IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **09.10.2025** THROUGH VIDEO CONFERENCING

PRESENT: **HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF **:** J Jaya Seelan
Vs
Vasan Construction Com P Ltd

MAIN PETITION NUMBER **:** CP/1398/IB/2018

(IA/MA) APPLICATION NUMBERS

IA(IBC)/1715(CHE)/2024

ORDER

Present: Ld. Counsel Ms. Raathai S Yadav for the Applicant / erstwhile Liquidator.

Vide separate order pronounced in Open Court, application is disposed of with directions.

Sd/-	**Sd/-**
(VENKATARAMAN SUBRAMANIAM)	**(SANJIV JAIN)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

MG

Date: 09.10.2025

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IA(IBC)/1715(CHE)/2024

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 4 of IBBI (Liquidation Process) Regulations, 2016 and Rule 32 & 11 of NCLT Rules, 2016)

In the matter of ***Vasan Construction Company Private Limited (Under Liquidation)***

Mrs. M. Jayasree
Liquidator of
Vasan Construction Company Private Limited
Email: jayashree_muralidharan@yahoo.co.uk

. . . ***Applicant / Liquidator***

vs

1. **Canara Bank**
   Perambalur Branch
   Financial Creditor and SCC Member of
   Email: cb1214@canarabank.com

2. **Bank of India**
   Perambalur Branch
   Financial Creditor and SCC Member of
   Email: perambalur.chennai@bankofindia.co.in

. . . ***Respondents***

Order pronounced on ***09th October, 2025***

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : B. Dhanaraj,
For Respondent : R. Umasuthan, K. Bhaskar, Advocates

ORDER

1. Under consideration is an application filed by the Liquidator of Vasan Construction Company Private Limited, under Section 60(5) of IBC, 2016 read with Regulation 4 of IBBI (liquidation) Process Regulations, 2016 and Rule 32 & 11 of NCLT Rules, 2016, seeking the following reliefs:

a. *Direct the Respondent No. 1 and 2, to pay the Liquidator's Fees as proposed by the Liquidator and reimburse the expenditure incurred by the Liquidator during the Liquidation Process of the Corporate Debtor, immediately to the Applicant / Liquidator, pending consideration of the present Application.*

b. *Discharge the Applicant from the role of the Liquidator of the Corporate Debtor and consequently, appoint the fresh Liquidator for the Corporate Debtor in liquidation.*

c. *Pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.*

SUBMISSIONS MADE BY THE APPLICANT

2. It is stated that Mr. Jayaseelan, Unsecured Financial Creditor, filed an application under Section 7 of IBC, 2016 seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate

Debtor, Vasan Construction Company Private Limited. The Application came to be allowed vide order of this Tribunal dated 04.04.2019 in CP/1398/1B/2018 and Mr. A.R. Ramasubramania Raja was appointed as the Interim Resolution Professional ("IRP").

3. It is stated that the IRP made public announcement in Form A on 08.04.2019 and the last date for submission of claims was fixed as 20.04.2019. The Committee of Creditors ("CoC") was constituted on 26.04.2019, with three financial creditors viz., Canara Bank, Bank of India and J. Jayaseelan.

4. It is stated that since no Resolution Plan was approved, the CoC in its 6th CoC meeting held on 31.12.2019, resolved to liquidate the Corporate Debtor. This Tribunal vide order dated 21.09.2020 in MA/85/2020 ordered the liquidation of the Corporate Debtor. Thereafter, the Applicant, on the recommendation of IBBI, was appointed as the liquidator of the Corporate Debtor vide order dated 12.11.2021 in MA/ 85/2020.

5. It is stated that the Applicant caused paper publication in Form B to be issued on 27.11.2021 calling for claims from the creditors/stakeholders of the Corporate Debtor and the last date for submission of claims was fixed as 25.12.2021. On verification of the claims with the available records, the Liquidator constituted the Stakeholders Consultation Committee ("SCC"). The 1st SCC meeting was held on 19.03.2022.

6. It is stated that the during the liquidation process, the Applicant filed the Preliminary Report, First Progress Report, Audited Receipts and Payment Accounts of the Corporate Debtor and ten Quarterly Progress Reports pertaining to the liquidation process before this Tribunal.

7. It is stated that the assets of the Corporate Debtor included the building materials, JCBs, securities, financial assets and plants & machinery. The Liquidator appointed two registered valuers for the valuation of plant & machinery and for securities & financial assets of the Corporate Debtor. The Assets Valuation Report pertaining to Securities and Financials Assets was submitted on 21.01.2022 and for Plant and Machinery, on 25.01.2022

8. It is stated that the Applicant filed the Reconstituted List of Stakeholders, in terms of the newly inserted Regulation 31A (1) of Liquidation Regulations, 2016 and the same was taken on record by this Tribunal vide order dated 13.12.2022 in IA/1432(CHE)2022.

9. The Applicant has made following submissions regarding **IA/143(CHE)/2022:**

9.1. It is stated that the books of accounts and the financial documents of the Corporate Debtor were neither handed over by the suspended directors of the Corporate Debtor nor the erstwhile IRP of the Corporate Debtor to the Applicant. Hence, the Applicant filed

IA/143(CHE)/2022 before this Tribunal, seeking for co-operation from suspended directors and erstwhile IRP.

9.2. It is stated that this Tribunal vide order dated 17.01.2023 appointed Mr. T.M. Pappiah as the Advocate Commissioner. He was directed to visit the places where the books of accounts and other records were kept by the Corporate Debtor. The Advocate Commissioner submitted his Report dated 05.04.2023 before this Tribunal.

9.3. It is stated that the remuneration to be paid to the Advocate Commissioner is pending till date. The Tribunal vide order dated 02.04.2024, directed the Respondents in the said application to appear before the Tribunal on 30.04.2024, however, the Respondents did not appear before the Tribunal on 30.04.2024.

10. It is stated that Mr. Kumaragurubaran, one of the suspended directors of the Corporate Debtor, appeared on 02.04.2024 and was directed to file his reply to the above application. It is stated that, on 15.07.2024, the Tribunal heard the submissions of the parties at length and posted the subject Application for further hearing on 09.08.2024.

Misappropriation of amount during CIRP period by the Respondents:

11. It is stated that Applicant had filed applications bearing Nos. IA/255(CHE)/2022 and IA/286(CHE)/2022 before this Tribunal against

Canara Bank, the 1st Respondent and Bank of India, the 2nd Respondent and the erstwhile IRP respectively, for the amounts misappropriated during the moratorium of the Corporate Debtor and also during Liquidation. This Tribunal by its common order dated 17.01.2023 made in IA/255(CHE)/2022 and IA/286(CHE)/2022 allowed the Application as prayed for by the Applicant/Liquidator.

12. It is stated that aggrieved against the above order, the Respondents i.e., Canara Bank and Bank of India, preferred Company Appeals (AT) (INS) No. 60 & 76 of 2023 before the Hon'ble NCLAT, Chennai and the same are posted under the caption "For Hearing".

Section 66 application filed against the ex-directors of the CD and the erstwhile IRP/RP of CD:

13. It is stated that the Applicant also preferred an Application before the Tribunal against the Ex-Directors of the Corporate Debtor and the erstwhile IRP/RP under Section 66 of Code therein and the same is pending adjudication before the Tribunal. The Tribunal during the hearing held on 15.07.2024 heard the Application in detail and posted the Application for further hearing

Liquidator's fees and expenses incurred during the liquidation process of the Corporate Debtor:

14. It is stated that the Applicant has been discharging her duties as per the provisions of IBC, 2016 without getting any fees/remuneration

from the Respondents and also, meeting the expenditure related to the conduct of liquidation from her own sources and in fact, the Respondents have not paid the legal fees including advocate fees incurred in prosecuting the above applications and appeals pending before this Tribunal and the Hon'ble NCLAT, Chennai. Notably, the Respondents being the Financial Institutions are required to contribute to the liquidation costs to the Liquidator as per the provisions of IBC, 2016.

15. It is stated that in the 2nd SCC Meeting held on 10.10.2022, 3rd SCC Meeting held on 29.10.2022 and the 4th SCC Meeting held on 08.12.2023, the Applicant requested the Respondents for her remuneration, and reimbursement of expenditure incurred for conducting the liquidation and legal fees. In response to the same, the Respondents though appreciated the actions of the Applicant in conducting the liquidation process of the Corporate Debtor but sought time to seek advice from the higher authorities, in respect to the liquidator's fees and the legal fees incurred by the Liquidator.

16. It is stated that in the 5th SCC Meeting held on 09.02.2024, the Applicant was put to shock and surprise by the contradictory stand taken by the Respondents that the Liquidator is required to claim the fees only out of the realization of the Liquidation proceeds, hence, no remuneration was paid to the Liquidator. It is stated that in the 6th SCC Meeting held on 22.04.2024, the 1st Respondent suggested the

Liquidator to dissolve the Corporate Debtor. It informed that there is no point in incurring the expenditure for the liquidation.

17. It is stated that this Tribunal by its common order dated 17.01.2023 made in IA/255(CHE)/2022 and IA/286(CHE)/2022 allowed the Applications directing to pay a sum of Rs.4,95,00,000/- by the 1st Respondent and Rs.35,68,000/- by the 2nd Respondent forthwith to the Liquidator, totalling to Rs.5,30,68,000/- for the utilization by the Liquidator. Notably, the Respondents challenged the orders before the Hon'ble NCLAT, Chennai. Despite no stay order was passed by the Hon'ble NCLAT, Chennai in regard to the operation of the Common Order dated 17.01.2023, the Respondents did not pay the above amount to the Liquidation Estate of the Corporate Debtor.

18. It is stated that Section 34 (8) of IBC, 2016 entitles the Liquidator to charge such fees for the conduct of the Liquidation Proceedings and in such proportion to the value of the Liquidation Estate of the Corporate Debtor. Further, the combined reading of the Regulation 39 (D) of CIRP Regulations, 2016 and Regulation 4 of Liquidation Regulations, 2016 provides that the Liquidator is entitled to receive the remuneration for her duties and in addition to the above remuneration, the Liquidator is entitled to receive incentives based on the realization during Liquidation Process of the Corporate Debtor.

19. It is stated that the Respondents being the Financial Creditors of the Corporate Debtor have neglected to pay the Liquidator's Fees and

reimburse the balance expenditures to the Applicant and have asked the Applicant/Liquidator, to claim the Liquidator's Fees out of the realization of the Liquidation Estate, which is contrary to the provisions of IBC, 2016 and its allied. Regulations, 2016. More so, the Respondents have ignored to reimburse the legal fees including advocates fees to the liquidator, in prosecuting the Applications and Appeals by and against the Corporate Debtor.

20. It is stated that the Liquidator has not received any remuneration since 26.11.2021, i.e., 2 years 8 months as on date. Applying the provisions laid down for determination of the Liquidator's fees under Regulations 39 (a to c), any period not falling into the period of Compromise / Arrangement or the period of sale, will form part of the Balance Liquidation Period. As such, even if there has been no Liquidator Fees fixed by the CoC or the SCC, the Liquidator shall still be entitled for a reasonable Fees for the performance of her duties as per Regulation 4 (2) (a) of Liquidation Regulations, 2016, which is a remuneration other than what has been mentioned in Regulation 4 (2) (b) of Liquidation Regulations, 2016, in respect of allotted percentage on the Amounts realized and distributed.

21. It is stated that the Applicant has calculated the minimum remuneration of Rs.50,000/- per month from 26.11.2021 till 31.07.2024 and the remaining expenditure to be reimbursed to the Applicant/Liquidator including advocate's fees.

Discharge the Applicant from the role as the liquidator of the Corporate Debtor:

22. It is stated that Dr S. Muralidharan, the husband of the Applicant, was diagnosed with a brain tumour in May, 2024. He has currently been undergoing daily chemotherapy at Kovai Medical Center and Hospital Limited, Coimbatore, with the assistance of the Applicant.

23. It is stated that the Applicant has been diligently performing her duties in accordance with the provisions of the IBC, 2016. The Applicant has taken actions against the ex-directors and the erstwhile Interim Resolution Professional of the Corporate Debtor by preferring an Application seeking co-operation in handing over the financials of the Corporate Debtor along with other relevant documents. Likewise, the Liquidator filed an Application against the Respondents/Financial Creditors of the CD, to pay the misappropriated funds, in violation to the moratorium declared by the Tribunal under Section 14 & 33(5) of I&B Code. 2016. Additionally, the Applicant/Liquidator has filed an Application against the Ex-Directors of the CD under Section 66 of I&B Code, 2016.

24. It is stated that despite diligent efforts and commitment, the Liquidator is unable to discharge her duties with efficiency and effectiveness due to severe and ongoing illness of the Applicant's husband. In fact, there is no other individual, to support the health and

take care of the Applicant's husband. It is stated that with the personal commitment, it would be difficult for her to pursue the role of Liquidator which otherwise she has been performing ever since she took over as the Liquidator of the Corporate Debtor.

25. It is stated that the Financial Creditors of Corporate Debtor never cooperated with the Liquidator in terms of reimbursement of even the minimal expenditure for conducting the liquidation. She has otherwise been facing mental harassment by the conduct of the Financial Creditors, and in fact, the illness of her husband became the last straw on the camel's back for the Applicant. Hence, the Applicant is compelled to file the present Application seeking discharge from the role of the Liquidator of the Corporate Debtor and consequently appoint a new Liquidator of the Corporate Debtor.

COUNTER FILED BY THE RESPONDENTS

26. The Respondents have filed counter affidavit vide S.R. No. 5099 dated 21.10.2024.

27. The sequence of events stated in the counter affidavit is extracted hereunder,

Sl. No.	Date	Events
1	04.04.2019	CP (IB) No.1398 of 2018 filed against the Corporate Debtor u/s.7 of IBC was admitted by the adjudicating authority and CRIP process

		was initiated against the Corporate Debtor.
2	31.12.2019	The COC in its 6th meeting unanimously passed a resolution, recommending the liquidation of the Corporate Debtor.
3	21.09.2020	The Adjudicating Authority in M.A.No.85 of 2020 in CP(IB) No.1398 of 2018, ordered for the liquidation of the Corporate Debtor.

28. It is stated that subsequent to her appointment as the Liquidator of the Corporate Debtor, the Applicant herein did not take effective measures for the liquidation and sale of the liquidation estate of the Corporate Debtor.

29. It is stated that without resorting to the effective measures for the sale of the liquidation estate of the Corporate Debtor, the Applicant filed I.A. No. 255 of 2022 for directing the 1st Respondent to remit a sum of Rs. 4.95 crores, which was received by the 1st Respondent from a third party namely, Shree Basaveshwar Sugars Limited as initial payment for the purpose of OTS, back into the liquidation account of the Corporate Debtor. As against the order dated 17.01.2023, passed by the Adjudicating Authority in I.A.No.255 of 2022, the 1st respondent herein has preferred appeal before the NCLAT, Chennai Bench in Appeal (AT) CH No.76 of 2023 and the appeal is pending for final disposal.

30. It is stated that the Applicant also filed I.A.No.286 of 2022 for directing the 2nd Respondent to remit a sum of Rs.35,68,000/- back into the liquidation account of the Corporate Debtor. It is stated that against order dated 17.01.2023, passed by the Tribunal in I.A.No.286 of 2022, the 2nd respondent herein has preferred appeal before the NCLAT, Chennai Bench in Appeal (AT) CH No.60 of 2023 and the appeal is pending for final disposal.

31. It is stated that the present application has been filed by the Liquidator for relieving herself from the office of the liquidator of the Corporate Debtor, predominantly on the ground of "personal reasons, citing ill health of her husband". The respondents herein state that since both the IBC and IBBI (Liquidation Process) Regulations do not provide for voluntary relinquishment by the office of the liquidator for any reason whatsoever, it is left to the discretion of this Tribunal for appropriate orders in this regard.

32. With regard to the plea of the applicant for the payment of liquidator's fees and re-imbursement of the expenses incurred by liquidator, it is stated as under :-

32.1. The liquidator's fee is covered under Sec.34(8) of IBC. The liquidation cost is covered under Sec.5(16) of IBC, r/w Sec.2(1)(ea) of the IBBI Liquidation Process Regulations, 2016.

32.2. As per Sec.39(D) of IBBI (Resolution Process for Corporate Persons) Regulations, 2016, COC is empowered to fix the fees for the liquidator in consonance with Sec.4 (1) of the IBBI Liquidation Process Regulations, 2016.

32.3. In the present case, CoC in the 6th CoC meeting, while recommending for the liquidation of the corporate debtor, approved that " the remuneration payable to the liquidator shall be as per IBBI Liquidation Process Regulations, 2016. "

32.4. It is stated that the liquidator shall be eligible to claim the fees prescribed under Sec.4 (c) of the IBBI Liquidation Process Regulations, 2016, only on the amount "realized and distributed".

32.5. In the present case, the assets of the Corporate Debtor are yet to be sold and realized. While so, it is not legally correct and justified for the Liquidator to claim for the payment of fee even prior to sale and realization of the liquidation estate of the Corporate Debtor. It is stated that in view of the aforesaid statutory position, the present application seeking for payment of the liquidator's fees and cost of liquidation is premature and cannot be entertained.

33. During the hearing held on 14.10.2024, the Respondents submitted that they have no objection to the replacement of the Applicant with another Liquidator. However, they requested two days' time to propose the name of the new Liquidator and settle the fees of the Applicant in terms of her prayer.

34. During the hearing on 23.10.2024, the Respondents submitted that they are not nominating any resolution professional for the appointment as the liquidator of the Corporate Debtor. On 23.10.2024, this Tribunal appointed **Mr. C. Prabakaran** (Registration No. IBBI/IPA-001/IPP01596/2018-2019/12444, AFA valid up to 15.01.2025) as the Liquidator of the Corporate Debtor.

FINDINGS OF THE TRIBUNAL

35. We have heard Ld. Counsels for the parties and perused the documents placed on record.

36. The present application has been filed by the Erstwhile Liquidator of Vasan Construction Company Private Limited (hereinafter, Corporate Debtor), seeking primarily two sets of reliefs. In prayer (a), the Applicant seeks directions to the Respondent Banks viz., Canara Bank and Bank of India, to reimburse liquidation expenses incurred by her and to pay her fees/remuneration for the services rendered during the liquidation period. In prayer (b), the Applicant seeks discharge from the role of liquidator of the Corporate Debtor.

37. In so far as prayer (b) is concerned, the Stakeholders Consultation Committee (SCC), during the hearing on 23.10.2024 submitted that they have no objection to the discharge of the Applicant from the role of liquidator. Hence, this Tribunal, by order dated 23.10.2024, appointed Mr. C. Prabakaran as the liquidator of the

Corporate Debtor. Consequently, prayer (b) of the application stands adjudicated by virtue of the aforesaid order.

38. With respect to prayer (a), it is observed from the minutes of the 1st SCC meeting held on 19.03.2022, 4th SCC meeting held on 08.12.2023, and 6th SCC meeting held on 22.04.2024, that the Liquidator had, on multiple occasions requested, the Financial Institutions/ Respondents, to ratify the liquidation expenses and contribute to the liquidation costs in proportion to the debts owed by the Corporate Debtor. However, the Respondents maintained their stance that any such reimbursement should be sought from Mr. Jayaseelan, the applicant in CP/1398/IB/2018, and not from them. Hence, the Applicant has filed the present application seeking reimbursement of liquidation expenses and liquidator's fees.

39. During the hearing on 07.01.2025, this Tribunal directed the newly appointed Liquidator to convene a meeting of the SCC to deliberate and take a decision on the issue of payment of expenses and fees as prayed for by the Applicant in accordance with law. It was also directed that the Erstwhile Liquidator/ Applicant be invited in the meeting. Pursuant thereto, the 8th SCC meeting was held on 23.01.2025 and the minutes of the meeting were placed before this Tribunal on 26.05.2025. It is noted that Respondent No. 2 was not present in the meeting. Respondent No. 1, Canara Bank reiterated its stand that the payments towards liquidation expenses and fees could be made only after the realization of the liquidation assets, as contemplated under

the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter, *Liquidation Regulations*).

40. The preliminary issue that lies before this Tribunal is whether the Respondents are liable to contribute towards the liquidation costs incurred during the liquidation period. In this regard, reference is made to Regulation 2A of the Liquidation Regulations, which provides that where liquidated assets are insufficient to meet liquidation costs, financial creditors, specifically financial institutions, are obligated to contribute the shortfall in proportion to their admitted claims. Such contributions are repayable with interest once realizations are made from the liquidation estate. Regulation 2A of the Liquidation Regulations is extracted below,

"2A. Contributions to liquidation costs.

(1) Where the committee of creditors did not approve a plan under sub-regulations (3) of regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall call upon the financial creditors, being ***financial institutions****, to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, as estimated by him, in proportion to the financial debts owed to them by the corporate debtor*

Illustration

Assume that the excess of liquidation costs over liquid assets is Rs.10, as estimated by the liquidator. Financial creditors will be called upon to contribute, as under:

Sl. No.	Financial creditors	Amount of debt due to financial creditors (Rs.)	Amount to be contributed towards liquidation cost (Rs.)
(1)	(2)	(3)	(4)
1	Financial institution A	40	04
2	Financial institution B	60	06
3	Non-financial institution A	50	00
4	Non-financial institution B	50	00
Total		200	10

(2) The contributions made under the plan approved under sub-regulation (3) of regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or contributions made under sub-regulation (1), as the case may be, shall be deposited in a designated escrow account to be opened and maintained in a scheduled bank, within seven days of the passing of the liquidation order.

(3) The amount contributed under sub-regulation (2) shall be repayable with interest at bank rate referred to in section 49 of the Reserve Bank of India Act, 1934 (2 of 1934) as part of liquidation cost.

[Explanation.- It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019.]"

41. The definition of 'financial institutions' is provided under Section 3(14) of the IBC, 2016. It reads as under:

*"**3(14) "financial institution"** means*
(a) a scheduled bank;
(b) financial institution as defined in Section 45-1 of the Reserve Bank of India Act, 1934;
(c) public financial institution as defined in clause (72) of Section 2 of the Companies Act, 2013; and

(d) such other institution as the Central Government may by notification specify as a financial institution.

(II) Section 45-I of the RBI Act, 1934, clearly mentions that a `Financial Institution', is a `Non-Banking Institution', which carries on as its business various activities among other things including Financing, whether by way of making Loans or Advances or Acquisition of Shares, Stocks, Bonds, Debentures or Securities, issued by a `Local Authority', etc.

42. As per the records placed before us, it is seen that the Stakeholders Consultation Committee comprises of the creditors as under:

Sl. No.	Name of the Creditor	Category	Percentage of debt to total debt
1	Canara Bank	Secured Financial Creditor	53%
2	Bank of India	Secured Financial Creditor	2.08%
3	M Jayaseelan	Unsecured Financial Creditor	1.7%
4	M/s Srinivasan Charitable & Educational Trust	. . . do . . .	10.55%
5	M/s Dhanalakshmi Srinivasan Chit Funds P Ltd	. . . do . . .	1.3%
6	M/s Dhanalakshmi Srinivasan Builders P Ltd	. . . do . . .	0.40%
7	M/s Kumaran Agencies	. . . do . . .	4.25%
8	Deputy Commissioner of GST and Central Excise	Government dues	17.06%

9	M/s Dhanalakshmi Srinivasan Builders Private Limited	Operational Creditor	9.64%
10	M/s Sri Vari Industries	Operational Creditor	0.02%

43. In terms of Regulation 2A, only the financial institutions are obligated to contribute to the liquidation costs, in proportion to their admitted claims, where liquidation costs exceed the liquid assets of the corporate debtor. In the present case, Respondent No. 1 (Canara Bank) and Respondent No. 2 (Bank of India) are the only financial institutions that form part of the SCC. The list of financial institutions/ creditors of the Corporate Debtor along with their claims are extracted as under:

List of secured Financial Creditors

Amount in Rs.

Sl. No.	**Name of creditor**	**Details of claim received**	
		Date of receipt	**Amount claimed**
1	Canara Bank	24.12.2021	36,49, 14,131
2	Bank of India	24.12.2021	1,43,53,084
			37,92,67,215

44. While Section 53 of IBC, 2016 prescribes the priority waterfall for the distribution of liquidation proceeds, this cannot be interpreted to dilute the requirement envisaged under Regulation 2A, which

mandates contribution by financial institution when liquidation costs arise before realizations accrue. While Section 53 applies for distribution of proceeds of the liquidation estate once realisation of assets is made, Regulation 2A governs the funding of the costs incurred by the liquidator in the interim period before realisation of assets, if any, is made. Regulation 2A(3) protects the interest of the financial institutions providing that the amounts so contributed under Regulation 2A shall be repayable with interest.

45. In view of Regulation 2A of Liquidation Regulations, the contention of the Respondents that they are not liable to contribute to the liquidation expenses for the reason that they had not initiated CIRP process or that liquidation costs should be recovered from the liquidation estate, is untenable.

46. In view of the above, this Tribunal decides this issue in favour of the Applicant. We hold that the Respondents are liable to contribute to the liquidations costs of the Corporate Debtor, if any, in terms of Section 3(16) of IBC, 2016 read with Regulation 2A of Liquidation Regulations, subject however, to reimbursement once assets are realized.

47. **Whether the liquidator is entitled to the reimbursement of liquidation costs claimed by her?**

48. In this regard, this Tribunal considers it necessary to refer to the statutory framework governing "liquidation cost." Section 5(16) of the

IBC, 2016 defines '*liquidation cost*' to mean any cost incurred by the liquidator during the period of liquidation, subject to the regulations framed by the Insolvency and Bankruptcy Board of India (IBBI). Regulation 2(ea) of the Liquidation Regulations expands the meaning of *'liquidation cost'* by including within its scope the fees payable to the liquidator under Regulation 4, remuneration payable to professionals appointed under Regulation 7, costs incurred under Regulation 24(2), expenses for preservation and protection of assets, costs for carrying on business of the Corporate Debtor as a going concern, interest on interim finance, amounts repayable under Regulation 2A(3), and other essential costs for completing liquidation. The provisions are extracted herein for reference:

> *"**Section 5. Definitions***
> *(16) "liquidation cost" means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board;"*
>
> ***Regulation 2. Definitions***
> *(ea) "liquidation cost" under clause (16) of section 5 means-*
>
> ***(i) fee payable to the liquidator under regulation 4;***
>
> ***(ii) remuneration payable by the liquidator under sub-regulation (1) of regulation 7; -***
>
> *(iii) costs incurred by the liquidator under sub-regulation (2) of regulation 24;*
>
> *(iv) costs incurred by the liquidator for preserving and protecting the assets, properties, effects and actionable claims, including secured assets, of the corporate debtor;*

(v) costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern;

(vi) interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower;

(vii) the amount repayable under sub-regulation (3) of regulation 2A;

(viii) any other cost incurred by the liquidator which is essential for completing the liquidation process:

Provided that the cost, if any, incurred by the liquidator in relation to compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013), if any, shall not form part of liquidation cost.]"

49. Regulation 7 of the Liquidation Regulation vests the liquidator with powers to appoint professionals to assist him in discharging his duties as the liquidator. Any remuneration payable to such professionals shall form part of the *'liquidation costs'*. Regulation 7 is extracted below,

*"**<u>7. Appointment of professionals.</u>***

(1) A liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

(2) The liquidator shall not appoint a professional under sub-regulation (1) who is his relative, is a related party of the corporate debtor or has served as an auditor to the corporate debtor in the five years preceding the liquidation commencement date.

(3) A professional appointed or proposed to be appointed under sub-regulation (1) shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders, or the concerned corporate debtor as soon as he becomes aware of it, to the liquidator.

50. It is seen that the Applicant, during her tenure as the Liquidator of the Corporate Debtor, spent an amount of Rs. 69,127.35 towards other liquidations expenses and Rs. 3,75,000/- towards legal expenses during the period from 26.11.2021 to 30.07.2024. The details of the expenditure which have been submitted in ***Annexure II(14)*** to the application are extracted below:

<u>Details of Expenditure incurred by the liquidator in the matter of Vasan Construction Co Private Limited (in Liquidation)</u>

<u>Date of commencement of Liquidation 26.11.2021</u>

(in Rupees)

Financial year	**Remuneration requested by the Liquidator Rs.50,000/- per month excluding GST**	**Other expenditure for liquidation Incurred by the Liquidator-As per Annex A**	**Legal fees to be paid**
2021-22 (from 26.11.21 to 31.3.22)	2,00,833.00	42,586.00	
2022-23		1,01,067.00	
2023-24		22,746.00	
2024-25 (expenditure up to 30.07.2024 remuneration up to		15,350.00	

July 2024)			
Total	16,00,833.00	1,81,745.00	3,75,000 Plus GST
Less: Amount reimbursed by the FC		1,12,621.65	
Total to be reimbursed by FC to the Liquidator	16,00,833.00	**69,127.35**	**3,75,000 Plus GST**
GST on Liquidator remuneration	2,88,149.94	0	
Legal Fees	3,50,000.00		
GST on Legal Fees	63,000.00		
Total to be reimbursed by FC	**23,01,982.94**	**69.127.35**	**23,71,110.29**

(Rupees Twenty-three lakhs seventy-one thousand one hundred ten and paise twenty-nine only)

51. In support of her claims, the Applicant has placed on record the Audited Receipts and Payments Accounts for the periods: (i) 26.11.2021 to 31.03.2022, (ii) 01.04.2022 to 31.03.2023 and (iii) 01.04.2023 to 31.03.2024. The Applicant has also submitted the unaudited Receipts and Payments Accounts for the period from 01.04.2024 to 30.07.2024. These accounts reflect the expenditure incurred and payments made during the course of liquidation. On verification of the Receipts and Payments Accounts, it is seen that amount of Rs. 69,127.35 claimed in the ***Details of Expenditure Statement*** extracted in paragraph 41 (supra), pertain to liquidation expenses such as stationery expenses,

travelling charges, stamp duty, public announcement expenses, bank charged and valuer's expenses.

52. In view of the above, the Tribunal finds that expenses incurred by the Applicant fall within the definition of liquidation costs under Section 5(16) of IBC, 2016 read with Regulation 7 and Regulation 2(ea) of Liquidation Regulations. The Respondents herein, are therefore under an obligation as per Regulation 2A to contribute to the liquidation costs, in proportion to their admitted claims, subject to reimbursement once realisations accrue in the liquidation estate.

53. Hence, the aforementioned liquidation costs of Rs. 4,44,127.35 (i.e., legal expenses of Rs. 3,75,000 and other liquidation expenses of Rs. 69,127.35) be treated as part of liquidation cost. Accordingly Respondent No. 1 and Respondent No. 2 are directed to pay 96.22% and 3.78%, respectively, of the liquidation cost as determined above within a period of 3 weeks from the date of this order.

54. **Whether the Applicant is entitled for payment of liquidator's fee for her services during the liquidation period?**

55. The liquidation proceedings against the Corporate Debtor were initiated vide order of this Tribunal dated 21.09.2020 in MA/85/2020. Thereafter, on the recommendation of IBBI, the Applicant herein was appointed as the liquidator of the Corporate Debtor by order dated 12.11.2021 in MA/ 85/2020. As noted above, the Applicant was discharged from the role of liquidator by the order dated 23.10.2024.

Hence the Applicant held the office as liquidator of the Corporate Debtor for a period of 2 years, 11 months and 12 days from 12.11.2021 to 23.10.2024.

56. According to the Applicant, she discharged her duties as Liquidator, which entitle her to liquidator's fees in terms of Section 34 (8) of IBC, 2016 read with Regulation 4 of Liquidation Regulations, 2016. Per contra, the Respondents have submitted that the liquidator shall only be eligible to claim the fees prescribed under Section 4 (c) of the Liquidation Regulations, on the amount "realized and distributed" from the liquidation estate of the Corporate Debtor.

57. From the quarterly progress reports filed before this Tribunal by the Applicant during her tenure, the efforts exerted by the Applicant can be summarized as under:

a. The Applicant filed IA(IBC)/486(CHE)/2022 against the suspended directors of the Corporate Debtor and the erstwhile IRP seeking repayment of value of building materials belonging to the Corporate Debtor of Rs. 3,08,72,859/- (Rupees Three Crores Eighty Lakhs Seventy-Two Thousand Eight Hundred and Fifty-Nine only) that was allegedly wrongfully utilised during the CIRP period. The application is pending adjudication before this Tribunal.

b. The Applicant also filed IA(IBC)/255(CHE)/2022 against Canara Bank seeking refund of Rs. 4,95,00,000 which was allegedly misappropriated by the bank during the moratorium period, back to the liquidation account of the Corporate Debtor. Another Application bearing IA(IBC)/286(CHE)/2022 was filed against Bank of India seeking to credit a sum of Rs. 35,68,000/- to the account of the Corporate Debtor which was misappropriated by the bank. Both these applications came to be disposed of by this Tribunal vide separate orders dated 17.01.2023 with directions to the banks to deposit the amounts claimed by the liquidator to the account of the Corporate Debtor. However, Respondent No 1 and 2 appealed against the order of the Hon'ble NCLT dated 17.01.2023 in Company Appeal (AT)(CH)(INS)No. 60 of 2023 and Company Appeal (AT)(CH)(INS)No. 76 of 2023, respectively and the same are pending adjudication before the Hon'ble NCLAT.

c. The Applicant filed IA(IBC)/143(CHE)/2022 against the suspended directors of the Corporate Debtor and the erstwhile IRP seeking to handover books of accounts, audited financial statements, tally backup and other statutory records of the Corporate Debtor as available with them. The application is pending adjudication before this Tribunal.

d. The Liquidator filed two more cases against Basveswara Sugars and Dhanalakshmi Hotels Private Limited, the borrowers of the Corporate Debtor, to recover the amount, however, the both the applications were subsequently withdrawn by the Applicant.

58. In the present case, the Applicant has claimed a sum of Rs. 23,01,982.94 as the liquidator's fees for the efforts and services undertaken by her during the liquidation proceedings.

59. As per Section 34(8) of IBC, 2016, the liquidator can charge a fee for the conduct of liquidation proceedings in proportion to the value of the liquidation estate assets as may be specified by the Board. Further, as per Section 34(9), the liquidator's fee shall be paid from the proceeds of the liquidation estate as specified under Section 53. Section 53(1) provides the manner of distribution of proceeds from the realisation of liquidation estate of the Corporate Debtor by the liquidator from which the liquidator is entitled to fees. As per Section 53(3) of IBC, 2016, the liquidator's fee is to be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction. The relevant provisions of IBC, 2016 which deal with payment of liquidator's fee are extracted hereunder,

"34. Appointment of liquidator and fee to be paid.

.

.

(8) An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and

in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

(9) The fees for the conduct of the liquidation proceedings under sub-section (8) shall be paid to the liquidator from the proceeds of the liquidation estate under section 53."

53. Distribution of assets

*(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, **the proceeds from the sale of the liquidation assets shall be distributed** in the following order of priority and within such period and in such manner as may be specified, namely: -*

(a) the insolvency resolution process costs and the liquidation costs paid in full; (b) the following debts which shall rank equally between and among the following:

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following: -

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if

any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator ***shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction***

Explanation. – For the purpose of this section-

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013)."

60. The manner of calculation of liquidator's fee is provided under Regulation 4 of Liquidation Regulations which is extracted hereunder,

*"4. **Liquidator's Fee***

(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*	*Thereafter*
Amount of Realisation (exclusive of liquidation costs)			
On the first 1 crore	*5.00*	*3.75*	*1.88*
On the next 9 crore	*3.75*	*2.80*	*1.41*
On the next 40 crore	*2.50*	*1.88*	*0.94*
On the next 50 crore	*1.25*	*0.94*	*0.51*
On further sums realized	*0.25*	*0.19*	*0.10*
Amount Distributed to Stakeholders			
On the first 1 crore	*2.50*	*1.88*	*0.94*
On the next 9 crore	*1.88*	*1.40*	*0.71*

On the next 40 crore	*1.25*	*0.94*	*0.47*
On the next 50 crore	*0.63*	*0.48*	*0.25*
On further sums distributed	*0.13*	*0.10*	*0.05*

[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.

Clarification: Regulation 4 of these regulations, as it stood before the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 shall continue to be applicable in relation to the liquidation processes already commenced before the coming into force of the said amendment Regulations.]

61. As per Regulation 4 of the Liquidation Regulations, the fee payable to the liquidator may be fixed by the CoC in accordance with Regulation 39D of the CIRP Regulations or by the SCC in the 1st SCC meeting. The object of Regulation 4 of Liquidation Regulations is to provide method of computation of liquidator's fee specified in Section 34(8) in case no fee for liquidator is 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 or by the Stakeholders Consultation Committee under Regulation 4(1A) of Liquidation Regulations. As per the regulation, the liquidator's fees is contingent upon the time taken to realise/ distribute the amounts amongst stakeholders.

62. The IBBI vide circular dated 28.09.2023 bearing ***Circular IBBI/LIQ/61/2023,*** issued under Section 196 of the IBC, 2016 clarified the meaning of the terms "amount realised"; "other liquidation costs"; and "amount distributed to stakeholders", as used in Regulation 4(2)(b) of the Liquidation Regulations. As per paragraph 2.1 of the circular, *'Amount realised'* means an amount realised from sale of an asset where the asset changes form. If an asset is already liquidated such as in the case of cash, bank balances, fixed deposits, quoted shares, mutual funds, the same is not considered to be realisation and consequently, the liquidator would not be entitled to fees on realisation of same. In such cases, the liquidator would get a fee only on "distribution" of those amounts, not on "realisation." The contents of Paragraph 2.1 of the Impugned Circular is extracted below:

> ***"2.1 Amount realised:***
>
> *Regulation 4(2)(b) provides that the fee shall be "as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation…."*
>
> *"Amount realised" means an amount that is being realised from the sale of an asset where the asset changes form. Where the asset is already liquid such as cash and bank balance including term deposits, mutual*

funds, and quoted shares, there is no 'realisation', and funds are readily available for distribution. The amount realised, thus, implies the proceeds from the sale/realization from the liquidation of assets which are not liquid. Therefore, the liquidator is not entitled to a fee on realisation for these liquid assets and is entitled to a fee only on distribution.

Clarification: "Amount realised" shall mean amount realised from assets other than liquid assets such as cash and bank balance including term deposit, mutual fund, quoted share available on start of the process after exploring compromise and arrangement, if any".

63. The Hon'ble High Court of Bombay in the case of A***mit Gupta v. Insolvency and Bankruptcy Board of India (IBBI) and Anr (Writ Petition (Lodging) No. 34701 of 2023)***, assessed the constitutional validity of the circular dated 28.09.2023. While considering the definition provided for the term, 'amount realised' defined in paragraph 2.1 of the circular, the Hon'ble High Court was of the view that an interpretation that, liquidation fees is payable only when "non-liquid assets" are distributed**,** imposes a new standard that is not found in the provisions of IBC, 2016 or Liquidation Regulations. Hence, Hon'ble High Court struck down the paragraph 2.1 of the circular which defines amount realised. The relevant paragraphs is extracted below,

"37. Even a plain reading of the contents of Paragraph 2.1 would show that they introduce completely new legal standards. Nowhere in the IBC or in the LP Regulations, is there a whisper of a basis to hold that liquidation fees are payable only for liquidating illiquid assets. The Impugned Circular and the IBBI's affidavit in reply, introduce a new

standard of perceived effort or lack of it in the process of liquidation. The standard that an asset under liquidation has to "change form" is found only in the Impugned Circular and is not found in the LP Regulations or in the IBC. Even the notion that no effort would be involved in liquidating liquid assets could well be untenable – a pre-legislative consultation under the Law-Making Regulations would be warranted for introducing such a requirement. It therefore follows that Paragraph 2.1 indeed represents an over-reach, extending way beyond the LP Regulations and the IBC."

64. Subsequent to the decision of the Hon'ble High Court of Bombay in the case of A***mit Gupta (Supra),*** the circular was modified vide Circular No. IBBI/LIQ/70/2024 dated 18.04.2024 and Paragraph 2.1 ('Amount Realised') was withdrawn.

65. Applying the above legal position laid down in the case of ***Amit Gupta (supra)***, it is construed that the Applicant's entitlement to fees must be assessed in light of efforts expended in realisation of assets during the liquidation period. The Applicant was successful in the litigation initiated against the Respondents herein in IA(IBC)/255(CHE)/2022 and IA(IBC)/286(CHE)/2022, wherein the Tribunal had ordered the banks to remit a sum of Rs. 5,30,68,000, collectively, to the account of the Corporate Debtor. However, these orders are under challenge before the Hon'ble NCLAT.

66. Nonetheless, it is observed that there is no stay order issued by the Hon'ble NCLAT barring the Financial Institutions from contributing the sum of Rs. 5,30,68,000 to the liquidation estate of the Corporate Debtor. While no stay in operation, the status quo is

maintained and the Respondents are bound by the order of this Tribunal dated 17.01.2023 in IA(IBC)/255(CHE)/2022 and IA(IBC)/286(CHE)/2022. Therefore, the realisation of Rs. . 5,30,68,000/- is attributed to the efforts of the Applicant herein.

67. For computation of the liquidator's fee, the realisation from liquidation estate net of other liquidation costs must be taken into account. As per the statement of receipts and payments annexed with the application, it is seen that liquidation costs for the period 26.11.2021 to 30.07.2024 other than liquidator's fee would be 5,56,749. Hence, the liquidator would be entitled to a fee on an amount realised as a percentage calculated on Rs. 5,25,11,251/-.

68. Since the amount is realised only after the period of one year since the liquidation commencement date, the percentage provided in the columns 'thereafter' shall be relevant. Considering the same, the fee payable would be,

Particulars	**Percentage of fee**	**Amount of realisation**	**Amount of fee payable (in Rs.)**
On the first 1 crore	1.88	1,00,00,000	1,88,000
On the next 9 crore	1.41	4,25,11,251	5,99,408.64
Total		90584110	**7,87,408.64**

69. In view of the findings made above, we order, that the Financial Institutions shall contribute to the liquidator's fee of ***Rs. 7,87,408.64 plus GST***, in proportion to their admitted claims, in the following manner:

a. Respondent No. 1 shall pay Rs. 7,57,644.60 (i.e., 96.22% of the liquidator's fee); and

b. Respondent No. 2 shall pay Rs. 29,764.04 (i.e., 3.78% of the liquidator's fee).

70. The amount be paid within 21 days from the date of the order.

71. Accordingly, IA(IBC)/1715(CHE)/2024 is **disposed of.**

-Sd-

VENKATARAMAN SUBRAMANIAM
MEM BER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)