

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 975/KB/2023
In
C.P. (IB) No. 830/KB/2018

*An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with other provisions.*

IN THE MATTER OF:

Sujla Suppliers Privat Limited ... Financial Creditor

Verses

Barcle Enterprises Limited (in Liquidation) ... Corporate Debtor

And

IN THE MATTER OF:

Radhasiriya Properties Pvt. Ltd. ... Applicant

Verses

Jai Narayan Gupta

(Liquidator of Barcle Enterprises Limited) ... Respondent

Date of Hearing: 21/09/2023

Date of Pronouncement: 03/10/ 2023

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI D. ARVIND, MEMBER (TECHNICAL)

Appearance:

For Petitioner: Ms. Swati Dalmia, Adv.

For Respondent: Mr. Jai Narayan Gupta, Adv. (Liquidator in person)

ORDER

Per D. Arvind, Member (Technical):

1. This Court is congregated through hybrid mode.

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2. This instant application is filed under **Section 60(5)** of the **Insolvency and Bankruptcy Code, 2016** (for brevity “**I&B, Code**”) read with other provisions by **Radhasiriya Properties Pvt Ltd**, hereinafter referred to as “**Applicant**” against **Jai Narayan Gupta, Liquidator of the Corporate Debtor**, hereinafter referred as “**Respondent**”, seeking the following relief that:

- a. *To direct the Liquidator to forthwith refund the amount of Rs. 23,88,280/- to the Applicant.*
- b. *To pass any such order(s) may deem fit and proper.*

3. **Brief facts of the Case:**

- 3.1. That, **vide an Order dated 29.08.2019**, the Tribunal had directed to commence CIRP of the Barcle Enterprises Limited (Corporate Debtor) under Section 7 of I&B Code, 2016, and appointed the Respondent as IRP. Since no Resolution Plan had been received by the RP, this Tribunal passed an order of Liquidation of the Corporate Debtor, **vide an Order dated 24.01.2022** and the Respondent was appointed to liquidate the Corporate Debtor in terms of Section 33(2) of I&B Code.
- 3.2. That, the Applicant herein was the propounder/proponent of a composite scheme of compromise and arrangement between Radhasiriya Properties Pvt Ltd and the creditors of Barcle Enterprises Limited. The applicant came to know that the Liquidation process was started against the Corporate Debtor.
- 3.3. That, on 16.02.2022, the Applicant wrote a letter to the Liquidator expressing its interest in submitting a Scheme of Compromise and Arrangement and requested to provide information, documents inspection of assets etc. in respect of the Corporate Debtor.
- 3.4. That, on 15.03.2022, the Applicant submitted its Scheme to the Liquidator and upon request from the Liquidator, on 20.04.2022, the Applicant

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deposited **Rs. 7,88,280/-** on the account of Corporate Debtor being A/C No. 3183002101724015 maintained by the IDBI Bank.

- 3.5.** That, From April to May 2022, several communications were exchanged between the Applicant and the Respondent on multifarious drafts of the Scheme and subsequently, on 12.05.2022 the Liquidator accepted the proposed Scheme of Compromise and Arrangement and filed an application being **I.A. (IB) No. 495/KB/2022** praying this Tribunal to direct the Liquidator to conduct the meeting of the Creditor under Regulation 2B of the IBBI (Liquidation Process) Regulation, 2016 read with Section 230(1) of the Companies Act, 2013.
- 3.6.** That, on 14.12.2022, the Applicant requested the liquidator to intimate the provision under which the entire amount proposed under the Scheme was being demanded by the Liquidator while the application praying for convening the meeting was still pending consideration before the Tribunal.
- 3.7.** That, on 16.12.2023, the Liquidator replied to the aforesaid letter of the applicant and insisted on depositing half of the Scheme amount in the Corporate Debtor's Bank Account.
- 3.8.** That, on 23.12.2022, the Liquidator once again sent an email to the Applicant demanding the payments to be made and stating further therein that failing the payment being made, the Liquidator would withdraw the aforesaid application.
- 3.9.** That, on 28.12.2022, the Applicant wrote a letter to the Liquidator requesting the Liquidator not to take any coercive steps that would cause prejudice to the Applicant.
- 3.10.** That, vide an order dated 06.01.2023, this Tribunal allowed the Application bearing **I.A. (IB) No. 495/KB/2022** and directed the Liquidator to *hold a meeting of the Creditors u/s. 230(1) of the Companies Act, 2013.*

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- 3.11.** That, on 02.02.2023, due to incessant demands of the Liquidator to make payment, the Applicant transferred **Rs. 5,31,000/-** with an outstanding that the said amount would be adjusted against the final payment to be made under the Scheme proposed.
- 3.12.** That, on 03.02.2023, the Applicant received another email from the liquidation demanding a further sum of money towards liquidation cost.
- 3.13.** That, on 16.02.2023, the Applicant made a payment of **Rs. 6,00,000/-**.
- 3.14.** That, on 28.02.2023, the Applicant made again payment of **Rs. 4,69,000/-**.
- 3.15.** That, on 01.03.2023, the Liquidator informed the Applicant that a meeting of creditors was held on February 17, 2023, wherein the Scheme had been rejected by the Creditors.
- 3.16.** That, on 21.03.2023, the Applicant wrote a letter to the Liquidator requesting him to forthwith refund the aggregated amount of **Rs. 23,88,280/-**.
- 3.17.** That, on 11.04.2023, the Applicant again requested the Liquidator to refund the aforesaid amount to which the Liquidator has responded stating that said amount is not refundable.
- 4. Ld. Counsel for the Respondent per contra claims:**
- 4.1.** The Liquidator has relied upon various statutory provisions and claimed that he has rightly taken money from the Applicant. In the Reply Affidavit, he has furnished a detail of the liquidation cost during the period of compromise or arrangement are given as follows:

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Particulars	Amount (Rs.)
Liquidator's fee for 13 months (Jan 2022-Feb 2023)	23,01,000
Publication of Form B for initiation of liquidation	5,376
Drafting and Filing fee for IA 409/2022 – Extension of time period of scheme of compromise or arrangement	10,000
Drafting and Filing fee for IA 495/2022 – Approval to conduct meeting of creditors	10,000
Drafting and Filing fee for IA 1355/2022 – Progress report for 30.09.2022	10,000
Drafting and Filing fee for IA 223/2023 – Progress report for 31.12.2022	10,000
Drafting and Filing fee for IA 358/2023 - Affidavit of Service u/r 12 of CAA Rules	10,000
Drafting and Filing fee for IA 521/2023 – Result of meeting of creditors	11,800
Publication of Form CAA 2	2,352




15 JUN 2023

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Audit fee for FY 2021-22	20,000
Bank charges till 17.02.2023	638
MSME registration of the Corporate Debtor	2,700
ROC filing fee	600
Sub-total	23,94,466
Other expenses	
Publication of sale notices dt. 27.02.2022, 22.03.2022, and 14.04.2022	10,626
E-voting charges	7,080
Total	24,12,172



4.2. The Ld. Counsel for the Respondent contends that the audited accounts have been produced before this Adjudicating Authority vide I.A. 854/KB/2023 as a form of the quarterly progress report.

4.3. The Ld. Counsel for the respondent further claims that the overall costs uncured during the liquidation process till 17.02.2023 amounts to **Rs. 24,12,172/-** in which, the applicant has paid **Rs. 23,88,280/-** as he claims. Thus, the applicant is liable to remit the rest amount of **Rs. 23,892/-** to the Respondent as 'Liquidation Cost'.

5. Ld. Counsel for the Applicant further submits through Rejoinder:

5.1. That, the Liquidator has illegally claimed money from the Applicant and the Liquidator did not inform the decision of the creditor rejecting the Scheme of the Applicant.

5.2. That, the Liquidator has misinterpreted the applicability of the statutory provisions and the Liquidator's fee cannot be considered to be "cost incurred" by the Liquidator in relation to compromise or arrangement.

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- 5.3.** That, the costs mentioned in the table contained in Para 4.1 claimed to have been incurred by the Liquidator including his fees, along with the amount which forms a part of the 'Liquidation Costs' claimed by the Liquidator is denied and the expenses alleged to have incurred by the Liquidator are not in relation to the compromise or arrangement.
- 6.** The Liquidator Mr. Jai Narayan Gupta, through the **Affidavit of Clarification dated August 04, 2023**, in respect of his eligibility to raise bills, contends that the argument of the Applicant is *reductio ad absurdum* and not supported by any regulations and/or provisions and the Applicant is rightly liable to remit the costs incurred by the liquidator in relation to the liquidation process including the liquidator's fee.
- 7.** Heard the rival contentions placed before us and perused the records/documents furnished. The **key issue**, we have observed as:

Whether the Liquidator is entitled to claim his fees and other costs in relation to liquidation, from the Applicant who is a proponent of a composite scheme of compromise and arrangement, when the scheme proposed by him is rejected by the creditors

8. Analysis and Findings:

- 8.1.** We would refer to the **Section 34(9) and 34(8) of I&B, Code**, reproduced verbatim:

“34. Appointment of liquidator and fee to be paid. –

xxx

xxx

xxx

xxx

(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.

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(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.

8.2. Further, we would refer to **Regulation 2(ea)** of the **IBBI (Liquidation Process) Regulations, 2016** that:

“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.]”

8.3. Further, we would refer to **Regulation 2B (3)** of the **IBBI (Liquidation Process) Regulations, 2016** that:

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“Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of section 230:”

“Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.”

- 8.4.** Further, we refer to **Section 230(6) of the Companies Act, 2013** read as:
“Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.”
- 8.5.** Thus, a combined going through of **Regulation 2B (3) of the IBBI (Liquidation Process) Regulations, 2016** and **Section 230(6) of the Companies Act, 2013** envisages that **if any cost incurred by the Liquidator, in relation to compromise or arrangement sanctioned by the Tribunal, shall be borne by the corporate debtor.**
- 8.6.** Proviso to **Rule 2B(3) of the Liquidation Process regulations 2016**, provides for bearing of cost by the parties who proposed compromise or arrangement only when such a scheme is not sanctioned by the Tribunal under sub section (6) of Section 230 of the Companies Act

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2013. It is evident that his Tribunal, vide an **Order dated 06.01.2023**, allowed the Application bearing **I.A. (IB) No. 495/KB/2022**, held that:

“(a) This is an application filed by the Liquidator under regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 seeking to conduct a meeting of the Creditors u/s. 230(1) of the Companies Act, 2013. The application is supported by an affidavit duly affirmed by the Liquidator, which is at pages 17 to 19 of the application.’

“(b) We have heard the Liquidator and perused the application. For the reasons stated in the application, we allow the Liquidator to hold a meeting of the Creditors u/s. 230(1) of the Companies Act, 2013.’

“(c) IA is allowed and disposed of accordingly.”

It is evident that pursuant to the Order dated 06.01.2023, the Liquidator conducted a meeting among the Creditors of the Corporate Debtor on 17.02.2023 and the meeting was attended by and the scheme was voted upon by 95.58% of the creditors by value wherein the proposal was rejected by the majority of the creditors and the same was intimated to the Applicant vide an email dated March 01, 2023, along with the ‘Voting Sheet’. **The Scheme proposed by the Applicant was rejected unanimously at its first motion of compromise or arrangement and this Adjudicating Authority did not have any scope to sanction the scheme and therefore there is no case made out by the liquidator for invoking proviso to Rule 2B(3) of liquidation process regulations 2016 .Thus, we are in view that the all the costs, incurred by the Liquidator in relation to compromise or arrangement including liquidator fee were wrongly claimed from the Applicant.**

8.7. Hence, we direct the **Liquidator of Barcle Enterprises Limited** (Corporate Debtor – in Liquidation) to refund the entire amount of **Rs.**

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23,88,280/- to the Applicant within two weeks from the date of pronouncement of this order and report compliance.

9. In terms of the order above, this Application being **I.A. (IB) No. 975/KB/2023** is **allowed** and accordingly **disposed of**.
10. Urgent Certified copy of the Order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is signed on the 03rd Day of October, 2023.

Bose, R. K. [LRA]