

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

**Company Appeal (AT) (Insolvency) No. 67 of 2025**

[Arising out of order dated 14.11.2024 passed by the Adjudicating Authority  
(National Company Law Tribunal, Mumbai Bench, Court – II) in I.A. No.  
4874/2023 in C.P. (IB) No. – 1624/MB/2017]

**IN THE MATTER OF:**

**Cosmos Co-Operative Bank Ltd.**

**...Appellant**

**Versus**

**CS Anaghaanasingaraju,**

**Liquidator for Pandit Automotive Pvt. Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant : Mr. Ramchandra Madan and Mr. Tushar Nigam,  
Advocates.**

**For Respondents : Mr. Avinash R. Khanolkar, Ms. Surekha Yadav and  
Ms. Khushbu Bhanushali, Advocates.**

**Mr. V. Deshpande, Advocate for R-3.**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

This appeal by a secured creditor of the corporate debtor M/s. Pandit Automotive Private Ltd. has been filed challenging the order dated 14.11.2024 passed by the adjudicating authority (National Company Law Tribunal, Mumbai Bench, Court – II) allowing the I.A. No.4873/2023 filed by the liquidator. By the impugned order, adjudicating authority has directed the appellant to make a contribution out of the amount realised by it under Section 52 of the Insolvency and Bankruptcy Code, 2016, (for short the 'Code' or the 'IBC'), proportionately towards workmen's dues in accordance with the Section 226(1)(b) of the Companies Act, 2013 and also towards liquidation

cost in terms of the Section 52(8) of the IBC. Aggrieved by the order impugned, this appeal has been filed.

**2.** Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. The corporate debtor mortgaged its immovable property with the appellant as a guarantor to two borrower companies namely M/s. Pandit Automotive Sangli Private Limited and M/s. Pandit Automotive Satara Private Ltd.
- ii. The appellant issues notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the 'SARFAESI Act, 2002), calling upon the borrower companies and the corporate debtor to repay the amount mentioned therein with interest.
- iii. On account of failure of borrower companies and corporate debtor, appellant issued notice under Section 13(4) and took symbolic possession on 18.10.2017.
- iv. On an application filed under Section 7 by Reliance Commercial Finance Limited, Corporate Insolvency Resolution Process (CIRP) against the corporate debtor commenced on 12.03.2018.
- v. Committee of Creditors (CoC) on 09.07.2018 decided to proceed with the liquidation of the corporate debtor. Adjudicating Authority passed an order on 09.08.2018, directing for liquidation of the corporate

- debtor. Liquidator on 13.08.2018 published notice inviting claim from stakeholders of the corporate debtor.
- vi. On 04.09.2018, appellant filed its claim that is of ₹60,50,002,003/-. Appellant also sent a letter dated 22.11.2018, intimating liquidator that appellant shall realise its security interest under Section 52(1) of the IBC.
  - vii. On 25.07.2019, Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 (for short the “Liquidation Regulations, 2016”) was amended by inserting Regulation 21A in the Liquidation Regulation.
  - viii. On 26.08.2019, IBBI issued a circular clarifying that provisions of the Amendment Regulations 2019 are applicable only to liquidation process which commenced on or after 25.07.2019.
  - ix. Liquidator verified the claim of the appellant on 04.12.2020 as well as the security interest in parcel 1 and parcel 2 of the plot of land and permitted the appellant to realise its security.
  - x. On 28.04.2022, IBBI Liquidation Process Amendment Regulation, 2002 was issued clarifying that Regulation 21A would apply only to liquidation process commencing on or after date of commencement of IBBI Liquidation Process Amendment Regulation, 2019.
  - xi. One Shah Lagoo Properties LLP purchased the assets of the corporate debtor, which were mortgaged with the appellant for total consideration

of ₹21,35,00,000/- which was accepted by appellant on 20.01.2023. Sale certificate was also issued on 23.03.2023 after deposit of the entire amount. Appellant informed the liquidator on 23.03.2023 about the sale of its asset by private treaty for consideration of ₹21,35,00,000/-.

- xii. Liquidator filed an application I.A. No.4874/2023, under Section 60(5) seeking contribution from secured creditors including the appellant who had chosen to exercise their rights to realise the secured interest.
- xiii. The appellant was impleaded as Respondent No. 2 in the application 4874/2023. Adjudicating Authority heard the liquidator as well as the secured creditor in the application and by impugned order has allowed the application. In paragraph 41 of the judgement following order has been passed:

“41. In the light of the foregoing discussion, **IA No. 4874/2023 filed by the Liquidator is hereby allowed** to the extent that Respondents No. 1 and 2 shall make contribution out of the amount realised by them under Section 52 of the Code proportionately towards workmen’s dues in accordance of Section 326 (1) (b) of the Companies Act, 2013 and also towards liquidation cost in terms of Section 52 (8) of the Insolvency and Bankruptcy Code, 2016. There shall be, however, no order as to cost.”

- xiv. Appellant aggrieved by this order has come up in this appeal.

**3.** We have heard learned counsel Mr. Ramchandra Madan and Mr. Tushar Nigam appearing for the appellant. Learned counsel Mr. Avinash R Khanolkar has appeared for the liquidator and learned counsel Mr. V. Deshpande has appeared for Respondent No. 3.

4. Learned counsel for the appellant challenging the impugned order submits that Regulation 21A was inserted in the Liquidation Regulation 2016 only on 25.07.2019, which entitled the liquidator to receive cost of liquidation from secured creditors, who have realised their security interest outside the liquidation which regulation is not applicable in the facts of the present case since the liquidation commenced against the corporate debtor on 09.08.2018. There is no other provisions in the Liquidation Regulation, 2016, under which liquidator could have asked the appellant to make a payment towards workmen's dues and liquidation cost. Adjudicating authority, although in the impugned order has accepted that Regulation 21A does not apply to the facts of the present case but in substance, applied the regulation by directing payments towards the workmen's dues and liquidation cost. Adjudicating Authority has relied on Section 13(9) of the SARFAESI act 2002, which has no application in the IBC proceeding. Provisions of winding up under the Companies Act 1956 and Companies Act 2013 have no application in the IBC. Section 13(9) of the SARFAESI Act 2002, which has been relied by the adjudicating authority commences with phrase "subject to the provisions of the Insolvency and Bankruptcy Code, 2016" which clearly means that when provisions of IBC are applicable Section 13(9) shall not apply. Further Section 326 of the Companies Act 2013, which is *pari materia* to Section 529A of the Companies Act 1956 has been explicitly made inapplicable to cases where liquidation proceeded under the IBC. The exclusion is incorporated under Section 327(7) of the Companies Act, which provisions have been completely overlooked by the adjudicating authority. Regulation 21A being clearly

prospective could not have been utilised for issuing directions by the adjudicating authority. When the IBC was enacted including the Liquidation Regulation, 2016, there was no provisions for asking the secured creditors who decides to realise its security interest to contribute which provisions for the first time came to be added in Liquidation Regulation on 25.07.2019 can have no application in the facts of the present case. It is submitted that dues of the workmen by the appellants have already been stand satisfied. Workmen entered into settlement with purchaser. Appellant cannot be held liable either workmen's dues or liquidation cost. It is prayed that impugned order be set aside.

**5.** Learned counsel appearing for the liquidator refuting the submissions of the appellant submits that adjudicating authority has correctly appreciated the legal position and issued direction to the appellant to contribute towards the workmen's dues and liquidation cost. It is submitted that adjudicating authority has passed the direction in the peculiar situation arising in the present case. Adjudicating authority nowhere has applied the provisions of Regulation 21A. Adjudicating authority has rightly placed reliance on the provisions of SARFAESI Act, 2002 and the Companies Act 2013. Adjudicating authority has not exceeded its jurisdiction in issuing directions. Appellant has realised its security interest under the provisions of SARFAESI Act, 2002. Appellant is liable to comply the requirement of SARFAESI Act, 2002, under which provisions appellant was liable to contribute towards workmen's dues. The process of realization of its security interest by the appellant has not been

affected by the impugned order. Only direction is to contribute towards the unpaid workmen's dues and liquidation cost.

6. We have considered the submissions of the counsel for the parties and perused the records.

7. Regulation 21A of the Liquidation Regulation, 2016 has been inserted in regulation with effect from vide notification dated 25.07.2019, which Regulation 21A is as follows:

**“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.”

**8.** An explanation Regulation 21A has also been inserted vide notification dated 28.04.2022, which explanation is as follows:

*“Explanation.-* It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019.”

**9.** In the present case as noted above liquidation proceeding had commenced vide order dated 09.08.2018. Regulation 21A thus is clearly not applicable in the facts of the present case. Adjudicating authority being conscious of the fact has made observations in paragraphs 31 & 33 of the judgement:

“31. The liquidator has candidly admitted that Regulation 21 A of the Liquidation Rules, 2016 was introduced only with effect from 25.07.2019 and the explanation to the said Regulation itself provides that the requirements of this Regulation shall apply to the liquidation processes commencing on or after the date of commencement of the said amendment i.e. 25.07.2019 whereas the liquidation in this case commenced much earlier on 09.08.2018. Now, the question arises as to whether under the circumstances, the Respondents can be made to contribute towards the liquidation cost and also towards the outstanding dues of the workmen or not.

33. However, the question is that Regulation 21 A is not applicable to the instant case, being prospective in nature, and in the absence of the said Regulation, how and in what manner, the situation cropping up in this case has to be or can be resolved which should be fair and equitable to all the stakeholders. To our mind, even if, we presume that Regulation 21 A is not applicable to the present case, some solution has to be conjured up to meet the situation. The necessity for the introduction of Regulation 21 A also arose on account of the fact that the legislature must have been conscious of the absence of a provision to meet a situation

when all the secured creditors have exercised their right under 52 of the Code and to devise ways and means to close the liquidation process which may be fair and equitable to all the stakeholders.”

**10.** Adjudicating authority in the impugned order has placed reliance on two provisions; (i) Section 13(9) of the SARFAESI Act, 2002; and (ii) Section 52(8) of the IBC for allowing the application filed by the liquidator.

**11.** Section 52(1) entitles the secured creditor to realise its security interest in the manner specified in this Section. Section 52(1), (4) & (8) which are relevant are as follows:

**“52. Secured creditor in liquidation proceedings. –**

(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.

(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.

(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.”

**12.** Sub-section (4) of Section 52, entitled the secured creditor to enforce or realise its secured asset in accordance with such law as applicable to the security interest being realised and apply the proceed to recover the debts issued to it. The present is a case where appellant has realised its security interest by invoking the provisions of the SARFAESI Act, 2002. Section 13 of

the SARFAESI Act, 2002 deals with enforcement of security interest. As noted above notices were issued by the appellant under Section 13(2) and Section 13(4) of the SARFAESI Act, 2002, and the appellant proceeded to realise its security interest under Section 13. Section 13(9) on which reliance has been placed by the adjudicating authority in the impugned order is as follows:

**“13. Enforcement of security interest. –**

(9) Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of] financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than <sup>8</sup>[sixty per cent.] in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimate dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

*Explanation.* – For the purposes of this sub-section, -

(a) "record date" means the date agreed upon by the secured creditors representing not less than <sup>8</sup>[sixty per cent.] in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.”

**13.** It is undisputed case of the parties that realization of security interest by appellant is under the SARFAESI Act, 2002. When appellant has realised its security interest under SARFAESI Act, 2002, it is obviously obliged to follow the provisions of SARFAESI Act, 2002.

**14.** Learned counsel for the appellant submits that provisions of Section 13(9) are not attracted in the present case since the Section 13(9) begins with the phrase “subject to provision of Insolvency and Bankruptcy Code, 2016”. The above phrase thus makes the provision of Section 13(9) subject to Insolvency and Bankruptcy Code, 2016. Section 52(4) of the IBC itself permits secured creditor to enforce or realise its secured assets in accordance with such law as applicable to the security interest. Appellant having invoked the SARFAESI Act, 2002 for realizing its security interest. There is no conflict between the provisions of Section 13(9) of the SARFAESI Act, 2002 and the IBC. Thus, security realization by the appellant is in accordance with the provisions of Section 52(4) of the IBC. The secured creditors having opted to

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realise its security outside the liquidation process and decided not to put the secured assets in the liquidation estate, the provisions of Section 13(9) are fully attracted in the realization of security interest by the appellant. The statutory scheme as delineated by Section 13(9) proviso clearly indicates that amount realised from the sale of secured assets is to be distributed as per the Companies Act 1956. Companies Act 1956, having been repealed and Companies Act 2013 having been enforced, the distribution contemplated has to be under the Companies Act 2013. Secured creditor is liable to pay workmen's dues as per the statutory scheme under Section 13(9) of the SARFAESI Act, 2002. Under the statutory scheme under Section 13(9) secured creditors were obliged to carry on distribution of the assets as per Section 529A of the Companies Act 1956, which is now *pari materia* to Section 326 of the Companies Act 2013. The secured creditors statutorily required to deposit the workmen's dues with the liquidator. Appellant having realised its security interest under SARFAESI Act, 2002. It cannot shirk of its obligation to deposit the workmen's dues with the liquidator which is the scheme of legislation.

**15.** We thus do not find any error in the order of the adjudicating authority, placing reliance on Section 13(9) of the SARFAESI Act, 2002 to support his direction to the appellant to deposit the proportionate workmen's dues with the liquidator.

**16.** The second issue raised is with regard to liquidation cost. Adjudicating Authority has relied on Section 52(8) for issuing direction for payment of liquidation cost. Section 52(8) is as follows:

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**“52. Secured creditor in liquidation proceedings. –**

(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.”

**17.** When we look into Section 52(8), it refers to insolvency resolution process cost due from secured creditors who realised their security interest provided in this Section. The insolvency resolution process cost is defined in Section 5(13), which is as follows:

**“5. Definitions.**

In this Part, unless the context otherwise requires,—

(13) **“insolvency resolution process costs”** means—

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

(e) any other costs [as may be specified by the Board;](#)”

**18.** The expression insolvency resolution process cost itself is clearly referred to Section 5(13) and any cost which is payable by secured creditor under Section 52(8) has to confine to insolvency resolution process cost mentioned in Section 5(13). Section 5(13) of the IBC does not include any liquidation cost.

**19.** We thus do not subscribe to the view of the adjudicating authority that direction to pay liquidation cost can be sustained under Section 52(8) of the IBC.

**20.** Learned counsel for the appellant has relied on BLRC Report. Learned counsel for the appellant has referred to paragraph 5.5.6, which is as follows:

**“5.5.6 Right of the secured creditors to withdraw from collective Liquidation**

Once the moratorium is lifted at the closure of the IRP, the secured creditors can initiate debt recovery action on the assets of the entity. As recognised in other jurisdictions and in the IRP under the Code, the Committee argues that there are likely benefits to collective action in liquidation just as there is in assessing viability during the IRP (Mukherjee, Thyagarajan, and Anchayil, 2015).

However, at the close of the IRP, the Committee appreciates that the secured creditor must be able to enforce their interest and act to maximise their loss given default through sale of the security without the costs of the Liquidation process under the Code. Thus, the Code provides that the secured creditor can withdraw the asset against which they hold security interest.

Drafting instructions for provisions in the Code enforcing the rights of secured creditors in Liquidation is presented in Box 5.20.”

**21.** The above paragraph at best can be read that security interest can be realised without the cost of liquidation process under the Code. The above paragraph of the Report of BLRC does not throw any light with regard to obligation of the secured creditor to contribute to the workmen’s dues when security is realised under the SARFAESI Act, 2002.

**22.** Learned counsel for the appellant has also referred to a discussion paper of IBBI dated 27.04.2019. In the discussion paper which is relied by

the appellant in paragraph 5.1 deals with security interest. It is useful to refer to paragraphs 5.1.5 & 5.1.6 which are to the following effect:

“5.1.5 Where the secured creditors decide to realize their security interest, the workmen would recover lesser amount or nothing depending upon the realisation during the liquidation process. The stakeholders feel that there is a need to make necessary changes in section 52 of the Code on the lines of section 2529(1) of the Companies Act, 1956 or in the Regulations to protect dues of workmen. The said section entitled the Liquidator to recover the cost of preservation of security if the secured lenders sell assets independently. The secured creditor was liable to pay his portion of the expenses incurred by the Liquidator for the preservation of the security before its realisation by the secured creditor. Regulation 21 of the Regulations may provide that if a secured creditor, instead relinquishing his security and proving for his debt, proceeds to realise his security, he shall be liable to pay his share of the expenses incurred by the Liquidator for the preservation of the security before its realisation by the secured creditor.

5.1.6 Similarly, if a CD has only secured assets and all security holders decide to realise their security interests outside the liquidation assets, there will be no liquidation proceeds and hence there will be no resource to meet the liquidation costs. It is necessary to provide that the liquidation costs must be met out of proceeds from sale of secured assets whether these are sold as part of liquidation asset or security interests are realised outside.”

**23.** The amendments in Liquidation Regulations were incorporated on 25.07.2019, i.e., subsequent to the discussion paper, which now specifically provides that the contribution by the secured creditors who realises their security interest outside the liquidation process.

**24.** Learned counsel for the appellant has also placed reliance on the judgement of the Hon’ble Supreme Court in **Writ Petition (Civil) No. 421/2019, ‘Mosar Baer Karamchari Union’ Vs. ‘Union of India & Ors.’** reported in **[(2023) 9 SCC 499]**. In the above Writ Petition, the petitioners have prayed for striking of Section 327(7) of the Companies Act 2013. The

Writ Petition was dismissed and the statutory provisions of Companies Act were upheld. Repelling the contentions of the writ petitioner that provisions of Sections 326 & 327 are arbitrary following was observed in paragraphs 26 to 29:

**“26.** In view of the enactment of IBC and Section 53 IBC, it necessitated to amend the 2013 Act. As per sub-section (7) of Section 327, Sections 326 and 327 shall not be applicable in the event of liquidation under IBC. The object and purpose of amending the 2013 Act and to exclude Sections 326 and 327 in the event of liquidation under IBC seems to be that there may not be two different provisions with respect to winding up/liquidation of a company. Therefore, in view of the enactment of IBC, it necessitated to exclude the applicability of Sections 326 and 327 of the 2013 Act which cannot be said to be arbitrary as contended on behalf of the petitioner.

**27.** At this stage, it is required to be noted that sub-section (7) of Section 327 of which the vires are under challenge, shall be applicable in case of liquidation of a company under IBC. Meaning thereby, in case of liquidation of a company under IBC, the provisions of Section 53 IBC and other provisions of IBC shall be applicable as the company is ordered to be liquidated or wound up under the provisions of IBC. Therefore, merely because under the earlier regime and in case of winding up of a company under the 1956 Act/the 2013 Act, the dues of the workmen may have pari passu priority with that of the secured creditor, the petitioner cannot claim the same benefit in case of winding up/liquidation of the company under IBC. The parties shall be governed by the provisions of IBC in case of liquidation of a company under the provisions of IBC.

**28.** Now so far as Section 53 IBC is concerned, it provides for distribution of the assets in case of liquidation of a company under IBC. As per Section 53(1)(b) the workmen's dues for the period of twenty-four months preceding the liquidation commencement date shall rank equally between the workmen and the secured creditor in the event such secured creditor has relinquished security in the manner set out in Section 52. Therefore, workmen's dues for the period of twenty-four months preceding the liquidation commencement date shall have pari passu priority with the dues of secured creditor. At this stage, it is required to be noted that as per Section 36(4) IBC, all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund shall not be

included in the liquidation estate assets and shall not be used for the recovery in the liquidation. Therefore, a conscious decision has been taken by Parliament/Legislature in its wisdom to keep out of all sums due to any workman/employee from the provident fund, the pension fund and the gratuity fund from the liquidation estate assets [as per Section 36(4)] and that the workmen's dues for the period of twenty-four months preceding the liquidation commencement date shall rank equally between the workmen's dues to the said extent and the dues to the secured creditor. Therefore, the same cannot be said to be arbitrary and violative of Article 21 of the Constitution of India as contended on behalf of the petitioner. As per the settled position of law, IBC is a complete code and the object and purpose of IBC is altogether different than that of the 1956 Act/the 2013 Act. IBC is a new insolvency mechanism, therefore, the provisions under IBC cannot be compared with that of the earlier regime, namely, the Companies Act, 1956/the Companies Act, 2013.

**29.** At this stage, it is required to be noted that the issue with respect to the workman and the secured creditor being kept at equal footing under Section 53 IBC is only in a case wherein the secured creditor has relinquished its security and the same is the part of the stage of the liquidation pool.”

**25.** Observations made in paragraph 29 clearly mentions that issues with respect to workmen as a secured creditor being kept on and equal footing under Section 53 is only in case where secured creditor has relinquished its security and the same is part of the stage of liquidation pool. It was due to the waterfall mechanism under Section 53 that provisions of Section 327(7) were upheld. On waterfall mechanism under Section 53, Hon’ble Supreme Court laid down in paragraph 48:

**“48.** The waterfall mechanism is based on a structured mathematical formula, and the hierarchy is created in terms of payment of debts in order of priority with several qualifications, striking down any one of the provisions or rearranging the hierarchy in the waterfall mechanism may lead to several trips and disrupt the working of the equilibrium as a whole and stasis, resulting in instability. Every change in the waterfall mechanism is bound to lead to cascading effects on the balance of rights and interests

of the secured creditors, operational creditors and even the Central and State Governments. Depending upon the facts, in some cases, the waterfall mechanism in the Code may be more beneficial than the hierarchy provided under Section 326 of the Companies Act, 2013 and vice-versa. Therefore, we hesitate and do not accept the arguments of the petitioners.”

**26.** As observed above, waterfall mechanism is to be restored with regard to workmen’s dues only when secured creditors have relinquished their security interest. No exception can be taken to the law laid down by the Hon’ble Supreme Court in the above case. Hon’ble Supreme Court had upheld the provisions of Sections 326 & 327 of the IBC and repelled the challenge that provisions are arbitrary. It goes without saying that when secured creditors are relinquishing their security interest, it is Section 53, which shall be applied for distribution. In the present case, applicability of Section 53 in the distribution is not attracted, secured creditors having not relinquished their security interest.

**27.** In view of the above discussions, we sustain the direction of the adjudicating authority directing the appellant to make contribution out of the amount realised under Section 52 of the Code proportionate towards workmen’s dues. However, direction to make contribution towards liquidation cost in terms of Section 52(8) cannot be sustained.

**28.** In result, the appeal is partly allowed. Direction to the appellant to make contribution out of the amount realised by it under Section 52 of the Code proportionate towards workmen’s dues is upheld, whereas, direction to the appellant to make contribution out of the amount realised by it under

Section 52 of the Code, proportionate towards liquidation cost in terms of Section 52(8) are set aside.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

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

**NEW DELHI**

***08<sup>th</sup> July, 2025***

*himanshu*