



**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 717 OF 2025**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016

**Mr. Rakesh Kumar Tulsyan**

The Liquidator

**...Applicant**

V/s

**Omkaara Asset Reconstruction Private  
Limited**

**...Respondent**

In the matter of

C.P.(IB) No. 1669/MB/2018

Trimurti Service

**...Operational Creditor**

Vs.

M/s Vipul S. Plastocrafts Private Limited

**...Corporate Debtor**

***Order delivered on: 08.07.2025***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)


*Appearances:*

For the Applicant : Adv. Kunal Kanungo a/w  
Adv. Gaurav Jalendra

For the Respondent : Adv. Charles D'souza a/w Adv.  
Shreyansh Desai i/b Adv. Ms V.  
Deshpande & Co.

**ORDER**

1. This Application has been filed by Mr. Rakesh Kumar Tulsyan, the Liquidator of M/s. Vipul S Plastocrafts Pvt. Ltd. (Corporate Debtor) against Omkar Asset Reconstruction Pvt. Ltd. (Respondent) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 21A r/w Regulation 4(2) (b) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 seeking to direct the respondent, **Omkar Asset Reconstruction Private Limited** ("Secured Creditor/OARPL/Respondent") to pay the Liquidation Cost amounting to Rs. 98,99,286/- which includes liquidator fee of INR 91,82,375/- as per Regulation 21A r/w Regulation 4(2)(b) of the IBBI (Liquidation Process) Regulations, 2016.
2. M/s. Trimurti Services ("Operational Creditor") filed a Company Petition being C.P. (IB) 1669 of 2018 before this Tribunal under Section 9 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor for non-payment of outstanding dues by the Corporate Debtor. This Tribunal vide an order dated 11<sup>th</sup> March 2019 admitted the said company petition against the Corporate Debtor and appointed one Jovita Reema Mathias as the Interim



Resolution Professional (IRP) of the Corporate Debtor (hereinafter, “IRP”).

3. This Tribunal has passed an order for liquidation of the Corporate Debtor on 23<sup>rd</sup> November 2023 wherein the Applicant i.e., Rakesh Kumar Tulsyan was appointed as the Liquidator of the Corporate Debtor. The Applicant has received the order on 7th December 2023.
4. Pursuant to Regulations 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Public Announcement in the prescribe FORM B was published on 9th December 2023 (within 3 days of receipt of order copy from Hon’ble NCLT, Mumbai - Bench) in Indian Express, Pune Edition (English Newspaper) 85 Loksatta, Pune Edition (Marathi Language).
5. The applicant submits that in pursuant to the publication of Form B, OARPL had submitted its claim on 05.01.2024 amount to INR 35,67,19,795/- (Indian Rupees Thirty Five Crore Sixty Seven Lakhs Ninety Thousand Seven Hundred and Ninety Five Only) stating at Sl. No. 8A thereof that they are not willing to relinquish their security interest. The applicant further submits that OARPL proceeded with the realisation of mortgaged properties of the Corporate Debtor as mentioned in para 8 of the Application under SARFAESI Act in terms of Section 52 of the Insolvency and Bankruptcy Code.

5.1. He further states that in view of Regulation 21A of Liquidation Process Regulations, 2016, the applicant, vide email dated



28.02.2024 and reminder email on 06.05.2024, requested the OARPL to make the payment of Liquidator's Fee and Liquidation expenses as Estimated by the Liquidator during the Liquidation Process as per regulation 21A of IBBI Liquidation Process Regulations 2016. It is submitted that, till date, no payment has been made against the liquidation cost, including liquidator's fees.

5.2. The applicant further submits that OARPL auctioned the Plant & Machinery for a sum of Rs. 85 Lakhs in auction conducted on 11.6.2024 and the land and building (immovable assets) for a sum of Rs. 1845 Lakhs in E-Auction concluded on 24.09.2024 through Swiss Challenge Method.

5.3. The applicant submits that, pursuant to the successful auction, the Liquidator, vide its email dated 03.10.2024 and 10.10.2024, 21.10.2024, 19.11.2024 and reminder email dated 25.11.2024, requested OARPL for payment of the outstanding liquidation Cost amounting to INR 98,99,286/- incurred during the process which includes the Liquidator fee amounting to INR 91,82,375/- as per regulation 21A r/ w Regulation 2 (ea) r/w Regulation 4 of the IBBI Liquidation Process Regulations 2016. However, the Respondent vide its reply email dated 21.01.2024 stated that "*The said fees were never agreed upon and the auction has been done under the provisions of SARFAESI Act.*" The Respondent vide email dated 02.12.2024 replied to the Applicant stating that they have calculated the Liquidators fee @2% on the amount recovered of Rs. 1845 Lakhs.

5.4. It is also submitted that the Applicant vide email dated 05.12.2024 replied to the Respondent providing the calculation



of the Liquidator's fee in accordance with Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016 and further requested the Respondent to deposit the Liquidator fees and expenses in compliance with Regulation 21A of the IBBI (Liquidation Process) Regulations 2016 in the Liquidation Account of the Corporate Debtor. The Applicant has emphasised that, as per the provisions of the Code, even if the applicant is realising the Security Interest outside the Liquidating process of the Corporate Debtor, it shall pay the amount towards 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, which includes the Liquidator's fees. Thus, the Respondent till date has not remitted any amount against the fees of the Liquidator and acted in grave violation of the provisions of the Code and regulations framed thereunder, applicant herein is constrained to prefer the present application.

6. The Applicant has also placed on record an email communicated dated 15.11.2024 from OARPL, which reads as follows :

*Refer to your email dated 03.10.2024 and your subsequent emails and we have noted the contents and in response thereto, we have to state as follows :*

*At the outset, you are aware that being a Secured Creditor, Omkara ARC has never relinquished their security interest in the secured assets and therefore in the process of liquidation of the Corporate Debtor, Omkara ARC were all along entitled to enforce their security interest in the secured assets of the Corporate Debtor. Further, in acknowledgement of the said entitlement of Omkara ARC, you have on or about 08.04.2024 also handed over physical possession of our*



*secured assets for our doing needful by following due process under the provisions of SARFAESI Act, 2002.*

*It was to your knowledge that initially Warna Sahakari Bank Limited has claimed their charge on the plant and machineries which charge was all along denied from your end. We however managed to sell and disposed of the said plant and machineries for a higher bid amount of Rs. 85 Lakhs. The claim of the Warna Sahakari Bank Limited over the said plant and machineries is still in force and they have already initiated necessary action by filing a Securitization Application before the DRT, Pune and Omkara ARC is contesting the same on its own merits.*

*As regards the mortgaged properties, the same was put up on auction under Swiss Challenge Method for Rs. 1125 Lakhs and the auction was scheduled on 24.09.2024 and in the course of the inter-se bidding, Omkara ARC were able to recover sum of Rs. 1845 Lakhs as highest bid amount which in fact turns out to be more than liquidation cost. The entire process of sale of hypothecated and mortgaged properties were conducted by the Omkara ARC under the provisions of SARFAESI Act, 2002 by standing outside liquidation and therefore by no stretch of imagination, it can be construed that the amount received from sale of the said secured assets is forming the part of liquidation fees as claimed by your aforesaid emails.*

*The amount estimated in the said email which are payable to you are in fact on the higher side and the same is beyond the scope of IBBI Guidelines. In fact, when the mortgaged / hypothecated properties were disposed of by Omkara ARC by following due process under the SARFAESI Act, 2002, there is no occasion for you to consider the same as forming part of the liquidation process and called for liquidation fees on the basis of sale proceeds realized from such sale.*



*As per the IBBI Guidelines and as per the calculation made from our end, you will be entitled to claim Resolution fees only of about Rs.36,90,000/- and not Rs. 91,82,375/- as per the Annexure annexed to your aforesaid emails. You are therefore once again requested to kindly re-verify the factual position and calculate the estimated liquidation fees as per the IBBI Guidelines and revert to us at the earliest.*

*Needless to mention that we are ready and willing to remit the said amount of Rs.36,90,000/-towards liquidator fees.”*

7. The Respondent OARPL filed its Reply dated 25.4.2025 stating that –

- a) the Applicant has also failed to provide basis of arriving at such a huge amount of Rs.98,99,286/- as an estimated liquidation expenses and liquidation fee incurred in the Liquidation of the Corporate Debtor;
- b) under the provisions of Regulation 4 of the IBBI Liquidation Process Regulation 2016, the fee payable to the liquidator is required to 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;
- c) Regulation 1A of the IBBI Liquidation Process Regulation 2016, it is laid down that where no fee has been fixed under sub-regulation (1), the consultation committee may fix the fee of the liquidator in the first meeting. I say that in the First Meeting of the Stakeholders Consultation Committee held on 13.L2.2023, neither any discussion nor any quantum of



- fee, as sought for by the Applicant, was fixed and in the absence of fixation of such fees, the Applicant is estopped from claiming the relief as made in the present application;
- d) as per Regulation 2(ea) of the IBBI Liquidation Process Regulations, the Liquidation Cost includes (i) remuneration payable to the Applicant; (ii) cost incurred by the Applicant; (iii) Cost incurred for preserving and protecting the assets, properties, effects and actionable claims, including secured assets of the Corporate Debtor; (iv) Cost incurred in carrying the business of the Corporate Debtor as a going concern; (v) interest in interim finance for a period of 12 months or for the period from the liquidation commencement date till repayment of the interim finance, whichever is lower, (vi) any other cost incurred by the liquidator;
- e) It is significant to note that this Respondent vide an email dated 15.11.2024 has categorically asserted that the secured asset is sold by this Respondent under the provision of SARFAESI Act and hence the distribution of fees is not applicable at all. By the said email, this Respondent has also indicated that the fees charged by the Respondent is on a higher side and the Applicant has charged the Resolution Fees as well as distribution fees and not as per IBBI Guidelines and thus has proposed to pay the Resolution Fees in the sum of Rs. 47,64,850/- calculated as per IBBI Guidelines.

8. Heard the learned Counsel for both sides and perused the records.
- 8.1. Regulation 4 of the IBBI Liquidation Process Regulation 2016 provides that -



*“(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.*

*(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.*

*(2) In cases other than those covered under sub-regulation (1) and (1A) the liquidator shall be entitled to a fee-*

*(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*

*(b) 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:*

Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realised / distributed		
	in the first six months	in the next six months	there after
<b>Amount of Realisation (exclusive of liquidation costs)</b>			
<i>On the first 1 crore</i>	5.00	3.75	1.88
<i>On the next 9 crore</i>	3.75	2.80	1.41
<i>On the next 40 crore</i>	2.50	1.88	0.94
<i>On the next 50 crore</i>	1.25	0.94	0.51
<i>On further sums realized</i>	0.25	0.19	0.10
<b>Amount Distributed to Stakeholders</b>			
<i>On the first 1 crore</i>	2.50	1.88	0.94
<i>On the next 9 crore</i>	1.88	1.40	0.71
<i>On the next 40 crore</i>	1.25	0.94	0.47



*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.*

*(3) 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 only after such realised amount is distributed.”*

8.2. In this case, admittedly, the Liquidator's fees was neither fixed by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 , nor Stakeholder Committee fixed his fees, accordingly, the Liquidator's fees is to be determined in accordance with Regulation 4(2).

8.3. It is trite law that even if a Secured Creditor is realising the Security Interest outside the Liquidating process of the Corporate Debtor, it shall pay the amount towards 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 as per Regulation 21A of the IBBI Liquidation regulation 2016 i.e. the Liquidation cost and CIRP cost if any along with the amount paid to the Workmen. Admittedly, the Corporate Debtor did not have any workmen claims as on date therefore, the Liquidation cost, including



Liquidator's fees is to be borne by OARPL out of proceeds of Security interest.

8.4. In case of **State Bank of India vs. Navjit Singh (2022) ibclaw.in 230 NCLAT**, it was held that “*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.*” Para 13 of the Order passed by the Adjudicating Authority reads as “*As the Respondent has no objection in allowing the application subject to compliances of Liquidation Regulations, therefore, without going into the merits of the prayer of the Applicant, we dispose of the application with the direction to make payment of Liquidator's fees and ensure compliance of Regulations 2(ea), 2A, 21A, 37 of the Liquidation Regulations and Section 52 and 53 of the Code, and act as per the provisions of law.*”

8.5. In the case of **Shikshak Sahakari Bank Ltd. v. Mr. Jagdish Kumar Parulkar, (2024) ibclaw.in 823 NCLAT**, it was held that “*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.”*

The Hon'ble NCLAT also took note of IBBI FAQ (Question No. 9) and held that *“This clarification may not be applicable in this case as this refers to a situation wherein the Liquidator did not sell assets of the Corporate Debtor but has merely distributed the assets. Further, in the facts of the case, the Respondent / Liquidator is taking care of the realisation of the assets through the Secured Financial Creditor and, for that reason, he has to coordinate for all the activities and it is his overall responsibility to take care of the realisation. In such a situation, as argued by the Appellant, the clarification provided under Sub-Regulation 2(b) may not be helpful for the Appellant.*

8.6. In view of the aforesaid, we are of considered view that the Applicant liquidator is entitled to his fees in terms of Regulation 4(2)(b) of Liquidation Process Regulations. In the present case, the Plant & Machinery was realised in auction conducted on 11.6.2024 and the land and building (immovable assets) was realised in E-Auction concluded on 24.09.2024. The Liquidation of the Corporate Debtor commenced on 23.11.2023 and the Order of Liquidation is stated to be communicated to the Liquidator on 7.12.2023. In other words, both the assets were realised in period after six month but before 1 year (second six month). Accordingly, the Application Liquidator is entitled to liquidation fees on the amount realised after deduction of cost of realisation incurred by the Respondent at the rates prescribed in third column of Table in Regulation 4(2)(b) i.e. @ 3.75% on first 1.00 Crores; @ 2.80% on next 9 Crores; @ 1.88% on balance amount. Besides this, the Respondent shall also be liable to pay Liquidation cost, if any incurred, in proportion to value of security realised bears



to total value realised in liquidation process. Accordingly, the Respondent is directed to compute the fees and remit the same within 30 days from the date of this order.

9. In view of the aforesaid, IA 717 of 2025 is partly allowed and disposed of.

- Sd/-

**Prabhat Kumar**  
Member (Technical)

-Sd/-

**Justice V.G. Bisht**  
Member (Judicial)