

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 680 of 2023

IN THE MATTER OF:

Dhanlaxmi Bank Ltd.

...Appellant

Versus

Hrisikesh Dasgupta, Liquidator M/s. Technofab Manufacturing Ltd. & Ors. **...Respondents**

Present:

For Appellant: Aamir Shaikh, Manas Shukla, Sh. Sarasul Haq
Khan, Advocates

For Respondent:

ORDER

10.07.2023: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 23rd March, 2023 by which order the Application filed by the Liquidator being I.A. No. 781 of 2022 allowing the Liquidator to distribute the sale proceeds in accordance with Section 53 of the Code has been disposed of.

3. The Appellant has come up in the Appeal challenging the said Order.

4. Appellant's case is that Appellant was secured creditor with regard to the assets of the Corporate Debtor and Appellant has not relinquished its security interest in the estate under Section 52 of the Code. It is submitted that subsequently under the Order of the Adjudicating Authority dated 23rd August, 2021, the Appellant was directed to hand over the assets (Mortgage

Property) to the Liquidator. Appellant filed appeal against the said order which too was dismissed on 23.09.2021. Subsequently the assets were sold.

5. The Appellant's case before the Adjudicating Authority was that Appellant although have released the property but not the security interest in the sale of the mortgage property which should be given to them. Adjudicating Authority after hearing the contention of the parties by the Impugned Order took the view that liquidator shall proceed with the distribution as per Section 53 of the Code. It is further observed that Appellant shall stand at par with other secured creditors under the waterfall mechanism.

6. Aggrieved by the said order, this Appeal has been filed.

7. Learned Counsel for the Appellant submits that Appellant is entitled for the entire amount received from the security interest. He further submits that reliance on the Judgment of this Tribunal in C.A. (AT) Ins. No. 731 of 2020 was misplaced since against the same order of this Appellate Tribunal, Appeal has already been filed before the Hon'ble Supreme Court.

8. We have considered the submissions of Learned Counsel for the Appellant. When the assets were handed back to the Liquidator under the order of Adjudicating Authority dated 23.08.2021 and the said order has become final, the assets are part of liquidation assets and have to be distributed under Section 53 of the Code. A perusal of the Order of the Adjudicating Authority makes it clear that reliance was placed by the Appellant on the Judgment of this Tribunal in C.A. (AT) Ins. No. 731 of 2020

and the Adjudicating Authority took the view that the said Judgment does not lend any support in the present case. The mere fact that Appeal is pending in the Supreme Court against the said Order is not a ground to adjourn the present proceedings before the Adjudicating Authority.

9. We are of the view that no error has been committed by the Adjudicating Authority in allowing an Application of the Liquidator for distribution of the proceeds in accordance with Section 53 of the Code. There is no merit in the Appeal, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

Basant/nn