NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT)(INSOLVENCY) NO.565 OF 2021

(Arising out of Order dated 26.07.2021 passed in IA No.19/2021, IVN.P02//ALD/2020 in CP No.(IB)223/ALD/2019 by National Company Law Tribunal, Allahabad Bench, Allahabad)

In the matter of:

Yogesh Singh,
S/o Nand Kumar Singh,
Aged about 41 years,
R/o Koilari, Koilaro,
Jaunpur UP 222148 Appellant

Vs

1. Mr Supriyo Kumar Chaudhuri,
   Liquidator of M/s JVL Agro Industries Ltd,
   (under going CIRP) and having his office
   At BDO,
   Restructuring Advisory LLP
   C/o BDO India LLP, Floor 4, Duckback House,
   41 Shakespeare Sarani,
   Kolkata 700017.

2. Bank of Baroda,
   Baroda Bhavan,
   RC Dutta Road,
   Alkapuri,
   Baroda 390007

   Also at
   Varuna Bridge Cantt,
   Varanasi 221002

3. State Bank of India, SARG,

Corporate Centre,
Makers Tower,
21st Floor, Cuffe Parade,
Mumbai 400005

4. Punjab National Bank,
Plot No.4,
205 Delhi Road, Sector 10
Dwarka,
New Delhi 110075

Also having its office at
Mahmoorganj,
Varanasi 221010

5. Allahabad Bank,
2 N.S. road,
Kolkata 700001

6. Standard Chartered Bank,
Special Assets Management,
2nd Floor, Building No.7A,
DLF Cyber City,
Sector 24/25/25A,
Gurgaon 122002

7. Union Bank of India
Overseas Branch 9
Indian Exchange Place,
Kolkata 700001 Respondents

For Appellant: Mr Gautam Singh, Advocate.
For Respondent: Ms Swati Dalmia, Mr Saurabh Bindal, Mr Palzer and Mr. Siddharth Baskar, Advocates for R1.

With
Company Appeal (AT)(Insolvency) No. 594 of 2021.

In the matter of:

Satya Naryan Jhunjhunwala,

Earstwhile Director,
JVL Agro Industries Ltd
K-67/85-2, Jhunjhunwala Bhavan
Natimli,
Varanasi 221001
Email: mrsnj101@gmail.com
Mobile 8795831200 Appellant

Vs

1. Mr Supriyo Kumar Chaudhuri,
   Liquidator of M/s JVL Agro Industries Ltd,
   (under going CIRP) and having his office
   At BDO,
   Restructuring Advisory LLP
   C/o BDO India LLP, Floor 4, Duckback House,
   41 Shakespeare Sarani,
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   Corporate Centre,
   Makers Tower,
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   Having its office at
   Mahmoorganj,
   Varanasi 221010

4. Union Bank of India
   Overseas Branch 9
   Indian Exchange Place,
   Kolkata 700001

5. Standard Chartered Bank,
   Special Assets Management,
   2nd Floor, Building No.7A,
   DLF Cyber City,
   Sector 24/25/25A,
   Gurgaon 122002

6. P.K. Mukhopadhyay
   JVL Agro Industries Ltd
   9th Floor, Diamond Prestige 41A,
   AJC Bose Road,
   Kolkata 700017

7. The Goods Shed Superintendent,
   Budge Budge, Eastern Railway,
   Sealdah Division,
   Kolkata

8. JSW Vallabh Tinplate Pvt Ltd,
   Village Beopror, GT Road,
   Shambhu, Teh. Rajpura,
   Ditt. Patiala
   Punjab 140417

9. Rathod Jitendra Kumar,
   Narsang Bhai 18,
   Prakruti Bunglow,
   Bopal, Ahmedabad,
   Gujarat 380058

10. Bank of Baroda,
    Baroda Bhavan,
    RC Dutta Road,
    Alkapuri,
    Baroda 390007

    Also at
    Varuna Bridge Cantt,
    Varanasi 221002 Respondents

For Appellant: Mr Mohit Choudhury, Mr Prakhar Mithal and Ms Sanyuikta Gupta, Advocates.
For Respondent: Ms Swati Dalmia, Mr Saurabh Bindal, Mr Palzer and Mr Siddharth Baskar, Advocates for R1.
Mr. Bishwajit Dubey and Ms Aishwarya Gupta, Advocates for R2/SBI.

Mr Shivam Saini and Mr Arun Aggarwal, Advocates for R10/Bank of Baroda.

JUDGEMENT
(30th August, 2022)

JUSTICE RAKESH KUMAR, MEMBER (JUDICIAL)

Since in both the appeals order challenged was common i.e. order dated 26.07.2021 passed by the Adjudicating Authority, National Company Law Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as 'Adjudicating Authority') in IA No.19/2021 filed in CP No.(IB) 223/ALD/2019, both the appeals were tagged and heard together. Accordingly, by a common judgement both the appeals are being disposed of.

2. Mr. Mohit Chaudhury, learned counsel for the appellant in Company Appeal (AT)(Insolvency) No.594/2021 has argued as lead appeal and as such the brief facts stated in Company Appeal (AT)(Insolvency) No.594/2021 can be taken into account for disposal of both the Appeals. In both the Appeals the Appellants have prayed for setting aside an order

dated 26.07.2021 whereby the Adjudicating Authority on an application filed by the Liquidator i.e. Respondent No.1 under Section 35(1)(n) of IBC read with Section 60(5) IBC allowed the said application. By the said order the Adjudicating Authority opined that as the amount to be distributed is in excess of the liquidation cost as estimated by the liquidator and is to be distributed to them who are entitled to the benefit of the distribution of liquidation proceedings, therefore, the Adjudicating Authority allowed the applicant/liquidator to distribute the amount of Rs.61 crore, less any applicable withholding tax, out of the accumulated cash profits lying the bank accounts of the corporate debtor, to the stakeholders in accordance with the waterfall mechanism as specified under Section 53 of the IBC and the Adjudicating Authority allowed the IA No.19/2021.

3. The Appellant in Company Appeal (AT)(Insolvency) No.594/2021 has claimed to be ex-Director of JVL Agro Industries Ltd (Corporate Debtor) whereas the Appellant in Company Appeal (AT) (Insolvency) No.565/2021 has claimed to be an employee of JVL Agro Industries Ltd

and representing all employees of the Corporate Debtor. However, no such authorisation on behalf of other employees has been brought on record. In the affidavit filed alongwith the Memo of Appeal by the Appellant depicts that he was employed as Electrical Engineer (HOD) in JVL Agro Industries Ltd (Corporate Debtor).

4. The brief facts of the case is that on the ground of corporate debt an application under Section 7 of IBC was filed by Standard Chartered Bank seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s JVL Agro Industries Ltd (Corporate Debtor). The said application was filed before the Adjudicating Authority which was admitted on 25.07.2018 and subsequently on 10.09.2018 the Adjudicating Authority appointed Mr Supriyo Kumar Chaudhuri, Respondent No.1 herein as Resolution Professional of Corporate Debtor. After commencement of CIRP on 05.10.2018 the Resolution Professional published the Request for Expression of Interest (hereinafter referred to as EOI) which was again issued on 05.12.2018. On 19.02.2018 upon receipt of 12 applications for Expression of

Interest the Resolution Professional issued Request of Resolution Plan (RFRP). In terms of RFRP, the last date for submission of the Resolution Plan was 02.02.2019. Since no Resolution Plan was received on 02.02.2019 the notified date for submission of Resolution Plans was extended at various occasions. Even after best efforts made by the RP, Resolution Plan was not approved by the CoC.

5. Finally on an application for liquidation under Section 33(1) of IBC on 19.08.2020 the order was passed by Adjudicating Authority regarding liquidation of the Corporate Debtor. During the liquidation proceeding, meeting of the Stakeholders Consultation Committee was held on 21.10.2020 wherein the members of the Stakeholders' Consultation Committee comprising of the representatives of the State Bank of India and other Banks considered that when the amount was lying in the Bank account of the corporate debtor approximately Rs.99.35 crores, those amount may be distributed amongst the shareholders. In the said Meeting it was intimated by the Liquidator that

such distribution would only commence after filing of the assets memorandum with the Adjudicating Authority and after expiry of period of 90 days stipulated for receipt of the proposals for scheme of compromise for arrangements. No scheme of compromise or arrangement was receipt by the applicant from any eligible person. Thereafter, second meeting of Stakeholders Consultation Committee (hereinafter referred to as SCC) of the Corporate Debtor was held on 10.12.2020 and in the said Meeting the representatives of SBI insisted that the accumulated profit aggregating to Rs.96.21 crore lying in the bank account of the corporate debtor be distributed to the stakeholders in accordance with waterfall mechanism as per Section 53 of IBC. The said stand was also supported by representatives of Standard Chartered Bank. It is reflected from the impugned order that Legal Advisor on behalf of Liquidator present in the said Meeting informed the Members of the SCC that such distribution would not be possible without obtaining leave of the Adjudicating Authority. The SBI sent an email on

15.12.2020 urging immediate distribution of funds lying in the Bank account of the Corporate Debtor and also SBI offered to indemnify the corporate debtor for any amount that are distributed to them out of the accumulated cash profits represented by the present balance in the bank account of the corporate debtor. The liquidator prepared liquidation cost which was aggregating to Rs.21.95 crores. The estimated cost of liquidation was less than the accumulated cash profit amount of Rs.96.21 crores. Subsequently the liquidator filed an application which was numbered as IA No.19/2021 before the Adjudicating Authority seeking clarification whether the accumulated cash profit presently lying in the bank account of corporate debtor which are in excess of liquidation cost, can be distributed by the liquidator to the stakeholders subject to deduction of withholding tax, as may be applicable pending sale of assets forming part of liquidation estates and realisation of proceeds thereof.

6. Before the Adjudicating Authority, Bank of Baroda filed an intervention petition being financial creditor of

the corporate debtor and Member of the CoC. Bank of Baroda claiming as secured financial creditor filed a claim which was duly admitted and it was also part of CoC holding 26.38% in the CoC of the corporate debtor. The Bank of Baroda intimated its decision to relinquish its security interest in respect of all the properties of the corporate debtor charged to it on pari passu basis with other consortium lenders of the Bank of Baroda.

7. After hearing learned counsel for the parties, the Adjudicating Authority permitted the liquidator to proceed with the distribution once the list of stakeholders and asset memorandum have been filed with the Tribunal. The Adjudicating Authority allowed distribution of amount of Rs.61 crores less any applicable withholding tax out of accumulated cash profit lying with the Bank in the account of corporate debtor to the stakeholders in accordance with waterfall mechanism as specified under Section 53 of the IBC.

8. Before further proceeding, it is necessary to indicate that after an application filed under Section 33 of IBC by the liquidator/Respondent No.1, the learned

Adjudicating Authority by its order dated 19.08.2020 allowed the same. The liquidation order dated 19.8.2020 was assailed by both the appellants herein alongwith some other. The Appellant in Company Appeal (AT)(Ins) No.594/2021 filed an appeal under Section 61 of IBC vide Company Appeal (AT)(I) No. 832/2020 whereas appellant in Company Appeal (AT)(I) No.565/2021 filed an another appeal i.e. Company Appeal (AT)(Ins) No.846/2020. The Appellant i.e. Yogesh Singh was Appellant No.2 in Company Appeal (AT) (Ins) No.846/2020. The said appeals were finally disposed off by judgement dated 18.01.2022 passed by the Division Bench of this Tribunal. This Tribunal did not interfere with the liquidation order rather approved the same with certain observations.

9. While Company Appeal (AT)(Ins) No. 565/2021 was taken up for the first time before Division Bench of this Tribunal, a prayer was made by the Appellant for staying of operation of the impugned order. However, considering the fact that the impugned order had already been carried out, this Tribunal refused to pass

an order staying the impugned order. We feel appropriate to reproduce the order dated 5.8.2021 passed in Company Appeal (AT) (Ins) No. 565/2021 as follows:-

> *"05.08.2021: Heard Ld. Counsel for the Appellant, he submits that ld. Adjudicating Authority by the impugned order erroneously permitted to the Liquidator to distribute the amount between the Financial Creditors. The order is erroneous and prejudicial to the Promoters of the Corporate Debtor Company. Specially Ld. Adjudicating Authority should not pass the order when the CA (AT) (Ins) No. 846 of 2020 is pending before this Appellate Tribunal. He further submits that the operation of the impugned order may be stayed.*
>
> *Issue notice.*
>
> *Ld. Counsel appearing for the Liquidator (Respondent No. 1) accepts notice and submits that in compliance of the impugned order the Liquidator has already been distributed the amount as per*

Section 53 of the IBC. Therefore, there is no question for staying the impugned order.

We have considered the submissions of Ld. Counsels for the parties. We admit the Appeal however when the order has already been carried out, therefore, there is no question of passing any order for staying the impugned order.

Ld. Counsel for the Respondent No. 1 (Liquidator) may file Reply Affidavit within two weeks. Rejoinder, if any, may be filed within one week thereafter.

Issue notice to the other Respondents by speed post. Requisites alongwith process fee be filed if not filed within two days. If the Appellant provides the email address to the Respondents. Let notice be also issued through email. Let the matter be fixed 'For Admission (After Notice)' on 03th September, 2021."

10. At the very outset when both the appeals were taken up for hearing before the Appellate Tribunal ,

considering the subsequent development this Tribunal was of the view that nothing is remained to be adjudicated in both the appeals. However, learned counsel for the appellant in both the appeals insisted for hearing in the appeals and prayed for deciding the issue.

11. Mr. Mohit Chaudhury, learned counsel for the Appeal in Company Appeal (AT)(Ins) No.594/2021 has emphatically argued that the impugned order is liable to be set aside on the ground that the same is in conflict with the Regulation 32 and 42 of the IBBI (Liquidation Process) Regulations, 2016 (hereinafter referred to as Regulation, 2016). He further submits that the impugned order is itself against the provisions contained in Section 53 of the IBC. He has argued that without following procedure as prescribed in Chapter VI and VII of the Regulation, 2016 neither the liquidator was entitled to file an application for distribution of surplus income lying in the bank account of corporate debtor nor the Adjudicating Authority was competent to permit the liquidator for distribution of the said funds amongst the stakeholders.

12. Shri Chaudhury, learned counsel has further made allegations against the liquidator for suppression of fact. He submits that once appeal i.e. Company Appeal (AT)(Ins) No.832/2020 and 846/2020 filed against the liquidation order were pending before the Appellate Tribunal it was duty on the part of the liquidator to inform the Adjudicating Authority, but this fact was suppressed. Same stand has been taken by Mr. Gautam Singh, learned counsel who has appeared on behalf of the Appellant in Company Appeal (AT)(Ins) No.565/2021. Both the counsel besides raising allegations against the liquidator have also argued that this Tribunal may issue some guidelines to prevent re-occurrence of such event by either liquidator or the Adjudicating Authority. According to the learned counsel for the appellant the liquidator in connivance with State Bank of India persuaded the Tribunal to allow him to distribute accumulated profit. Mr. Chaudhury by way of referring to Section 53 of IBC highlighted that only proceeds from the sale of liquidation assets can be distributed on priority basis. According to him the profit

which has been permitted to be distributed may not be termed as sale proceed of the liquidation assets. He by way of referring to Regulation 42(2) further emphasised that liquidator can distribute proceeds only on realisation from the sale proceeds to the stakeholders. According to him the accumulated profit cannot be termed as proceeds from realisation and as such there was no question of distribution of the said amount.

13. Mr. Gautam Singh, learned counsel for the Appellant in Company Appeal (AT)(Ins) No.565/2021 by way of referring to paragraph 19 of the impugned order which is at running page 36 and also order dated 20.11.2020 passed in Company Appeal (AT)(Ins) No.832/2020 and 846/2020 at running page 45, has tried to highlight that on one side this Appellate Tribunal was directing to ensure that corporate debtor shall continue to operate as going concern, whereas the Adjudicating Authority has observed that the Corporate Debtor in liquidation was not a going concern. At this juncture it would be appropriate to reproduce para 19 at page 36 of the impugned order dated 26.07.2021 and

order dated 20.11.2020 passed by this Tribunal in Company Appeal (AT)(Ins) No.832/2020:-

"Para-19 of the order dated 26.07.2021 passed in IA 19/2021 filed in CP No.(IB)223/ALD/2019"

"Para 19.*Further since the corporate debtor in liquidation is not a going concern and assets which are to be distributed are in the form of liquid assets and are non saleable, thus this Adjudicating Authority is of the opinion that the Code does not bar such distribution as such distribution will not hamper the liquidation process of the corporate debtor."*

"Order dated 20.11.2020 passed in Comp.App(AT) No.832 and 846 of 2020.

"20.11.2020: *Let a formal notice be issued to Respondents. Notice on behalf of Respondent No.1 is accepted by Mr. Ramji Srinivasan, Senior Advocate along with Ms. Swati Dalmia, Advocate. Notice on behalf of Respondent No.2 (Committee of*

Creditors/ Members of the Committee of Creditors) is accepted by Mr. Ritin Rai, Senior Advocate along with Mr. Madhav Kanoria. No further notice need be issued to them. Reply affidavit may be filed by the Respondents within two weeks. Rejoinder, if any, be filed within two weeks thereof. Short written submissions, not exceeding three pages, may also be filed along with the pleadings. List the appeals on 13th January, 2021 at 2.00 P.M. Meanwhile, the Liquidator shall ensure that if the Corporate Debtor (Company) is a going concern, it shall continue to operate as a going concern."

14. According to Mr. Gautam Singh, learned Counsel for the appellant in Company Appeal (AT)(Ins) No.565/2021, the Adjudicating Authority has not taken any steps to ensure the corporate debtor to continue as going concern. He also reiterates that liquidator/Respondent No.1 has suppressed the facts before the Adjudicating Authority regarding pendency of two appeals i.e Company Appeal (AT)(Ins) No.832 and

846 of 2020 and he levelled serious allegations against the liquidator for suppression of facts.

15. Ms Swati Dalmia, learned counsel has appeared on behalf of Liquidator/Respondent No.1. She has taken the allegations made by both the appellants very seriously and refuting the same she has argued that without pleading such allegation has been levelled which is highly deplorable.

16. On the point of allegation regarding non-disclosure of fact of pendency of appeals before the Appellate Tribunal she has drawn attention of this Tribunal to IA No.19/2021 which was filed in CPNo.(IB)223/ALD/2019 under Section 60(5) of the IBC before the Adjudicating Authority. She submits that in the IA, Respondent No.6, P.K. Mukhopadhyay was representatives of the employees whereas Respondent No.9 Mr. Rathod Jitender Kumar was arrayed as representative of the shareholders. She submits that it is not case of the liquidator that only with the support of State Bank of India and other Banks petition was filed rather the representative of employee as well as

representative of shareholders were arrayed as parties. She has further drawn our attention to rejoinder filed by the liquidator to reply of State Bank of India which was filed on 24.03.2021. She submits that much before passing of the impugned order in the rejoinder dated 24.03.2021 filed by Respondent No.1/liquidator at page 161 to 179 of Volume 2 to the reply, the Respondent No.1 had intimated the Adjudicating Authority regarding pendency of Appeals i.e. Company Appeal (AT)(Ins) No. 832 and 846/2020. She has drawn our attention to running page 178 of Volume 1 of Reply of Respondent No.1. It is appropriate to reproduce the same:-

> "*The Liquidator has sought clarification for distribution of funds to the Stakeholders prior to sale of assets of the Corporate Debtor in the instant application and any allegation to the contrary is denied and disputed. The applicant reiterates the statements made in paragraphs 4,5 and 6 and the prayers of the instant application in this regard.* <u>*The Applicant also states and submits that two*</u>

appeals bearing Comp.app.(AT)(Ins) no.832/2020 and (AT)(Ins) 846/2020 have been filed on behalf of the Promoters of the Corporate Debtor and Ramesh Chandra Garg, ex-CFRO of the corporate debtor and others (Employees) respectively against the order of liquidation passed by this Hon'ble Tribunal dated 19th August, 2020. The Hon'ble NCLAT has observed in course of hearings that any sale of assets an/or distribution of proceeds would render the appeals infructuous. The appeals are in the final stage of hearing and next fixed in April, 2021 for hearing. The Applicant craves leave to submit copies of the said appeals and orders passed thereon at the time of hearing of this application, if any."

17. Learned counsel for the Respondent No.1 has further drawn our attention to IA filed in Company Application No.19/2021 which was filed on behalf of the liquidator to urgency application, filed by the applicant under Section 60(5)(c) of IBC read with Rule 111 of NCLT Rules. She has drawn our attention to para 8 of

the petition which is at running page 267 to 268 in Volume 2 of reply affidavit filed on behalf of Respondent No.1. The same is quoted herein below:-

"8. Paragraph 5(vi) and (vii)-With reference to paragraphs 5(vi) and (vii), save what are matter of records, all allegations made therein are denied and disputed. It is denied and disputed that the Liquidator has stalled the liquidation process and the only sale notice dated 19th January, 2021 issued for sale of Block/(s) of assets of the Corporate Debtor has been withdrawn on 3rd March, 2021 without specifying any reason and without discussion with the Stakeholders. The Liquidator states that two appeals bearing Company Appeal (AT)(Insolvency) No.832 of 2020 and Company Appeal (AT)(Insolvency) No.846 of 2020 have been filed before the Hon'ble NCLAT by the suspended Promoter Director and employees of the corporate debtor respectively from the order of liquidation of the corporate debtor passed by this Hon'ble Tribunal dated 19th August, 2020 which were

initially listed before the Hon'ble Chairperson's Court (Bench-1) at NCLAT and pleadings were completed by parties including the Applicant herein. By an order dated 24th February, 2021, the Hon'ble Bench-I of the Hon'ble NCLAT was pleased to place the appeals for hearing before the Hon'ble Bench-IV, NCLAT since the appeals were ready for hearing which commenced immediately thereafter on 2nd March, 2021 before the Hon'ble Bench-IV of the NCLAT. During the course of arguments, before the Hon'ble Bench IV, NCLAT the appellants put forth submissions to the effect that, the Liquidator intends to sell the assets of the Corporate Debtor through e-auction scheduled to be held on 4th March, 2021 and 5th March, 2021 and on this ground sought ad interim stay from the Hon'ble NCLAT. The aforesaid submission was vehemently opposed by the learned senior counsel appearing on behalf of the Liquidator. The applicant herein is also appearing in the hearing of the appeals and is representate3d by a Senior Counsel. Upon hearing *all the Counsel appearing on behalf of the parties, it fell from the Hon'ble Tribunal that in case the assets of the corporate debtor was sold during the pendency of the appeals, then the appeals would be rendered infructuous. Senior Counsel appearing on behalf of the Liquidator, realizing that he was in the appeals appearing on behalf of an officer of the Hon'ble Tribunal informed the Hon'ble Bench-IV , NCLAT that he would advise his client, the Liquidator to defer the e-auction till the appeals were disposed of. The Liquidator was likewise advised by his senior counsel to defer the e-auction scheduled on 4th March, 2021 and 5th March, 2021. The Liquidator being an officer of the Tribunal considered that the appeals had reached an advanced stage of hearing and pursuant to concerns raised by the Hon'ble Bench-IV, NCLAT and the advice of his learned senior counsel cancelled the e-auction process scheduled on 4th March, 2021 and 5th March, 2021. The said appeals were thereafter heard by the Hon'ble*

Bench –IV, NCLAT on 4th March, 2021 when counsel appearing on behalf of the appellants concluded their arguments. On the said date the Counsel on behalf of the Liquidator informed the Hon'ble Bench-IV, NCLAT were informed about the cancellation of the e-auction. The Applicant and its officers despite appearing as Respondent No.2 in the said appeals and being represented by its Senior counsel who have had no objection whatsoever to the deferment/cancellation of e-auction in course of hearing of the appeals on the assurance of the Senior Counsel of the Liquidator is now taking advantage of the situation and instigating and misrepresenting to other stakeholders/lenders that the Liquidator has unilaterally cancelled the e-auction without any direction being passed of stay of liquidation process/e-auction by the Hon'ble NCLAT. The Applicant herein has in fact in a meeting of the 4th Stakeholders' Consultation Committee held on 24th May, 2021 repeatedly raised alleged and insisted *that the Liquidator has brought in a "self inflicted stay" on the e-auction/liquidation process while deliberately suppressing to other stakeholders that the Applicant has not also raised any objection to the submissions made by Senior Counsel of the Liquidator before the Hon'ble Bench-IV, NCLAT regarding deferment/cancellation of e-auction till the appeals are disposed of. The stakeholders attending the said meeting categorically advised the liquidator that he should immediately proceed with e-auction of assets since there is no stay order in existence passed by the Hon'ble NCLAT and not pay any heed to observations and directions made by any court and tribunal in the event they are not mentioned in the written orders passed by the Courts/Tribunals. One of the stake holders also gave opinion that the Liquidator ought to have sold the assets since there was no stay order and made the appeals infructuous. A copy of the minute of the 4th Stakeholders Committee Meeting held on 24th May, 2021 is annexed hereto and marked as* *annexure "B". Pursuant to the said meeting of the Stakeholders' Consultation Committee held on 24th May, 2021 the liquidator was compelled to file two applications bearing IA No.050 of 2021 and IA No.960 of 2021 before the Hon'ble Bench IV NCLAT seeking directions for e-auction of assets including perishable inventory of oil and also recording the apprehensions of the stakeholders therein. A letter by way of an email dated 28th May, 2021 was also filed with the Registrar, NCLAT for early listing and hearing of the pending appeals. The appeals thereafter appeared in the list before the Hon'ble Bench IV, NCLAT on 2nd June, 2021 when the learned counsel on behalf of the Liquidator made submissions on his applications for permission regarding e-auction. The Hon'ble Bench IV, NCLAT has been pleased to pass directions for filing affidavits on the applications and appeal paper books with written submissions on the appeals by an order dated 2nd June, 2021. The matters were directed to be listed on 8th June, 2021. The* *applications filed on behalf of the Liquidator inter alia seeking directions for holding e-auction of assets and inventory of expired stock of Olein and Palm Oil was heard by the Hon'ble NCLAT on 8th June, 2021 when counsel on behalf of the appellants therein, Liquidator and the Applicant herein were present and made submissions. The Hon'ble NCLAT concluded hearing of the applications of the said date and disposed of the same by an order dated 10th June, 2021 wherein the Liquidator was allowed to sell the inventory of 600 tonnes (approx.) of expired Olein and 100 tonnes (approx.) of expired stock of refined palm oil by way of e-auction in a transparent manner to the highest bidder. The sale proceeds have been directed to be kept in a interest baering bank account. The senior counsel appearing on behalf of the Applicant herein in the said appeals was present during hearing and did not have any submissions and/or objections. It is, therefore, clear that the NCLAT has not permitted the*

Liquidator to sell the assets of the Corporate Debtor pending adjudication of the appeals filed by the Promoter Director and Employees of the Corporate Debtor. The NCLAT has also not passed any direction for distribution of funds to the stakeholders from proceeds realized from sale of inventor. The Liquidator humbly states and submits that there is no scope for passing any order of distribution of funds to the stakeholders at this stage in view of the order passed by the Hon'ble NCLAT as aforesaid. Copies of the order dated 2nd June, 2021 and order dated 10th June, 2021 are annexed hereto and marked as Annexure D. It is denied and disputed that the Liquidator has not been convening the meetings of stakeholders even when request for such meeting is made by more than 60% of the stakeholders. It is further denied and disputed that the Liquidator had previously, by intentionally misinterpreting the provisions of law as to stakeholders rejected the request of all financial creditors who constitute 90% of the *stakeholders (in terms of value) on many occasions for conducting such meeting. The Liquidator states and submits that a meeting of Stakeholders' Consultation Committee can be convened at the request of stakeholders only when a request is received from at least fifty-one percent of the representatives in the consultation committee under Regulation 31A(6) of the IBBI (Liquidation Process) Regulations, 2016. The Liquidator states and submits that there has been no valid request from adequate number of the members of the Stakeholders' Consultation Committee under Regulation 31A(6) of the IBBI (Liquidation Process) Regulations, 2016 and the Applicant is making baseless and unfounded allegations."*

18. Ms Swati Dalmia, Learned Counsel for Respondent No.1 by way of referring to contents of petition quoted hereinabove submits that appellants before this Tribunal have made completely false and frivolous allegations against the liquidator regarding the

suppression of fact in respect of pendency of appeals before this Appellate Tribunal.

19. Learned Counsel for Respondent No.1 has further questioned the locus of appellants before this Tribunal. Raising question of locus of Yogesh Singh, appellant in Company Appeal (AT)(Ins) No.565/2021 she submits that once in respect of corporate debtor an liquidation order was passed long back on 19.08.2020, in terms of Regulation 33(7) all the employees were deemed under notice of discharge and as such the appellant claiming to be Electrical Engineer of the corporate debtor was not having any locus to file the present appeal. Moreover the representatives of employees i.e. Respondent No.6 P.K> Mukhoupdhyay was already on record before the Adjudicating Authority. Similarly it has been argued that once representative of all shareholders i.e. Respondent No.9 Rathod Jitender Kumar was already arrayed in the application filed before the Adjudicating Authority under Section 60(5) of the IBC, Satya Narayan Jhunjhunwala, the appellant in Company Appeal

(AT)(Ins) No.594/2021 was having no locus to file the present appeal.

20. Ms Swati Dalmia, learned counsel for Respondent No.1 has argued that it is true that mechanism has been provided under Section 53 of the IBC as well as Chapter VI and Chapter VII of the Regulation, 2016 regarding sale of assets etc and its liabilities but fact remain that once accumulated profits of the corporate debtor was already lying in the bank account, distribution of such accumulated profit may not invite any question since it was not the proceed of the sale of assets. The accumulated profit was already lying in the bank and there was huge corporate debt against the corporate debtor. In any event such amount would not have been withheld for long period by the liquidator and as such it was necessary to distribute the accumulated profit amounts in terms of Section 53 of the Code. She has also drawn our attention to distribution of accumulated profit by way of referring to chart showing distribution of accumulated cash profit available with the corporate debtor as in the month of December, 2020. She has

taken this Tribunal to running page No.355 of Volume 2 of reply affidavit filed by Respondent No.1. We feel it necessary to reproduce the same as follows:-

	Particulars	Amount distributed	Remarks
1	Insolvency Resolution process costs (Section 53(1)(a)	62,93,488	Provisioning for payment of entire outstanding CIRP costg had been made which is over and above the 61 crores distributed to the secured creditors. Entire outstand CIRP cost paid in full.
2	Liquidation costs (Section 53(1)(a) of the code)	16,02,15,728	The amount represents liquidation costs paid tup to 31st July, 2021. Requisite provisioning towards payment of entire liquidation cost for a period up to one year has been made. Funds have been earmarked and kept aside separately for meeting the liquidation expense

			estimated at Rs.21.95 crore(for 1 Year)
3	Workmen's dues representing wages, leave encashment and bonus (53(1)(b)(i) of the Code)	-	All workmen dues for the period of 24 months preceding the liquidation commencement date including leave encashment and bonus aggregating to Rs.40,75,731/- have been paid before filing the application with the Adjudicating Authority.
	Workmen's dues representing gratuity (53(1)(b)(i) of the Code	1,27,58,850	An amount of Rs. 3 crores had been set aside (which is over and above the sum of Rs.61 crores distributed to the secured creditors) towards payment of gratuity to the eligible workmen and employees of the corporate debtor. Amount payable as per actuarial valuation of LIC has been deposited with

			LIC under LIC's group gratuity policy in pursuance to an order dated 10.12.2020 passed by the Adjudicating Authority.
	Indian Bank(e-Allahabad Bank	1,81,29,542.89	
	State Bank of India	15,41,10,517.98	
	Union Bank of India and Union Bank of India (E-Corporation Bank)	5,88,61,229.85	
	Punjab National Bank (e-OBC) and Punjab National Bank	16,30,77,790.86	
	Indian Overseas Bank	2,32,58,563.86	
	Bank of Baroda (incl Vijay Bank	15,79,62,209.62	
	Standard Chartered Bank (UK)	1,44,79,249.19	
	Standard Chartered Bank (India)	2,01,20,895.75	

Total amount distributed to the secured financial creditors is Rs.61,00,000,00.

On aforesaid fact and circumstances the learned counsel for Respondent No.1 has further argued that filing of the present appeal and that too pressing the same even after liquidation order was already approved by this Appellate Tribunal amounts to abuse of process of Court and wasting precious time of the Tribunal.

21. Mr. Biswajit Dubey, learned Counsel appearing on behalf of State Bank of India in both the appeals has raised question of maintainability of the present appeal by way of referring to Section 61 of the IBC. He submits that only an aggrieved person can file an appeal under Section 61 of the IBC whereas appellants in both the appeals are strangers. One of the appellant has claimed to be ex director of the corporate debtor i.e. Company Appeal (AT)(Ins) No.594/2021 whereas in Company Appeal (AT)(Ins) No.565/2021 the appellant claims to be an employee/engineer of the corporate debtor. He further submits that though learned counsel for the appellant in both the appeals have highlighted the

provisions regarding distribution of sale proceeds they have not shown any provision which restrict distribution of accumulated profit lying in the account of corporate debtor during liquidation proceedings.

22. Mr. Shivam Saini, learned counsel for the Bank of Baroda in Company Appeal (AT)(Ins) No.594/2021 adopts the arguments of learned counsel Ms Swati Dalmia and Mr. Biswajit Dubey and submits that there is no infirmity in the impugned order.

23. Besides hearing learned counsel for the parties we have minutely examined the material available on record. At the very outset we are of the considered opinion that on perusal of impugned order which had already been carried out and after approval of liquidation order by this Tribunal which was passed on 19.08.2020, there was no reason available to the appellants to further press the present appeal. Even at the time of admission of Company Appeal (At)(Ins) No.565/2020 this Tribunal had noticed that order impugned have already been carried out and this was the reason for refusal for passing any order staying the

impugned order. At this juncture we feel necessary to reproduce order dated 05.08.2021 whereby Appeal No.565/2021 was admitted by the Tribunal. It is quoted hereinbelow:-

> *"05.08.2021: Heard Ld. Counsel for the Appellant, he submits that ld. Adjudicating Authority by the impugned order erroneously permitted to the Liquidator to distribute the amount between the Financial Creditors. The order is erroneous and prejudicial to the Promoters of the Corporate Debtor Company. Specially Ld. Adjudicating Authority should not pass the order when the CA (AT) (Ins) No. 846 of 2020 is pending before this Appellate Tribunal. He further submits that the operation of the impugned order may be stayed.*
>
> *Issue notice.*
>
> *Ld. Counsel appearing for the Liquidator (Respondent No. 1) accepts notice and submits that in compliance of the impugned order the Liquidator has already been distributed the amount as per Section 53 of the IBC. Therefore, there is no question*

for staying the impugned order. We have considered the submissions of Ld. Counsels for the parties. We admit the Appeal however when the order has already been carried out, therefore, there is no question of passing any order for staying the impugned order.

Ld. Counsel for the Respondent No. 1 (Liquidator) may file Reply Affidavit within two weeks. Rejoinder, if any, may be filed within one week thereafter.

Issue notice to the other Respondents by speed post. Requisites alongwith process fee be filed if not filed within two days. If the Appellant provides the email address to the Respondents. Let notice be also issued through email.

Let the matter be fixed 'For Admission (After Notice)' on 03th September, 2021."

Once the order impugned had already taken its finality there was no reason to advance further arguments. Even though learned counsel for the appellants were conveyed regarding the present situation, learned counsel for the appellants insisted to pursue the Court. We have noticed that without any plausible reason during arguments false allegations were made against Respondent No.1/liquidator on the point of facts relating to pendency of two appeals before this Appellate Tribunal. We have already hereinabove that the fact regarding pendency of the appeal before this Appellate Tribunal was brought on record by the liquidator by way of filing rejoinder/reply affidavit before the Adjudicating Authority as it is apparent from Volume I and Volume II. The reply filed by the Respondent No.1 was already served on the appellants even then learned counsel for the appellants have ventured to make allegations against Respondent No.1 regarding suppression of fact of pendency of appeal before this Appellate Tribunal.

24. So far as locus of both the appellants is concerned it also appears to be doubtful. Section 61 of IBC in a specific term contemplates filing of appeal by an aggrieved person. It was not a stage of corporate insolvency proceeding. After CIRP since it failed,

liquidation order was passed by the Adjudicating Authority on an application filed by the Liquidator under Section 33(1) of the IBC. Once corporate debtor went into liquidation and the petition for distribution of accumulated profit was filed wherein representatives of employees as well as representatives of shareholders were arrayed as party there was no reason for third person to file the present appeal. So far as question of law which has been raised by the learned counsel for the appellant regarding distribution of sale proceeds as contemplated under Section 53 IBC as well as Regulation 32 and 42 of Regulation 2016 is concerned, we are of the opinion that by the impugned order no sale proceed was directed to be distributed. In the present case there was accumulation of profit in the account of corporate debtor regarding which account as per Regulation 41 in the account of corporate debtor the word “liquidation is to be added” being custodian of the said account. Being custodian of the said account it was duty on the part of the Liquidator to immediately distribute accumulated profit lying in the said account.

Had it been not done by the liquidator after noticing accumulation of huge accumulated profit amounting to the tune of Rs.96 crores, question would have raised as to why the said amount was lying in the bank account. In such situation in all fairness it would be the duty on the part of the liquidator to take immediate steps to distribute the accumulated profit in terms of Section 53 of the Act under the waterfall mechanism. Accordingly we find no error or default in liquidator for approaching the Adjudicating Authority regarding distribution of accumulated profit. We have noticed the chart of distribution which has been referred hereinabove, that the distribution was made in accordance with law. Even huge cash i.e. Rs.1,27,58,850/- was distributed under the head of workmen dues representing gratuity. We do not find any justification to interfere with the impugned order.

25. Before parting with the judgment it is also required to notice that the same appellants i.e. Appellant Satya Narayan Jhunjhunwala in Company Appeal (AT)(Ins) No.594/2021 and Mr. Yogesh Singh appellant in

Company Appeal (AT)(Ins) No.565/2021 had earlier approached this Tribunal assailing the order of liquidation passed by the Adjudicating Authority. The liquidation order was approved by this Tribunal. It is also noticed that the corporate debtor was not going concern. Even though learned counsel for the appellant by way of referring to an order dated 20.10.2020 passed by this Tribunal, which has been quoted hereinabove, has argued that the Tribunal had observed that it was a going concern. On bare perusal of the said order it is clear that it was observed in order dated 20.11.2020 that liquidator shall ensure that if the corporate debtor was (company) going concern, it shall continue to operate as going concern. Accordingly the allegation of Learned Counsel for the Appellant that the Adjudicating Authority has incorrectly referred in its order that the corporate debtor was not going concern appears to be baseless.

26. In view of the facts and circumstances as discussed hereinabove we are of the opinion that both the appeals are devoid of merits and require to be

rejected with imposition of heavy cost. It is observed that even though the order impugned had taken its finality and there was no error in the impugned order, both the appellants by filing and pursuing the present appeal have abused the process of this court. It appears that the appellants are in habit of filing such petitions which is reflected from disposal of two appeals by this Tribunal in which both the appellants by filing separate appeal had assailed the liquidation order passed by the Adjudication Authority in respect of the corporate debtor of the present appeal.

27. In view of the fact and circumstances as discussed above we are of the opinion that it is a glaring case of abuse of process of court. Accordingly, while dismissing both the appeals, it is desirable to impose exemplary cost. Accordingly the appellant in Company Appeal (AT)(Ins) No.565/2021 who has claimed to be representative of employees, is imposed a cost of Rs.2 lakhs. The Appellant Satya Narayan Jhunjhunwala, in Company Appeal (AT)(Ins) No.594 of 2021 who is ex-director of Corporate Debtor is liable to be imposed

heavier cost than the appellant Yogesh Singh and as such the Appellant Satya Narayanan Jhunjhunwala is imposed a cost of Rs.5 lakhs. Both the Appellants are directed to deposit the aforesaid cost in the account of Prime Minister's National Relief Fund, which must be deposited within one month from the date of this order and this Tribunal may be intimated by appellant regarding depositing the cost within one week thereafter.

28. Accordingly both the appeals are dismissed with cost as indicated above.

(Justice Rakesh Kumar)
Member (Judicial)

(Mr. Kanthi Narahari)
Member (Technical)

Bm