



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III**

Item No.02

IA-5671/2021
In
(IB) – 495(ND)/2017

IN THE MATTER OF:

M/s. IMPEX SERVICES INDIA PRIVATE LIMITED

..... Operational Creditor

VERSUS

M/s. SSMP INDUSTRIES LIMITED

..... Corporate Debtor

SECTION

U/s 9 of IBC, 2016 In Liquidation

Order Pronounced On: 27.07.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Liquidator : Mr. Yogesh Jagia, Adv.

For the Applicant : Mr. Narendra Kumar, Adv. in IA No 5634/2021

For the Respondent : Mr. Narendra Kumar, Adv. in CA-292/2019,
Mr. Rohit Bohra, Adv. in IA-1395/21,
IA-1591/2021, IA-3287/2022.

For the Punjab : Mr. Aamir Shaikh and Mr. Arun Kumar Shukla,
National Bank Adv.

ORDER

Order pronounced in open court vide separate sheets. IA-5671/2021 is
dismissed.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-5671/2021

In

(IB) – 495(ND)/2017

IN THE MATTER OF:

M/s. IMPEX SERVICES INDIA PRIVATE LIMITED

..... Operational Creditor

VERSUS

M/s. SSMP INDUSTRIES LIMITED

..... Corporate Debtor

AND IN THE MATTER OF:

Application under Rule 11 of the National Company Law Tribunal Rules, 2016 read with Regulation 2(A) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.

Mr. Yogesh Sethi

Liquidator of M/s. SSMP Industries Limited

..... Applicant

VERSUS

Punjab National Bank & Ors.

1. Punjab National Bank

..... Respondent No. 1

2. Kotak Mahindra Prime Ltd.

..... Respondent No. 2

Order Pronounced On: 27.07.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Liquidator : Mr. Yogesh Jagia, Adv.

IA-5671/2021 In (IB) – 495(ND)/2017

Date of Order: 27.07.2023



For the Applicant : Mr. Narendra Kumar Adv. in IA No 5634/2021
For the Respondent : Mr. Narendra Kumar Adv. in CA-292/2019, Mr. Rohit Bohra, Adv. for Respondent in IA-1395/21, IA-1591/2021, IA-3287/2022.
For the Punjab : Mr. Aamir Shaikh and Mr. Arun Kumar Shukla,
National Bank Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application was filed before this Adjudicating Authority under Rule 11 of the National Company Law Tribunal Rules, 2016 read with Regulation 2(A) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, on behalf of Liquidator against Respondent Bank with a prayer to direct Respondent Bank to clear outstanding Liquidation cost of Appx. Rs. 45 Lakh and to Permit the Applicant to use Sale Proceeds of Rs. 15.85 Lakh of Car Disposed of in Liquidation, for seeking the following reliefs:
 - a) *“To direct the Respondents to make payment of INR 44,48,158 to clear outstanding liquidation cost or*
 - b) *To direct the Respondents to make payment of INR. 28,63,158 and permit the applicant to use sale proceeds of INR 15.85 lakh lying deposited in current account no. 10481132000324 with Punjab National Bank.*
 - c) *To co-operate for the timely payment of Liquidation Cost and Liquidator's fee in order to complete the liquidation process in a time-bound manner;*
 - d) *To pass any other such order(s) as this Hon'ble Tribunal may deem fit in the interest of justice, equity and good conscience.”*

2. **Submissions of the Applicant:**

- i. This Tribunal, vide Order dated 31.07.2019 passed in CP(IB)/495/(ND)/2017 was pleased to allow the Resolution Professional under Section 33 of the Insolvency and Bankruptcy

IA-5671/2021 In (IB) – 495(ND)/2017
Date of Order: 27.07.2023



Code, 2016 ("IBC, 2016") for initiation of Liquidation process against the Corporate Debtor and appointed applicant herein (bearing Registration Number: IBBI/IPA-001/IP-P00814/2017-18/11379), as the Liquidator for carrying out the Liquidation Process and for exercising all powers and duties as contemplated under the provisions of the IBC, 2016. It is submitted that pursuant to the appointment as Liquidator, the Applicant has carried out his duties as envisaged under Section 35 of the IBC, 2016.

- ii.** It is submitted by the Applicant that in the discharge of duties, the Applicant as at 30/09/2021 incurred total expenditure of Rs. 46,42,251/- excluding the liquidation fee which will be charged as permitted by law. The expenses have been incurred in various heads which have been notified to the Respondent bank.

However, as on date Rs. 33,86,158/- is outstanding receivable on account of expenses and Rs. 10,62,000/- is receivable on account of liquidator fee. In total Rs. 44,48,158/- is outstanding and receivable.

- iii.** It is submitted by the Applicant that due consideration has to be given towards the acute shortage of funds for handling the liquidation process as the same is proving to be an impediment to the Applicant in performing his duties to carry out the Liquidation process. The Applicant has been constantly following up with Respondent No. 1 herein to release all the pending invoices towards the meeting of liquidation expenses but despite of promises, no action has been taken which forced the applicant to seek indulgence of this Tribunal.

- iv.** It is pertinent to note that applicant is not able to even deposit statutory dues inter alia Tax deducted at source, GST (RCM) and non-payment of dues which is creating problems in having required co-operation of staff and professionals engaged to fructify liquidation. Persistent follow-up for payment is evident



from the exchange of mails, part of which are filed along with the application.

- v. It is submitted by the Applicant that in the process of liquidation, the applicant through e-auction disposed of BMW Car of the Corporate debtor in liquidation for Rs. 15.85 lakh and same is deposited in current account no 10481132000324 with Punjab National Bank.

3. **Submissions of the Respondents:**

- i. The liquidator seems to be aggrieved by the delayed payments of the liquidation cost as the liquidator's fee. The liquidator also seems to be aggrieved by the accountability that the Respondent bank is trying to put upon the liquidator with regard to the manner in which the liquidation costs have been incurred.
- ii. The liquidator had on an earlier date in liquidation also filed a similar application for payment of the liquidator fee as well as liquidation cost being IA-1054/2020. The said application was disposed of after payment was made to the liquidator by the respondent bank.
- iii. Since the inception of the liquidation, the stakeholder and the liquidator have been in dispute with regard to the payment of the liquidator fees and the liquidation cost. The Respondent bank has till date paid over Rs. 64 Lakh towards the present liquidation fee and liquidation cost of the Corporate Debtor.
- iv. This Tribunal vide orders dated 10.12.2021 & 05.01.2022 was allowed to utilize Rs.10 Lakh out of the sale proceed of BMW Car of the Corporate Debtor, for liquidation cost. It is pertinent to note that till date the liquidator has not made distribution of the remaining amount of Rs.5.85 Lakh recovered from the sale of BMW Car. This Tribunal in its order dated 05.01.2022 had also directed the Respondent bank to immediately release an amount of Rs.10 Lakh towards the liquidation cost. The Respondent bank in compliance of the order dated 05.01.2022 released an amount of Rs.11,80,000/- towards liquidation cost.



- v. The matter was not completely argued on 17.03.2022 but an order was passed by this Tribunal directing the respondent bank to make a complete payment of Rs.45 Lakh as prayed for under the present I.A. In compliance of the order dated 17.03.2022, the Respondent bank filed an application dated 20.07.2022 wherein it has been categorically stated that an amount of Rs.44,15,840/- has been paid towards liquidation since the filing of IA-5671/2021. It may be noted that as directed vide order dated 17.03.2022 an officer of the respondent bank visited the office of the liquidator and collected/inspected the bills and vouchers that have been raised by the office of the liquidator and all the bills that were in order were cleared.
- vi. The manner in which the liquidation cost has been incurred in the absence of the consultation of the stakeholder and the manner in which the liquidator is running the liquidation process are both prejudicial to the Respondent bank and thus the Respondent bank wishes to place its objection to the same.
- vii. In conclusion, the Respondent Bank wishes to state that the harm that is being caused to the Respondent Bank who is being forced to pay this exorbitant liquidation cost should be taken into consideration before disposing of the present I.A. as the Respondent Bank is the custodian of public money, who is already under the burden of the amount that has been defaulted by the Corporate Debtor and the present liquidation cost is further increasing that burden.

4. **Analysis and Findings:**

- i. We have heard the Ld. Counsel appearing for both parties from time to time and also perused the documents on record.
- ii. We are of the opinion that since the initiation of the liquidation, process, the stakeholder committee and the Liquidator have been in dispute with regard to the payment of the liquidator fees and the liquidation cost.



- iii.** After considering the facts and circumstances of the present case, we observe that the liquidator has failed to fulfil the duties as assigned to it under the code as the liquidator is only interested in the payment of liquidator fees and has been continuously interested in delaying the liquidation process.
- iv.** We find it relevant to mention that as per the affidavit dated 20.07.2022, the Respondent already paid the amount of Rs. 44,15,840/- to the Liquidator, the details of which are as follows:

| S.NO. | DATE OF PAYMENT | AMOUNT PAID |
|---|-----------------|---|
| 1. | 29.12.2021 | Rs.4,93,500/- (Rupees four Lakhs Ninety-Three Thousand Five Hundred Only) |
| 2. | 12.01.2022 | Rs.11,80,000/- (Rupees Eleven Lakhs Eighty Thousand Only) |
| 3. | 12.04.2022 | Rs.27,42,340/- (Rupees, Twenty-seven Lakhs Forty-two Thousand Three Hundred and Forty Only) |
| TOTAL AMOUNT PAID RS.44,15,840/- (RUPEES FORTY-FOUR LAKHS FIFTEEN THOUSAND EIGHT HUNDRED FORTY ONLY) | | |

That an amount of Rs.44,15,840/- has been paid towards the liquidation cost and liquidator fees since the date of filing of IA NO. 5671 OF 2021.

- v.** In the peculiar facts and circumstances of the present case, we are of the considered view that the matter needs to be referred to the Insolvency and Bankruptcy Board of India (IBBI) for proper scrutiny and audit of the expenses incurred under liquidation as prayed by the Respondent.
- vi.** The IBBI is directed to submit the status report within Two (2)



months from the pronouncement of this Order, giving the details of the liquidation cost regarding the Liquidator's fee in order to complete the liquidation process.

The IBBI is at liberty to check or scrutinize all the bills or vouchers raised by the Liquidator in order to complete the liquidation process and to form a rational opinion regarding the expenses incurred by the Liquidator in order to complete the liquidation process.

5. **Order**

- i.** In light of the above facts and circumstances, the Application bearing **IA-5671/20221** is **dismissed**.
- ii.** The Registry is directed to accept the status report.
- iii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for the necessary compliance.

No order as to costs.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**