

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

CA No. 585/2018 and 530/2018

in

C.P. NO.IB-40(PB)/2017

IN THE MATTER OF:

M/s Vedika Nut Crafts Private Limited

.....Petitioner

SECTION: Under Section 10 of the Insolvency and Bankruptcy Code, 2016

Order delivered on:02.11.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

SHRI S.K. MOHAPATRA
Hon'ble Member (Technical)

PRESENTS:

For the Applicant :Mr. Shashi Kant Nemani, Liquidator & Ms. Priyanka Swami, Adv.

For the Respondent :Mr. Sanjeev Sagar, Mr. J. Kiran, Advs.

ORDER

M.M.KUMAR, PRESIDENT

CA – 585 (PB)/2018 along with CA-530(PB)/2018

1. This is an application where one of the relief sought by the Applicant – Liquidator is:

“To initiate such actions and provide directions regarding the funds as required for carrying out the liquidation proceedings as no funds are available. Also, to pass such order demanding



the corporate debtor or stakeholder i.e. secured financial creditors to provide funds to meet out the liquidation expenditure as stated under Section 52(8) of the Insolvency and bankruptcy Code, 2016.”

2. This Tribunal vide Order dated 04.04.2018 appointed Mr. Shashi Kant Nemani as a Liquidator in the matter as the Resolution Professional expressed his inability to continue as a liquidator on account of his other engagements as well as non receipt of complete fee.
3. Thereafter the Liquidator filed an application CA - 444(PB)/2018 where he asserted that the order of Liquidation of the Corporate Debtor was communicated to him on 24.05.2018 via e-mail from the Assistant General Manager, Central Bank of India, Parliament Street, New Delhi – 110001. The Tribunal vide order dated 01.06.2018 in CA-444(PB)/2018 permitted the Liquidator to keep on filing the status report in accordance with the provisions of the Code. Subsequently the Liquidator issued the public announcement in the newspapers – Financial Express and Jansatta on 05.06.2018.



4. The grievance made in the present application as well as in CA- 530(PB)/2018 by the Liquidator is that he has been incurring expenses for the liquidation process and his fee has also not been paid. It is appropriate to mention that one part of CA-530(PB)/2018 was disposed off on 03.07.2018 but no opinion was expressed on the claim of the liquidator for the payment of cost and fee. It has also been pointed out that there is no asset available to recover the cost and fee of the liquidator.

5. Mr. Sanjeev Sagar, learned Counsel for the Union Bank of India has submitted that COC is under no obligation to provide for the cost and fee of liquidator and has placed reliance on various paras of the Reply filed by the Financial Creditor – the Union Bank of India.

6. In order to find out the obligation to pay for the fee & cost of the Liquidator it would be appropriate to read Section-34 (8) & (9) along with Section-53 which reads as under:

Section 34. Appointment of Liquidator and fee to be paid



(1).....

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(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.

Section- 53. Distribution of Assets.

(1) Notwithstanding anything to the contrary contained in any law 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;

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(2).....

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(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.

7. A perusal of the aforesaid provision would show that the fee for conducting Liquidation proceedings is chargeable in such proportion to the value of Liquidation Estate,

Assets as may be specified by the Board and it is payable to the Liquidator from the proceeds of Liquidation Estate in accordance with the provisions of Section-53. Section-53(3) gives the priorities for payments and the Insolvency Resolution process Cost & Liquidation Cost are required to be paid in full. It is to be deducted proportionately from the proceeds payable to each class of recipients under Section-53(1). After deduction of the Insolvency Resolution process & Liquidation cost, the proceeds are to be distributed to the relevant recipient thereafter.

8. It is appropriate to mention as per the definition of liquidation cost inserted by the Insolvency and Bankruptcy Board Of India (Liquidation Process)(Amendment) Regulations, 2018, w.e.f 1-4-2018, liquidation cost has been defined to mean various things and the Regulation 2(ea) reads as under:

2 [(ea) "liquidation cost" under sub-section (16) of section 5 means-

(a) fee payable to the liquidator under regulation 4;

(b) remuneration payable by the liquidator under regulation 7;

(c) cost incurred by the liquidator under regulation 24; and



(d) 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;]

9. It is thus evident that Liquidation cost includes fee payable under Regulation 4 of the Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016; remuneration payable by the Liquidator under Regulation 7; cost incurred by the liquidator under Regulation 24 and 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.

10. On behalf of the liquidator it has been argued that there are no assets and the Corporate Guarantees have been encashed by the Financial Creditor and the claim of the liquidator and IRP/RP for the payment of fee and cost remains unsatisfied.

11. Regulation 4 of the Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 postulates that the liquidator is entitled to such fee as



might be decided by the COC. It appears that the COC has not complied with the provisions of the said Regulation and therefore it is erroneous on the part of the Financial Creditor – Union Bank of India to take a stand that no obligation is cast on the COC to provide for the fee and cost of the Insolvency Resolution Process/ Liquidation Process.

12. As a sequel to the above discussion the COC is directed to take a decision on the issue of payment of cost and fee due to COC on behalf of the Liquidator and IRP/RP.


(M.M.KUMAR) 2.11.2018
PRESIDENT

(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

Pronounced Today under Rule 151 of the NCLT Rules, 2016 as Sh. S.K. Mohapatra Hon'ble Member (Technical) is not holding the Court today.


P.K. Sharma
(Court Officer)

02.11.2018
(VIDYA)