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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**Coram : (1) Shri Madan B. Gosavi, Hon'ble Member (J)  
(2) Shri Virendra Kumar Gupta, Hon'ble Member(T)**

**CA (IB) No.867/KB/2019 in CP(IB) 182/KB/2017**

**In the matter of:**

**An application under section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 4 of the Insolvency  
And Bankruptcy Board of India (Liquidation Process)  
Regulation, 2016;;**

-And-

**In the matter of:**

**M/s. Gujarat NRE Coke Limited (In Liquidation), represented  
By the Liquidator Mr. Sumit Binani, IBBI/IPA-001/IP-N00005/  
2016-17/10025 having his office at 4<sup>th</sup> floor, Room No.6,  
Commerce House, 2A, Ganesh Chandra Avenue, Kolkata-700 013;  
... Corporate Debtor**

-And-

**In the matter of:**

**Mr. Sumit Binani, Liquidator, having his office at 4<sup>th</sup> floor,  
Room No.6, Commerce House, 2A, Ganesh Chandra Avenue,  
Kolkata- 700 013;**

... Liquidator/ Applicant

**Counsel appeared:**

- |                                     |                                    |
|-------------------------------------|------------------------------------|
| 1. Mr. Sumit Binani,                | ] Liquidator                       |
| 2. Ms. Ujjaini Chatterjee, Advocate | ] For Liquidator                   |
| 3. Ms. Diprani Thakur, Pr.CS,       | ]                                  |
| 1. Mrs. Swati Agarwal, Advocate     | ] For Applicant in CA(IB)865/KB/19 |
| 2. Mr. Debu Chowdhury, Advocate     | ] For SFIO in CA(IB)865/KB/19      |



Date of Pronouncement of Order: 18.10.2019

**ORDER**

**Per Shri M. B. Gosavi, Member(J):**

This is an application filed under section 34 of Insolvency & Bankruptcy Board of India (Liquidation Process) Regulation, 2016 by the Liquidator for permitting him to withdraw remuneration of Rs.3 lakhs per month from the date of the order of liquidation passed by this authority.

2. Undisputed facts are as follows.

3. By order dated 11.01.2018, this authority ordered the liquidation of the corporate debtor directing the Liquidator to sell corporate debtor as a going concern.

4. The Liquidator is directed to draw remuneration as per the rules.

5. One of the orders passed by this authority (pertaining to amalgamation under section 230 of Companies Act, 2013) was challenged by one of the secured creditor, M/s. Jindal Steel & Power Limited. The Hon'ble Appellate Tribunal by order dated 06.08.2018 passed interim order prohibiting this authority as well as Liquidator from selling assets of the corporate debtor. We are told that appeal is still pending and interim orders are continued.

6. Sub-section 8 of section 34 of I&B Code allows the Liquidator to charge such a fees as prescribed. Sub-section 9 of section 34 makes it clear that fees of Liquidator shall be paid from proceeds of the liquidation under section 53 of IBC.





7. In this case, the order of liquidation is already passed but Hon'ble Appellate Tribunal restrained the Liquidator from selling assets of the corporate debtor. In short, for the purpose of paying Liquidator's fees, fund could not be made available, as the assets of the corporate debtor could not be sold.

8. Ld. Liquidator submitted that during the above period, the funds are available from the operation of the corporate debtor being carried. All proceeds from the operation of the corporate debtor are deposited in the bank. The Monitoring Committee in its meeting dated 31.01.2019 permitted the Liquidator to draw sum of Rs.3 lakhs per month as his remuneration.

9. We perused the records. We have considered the submission of the Liquidator. It is seen that he has been carrying liquidation process since January, 2018 without getting any remuneration. He is running the corporate debtor as a going concern in part since then. He cannot sell the assets of the corporate debtor because of the order passed by the appellate authority. In such situation, we are inclined to accept his request which is also supported by resolution passed by the Monitoring Committee.

10. Upon our enquiry as to on what basis, Liquidator is claiming Rs.3 lakhs per month as his remuneration, the Liquidator submitted before us the datewise chart and the work, he has done in this process. We have gone through that chart. It is seen that Liquidator has been attending the matter before this authority as well as before Appellate Authority. He has been running the operation of the corporate debtor in part and earning some amount. Considering the fact that the Liquidator has to run the corporate debtor which is public limited company having so many workers, employees, etc. and attend all day to day affairs of the corporate debtor. We hold that the claim of the Liquidator for remuneration of Rs.3

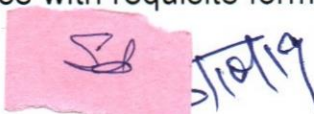



lakhs per month is proper and reasonable. Hence, we allow the application and pass the following order:

**ORDER**

- i) Mr. Sumit Binani, Liquidator having registration no. IBBI/IPA-001/IP-N00005/2016-17/10025 is allowed to draw remuneration of Rs.3 lakhs per month including all expenses. The remuneration including expenses to be paid to him from the amount deposited in the bank which is collected by carrying business of the corporate debtor throughout.
- ii) Registry is hereby directed to communicate the order to the Liquidator and to the Corporate Debtor by Speed Post and also by email.
- iii) CA(IB) No.867/KB/2019 stands disposed off.

Let the certified copy of the order be issued to all the concerned parties upon compliance with requisite formalities

  
(Virendra Kumar Gupta)  
Member (T)

  
(Madan B. Gosavi)  
Member (J)

*Signed on this, the 18<sup>th</sup> day of October, 2019.*