

**THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH
AT NEW DELHI**

**IA-1285 (PB) / 2020
IN
Company Petition No. (IB) - 16 (PB) / 2017**

In the matter of:

Mr. Harish Chander Manchanda
Liquidator of Corporate Debtor
M/s Earth Iconic Infrastructure Pvt Ltd.

.....Applicant

*Under Section 60 (5) of the Insolvency and Bankruptcy Code,
2016 for fixation of fee of the Liquidator*

Order pronounced on: 03.03.2020

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DR. DEEPTI MUKESH, MEMBER (JUDICIAL)

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For Applicant: Mr. Rakesh Kumar, Advocate.



ORDER

S.K. Mohapatra, Member

1. This is an application filed by the liquidator under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") with the following prayer:

"To modify the para 4(b) of the order dated 10th January 2020 to the extent that the liquidation cost and the liquidator's fee for the liquidation of the Corporate Debtor would be in terms of 39(d) of the CIRP Regulations, 2016 and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 in reference to the 12th CoC Meeting dated 11th August 2019".

2. The facts necessary for disposal of the present application very precisely are that Corporate Insolvency Resolution Process against M/s Earth Iconic Infrastructure Private Limited ("Corporate Debtor") was initiated on 20.04.2018. Subsequently in the absence of any viable resolution plan and as per the decision of CoC, the corporate debtor was ordered to be liquidated in the manner laid down in Chapter III Part II of the Code, vide order dated 10th January, 2020.



3. In the order dated 10th January, 2020 the Resolution Professional Mr. Harish Chander Manchanda was appointed to act as liquidator of the corporate debtor. In the present application para 4(b) of the said order dated 10th January, 2020, where fee of the liquidator has been fixed in proportion to the value of the liquidation estate assets as specified under regulation 4(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, is sought to be modified.
4. The impugned para 4(b) of the order dated 10th January, 2020 sought to be modified in the present petition is reproduced below for ready reference:

“4(b) The Resolution Professional viz. Mr. Harish Chander Manchanda is hereby appointed to act as liquidator for the purpose of liquidation of the corporate debtor, therefore, all powers of the board of directors, Key managerial personnel and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be hereby vested in the liquidator. The personnel of the



corporate debtor are directed to extend all co-operations to the liquidation as may require will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.”

5. It is submitted that in the present case the fee payable to the liquidator shall be in accordance of decision of CoC and as per regulation 4 (1) and not under regulation 4 (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
6. It has been affirmed that in the 12th CoC meeting of the Corporate Debtor held on 11th August 2019, in Item No. 5 the fee of the Liquidator was approved with 92% vote share in terms of regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate



Persons) Regulations, 2016. Copy of the minutes of the 12th CoC meeting as well as the voting results have been placed on record. The relevant portion of the same is being reproduced here as under:

“Item no. 5.

To consider and approve the remuneration of the liquidation as per regulation 39 (D) of the CIRP Regulations 2016

RP informed that in view of the amendments in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 dated 25th July 2019 the CoC has to approve the liquidators fee as per regulation 39(D) of CIRP regulations which is as under:

“39D. Fee of the liquidator

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional fix the fee payable to



the liquidator, if an order for liquidation is passed under section 33, for –

(a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;

(b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and

(c) the balance period of liquidation.”

RP has given his consent to work as liquidator as per the clause (a), (b), (c) at the same remuneration as he was drawing as RP i.e. @ Rs. 2,50,000/- per annum.”

7. Regulation 4 (1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 mandates that:

“4 (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.”

(emphasis given)

8. It is reiterated that in the present case committee of creditors with majority decision of 92% vote share approved the fee of the Liquidator in terms of regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
9. In the facts as per mandate of Regulation 4 (1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the fee payable to the liquidator *shall* be in accordance with the aforesaid 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.
10. Accordingly, with regard to the fee of the liquidator, it is clarified that in terms of Regulation 4 (1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, *the fee payable to the applicant liquidator shall be as per the decision of CoC taken under regulation 39D*



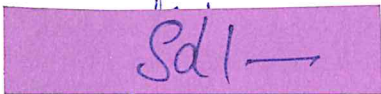
of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. I.A. 1285 (PB) /2020 filed in IB -16 (PB)/2017 is disposed of in the aforesaid terms.

Let copy of the order be served to the parties.



(S. K. MOHAPATRA)
MEMBER (T)



(DR. DEEPTI MUKESH)
MEMBER (J)

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