

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

**Company Appeal (AT) (Insolvency) No. 346 of 2025**

**[Arising out of the Order dated 04.02.2025, passed by the  
'Adjudicating Authority' (National Company Law Tribunal, New  
Delhi, Court-III), in IA-4610/2022 in IB-900/(ND)/2020]**

**IN THE MATTER OF:**

**1. HDFC Bank Ltd.**

Department for Special Operations  
Ground Floor, GulabBhawan,  
6, Bahadur Shah Zafar Marg,  
New Delhi-11 0002

**...Appellant**

**Versus**

**1. M/s Hema Engineering Industries Ltd.**

Through its Liquidator, Mr. Vikas Garg  
Having its regd. office at:  
Sachidanand Farm House, Kishangarh  
Village, Opp. Swimming Pool Lane, Green  
Avenue, Vasant Kunj, New Delhi-110070  
E-mail: [liquidator.hemaengg@gmail.com](mailto:liquidator.hemaengg@gmail.com)  
Also at:  
Immaculate Resolution Professionals Pvt. Ltd.  
Unit No.111-112, First Floor, Tower-A,  
Spazedge Commercial Complex,  
Sector-47, Sohna Road, Gurgaon-122018

**...Respondent**

**Present:**

**For Appellant** : Mr. Krishnendu Dutta Sr. Adv. With Ms. Niti Jain,  
Ms. Niharika, Ms. Mahima, Advocates.  
**For Respondent** : Mr. Vishal Ganda, Advocate for Liquidator.

**J U D G M E N T**  
**(Hybrid Mode)**

**[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]**

The instant appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as the 'IBC') has been filed by the appellant assailing the impugned Judgment and order dated 04.02.2025 (herein after referred to as 'impugned order') passed by the

National Company Law Tribunal, New Delhi (herein after referred to as 'Adjudicating Authority') in IA No. 4610 of 2022 in Company Petition No. IB-900/(ND)/2020 titled as "HDFC Bank Limited Vs. Hema Engineering Industries Ltd. under Section 60(5)(c) read with Section 52(5) of the IBC, read with rule 11 of the National Company Law Tribunal Rules, 2016, whereby the aforesaid IA of the appellant was rejected by the Adjudicating Authority.

2. Brief factual matrix necessary for disposal of the instant appeal is that a Petition under Section 9 of the IBC was filed by an Operational Creditor ('OC') namely, M/s PR Rolling Mills Pvt. Ltd. whereon vide order dated 05.04.202, the CIRP Process was initiated against the Corporate Debtor. Since, no Resolution Plan was approved by the CoC Members, initiation of liquidation and application for appointment of liquidator of the CD was approved by the Adjudicating Authority vide its order dated 17.05.2022 whereby the Respondent Mr. Vikas Garg, was appointed as the liquidator of the CD (herein after referred to as Sole Respondent).

3. It is also transpired that a public announcement in terms of Section 38 of the IBC read with Regulation 12 of the Insolvency and Bankruptcy Board of India, (Liquidation Process) Regulations, 2016 (herein after referred to as 'Liquidation Regulations') was made for the purpose of inviting claims from all stakeholders of the CD and the last date of the same was specified as 16.06.2022. The appellant submitted Form D on 01.06.2022 for a total amount of Rs. 87,61,99,358.13/- (Rupees Eighty-Seven Crore Sixty-One Lakh Ninety-Nine Thousand Three Hundred Fifty-

Eight and Paise Thirteen Only) and sought to realise its Security Interest outside the liquidation estate in terms of Section 52 of the IBC.

4. It also appears that the Respondent on 30.07.2022 took a decision and identified all the properties over which the Appellant/Bank claimed exclusive charge and allowed the Appellant/Bank to realise the Security Interest in terms of Section 52 of the IBC subject to certain conditions. This decision is stated to have been communicated to the appellant vide email of the Respondent dated 09.08.2022 while the Respondent/ liquidator has stated to have communicated the same on the day the decision was taken i.e. on 30.07.2022. It was on 08.09.2022, Respondent addressed a letter to the appellant/bank informing that since the appellant has failed to make the contribution as required under Section 53 of the IBC within 90 days as per Regulation 21A of the liquidation Regulations, 2016, the assets which were sought to be realised by the appellant/bank shall now be part of the liquidation common pool.

5. The appellant replied to this letter of the Respondent on 14.09.2022 pointing out certain discrepancies with regard to the amount and also that the Bank be permitted to pay the dues as provided under Section 53 of the IBC after the realisation of the security interest by it. An IA No. 4610 of 2022 was thereafter filed by the Appellant/ Bank before the Adjudicating Authority with various prayers, including a prayer to permit the bank to deposit the dues under Section 53 of the IBC offer realisation of security interest, which has been dismissed by passing the impugned order.

6. Heard Mr. Krishnendu Dutta, Ld. Sr. Counsel for the appellant as well as Ld. Counsel appearing for the Respondent and perused the record.

7. Ld. Sr. Counsel appearing for the appellant while drawing the attention of this Tribunal towards Section 52 and 53 of the IBC as well as towards Regulation 21A of Liquidation Regulations submits that though the decision with regard to the identification of the properties for the purpose of realisation of the Security Interest of the appellant appears to have been taken by the liquidator on 30.07.2022 but the same could only be communicated to the appellant on 09.08.2022. It is vehemently submitted that as the timeline provided under Section 21A of the Regulations was to be over by 15.08.2022 there was no ample time available to the appellant to realise Security Interest in the said assets.

8. It is vehemently submitted that though it has been specifically pleaded by the appellant before the Adjudicating Authority that the decision taken by the liquidator/Respondent on 30.07.2022 has only been communicated vide email dated 09.08.2022 and therefore, there was no time available for the appellant to have realised the Security Interest in the assets identified for the purpose however, the Adjudicating Authority has committed manifest illegality in not considering this aspect of the matter in right perspective.

9. It is submitted that the time line of 90 days provided under Regulation 21A of Regulations would commence from the date of initiation of the liquidation process however, since the identification of the properties for the purpose of realisation of the Security interest was a condition precedent therefore it was the duty of the liquidator to inform the appellant timely pertaining to the identification of properties earmarked for realisation of security interest. In this regard Ld. Sr. Counsel for the appellant has

drawn the attention of this Appellate Tribunal towards the provisions contained under Section 52 (3) of the IBC.

10. It is further submitted that the provisions as contained under Regulation 21A of Regulations are only directory and are handmaid of Justice and the same may be relaxed as the appellant did not get sufficient time to realise its Security Interest without any fault of it as the decision taken by the liquidator has not been communicated timely.

11. In support of his submissions Ld. Sr. Counsel for the Appellant has relied on following case laws:

(i) Sansera Engineering Ltd. vs. Deputy Commissioner 2022 SCC Online SC 1635.

(ii) Rallis India Ltd. vs. State of A.P., (1980) 2 SCC 315.

(iii) Shri Ram vs. Lt. Governor of Delhi (2000) 5 SCC 451.

(iv) Prakash Chandra Kapoor & Anr. vs. Vijay Kumar Iyer & Anr. 2021 SCC Online NCLAT 622.

(v) Standard Surfa Chem India Pvt. Ltd. vs. Kishore Gopal Sumani 2022 SCC Online NCLAT 305

(vi) V.S. Palanivel vs. Shri Lakshi Holidays (P) Ltd., P. Shriram CS Liquidator & Ors. 2025 1 SCC 559.

(vii) Macquarie Bank Ltd. vs. Shilpi Cable Technologies Ltd. (2018) 2 SCC 674.

(viii) Rani Kusum vs. Kanchan Devi & Ors. (2005) 6 SCC 705.

12. Ld. Counsel representing Respondent/liquidator submits that the timeline provided under Regulation 21A is mandatory and is not dependent on the realisation of the Security Interest by a secured creditor and thus it

was the duty of the appellant to have deposited the requisite amount as provided under Section 53 of the IBC read with Regulation 21A within 90 days of the initiation of the liquidation process.

13. It is also submitted that the appellant is taking contradictory stands in his pleadings as on one hand the appellant has realised its Security Interest by selling some moveable properties however, has raised objections of not receiving timely decision by the Respondent with regard to the immovable properties.

14. It is further submitted that the timeline provided under Regulation 21A of the liquidation regulation is mandatory and could not be relaxed. In support of his submissions Ld. Counsel for the Respondent has relied on following case laws:

(i) Moser Baer Karamchari Union vs. Union of India, (2023) 9 SCC 499.

(ii) Shikshak Sahakari Bank Ltd. vs. Mr. Jagdish Kumar Parulkar, CA (AT) (Ins) No. 2023 of 2024.

(iii) Small Industries Development Bank of India (SIDBI) vs. Shri Vijender Sharma, CA (AT) (Ins) No. 1027 of 2021.

(iv) State Bank of India vs. Navjit Singh, CA (AT) (Ins) No. 151 of 2022.

(v) Sunil Kumar Jain & Ors. vs. Sundaresh Bhatt & Ors. (2022) 7 SCC 540.

(vi) Assam Tea Employees Provident Fund Organization, through an authorized representative vs. Mr. Madhur Agarwal & Anr., CA (AT) (Ins) No. 262 of 2022.

15. We have heard Ld. Counsel for the parties and have perused the written submissions filed by them and also the record.

16. Before proceeding further, it would be in the interest of justice to recall relevant provisions of the IBC and liquidation Regulations, 2016 in order to appreciate the submissions advanced by Ld. Counsel for the parties.

17. Section 36 of the IBC which talks about the liquidation estate, is hereby reproduced as under:

*“36. (1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.*

*(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.*

*(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following: —*

*(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;*

*(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;*

*(c) tangible assets, whether movable or immovable;*

*(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;*

*(e) assets subject to the determination of ownership by the court or authority;*

*(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;*

*(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;*

*(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and*

*(i) all proceeds of liquidation as and when they are realised.*

*(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: —*

*(a) assets owned by a third party which are in possession of the corporate debtor, including—*

*(i) assets held in trust for any third party;*

*(ii) bailment contracts;*

*(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;*

*(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and*

*(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;*

*(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;*

*(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;*

*(d) assets of any Indian or foreign subsidiary of the corporate debtor; or*

*(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.*

18. Section 37 of the IBC is also relevant and the same is also being reproduced below:

*“37. (1) Notwithstanding anything contained in any other law for the time being in force, the liquidator shall have the power to access any information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor from the following sources, namely: —*

*(a) an information utility;*

*(b) credit information systems regulated under any law for the time being in force;*

*(c) any agency of the Central, State or Local Government including any registration authorities;*

*(d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;*

*(e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;*

*(f) any database maintained by the Board; and*

*(g) any other source as may be specified by the Board.*

*(2) The creditors may require the liquidator to provide them any financial information relating to the corporate debtor in such manner as may be specified.*

*(3) The liquidator shall provide information referred to in sub-section (2) to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information.*

19. Section 52 and 53 of the IBC are also necessary to be considered for the purpose of adjudication of the instant dispute and these sections are also reproduced as under:

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

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

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

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

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

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

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

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

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

*Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.*

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

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

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

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

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

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

*“53. (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time*

*being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: —*

*(a) the insolvency resolution process costs and the liquidation costs paid in full;*

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

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

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

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

*(d) financial debts owed to unsecured creditors;*

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

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

- (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*
- (f) any remaining debts and dues;*
- (g) preference shareholders, if any; and*
- (h) equity shareholders or partners, as the case may be.*

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

*(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.*

*Explanation. — For the purpose of this section—*

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

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

20. Regulation 21 A of IBBI (Liquidation Process), 2016 liquidation Regulations, 2016 is at the centre of the controversy and is also reproduced as under:

**“21A: Presumption of security interest.**

*(1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:*

*Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.*

*(2) Where a secured creditor proceeds to realise its security interest, it shall pay –*

*(a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and*

*(b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date:*

*Provided that where the amount payable under this sub-regulation is not certain by the date the amount is*

*payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator:*

*Provided further that any difference between the amount payable under this sub-regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.*

*(3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.*

21. A perusal of the above provisions would reveal that Section 36 (4) of the IBC protects the workmen dues under the Provident Fund, Gratuity Fund, and Pension Fund which may not be treated as liquidation estate and these are required to be paid by the Secured Creditor in full and could not be used to satisfy the claim of any Creditor under Section 53 of the Code.

22. It is also reflected that a Secured Creditor who opts to realise its Security interest under Section 52 of the Code is required to pay as much towards the amount payable under Section 53 of the Code, therefore, it is/was obligatory on the part of the appellant/bank to pay as much amount which was required under the relevant provisions of Section 53 of the IBC. The law with regard to the dues required to be paid under Section 53 of the IBC is now settled and in this regard following case laws may be considered. This tribunal in Company Appeal (AT) Ins. No. 987 of 2022 in the matter of **“Regional P.F. Commissioner Vs Ashish Chhawchharia, Resolution**

**Professional for Jet Airways (India) Ltd. & Anr.** relying on the law laid down by the Hon'ble Supreme Court in **"Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner & Others, (2009) 10 SCC 123"** has held as under: -

*"118. Challenge to the Resolution Plan by the Appellant is on the ground that Section 11 of the 1952 Act requires priority over all other dues and further Section 36(4)(a)(iii) excludes provident fund dues from the liquidation estate of the Corporate Debtor. We have already dealt with provisions of Section 36(4)(a)(iii) in foregoing paras of this judgment. Now, we, need to look into Section 11 of 1952 Act. The Section 11 of the 1952 Act provides for priority of payment of contributions over other debts. Learned counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court in **"Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner & Others, (2009) 10 SCC 123"**. The Hon'ble Supreme Court dealing with Section 11 of 1952 Act laid down following in Para 67:*

*"67. The expression "any amount due from an employer" appearing in sub-section (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including sub-section (1) of Section 11 and Sections 7A, 7Q, 14B and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund. If any amount payable by the employer becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages."*

*119. The above judgment lays down that any amount due from employer appearing in sub-section (2) of Section 11 also covers the amount determined under Section 14B and there cannot be any quarrel to the preposition as laid down by the Hon'ble Supreme Court in the above case. The priority for payment of debt under Section 11 of the 1952 Act has to be looked into in view of the mechanism which is specifically provided under Section 53(1) of the Code. We have already dealt the provision of Section*

36(4)(a)(iii) of the Code and held that provident fund dues are not subject to distribution under Section 53(1) of the Code. The issue is fully covered by three-member bench judgment of this Tribunal **Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner & Others, (2009) 10 SCC 123** (Supra). In view of foregoing discussion, we hold that provident fund dues were entitled to be paid in full. In view of the judgment of Supreme Court in “Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner & Others” (Supra), the claim of Appellant was to be satisfied in full, otherwise breach of provision of Section 30(2)(e) would have occurred. We, thus, are inclined to issue direction to the Successful Resolution Applicant to make payment of the admitted claim of the Appellant towards provident fund dues to save the plan from invalidity.”

The ratio propounded in above case has also been followed in other cases decided by this Tribunal in **Company Appeal (AT) (Insolvency) No. 262 of 2022, Assam Tea Employees Provident Fund Organization, through an Authorized Representative V. Mr. Madhur Agarwal & Anr.** as well as in **Small Industries Development Bank of India (SIDBI) v. Shri Vijendra Sharma, Company Appeal (AT) (Insolvency) No. 1027 of 2021** wherein it has been reiterated that the compliance of regulations 2(ea), 2-A, 21-A and 37 of the Liquidation Process Regulations and Section 52/53 of the IBC are absolutely necessary even if the secured creditor proceeds to realise its security interest.

**In State Bank of India v. Navjit Singh Company Appeal (AT) (Insolvency) No. 151 of 2022 this Tribunal opined again to the following effect: -**

*“6. We have considered the submissions of Learned Counsel for the parties and perused the record. In so far as the claim of the Appellant is concerned of Rs. 29,34,54,879.59/- it has been admitted by the Liquidator the said claim is the claim admitted in the Liquidation Process and no further adjudication was called for with regard to the said claim. In the present case, the admission of the claim is not sought to be challenged by*

*State Bank of India. In so far as the payment of Liquidator's Fee in paragraph 13 as noted above, Adjudicating Authority has disposed of the application with the direction to make payment of Liquidator's Fee and ensure compliance of Regulations 2(ea), 2A, 21A, 37 of the Liquidation Regulations and Section 52/53 of the Code. The order passed by the Adjudicating Authority does not warrant any interference. What was directed was as per Liquidation Regulation 21A as extracted in Paragraph 10 of the Judgment from which it is clear, even if the secured creditor proceeds to realise its security interest it is liable to pay fee as contemplated under Regulation 21A (2)(a)".*

Hon'ble Supreme Court **in Sunil Kumar Jain and Ors. v. Sundaresh Bhatt and Ors, (2022) 7 SCC 540**, authoritatively held in para 18 and 19 as under:

*“18. It cannot be disputed that as per Section 5(13) IBC, "insolvency resolution process costs" shall include any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern. It is also true that Section 20 IBC mandates that the interim resolution professional/resolution professional is to manage the operations of the corporate debtor as a going concern and in case during the CIRP the corporate debtor was a going concern, the wages/salaries of such workmen/employees who actually worked, shall be included in the CIRP costs and in case of liquidation of the corporate debtor, dues towards the wages and salaries of such workmen/employees who actually worked when the corporate debtor was a going concern during the CIRP, being a part of the CIRP costs are entitled to have the first priority and they have to be paid in full first as per Section 53(1)(a) IBC.*

*19. Therefore, while considering the claims of the workmen/employees concerned towards the wages/salaries payable during CIRP, first of all it has to be established and proved that during CIRP, the corporate debtor was a going concern and that the workmen/employees concerned actually worked while the corporate debtor was a going concern during the CIRP. The wages and salaries of all other workmen/employees of the corporate debtor during the CIRP who actually have not worked and/or performed their duties when the corporate debtor was a going concern, shall not be included automatically in the CIRP costs. Only with respect to those workmen/employees who actually worked during CIRP*

*when the corporate debtor was a going concern, their wages/salaries are to be included in the CIRP costs and they shall have the first priority over all other dues as per Section 53(1)(a) IBC. Any other dues towards wages and salaries of the employees/workmen of the corporate debtor shall have to be governed by Section 53(1)(b) and Section 53(1)(c) IBC. Any other interpretation would lead to absurd consequences and violate the scheme of Section 53 read with Section 5(13) IBC. If any other interpretation, more particularly, the interpretation canvassed on behalf of the appellants is accepted, in that case, the wages/salaries of those workmen/employees who had not worked at all during CIRP shall have to be treated and/or included in the CIRP costs, which cannot be the intention of the legislature.”*

Hon’ble Supreme Court in **Moser Baer Karamchari Union v. Union of India, (2023) 9 SCC 499** while considering issues relating to the status and protection of workmen’s dues in insolvency resolution opined as under: -

*“41. When we turn our attention to the Code, it is to be first noted that in terms of Section 36(4)(a)(iii) of the Code, all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund, do not form part and are not to be included in the liquidation proceedings. Sub-section (1) of Section 52 of the Code gives two options to a secured creditor. First, the secured creditor in a liquidation proceeding may relinquish its security interest and receive the proceeds from the sale of assets by the liquidator in the manner specified in Section 53 of the Code. The second option is to realise the security interest, but in the manner specified in Section 52 of the Code. Sub-section (2) of Section 52 of the Code states that where the secured creditor realises the security interest, he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised. The liquidator is to verify the security interest and shall permit the secured creditor to realise such security interest, which is proved either by records of such security interest maintained by an information utility, or by such other means as may be specified by the Board. Sub-section (4) of Section 52 of the Code states that the secured creditor may enforce, realise, settle, compromise or deal with the secured asset in accordance with such law as applicable to the security interest being realised and to the secured creditor. The secured creditor is to accordingly apply the proceeds to recover the debts due to him.*

**42.** *We need not refer to sub-section (5) of Section 52 of the Code as it relates to the action which the secured creditor may take if he faces resistance from the corporate debtor or any other person connected therewith in taking possession of, selling or otherwise disposing off the security. Sub-section (6) of Section 52 of the Code applies when an adjudicating authority is in receipt of an application under sub-section (5) of Section 52 of the Code. Sub-section (7) of Section 52 of the Code, however, is important as it states that where on enforcement of the security interest, an amount by way of proceeds is in excess of the debts due to the secured creditor, the secured creditor shall account for and pay the excess/surplus amount to the liquidator from enforcement of such secured assets. The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in the section, are to be deducted from the proceeds of any realisation by such secured creditors. They are to be transferred and included in the liquidation estate. Subsection (9) of Section 52 of the Code states that where proceeds for realisation of the secured assets are not adequate to repay the debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) to sub-section (1) of Section 53 of the Code.*

**43.** *To protect the interest of the workmen where the secured creditor does not relinquish its security interest to fall under Section 53 of the Code, Regulation 21-A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 has been enacted, and it requires that the secured creditor, who opts to realise its security interest as per Section 52 of the Code, has to pay as much towards the amount payable under clause (a) and sub-clause (i) to clause (b) of sub-section (1) of Section 53 of the Code to the liquidator within the time and the manner stipulated therein. The workmen's dues, even when the secured creditor opts to proceed under Section 52 of the Code, are therefore protected in terms of sub-clause (b) of subsection (1) of Section 53 of the Code."*

Thus it is clear from the above legal precedents that even if the secured creditor proceeds to realise its security interest it is under a mandatory obligation to pay dues as contemplated under Section 52/53 of the Code

within the time as contemplated under Regulation 21A (2)(a) of the Liquidation Regulations 2016.

23. What Ld. Sr. Counsel appearing for the appellant has agitated before us with considerable force is that though the decision with regard to the realization of Security Interest was taken on 30.07.2022 but the same could only be communicated to the appellant on 09.08.2022, that too with wrong facts and figures.

24. There cannot be any quarrel with the proposition that the timeline as provided in the IBC and relevant regulations framed by the IBBI must be followed strictly as in Resolution Process or Liquidation Process time is of the essence. However, in exceptional cases where there is no fault of the party it may request the Adjudicating Authority to extend the timeline or to exclude certain period, however this could only be done in rare cases of exceptional nature.

25. Perusal of Section 52 of the IBC would reveal that reciprocal duties and obligations have been casted on Secured Creditor as well as on liquidator. Under Section 52 (2) of the Code a duty is cast on the secured creditor to inform the liquidator about his intention to realize the security interest in a property and also to identify, verify those assets/properties which may be subject to realisation of such security interest. Simultaneously, sub-Section 3 of this Section cast a reciprocal duty on the liquidator to verify such security interest and thereafter permit the secured creditor to realize only such security interest, existence of which has been proved to the satisfaction of the liquidator.

26. Thus, permission of liquidator, permitting secured creditor to realize his security interest after due verification of the assets appears to be a condition precedent and without such permission a secured creditor may not be in a position to realize the secured interest in that asset.

27. Coming to the facts of the instant case it would be evident that the decision taken by the liquidator stated to be of 30.07.2022 was communicated to the appellant i.e. secured creditor on 09.08.2022 via email. It appears to be admitted to the parties that 90 days after liquidation commencement date were ending on or before 15.08.2022. It is also conspicuous that though the liquidator in its reply before the Tribunal has stated that a decision taken by him on 30.07.2022 was communicated on the same day however, the reply of the liquidator filed before the Tribunal is silent on the point as to how this decision has been communicated. Before us also it has not been clarified as to how the decision allegedly taken on 30.07.2022 by the liquidator has been served on appellant/bank. A copy of an email sent by liquidator to appellant on 09.08.2022 enclosing therewith copy of decision taken on 30.07.2022 has been placed on record by appellant which has also not been denied by the Respondent. Thus it can be safely taken that the decision which has been taken by the liquidator permitting the appellant/bank secured creditor to realize his security interest in specific properties on 30.07.2022 could only be communicated to the appellant on 09.08.2022 and the 90 days' timeline as per Regulation 21 (2) (a) was expiring on 15.08.2022. Certainly this period from 09.08.2022 till 15.08.2022 of only six days appears to be not sufficient for realisation of security interest by the appellant.

28. It has also been submitted by Ld. Sr. Counsel before us with considerable force that in this short period of time (from 09.08.2022 to 15.08.2022) it was not possible for the appellant/ secured creditor to realize its security interest in the targeted properties and thus ample time should have been provided to the appellant for this purpose and also that Tribunal has committed a manifest illegality by dismissing the IA filed by appellant/bank. The submissions made by Ld. Sr. Counsel, at the first glance appears to be having substance and force, however when we dwell deep into it we find that not only before this tribunal but also before the Adjudicating Authority an attempt has been made to connect the timeline provided under Regulation 21A (2) (a) provided for payment of dues under Section 53 of the IBC with the realization of the Secured interest, while it is not so. Secondly, though it has been submitted before us by Ld. Sr. Counsel that some reasonable time be granted to the appellant to deposit the due as required under Section 52/53 of the IBC, no such request has ever been made before the Tribunal.

29. It may be recalled that the IA No. 4610 of 2022 was moved before the Tribunal with the following prayers:

- “A. Pass an order allowing the present Application;*
- B. Pass an order allowing the Applicant to proceed with the sale of security interest in view of Section 52 of the IB Code, 2016 whereafter the Applicant Bank undertakes to pay an amount of Rs. 1,07,50,291/-towards the liquidation cost and workmen dues;*
- C. Pass an order allowing the Applicant to make the payment towards liquidation cost and workmen dues from the proceeds of sale of properties over which the Applicant has an exclusive right;*
- D. Pass an order directing the respondent to handover entire assets as indicated at S.no. 1 to 14, 17 and 18 in para 3 of the present application, over which the Applicant*

*has exclusive right, for the Applicant to realize its security interest in terms of section 52 of the IB code, 2016;*  
*E. Pass an order of restraining the liquidator from taking any action against the Applicant in consequence to letter dated 08.09.2022 i.e. including the security interest of the Applicant bank into the common pool of the Corporate Debtor;*  
*F. Pass an order declaring the decision issued by the Respondent vide letter dated 08.09.2022 and 30.07.2022 as null and void;*  
*G. Pass an order holding that the Applicant is not liable to pay for gratuity and provident fund in view of the fact that these funds do not form part of the liquidation estate; and*  
*H. Pass such other or further order(s) as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case."*

The above prayers would sufficiently indicate that the prayers of the appellant was to permit him to first realize the security interest in view of Section 52 of the IBC and thereafter he would be obliged to pay the amount communicated by the liquidator i.e. 10750291/- towards the liquidation cost and workmen dues as provided under Section 53 of the IBC. The intention of the appellant not to pay the requisite dues in terms of Section 53 of the IBC may also be gathered from the email sent by it to the liquidator on 14.09.2022 whereby a request has been made to withdraw letter dated 08.09.2022 whereby liquidator has informed the appellant of inclusion of the properties in liquidation pool. The relevant part of the communication dated 14.09.2022 sent by the appellant to liquidator has been mentioned by the Tribunal in its impugned Judgment and is also reproduced here as under:

*"5. Reliance placed by the liquidator on the Liquidation Regulation 21A to state that the Financial Creditor shall immediately release money towards liquidation cost and workman dues is misplaced as the regulations are made only to aid and assist in interpreting the provisions of principal act. It is stated that on a plain reading of Regulation 21A(2) (a) of the Liquidation Regulations, it*

*becomes abundantly clear that purpose and intendment of the said provision is to afford a period of 90 days to make payment of Cost from the date it becomes payable. Since, estimated Cost was shared only on 09.08.2022, period of 90 days ought to be calculated from 09.08.2022. That being so, period of 90 days given to secured FC for making payment of estimated cost has not expired. Therefore, the Bank's secured assets cannot be construed to have become part of the liquidation estate.*

*6. Sub-Regulation (2) comprises of two parts viz. (i) Contribution towards our share of cost as per S. 53(1) (a) and (b)(i) within 90 days & (ii) sale of secured assets by FC within 180 days. Non-compliance of both parts is condition precedent for invocation of Sub-regulation (3) as a consequence whereof, asset will form part of liquidation estate. Neither asset's custody has been handed over to the Bank nor period of 180 days has expired since then. Therefore, asset cannot be deemed to have become part of liquidation estate.*

*7. However, without prejudice to our rights and contentions, the Bank, as per applicable law, proposes to pay the appropriate amount as per its share, towards liquidation cost and Workmen dues from the proceeds of the security interest realised by the Bank in terms of section 52 of the IB Code, 2016. As the amount sought by you is too high for the Bank to pay at such initial stage without any recovery from any of the assets secured to the Bank by the Corporate Debtor.*

*8. Further, to obtain the best value of the security interest of the properties exclusively secured to it, the Bank seeks reasonable time to proceed with the sale of the security interest under SARFAESI proceedings, in order to obtain the best value of the same and request you to handover the possession of the assets, wherein charge has been not relinquished.*

*9. Further, without prejudice to our right to refute / dispute the Cost estimate or lay challenge to any of the steps being taken in the Liquidation process so far, we hereby state that in so far as the retail exposure of the Bank is concerned, we will make the payment of revised estimated Cost within a period of 15 days from the date of receipt of revised estimated liquidation cost from your office. Kindly take note of the fact that vehicles constituting the retail exposure of the Bank are fast depreciating assets. Delay in realization of vehicles has already resulted in*

*diminution of value. Kindly extend necessary cooperation for sale of those assets/vehicles.*

*10. Further, with respect to undertaking by the Bank for making payment of Rs.89,63,788/-towards Gratuity and Provident Fund, it is stated that a secured FC realizing security interest in terms of Section 52 IBC, is only obligated, in terms of S. 52 (8) IBC, to contribute payment of insolvency resolution process costs and not liquidation cost. Nowhere in the entire 18 Code or Regulations framed therein, it is stipulated that the secured Financial Creditor realising security interest u/s 52 of IBC is liable to make contribution towards any alleged unpaid provident fund and gratuity fund. As such, the Bank is not liable to make any contribution/ payment towards Gratuity and Provident Fund.*

*11. Even otherwise, the alleged unpaid provident fund and gratuity fund is not to be paid out of the liquidation estate as per Section 36(4)(a)(ii) IBC. Nowhere in the IBC is it stated that the secured/financial creditor is obligated to contribute to the alleged unpaid provident fund and gratuity fund and especially if the secured creditor realizes its security interest in terms of Section 52 IBC."*

30. The communication, in response to this email sent by the liquidator on 16.09.2022 would further fortify that the liquidator has informed the appellant to comply with the decision taken on 30.07.2022. The relevant portion of the communication sent by the liquidator to the appellant on 16.09.2022 is also mentioned by the Tribunal in impugned judgment at appropriate place and is also being reproduced by us as under:

*"The decision date 30-7-2022 and subsequent email dated 9-8-2022 are in accordance with the provisions of IBC, 2016 and IBBI (Liquidation Process) Regulations detailed therein. As noted in email dated 9-8-2022 the security interest of HDFC Bank forms part of liquidation estate on account of non-compliance of contributions sought under Regulation 21A of IBBI (Liquidation Process) Regulations, which require contribution to be made within 90 days from Liquidation Commencement Date (and not from date of seeking contribution). The Liquidation Commencement Date is 17.05.2022 and nearly 120 days have lapsed from the date.*

*The provision regarding contribution of excess of sale of assets over claim amount is not applicable as estimated value of security interest is lesser than claim amount.*

*The very purpose of Regulation 21A of IBBI (Liquidation Process) Regulations is to seek contribution from secured creditor choosing to realise its security interest at the time of permitting secured creditor for such realisation.*

*The contributions are sought on an estimated basis and are subject to actuals and liquidator/ secured creditor has to account for the same. Thus, the submission for making contribution only on realisation from assets is not in accordance with Regulation 21A of IBBI (Liquidation Process) Regulations.*

*As regards undertaking with respect to PF/Gratuity, please note the security interest can be permitted to be realised only subject to verification. Since PF/ Gratuity dues do not constitute the assets of the CD in terms of Sec 36 the same can't be verified as security interest under Sec 52 and can't be permitted to be appropriated by a secured creditor. You are also requested to refer to the decision of Hon'ble NCLT in case of Precision Fasteners Ltd. referred in the decision dated 30.07.2022. The judgement in case of Savan Godiwala has also been dealt in decision dated 30.07.2022. You are requested to refer to the decision dated 30.7.2022 on the subject.*

*We have taken note of relinquishment of charge on P&M and current assets. Further requests for making contributions with respect to retail exposure is not clear. Please note that 120 days from Liquidation Commencement Date have since lapsed and it is not possible for us to provide further 15 days as the same shall affect the entire liquidation process”.*

31. Thus it is evident from the above material that before Tribunal no request has ever been made by the appellant to provide him sufficient time for the purpose of deposition of dues as required under Section 53 of the IBC. Contrary to this the appellant has requested to grant permission to pay the dues as required under Section 53 of the IBC only after realization of his security interest. It is to be recalled that the provision as contained under Insolvency Regulation 21A (2) (a) pertaining to deposition of such dues in 90 days is a mandatory provision, unless rare circumstances of exceptional

nature occurs, in which case time extension may be considered and the same is also not dependent on realisation of security interest by secured creditor and therefore it could not be linked with realisation of security interest. In simple words the payment which is to be made under relevant provisions of Section 52 and 53 of the IBC by the secured creditor is not dependent on the realisation of security interest by a secured creditor. Thus the Tribunal in this regard has not erred in returning a finding that prayer of the appellant to pay the required dues under Section 53 of the IBC only after realisation of his security interest is not justified and legal.

32. It may also be noticed that though it is being claimed by the appellant that ample time has not been granted to it for realisation of security interest however it is evident that so far as the moveable properties are concerned the appellant has realised its security interest while the issue of insufficient time is being raised for immoveable properties and this has also been highlighted by the Tribunal while rejecting the case of the appellant.

33. In ***Shikshak Sahakari Bank Ltd. vs. Mr. Jagdish Kumar Parulkar***, CA (AT) (Ins) No. 2023 of 2024, a coordinate Bench of this Appellate Tribunal while considering Regulation 21 A held as under in para no. 28, 30, 34 and 37.

*“28. Regulation 21-A of the Liquidation Process Regulations, 2016, mandates Secured Creditors to inform the Liquidator of their decision to realise their security interest and to pay their share of the liquidation costs<sup>1</sup>*

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<sup>1</sup> **Liquidation cost** provided in Section 5(16) of IBC 2016 to be read with **Regulation 2(ea)**.

**Section 5(16) of IBC 2016:** liquidation cost means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board.

**Regulation 2(ea) (ea):** “liquidation cost” under clause (16) of section 5 means-

within 90 days. It was agreed by the Appellant that the liquidation cost will be shared as per Regulation 21-A but was raising clarifications regarding its calculations and which was clarified also by the liquidator again and again and this exchange was going on for quite some time”.

*30. It will be clear from this provision that the Secured Creditor is mandatorily obligated to pay its share as per Section 53(1)(a) and 53(1)(b)(i) of the Code which provides for distribution of assets from the sale of liquidation assets in the order of priority. (waterfall mechanism). Further, Regulation 21A (3) of Liquidation Process Regulations, 2016, provides that where a Secured Creditor fails to comply with Sub-Regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.*

*34. The Respondent/Liquidator relies upon this Tribunal's judgment in **'State Bank of India Vs. Navjit Singh (supra)** wherein it was held:*

*“.....*

*6. We have considered the submissions of Learned Counsel for the parties and perused the record. In so far as the claim of the Appellant is concerned of Rs. 29,34,54,879.59/- it has been admitted by the Liquidator the said claim is the claim admitted in the Liquidation Process and no further adjudication was called for with regard to the said claim. In the present case, the admission of the claim is not sought to be challenged by State Bank of India. In so far as the payment of*

- 
- (i) fee payable to the liquidator under regulation 4;
  - (ii) remuneration payable by the liquidator under sub-regulation (1) of regulation 7;
  - (iii) costs incurred by the liquidator under sub-regulation (2) of regulation 24;
  - (iv) costs incurred by the liquidator for preserving and protecting the assets, properties, effects and actionable claims, including secured assets, of the corporate debtor;
  - (v) costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern;
  - (vi) interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower;
  - (vii) the amount repayable under sub-regulation (3) of regulation 2A;
  - (viii) any other cost incurred by the liquidator which is essential for completing the liquidation process:

Provided that the cost, if any, incurred by the liquidator in relation to compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013), if any, shall not form part of liquidation cost.

*Liquidator's Fee in paragraph 13 as noted above, Adjudicating Authority has disposed of the application with the direction to make payment of Liquidator's Fee and ensure compliance of Regulations 2(ea), 2A, 21A, 37 of the Liquidation Regulations and Section 52/53 of the Code. The order passed by the Adjudicating Authority does not warrant any interference. What was directed was as per Liquidation Regulation 21A as extracted in Paragraph 10 of the Judgment from which it is clear, even if the secured creditor proceeds to realise its security interest it is liable to pay fee as contemplated under Regulation 21A (2)(a). The Adjudicating Authority has only directed the Applicant to follow the regulations as noted in paragraph 13.”*

*37. In brief, with respect to the Secured Financial Creditor, the situation is clearly enumerated in Regulation 21-A(2)(a), which is applicable in this case. The Liquidator's fee is also prescribed under Regulation 4. Regulations 4(1) and 4(1A) provides primacy to CoC and consultation Committee. The Respondent's claim that the Liquidator is entitled for a fee under Regulation 4(2)(b) only when he has actually realised or distributed any amount is not tenable in the light of Regulation 21A”.*

***In Small Industries Development Bank of India (SIDBI) vs. Shri Vijender Sharma, CA (AT) (Ins) No. 1027 of 2021***, another coordinate Bench of this Appellate Tribunal while considering Regulation 21 A held as under in para no. 16, 21.

*“16. It is clear from Regulation 21-A of the Liquidation Process Regulations, 2016 that after presumption of security interest by secured creditor, the secured creditor shall pay as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date. Quite obviously this was not done by the appellant as is evident from the order dated 8.7.2020 in CA No.135/2019 by which the Appellant was directed at a much later date to pay its share of liquidation fees and cost after detailed calculations have been provided to it by the liquidator.*

*21. It thus becomes quite clear that compliance of regulations 2(ea), 2-A, 21-A and 37 of the Liquidation Process Regulations*

*and Section 52/53 of the IBC are absolutely necessary even if the secured creditor proceeds to realise its security interest”.*

(Emphasis Supplied)

*In Phoenix ARC Pvt. Ltd. vs. Kuldeep Verma Liquidator of KS Oils Ltd.*

**& Ors., CA (AT) (Ins) No. 592 of 2024**, this Tribunal speaking through its

Chairperson has held as under in para no. 16, 18, 21, 22.

*“16. The first step which secured creditor has to take is to intimate the Liquidator of the price at which he proposes to realize its secured asset and it was thereafter the Liquidator was to inform as to whether a person is willing to buy the secured asset before the expiry of thirty days from the date of intimation, at a price higher than the price intimated under sub-regulation.*

18. The Regulation 21A has been inserted with effect from 25.01.2019. Sub regulation (2) of Regulation 21A provides “Where a secured creditor fails to realise its security interest, it shall pay ....”. Thus, the obligation to pay the amount as referred to in sub-clause (a) of sub-regulation (2) of Regulation 21 is on the security interest holder. It is relevant to notice that the requirement of making the payment as provided under 21A (2) (a) is 90 days from the liquidation commencement date.

21. The present is a case where no steps were taken by the Appellant under Regulation 37 and at no point of time, even a communication was sent by the Appellant to the Liquidator for informing about the estimated amount required to be paid under Regulation 21A (2) (a). As noted above, the Applicant as a secured creditor was to make payment under sub-regulation (2) of Regulation 21A, within 90 days from the liquidation commencement date. When obligation is linked with the time period, the Appellant cannot fall back on the argument that the Liquidator has not communicated the estimated amount to the secured creditor. When secured creditor at no point of time even asked for estimated amount from the Liquidator and no steps were taken under Regulation 37 by the Appellant, it is not open for the Appellant to contend that Regulation 21A, sub-regulation (2) shall not apply, since he was not communicated the estimated amount by the Liquidator. In this context, we may further notice second proviso of Regulations 21A (2), which provides as follows:

“21A (2)

xxx                      xxx

Provided that where the amount payable under this sub-regulation is not certain by the date the amount is

*payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator:*

*Provided further that any difference between the amount payable under this sub -regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.”*

22. The second proviso clearly protects the interest of the secured creditor to the extent that if there is any difference between the amount payable under sub-regulation (2) and the amount paid under the first proviso, the Liquidator or the creditor, as the case may be, is to do the needful. Thus, even if, a secured creditor, who does not write to the Liquidator for any estimation or Liquidator does not send any estimate and any amount is paid by the secured creditor, he is well protected by second proviso and thus, the secured creditor cannot fall back on the argument that Liquidator having never communicated the estimated amount, sub-regulation (2) of Regulation 21A is not attracted”.

*(Emphasis Supplied)*

***In Suraksha Asset Reconstruction Ltd. vs. Varsha Bagri, Liquidator of Bharat NRE Coke Ltd., CA (AT) (Ins) No. 650 of 2024***, another coordinate Bench of this Appellate Tribunal while considering Regulation 21 A held as under in para no. 11

*“11. In the present case, there are ample materials to indicate that Appellant has informed the liquidator of its decision to relinquish its security interest. Letter dated 10.01.2020 relied by the Appellant is referred, thus, there is no applicability of Section 21A (1) in the present case. Reliance which has been placed by the liquidator is on sub-regulations (2) and (3) of Regulation 21A. In the present case, the Appellant after informing the liquidator on 10.01.2020 proceeded to realise its security interest by issuing notice under Section 13(2) on 20.08.2021 which was already intimated to the liquidator on 10.01.2020. Present is a case where liquidator has communicated the Appellant twice for payment of proportionate share of the liquidation costs on 16.02.2023 and 29.05.2023 although communication was sent in response to the said letter by the Appellant but fact remains that no payment was made by the Appellant towards liquidation costs. Submission of the Counsel for the Appellant that Appellant is*

*ready and has never denied to make the payment shall not make the sub-regulation (3) of Regulation 21A inapplicable. When Appellant has proceeded to realise its security interest it was required to pay the amount as referred to in Regulation 21A (2)(a)".*

**In ESSEL FINANCE ADVISORS AND MANAGERS LLP vs. MR. PANKAJ SRIVASTAVA CA (AT) (CH) (Ins) No. 332 of 2023,**  
another coordinate Bench of this Appellate Tribunal while considering Regulation 21 A held as under in para no.91, 96, 97

*"91. The 'Adjudicating Authority' / 'Tribunal', in the 'Impugned Order', at Paragraph No. 14, had mentioned that 'in this connection, it is relevant to mention here that in the Written Submission, the Respondent No. 3 has explained that they have filed a Writ Petition, challenging the constitutional validity of Regulation 2A and 21A of The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. However, the same is not relevant here, and the Respondent No. 3 are directed to pay the portion of the Liquidator's fees which is pending against them' and by referring to the decision of this 'Tribunal', in State Bank of India V. Navjit Singh dated 16.03.2022 (vide Comp. App (AT) (INS) No. 151 of 2022), wherein it was held that 'even if the Secured Creditor proceeds to realise its Security Interest it is liable to pay fee as contemplated under Regulation 21 A(2)(a). Further, Hon'ble NCLAT in the case of 'Small Industries Development Bank of India v. Shri Vijender Sharma', dated 02.11.2022, in Company Appeal (AT) (Insolvency) No. 1027 of 2021, held that compliance of regulations 2 (ea), 2-A, 21-a and 37 of the Liquidation Process Regulations and Section 52/53 of the IBC are absolutely necessary even if the Secured Creditor proceeds to realise its Security Interest', and opined that the Respondent Nos. 1, 2 & 3 were to defray their portion of 'Liquidation Process Costs', in terms of Regulations 2A of the IBBI (Liquidation Process) Regulations, 2016, and the IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018, was 'disposed of', accordingly.*

*96. It must be borne in mind when a 'Secured Creditor', exercise its right as per Section 52 of the I & B Code, 2016, there is no provision in the I & B Code, 2016 or Regulation, which provides for 'extension of time', to pay the 'Liquidation Costs'. Also that, it is quite clear from the Regulation 21A of the Liquidation Process Regulations, 2016, that the 'Secured*

*Creditors', who do not relinquish their 'Security Interest', in the 'Liquidation Estate' is required to pay the Sum as payable under clause (a) and sub-clause (i) of clause (b) of subsection (1) of Section 53 of the Code, which includes the 'Appellant'.*

*97. In the present case, even though the 'Appellant', has taken a plea that it and the 'Debenture Holders', it represents are not 'Financial Institutions' and not liable to 'pay the Liquidation Costs', being a 'Member' of the 'Committee of Creditors' of the 'Corporate Debtor', on the basis of 'Investment', made of Rs.55 Crores, by subscribing 5500 Redeemable Secured Non-Convertible Debentures of Rs.1,00,000/- etc., it is one of the 'Financial Creditors' and being a 'Financial Institution', in the considered opinion of this 'Tribunal', is liable to pay the 'Liquidation Costs', as per the I & B Code, 2016. Even as per 'Regulation 2A of the Liquidation Process Regulations, 2016', the Appellant as a 'Financial Creditor' and also a 'Financial Institution', is required to pay the 'Liquidation Process Costs', in the event such 'Financial Creditor', exercising its right to enforce its 'Security', in the teeth of the ingredients of Section 52 of the I & B Code, 2016. Continuing further, it must be borne in mind that there is nothing in the I & B Code, 2016 or the Regulation, which provides for extension / elongation of time, to pay the 'Liquidation Costs', especially when the exercise of right by the 'Secured Creditor' is pressed into service, in terms of the 'Code'.*

34. Therefore, having regard to all the facts and circumstances of this case and keeping in view the various judgments passed by this Tribunal mentioned herein before it is evident that the appellant did not make any prayer before the Tribunal to extend time or to provide sufficient time to deposit the money as required under Section 53 of the IBC and has only requested the Tribunal to permit him to realise his security interest first and to further permit to deposit the dues under Section 53 of the IBC thereafter from the proceeds of such realisation and this prayer of the appellant in our considered opinion has been rightly rejected by the Tribunal. The Judgment impugned before us is required to be tested on the basis of the prayers made before the Tribunal and reasons given by the Tribunal in order to arrive at a

particular finding. Therefore, when no prayer for extension or exclusion of time has been made before Tribunal by the appellant, he may not be deemed to be an aggrieved person so far as this prayer is concerned. It is also to be recalled that non-deposition of dues as required under Section 53 of the IBC read with Regulation 21A (2) (a) of Insolvency Regulations within stipulated period has resulted in the automatic vesting of the assets in liquidation pool and the liquidator vide his email dated 08.09.2022 has only formally communicated it. Though the dispute before us has not been contested by Ld. Counsel for liquidator with tooth and nail but even thereafter in our considered opinion when no request to extend time or exclusion of time was prayed before the Tribunal by the appellant, the Tribunal was not obliged to grant it on its own. At the cost of repetition, it is stated that the appellant before tribunal has requested to permit him to realise the secured interest from specified properties at first and thereafter to deposit the dues as provided under Section 53 of the IBC, which have been duly communicated to the appellant by the Respondent/liquidator and after getting knowledge of these dues the appellant instead of making efforts to deposit it, chosen to challenge the decision of the liquidator and has also challenged the vires of Insolvency Regulation 21A. Thus the intention of the appellant, before the tribunal was not of deposition of the dues.

35. Thus, for the reasons mentioned hereinbefore we do not find any good ground on the basis of which any interference may be made in the impugned Judgment. Resultantly, the appeal appears to be having no force and is dismissed as such. No order is as to costs.

36. Pending IA's if any will also stand disposed of.

**[Justice Mohd. Faiz Alam Khan]**  
**Member (Judicial)**

**[Arun Baroka]**  
**Member (Technical)**

**New Delhi.**  
**05.08.2025.**

*sr*