NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 570 of 2022

IN THE MATTER OF:

1. Small Industries Development Bank of India (SIDBI),
Specialized Asset Recovery Branch,
2nd Floor, Atma Ram House,
1 Tolstoy Marg, New Delhi – 110001
Eamil: sarb_newdelhi@sidbi.in

...Appellant

Versus

1. Vivek Raheja,
Resolution Professional, M/s. Gupta Exim (India) Pvt. Ltd.,
JD-2C, 2nd Floor,
Pitampura, Delhi – 110034
Email: ip.guptaeximg@mail.com

...Respondent No. 1

2. Punjab National Bank,
E-Block, Harsha Bhawan,
1st Floor, Connaught Place,
New Delhi – 110001
Email: zs8343@pnb.co.in

...Respondent No. 2

3. Lotus Textiles,
Through Authorised Signatory Partner-Mr. Vijayant Mittal
68D, DLF Industrial Area, Phase 1, Faridabad,
Haryana – 122301
Email: vm3457@gmailcom

...Respondent No. 3

For Appellant: Mr. N. P. S. Chawla and Ms. Kinjal Goyal, Advocates.

For Respondent: Mr. Krishnendu Datta, Sr. Advocate Mr. Anuj Pandey, Mr. Pulkit Goyal, Advocates for R1.

Mr. V. Mittal, Mr. Rajat Sinha, Mr. Karan Gandhi, Ms. Komal Karva, Advocates Mr. S.K. Sharma, Dvuti Ghai, Advocates for R-2.

J U D G E M E N T

Ashok Bhushan, J:

1. This Appeal has been filed against the Order dated 17th March, 2022 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "The Adjudicating Authority") challenging the Order dated 17th March, 2022 in I.A. No. 581 of 2021 in CP(IB) No. 312/Chd/Hry/2018.

2. Brief facts of the case giving rise to this Appeal are:-

- Oriental Bank of Commerce had filed a Section 7 Application under the Insolvency and Bankruptcy Code, 2016 (IBC in short) against the Corporate Debtor – M/s. Gupta Exim (India) Pvt. Ltd. which was admitted by the Adjudicating Authority vide Order dated 29th October, 2019. In the 'Corporate Insolvency Resolution Process' in 16th Meeting of 'Committee of Creditors', Resolution Plans were discussed. Revised Resolution Plans were submitted by the prospective Resolution Applicants. Resolution Plan was put to e-Vote between 07th August, 2021 and 16th August, 2021 and by majority of 97.97%, the Resolution Plan of 'Lotus Textiles' and Mr. Vijayant Mittal was approved. Appellant sent an Objection dated 16th August, 2021 to the distribution to the Appellant under the Resolution Plan.
- An I.A. No. 581 of 2021 was filed by the Appellant for direction to the Resolution Professional to distribute the proceeds of the Resolution Plan where following prayers were made:

> *"It is therefore, most respectfully prayed that:*

1. The present application may kindly be allowed and the directions be issued to the Respondent No. 1 modify/clarify the distribution to dissenting members as per the Resolution Plan and distribute the proceeds of the resolution plan to Applicant SIDBI for an amount of Rs. 5,64,97,893/- in priority in accordance with provisions of IBC 2016 in the interest of justice and equity.

2. Interim stay be granted on distribution of the resolution plan amount by the Resolution Professional to the CoC members till the present application is decided."

- The case of the Appellant in the Application was that as per security interest of the Appellant, the Appellant is entitled to 6.93 % i.e. the amount of Rs. 5,64,97,893/- and as per voting share as approved by the CoC, the Appellant is entitled to 2.03% i.e. Rs. 1,65,47,078/-. The case of the Appellant set up in the Application is that he is entitled for his distribution of plan amount as per value of the security interest of the Appellant. The Application was objected by the Resolution Professional. The Adjudicating Authority by the Impugned Order dated 17th March, 2022 rejected the I.A. No. 581 of 2021 upholding the decision of the CoC for distribution of proceeds of the Resolution Plan as per the voting share. Appellant aggrieved by the said Order, has come up in this Appeal.

3. Shree N.P.S Chawla, Learned Counsel for the Appellant submits that the Appellant has first charge on two properties of the Corporate Debtor. The Liquidation Value of the securities exclusively charged to Appellant is Rs. 5.64 Crores which is equivalent to 6.93% of the Liquidation Value of the assets of the Corporate Debtor. Voting share of the Appellant is 2.03% and voting share of the Punjab National Bank is 97.7%. It is submitted that distribution of proceeds of the Resolution Plan ought to have been in accordance with the value of the security interest of the Appellant and not as per the value of the voting share. It is submitted that the Committee of Creditors committed error in approving the Resolution Plan which does not provide for distribution to the Appellant as per Section 30(2)(b). The Plan being not compliant to Section 30(2)(b) deserved not to be approved and despite objection raised by the Appellant objecting to the distribution of the Resolution Plan proceeds, the grievance has not been redressed either by the Committee of Creditors or by the Adjudicating Authority. It is submitted that the Adjudicating Authority committed error in rejecting the I.A. No. 581 of 2021. Learned Counsel for the Appellant submitted that Section 53(1)(b) of the Code does not talk about priority *inter se* secured creditors and subordination agreement provisions are required to be respected in the Liquidation Waterfall under Section 53 of the Code. Learned Counsel for the Appellant has placed reliance on report of the Insolvency Law Committee March, 2018 as well as the Statement of Objects and Reasons of the Insolvency and Bankruptcy Code (Amendment Bill), 2019. Learned Counsel for the Appellant has also placed reliance on two judgements of the Hon'ble

Supreme Court and judgements of this Tribunal which shall be referred to while considering the submissions in detail.

4. Learned Sr. Counsel appearing for Respondent No. 1-Resolution Professional refuting the submissions of Learned Counsel for the Appellant submits that manner of distribution of the proceeds of the plan value is in accordance with Section 30(2)(b) of the Code. The Appellant is entitled for distribution as per value of the debt of the Appellant. There is no entitlement to claim distribution on the basis of value of security interest of the Appellant. The issue raised by the Appellant is fully covered by the Judgement of the Hon'ble Supreme Court in **"India Resurgence Arc Private Limited Vs. M/s. Amit Metaliks Limited & Anr."** (Civil Appeal No. 1700 of 2021) decided on 13.05.2021 as well as two judgements of this Tribunal; first in Company Appeal (AT) Ins. No. 665 of 2022 and second Judgement of this Tribunal in **"Indian Bank Vs. Charu Desai, Erstwhile Resolution Professional & Chairman of Monitoring Committee of GB Global Ltd. & Anr."** (Company Appeal (AT) Ins. No. 644 of 2021) decided on 06th May, 2022.

5. Learned Counsel appearing for Respondent No. 3-Successful Resolution Applicant also opposing the submissions of Learned Counsel for the Appellant contends that distribution of proceeds of the Resolution Plan is in accordance with the debt value of the secured creditors as per Section 30(2)(b) of the Code. The Appellant is not entitled to claim distribution on the basis of value of the security interest of Appellant. The commercial wisdom/decision of the CoC approving the distribution in the Resolution Plan cannot be allowed to be questioned by the dissenting financial creditor.

6. We have considered the submissions of Learned Counsel for the parties and have perused the record.

7. The only question which arises for consideration in the present Appeal is as to whether the Appellant-dissenting Financial Creditor is entitled to claim distribution of proceeds of the plan as per value of the security interest of the Appellant or as per the debt of the Appellant (voting share).

8. The Appellant is one of the members of the CoC, the other member of the CoC being Punjab National Bank, voting share of both the Appellant and Punjab National Bank are as follows:

Name of CoC Member	***Voting Share (%)***
Punjab National Bank	***97.97***
Small Industries Development Bank of India	***2.03***

9. Under the Resolution Plan, the Appellant was proposed to be paid amount of Rs. 1,65,47,078/- as per voting share being 2.03 %. I.A. No. 581/2021 was filed by the Appellant claiming distribution as per security interest i.e. Rs. 5,64,97,893/-. Learned Counsel for the Appellant submitted that when a distribution by the Resolution Applicant is not in accordance with Section 30(2)(b) of the Code, the same can be set aside by the Adjudicating Authority as well as by this Appellate Tribunal which is well within the jurisdiction of the Court. Learned Counsel for the Appellant in support of his submission has placed reliance on the judgement of Hon'ble Supreme Court in **"Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors.",** [(2021) 1 SCC 401]. Hon'ble Supreme Court in the above case has occasion to consider the provisions of Section 30(2)(b) as well as the scope of judicial review. Learned

Counsel for the Appellant placed reliance on paragraph 77, 77.1, 77.2, 77.3 which are to the following effect:

> *"77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.*
>
> *77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.*
>
> *77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an*

appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; 171 or the resolution plan does not comply with any other criteria specified by the Board.

77.3. The material propositions laid down in Essar Steel (supra) on the extent of judicial review are that the Adjudicating Authority would see if CoC has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors have been taken care of. And, if the Adjudicating Authority would find on a given set of facts that the requisite parameters have not been kept in view, it may send the resolution plan back to the Committee of Creditors for re-submission after satisfying the parameters. Then, as observed in Maharashtra Seamless Ltd. (supra), there is no scope for the Adjudicating Authority or the Appellate Authority to proceed on any equitable perception or to assess the resolution plan on the basis of quantitative analysis. Thus, the treatment of any debt or asset is essentially required to be left to the collective commercial wisdom of the financial creditors."

10. The law as laid down by the Apex Court is very clear. If the plan does not conform to Section 30(2)(b), the judicial review to the limited extent, i.e. to the extent the plan is in violation of the statutory provision is permissible. There cannot be any quarrel to the preposition of the law laid down by the Apex Court in the above case. In a given set of facts, if requisite parameters as laid down in Section 30(2) are not complied with, the Adjudicating Authority does not lack jurisdiction to send the Resolution Plan back to the Committee of Creditors for resubmission after satisfying the parameter. The question to be considered in the present case is as to whether distribution as approved by the CoC to the Appellant as per voting share of the Appellant contravenes the Section 30(2)(b) as contended by Learned Counsel for the Appellant.

11. Expression "debt" is defined in Section 3(11) in following words:

> *"(11) "**debt**" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;"*

12. In the CIRP Process, Appellant has filed claim which was admitted by the Resolution Professional and as per the claim of the Appellant admitted, the Appellant was allotted the voting share of 2.03 % in the CoC. Voting Share is allotted to the members of CoC on basis of financial debt owed to them. Section 21(3) is as follows:

> *"21(3). [Subject to sub-sections (6) and (6-A), where] the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their*

voting share shall be determined on the basis of the financial debts owed to them."

13. Section 53(1) which is relevant in the present case is as follows:

> ***"53. Distribution of assets.*** *(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following 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."

14. Section 53(1)(b)(ii) uses expression "debts owed to a secured creditor" which is the basis for distribution in the order of priority as provided in Section 53(1)(ii). The debt owed to a secured creditor is a debt which is relatable to his claim as admitted in CIRP Process. The claim/debt of a secured financial creditor which is admitted in CIRP Process of a secured creditor is a fixed amount determined in CIRP process as reflected in Information Memorandum prepared by the Resolution Professional. The debt owed to a secured creditor is not the value of security of a secured creditor. The value of security of secured creditor is not the debt owed to a secured creditor in the CIRP Process. Section 53(1) does not contemplate distribution as per value of security of a secured creditor. Submission of the Appellant that he is entitled to distribution of the proceeds of the plan value as per value of security possessed by him is not in accord with the legislative scheme as delineated in Section 53(1) of the Code. The above issue has been decided by this Appellate Tribunal in Company Appeal (AT) Ins. No. 665 of 2022 **"Union Bank of India Vs. Resolution Professional of M/s Kudos Chemie Ltd. & Ors."**. In the above case also, the Financial Creditor of the Corporate Debtor has filed an Application seeking direction to distribute the resolution plan amount as per value of the security of the Appellant. The CoC has decided to distribute the amount as per amount accepted by the Resolution Professional. The CoC decision was challenged before the Adjudicating Authority who rejected the Application against which the

Appeal was filed. The view of the Adjudicating Authority for distribution of plan amount as per voting share found approval by this Tribunal in Paragraph 4 and 5 of the Judgement. This Tribunal laid down as under:

> *"4. The objection was raised by the Appellant Bank and it wanted that distribution should be done as per the Option-3. The CoC by majority having taken decision to distribute the amount as per Option-1 by 97.61% vote, we see no reason to take a different view from one which has been taken by the Adjudicating Authority. The Adjudicating Authority in paragraph 40 has made following observations:-*
>
> > *"40. Both these contentions of learned counsel for the applicant are not tenable because the distribution of the amount was made by the Committee of Creditors resting on total dues of voting share of individual creditors which is neither whimsical nor arbitrary in any manner. Although the applicant gave a dissenting vote for approval of the Plan, based on the reason that distribution of resolution fund was discriminatory against it and despite the plea that it was entitled to the equal share in regard to the distribution of the resolution fund on the value of the assets of the corporate debtor as security. However, the committee of creditors, deciding to go with option no.1 i.e. distribution of plan amount as per claims admitted, has approved the resolution plan by 97.61% votes."*
>
> *5. The decision of the CoC regarding the distribution of amount is in its commercial wisdom which we cannot question or be questioned by the Appellant. The Adjudicating Authority has rightly referred the*

judgment of the Hon'ble Supreme Court in ***"India Resurgence Arc. Pvt. Ltd. Vs. M/s. Amit Metaliks Ltd. & Anr.- Civil Appeal No. 1700 of 2021"*** *where in paragraph 13.1, the Hon'ble Supreme Court has held that what amount is to be paid to different classes or sub-classes of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest. Paragraph 13.1 of the judgment is as follows:-*

> *"13.1.Thus, what amount is to be paid to different classes or sub-classes of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.""*

15. The Judgment of the Hon'ble Supreme Court in Civil Appeal No. 1700/2021 **"India Resurgence"** (supra) was a case where Hon'ble Supreme Court had occasion to consider where also the Financial Creditor has objected to distribution contending that distribution should be as per value of the security interest held by the financial creditor. Hon'ble Supreme Court after referring to Section 30(2) and submission of the Appellant that distribution ought to have been as per value of security interest expressly rejected the submission. In paragraph 13, 13.1 and 14.2, following was laid down:

"13. The repeated submissions on behalf of the appellant with reference to the value of its security interest neither carry any meaning nor any substance. What the dissenting financial creditor is entitled to is specified in the later part of sub-section (2)(b) of Section 30 of the Code and the same has been explained by this Court in Essar Steel as under:-

> *"128. When it comes to the validity of the substitution of Section 30(2)(b) by Section 6 of the Amending Act of 2019, it is clear that the substituted Section 30(2)(b) gives operational creditors something more than was given earlier as it is the higher of the figures mentioned in sub-clauses (i) and (ii) of sub-clause (b) that is now to be paid as a minimum amount to operational creditors. The same goes for the latter part of sub-clause (b) which refers to dissentient financial creditors. Ms Madhavi Divan is correct in her argument that Section 30(2)(b) is in fact a beneficial provision in favour of operational creditors and dissentient financial creditors as they are now to be paid a certain minimum amount, the minimum in the case of operational creditors being the higher of the two figures calculated under sub-clauses (i) and (ii) of clause (b), and the minimum in the case of dissentient financial creditor being a minimum amount that was not earlier payable. As a matter of fact, pre-amendment, secured financial creditors may cram down unsecured financial creditors who are dissentient, the majority vote of 66% voting to give them nothing or next to nothing for their dues. In the earlier regime it may have been possible to have done this but after the amendment such*

financial creditors are now to be paid the minimum amount mentioned in sub-section (2). Ms Madhavi Divan is also correct in stating that the order of priority of payment of creditors mentioned in Section 53 is not engrafted in sub-section (2)(b) as amended. Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the commercial wisdom of the Committee of Creditors that is free to determine what amounts be paid to different classes and subclasses of creditors in accordance with the provisions of the Code and the Regulations made thereunder."

(underlining supplied for emphasis)

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

.....

14.2. The extent of value receivable by the appellant is distinctly given out in the resolution plan i.e., a sum of INR 2.026 crores which is in the same proportion and percentage as provided to the other secured financial creditors with reference to their respective admitted claims. Repeated reference on behalf of the appellant to the value of security at about INR 12 crores is wholly inapt and is rather ill-conceived."

16. Learned Counsel for the Appellant sought to contend that two Judge Bench of **"India Resurgence"** (supra) does not take into consideration law laid down by the Hon'ble Supreme Court in three Judge Bench in **"Jaypee Kensington"** (supra). The ratio of the Judgment of two Judge Bench in "India Resurgence" is not in any manner at variance to the law laid down by the three Judge Bench in "Jaypee Kensington".

17. Learned Counsel for the Appellant has relied on report of the Insolvency Law Committee March, 2018, especially paragraph 21 which deals with "treatment of subordination agreements within the liquidation waterfall". The Committee was asked to clarify as to whether inter-creditor agreements hold good for distribution of proceeds on liquidation under section 53 in order to promote resolution over liquidation. The Committee disregarded the suggestion. Paragraph 21.5 and 21.6 of the Committee Report is referred to which states in following words"

> *"21.5Lastly, it was deliberated whether inter-creditor agreements if not disregarded for the liquidation waterfall in section 53 of the Code, may result in secured creditors, especially those holding a first charge to prefer liquidation over resolution. It was suggested to the Committee to clarify whether inter-creditor agreements hold good for distribution of proceeds on liquidation under section 53 in order to promote resolution over liquidation. The Committee, as discussed in the context of the ICICI case above, noted that it may not be prudent to take away a valuable property right vested with creditors. The Committee felt that generally all secured financial creditors whether first charge or secondary charge holders are sophisticated entities which grant loans*

after exercising due-diligence and are presumed to be able to evaluate their interests and risks sufficiently. Moreover, this may negatively impact the credit market and discourage banks and other financial creditors to grant big loans which are more often than not granted against property or other valuable collateral as they shall have no protection in case the corporate debtor becomes insolvent. Accordingly, the Committee disregarded this suggestion.

21.6To conclude, the Committee was of the opinion that it is sufficiently clear from a plain reading of section 53(1)(b) that it intended to rank workmen's dues equally with debts owed to secured creditors who have relinquished their security. Section 53(1)(b) does not talk about priority inter-se secured creditors. Thus, valid inter-creditor/subordination agreements would continue to govern their relationship. Further sub-section (2) of section 53 must also be interpreted accordingly. For instance, applying section 53(2) in the context of section 53(1)(b), any agreements between workmen and secured creditors which disrupts their pari passu rights will be disregarded by the liquidator. However, agreements inter-se secured creditors do not disturb the equal ranking sought to be provided by section 53(1)(b) and therefore do not fall within the ambit of section 53(2). ***The Committee felt that there was no requirement for an amendment to the Code required since a plain reading of section 53 was sufficient to establish that valid inter-creditor and subordination provisions are required to be respected in the liquidation waterfall under section 53 of the Code."***

18. The Committee ultimately did not suggest any amendment in Section 53 of the Code. The above report of the Insolvency Law Committee in no manner support the submission of Learned Counsel for the Appellant that distribution under Section 53(1) ought to be on basis of value of security of financial creditor and not on basis of debt owed to secured creditor.

19. Learned Counsel for the Appellant has referred to the Statement of Objects and Reasons of the Insolvency and Bankruptcy Code (Amendment Bill) 2019 by which amendments were brought in Section 30(2)(b). The Statement of Objects and Reasons noticing various difficulties to fill critical gaps, amendments were brought. In paragraph 3 (e) of the Statement of Objects and Reasons referring to amendment in Section 30(2) following is stated:

> *".....*
> *(e) to amend sub-section (2) of section 30 of the Code to provide that–*
> *(i) the operational creditors shall receive an amount that is not less than the liquidation value of their debt or the amount that would have been received if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priorities in section 53 of the Code, whichever is higher;*
> *(ii) the financial creditors who do not vote in favour of the resolution plan shall receive an amount that is not less than the liquidation value of their debt;*
> *(iii) the provisions shall apply to the corporate insolvency resolution process of a corporate debtor–*
> *(A) where a resolution plan has not been approved or rejected by the Adjudicating Authority; or*

(B) an appeal is preferred under section 61 or 62 or such appeal is not time barred under any provision of law for the time being in force; or

(C) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

……"

20. When we look into above statement of objects and reasons, it is made clear that financial creditors who do not vote in favour of the resolution plan shall receive an amount that is not less than the liquidation value of their debt. The above statement of objects and reasons also makes it clear that the entitlement of dissenting financial creditor is to receive liquidation value of their debt and not the distribution as per their security value as is sought to be contended by the Learned Counsel for the Appellant before us. The statement of objects and reasons by which amendments in Section 30(2)(b) has been made, makes it clear that entitlement of dissenting financial creditor is the liquidation value of their debt which also clearly negate the submissions raised by the Learned Counsel for the Appellant before us.

21. Learned Counsel for the Appellant has also referred to Report of Insolvency Law Committee (February, 2020) which report discussed Section 52, 53(1)(b)(ii). The Committee in paragraph 7.4 opined that provision does not necessitate any further amendment to the provisions of the Code. What was said by the Committee was that priority to secured creditors under Section 53(1)(b)(ii) should be applicable only to the extent of the value of the security interest that is relinquished by the secured creditor. The said observation was for different purpose i.e. in reference to priority which with respect to debt owed to secured creditor, in the event secured creditor

relinquishes the security in the manner set out in Section 52. The Committee in its report nowhere even suggested that secured financial creditor is entitled to distribution as per value of security. The conclusion of the committee is that the priority under Section 53(1)(b)(ii) shall be only to the extent of security interest of the secured creditor. The secured creditor cannot claim priority under Section 53(1)(b)(ii) of the whole debt where only part of the debt is secured, the above report of the Committee in no manner helps the appellant to support the submission which is canvassed before us.

22. Learned Counsel for the Appellant has also referred to the Judgment of Hon'ble Supreme Court in "**ICICI Bank Vs. SIDCO Leathers Ltd. & Ors."**, [(2006) 10 SCC 452] in which the Hon'ble Supreme Court has dealt with Section 529 of the Companies Act, 1956. The above judgement was on Section 529 of the Companies Act and does not support the submissions which have been canvassed by the Learned Counsel for the Appellant in the present case.

23. Learned Counsel for the Appellant has also referred to Judgement of this Tribunal in Company Appeal (AT) Ins. No. 731 of 2020 in **"Technology Development Board Vs. Anil Goel & Ors."** decided on 05th April, 2021 which judgement has been stayed by the Hon'ble Supreme Court vide its Order dated 29th June, 2021 in Civil Appeal Diary No. 11060/2021. Learned Counsel for the Respondents have not placed reliance on the Judgement of this Tribunal in Technology Development Board (supra).

24. The Judgement of this Tribunal in Company Appeal (AT) Ins. No. 547 of 2022 in **"Oriental Bank of Commerce Vs. Anil Anchalia & Anr."** decided on 26th May, 2022 also does not support the submission of Learned

Counsel for the Appellant. It was held that dissenting financial creditor is entitled for distribution as per Section 53(1). The claim of the dissenting Financial Creditor that he is entitled to receive the entire amount received from property which was secured with the Financial Creditor was rejected relying on the Judgment of the Hon'ble Supreme Court in "India Resurgence" (supra).

25. In view of the foregoing discussion, we do not find any error in the Order dated 17.03.2022 of the Adjudicating Authority rejecting I.A. No. 581 of 2021 filed by the Appellant. The decision of the Committee of Creditors and the Adjudicating Authority deciding to distribute the proceeds of the plan value as per voting share of the secured creditor in no manner contravenes the provisions of Section 30(2)(b) of the Code. None of the submissions raised by the Learned Counsel for the Appellant has any substance. In result, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

NEW DELHI
16th September, 2022
Basant