



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

**IA (IB) No. 69/CB/2023
IN
TP No. 17/CTB/2021
CP (IB) No. 1696/MB/2017**

[An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Regulation 42 of the Insolvency and Bankruptcy Board of India (Liquidation Regulations) 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016]

In the matter of:

IDFC BANK LIMITED

.....FINANCIAL CREDITOR

Versus

MONNET POWER COMPANY LIMITED

..... CORPORATE DEBTOR

AND

In the matter of:

NAVNEET KUMAR GUPTA

Reg. Number: IBBI/IPA-001/IP-P00001/2016-2017/10009

Email ID: navneet@minervaresolutions.com, LQ.MPCL@in.gt.com

Address:

At/PO: Unit No. 2, Block D1,

Golf Link DDA, Sector 23B, Pocket 8,

Dwarka, New Delhi,

National Capital Territory of Delhi, 110077

Liquidator of Monnet Power Company Limited

...APPLICANT

Order Pronounced on: 02.05.2025

CORAM:

DEEP CHANDRA JOSHI, MEMBER (JUDICIAL)

BANWARI LAL MEENA, MEMBER (TECHNICAL)

Appearance:

For Applicant:

Saswat K. Acharya, Advocate

For the Respondents:

IFCI Limited,

IL&FS Financial Services Limited,

Indian Bank:

Abhinay Sharma, Advocate

Aishwarya Dash, Advocate

Sd

Sd



Raj Kumar Rout, Advocate
Parul Khurana, Advocate
Deeksha Prakash, Advocate
Pooram Chand Roy, Advocate
Lakshmi Kant Srivastava, Advocate

For Canara Bank: Supriyo Ranjan Mahapatra, Advocate
Prakash Chandra Mahapatra, Advocate
Binay Kumar Pattajoshi, Advocate
Sarthak Mishra, Advocate

ORDER

1. The present Application is filed by the Liquidator of the Corporate Debtor, i.e., Monnet Power Company Limited (hereinafter referred to as "**Applicant**"), seeking directions from this Adjudicating Authority for distribution of the balance sale consideration and for extending the time for distribution of sale proceeds under Section 53 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**Code**") read with Regulation 42 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as "**Liquidation Regulations, 2016**").

2. The brief facts of the case are as follows:

(i) The National Company Law Tribunal, Mumbai bench *vide* order dated 23.02.2018 admitted the Corporate Debtor into Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**"). It had appointed the Applicant as the Interim Resolution Professional, whose appointment was subsequently confirmed as the Resolution Professional by the Committee of Creditors (hereinafter referred to as "**CoC**") in their first meeting.

(ii) As there was no successful resolution achieved during the CIRP and based on the decision taken by the CoC, an order of Liquidation was passed by the National Company Law Tribunal,

Sd

Sd



Mumbai Bench on 23.10.2019, and the present Applicant was appointed as the Liquidator of the Corporate Debtor.

(iii) Thereafter, the Applicant initiated the 9th round of e-auction for the sale of the assets of the Corporate Debtor on a slump sale basis. The reserve price for this round of e-auction was Rs. 400 crores. Necessary public announcements were made in this regard on 01.10.2022. The Applicant further issued the Asset Sale Process Memorandum on 01.10.2022 and uploaded the same on the website of the Corporate Debtor.

(iv) The Applicant received Expression of Interests from the following bidders: (a). Jindal Steel and Power Limited; (b) Adani Power Limited; (c) J Kumar Infraprojects Limited; and (d) Chinar Steel Segment Centre Private Limited. Subsequently, the eligible bidders, who had submitted their Expression of Interests, conducted the due diligence from 15.10.2022 to 28.10.2022. Thereafter, the Applicant received a bid form and Earnest Money Deposit from: (a). Jindal Steel and Power Limited, (b) Adani Power Limited, and (c) J Kumar Infraprojects Limited, who were then allowed to participate in the e-auction, which was scheduled on 02.11.2022. The 9th round of e-auction was successfully concluded on 02.11.2022 at 6 PM with the highest bid of Rs. 410 Crores, which was submitted by Jindal Steel and Power Limited (hereinafter referred to as "**Successful Bidder**").

(v) The Applicant then issued the Letter of Demand to the Successful Bidder on 07.11.2022. On 15.11.2022, the Successful Bidder accepted the Letter of Demand and further deposited the balance Performance Bank Guarantee which is 5% of the sale consideration amounting to Rs. 15.5 crores (after adjusting the Earnest Money Deposit of Rs. 5 Crore, which the Successful

Sd

Sd



Bidder deposited at the time of submission of bid form) in the Liquidation Account of the Corporate Debtor.

(vi) The Successful Bidder then deposited Rs. 385.40 Crores towards the balance amount of sale consideration on 07.12.2022 and further balance of Rs. 4.10 Crores on 18.01.2023. Thus, the overall amount received by the Liquidator from the Successful Bidder as on date amounts to Rs. 410 Crores (including Rs. 20.50 Crores for the Performance Bank Guarantee).

(vii) The Applicant states that the Corporate Debtor has two categories of Secured Creditors as its stakeholders, one is those who are Secured Creditors having a first *pari passu* charge over the entire assets of the Corporate Debtor. Out of the total admitted claim of Secured Creditors which aggregates to Rs. 74,14,48,96,870/- (Rupees Seven Thousand Four Hundred Fourteen Crores Forty-Eight Lakh Ninety-Six Thousand Eight Hundred Seventy Only), the total admitted claim of Secured Creditors with first *pari passu* charge over entire assets of the Corporate Debtor is Rs. 68,01,83,92,441/- (Rupees Six Thousand Eight Hundred One Crore Eighty-Three Lakh Ninety-Two Thousand Four Hundred Forty-One Only) and the total admitted claim of the Secured Creditors having second *pari passu* charge over the assets of the Corporate Debtor is Rs. 6,12,65,04,429/- (Rupees Six Hundred Twelve Crore Sixty-Five Lakh Four Thousand Four Hundred Twenty-Nine Only).

(viii) Due to a lack of clarity regarding whether the superiority of charge of the senior lenders shall be considered for the distribution of sale proceeds amongst the stakeholders under Section 53(1)(b)(ii) of the Code, the Stakeholders Consultation Committee (hereinafter referred to as "SCC") in its 11th meeting

Sd

Sd



held on 22.11.2022 has approved the following distribution mechanism proposed by the Applicant:

(a) Unpaid CIRP cost, Liquidation Cost, and Liquidator's fee would be deducted and set aside first from the final sale consideration; these shall be paid subject to final expense/invoice reconciliation.

(b) A Contingency Reserve of Rs. 10.70 crores would be kept aside to meet the expenses till the dissolution of the Corporate Debtor. CIRP and Liquidation costs contributed by the lenders would be paid out of the sale proceeds to the respective lenders.

(c) Net distribution of the remaining amount after deducting the amount as per (a), (b), and (c) above has been computed as per the voting share of all Secured Creditors irrespective of their security status as to first charge or second charge.

(d) Out of the above, the distribution payout is done to only those Secured Creditors who have a first charge on the assets of the Corporate Debtor.

(e) The remaining undistributed amount has been held with the Applicant, which would be distributed upon further clarity, either upon the order of the Hon'ble Supreme Court of India (in similar matters which are currently pending with the Hon'ble Supreme Court of India) or by any amendment/clarification in this regard in the Code or Liquidations Regulations.

(f) Subsequently, after deducting the unpaid CIRP cost, unpaid Liquidation cost, funds earmarked for contingency reserve and Liquidator and its professional advisor's legal

Sd

Sd



fees, the Applicant has proceeded with the distribution of share of Secured Creditors having first *pari passu* charge over the assets of the Corporate Debtor, which amounts to Rs. 336 Crores. However, the Applicant has kept on hold the balance amount of **Rs. 30,26,42,850/- (Rupees Thirty Crore Twenty-Six Lakh Forty-Two Thousand Eight Hundred Fifty Only)**, which is the share of the second *pari passu* charge holders.

(ix) Further, all the Secured Creditors having first *pari passu* charge over the assets of the Corporate Debtor have provided a duly signed and notarized undertaking to the effect that the distribution of the sale proceeds to the Secured Creditors having second *pari passu* charge over the assets of the Corporate Debtor under Section 53(1)(b)(ii) shall be put on hold and kept with the Applicant and shall be released by the Applicant either to Secured Creditors having first *pari passu* charge or to the Secured Creditors having second *pari passu* charge over the assets of the Corporate Debtor, as the case may be, based on the judgment of the Hon'ble Supreme Court of India in **Kotak Mahindra Bank Ltd. Vs. Technology Development Board & Ors., Civil Appeal No. 11060 of 2021**, wherein an identical question of law is pending for consideration, or based on any amendment/clarification brought in by the Legislature or the Insolvency and Bankruptcy Board of India clarifying on the abovementioned issue.

(x) The Applicant has filed the present Application seeking directions for the distribution of the balance sale consideration and for extending the time for distribution of sale proceeds under Section 53 of the Code, read with Regulation 42 of the Liquidation Process Regulations, 2016. The Applicant has further requested

Sd/

Sd



for granting of an additional 60 days to the Applicant by this Adjudicating Authority, after expiry of the original period of 90 days for the distribution of sale proceeds.

3. This Adjudicating Authority *vide* order dated 15.01.2024, directed the Applicant to send notices to all the Secured Creditors of the Corporate Debtor. Accordingly, the Applicant sent notices to all the Secured Creditors of the Corporate Debtor. Pursuant to the directions passed by this Adjudicating Authority *vide* order dated 15.01.2024, Indian Bank, which is a first *pari passu* charge holder as well as a second *pari passu* charge holder of the Corporate Debtor has filed its reply wherein it has submitted that it has received its share as a Secured Creditor holding first charge over the assets of the Corporate Debtor from the proceeds of sale. However, it is yet to receive its share as a second-charge holder.

4. Accordingly, Indian Bank has filed its reply only on this limited issue, wherein they have relied upon the judgment of the Hon'ble NCLAT in **Technology Development Board vs. Mr. Anil Goel, Liquidator of M/s. Gujarat Oleo Chemicals Limited & Ors., Company Appeal (AT) (Ins) No. 731 of 2020**, wherein the Hon'ble NCLAT directed the Liquidator to treat the Secured Creditors relinquishing their security interest as one class for the distribution of assets under Section 53 (1)(b)(ii) of the Code. However, this order of the Hon'ble NCLAT has been stayed by the Hon'ble Supreme Court of India in **Kotak Mahindra Bank Ltd. Vs. Technology Development Board & Ors., Civil Appeal No. 11060 of 2021** *vide* its order dated 29.06.2021, however, Indian Bank has submitted that the order of the Hon'ble NCLAT has only been stayed as on date and has not been set aside by the Hon'ble Apex Court. It has further stated that the funds which have been kept on hold by the Liquidator should be disbursed in

Sd

Sd



favor of the second charge Secured Creditors in the same proportion and percentage as the first charge Secured Creditors.

5. IL&FS Financial Services Ltd. and IFCI Limited, who are second *pari passu* charge holders, have filed their respective replies wherein they have challenged the action of the Liquidator. Both IL&FS Financial Services Ltd. and IFCI Limited have taken common grounds in their respective replies, which are as follows:

(i) The Liquidator has arbitrarily kept on hold the distribution of the share of the second charge Secured Creditors. Section 53 of the Code does not *inter se* rank or prioritise the charges among the Secured Creditors for the distribution of assets of the Corporate Debtor. Therefore, the action of the Liquidator, by keeping in hold the share of the second charge Secured Creditors despite having distributed the share of the first charge Secured Creditors relinquishing their security interest, is contrary to Section 53(1) of the Code as both the said charges of Secured Creditors belong to a single category without any ranking amongst them, thereby warranting the same proportion and percentage of share to be maintained amongst all the Secured Creditors of the Corporate Debtor.

(ii) However, in withholding the distribution of the share of second charge Secured Creditors, the Liquidator has failed to make such distribution in a fair and equitable manner. The Liquidator has acted beyond the scope of Section 53 in distributing the assets of the Corporate Debtor, and he has unlawfully prioritized the first charge Secured Creditors over the second charge Secured Creditors.

(iii) IL&FS Financial Services Ltd. and IFCI Limited have also relied upon the judgment of The Hon'ble NCLAT in **Technology**

Sd

Sd



Development Board vs. Mr. Anil Goel, Liquidator of M/s. Gujarat Oleo Chemicals Limited & Ors., Company Appeal (AT) (Ins) No. 731 of 2020 to contend that there can be no *inter se* priority/ranking amongst the Secured Creditors for distribution of proceeds under Section 53 of the Code.

(iv) In the present case, the SCC has directed the funds to be released to the first charge Secured Creditors, subject to the aforesaid pending appeal before the Hon'ble Supreme Court of India. In light of the same, it is submitted that the funds should be disbursed by the Liquidator in favour of the second charge Secured Creditors in the same proportion and percentage as the first charge Secured Creditors without any part thereof being kept on hold and in furtherance of the same, IL&FS Financial Services Ltd. and IFCI Limited are ready to comply with the same aforesaid condition so imposed by the SCC on the first charge Secured Creditors.

(v) IFCI has filed a written note of submissions wherein they have cited the following judgments:

- (a) Technology Development Board vs. Anil Goel, 2021 SCC Online NCLAT 349;
- (b) India Resurgence ARC Pvt. Ltd. vs. Amit Metaliks, 2021 SCC Online SC 409;
- (c) Oriental Bank of Commerce vs. Anil Anchalia, 2022 SCC Online NCLAT 3456;
- (d) M/s. Asset Reconstruction Company (India) Limited vs. M/s. Parasrampuriah Synthetics Limited, IA (IB) No. 306/JPR/2022; IA (IB) No. 361/JPR/2022 in CP No. (IB) 155/PB/2018



6. The Canara Bank, which is a second *pari passu* charge holder, has stated through a memo filed before this Adjudicating Authority that they have no objection to the liquidation payout proposed by the Liquidator in this case.

7. During the course of the hearing of this Application, this Adjudicating Authority directed the Applicant to place on record the relevant minutes of the SCC meetings of the Corporate Debtor. In compliance with this, the Applicant has filed the minutes of the 13th, 14th, and 15th SCC meetings.

8. From the perusal of the minutes of the abovementioned meetings of the SCC, it is evident that the second charge holders, which include Indian Overseas Bank, IFCI Limited, IL&FS Financial Services Ltd, Indian Bank and Canara Bank have asserted that the retained amount shall be allocated among the second charge holders following the waterfall mechanism outlined in Section 53 of the Code. However, the first charge holders, namely, EARC, IDBI Bank and Bank of India are of the view that the Liquidator should distribute the balance sale proceeds under Section 53(1)(b)(ii) of the Code after taking into consideration the superiority of charge in favour of senior lenders of the Corporate Debtor over the mezzanine lenders of the Corporate Debtor as such distribution will be in consonance with the intent of the law. In support of this, the first charge holders have relied upon the ruling of the Delhi High Court in **Tata Iron & Steel Co. Ltd. vs. M/s. Jhalani Tools India Ltd., 2023 SCC OnLine Del 4211**. As per this ruling, the Official Liquidator must consider the priority of security interests while distributing assets during the liquidation of companies under the Companies Act, 1956.

9. It is also evident from the minutes of the SCC meetings that the Liquidator has filed the present Application seeking appropriate directions from this Adjudicating Authority regarding the distribution

Sd

Sd



of sale proceeds of INR 30,26,42,850/-, which pertains to the share of second charge holders. The Liquidator has sought directions from this Adjudicating Authority because the Hon'ble Supreme Court of India has not yet pronounced its judgment in the case of **Kotak Mahindra Bank Ltd. Vs. Technology Development Board & Ors., Civil Appeal No. 11060 of 2021**, that involves the same question of law as in the present case.

ANALYSIS AND FINDINGS:

10. We have heard the learned counsels for the parties and perused the averments made in the Application, Reply, Written Submissions, and the documents enclosed with the Application.

11. In the present case, the CIRP of the Corporate Debtor was initiated by the National Company Law Tribunal, Mumbai bench *vide* order dated 23.02.2018. As there was no successful resolution achieved during the CIRP and based on the decision taken by the CoC, an order of Liquidation was passed by the National Company Law Tribunal, Mumbai Bench on 23.10.2019. Pursuant to the 9th round of e-auction, Jindal Steel and Power Limited emerged as the Successful Bidder with the highest bid of Rs. 410 Crores as against the reserve price of Rs. 400 Crores.

12. The moot question of law involved in the present Application is whether there can be any classification *inter se* the Secured Creditors in relation to the distribution of the sale proceeds received from the sale of the assets of the Corporate Debtor as per Section 53 of the Code.

13. Before proceeding further, it is relevant to take note of Sections 52 and 53 of the Code, which deal with the Secured Creditor in Liquidation proceedings and distribution of assets, respectively. The aforementioned provisions of the Code are reproduced hereunder:

Sd

Sd



“52. Secured creditor in liquidation proceedings.—(1) A secured creditor in the liquidation proceedings may—

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in Section 53; or

(b) realise its security interest in the manner specified in this section.

(2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either—

(a) by the records of such security interest maintained by an information utility; or

(b) by such other means as may be specified by the Board.

(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

(5) If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to

Sd

Sd



realise such security interest in accordance with law for the time being in force.

(6) The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.

(7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall—

(a) account to the liquidator for such surplus; and

(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of Section 53.

53. Distribution of assets.—(1) Notwithstanding anything to the contrary contained in any law enacted 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

Sd

Sd



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;

(b) the following debts which shall rank equally between and among the following—

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in Section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

Sd

Sd



(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(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.

Explanation.—For the purpose of this section—

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(ii) the term “workmen's dues” shall have the same meaning as assigned to it in Section 326 of the Companies Act, 2013 (18 of 2013).”

14. A bare perusal of the aforementioned provisions of the Code reveals that Section 52(1) has two alternate clauses. Clause (a) covers a situation when the Secured Creditor relinquishes its security interest, and Clause (b) covers the situation when the Secured Creditor realises its security interest in the manner specified under Section 52 of the Code. A Secured Creditor has been given an option to relinquish its security or realise its security. Correspondingly, there are two categories of Secured Creditors under Section 53(1) of the Code. First category of the Secured Creditors pertains to those creditors who have relinquished their Security Interest under Section 52(1)(a) of the Code and are covered under Section 53(1)(b)(ii). They shall rank equally between and among the workmen's dues for the period of twenty-four

Sl

Sl



months preceding the Liquidation commencement date as provided under Section 53(1)(b)(i) of the Code.

15. The Second category deals with those Secured Creditors who realise their security interest as provided under Section 52(1)(b) of the Code and are covered under Section 53(1)(e)(ii) of the Code and they shall rank equally between and among any amount due to the government for the period of two years preceding the liquidation commencement date.

16. At this juncture, it becomes relevant to refer to some of the judgments of the Hon'ble NCLAT and the Hon'ble Supreme Court of India wherein they have adjudicated upon the issue concerning the *inter-se* priorities among the Secured Creditors in the CIRP and the Liquidation proceedings. This issue was first adjudicated upon by the Hon'ble NCLAT in the case of **Technology Development Board vs. Anil Goel, 2021 SCC OnLine NCLAT 349**

“9. While it is true that the relinquishment of security interest affects the order of distribution, it is equally true that the Secured Creditor does not lose its status of being a Secured Creditor though he has elected to forego his right of enforcing security interest. Whether the Secured Creditor holds first charge or second charge is material only if the Secured Creditor elects to realise its security interest. A conjoint reading of Sections 52 and 53 of I&B Code, leaves no room for doubt that the legislature in its wisdom thought it proper to provide an option to the Secured Creditor armed with a security interest to choose out of the two options viz. either enforce security interest against the asset out of liquidation estate which is the subject of security interest or relinquish the same and claim as Secured Creditor in the manner set out under Section 53(1)(b)(ii) ranking equal to other Secured Creditors. It is manifestly clear that in the event of a Secured Creditor electing to realise its security

Sd

Sd



interest but failing to realise the whole amount due to it would be entitled to distribution of assets under Section 53(1)(e)(ii) for any amount that remains unpaid following the enforcement of security interest thereby ranking lower in priority as compared to a Secured Creditor who has relinquished its security interest to the liquidation estate and is entitled to distribution of assets under Section 53(1)(b)(ii). Once a Secured Creditor elects to relinquish its security interest to the liquidation estate, it ranks higher in waterfall mechanism under Section 53 to a Secured Creditor who has enforced its security interest but failed to realise its claim in full and for the unpaid part of its claim ranks lower to the Secured Creditor who has relinquished its security interest. Viewed in this context the argument advanced that sub-classification amongst Secured Creditors is impermissible cannot be accepted. Section 52 incorporating the doctrine of election, read in juxtaposition with Section 53 providing for distribution of assets treats Secured Creditor relinquishing its Security interest to the liquidation estate differently from a Secured Creditor who opts to realise its security interest, in so far as any amount remains unpaid following enforcement of security interest to a Secured Creditor is concerned by relegating it to a position low in priority. The two sets of Secured Creditors, one relinquishing the security interest and the other realising its security interest are treated differently. A creative interpretation has to be given to the provisions to make them workable and stand in harmony. It is significant to note that Section 53 has been given overriding effect and the non-obstanate clause contained in the very opening words of the Section leaves no room for doubt that the distribution mechanism provided thereunder applies in disregard of any provision to the contrary contained in any Central or State law in force. Of course first charge holder will have priority in realising its security interest if it

Sl

Sl



elects to realize its security interest and does not relinquish the same. However, once a Secured Creditor opts to relinquish its security interest, the distribution of assets would be governed by the provision engrafted in Section 53(1)(b)(ii) whereunder all Secured Creditors having relinquished security interest rank equally and in the waterfall mechanism are second only to the insolvency resolution process costs and the liquidation costs.”

17. The abovementioned judgment of Hon’ble NCLAT in the case of **Technology Development Board (Supra)** was assailed before the Hon’ble Supreme Court of India in Civil Appeal No. 11060 of 2021 captioned as **Kotak Mahindra Bank Ltd. Vs. Technology Development Board & Ors.** In this case, the Hon’ble Supreme Court of India *vide* its order dated 29.06.2021 stayed the operation of the order of the Hon’ble NCLAT in the case of **Technology Development Board (Supra)**.

18. Thereafter, the aforementioned issue again came for consideration before the Hon’ble NCLAT in the case of **Oriental Bank of Commerce vs. Anil Anchalia 2022 SCC Online NCLAT 3456**, wherein the Hon’ble NCLAT relied upon the judgment of the Hon’ble Supreme Court in the case of **India Resurgence ARC Pvt. Ltd. vs. Amit Metaliks 2021 SCC Online SC 409** and had observed that:

“4. The Appellant had opted to relinquish its security exercising its right under Section 52 of the Code. After it relinquished the security, the secured creditors are entitled for receiving payment as per Section 53. The issue is no more res integra in view of the judgment of the Hon'ble Supreme Court in “India Resurgence ARC Private Limited v. Amit Metaliks Limited - 2021 SCC OnLine SC 409”. In the case before Hon'ble Supreme Court, Appellant was Dissenting Financial Creditor and it challenged the distribution of the assets under the Resolution Plan. The argument was raised

Sj

Sj



that the Dissenting Financial Creditor was entitled to receive the payment as per their secured interest. The argument was rejected and the Hon'ble Supreme Court in Paragraphs 17, 19, 20 & 21 laid down following:—

“17. Thus, what amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.

19. In Jaypee Kensington (*supra*), this Court repeatedly made it clear that a dissenting financial creditor would be receiving the payment of the amount as per his entitlement; and that entitlement could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him. It has never been laid down that if a dissenting financial creditor is having a security available with him, he would be entitled to enforce the entire of security interest or to receive the entire value of the security available with him. It is but obvious that his dealing with the security interest, if occasion so arise, would be conditioned by the extent of value receivable by him.

20. The extent of value receivable by the appellant is distinctly given out in the resolution plan i.e., a sum of INR 2.026 crores which is in the same proportion and percentage as provided to the other secured financial creditors with reference to their respective admitted claims. Repeated reference on behalf of the appellant to the value of security

Sd

Sd



at about INR 12 crores is wholly inapt and is rather ill-conceived.

21. The limitation on the extent of the amount receivable by a dissenting financial creditor is innate in Section 30(2)(b) of the Code and has been further exposted in the decisions aforesaid. It has not been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above other financial creditors so as to enforce the entire of the security interest and thereby bring about an inequitable scenario, by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors.”

5. In a recent judgment delivered by this Appellate Tribunal in Company Appeal (AT) (Ins.) No. 644 of 2021 dated 06.05.2022 - “Indian Bank v. Charu Desai, Erstwhile Resolution Professional & Chairman of Monitoring Committee of GB Global Ltd.”, a similar contention raised by the Indian Bank which was secured creditor who was Dissenting Financial Creditor was repelled. After relying the judgment of the Hon'ble Supreme Court in **Amit Metaliks Ltd.** (supra), this Tribunal in paragraphs 27 and 28 laid down following:—

“27. The Judgment of the Hon'ble Supreme Court, in the above case, is that when the extent of value received by the creditors under Section 53 is given which is in the same proportion and percentage as provided to the other Financial Creditors, the challenge is to be repelled.”

6. We thus, do not find any merit in the submissions of the Learned Counsel for the Appellant. The submission that earlier judgment of

Sd

Sd



this Tribunal in “**Technology Development Board**” having been stayed by the Hon'ble Supreme Court on 29.06.2021, no reliance can be placed on the said judgment loses its importance in view of the subsequent judgment of the Hon'ble Supreme Court dated 13.05.2021 **Amit Metaliks Ltd.** (supra). The issue is no more res integra and no error is committed by the Adjudicating Authority in rejecting the Application filed by the Appellant. There is no merit in the Appeal. The Appeal is dismissed.”

19. Thus, the Hon'ble NCLAT in the case of **Oriental Bank of Commerce (supra)** took note of the stay granted by the Hon'ble Supreme Court of India in the case of **Kotak Mahindra Bank Ltd. Vs. Technology Development Board & Ors.**, in Civil Appeal No. 11060 of 2021 and decided the aforementioned issue based on a subsequent judgment of the Hon'ble Supreme Court of India in the case of **India Resurgence ARC Pvt. Ltd. (Supra)**. Thus, insofar as the issue about the distribution of assets among creditors is concerned, as per the judgment of the Hon'ble NCLAT, after relinquishing its security interest, Secured Creditors cannot seek priority over other similar creditors during the distribution of the sale proceeds of the secured assets.

20. At this juncture, it becomes relevant to take note of a recent judgment of the Hon'ble Supreme Court of India in the case of **DBS Bank Ltd. vs. Ruchi Soya Industries Ltd. (2024) 3 SCC 752** wherein a division bench of the Hon'ble Supreme Court of India has referred the issue decided by a bench of same strength of the Hon'ble Supreme Court of India in the case of **India Resurgence ARC Pvt. Ltd. (supra)** to a larger bench. It was observed that:

“52. In view of the aforesaid discussion, and as we are taking a different view and ratio from India Resurgence ARC [India Resurgence ARC (P) Ltd. v. Amit Metaliks Ltd., (2021) 19 SCC 672] on interpretation of Section 30(2)(b)(ii) IBC, we feel that it would be

Sd

Sd



appropriate and proper if the question framed at the beginning of this judgment is referred to a larger Bench. The matter be, accordingly placed before the Hon'ble the Chief Justice for appropriate orders.”

21. Thus, it transpires that the judgment of the Hon'ble Supreme Court in the case of **India Resurgence ARC Pvt. Ltd. (Supra)**, based on which the judgment of the Hon'ble NCLAT in the case of **Oriental Bank of Commerce (supra)** was passed, has been referred to a larger bench of the Hon'ble Supreme Court of India in the case of **Ruchi Soya Industries Ltd. (Supra)**.

22. Although the judgment of the Hon'ble Supreme Court of India in the case of **India Resurgence ARC Pvt. Ltd. (Supra)** has been referred to a larger bench, however, the ratio laid by the Hon'ble Supreme Court of India in **India Resurgence ARC Pvt. Ltd. (Supra)** remains binding. It is a settled position of law that once a final judgment is passed by the Hon'ble Supreme Court of India, the same becomes a binding precedent in terms of Article 141 of the Constitution of India. Further, merely because a judgment is referred to a larger bench, the same does not make it ineffective, nor is the same to be considered as stayed. In this regard, reference can be made to the judgment of the Hon'ble Supreme Court of India in the case of **Union Territory of Ladakh and others vs. Jammu and Kashmir National Conference and Anr., 2023 SCC Online SC 1140**, wherein it was observed by the Hon'ble Supreme Court of India:

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its

Sd

Sd



correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”

23. It is also pertinent to note the observation of the Hon'ble NCLAT in **Beacon Trusteeship Limited vs. Jayesh Sanghrajka & Ors., 2024 SCC Online NCLAT 667**, which is as follows:

“54. Judgment of the Hon'ble Supreme Court in ‘Vistara ITCL (India) Ltd.’ (Supra) does not come to help of the Appellant in the present case. It is relevant to notice that Hon'ble Supreme Court in ‘DBS Bank Ltd. Singapore v. Ruchi Soya Industries Ltd.’ 2024 SCC OnLine SC 3, made a reference to the earlier Judgment of the Hon'ble Supreme Court in ‘India Resurgence ARC Pvt. Ltd.’ (Supra), which reference is pending consideration before the Hon'ble Supreme Court. Law declared by Hon'ble Supreme Court in ‘India Resurgence ARC Pvt. Ltd.’ (Supra) can very well be relied until a different view is expressed by the Hon'ble Supreme Court in the reference pending before it.”

24. In light of the facts of the present case and aforementioned case laws, we are of the view that the issue concerning the distribution of the sale proceeds of the assets of the Corporate Debtor has been put to

Sd

Sd



rest by the Hon'ble NCLAT in the case of **Oriental Bank of Commerce (Supra)** and **Beacon Trusteeship Ltd. (Supra)**. Thus, we are of the opinion that once a Secured Creditor relinquishes its security interest to the liquidation estate, it cannot seek priority among other secured creditors on the basis of the charge and is only entitled to receive proceeds from the sale of assets in the manner specified under Section 53 of the Code.

25. Some of the Secured Creditors having first charge over the assets of the Corporate Debtor, during their deliberations in the SCC meetings, have relied upon the ratio of the judgment of the Hon'ble Delhi High Court, i.e., **Tata Iron & Steel Co. Ltd. vs. M/s. Jhalani Tools India Ltd., 2023 SCC OnLine Del 4211**, to contend that the Liquidator must consider the priority of security interests while distributing assets during the liquidation of companies. However, we are of the opinion that the ratio of this judgment will not be applicable to the facts of the present case. This is because, in that judgment, the Hon'ble Delhi High Court dealt with Section 529 and Section 529-A of the Companies Act 1956. We believe that when Section 53 of the Code has been dealt with by the Hon'ble Supreme Court of India in **India Resurgence ARC Pvt. Ltd. (Supra)**, we are bound to follow the Judgment of the Hon'ble Supreme Court of India in **India Resurgence ARC Pvt. Ltd. (Supra)**.

26. In the present case, it is also observed from the minutes of the SCC meetings, if the balance amount of **Rs. 30,26,42,850/- (Rupees Thirty Crore Twenty-Six Lakh Forty-Two Thousand Eight Hundred Fifty Only)** is distributed among the Secured Creditors of the Corporate Debtor based upon the nature of security held by them, then 4 Secured Creditors, namely, IFCI Ltd., IL&FS Financial Services Ltd., Indian Overseas Bank and Canara Bank) holding only a Second Charge over the Corporate Debtor's assets would not receive any amount from the

Sd

Sd



sale consideration, despite accounting for approximately 4.4% of the total admitted claims of the Corporate Debtor.

27. Therefore, applying the ratio laid down by the Hon'ble NCLAT in **Oriental Bank of Commerce (Supra), Beacon Trusteeship Ltd. (Supra)** and the Hon'ble Supreme Court of India in **India Resurgence ARC Pvt. Ltd. (Supra)**, we deem it fit to direct the Liquidator to distribute the balance amount of **Rs. 30,26,42,850/- (Rupees Thirty Crore Twenty-Six Lakh Forty-Two Thousand Eight Hundred Fifty Only)** among the Secured Creditors of the Corporate Debtor on a pro-rata basis without giving any priority of charge.

28. At this stage, it is pertinent to mention that, **Joint Commissioner of Commercial Taxes & GST**, Angul, Odisha has filed an Interlocutory Application, i.e., **IA (IB) No. 211/CB/2023** before this Adjudicating Authority, wherein a direction has been sought from this Adjudicating Authority against the Liquidator to treat its claim as a 'Secured Creditor'. We have allowed **IA (IB) No. 211/CB/2023** in view of the statutory charge in terms of Section 55 of the Orissa Value Added Tax Act, 2004, which is *pari materia* with Section 48 of the Gujarat Value Added Tax Act, 2003 and applying the ratio laid down by the Hon'ble Supreme Court of India **State Tax Officer vs. Rainbow Papers Ltd, (2023) 9 SCC 545**. Hence, we have directed the Liquidator to treat **Joint Commissioner of Commercial Taxes & GST**, Near Rotary Public School, Angul, Odisha-759122 as a 'Secured Creditor' of the Corporate Debtor.

29. In view of the above, before distributing the balance amount of **Rs. 30,26,42,850/- (Rupees Thirty Crore Twenty-Six Lakh Forty-Two Thousand Eight Hundred Fifty Only)**, the Liquidator is directed to update the list of creditors by incorporating **Joint Commissioner of Commercial Taxes & GST**, Near Rotary Public School, Angul, Odisha-759122 as a 'Secured Creditor' of the Corporate Debtor.

Sd

Sd



30. As per Regulation 39 of the Liquidation Regulations, 2016, the Liquidator is duty-bound to recover and realise all assets of and dues to the Corporate Debtor in a time-bound manner for maximising the value for the stakeholders. Further, as per Regulation 42(2) of the Liquidation Regulations, 2016, the Liquidator is mandated to distribute the proceeds from realisation within ninety days from the receipt of the amount to the stakeholders. However, in the present case, the Liquidator, despite his best efforts, has not been able to comply with the timelines prescribed due to the pendency of this litigation, which was filed way back on 20.02.2023. Therefore, we deem it proper to extend the timeline for the purpose of the distribution of sale proceeds of the Corporate Debtor.

31. Accordingly, we pass the following directions:

(i) Firstly, the Liquidator, *vide* **IA (IB) No. 211/CB/2023** is directed to treat the **Joint Commissioner of Commercial Taxes & GST**, Near Rotary Public School, Angul, Odisha-759122 as a “**Secured Creditor**” of the Corporate Debtor, and update the list of creditors of the Corporate Debtor accordingly.

(ii) Thereafter, the Liquidator is directed to distribute the balance amount of **Rs. 30,26,42,850/- (Rupees Thirty Crore Twenty-Six Lakh Forty-Two Thousand Eight Hundred Fifty Only)** among the Secured Creditors of the Corporate Debtor on a pro-rata basis without giving any priority to the first charge holders.

(iii) In furtherance of Regulation 42 (2) of the Liquidation Regulations, 2016, the Liquidator is directed to complete the distribution of the proceeds from the sale of assets of the Corporate Debtor realization within sixty days from the date of this order.



NCLT CUTTACK BENCH
IA (IB) No. 69/CB/2023
IN
TP No. 17/CTB/2021
CP (IB) No. 1696/MB/2017

32. Hence, **IA (IB) No. 69/CB/2023** in **TP No. 17/CTB/2021** is **DISPOSED OF** based on the aforementioned directions of this Adjudicating Authority.

Sd

BANWARI LAL MEENA
MEMBER (TECHNICAL)

Sd

DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)