

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

IA (I.B.C) No. 1780/MB/2021
IN
C.P. (IB) No. 2294/MB/2018

*[Under Section 52(5) of the Insolvency
and Bankruptcy Code, 2016]*

Central Bank of India

..... Applicant

IN THE MATTER OF

ICICI Bank

... Financial Creditor

Vs.

M/s. Anil Printers Limited

... Corporate Debtor

And

Vishal Bidawatjika

.... Official Liquidator

Order pronounced on: 26.06.2025

CORAM:

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

Appearances: Hybrid

For Applicant : Adv. Raina Birla
For Respondent : Adv. Akash S. Acharya
For Liquidator : Mr. Vishal Bidawatjika

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

IA (I.B.C) No. 1780/MB/2021
IN
C.P. (IB) No. 2294/MB/2018

ORDER

1. This Application is filed under Section 52(5) of the Insolvency and Bankruptcy Code, 2016 (Code) to facilitate realisation of security interest in accordance with law seeking various reliefs. However, the Applicant, during the hearing submitted that he wants to pursue only the following reliefs:

“3. Liquidator be directed to distribute the Sale Proceeds received from the sale of Moveable as well as Immovable Properties amongst the Secured Creditors including the Applicant.

4. Liquidator be directed to take steps to repay the claim of the Applicant by selling the moveable as well as immovable properties owned by the Corporate Debtor. “

2. **Facts of the case**

- 2.1 This Tribunal *vide* order dated 06.05.2019, initiated Corporate Insolvency Resolution Process (CIRP) in C.P.(IB) No.2294/MB/2018 against Anil Printers Limited (Corporate Debtor). During the CIRP, the Applicant filed its claim in Form-C with the Interim Resolution Professional (IRP) appointed by this Tribunal. The claim of the Applicant was admitted and the Applicant was recognised as ‘Secured Creditor’ in the 3rd meeting of the Committee of Creditors (CoC) held on 19.09.2019.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

IA (I.B.C) No. 1780/MB/2021
IN
C.P. (IB) No. 2294/MB/2018

2.2 Thereafter, liquidation process against the Corporate Debtor was initiated by an order dated 15.10.2019, and Mr. Vishal Bidawatjika, the Respondent herein, was appointed as the Liquidator for the Corporate Debtor. The Liquidator sold the assets of the Corporate Debtor, but no amount was distributed to the Applicant. In the circumstances, the Applicant has filed the present Application.

3. Submissions of Applicant

3.1 The Applicant submits that it sanctioned working capital facilities to the extend of Rs. 6 Crore to the Corporate Debtor on the terms and conditions of the Sanction Letter dated 06.08.2010. As security for the working capital facility granted by the Applicant, the Corporate Debtor executed a deed of hypothecation creating charge on the book debts and other goods (movable properties). The charge created on the book debts and inventory of the Corporate Debtor was duly registered with the Registrar of Companies under Section 125 of the Companies Act, 1956. The Applicant had also sought NoC from the Financial Creditor for creation of *pari passu* charge on movable and immovable assets of the Corporate Debtor.

3.2 Since the Corporate Debtor committed defaults in repayment of the working capital facility, the Applicant filed a recovery application before the Debt Recovery Tribunal (OA.No.246/2015). This application was allowed *vide* order dated 20.05.2016 and issued a recovery certificate for Rs. 8,87,52,822/- with further

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

IA (I.B.C) No. 1780/MB/2021
IN
C.P. (IB) No. 2294/MB/2018

interest at the rate 12.5% per annum from the date of application till payment or realisation.

- 3.3 The Liquidator has filed an application under Section 35(1)(n) read with Regulation 9 of IBBI (Liquidation Process) Regulations 2016, against the Suspended Board/Directors of the Corporate Debtor seeking directions to extend necessary support for the smooth conduct of the liquidation process. The said application is still pending. On account of the non-cooperation of the Suspended Directors, the Forensic Auditor's report submitted in November 2019 was incomplete and inconclusive. The Forensic Auditor's Report could not reveal the information regarding the book debts and goods hypothecated in favour of the Applicant. It is submitted that the Respondent did not take the necessary steps for the cooperation of the Suspended Directors or for obtaining a conclusive forensic audit report.
- 3.4 The Applicant could not trace the assets charged/hypothecated to the Applicant and hence the Applicant seeks a direction under Section 52(5) of the Code, which enables the secured creditors to make an application before this Tribunal if in the course of realising a secured asset, the secured creditor faces any resistance from the Corporate Debtor or any person connected therewith in the taking possession of, selling or otherwise disposing off the security. The Applicant submits that he is facing resistance due to the inefficient acts of the Forensic Auditors as well as the Liquidator in tracing the assets charged to the Applicant.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

IA (I.B.C) No. 1780/MB/2021
IN
C.P. (IB) No. 2294/MB/2018

3.5 The Applicant submits that the liquidator be directed to sell the secured assets without any delay and the sale proceeds be distributed amongst the secured creditors in accordance with the law.

4. Contentions of Respondent

4.1 The Liquidator filed the affidavit in reply dated 07.08.2021, denying the averments made by the Applicant.

4.2 The Respondent submits that the Application suffers from legal infirmities as it has been filed under Section 52(5) of the Code and at the same time claims a share in the distribution made as per Section 53 of the Code.

4.3 It is submitted that the Applicant was classified as a Secured Creditor on the basis of the hypothecation charge executed in favour of the Applicant. However, no assets secured in favour of the Applicant were available even before the commencement of CIRP. It is further submitted that on the insolvency commencement date, the factory at Ambad MIDC was being run by one Sarvin Printers, and the factory at Gonde remained sealed by the Financial Creditor two years prior to the commencement of CIRP. Neither IRP nor the Applicant could locate any stocks or book debts of the Corporate Debtor. Even the Applicant obtained a recovery certificate from the DRT on 20.05.2016, much before the commencement of CIRP. Not being able to trace the goods charged in favour of the Applicant is beyond the control of the liquidator. The Applicant has also not identified any security

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

IA (I.B.C) No. 1780/MB/2021
IN
C.P. (IB) No. 2294/MB/2018

charged in their favour nor relinquished their security in favour of the Liquidator.

4.4 The Liquidator has in no way obstructed or resisted the enforcement of the secured assets claimed to be hypothecated/charged in their favour.

4.5 Hence, the Liquidator seeks dismissal of the Application.

5 Analysis and findings:

5.2 We have heard the Ld. Counsel for the parties and perused the documents on record.

5.3 The records reveal that the Corporate Debtor is currently undergoing the liquidation process pursuant to an order passed by this Tribunal on 15.10.2019. The Applicant was admitted as a secured creditor in respect of its claim on the basis of hypothecation charge and the registration of charge with the Registrar of Companies. However, the assets that were charged in favour of the Applicant have not been located/traced since the commencement of CIRP. There is no record to show that the security created in favour of the Applicant was relinquished by the Applicant in terms of Section 52(1) (a) of the Code. Further, the liquidator proceeded with the sale of assets relinquished by the secured creditors to the liquidation estate, and the sale proceeds were distributed to the Financial Creditors in accordance with Section 53 of the Code. Since the Applicant did not receive any

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

IA (I.B.C) No. 1780/MB/2021
IN
C.P. (IB) No. 2294/MB/2018

distribution from the sale, the Applicant has filed the present Application.

- 5.4 The Applicant claims to be a secured creditor based on the security on the book debts and other goods created by way of deed of hypothecation executed by the Corporate Debtor in the year 2010. Although the Applicant obtained a recovery certificate in 2016, the same could not be executed. Given that the assets charged in favour of the Applicant were never available at any stage of the CIRP or Liquidation Process, there was no occasion for the Applicant to relinquish its security interest to the Liquidation estate or realise its security interest as per Section 52(1)(b) of the Code. When the secured creditor has not relinquished its security interest to the liquidation estate as per Section 52(1)(a) of the Code, the claim of the Applicant falls lower in the category of unsecured creditors in the waterfall mechanism provided in Section 53 of the Code. Since the secured Financial Creditor who relinquished their security to the liquidation estate have not been paid fully, there is no basis for distributing to the Applicant in accordance with Section 53.
- 5.5 As regards the other contention of the Applicant to facilitate the enforcement of security interest as provided under Section 52(1)(b) of the Code, we notice that the goods hypothecated to the Applicant were not traceable even on the insolvency commencement date. As the present Application has been filed under Section 52(5) of the Code, it is appropriate to extract the relevant provision hereunder.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

IA (I.B.C) No. 1780/MB/2021
IN
C.P. (IB) No. 2294/MB/2018

“52 (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.”

5.6 A plain reading of the above provision clearly indicates that the intent of this provision is to facilitate the realisation of secured assets when there is resistance from the Corporate Debtor or any connected person. This, in our considered view, this provision cannot be interpreted as imposing a duty on the liquidator or forensic auditor to trace the goods on behalf of the creditor to enable their recovery. Thus, we find no merit in the Application filed under Section 52(5) of the Code.

5.7 In the facts and circumstances of the case, it is evident that the Applicant has not relinquished any security to the liquidation estate, which would qualify them as a secured creditor for the purpose of distribution under Section 53 of the Code. Further, no case is made out to show that there is resistance from the liquidator or the forensic auditor in realising the security by the Applicant. The Applicant has also not brought on record any evidence to show that the assets charged to the Applicant were available, but could not be realised due to resistance from any person. Consequently, the Application is devoid of merit and deserves to be dismissed.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

IA (I.B.C) No. 1780/MB/2021
IN
C.P. (IB) No. 2294/MB/2018

5.8 Accordingly, **IA.No.1780/2021 is dismissed with no costs.**

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)