

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 843/2020
In
CP (IB) No.121/Chd/Pb/2018
(admitted)**

Under Section 60(5) of IBC, 2016

In the matter of:

RPG Industrial Product Pvt. Ltd.

....Petitioner/Operational Creditor

Versus

M/s. Sahil International Pvt. Ltd.

....Respondent/Corporate Debtor

And in the matter of IA No. 843/2020:-

RPG Industrial Product Pvt. Ltd.

having its office at
4 Shankar Vihar, Vikas Marg,
New Delhi-110092,

...Applicant

Vs.

Sh. Harvinder Kumar Jatana

Liquidator of M/s. Sahil International Pvt. Ltd.
having its office at
SCO-2935-36, Level-1, Sector 22C,
Chandigarh-166022

...Respondent

Order delivered on: 30.05.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

IA No. 843/2020
In
CP (IB) No.121/Chd/Pb/2018
(admitted)

Present :

For the Applicant in

IA No. 843/2020 : Mr. Vishav Bharti Gupta, Advocate

For respondent in

IA No. 843/2020 : Mr. Deepankur Sharma, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No. 843/2020

This application has been filed by the applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, with a prayer to replace Sh. Harvinder Kumar Jatana-Liquidator appointed in Sahil International Pvt. Ltd. with Sh. Arvind Mital as New Liquidator.

2) It is stated in the application that the CIRP was initiated by order of this Tribunal dated 21.09.2019, and the IRP was appointed and was substituted on the request of the petitioner-operational creditor by this Tribunal by its order dated 29.03.2019. Subsequently, the liquidation order was passed by this Bench on 18.11.2019 on an application by the Resolution Professional. As the outgoing RP did not give his consent to act as a liquidator, the present applicant Sh. Harvinder Kumar Jatana was appointed as liquidator. The RP informed the petitioner-operational creditor by his email dated 06.12.2019 and has invited the claim by 18.12.2019, the requisite claim submitted by the liquidator in time. The liquidator informed the petitioner by email dated 08.01.2020 about the estimated amount of liquidation expenses for a period of 12 months, the said email is attached as Annexure C to the application.

IA No. 843/2020

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(admitted)

Furthermore, by his email dated 28.01.2020, the liquidator intimated the operational creditor to constitute towards the liquidation costs was as to enable him to proceed with the liquidation process. It is also stated that the RP could not find any asset or any liquidity in the account of the respondent. It is stated by the applicant that in the 6th CoC, meeting held on 15.10.2019 under Item 11 to discuss and approve the fee of the liquidator and as per Regulation 39 (d) of the CIRP Regulations, the following decision was taken:

“The RP further explained the relevant provisions of the IBC, 2016 and the regulations to the members of the CoC. The CoC after discussions decided not to fix any fees payable to the liquidator.”

3) It is further stated that the demand of the liquidator is illegal and arbitrary, and the liquidator is not pursuing the applications filed under Sections 43 & 66 of the Code, and there has been no progress in the liquidation process.

4) In view of this, the applicant has prayed to appoint Mr. Arvind Mittal as the new liquidator by replacing Sh. Harvinder Kumar Jatana/liquidator.

5) In his reply filed by Diary No. 02050/01 dated 08.04.2022, it is stated that the respondent has taken all necessary steps to discharge his duties as provided under the IBC as well as the IBBI (Liquidation Process) Regulations 2016, including submitting quarterly progress reports. It is stated that the liquidator has not demanded any fee from the applicant and, on request of the applicant, only provided the estimated liquidation cost through his email dated 08.01.2020.

6) We have heard the learned counsel for the parties and have carefully perused the available records.

7) In the course of the present proceedings, it has been stated by the learned counsel for the liquidator that he has no objection to his replacement subject to the payment of his fees.

8) From a perusal of the minutes of the Stakeholders Consultation Committee, it is seen that the liquidator's request for his fees have not been seriously considered by the operational creditor. In the present case, no decision has been taken by the CoC under Regulation 39 (d) of the IBC, 2016, and therefore, the case squarely falls under Regulation 4 (2) of the Liquidation Regulations. We also note the fact that the corporate debtor has no tangible assets. Be that as it may, under the provisions of the Code, a decision with regard to the fees to be paid in terms of Regulation 4 (2) of the Liquidation Regulations needs to be determined.

9) As regards to the appointment of Sh. Arvind Mittal as the liquidator in place of Sh. Harvinder Kumar Jatana, we are of the view that the Code, 2016 does not explicitly state the grounds for removing the liquidator. In this context, a reference is made to the decision of Hon'ble NCLAT Chennai Bench in case of **CA V. Venkata Sivakumar Vs. IDBI Bank Ltd. Company Appeal (AT) (CH) (Ins.) No. 269/2022 & I.A. Nos. 571, 572 & 623/2022 dated 20.12.22** wherein it is held that

"1. The Code, 2016 does not explicitly state the grounds for removing the liquidator. In the absence of specific provisions, we may resort to Section 33 & 34 of the Code, 2016 and

Section 276 of the Companies Act, 2013, which provides for the removal and replacement of liquidators on various grounds.

II. NCLAT also notes the recent judgement passed by Principal Bench, NCLAT vide order dated 13.10.2022 reported at [\(2022\) ibclaw.in 839 NCLAT](#). This clearly establishes that, no Liquidator, has any personal rights, to continue in Liquidation and the Adjudicating Authority, can order for replacement of the Liquidator, recording sufficient reasons, as per law.

III. Further, since the Adjudicating Authority, is vested with the power, to appoint a Liquidator, under Section 33 and 34 of the Code, 2016. It is by the virtue of the Section 16 of the General Clauses Act, 1897, that an Adjudicating Authority, who also, has the power, to remove the Liquidator.

IV. Combined reading of above Case Laws and provisions along with Section 33 and Section 34 of the Code, 2016, would make it clear that the Adjudicating Authority, which had the powers, to appoint the Liquidator, will also have the powers, to remove the Liquidator for reasons, the Adjudicating Authority, may find fit, just, valid and proper.”

10) In the present case, the applicant is the sole member of the SCC constituted by the liquidator. Hence, it's recommendation to appoint Mr. Arvind Mittal in place of Mr. Harvinder Kumar Jatana is accepted. The Law Research Associate of this Tribunal has checked the credentials of Mr. Arvind Mittal, and there is nothing adverse against him. In view of the above, we appoint Mr. Arvind Mittal, Registration No. IBBI/IPA-001/IP-P01358/2018-19/12081, E-mail:arvindmittal81@yahoo.in, Mobile No. 9958061149. The outgoing liquidator is directed to hand over the charges and records to the newly appointed liquidator within the period of seven days from the date of this order.

11) As regards to the payment to the outgoing Liquidator, we have already observed in para 7 & 8 above the legitimate claims regarding Fees etc, of the liquidator have not been seriously considered by the CoC. In view of such

facts, we direct the new liquidator to convene the meeting of the stakeholders within 15 days of this order, and the Stakeholders Committee is to decide on the fees of the outgoing liquidator in the said meeting. The necessary payments with regard to the fees to be paid within 30 days of the SCC meeting.

12) In the result, IA No. 843/2020 is allowed and disposed of accordingly. The registry is directed to send a copy of this order to IBBI for its information and records.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

May 30, 2023
PB