

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 1704/KB/2022

In

C.P. (IB) No. 1250/KB/2018

**An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules,
2016.**

IN THE MATTER OF:

Yusen Logistic (India) Private Limited

... Operational Creditor.

Versus

Diamond Shipping Company Limited

... Corporate Debtor.

And

IN THE MATTER OF:

ICICI Bank Limited

... Applicant.

Versus

Ms. Sonu Jain

... Respondent/ erstwhile Liquidator.

Date of Pronouncement: May 02, 2024.

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI. D. ARVIND, MEMBER (TECHNICAL)

Appearance:

For the Applicant:

Mr. Avishek Guha, Adv.

Ms. A. Dutta

Mr. K. De. Sarkar, Adv.

For the Liquidator:

Mr. D. Acharjee, Adv.

Mr. K. K. Choraria, Liquidator.

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ORDER

Per: D. Arvind, Member (Technical):

1. The Court congregated through hybrid mode.
2. Heard Ld. Counsels for the parties.
3. This application has been preferred by ICICI Bank Limited (hereinafter referred as “**Applicant**”) against Mr. Sonu Jain erstwhile liquidator of Diamond Shipping Company Limited (hereinafter referred as “**Respondent**”) seeking direction to the erstwhile liquidator to makeover a sum of Rs. 12,76,000/- along with an interest at the rate of 18% to the applicant. Apart from above, the applicant is seeking direction to the respondent to handover all information and/or documents relating to CIRP and the liquidation process of the corporate debtor to the present liquidator.

Brief Facts of the Case:

4. Diamond Shipping Company Limited (the Corporate Debtor) was admitted into CIRP by way of an Order dated 14.03.2019, by this Bench and the respondent herein was appointed as Insolvency Resolution Professional.
5. Subsequently, the corporate debtor went into liquidation and the respondent was replaced with one Mr. Krishna Kumar Chamaria as liquidator.
6. The replacement became necessary as there were several allegations of unlawful and wrongful acts and/or losses of the respondent during the period when she acted as resolution professional/liquidator of the corporate debtor.

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7. On earlier occasions, this matter was dealt by this Bench and *vide* Order dated 26.11.2021, this Bench accepted the resignation of the respondent as liquidator and fixed the total lump sum fee of Rs. 2 lacs for whatever work she has done till the date of replacement. This was accepted by the respondent as could be seen in Para 5 of the Order passed by this Bench in IA No. 591/KB/2021 dated 26.11.2021.
8. In this application it has been alleged that one of the assets of the corporate debtor was sold during the period when she was the liquidator for a sum of Rs. 12,76,000/-. She provided an account of expenditure incurred in connection with the liquidation in a tabular form, attached at page 16 to her Reply Affidavit, reproduced in verbatim:

Receipts	Amount (Rs.)
Sale proceed of office	12,76,000.00
Payment	
Public Announcement	65,000.00
Filing and other expense	3,80,000.00
Income Tax Submissions	3,000.00
Asset Searching Charge	20,000.00
Asset documenting Charge	15,000.00
Asset Management Charge	25,000.00
Meeting Charges of Recovery Advisor	25,000.00

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Legal expenses	3,98,143.00
Other Miscellaneous Expenses	45,000.00
Property Inspection Charges	5,000.00
E-auction	10,000.00
Valuation Charges	25,000.00
Bank Charges	257.00
RP Fees	2,59,600.00
Total	12,76,000.00

Ld. Counsel for the Applicant:

9. Ld. Counsel for the applicant submits that out of the total sale proceeds of Rs. 12,76,000/- the respondent has adjusted a sum of Rs. 9,98,177/- as expenses without any supporting. Ld. Counsel submits that not a single penny claimed to have been incurred by the respondent as expenses, has been supported with bills/invoices/ documents etc. Even the approval for such expenditure, from stakeholder committee is absent.
10. Consequently, no adjustments could have been made by the respondent against the realisation for sale of the assets and such amount realised should be distributed as per Section 53(1) of the IBC.

Ld. Counsel for the Respondent:

11. Ld. Counsel for the respondent submits that she has worked diligently in this matter and incurred several expenses and in reply

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she submits that all the expenses were directly transferred from the bank account to the vendors from whom services were taken. The Ld. Counsel relies on the bank statement attached. Therefore, Ld. Counsel claims that nothing more is due and payable to the applicant herein.

- 12.** Ld. Counsel further submits that after accepting the lumpsum fee of Rs. 2 lacs as per the Order passed by this Bench, four months RP fees becomes payable to the tune of Rs. 4,43,400/-.
- 13.** Ld. Counsel submits that this pending due for four months RP fee to the tune of Rs. 4,43,400/- will have to be honoured by the applicant.

Analysis and Findings:

- 14.** It would be evident from the table attached in Para 8 of the order that Rs. 65,000/- has been incurred for public announcement, Rs. 3,80,000/- for filing and other expenses and Rs. 3,98,143/- as legal expenditure and another Rs. 45,000/- as miscellaneous expenditure. None of the major expenses have been supported with quotation/approval/bills/invoices etc. There is nothing on record other than the bank statement which evidences payment to these vendors.
- 15.** In view of above, we direct the respondent herein to provide invoices/ bills in respect of expenditure and also provide the process employed by the liquidator in engaging these vendors for incurring such expenditure. Failing to do within a period of **15** days from the date of this pronouncement, the amount corresponding to this

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expenditure mentioned above may be refunded to the SCC for distribution under Section 53 of IBC. Further, we would discern that when the respondent has accepted an amount of Rs. 2 Lac as lump sum amount payable at the time of her replacement with a new liquidator, as recorded in our order in I.A. 591/KB/2021 dated 26.11.2021, the question of making further payment as fees for the liquidator does not arise and hence, her claim stands rejected. Accordingly, this application is **disposed of**.

- 16.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on 02nd Day of May, 2024.

PH(PS)/ Bose, R. K. [LRA]