconceived and contrary to the scheme of the IBC. The Respondent No. 1, along with Respondent No. 2 (State Bank of India), had clearly opted to realize its security interest outside the liquidation process

under Section 52 of the IBC. The sale was conducted by the secured creditors themselves without any involvement of the Liquidator. Therefore, the Liquidator is not entitled to any fees on such realization. The Respondent No. 1 categorically denies that it had given any unconditional undertaking to pay the Liquidator's fees as alleged by the Appellant. While there were discussions regarding contribution towards liquidation costs as required under Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016, there was never any agreement to pay the Liquidator's fees on the entire sale proceeds of the Panagarh Factory. The Respondent No. 1 had already contributed a sum of Rs. 21,55,706/- towards the liquidation costs, which was proportionate to its obligation under Regulation 21A.

56. The sale was conducted by the secured creditors themselves without any involvement of the Liquidator. The Liquidator's fees are meant to compensate for the actual work done in selling assets. In the present case, the Liquidator did not conduct the sale of the Panagarh Factory; it was done by the secured creditors under Section 52 of the IBC. Therefore, the Liquidator is not entitled to any fees on such realization.

57. The Joint Lenders' Meeting (JLM) held on 21.11.2024 and 22.11.2024 did not result in any binding agreement to pay the Liquidator's fees as alleged by the Appellant. The minutes of the meeting clearly state that both banks agreed to "take up the matter with their Higher Competent Authorities and also Legal clearance for seeking guidance/ approval for the payment of Liquidation Fees". This was merely an agreement to consider the matter further and not a binding commitment to pay the fees.

58. The Respondent No. 1 submits that the NCLT has correctly interpreted the provisions of the IBC and the IBBI (Liquidation Process) Regulations, 2016. The Liquidator's fees are meant to compensate for the actual work done in selling assets. In the case, the Liquidator did not conduct the sale of the Panagarh Factory; it was done by the secured creditors under Section 52 of the IBC. Therefore, the Liquidator is not entitled to any fees on such realization. The Appellant's reliance on the decision of this Appellate Tribunal in the case of Shikshak Sahakari Bank Limited is misplaced and inapplicable to the present case. The factual matrix in that case was entirely different.

59. The refusal of banks to pay the Liquidator's fee in the present case would not amount to non-compliance, as the Liquidator is not entitled to any fee as per Regulation 21A of the Liquidation Process Regulations. The NCLT correctly interpreted that Regulation 4(2)(b) of the IBBI (Liquidation Process) Regulations, 2016, which deals with the Liquidator's fees, applies only to assets that form part of the liquidation estate and are realized by the Liquidator. It does not apply to assets realized by secured creditors outside the liquidation process under Section 52 of the IBC.

60. It is claimed that Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016 requires secured creditors to contribute towards the liquidation costs in proportion to the amount they realize from the secured assets. The Respondent No. 1 has already contributed a sum of Rs. 21,55,706/-towards the liquidation costs, which is proportionate to its obligation under Regulation 21A.

61. It is denied that Rs. 1,87,76,133/-is pending fee of the Appellant.

Section 52 of the IBC grants secured creditors the right to realize their security interest outside the liquidation process. This is a special right given to secured creditors, recognizing the primacy of their security interest. When a secured creditor opts to realize its security interest outside the liquidation process, the asset is effectively taken out of the liquidation estate. As such, the fees for such assets are not part of the Liquidation costs.

62. It is contended that the Clarification of Regulation 4(2)(b) clarifies that where a liquidator the Clarification of Regulation 4(2)(b) clarifies that where a liquidator realizes any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realised by him, and 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 only. In the present case, liquidator having neither realised nor distributed is entitled to NIL fees.

63. NCLT has correctly held that the Appellant's claim for liquidator's fees on the entire sale proceeds of the Panagarh Factory is not only contrary to the scheme of the IBC but also amounts to unjust enrichment. The Liquidator did not conduct the sale of the Panagarh Factory, it was done by the secured creditors themselves. Therefore, the Liquidator is not entitled to any fees on such realization. The impugned order is legally sound and does not suffer from any infirmity warranting interference by this Hon'ble Tribunal.

Appraisal

64. In this case, pursuant to transfer of winding-up proceedings (winding-up order passed in Oct 2016) from the Hon'ble High Court at

Calcutta, the Adjudicating Authority (NCLT, Kolkata) initiated Liquidation proceedings of the Corporate Debtor (CD) under the Code, by order dated 19.12.2023 and appointed the Appellant as the Liquidator. There was no CIRP proceedings in the instant matter. The Respondent Banks submitted their claims and did not relinquish the security interest in Panagarh Factory, in terms of Section 52 of the Code. The Respondents informed the Appellant about the estimated realization value of Panagarh Factory as INR 20 Crores (R1) and INR 15.79 Crores (R2), respectively, in terms of Reg. 37(1) of the IBBI Liquidation Process Regulations. On 12.04.2024 (i.e. 115 days from the date of commencement of Liquidation proceedings of 19.12.2023) the Respondent Banks paid INR 21,55,706/-, in aggregate, being *part payment* of the estimated Liquidation Cost without considering the Liquidator's fees. We note that by part payment, the Respondents failed to comply with the provision of Reg. 21A(2)(a), in its entirety. The Respondent Banks had *agreed and undertook to pay the Liquidator's Fees in accordance with the provision of Reg. 4(2)(b)*. (emails issued in this regard are @ 189 and 191 of APB). Considering the *undertaking* given by the Respondents Nationalized Banks in terms of the second proviso to Reg. 21A(2), the Appellant obtained possession from the Official Liquidator and handed over the possession of the Panagarh Factory, jointly, to the Respondents. In the handover document dated 30.04.2024, both the Respondent Banks, reconfirmed their agreement by providing an undertaking to pay the Liquidator Fees in accordance with the provision of Reg. 4(2)(b). The Respondents sold the Panagarh Factory on 21.10.2024 i.e. 307 days from the liquidation commencement of 19.12.2023, for an amount of INR 55.10 Crores

which is 200% more than their expected realizable value, as stated in para 2 above.

Issue in this Appeal

65. Heard both sides and also perused the material on record basis. The issue in this Appeal is –

“Whether the liquidator can be denied his entitlement to fees under Reg. 4(2)(b) read with Reg. 21A(2) of the Liquidation Process Regulations, 2016 when the secured creditors have directly realised security interest (namely Panagarh Factory) under SARFAESI Act?”

66. Before proceeding further, it would be beneficial to reproduce the meaning of liquidation cost as per the Insolvency & Bankruptcy Code, 2016 and the Liquidation Process Regulations, 2016 governing the payment of liquidation cost, which are reproduced as follows:

“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)¹: “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;

¹ Liquidation Process Regulations, 2016

- (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.”

67. Regulation 21-A¹ mandates Secured Creditors to inform the Liquidator of their decision to realise their security interest and to pay their share of the liquidation costs. The relevant portion of Regulation 21-A(2)¹ 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.”

68. On a conjoint reading of Reg. 21A(2), Reg. 2(ea) and Reg. 4(2)(b) of the Liquidation Process Regulations 2016, we note the legal position that emerges is as follows:-

- Reg. 21A(2) clearly establishes that the Secured Creditors who have realized their security interest under section 52 of IBC, 2016 are obligated and mandated to pay their share of liquidation cost as they would have done “in case they had relinquished the security interest.” Simply put, the decision of the Secured Creditors to relinquish security interest or not, has no bearing on the payment obligation of such secured creditors towards the liquidation cost which includes liquidator’s fees under Reg.2(ea)(i) and also has no bearing on the mode of calculation of such amount to be contributed.
- Reg. 21A(2) categorically binds all secured creditors to pay the share of liquidation cost regardless of whether the security interest is relinquished or not. In fact, Regulation 21A(2) makes it clear that the quantum of contribution to liquidation costs including liquidator’s fees by such secured creditors is to be calculated as they would have done “in case they had relinquished the security interest.” The only way to calculate such costs as per Reg.21A(2) under the Liquidation Process Regulations in regard to a sale of security interest under section 52, is by applying the formula in Reg.4(2)(b).
- Reg. 2(ea)(i) of the Liquidation Process Regulations, 2016 distinctly defines ‘Liquidation Cost’ as including the Liquidator’s fee as per Regulation 4.
- The manner of determination of Liquidator’s Fees is also not open to interpretation. Reg. 4 enumerates the method of determination of the liquidator’s fee.

69. In the facts of the present case, there is no scope of application of Reg. 4(1) or Reg. 4(2)(a). As per Reg. 4(1A), the Stakeholders' Consultation Committee has decided upon payment of the Liquidator's fee in terms of Reg. 4(2)(b) in regard to the clear mandate of Reg.21A(2). Furthermore, the Respondent Banks have confirmed and undertaken to pay the Liquidator's fees in terms of Reg. 4(2)(b) as evident from the emails dated 12.04.2024. They have also made initial part payment of INR 21.56 Lacs (by R1) and INR 5.40 (by R2), respectively.

70. Furthermore, the Adjudicating Authority has come to conclusion that ratio of this Appellate Tribunal's judgment of *Shikshak Sahakari Bank Limited (supra)* is not applicable in the present case. We note that the facts of the aforementioned case are analogous to those in the current case. The issue framed in the referred judgment were:

“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 214A of the Liquidation Process Regulations, 2016?”

71. We also note that the judgment of this Hon'ble Tribunal in *Shikshak Sahakari Bank Limited (supra)* squarely applies in the instant appeal as both have identical facts:

- Sale of CD's Asset: By Secured Lenders under SARFAESI Act, 2002
- Proceeds from Asset Sale: Received by Secured Lenders without direct involvement of Liquidator
- Distribution of Proceeds on Asset Sale: By Secured Lenders without direct involvement of Liquidator

- Compliance of 90-day period as per Reg. 21A(2)(a): Amount received beyond 90 days in the **Shikshak Sahakari Bank Limited (supra)**. In the present case the amount received on 12.04.2024 (i.e. **115 days** from Liquidation commencement date of 19.12.2023)
- Contribution to Liquidation Cost in terms of Reg. 21A: In **Shikshak Sahakari Bank Limited (supra)** NCLAT observed that **full liquidation cost was not paid by Banks**. And in the present case Respondent Banks **did not pay the Liquidation Cost in full** but made payment excluding the Liquidator's Fees which is also part of Liquidation Cost.
- Conclusion of Sale of Assets whether within 180 days as per Reg. 21A(2)(b): Beyond 180 days.
(Note: In the present case sale concluded on 22.10.2024 i.e. **307 days** from Liquidation commencement date of 19.12.2023)

In the earlier case of *Shikshak Sahakari Bank Limited (supra)* this Appellate Tribunal had held that:

“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.”

72. Respondent No. 1 referred to *para 31 of the order of Shikshak Sahakari Bank Limited (supra)* judgment at the time of hearing and argued that the Secured Creditor in that case had failed to comply with the 90-day time limit as stipulated in Reg. 21A(2). Based on such observation, the Respondent No. 1 attempted to draw a completely artificial and non-existent distinction and fallaciously argued that the assets in *Shikshak Sahakari Bank Limited (supra)* case became part of Liquidation Estate. But the actual fact in that case is that the secured asset did not vest in the

Liquidation Estate, but rather was sold under the SARFAESI Act without involvement of the Liquidator and definitely not under IBC, 2016. In any event, in the present appeal also, there has been complete failure of the Respondent Banks to comply with the 90-day timeline in Reg.21A(2)(a) and also the 180-day timeline in Reg. 21A(2)(b). In other words, there is no factual distinction between the present Appeal and the case of *Shikshak Sahakari Bank Limited (supra)*.

73. In the impugned order, NCLT Kolkata held that the Liquidator in *Shikshak Sahakari Bank Limited (supra)* made distribution of the amount realised and hence concluded that the instant matter is on a different footing from the *Shikshak Sahakari Bank Limited (supra)* matter. Such conclusion is completely erroneous, as *paragraph 8 and 9 of the order of Shikshak Sahakari Bank Limited (supra)* case clearly establishes the fact that the Liquidator in *Shikshak Sahakari Bank Limited (supra)* matter did not make any distribution of the proceeds, which is exactly identical to the instant appeal. In view of the above, it is evident that *Shikshak Sahakari Bank Limited (supra)* is absolutely identical to the present case and the same is a binding precedent and ought to be followed in the present case to grant appropriate relief to the Liquidator.

74. NCLT erred in holding that the ratio of this Hon'ble Tribunal in *Shikshak Sahakari Bank Limited (supra)*, as has been approved by the Hon'ble Supreme Court, is not applicable to the present case. NCLT misconstrued, misinterpreted and misread the ratio of this Hon'ble Tribunal in *Shikshak Sahakari Bank Limited (supra)*, as has been approved by the Hon'ble Supreme

Court. We note that NCLT failed to appreciate that even in *Shikshak Sahakari Bank Limited (supra)* there was no separate “realisation” or “distribution”. The Appellant took due care for sale of the Panagarh factory through the secured financial creditors and for that reason, coordinated for all the activities to ensure sale of the said factory as was held in *Shikshak Sahakari Bank Limited (supra)*. NCLT erred in holding that in the case of *Shikshak Sahakari Bank Limited (supra)*, the liquidator therein did not sell the asset or realize any proceeds but merely distributed the amount that was realized. NCLT despite observing that even in *Shikshak Sahakari Bank Limited (supra)* this Hon’ble Tribunal held that irrespective of realization or distribution, the Liquidator would still be entitled to fee under regulation 21A of the Liquidation Process Regulations, could not have held that the Appellant was not entitled to any fee from sale of the Panagarh Unit.

75. Further this Tribunal’s judgment in ‘**State Bank of India Vs. Navjit Singh in Company Appeal (AT) (Insolvency) No. 151 of 2022**’ 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.”

76. Further in this Tribunal’s judgment in **Small Industries Development Bank of India (SIDBI) v. Shri Vijender Sharma** [Company Appeal (AT) (Ins.)

No. 1027 of 2021] 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.”

77. Both the above judgements support the case of the Appellant-Liquidator.

78. Additionally, we find that the reliance placed on the Clarification in Reg. 4(2)(b) is misconceived as the same evidently refers to and covers the situation where one liquidator who is realizing the assets is different from another liquidator who is distributing the proceeds and hence does not apply to the instant matter.

79. So far, as the terms ‘realisation’ and ‘distribution’ in Reg. 4(2)(b) are concerned, they have to be given same meaning when read in the context of Reg. 21A(2). If the contention of Respondent No. 1, as orally argued is accepted then it will lead to a completely illogical and unwanted situation where a liquidator will never be able to earn any fees in regard to

Reg.21A(2). As highlighted above, Reg.21A(2) is a mandatory provision imposing obligation on secured creditors to pay Liquidation Costs (which includes Liquidation fees) calculated on the basis as they would have shared in case they had relinquished the security interest.

80. We also note that the Respondent Banks have given repeated written undertakings to pay the balance amount of liquidation cost comprising of liquidator's fees determined in terms of Reg. 4(2)(b). *This tantamounts to a binding obligation against the Respondent Banks.* The undertakings of the Respondent Banks relating to determination and payment of Liquidator's Fees as per Reg. 4(2)(b) read with Reg. 21A(2), was *consequent* to their decision of selling Panagarh Factory under SARFAESI Act, as it is evident from the facts mentioned above. Thus, we find that the undertakings given by Respondent Banks were based on conscious commercial decision and subsequent denial for payment of Liquidator's fees arising on attaining the sale of Panagarh Factory, is surely an afterthought to deprive the Appellant of his legitimate entitlement. Hence, construing such undertaking by the NCLT, Kolkata as '*not a blanket undertaking*' is erroneous, and the Respondents are estopped from resiling from their admitted obligation to pay Liquidator's fees in terms of Reg. 4(2)(b) read with Reg. 21A(2) of the Liquidation Process Regulations, 2016 arising on sale of Panagarh Factory.

81. The Respondent No. 1 argued that the Liquidator had not played any role in selling or realizing of the asset and that the Respondents made realization by themselves. Further, referring to the clarification to Reg. 4(2)(b), the Respondent No. 1 contended that the payment of fees to

Liquidator is performance – linked. The above *arguments have been squarely rejected* by this Hon’ble Tribunal in *Shishak case* (supra) where it has been categorically held that –

“... the Respondent / Liquidator is taking care of the realization of the assets through the Secured Financial Creditor and, for that reason, he has to coordinate for all activities and it is his overall responsibility to take care of the realization. In such situation, as argued by the Appellant (i.e. Shishak Sahakari Bank) the clarification provided under Sub-Reg. 2(b) (of Reg. 4) may not be helpful for the Appellant.”

82. We further note that, Involvement and role of Liquidator, without which sale of security interest would not have been possible. The Appellant Liquidator undertook several steps / activities for protecting the Panagarh Factory without which the Respondent Banks would not have achieved a successful sale under SARFAESI Act. Appellant has elaborated the steps taken by it which are noted in its submissions herein earlier and are not being repeated here. Appellant Liquidator also coordinated with the Respondent No. 1 and 2 in mediating / resolving differences of opinion between the Respondent Banks in relation to taking over possession of the Panagarh Factory *inter alia* referring to their respective rights on the sale proceeds. As will be evident from the letter dated 02.03.2024 (*page 180 of the Appeal*), the Respondent No. 1 contended that since Respondent No. 2’s exposure in respect of the Panagarh factory was “...towards working capital loan only and not term loan. Hence, SBI (i.e R 2) is having second charge on fixed assets of Panagarh unit of the Company.” Similar views were iterated by Respondent No. 1 in its email dated 12.04.2024. Thus, the Respondent No.1 asserted that it should have first right from sale proceeds of the said factory. It is only when the Liquidator intervened, the two Respondent Banks resolved their disputes

and agreed “...to have the handover of possession of the assets of the CD at Panagarh made jointly in favour of the secured creditors...”. We note that without the Liquidator’s efforts to get handover of the premise from the Official Liquidator and dispute mitigation among the Respondent Banks, the sale of the Panagarh Factory would have been difficult, if not impossible. The Appellant-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 Regulation 4(2)(b) may not be helpful for the Appellant. We note that the Liquidator has undertaken significant responsibilities during the liquidation process, including asset management, stakeholder communication, and compliance with statutory obligations. These duties necessitate considerable effort and resources, justifying the entitlement to fees. The absence of asset realization or distribution does not diminish the scope of the Liquidator's work. Therefore, compensating the Liquidator solely based on physical realization or distribution would not adequately reflect the services rendered. We therefore find that, apart from the legal stand stated hereinabove, the mentioned activities clearly demonstrate that the Liquidator is entitled to fee as per Regulation 4(2)(b) for ‘realization’ and ‘distribution.’

Conclusion

83. Upon careful consideration of the pleadings, the submissions advanced by the learned counsel for the parties, and the documentary record, this Appellate Tribunal is persuaded to hold that the Adjudicating Authority

committed a manifest error in law and on facts, in dismissing the Application of the Appellant–Liquidator.

84. The Adjudicating Authority failed to appreciate that Regulation 21A(2) of the IBBI (Liquidation Process) Regulations, 2016, read conjointly with Regulation 2(ea) and Regulation 4(2)(b), unequivocally obligates a Secured Creditor, who chooses to realise its security interest outside liquidation under Section 52 of the Code, to bear its proportionate share of the liquidation costs — which statutorily include the fee of the Liquidator. The Respondent Banks, by their express emails dated 12.04.2024 as well as the handover document dated 30.04.2024, consciously undertook to pay the Liquidator’s fees as per Regulation 4(2)(b). Having derived the benefit of possession and subsequent sale of the Panagarh Factory, they cannot now resile from their statutory and contractual undertaking.

85. The interpretation adopted by the Adjudicating Authority, that the Liquidator’s fees are payable only when he directly realises or distributes assets, is contrary to settled law. In **Shikshak Sahakari Bank Limited v. Mr. Jagdish Kumar Parulkar** [Company Appeal (AT) (Ins.) No. 2023 of 2024, decided on 11.12.2024], this Tribunal held that:

“With respect to the Secured Financial Creditor, the situation is clearly enumerated in Regulation 21A(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.”

86. The above ratio, which has been affirmed up to the Hon'ble Supreme Court by dismissal of Civil Appeal No. 1973 of 2025 on 24.02.2025, squarely governs the present case. The factual matrix is virtually identical — in both cases, the secured creditors did not relinquish their security interest, yet the Tribunal recognised that the Liquidator's statutory entitlement to fee cannot be defeated by such election.

87. Similarly, in **State Bank of India (supra)**, this Tribunal upheld the Adjudicating Authority's direction that even if the secured creditor proceeds to realise its security interest, it is bound to make payment of the Liquidator's fee in terms of Regulations 2(ea), 2A, 21A and 37 of the Liquidation Regulations read with Sections 52 and 53 of the Code.

88. Again, in **Small Industries Development Bank of India (SIDBI) (supra)**, this Tribunal categorically observed that:

“Compliance of Regulations 2(ea), 2-A, 21-A and 37 of the Liquidation Process Regulations and Sections 52/53 of the IBC are absolutely necessary even if the secured creditor proceeds to realise its security interest.”

89. In the present case, not only did the Respondent Banks fail to comply with the timelines prescribed under Regulation 21A(2)(a) and (b) (i.e., 90 and 180 days respectively), but also defaulted in paying the full liquidation cost including the Appellant's fee, despite repeated reminders and despite having given written undertakings. Such conduct amounts to a clear violation of the statutory mandate and undermines the objectives of the Code.

90. The reasoning adopted by the Adjudicating Authority that the Liquidator had “no role in the sale” is also factually untenable. The record demonstrates that the Appellant took possession of the Panagarh Factory from the Official Liquidator, secured the premises, engaged security, coordinated with local authorities, mediated disputes between Respondent Banks, liaised with prospective buyers, and ensured that the asset could be put to sale in a value-maximising manner. The sale proceeds of INR 55.10 crores, nearly three times the expected realisation indicated by the Respondents (INR 15.79–20 crores), would not have been possible without the intervention and efforts of the Appellant. The Appellant’s role falls squarely within the scope of “realisation” and “distribution” as contemplated under Regulation 4(2)(b).

91. In view of the foregoing, we hold that the impugned order dated 05.02.2025 passed by the Adjudicating Authority in I.A. (Companies Act) No. 1 of 2025 in T.P. (Companies Act) No. 20 of 2022 is contrary to law and binding precedents, and therefore liable to be set aside.

Order

92. Accordingly, this Appellate Tribunal passes the following order:

- a) The Appeal, being *Company Appeal (AT) (Insolvency) No. 461 of 2025*, is **allowed**.
- b) The impugned order dated 05.02.2025 passed by the National Company Law Tribunal, Kolkata Bench, in I.A. (Companies Act) No. 1 of 2025 in T.P. (Companies Act) No. 20 of 2022 is hereby **set aside**.

- c) It is held that the Appellant–Liquidator is entitled to his fees determined in accordance with Regulation 4(2)(b) of the IBBI (Liquidation Process) Regulations, 2016, arising from the sale proceeds of the Panagarh Factory, being part of the liquidation cost as defined under Regulation 2(ea).
- d) The Respondent Banks are directed to forthwith contribute jointly the balance amount of Rs. 1,87,76,133/- towards liquidation costs including the Liquidator’s fee, together with clerkage at 5% as agreed in the handover document dated 30.04.2024, within a period of **six weeks** from the date of this judgment.
- e) In the event of default, the Appellant–Liquidator shall be at liberty to seek enforcement of this order before the Adjudicating Authority.
- f) No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
August 29, 2025.

Pawan