



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, COURT-II

KOLKATA

I.A. (IB) No. 388/KB/2022

IN

C.P.(IB) No. 574/(KB)/2017

An application under Section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 4 and 44(2) of IBBI (Liquidation Process) Regulations, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

Bank of Maharashtra

... Financial Creditor

Versus

Visa Power Ltd.

... Corporate Debtor

And

IN THE MATTER OF:

Anil Goel, Liquidator- Visa Power Ltd.

... Applicant/Liquidator

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II
KOLKATA



Coram:

Shri Labh Singh : Member (Judicial)

Ms. Rekha Kantilal Shah : Member (Technical)

Appearances (via physical mode/virtual mode)-:

For the Liquidator

- i. Ms. Urmila Chakraborty, Adv.
- ii. Mr. Niraj Chamyal, Adv.
- iii. Ms. Aishwarya Prasad, Adv.


Date of Pronouncement- 27.03.2026

ORDER

Per: Rekha Kantilal Shah, Member (Technical)

1. The instant application has been preferred by the liquidator of praying for the following reliefs:-

- i. Allow the Present Application.*
- ii. Exclude the following period of stay, to enable the Liquidator/Applicant to claim fee on amount realised/distributed under Reg. 4(2)(b) without prejudice caused due to stay granted by the Hon'ble NCLAT and the Hon'ble Supreme Court.*
 - a) From 07.08.2019 till 13.12.2019 being the period of stay granted by the Hon'ble NCLAT in C.A. (A.T.) (Ins) No. 802/2019;*



b) From 08.01.2020 till 10.08.2020 being the period of stay granted by the Hon'ble NCLAT in C.A. (A.T.) (Ins) No. 22/2020;

c) From 05.01.2021 till the date of adjudication of this Application or vacation of stay by the Hon'ble Supreme Court in Civil Appeal No. 523 of 2021 & connected appeals (whichever is earlier).

iii. Pass any other relief that this Hon'ble Tribunal may consider necessary in the interest of justice, equity and fair play.

2. Background of the case

- 2.1 The Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of the Corporate Debtor (hereinafter referred to as "CD") vide an order of this Tribunal dated 22nd December, 2017, and the applicant herein was appointed as the Resolution Professional in respect of the CD.
- 2.2 As, during the CIRP, no resolution plan was submitted with respect to resolution of the CD, this Tribunal vide an order dated 11th October, 2018, initiated liquidation proceedings in respect of the CD and appointed the applicant herein as the Liquidator of the CD.
- 2.3 Upon initiation of Liquidation in respect of the CD, BHEL, filed a Form C, on 09th November, 2018, before the liquidator claiming to be an Operational Creditor, and further claiming an unpaid seller's Lien and/or charge on the Plant & Machinery supplied by it but lying un-erected and/or subsequently to be erected at the project site of the CD.



- 2.4 The liquidator, by an order dated 31st December, 2018, “provisionally admitted” a part of the monetary claim of the Operational Creditor, submitted by it under Form C as an unsecured Operational Creditor, under Section 53(1)(f) of the IBC, 2016, subject to the pending dispute.
- 2.5 BHEL challenged the order of the liquidator dated 31st December, 2018 by filing an application being C.A. (IB) 149/KB /2019 before this Tribunal, seeking a declaration that it has a lien/charge on the plant & machinery supplied and/or erected at site.
- 2.6 During pendency of the aforesaid application, the Liquidator went ahead with the liquidation process and issued a sale notice dated 11th April, 2019. Pursuant to the sale notice, bidding process was concluded and a letter of intent dated 04th May, 2019 was issued in favour of Agrawal Structures Private Limited (hereinafter referred as “Auction Purchaser”).
- 2.7 Subsequently, vide an order dated 10th May, 2019, this Tribunal, disposed of the aforesaid application filed by BHEL, thereby directing as follows:-
- “i} The appeal is allowed. The matter is remitted back to the Liquidator for passing appropriate reasoned order by rejecting or allowing/partly allowing the claim of the appellant as per the rules.*
- ii) Liquidator to decided the claim within 30 days of this order.”*
- 2.8 On 20th May, 2019, the liquidator issued a certificate of sale in favour of the Auction Purchaser.




- 2.9 Thereafter, on 03rd June, 2019 in terms of the order of this Tribunal dated 10th May, 2019, the liquidator, passed an order, reiterating the categorisation of BHEL as an unsecured operational creditor.
- 2.10 BHEL, being aggrieved by the issuance of the Certificate of Sale and Liquidator's Order dated 03.06.2019, filed two different Applications being C.A. (LB.) No. 684/KB/2019 and C.A. (I.B.) No. 792/KB/2019 before this Tribunal.
- 2.11 In the interregnum, during pendency the pendency of the aforesaid applications before this Tribunal, BHEL moved the Hon'ble NCLAT through an appeal being C.A. (AT)(Ins) No. 802/2019 seeking directions against the Liquidator and the Auction Purchaser not to alienate the assets, on which the BHEL has alleged charge/lien.
- 2.12 The Hon'ble NCLAT vide an order dated 07th August, 2019, the Hon'ble NCLAT, while disposing of the appeal, observed and directed as follows:-

“In the facts and circumstances, while we are not expressing any opinion, we direct the Adjudicating Authority ('National Company Law Tribunal') Kolkata Bench, Kolkata to decide the appeal preferred by the Appellant u/s 42 of the 'I&B' Code on merit after hearing the Appellant and the Liquidator at an early date preferably by 30th August, 2019 which is the next date fixed for hearing.

In the meantime, the liquidator will not allow any person to remove the assets in question, even if it is sold but if not yet removed.

The appeal is disposed of with the aforesaid directions. No costs.”

- 2.13 In the interregnum, the Auction Purchaser filed an application being I.A. 1234 of 2019 before this Tribunal,



against the liquidator, alleging illegal restraint. The auction purchaser in the said application alleged that the liquidator had allowed Texcel Engineers Pvt. Ltd. to lift the goods belonging to Texcel Engineers. This Tribunal vide an order dated 02nd December, 2019, in the said application, directed the liquidator *“not to deal with any goods of the Corporate Debtor, irrespective of the fact as to whether it belongs to the Corporate Debtor or to anybody else, without seeking direction from this authority, as per Section 35(1)(n) of the Insolvency & Bankruptcy Code, 2016.”*

- 2.14 This Tribunal vide an order dated 13th December, 2019 decided the two applications filed by BHEL, and directed that *“the liquidator is directed to allow the lifting of goods after giving due notice of the same to the applicant (BHEL) who shall authorize its representative to oversee the lifting of material.”*
- 2.15 Being aggrieved by the order dated 13th December, 2019 passed by this Tribunal, BHEL, preferred an appeal being C.A. 22 of 2022 before the Hon’ble NCLAT. In the said appeal, vide an interim order dated 08th January, 2020, the Hon’ble NCLAT directed that the impugned order dated 08th January, 2020 shall stand stayed until further orders.
- 2.16 Thereafter, the Hon’ble NCLAT vide order dated 10th August, 2020 partly allowed BHEL’s appeal, thereby making certain remarks regarding the conduct of the liquidator, the applicant herein.
- 2.17 Being aggrieved by the appeal, all three parties, the liquidator, the auction purchaser and BHEL preferred appeals



before the Hon'ble Supreme Court. On 05th January, 2021, the Hon'ble Supreme Court, ordered that

“(i) There shall be a stay of the directions contained in clauses 5(a), 5(b), 5(d), 5(f) and 6 of the operative directions contained in the impugned order; and

(ii) The status quo shall be maintained in respect of the plant, machineries and equipment which have been auctioned and which are available at the site and there shall be no further removal of the above machinery, plant and equipment.”

2.18 Thereafter, vide an order dated 15th February, 2021, the Hon'ble Supreme Court, further directed as follows:-

“2. There shall be ad interim stay of the directions contained in clauses 7 and 8 of the operative directions contained in the impugned order of the National Company Law Appellate Tribunal dated 10th August, 2020.


3. The ad interim order dated 05th January, 2021 shall continue in addition to the above ad interim order”.

2.19 It has been stated the matter was further listed on various occasions, but could not be taken up for final hearing and is pending adjudication. However, the ad interim directions granted vide orders dated 05th January, 2021 and 15th February, 2021 have not been vacated.

3. Submissions on behalf of the Applicant


3.1 It has been submitted that the Preliminary Report, the Asset Memorandum and List of Stakeholders was filed by the liquidator within the time limit specified in the IBBI (Liquidation Process) Regulations, 2016.

3.2 It is submitted that as the liquidation period had come to an end on 10th October, 2020, the liquidator had filed an



application seeking extension of the liquidation process, which came to be allowed, vide an order of this Tribunal dated 17th March, 2021, whereby, this granted an extension of two years.

- 3.3 It has been submitted that due to the stay of granted by the Hon'ble Supreme Court in respect of the removal/sale/ /distribution of the said assets of the Corporate Debtor, the Liquidation Process of the Corporate Debtor could not be completed within the stipulated time period, as given in Regulation 44 of the IBBI (Liquidation Process) Regulations, 2016. It has further been submitted that despite the relentless efforts of the Applicant to get the matter disposed off expeditiously, the liquidation process has not been completed within a stipulated time period. The applicant has relied upon the order of *Bengal Polypet vs. Pincon Spirit Limited*, dated 16th August, 2021 (IA no. 1348(KB)2021) and that of the Hon'ble NCLAT in *Vikram Bajaj v. Bank of Baroda* C.A. No. 935 of 2021., to substantiate its arguments.
- 3.4 It has been submitted that the Applicant is moving the instant Application, seeking exclusion of the period of stay granted by the Hon'ble NCLAT and the Hon'ble Supreme Court, since it has a direct bearing on the fee of the Liquidator, as stipulated under Regulation 4(2)(b). It has been submitted that any further extension of the Liquidation Process, without excluding the period of stay shall have prejudicial effect on the fee of the Liquidator.
- 3.5 It has been submitted that fee of the Liquidator is paid in terms of Regulation 4 of the IBBI (Liquidation Process Regulations, 2016 and that the Liquidator is not entitled to



any monthly remuneration during the period of Liquidation and the fee is payable only after the assets are sold/distributed.


3.6 It has been submitted that if the period of stay on the sale of assets of the CD is not excluded, it shall also prejudice the fee of the Liquidator which is connected with the realisation/distribution of the amounts of the CD as provided in Regulation 4(2)(b) of the Liquidation regulations. It has been submitted that such prejudiced fee shall be due to reasons beyond the control of the Liquidator, as he has taken all reasonable steps to get the stay granted vacated.

3.7 It has been submitted that since the initiation of the Liquidation Process, the Liquidator has ensured timely compliance with various provisions of the Code and its Regulations and also undertakes to expeditiously sell the assets of the Corporate Debtor and distribute the sale proceeds to the stakeholders, as soon as the stay granted by the Hon'ble Supreme Court is vacated. As such, it is prayed that the application be allowed in terms of prayers made therein.

4. Analysis & Findings

4.1 We have gone through the case file carefully and perused the pleadings of the applicant, the documents placed on record, the arguments put forth by the counsel for the applicant and we shall now proceed to consider the present application on its merits.

4.2 The Liquidator, in the present case, has sought exclusion of the period during which a stay was granted by the Hon'ble NCLAT and the Hon'ble Supreme Court, thereby staying the



entire liquidation proceedings, as, if such exclusion is not granted, the same would have a negative effect on the remuneration of the liquidator.

4.3 We take note of the fact, that currently appeals against the order dated 10th August, 2020 are pending before the Hon'ble Supreme Court, and the Hon'ble Supreme Court has further granted a stay on certain operative clauses of the Hon'ble NCLAT's order.

4.4 It is also pertinent to note that Hon'ble NCLAT in its order dated 10th August, 2020 has made certain serious observations against the conduct of the liquidator. The Hon'ble NCLAT further in para 7 of the operative portion has stated as follows:-

“7) Copy of the Judgement of the Adjudicating Authority and this Judgement may be sent to IBBI which may consider if actions, if any, are required to be initiated under Chapter - VI of IBC. If Respondent no. 1 - Liquidator, extends full cooperation in carrying out the Orders which we are passing, especially, to get back goods/material of the Corporate Debtor and re-auction, IBBI may consider the same as mitigating factor, in favour of Respondent No. 1 in action (if any) under Chapter - VI of IBC.

8) If it appears to Adjudicating Authority that Respondent No.1 is not cooperating, it would be at liberty to replace him with another person as Liquidator.”


The extracted portion of the Hon'ble NCLAT's order has been stayed by the order of the Hon'ble Supreme Court dated 05th January, 2021.



- 4.5 In our view, if any dispute arises due to misconduct of the liquidator, resulting in litigation which eventually leads to a stay of the entire proceedings, the liquidator ought not to be granted the benefit of exclusion of such time periods, for the purpose of remuneration.
- 4.6 In the present case, the Hon'ble NCLAT has set aside the auction sale conducted by the liquidator and has also set aside the Sale certificate whilst holding that the same is invalid, whilst making observations against the liquidator relating to his conduct during the liquidation proceedings including the auction sale.
- 4.7 The Hon'ble Supreme Court has stayed the operative portion of the Hon'ble NCLAT order against the Liquidator, as noted hereinabove.
- 4.8 We also take note of the order of the IBBI Disciplinary Committee disposing of the Show Cause Notice (SCN) No. IBBI/IP/(INSP)/2020/49 issued to Mr. Anil Goel, the applicant in the present case. The order states as follows:-

“1.9 In the said order dated 15.01.2021, the Hon'ble Supreme Court stayed the directions given by the National Company Law Appellate Tribunal (NCLAT) in its Order dated 10.08.2020 contained in clauses (7) and (8) of the operative directions of that Order.

1.10 The Hon'ble NCLAT in its order dated 10.08.2020, inter alia, had observed as follows: “7) Copy of Judgment of the Adjudicating Authority and this Judgment may be sent to IBBI which may consider if actions, if any, are required to be initiated under Chapter - VI of IBC. If Respondent No.1 -



Liquidator, extends full cooperation in carrying out the Orders which we are passing, especially, to get back goods/material of Corporate Debtor and reauction, IBBI may consider the same as mitigating factor, in favor of Respondent No.1 in action (if any) under Chapter - VI of IBC. 8) If it appears to Adjudicating Authority that Respondent No.1 is not cooperating, it would be at liberty to replace him with another person as Liquidator.”

1.11 It is pertinent to note that the said SCN in relation to VISA Power Ltd. was based on the findings of the IA pursuant to the observations of the Hon’ble NCLAT in its Order dated 10.08.2020 which has been stayed by Hon’ble Supreme Court. The Chapter-VI of Part IV of the Code provides for inspection and investigation, issue of SCN and its disposal by DC.

1.12 In view of the fact that the Hon’ble Supreme Court is seized with the matter in Bharat Heavy Electricals Ltd. Vs. Anil Goel, with respect to VISA Power Limited, the DC is of the considered view that the said SCN is now construed to be limited only to M/s Varrsana Ispat Limited. Accordingly, the DC proceeds to dispose of the said SCN.”

4.9 As such, IBBI, has disposed of the Show Cause Notice issued to Mr. Anil Goel in respect to VISA Power as the Hon’ble Supreme Court had stayed the operative portions of the Hon’ble NCLAT’s judgment which were against the applicant. However, at this stage, we are not inclined to allow the prayer for exclusion of the time period, as sought by the Applicant, for the purpose of his remuneration, in view of the appeals pending adjudication and in the absence of a final determination of the dispute by the Hon’ble Supreme Court.

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- 4.10 However, we take note of the fact, that the extension in respect of the liquidation proceedings had last been granted vide order dated 17th March, 2021 till 10th October, 2022. As such, we hereby extend period of liquidation from 11th October, 2022 till the date of this order.
5. In light of the above, the Interlocutory Application being **I.A.(IB) 388/KB/2024** hereby stands disposed of in terms of the directions given hereinabove.
6. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Rekha Kantilal Shah

Member (Technical)

Labh Singh

Member (Judicial)

Order dated the 27th day of March, 2026.

HT (LRA)