

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA Nos.170/2021 & 74/2022
in
CP (IB) No.42/Chd/Hry/2017**

Under Section 60(5) of the IBC, 2016

In the matter of

Corporation BankFinancial Creditor

Vs.

Amtek Auto Limited ...Corporate Debtor

And in the matter IA No. 170/2021

**Ashok Kumar Gullia, Liquidator
Of Lotus Auto Engineering Limited**

having its registered office at
RBSA Restructuring Advisors LLP,
2nd Floor, IAPL House, 23,
South Patel Nagar,
New Delhi-110008

Vs.

- 1. DINKAR T. VENKATASUBRAMANIAM,**
Insolvency Professional and Member of
Monitoring Committee of Amtek Auto Limited
EY Restructuring LLP
Golf View Corporate Tower B,
Sector 42, Gurugram,
Haryana-122002

...Respondent No. 1

- 2. Monitoring Committee of Amtek Auto Limited**
having its registered office at
Plot No. 16, Industrial Area, Rozka Meo, P.O. Sohna,
Gurugram, Haryana-122003

...Respondent No. 2

3. Castex Technologies Limited

Through its Resolution Professional
EY Restructuring LLP, Golf View Corporate
Tower B, Sector 42, Gurugram, Haryana-122002.

...Respondent No. 3

And in the matter of 74/2022:

Lotus Auto Engineering ILimited

16, hare street, 1st floor,
Kolkata-700 001

...Applicant

1. Dinkar t. Venkatasubramaniam,

Insolvency Professional and Member of the Monitoring Committee of
Amtek Auto Limited EY Restructuring LLP,
Golf View Corporate Tower B,
Sector 42, Gurugram,
Haryana - 122002

...Respondent No. 1

2. Monitoring Committee of Amtek Auto Limited

Plot no.16, Industrial Area,
Rozka Meo, P.O. Sohna, Gurugram,
Haryana - 122003

...Respondent No. 2

3. Deccan Value Investors

Through Its Authorised Representative,
850 New Burton Road, Suite 201, Dover,
Delaware- 19904, USA

...Respondent No. 3

4. DVI PE (MAURITIUS) LTD.,

SGG Mauritius,
33, Edith CA Vell Street,
Port Louis 11324

...Respondent No. 4

Order delivered on: 03.08.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Applicant in
IA Nos. 170/21 and 74/2022 : 1. Mr. Akshay Bhan, Senior Advocate
2. Mr. Saurabh Arora, Advocate
3. Ms. Mahima, Advocate
4. Mr. Rohit Nagpal, Advocate

For the respondent in : Mr. Sanjay Bhatt, Advocate
IA Nos. 170/21 and 74/2022

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA Nos.170/2021

The present application has been filed by the applicant, who is the Liquidator of Lotus Auto Engineering Ltd. under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (herein referred to as "**the Code**") seeking the following prayers:

- a) The difference in the claim filed amount, and the current outstanding amount (being due in lieu of the goods supplied by Lotus Auto Limited after the commencement of CIRP of Amtek Auto Limited) be considered as the CIRP Costs of the Corporate Debtor;
- b) Urgent directions restraining Respondent Nos. 1 and 2 from making any direct payments to Castex Technologies Limited on behalf of Lotus Auto Engineering Limited out of the CIRP Costs of the Corporate Debtor due towards Lotus Auto Engineering Limited;
- c) Urgent directions restraining the netting of dues between the Corporate Debtor and Castex Technologies Limited w.r.t. Lotus Auto Engineering Limited;
- d) Urgent directions directing the Respondents to provide information to the

Applicant regarding the treatment of the Claim filed by the Applicant on behalf of Lotus Auto under the Resolution Plan approved for the Corporate Debtor.

2. The following contentions have been raised by the applicant in the application:-

2.1. Lotus Auto Engineering Ltd. and Castex Technologies Ltd. are the group companies of Amtek Auto Ltd., i.e. Corporate Debtor, and can be collectively referred to as the Amtek Group companies. The business arrangement between the Amtek Group Companies is that Lotus Auto purchases castings from Castex and procures child parts from the domestic markets as well as through import of the said child parts. After the machining of the castings and assembling of the child parts by Lotus Auto, the sale of the final products to the end customers are routed through Amtek Auto Limited, i.e. the Corporate debtor. The Corporate Debtor has tie-ups with end customers who purchase these products. The bills are raised to the Corporate Debtor, and Lotus Auto Engineering Ltd. ships the final products directly to the end customers on the instructions of the Corporate Debtor. In furtherance of the sale of the final products, the Corporate Debtor deducts its commission from the sale proceeds and transfers the remaining sum to Lotus Auto Engineering Ltd. Thereafter, Lotus Auto Engineering Ltd. deducts its share from the sum transferred by the Corporate Debtor and transfers the remaining sum to Castex Technologies Ltd., in lieu of the castings supplied by Castex for the machining of the castings and cost of assembling of child parts.

2.2. Vide order dated 24.07.2017, this Adjudicating Authority admitted CP(IB) No.42/Chd/Hry/2017 and directed for commencement of the Corporate Insolvency Resolution Process (herein referred to as "**CIRP**") of the Amtek Auto Limited and respondent No. 1 was appointed as the Interim Resolution

Professional of the Corporate Debtor.

- 2.3. Vide order dated 20.12.2017, this Adjudicating Authority admitted CP(IB) No.116/Chd/Hry/2017 and directed for commencement of CIRP of Castex Technologies Ltd., and respondent No. 1 was appointed as the Interim Resolution Professional of Castex Technologies Ltd.
- 2.4. Vide Order dated 07.08.2018, the Hon'ble NCLT, Principal Bench admitted Company Petition No. CP-IB-31/PB/2018 and directed commencement of CIRP of Lotus Auto Engineering Ltd., and the applicant was appointed as the Interim Resolution Professional of Lotus Auto Engineering Ltd., which is currently undergoing liquidation proceedings vide Order dated 01.06.2020 passed by the Hon'ble NCLT, Principal Bench.
- 2.5. The applicant filed the claim of Lotus Auto in the CIRP of the Corporate Debtor to the tune of INR 23,12,84,360/- as of 24.07,2017, which was admitted by the Respondent No. 1 to the extent of INR 23,12,09,057/-.
- 2.6. Castex Technologies Ltd. filed the claim in the CIRP of Lotus Auto Engineering Ltd. 31,89,55,323/- as on 07.08.2018, which was fully admitted by the Applicant. Subsequently, Castex filed the claim in the Liquidation Process of Lotus Auto to the tune of INR 45,83,98,928/- (i.e. INR 31,89,55,323/- for claim filed in CIRP of Lotus Auto plus INR 1,95,59,236/- for dues during the CIRP period of Lotus Auto being CIRP Costs and INR 11,98,84,369/- claimed as Interest) which was admitted by the Applicant to the extent of INR 33,85,14,559/- after rejecting interest claimed.
- 2.7. Prior to the initiation of CIRP Proceedings, the business arrangement between the Amtek Group Companies was to continue during the respective CIRPs. This arrangement was necessary for running the Corporate Debtor, Lotus Auto, as well as Castex as a going concern. Under this arrangement,

the payments were made by Amtek Auto Limited to Lotus Auto Engineering Ltd. for the supplies made by Lotus Auto Engineering Ltd. and further, Lotus Auto Engineering Ltd. used to make payments to Castex Technologies Ltd. for the supplies made by them to Lotus Auto Engineering Ltd. The Purchase Order payment terms between Castex and Lotus Auto, as well as Lotus Auto and the Corporate Debtor, were 30 days.

2.8. It is alleged that post the initiation of CIRP, Respondent No. 1, who was Resolution Professional for Amtek Auto Limited and Castex Auto Limited, unilaterally amended the business arrangement between the Amtek Group Companies and, ever since has been making direct payments to Castex, i.e. before transferring the sum realized from the end customers to Lotus Auto, in addition to the percentage share of Lotus Auto, and is also deducting the share of Castex and paying the said share directly to himself, in the capacity of being the Resolution Professional of Castex Technologies Ltd. Thereafter, the remaining sum is transferred to Amtek Auto Limited. Hence, direct payments are made by Amtek Auto Limited to Castex Technologies Ltd. for the supplies made by Castex to Lotus Auto.

2.9. The applicant submits that the applicant-Lotus Auto Engineering Ltd. never consented to the above-mentioned unilateral change in the business arrangement and the fact that the same person (Respondent No. 1) is the Resolution Professional of the Corporate Debtor and Castex is being commenced the aforesaid unilateral practice to the detriment of Lotus Auto which is contrary to the business arrangement agreed between the Amtek Group Companies.

3. The Applicant issued various communications dated 05.03.2019, 15.03.2019, 15.04.2019, 13.02.2020 and 20.02.2020 informing about the unilateral

practice of making direct payments to Castex during the Corporate Debtor's CIRP, Lotus Auto has provided goods to the Corporate Debtor, and payment was made by the Corporate Debtor pro-rata basis between Lotus Auto and Castex (referred as Direct Payments). Hence, the total amount recoverable by the Applicant from Amtek Auto Limited became INR 46.07 Crores as on 12.06.2020 (i.e. INR 23.12 Crore dues against a claim filed in CIRP of Corporate Debtor and INR 22.95 Crore dues during the CIRP of Corporate Debtor being CIRP Costs). It is claimed that the abovementioned amount of INR 22.95 Crore is separate from the Claim of INR 23.12 Crore submitted in the CIRP of the Corporate Debtor.

4. The Applicant submits that in terms of Section 5(13)(c) of the IBC, the amount to be paid by the Corporate Debtor, i.e. Amtek Auto Limited to Lotus Auto, in lieu of the goods supplied after the Insolvency Commencement Date of the Corporate Debtor, i.e. 24.07.2017, would be considered as part of the Insolvency Resolution Process Costs ("**CIRP Costs**") of the Corporate Debtor. In view of the same, INR 22.95 Crore should form CIRP Costs of the Corporate Debtor.

5. The Respondents were also informed that out of the amount recoverable from the Corporate Debtor being CIRP Costs of Corporate Debtor, Lotus Auto has to make payments worth INR 1.95 Crore to Castex, which has been duly made part of the CIRP Costs of Lotus Auto along with other CIRP Costs and admitted in Lotus Auto's Liquidation process. It was further clarified that accordingly, a total claim of INR 33.85 Crore of Castex has been admitted in the liquidation process of Lotus Auto, out of which INR 1.95 Crore is part of the CIRP Costs of Lotus Auto. In view of the same, the Respondents were requested not to pay any amount directly to Castex as the same would be in violation to the provisions of the IBC, being a priority of payments to unsecured creditors over the secured creditors. Accordingly, it was requested that the full amount of receivables should be transferred to Lotus

Auto, and thereafter, the dues of Castex would be settled as per Section 53 of the IBC. It is submitted that on 24.09.2020, Respondent No.2 issued an email to the Applicant stating that the balance payable to Lotus Auto as on 31.08.2020 is INR 8.47 Crore and not INR 22.95 Crore. Further, Respondent No. 2, i.e. the Monitoring Committee of Amtek Auto Limited, stated that *"Lotus owes a net amount (i.e. difference between amount receivable from AAL and amount payable to CTL) of INR 8.33 Crores to CTL"*. Respondent No. 2 also mentioned that the balance of INR 8.47 Crore payable to Lotus Auto as on 31.08.2020 *"is on account of the stock in transit or under quarantine, warehouse inventory, rejections and overdue collections yet to be received from customers such as Borgwarner, Cummins Inc, Dynamic Suspension and Meritor. As you are already aware that the payments are being made as per the business, practise being followed in earlier periods, which includes payments basis actual collections. The same practise continues to be followed, being the substance of transaction. Hence, this balance will be paid to LAEL as and when the collections are received from the above-mentioned customers."*

6. At this juncture, the Applicant submits that as mentioned hereinabove, the outstanding amount to be paid by the Corporate Debtor to Lotus Auto in lieu of the goods supplied after the Insolvency Commencement Date of the Corporate Debtor i.e. 24.07.2017, would be considered as part of the CIRP Costs of the Corporate Debtor. However, as may be seen from the abovementioned, the Respondents have denied the payment of the same to the Applicant. Moreover, Castex is an Operational Creditor of Lotus Auto and not of Amtek Auto Limited. In view of the same, no direct payment can be made by Amtek to Castex on 29.09.2020, there was a deliberation among the parties regarding the issues to be discussed in the meeting. Consequently, an email was issued to the Respondents stating as under:

" .. .Balance outstanding increased from 24.07.2017 to 30.6.2020-

Lotus had filled the claim the at the time of initiation AAL CIRP i.e. on 24.07.2017 for Rs 2312.09 Lakhs which was duly accepted by AAL. Now as on 30.06.2020 o/s balance is Rs 4581 Lakhs which mean an increase of balance of Rs 2270 lakhs during AAL CIRP. Pis share the payment plan for the same in meeting.

Debit notes to LAEL by AAL - AAL team has raised debit notes of Rs 1348.73 Lakhs (approx.) from Aug 18 to June 20. Team of LAEL has repeatedly asked for the details of these debit notes from AAL team but no details has been provided till date. Also the team AAL never bothered to sorted out the reconciliation issues even after sending multiple reminders, the debit notes are raised unilateral without consent of team LAEL. Here I would like to highlight one thing also that team LAEL came to know about these debit notes only at the time of reconciliations only..."

7. Respondent No. 2 issued an email dated 30.09.2020 to the Applicant stating that the meeting should take place only after the issue of debit notes is resolved between Lotus Finance Team, Marketing team and Amtek Finance team. The issues remained unresolved between the parties on 27.10.2020, the applicant issued a communication to the Respondents seeking clarity from the Respondents regarding the treatment of the claim of the Applicant/ Lotus Auto under the Resolution Plan approved for the Corporate Debtor. The Applicant further mentioned that the direct payment business arrangement (as mentioned above) has been carried on by the Respondents despite opposition from the Applicant herein and reiterated that no direct payment can be made by the Respondents to Castex as Castex is an operational creditor of Lotus Auto (and not a creditor of Amtek Auto Limited). Accordingly, Castex shall receive dispensation from the Applicant in terms of Section 53 of the IBC. Any such direct payment by the respondents to Castex would be unlawful as would be in direct violation of Section 53 of the IBC the Respondents are attempting to violate the provisions of Section 53 of the IBC by endeavoring to net

off the alleged dues of Lotus Auto towards Castex (which is Lotus Auto's Operational Creditor) and making direct payment of the netted amount to Castex. Hence, it needs to be clarified as to when the necessary payment will be made on account of dues pending related to supplies made by Lotus Auto to Amtek Auto Ltd after the Insolvency Commencement Date of Amtek Auto Ltd. Also, the stakeholders have sought clarity regarding the treatment of a claim of INR 23.12 Crore filed by Lotus Auto in the CIRP of Corporate Debtor in terms of the amount proposed by the Resolution Applicant and the timeline for the said payment. The Liquidator of Lotus Auto Engineering Limited has already issued Second E-Auction Public Advertisement for the sale of the Company as a Going Concern.

8. In the reply, Respondent No. 1- the erstwhile Resolution Professional of the corporate debtor has stated the following:-

- a) On approval of the Resolution Plan under Section 31 of the Code, with respect to Amtek Auto Ltd. and Castex Technologies Ltd., was approved by this Adjudicating Authority vide orders dated 09.07.2020 and 15.12.2020 respectively, and this adjudicating authority has become functus-officio and no application can lie before it as it has no jurisdiction to entertain or review an application in respect of the CIRP of the corporate debtor. It is also submitted that the present application has been filed on 01.12.2020, i.e. after more than six months from the date of approval of the resolution plan by this adjudicating authority.
- b) It is brought forward by the respondent about the settled position of law that the approved resolution plan becomes binding on the corporate debtor and its employees, members, and creditors, including the central government, state government or any local authority to whom a debt in respect of the payment of dues that rises under any law.

- c) It is apposite to note herein that the Hon'ble Supreme Court in the case titled as "**Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors**" (2021) SCC OnLine SC 313 has reaffirmed the settled position of law that once the Resolution Plan is approved by the Adjudicating Authority under Section 31 of the Code in respect of the corporate debtor, it becomes binding on all the stakeholders. The Hon'ble Supreme in para 102 of the said judgment, held as under:

102.1"..That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

- d) Prior to the judgment of Ghanashyam Mishra (supra), the Hon'ble Supreme Court in a case titled as '**Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and others** [2020] 8 SCC 5311 (famously known as Essar Judgment) has laid down the law and held in para 105 & 107 as under:

"105...Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were...

"107.. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count.

- e) Based on the law laid down by the Hon'ble Supreme Court, the Hon'ble NCLAT in the case titled as ***"Ms Prashant Properties Pvt. Ltd. V. Vijaykumar V. Iver RP of the Corporate Debtor & Ors."*** /2020 SCC OnLine MCLAT 988] has held that:-

4. "After hearing learned counsel for the parties and wading through the record, we are of the considered opinion that the Appellant who was an Operational Creditor could not seek intervention after approval of Resolution Plan by the Adjudicating Authority. Admittedly, the Resolution Plan was approved by the Adjudicating Authority on 08.04.2019 and in terms of provision embodied in Section 31(1) of the I&B Code the approved Resolution Plan is binding on all stakeholders involved in the Resolution Plan including the 'Creditors

- f) It is also pertinent to add that pursuant to the approval of the Resolution Plan by this Hon'ble Adjudicating Authority, the Resolution Plan has been fully implemented on 08.12.2021 with respect to AAL and on 21.01.2022 with

respect to CTL and therefore, the present application, in any case, cannot lie or survive before this Adjudicating Authority and with the utmost respect no relief as is being sought by the Applicant can be granted by this Adjudicating Authority. The present application thus deserved to be rejected.

- g) Further, in terms of section 60(5) of the Code, this Adjudicating Authority has been vested with the jurisdiction to entertain and dispose of, amongst others, any question of priorities or any question of law or facts arising out of or in relation to insolvency resolution and liquidation for corporate debtors or corporate persons. The provision of **Section 60(5)** of the Code are reiterated as under:

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of -

a) any application or proceeding by or against the corporate debtor or corporate person,

b) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

c) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

By a plain reading of Section 60(5), it can clearly be seen that the Hon'ble Adjudicating Authority shall have the jurisdiction to entertain all the Application or proceedings with respect to the Corporate Debtor in relation to the insolvency resolution or liquidation proceedings.

Admittedly, in the present case the CIRP has come to an end in respect of AAL and CTL on 09.07.2020 and 15.12.2020, respectively on approval of the Resolution Plan under Section 31 of the Code. It is the settled position of law that on closure of CIRP, the jurisdiction conferred under Section 60 of the Code also comes to end and cannot thereafter be resorted to by anyone. Thus due to lack of jurisdiction, the present Application cannot be entertained and dealt with by this Hon'ble Adjudicating Authority.

9. In the rejoinder, it was stated that:-

9.1 The reply has challenged the maintainability of the Application on the ground that since the Application was filed by the erstwhile Liquidator of LAEL, who has now become functus-officio It is stated that the present Application was filed on 25.11.2020, that is, at the time when LAEL was being represented by the Liquidator and the sale of the LAEL under the provisions of the Code was pending completion it is submitted that after the issuance of Certificate of Sale, the persons nominated by the Successful bidder, including the Applicant herein has been vested with the powers and responsibility to manage the affairs of the Company. It is submitted that in view of the Certificate of Sale issued, the book receivables from Amtek Auto Limited are the assets of the Applicant. The recovery of such book receivables is subject to the order passed in the present Application, which is to be represented by the Applicant as stipulated in the Certificate of Sale.

9.2 The Applicant denies that it has not followed the due process of law while filing an amended memo of parties by way of an additional affidavit for perusing the present Application to clarify that it was agreed that the existing business arrangement between the Amtek Group Companies was to continue during the respective CIRPs of LAEL, AAL and CTL which was also

necessary for running all the group companies including LAEL as a going concern. Therefore, as per the agreed arrangements, payments were supposed to be made by AAL to LAEL for the supplies made by LAEL and further, LAEL was to make payments to CTL for the supplies made by them to Applicant after deducting its value additions. However, soon after the commencement of the CIRP of AAL and CTL, Amtek, through its RP, who was also the RP of CTL, has been acting in a manner detrimental to the interest of the LAEL and has been making direct payments to CTL, i.e. before transferring the sum realized from the end customers to LAEL, in the capacity of being the RP of CTL.

9.3 The Respondents have attempted to make out a case that the amount payable to LAEL by AAL for the goods supplied during the CIRP period of AAL is not Rs. 22.95 Crores but only Rs. 7 Crores amount payable by AAL for dues during CIRP of AAL on the basis of emails dated 24.09.2020, 14.10.2020 and 29.05.2021.

9.4 The Respondent No. 1 has continuously adopted an approach of "group insolvency" inter-changeably dealing with AAL and CTL, which has not only resulted in severe confusion in claims handling but also in mishandling the CIRP Costs claims of the Applicant herein, as the CIRP Costs of LAEL on AAL is being treated on the basis of the dues of CTL on LAEL and therefore the said approach is completely erroneous and non-maintainable in law.

9.5 The Respondents have clearly failed to understand that CTL and AAL are two different entities under CIRP, and their dues and liabilities cannot be consolidated together despite being group companies and having a single

RP. The IB Code nowhere provides for netting off dues of one entity against the other entity, which is the group company of the first entity. It is submitted that the amount of Rs. 1.95 Crore, which Applicant is liable to pay to CTL, cannot be deducted from the due amount against AAL since these two are different entities and their dues cannot be clubbed and, therefore as well reliance on an email dated 29.05.2021 is completely misplaced

9.6. The present Application is not only limited to the nature of the treatment of the said costs as CIRP Costs, and the Applicant is also seeking payment of due CIRP cost in full which shall have precedence over payment to any other creditors, in terms of section 30(2)(a) of the Code. The Applicant herein also intends to clarify that Respondent No. I has completely misread the contents of an email dated 14.10.2020, as the said email categorically stated that the authenticity of the Debit Notes, as raised by AAL, were under deliberation, as part of the reconciliation activities and the payables, outside the Debit Notes were to the tune of Rs. 10.26 crores

9.7. The Applicant further clarifies that Respondent No. I has completely misread the contents of an email dated 14.10.2020, as the said email categorically stated that the authenticity of the Debit Notes, as raised by AAL, was under deliberation, as part of the reconciliation activities and the payables, outside the Debit Notes were to the tune of Rs. 10.26 crores issue raised in the present application is in relation to the declaration that the difference in the amount claimed pre-CIRP and the current outstanding (before the approval of the Resolution Plan of AAL) be considered as CIRP Costs and whereas the Respondent No. I has completely misconstrued the same while stating, "It is not the case of the original applicant that the dues

for goods supplied by LAEL during the CIRP of AAL are required to be considered as CIRP cost or not. But the issue is with respect to the quantum of dues to be paid. " It is submitted that Respondent No. I has not at all denied the treatment of the claimed amount as CIRP Costs but has, in fact, frivolously agitated on the quantum of it.

9.8. It is denied that since LAEL was not making timely payments to CTL, the RP of AAL, who was also acting as the RP of CTL, was allegedly compelled to directly transfer CTL its share instead of sticking to the old arrangement of routing transfer to CTL through LAEL. Another frivolous plea taken by the Respondents is that though AAL was paying the amount it received from customers after the sale to LAEL,

9.9. It is pertinent to mention that LAEL has only registered its protest against direct payments to CTL by AAL in relation to pre-CIRP dues of CTL, as CTL is an operational creditor of LAEL and its claims relating to the time period prior to the commencement of CIRP of LAEL, i.e. 07.08.2018 ought to be dealt as per the provisions of IB Code, 2016 and merely because AAL and CTL have same insolvency professional, that cannot be a ground to completely defeat the legislative intent of IB Code, 2016..

9.10. It is submitted that Respondent No. I has been making payments directly to CTL for the dues arising in the period prior to the commencement of CIRP of LAEL. It is submitted that such an action has resulted in a situation in CTL, even though being an Operational Creditor of LAEL, is being dealt in a different manner as compared to the other Operational Creditors of LAEL, who are only being paid as per Section 53 of IB Code,

2016.

9.11. It is further imperative to mention that not only the Respondent No. 1 has been directly making payments to CTL but also has been netting of dues between AAL and CTL with respect to LAEL on the pretext that the dues payable to LAEL during the CIRP of AAL shall be first adjusted and reduced from the dues payable by LAEL to CTL, in the CIRP of LAEL.

9.12. It is submitted that CIRP was initiated against LAEL on 07.08.2018, and right from 07.08.2018 till 27.10.2018, LAEL has been paying the proportionate shares to CTL against the supplies of castings made to LAEL. However, almost after three months from the initiation of the CIRP period of LAEL, AAL started paying the amount due to CTL directly against purchases made to LAEL, which was against the terms of the purchase order¹⁷. Further, it was observed that the amount paid directly to CTL was higher than the agreed purchase costs against which LAEL has raised its protest. It is pertinent to note at this juncture that CTL had time and again demanded the payment of pre-CIRP payments from LAEL, to which LAEL had strictly intimated the RP of CTL that LAEL is bound to pay CTL against its claims in accordance with the waterfall enunciated under Section 53 of the Code. As per the provisions of the Code, the claims of the operational creditors for pre CIRP period are frozen on the date of commencement of CIRP, and no third party can make payments to such provisions of the Code, the claims of the operational creditors for pre-CIRP period are frozen on the date of commencement of CIRP, and no third party can make payments to such operational creditor on behalf of the corporate debtor while depriving the corporate debtor of its legitimate dues. It is important to note that when LAEL

denied these pre-CIRP payments to CTL, the RP of AAL, who was also acting as the RP of CTL, wrote a mail to then RP of LAEL that since LAEL is not paying the share of CTL, it would be directly making payment to CTL from the amount it will receive from end customers. AAL started making unilateral payments to CTL against the pre-CIRP dues as well from November 2018.

9.13. It is submitted that CIRP was initiated against LAEL on 07.08.2018, and right from 07.08.2018 till 27.10.2018, LAEL has been paying the proportionate shares to CTL against the supplies of castings made to LAEL. However, almost after three months from the initiation of the CIRP period of LAEL, AAL started paying the amount due to CTL directly against purchases made to LAEL, which was against the terms of the purchase order.

9.14. Resolution Plan has been approved in favour of AAL by Hon'ble NCLT on 09.07.2020, which provides that Related Party Operational Creditors of AAL shall be paid the NIL amount and LAEL, being the related party operational creditor of AAL shall be paid the NIL amount. It is submitted that pursuant to the completion of the sale and issuance of Certificate of Sale dated 09.06.2021 in favour of DIL, who is an independent entity who is now controlling the operations and management of LAEL, LAEL is no more a Related Party as defined under Section 5 (24) of the IB Code. 21 It is submitted the entire issue of the claims of CTL with respect to the CIRP of LAEL is completely beyond the jurisdiction of this Hon'ble Tribunal as the CIRP of LAEL is pending before the Hon'ble NCLT, Principal Bench, New Delhi.

9.15. It is submitted by the applicant that the respondent wrongly states that claims of CTL in the CIRP of LAEL cannot be extinguished as the same fall post the CIRP period of AAL and CTL. It is further the case of Respondent No. I that the dues of CTL from the time period between 21.12.2017 (ICD of CTL) to 07.08.2018 (ICD of LAEL) shall form part of the asset of the Corporate Debtor that is, CTL and thus recoverable and cannot be extinguished. It is submitted that not only the said submission is non-maintainable before this Hon'ble Tribunal for want of jurisdiction, it is also beyond the scope of the present Application and therefore requires no indulgence of this Hon'ble Tribunal.

9.16. It is averred that CTL and AAL are two separate juristic personalities for the purpose of IBC, and their CIRP Proceedings are also running independently. The claims and submissions related to CIRP of CTL cannot be argued in the CIRP proceedings of AAL, especially when Hon'ble Tribunal has not ordered for substantive consolidation of the assets and liabilities of CTL and AAL for the purpose of IBC. Moreover, the Application nowhere speaks about the overdue payments due to CTL and pending liabilities against CTL.

9.17. It is strictly denied that the total receivable of Rs. 15.58 Crores due from LAEL to CTL (during the CIRP of CTL) as well as post 15.12.2020 till 20.05.2021 cannot be extinguished. It is submitted that the contention of the Respondents that all supplies made by CTL during its corporate insolvency period would qualify as CIRP costs for LAEL is erroneous and based on a false understanding of the provisions of the IB Code. It is submitted that only the supplies made by CTL during the CIRP/liquidation of LAEL will qualify as

the CIRP/liquidation costs, and only those costs can be paid to CTL, and nothing survives beyond that.

10. The short written submissions were filed by the applicant wherein it is stated that-

10.1. (a) The claim of Applicant filed during the CIRP of Amtek Auto Limited (AAL) be considered as CIRP costs of AAL;

(b). Restraining Respondent No. 1 and 2 from making any direct payments to Respondent no. 3 on behalf of Applicant out of the CIRP Costs of AAL due towards Applicant;

(c) Further, directions towards restraining the netting of dues between AAL and Respondent No. 3, w.r.t. Applicant. The CIRP dates of the three companies are as follows:

a. AAL: CIRP date is 24.07.2017, wherein Resolution Plan was approved on 09.07.2020;

b. Castex/Respondent no. 3: CIRP date is 20.12.2017, wherein Resolution Plan was approved on 15.12.2020;

c. LAEL/Applicant: CIRP date is 07.08.2018, liquidation was ordered on 12.06.2020, and Applicant was sold as a going concern on 09.06.2021.

10.2. The instant case is limited to the treatment of the said claim of Rs. 22.95 Crores as CIRP Costs of AAL.

10.3. It is stated that in the case of the Parties in Reply and Rejoinder can be summarized in the following manner: First Contention of Respondents:

(a). The Respondents simply, without any basis, claim that the Application is non-maintainable in the present form as the erstwhile Liquidator has become functus-officio.

(b) The Application was originally filed on 25.11.2020 when the Applicant was under liquidation.

10.4. During the pendency of the Application, the sale of LAEL as a going concern was complete upon the payment of the entire sale consideration by Deepak Industries Limited ("DIL/Successful Bidder") and a Certificate of Sale was also issued on 09.06.2021. @34/Rejoinder DIL has taken over Applicant and its management with the right to represent LAEL in all the legal proceedings, including the present Application and the book receivables from AAL are the assets of the DIL in terms of Certificate of Sale dated 09.06.2021; therefore, the Applicant has the right to take over this application and accordingly filed the additional affidavit including the amended memo of parties.

10.5 This is the first time Respondent No. 1 has responded to this information, and moreover, the treatment of Applicant as a "related party" is erroneous and non-maintainable in view of the fact that the ownership and management of Applicant have completely changed, which is in favour of DIL, which is an independent entity, pursuant to the completion of the sale as a going concern and therefore Applicant cannot be considered to be a related party anymore.

10.6 It is further stated that Applicant was admitted into liquidation on 12.06.2020, and Respondent no. 3 had submitted a claim of Rs. 33.85 Crore

against which the claim admitted is only Rs. 1.95 Crore as CIRP Costs. c. The case of the Respondent is that the extinguishment of the claim, relating prior to the CIRP period of Applicant, is non-maintainable as the amount receivable by Respondent No. 3 for the time period pertaining post the admission of CIRP of Respondent No. 3 cannot be extinguished.

10.7 The entire issue of the claims of Respondent No. 3 with respect to the CIRP of Applicant is completely beyond the jurisdiction of this Hon'ble NCLT Chandigarh as the CIRP of Applicant was before the Hon'ble NCLT, Principal Bench, New Delhi, and in terms of Section 60(5) of IB Code, 2016, the same should have been only raised before NCLT, Principal Bench, New Delhi.

10.8 In the present case, Respondent No. 3 though being in CIRP, is a creditor of Applicant and therefore, any claim pertaining prior to the period of CIRP of Applicant shall be dealt as per Section 53 of IB Code, 2016. Moreover, it is to be noted that AAL and Respondent No. 3 are two separate entities, and there has been no order by this Hon'ble NCLT for substantive consolidation of the assets and liabilities of Respondent No. 3 and AAL for the purpose of IBC. It is strictly denied that the total receivable of Rs. 15.58 Crores due from Applicant to Respondent No. 3 (during the CIRP of Respondent No. 3) as well as post 15.12.2020 till 20.05.2021 cannot be extinguished.

11. The short written submissions were filed by Respondent No.1 and 2 wherein it is stated that:-

11.1. After the approval of the resolution plan under Section 31 of the Code, the Adjudicating Authority becomes functus-officio and does not have

jurisdiction to entertain any application in respect of the CIRP of the Corporate Debtor or pass any order pertaining to the CIRP in respect of the Corporate Debtor.

11.2. It is further the settled position of law that on approval of the resolution plan by the Adjudicating Authority under sub-section (1) of Section 31 of the Code, the approved resolution plan becomes binding on the corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

11.3. Section 60(5), it can clearly seen that the Hon'ble Adjudicating Authority shall have the jurisdiction to entertain all the Application or proceedings with respect to the Corporate Debtor in relation to the insolvency resolution or liquidation proceedings. Admittedly, in the present case, the CIRP has come to an end in respect of AAL and CTL on 09.07.2020 and 15.12.2020, respectively, on approval of the Resolution Plan under Section 31 of the Code. It is the settled position of law that on the closure of CIRP, the jurisdiction conferred under Section 60 of the Code also comes to an end and cannot thereafter be resorted to by anyone. Thus due to a lack of jurisdiction, the present Application cannot be entertained and dealt with by this Adjudicating Authority. the present Application, in any event, is not maintainable in the present form as the Applicant has arrayed the Erstwhile Resolution Professional of the two separate Corporate Debtors, i.e. AAL and CTL, as Respondents. As is evident from the above, the CIRP in respect of

both AAL and CTL came to be initiated separately by the Hon'ble Adjudicating Authority and have come to an end on separate dates on approval of respective resolution plans vide order dated 09.07.2020 and dated 15.12.2020. The alleged claim pertaining to alleged CIRP costs for each of the Corporate Debtors gives rise to a separate cause of action, and therefore, the present single Application against both the Corporate Debtors together is not maintainable. It is the settled position of law that merely by filing an amended memo of parties, DIL cannot step into the shoes of the original applicant and pursue the present Application, and therefore the present Application deserves rejection on the ground of no locus standi.

11.4. The Applicant has chosen not to implead them as parties to the present Application. As stated above, the Resolution Plan with respect to AAL as well as CTL has already been implemented on 08.12.2021 and 21.01.2022, respectively and therefore, the erstwhile Liquidator as well as DIL is now stopped in law to claim any alleged CIRP costs from the erstwhile RP of AAL and CTL and therefore no relief as sought by the Applicant can be granted by this Hon'ble Adjudicating Authority.

12. We have carefully considered the submissions made by the Applicant as well as the Respondents and have also perused the record available.

13. In the application, the primary issue to be decided is whether the claim made under the head 'CIRP Cost' can be adjudicated after the approval of the Resolution Plan and implementation of the same. In the case of the corporate debtor, i.e., Amtek Auto Limited, the Resolution Plan was approved on 09.07.2020 by this Tribunal and the same was implemented by 08.12.2021. It is seen that the present application is filed on 02.12.2020, i.e., after the approval of the resolution plan of the

corporate debtor on 09.07.2020.

14. In the present case, the issues to be adjudicated are:
- i. Whether the amounts claimed by the applicant for supplies made after CIRP should be included in the CIRP cost;
 - ii. Whether the successful Resolution Applicant who has taken over the applicant company and can step into the shoes of the erstwhile liquidator who has originally filed this application;
 - iii. Whether respondent No. 1 can make direct payment to respondent No. 3 after the initiation of CIRP in contravention of the earlier business practice of making the payment only to the applicant, which in turn makes the payment to respondent No. 3;
 - iv. Whether the debit notes issued have been properly accounted for in determining the liability of respondent No.1, i.e., Amtek Auto Limited, towards the applicant.

Before going into the merits of these contentions, we note the fact that these issues are pertaining to the period post initiation of CIRP in the cases of both the applicant, respondent No.1 & respondent No. 3. It is also noted that the resolution plan has been approved by this Adjudicating Authority in the case of AAL and CTL on 09.07.2020 and 15.12.2020 respectively and the liquidation order has been passed in the case of the applicant and respondent No. 3 i.e. Castex Technologies Limited.

Furthermore, we note that there was no written formal agreement between the parties who originally belonged to one group regarding the payment for

supplies made and services rendered.

15. It is trite law that in view of the catena of judgments of the Hon'ble Apex Court, especially in the case of **Ghansyam Mishra and Sons Private Limited (Supra), Committee of Creditors of Essar Steel India Limited (Supra) and Prashant Properties (Supra) and others**, the appellant-operational creditor cannot seek intervention by this Adjudicating Authority after the approval of the resolution plan of the corporate debtor. We, therefore, do not wish to go into the merits of the case, which in any case cannot be entertained post-approval of the resolution plan.

16. In the result, this application is dismissed and stands disposed of accordingly, however without any order as to costs.

IA No. 74/2022

17. The present application is being preferred by Lotus Auto Engineering Limited, a company incorporated under the provisions of the Companies Act, 1956 (hereinafter referred to as the "Company/LAEL") seeking *status-quo* with regard to the implementation, operation and execution of the approved Resolution Plan of Respondent No. 3 and 4 in respect of the Corporate Debtor, Amtek Auto Limited ("Corporate Debtor/AAL").

18. The Brief facts of the application are that:-

17.1. The present Application is being filed by Mr. Sunil Ghiya, an authorised representative of the Applicant authorised vide Board Resolution dated 28.05.2021 and Letter of Authority issued by Liquidator dated 21.06.2021. The Applicant and another company by the name of Castex Technologies Limited ("Castex") are part of the group companies of the Corporate Debtor. The Applicant is an auto component machining unit, and the business arrangement between the group companies of the Corporate Debtor is of the nature that

Applicant purchases castings from Castex Technologies Limited and procures child parts from the domestic market as well as imports. After the machining of the castings and assembling of the child parts by the Applicant, the sale of the final products to the end customer is routed through the Corporate Debtor. The bills are raised to the Corporate Debtor, and the Applicant ships the final products directly to the end customers on the instructions of the Corporate Debtor. In furtherance of the sale of the final products, the Corporate Debtor deducts its commissions from the sale proceeds and transfers the remaining sum to the Applicant. Thereafter, the Applicant deducts its share and transfers the remaining sum to Castex in lieu of the castings supplied.

17.2. It is stated that all the group companies of the Corporate Debtor were admitted to CIRP pursuant to different admissions orders passed by the Hon'ble NCLT Benches. The Applicants state that vide order dated 24.07.2017 passed by this Hon'ble Tribunal in CP(IB) No.42/Chd/Hry/2017, the Corporate Debtor was admitted under CIRP. Thereafter, vide order dated 20.12.2017 in CP(IB) No.16/Chd/Hry/2017, this Hon'ble Tribunal had directed for the commencement of CIRP of Castex. Subsequently, vide order dated 07.08.2018, the Hon'ble National Company Law Tribunal, Principal Bench, admitted Company Petition No. CP-IB-31/PB/2018 and directed for commencement of CIRP of the Applicant. the Applicant was also admitted in Liquidation by the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi, vide its order dated 01.06.2020. Pursuant to the claims being invited by the erstwhile RP of the Corporate Debtor, the Applicant filed the claim of Rs. 23,12,84,350 against the

Corporate Debtor/Amttek Auto Limited, standing as on 24.07.2017, i.e. CIRP date of the Corporate Debtor. Out of this amount, Respondent No.1 admitted to the extent of Rs. 23,12,09,057/-.

17.3. Thereafter, even during the CIRP of the Corporate Debtor, the Applicant was making timely supplies to the Corporate Debtor as required for making the final product at the request of the Corporate Debtor, and payments were made by the Corporate Debtor to the Applicant on pro-rata basis. Considering the total post-CIRP supplies made by the Applicant and the pro-rata payment received from the Corporate Debtor for the post-CIRP supplies, the total amount recoverable by the Applicant from the Corporate Debtor came out to be Rs. 22.95 Crores.

17.4. The claim amount of the Applicant against the Corporate Debtor came out to be Rs. 46.07 Crores as on 12.06.2020 (i.e. Rs. 23.12 Crore pre-CIRP and Rs. 22.95 Crore as CIRP Costs of the Corporate Debtor). There were no major transactions amongst the Applicant and the Corporate Debtor between 12.06.2020 till the CIRP date of Amttek Auto/Corporate Debtor (24.07.2020). Accordingly, the total CIRP dues of the Applicant from the Corporate Debtor for the supplies made during the CIRP Period of the Amttek Auto/Corporate Debtor crystallized at Rs.22.95 Crores.

17.5. The Corporate Debtor, for the reason that the erstwhile Resolution Professional of the Corporate Debtor, Respondent No. 1, was also acting as the RP for Castex, resulted in arbitrary netting off the dues by Respondent No.1 and in mixing up the claims of the Applicant towards Corporate Debtor and Castex. It was indicated by Respondent No.1 to the Applicant that the claim of Rs. 22.95 Crores which stood as the CIRP Costs of the Corporate Debtor, would not be treated as CIRP Costs. In order to protect the interest of

all three entities, i.e. Amtek Auto, Castex and the Applicant (LAEL), the Applicant kept on supplying goods to the end customers of the Corporate Debtor on their instructions despite the Applicant company being in Liquidation. On 09.07.2020, the Resolution Plan of Respondent No. 3, together in consortium with Respondent No. 4, was approved by this Tribunal with respect to the Corporate Debtor. It is submitted that the Applicant was not even made aware and is still not aware regarding the treatment of the Claim filed by the Applicant qua the Corporate Debtor, and its provisioning in the approved Resolution Plan.

17.6. The Applicant approached this Tribunal with an Application bearing IA No. 170 of 2021 seeking (i) payment/classification of the Claim of the Applicant of Rs. 22.95 Crores as CIRP Costs, (ii) restraining the Respondent No. 1 in making direct payments to Castex, (iii) restraining the netting off dues and (iv) information about the Resolution Plan and the details of the manner in which the claim of the Applicant was being treated in the Resolution Plan.

19. We have carefully considered the submissions made by the Applicant as well as the Respondents and have also perused the record available.

20. This application is filed seeking status quo with regard to the implementation, operation and execution of the approved resolution plan of respondents No. 3 and 4, in view of the facts that the resolution plan has already been approved and implemented longback before the filing of this application in the case of Amtek Auto Limited on 09.07.2020 and as held in our aforementioned decision in IA No. 170/2021, no interference at this stage is called for.

21. In the result, this application, i.e., IA No. 74/2022, is dismissed and disposed

of accordingly, however without any order as to costs.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

August 03, 2023

PB/TBG

Sd/-
(Harnam Singh Thakur)
Member (Judicial)