



**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**MUMBAI BENCH COURT-III**

**I.A. 1869/2022**

**IN**

**C.P.(IB)3042/MB/C-III/2018**

Under Section 33 r.w. 60(5) of the Insolvency and Bankruptcy Code, 2016.

**Shyam Sunder Kasera** )  
Chartered Accountant & )  
Insolvency Professional, )  
B-402, La Chapelle, )  
Evershine Nagar, Malad(West), )  
Mumbai – 400064. ) **Applicant/Resolution Professional**

**IN THE MATTER OF**

**Shyam Sunder Kasera** )  
Chartered Accountant & )  
Insolvency Professional, )  
B-402, La Chapelle, )  
Evershine Nagar, Malad(West), )  
Mumbai – 400064. ) **Applicant/Resolution Professional**

**Vs.**

**1. Rahi Electronics Private Limited,**

Having former address at  
G-1, Devraj Building, S.V. Road,  
Goregaon-West, Mumbai-400062.

**&**

Having correspondence address at  
Flat no. 2204, Daffodil Tower,  
Pawan Baug, Chincholi Phatak,  
Malad-West, Mumbai-400064.

**Original Applicant/Respondent No.1**

**2. Mahesh Mulchandani**

**Respondent No.2**

**3. Rekha Mulchandani**

Residing at Flat No. 2024,  
Daffodil Tower, Pawan Baug,  
Chincholi Phatak, Malad-West,  
Mumbai-400064.

**Respondent No.3**



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**4. Thane Bharat Sahakari Bank Limited.**

Having its Legal and Recovery Office at 1<sup>st</sup> Floor,  
Shree Satyam Premises, Naupada,  
Above Punjab National Bank,  
Opposite Naupada Telephone Exchange,  
Thane-West, Pin No. 400602.

**Respondent No.4**

**Order Pronounced on: 29.10.2024**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

**Appearances:**

**For the Applicant:** Adv. Avinash R. Khanolkar, Adv. Kavita Singh, Adv. Surekha D Yadav

**Per: Sh. Charanjeet Singh Gulati, Member (Technical)**

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1. The present Application has been filed under Section 33 r.w. 60(5) of the Insolvency and Bankruptcy Code, 2016 by Mr. Shyam Sunder Kasera seeking the following reliefs: -

*"a. That this Hon'ble Tribunal be pleased to pass an Order thereby setting aside and recalling the aforesaid Order dated 18.02.2019 at Exhibit "1" hereto, on the ground that the same is an abuse of the process of law under Sections 60(5) of the Code read with Rule 11 of the NCLT Rules.*

*b. If this Hon'ble Tribunal given the peculiarity of the factual backdrop of the present matter, is not inclined to set aside and/or recall the aforesaid Order dated 18/02/2019, at Exhibit "1" hereto and in the alternative to the prayer (a) above, this Hon'ble Tribunal be pleased to pass an Order thereby*



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*approving/ directing the liquidation of the Respondent No.1 under Section 33 of the Code.*

- c. That this Hon'ble Tribunal be pleased to pass an Order thereby directing the Respondent No. 2 and 3, jointly and severally, to make payment to the Applicant of a sum of Rs.75,000/-, being the unpaid portion of their share of bearing the outstanding professional fee of Applicant, in his capacity of being the Resolution Professional of the Respondent No. 1, pursuant to the said Consent Terms dated 04.10.2021 executed between the Applicant and the Respondent Nos. 2 and 3 and filed before this Hon'ble Tribunal in the said Miscellaneous Application No. 3914 of 2019, at Exhibit "19" hereto;*
- d. That this Hon'ble Tribunal be pleased to pass an Order thereby determining and quantifying the best estimate of the amount recovered to meet liquidation costs in terms of Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016; and*
- e. Interim and Ad-interim relief in terms of prayer clauses (a) to (e) hereinabove be granted;*
- f. Costs of the present Application;"*

**Brief Facts**

2. The Respondent No. 1 was the Corporate Applicant, who filed the C.P. NO. (IB)3042/MB/C-III/2018 before this Tribunal under Section 10 of the Code, to initiate its Corporate Insolvency Resolution Process (CIRP). Respondent No. 2 & 3 are the erstwhile Directors of the Company. The Respondent No. 4 is the Financial Creditor of the Company. The abovementioned Company Petition was admitted by this Tribunal and



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the CIRP of Corporate Debtor commenced vide Tribunal order dated 18.02.2019.

3. Mr. Vimal Agarwal, the Interim Resolution Professional (IRP) published a Public Announcement in 'Form A' on 21.02.2019 in two leading daily newspapers; English: Free Press Journal (Mumbai Edition) and Marathi: Navshakti (Mumbai Edition) inviting Creditors to submit claims on or before 05.03.2019.
4. There were 6 meetings of the Committee of Creditors (CoC) held out of which first 3 meetings were conducted by the erstwhile IRP, Mr. Vimal Kumar Agrawal. The 4<sup>th</sup> meeting was convened by the IRP for the purpose of completion of the exercise of hand over to the RP. The 5<sup>th</sup> and 6<sup>th</sup> meeting of the CoC were convened and conducted by the Applicant. Mr. Vimal Agarwal, the Interim Resolution Professional (IRP) was replaced by Mr. Shyam Sunder Kasera, the Resolution Professional (RP) vide Tribunal order dated 19.06.2019.
5. The 1<sup>st</sup> CoC Meeting was held on 18.03.2019 in which the claim of only One Financial Creditor was received i.e. **Thane Bharat Sahakari Bank** who submitted a financial claim of Rs.5,21,75,866. Therefore, a single member COC was constituted comprising 100% voting share. No other Operational or Financial Creditors submitted any claims. Since the number of members required to constitute the Quorum was 1/3 of the total members, were present, the proceedings were commenced as per Regulation 22 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. With respect to the current state of Business Operations the IRP informed the CoC that no substantial Business Operations exist. CoC voted for the payment of Professional Fees of Rs. 50,000 p.m. from 14.03.2019 to the IRP until the RP is appointed.
6. In the 2<sup>nd</sup> CoC Meeting quotations were received from 2 valuers: Mr. Bhavesh M. Rathod and Mr. Modilal Dhanraj Pamecha. Both the valuers



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estimated the “fair value” and “liquidation value” of the Respondent at Rs.18,803 each, being the balance amount lying in the Current Bank Account of Respondent No.1, maintained with the State Bank of India. The Respondent No.1 did not own any ‘land & building and/or ‘plant & machinery’. The CoC also instructed the IRP to publish Expression of Interest (EoI) in ‘Form G’ in newspapers as required under the Code after the Valuation Report had been submitted.

7. In the 3<sup>rd</sup> Meeting, the CoC it discussed that the EoI was being published later than the time specified in the IBC and they shall seek condonation of delay from the NCLT, that the EoI shall be published latest by 07.06.2019. CoC informed that the Valuers fees shall be released in the next 2-3 days. A request for Resolution Plan was made by Evaluation Matrix and Criteria under Section 25(2)(h) with CoC. CoC approved the requests. After signing of Non-Disclosure Agreement, the Information Memorandum was provided to the CoC. With respect to the appointment of Forensic Auditor, the CoC decided to call quotations from auditors. With the permission of the Chair, the CoC instructed IRP to publish Expression of Interest in Newspapers as required under IBC, once the Valuation Report is received.
  
8. In the 4<sup>th</sup> Meeting, the IRP informed the CoC that he only received 1 claim i.e. Rs. 5,21,75,866 from M/s. Thane Bharat Sahakari Bank Ltd. which was admitted. He further informed that, he had not received any claim from any other Financial or Operational Creditor of the Corporate Debtor. The Resolution Professional: Mr. Shyam Sundar Kasera was appointed by the Tribunal vide order dated 19.06.2019. The IRP handed over hard copies and soft copies of certain documents to the RP, certain other documents were pending for submission which were also handed over later. It was also decided that that the IRP shall forward all the routine and non-routine emails relating to the present CIRP case to the RP within a reasonable time at [cirp.rahi@gmail.com](mailto:cirp.rahi@gmail.com).



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9. The 5<sup>th</sup> Meeting of the CoC was convened and chaired by the Resolution Professional Mr. Shyam Sunder Kasera on 31.07.2019. The Applicant communicated to the CoC that, after perusing the records of Respondent No.1, there appeared a strong likelihood of preferential, fraudulent, fund diversion in/from the account of the Respondent No.1, therefore the appointment of forensic auditor is justified. The following resolutions were passed in the 5<sup>th</sup> CoC Meeting: -

**“Accordingly, the following resolutions were passed with 100% voting share:**

*“**Resolved** that the previous Interim Resolution Professional Mr. Vimal Agarwal has failed to appoint a forensic auditor in spite of CoC’s recommendation to appoint a forensic auditor in its meeting held on June 04,2019, though the prima facie observations based on the records available indicate irregularities in the account.”*

*“**Further Resolved** that CoC hereby approves the appointment of IBA empanelled forensic auditor M/s. Batliboi & Purohit, on the terms as communicated by the newly appointed Resolution Professional Mr. Shyam Sundar Kasera, who has replaced Mr. Vimal Agarwal.”*

**Following resolution were passed with 100% voting share:**

*“**Resolved** that a miscellaneous application be filed with the Hon’ble Adjudicating Authority under Section 12(2) of the Insolvency and Bankruptcy Code, 2016, requesting it to extend the 180 days’ period of Corporate Insolvency Resolution Process of the Corporate Debtor M/s. Rahi Electronics Private Limited, by further period of 90 days, as the newly appointed forensic auditor would require couple of weeks’ time to carry out the said forensic audit, once the accounting records and details are made available by the Corporate Debtor, who has so far not cooperated*



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*with the newly appointed Resolution Professional Mr. Shyam Sunder Kasera.”*

**“Further Resolved** that Mr. Kasera be and is hereby authorized to appoint advocate for filing the aforesaid application and finalize the terms of his appointment for this purpose.”

**“Also Resolved** that a prayer be made to the honorable Adjudicating Authority to give permission to count the extended period of 90 days starting from the date, the Corporate Debtor makes available all the relevant records.”

*It was further discussed and decided that once the honorable Adjudicating Authority approves the extension of CIRP period by 90 days and once the forensic auditor issues the forensic audit report, CoC will decide further course of action. Accordingly following resolution was passed:*

**“Resolved that** depending on the findings made by the forensic auditor, CoC will decide further course of action i.e. either “liquidation of the corporate debtor” or prayer to honorable adjudicating authority for “Recall of the CIRP Process”.

**“Further Resolved** that depending on the findings made by the forensic auditor, Resolution Professional may, if thought fit, proceed to file application with honorable adjudicating authority U/Reg 35A(3) of the IBBI (CIRP) Regulations, 2016, for appropriate relief.”

10. The 6<sup>th</sup> meeting of the CoC was convened on 31.10.2019. The Forensic Audit report was emailed to the CoC on 29.10.2019. The following major observations were made by the forensic auditor in its Audit Report: -

a) *Preferential transactions: The Corporate Debtor has given loans (total payment being of Rs.1.03 Crores) to directors*



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- and related parties, instead of making repayment of bank loans. (Also considered as Fraudulent Transactions)*
- b) *Undervalued Transactions: goods worth Rs.0.51 Crore purchased from related parties at market prices; and sold at heavy discounts (Also considered as Fraudulent Transactions)*
- c) *Fraudulent Transactions: The preferential and undervalued transactions mentioned above are also considered as fraudulent transactions.*
- d) *Other Observations: A) GSTIN was cancelled on 13<sup>th</sup> July 2018 B) Cost of material consumed during FY 2016-17 was Rs.11.72 Crores, whereas actual sales was Rs.7.77 Crores. C) Most of the stock have been sold or returned to creditors against their settlement, so closing stock is informed to be very low of Rs.25,150/-. D) All the supporting documents like delivery challans, purchase order etc. were not attached to the purchase invoices and sale invoices.*

*Following is the break up of figures of loan and security interest mentioned below:*

*Financial Claim of Thane Bharat Sahakari Bank admitted towards loan availed by C.D.* : 5,21,75,866/-

*Outstanding as on 31.8.2019, in respect of loans availed from Thane Bharat Sahakari Bank by the group company of the corporate debtor (M/s. Rahi Appliances Pvt. Ltd.)* : 4,94,55,082/-

**Total Loan Outstanding of both companies** : **10,16,30,948/-**

*Less: Sale Proceeds from Auction of Goregaon Property No. (B) below.:* 75,00,000/-

**Balance Outstanding** : **9,41,30,948/-**



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**Details of Immovable Properties Mortgaged**

*Following two properties were jointly/commonly mortgaged by individual guarantor to secure both the loans i.e. the loan availed by the C.D. and by its group company M/s. Rahi Appliances Pvt. Ltd:*

A) *FLAT NO. 201, MORU MINAR CHS, 14<sup>TH</sup> ROAD, KHAR (W), MUMBAI 400 052 – (Owned by Guarantor – Mr. Hiralal K. Mulchandani)*

*Forced Sale Value as per  
Valuer's Report : 3,13,50,000/-*

B) *UNIT NO. 1 & 4, GR. FLOOR, 'E' WING, DEVRAJ CHS, S. V. ROAD, GOREGAON (W), MUMBAI 400 062  
(Owned by Guarantor – Mr. Hiralal K. Mulchandani)*

*Value taken of sale proceeds  
recently realized in  
Successful Auction by bank : 75,00,000/-*

***Total Valuation (Rs.) : 3,88,50,000/-***

*Based on above, CoC felt that if the liquidation of the Corporate Debtor happens, it (C.D.) will be wrongfully able to settle the bank loan of Rs.10.16 Crores against the properties valued at Rs.3.88 Crores, assuming that the petition filed (C.P.(IB)-3044(MB)-2018) by the group company M/s. Rahi Appliances Pvt. Ltd. under Section 10 of the Code is also admitted by the honourable NCLT and no investor shows any interest. Even otherwise, i.e. in case the petition of the said group company does not get admitted, Corporate Debtor will at least be able to*



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*settle its own bank loan availed from Thane Bharat Sahakari Bank against the pro-rata portion of the sale proceeds of the immoveable properties realized by the said bank and appropriated towards loan availed by the corporate debtor. In addition, other liabilities of the Corporate Debtor including loan taken from Bajaj Finserv etc. will also be settled as per Section 53 of the Code for almost NIL payment, as the valuation of corporate debtor as per valuation reports was only Rs.18,803/-, representing balance in current account of the corporate debtor with State Bank of India.*

*Based on the discussion above, whereby it seemed that the Corporate Debtor was abusing the process of law in order to get rid of its liabilities against the value of realizable assets as also the assets mortgaged by an individual guarantor in favour of the single member CoC, the total value of all such assets being considerably less than the amount of liabilities, following resolution was passed by CoC with 100% voting share:*

**“RESOLVED THAT** *the Committee of Creditors hereby decides to make application to honorable Adjudicating Authority (“AA”) for passing an order for “Recall of CIRP” of the corporate debtor under Section 60(5) read with Section 65 of IBC, 2016 and Rule 11 of NCLT Rules, 2016, as the Corporate Debtor has, in the opinion of the CoC, initiated CIRP under Section 10 of the Insolvency & Bankruptcy Code, 2016, fraudulently and with malicious intent for a purpose other than for resolution of insolvency; and also to request AA for taking punitive action against the Corporate Debtor and erstwhile Directors under Section 65 of the Insolvency and Bankruptcy Code, 2016.”*

**“ALSO RESOLVED THAT** *in case AA does not approve “Recall of CIRP”, CoC approves the liquidation of the corporate debtor,*



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*as no “EOI” (Expression of Interest)/Resolution Plan was received from any Prospective Resolution Applicants.*

*“**ALSO RESOLVED THAT** all necessary steps be taken by the Resolution professional to intimate to hon’ble Adjudicating Authority as required under Section 60(5)/Section 65/Section 33(2)/ Other applicable Provisions of the Insolvency and Bankruptcy Code, 2018, and an advocate be appointed by him for the purpose of filing aforesaid application with hon’ble adjudicating authority.”*

11. During the 6<sup>th</sup> CoC meeting, the fees proposed by the Respondent No.4, payable to the Applicant in the event of his appointment as the Liquidator was Rs.75,000/- for the entire period from Liquidation Commencement Date until the date of Dissolution. On the other hand, the Applicant had submitted a cost of Rs.4,50,000/- for the period of 6 months @ Rs.75,000/- per month.
12. The Respondent No. 2 & 3 along with the Applicant had entered into Consent Terms dated 04.10.2021 in which it was agreed upon by and between the Applicant and Respondent No. 2 & 3 that the latter shall pay to the former, a lump sum amount of Rs.1,75,000/- towards the outstanding professional fee of the applicant with regards to the share of the Respondent No. 2 & 3, with an understanding that the claim of the Applicant towards the full and final settlement of his professional fees covering the entire Insolvency Resolution period stands satisfied and accordingly, the allegations of the respective parties against each other, on the issue of the professional fees of the Applicant stand withdrawn.
13. The Respondent No. 2 & 3 made payment of Rs.1,00,000/- on 16.06.2022. The balance amount of Rs. 75,000/- towards the Applicant’s professional fee is still pending.



**OBSERVATIONS/ANALYSIS/FINDINGS**

14. Heard the learned counsels for the parties and perused the records.
15. The first prayer of the Applicant seeks that the CIRP order dated 18.02.2019 in C.P.(IB)3042(MB)/2018 be recalled. While ‘recalling’ an order, the focus is on retracting the order passed without diving into the merits of the case and giving an opportunity for the contending parties to be heard. The Hon’ble NCLAT in Union Bank of India Vs. Dinakar T. Venkatasubramanian in I.A. No. 3961 of 2022 in Company Appeal (AT) (Ins.) No. 729 of 2020 held that, “**...though the power to review is not conferred upon the Tribunal but power to recall its judgment is inherent in the Tribunal and is preserved by Rule 11 of the NCLT Rules, 2016**”.
16. We further rely on, The Hon’ble Supreme Court of India in ***Greater Noida Industrial Development Authority v/s. Prabhjit Singh Soni & Anr. vide Judgment dated February 12, 2024 in Civil Appeal Nos. 7590-7591 of 2023*** as follows:

*“50. .... Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order. **However, such power is to be exercised sparingly, and not as a tool to re-hear the matter. Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where (a) the order is without jurisdiction; (b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and (c) the order has been obtained by misrepresentation of facts or by playing fraud upon the Court /Tribunal resulting in gross failure of justice.**”* (Emphasis Supplied)



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17. In this case the order initiating the CIRP of the Corporate Debtor was passed based on the facts of the case and it cannot be said that such order was passed on account of misrepresentation of the facts or by playing fraud on this Tribunal. No material in this regard has been brought on record by the Applicant. Simply because there are no or minimum assets in the CD, it cannot be said that the order initiating CIRP was obtained maliciously. Though there may be fraudulent and undervalued transactions but for which a separate I.A. 1876 of 2022 has been filed by the Applicant under section 43, 45, 65, 66 read with Section 60(5) of the IBC, 2016 which is ongoing. Therefore, we are not inclined to recall the Order dated 18.02.2019 in C.P.(IB)3042(MB)/2018. Accordingly, Prayer (a) of the Applicant is rejected.
18. As we are not inclined to recall the CIRP order, we turn towards Prayer (b) and the resolution passed by the CoC that, as there were no Expression of Interest (EoI) and no Resolution Plan was received from any Prospective Resolution Applicant by the Resolution Professional. Under these circumstances the CoC in their 6<sup>th</sup> meeting had unanimously decided to liquidate the Corporate Debtor.
19. Under these circumstances and since the CoC had decided to proceed with the liquidation of Respondent No.1 as no Resolution Plan was received by them, we find it a fit case for liquidation of the company, and pass following directions: -

**ORDER**

- a. The Corporate Debtor is directed to be liquidated in accordance with the provisions of the IBC and applicable regulations.
- b. We note that the written consent of the Insolvency Professional along with Authorization for Assignment has not been annexed to



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the present application. Therefore, in accordance with Section 34(4)(c) of the Code, **we hereby appoint Mr. Rajesh Ramesh Kamath** bearing Registration No. **IBBI/IPA-001/IP-P-01606/2019-2020/12481** and having address at; 301, 'A' Wing, Green Gagan, near Lokhandwala Akurli Road, Kandivali East, Mumbai Suburban, Maharashtra - 400101 as the Liquidator in terms of Section 34 of the Code. His Authorization for Assignment is valid up to 30.06.2025.

- c. The fees entitled to the Liquidator shall be as per Regulation 4(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Respondent No. 2 & 3, the erstwhile Directors of the Company Resolution Applicant failed to make the balance payment of Rs. 75,000/-, therefore they are directed to pay the balance amount to the Applicant/Resolution Professional as soon as a copy of this order is received by them and in any case within 15 days of communication of this order.
- e. Registry is directed to send a copy of the order to the Registrar of Companies, Mumbai and the Insolvency and Bankruptcy Board of India.
- f. A fresh moratorium shall commence under Section 33(5) of the Insolvency and Bankruptcy Code.
- g. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of the IBC Code, 2016.
- h. The Liquidator is directed to proceed with the process of liquidation as laid down under Chapter III of the Part II of Insolvency and Bankruptcy Code, 2016 and the Insolvency &



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Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

- i. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) regulations, 2016.
  - j. The Liquidator appointed under section 34 of the Code shall have all the powers of the Board of Directors, Key Managerial Personnel and the existing Board of the Corporate Debtor, the Key Managerial Persons and the partners shall cease to have effect.
  - k. The personnel of the corporate debtor shall extend all co-operation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
  - l. A copy of the said order shall be sent to the Financial Creditors, Corporate Debtors and the Liquidator for taking necessary steps.
  - m. No order as to costs.
20. With regards to Prayer (c), as per Daily Order dated **05.08.2024**, the Learned Counsel for the Respondent No. 2 & 3 undertook to release Rs.75,000/- to the Resolution Professional within 2 weeks from the above-mentioned date. Accordingly, Respondents No. 2 & 3 are directed to make payment of Rs.75,000/- to the Applicant within 7 days of uploading of this order, if not done already.
21. With regards to Prayer (d), as per Daily Order dated **05.08.2024** the CoC and Resolution Professional had discussed about the estimated liquidation cost by giving the following estimates: -

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (Rs.)</b>
1.	Newspaper publication	2,000/-



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2.	Fee payable to the advocate during liquidation	25,000/-
3.	Estimate for 2 valuers' report	10,000/-
4.	Out of pocket and other incidental expenses	18,000/-
<b>Total</b>		<b>55,000/-</b>

22. The court observed in the Daily Order dated **05.08.2024** that, it is for the SCC (Stakeholders Consultation Committee) to decide the liquidation cost depending on various services to be availed or not. Therefore, it is not considered necessary to pass any orders in respect of Prayer (d).
23. The **I.A. No. 1869 of 2022** in C.P. No. 3042 of 2018 **stands disposed of in view and in accordance with above directions.**

**Sd/-**

**Charanjeet Singh Gulati**  
**Member (Technical)**

Vaishnavi, LRA

**Sd/-**

**Lakshmi Gurung**  
**Member (Judicial)**