

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 514 of 2019 in C.P. (I.B) No. 4/NCLT/AHM/2017

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.02.2020**

Name of the Company: Technology Development Board
V/s
Anil Goel & Ors

Section : IA for Directions

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	DEEPA VYAS KONAL SAISHARAY	AOY	Applicant	<i>[Signature]</i>
2.				

ORDER

The Applicant is represented through learned counsel.

The Order is pronounced in the open court vide separate sheet.

[Signature]
**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 27th day of February, 2020

[Signature]
**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

**I.A. No. 514 of 2019
in
CP(IB) No. 04 of 2017**

In the matter of:

1. Technology Development Board,
Vishwakarma Bhavan, Wing 'A',
Shaheed Jeet Sing Marg,
New Delhi -110 016
-Applicant
(Org. Financial Creditor)

Versus

1. Mr. Anil Goel,
Liquidator of Gujarat Oleo Chem Limited,
AAA Insolvency Professional LLP,
E-104, Kailash Colony,
Greater Kailash-1,
New Delhi - 110 048
2. Stressed Asset Stabilisation Fund,
5th Floor, IDBI Tower,
WTC Complex, Cuff Parade,
Mumbai - 400 005
3. Gujarat State Finance Corporation,
Block No.10, Udyog Bhavan,
Gandhinagar-382017
-Respondents

Order delivered on 27th February, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance:

Learned Advocate Mr. Deep D. Vyas for the Applicant and
Learned Advocate Ms. Natasha Dhruvan Shah for Respondent
No.1

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member(Technical)]

1. The instant application (IA) No. 514 of 2019 in CP(IB)No.
04/2017, is filed by Technology Development Board, (an

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autonomous body under the Department of Science and Technology, Ministry of Science and Technology, Government of India) being a Financial Creditor of Gujarat Oleo Chem Limited, the company under liquidation.

2. It is stated that Applicant has lodged his claim with the IRP/RP when Gujarat Oleo Chem Limited was in Corporate Insolvency Resolution Process and the Applicant/the Financial Creditor was part of the Committee of Creditors having voting share of 14.54%. Thereafter, the liquidation order was passed by this Adjudicating Authority on 17.01.2018 and Respondent No.1 was appointed as a liquidator of the Respondent Company. It is further stated Applicant lodged his claim for Rs.24,78,68,595/- with the liquidator and the liquidator has not called for the meeting of the Creditors for one and half years. However, it is stated that Applicant received E-mail on 07.05.2019 regarding meeting of creditors scheduled on 09.05.2019 however, due to paucity and proximity, the Applicant could not attend the meeting and vide his E-mail dated 08.05.2019 requested for sufficient time by scheduling aforesaid meeting of creditors on some other date. However, there was no response from the Respondent No.1. The Respondent No.1 vide his E-mail dated 16.05.2019 sent minutes of the meeting held on 09.05.2019 informing that the sale proceeds has been distributed amongst the Respondent No.2 and 3 stating them as the Security Charge Holders and distributed Rs.9,59,03,179/- to Respondent No.2 and Rs.1,59,99,480/- to the Respondent No.3 without considering the claim of the Applicant as secured creditor.





3. The Applicant further states that the said distribution made by the liquidator is done without following requisite procedure and approval of the other creditors including the present Applicant. The Applicant submitted that the said action of the Respondent No.1 is arbitrary and without due process of law. Even otherwise, the same is not in consonance with the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IB Code). More particularly, the Applicant's claim was admitted and the Applicant was granted voting rights. The Applicant further submits that in accordance with law, admitted claims of secured creditors and as per voting rights of the Applicant, his share is 14.54% which comes to Rs.1,62,70,647/- in the total proceeds wrongly distributed by the Respondent No. 1.
4. It is stated that Applicant under such circumstances, addressed letter dated 14.06.2019 to the liquidator. However, the Respondent No.1 reiterated his stand and declined the request of the Applicant by his communication dated 19.06.2019.
5. The Applicant submits that in pursuance of Section 52(1)(a) of the IB Code, all the secured creditors i.e. Respondent No.2 and 3, the Applicant Oriental Bank of Commerce and Andhra Bank had relinquished their right in the liquidation proceeds of the company to participate in the liquidation proceedings / distribution of assets in accordance with Section 53 of the IB Code. Section 53 of the IB Code provides for equal ranking of secured creditors and there is preferential treatment for first charge holders over second





charge holders as their security is relinquished in a common pool.

6. The Applicant submits that Applicant is a secured creditor admitted by the liquidator, would be entitled for pro-rata share in the liquidation proceeds i.e 14.54% and has therefore approached this Adjudicating Authority praying for appropriate reliefs.
7. The Applicant submits that Respondent No.1 is liable to retrieve back the liquidation proceeds of company i.e Rs.11,19,02,659/- from SASF (Respondent No.2) and GSFC (Respondent No.3) and redistribute the same on proportionate / pro-rata basis immediately. The Applicant further submits that in pursuance to Section 52(1)(a) of the IB Code, all the secured creditors in GOCL had relinquished their right in the liquidation proceeds of GOCL, to participate in the liquidation proceeding / distribution of assets in accordance with the Section 53 of IB Code.
8. The Applicant submits that Respondent No.1 is liable to pay interest @18% p.a. from the date Respondent No.1 had arbitrarily distributed the liquidation proceeds to Respondent No.2 & 3 on the Applicant's share of liquidation proceeds i.e. Rs.1,62,70,647/-.
9. The Applicant has prayed for the following relief;
 - (A) *Be pleased to direct the Respondent no.2 and 3 to forthwith deposit the sum received by them from the sale proceeds and further be pleased to direct Respondent no.1 to allocate corpus of sale proceeds*

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evenly to the Applicant in terms of their shares as the secured creditor i.e 14.54%.

- (B) *During hearing and pendency of this Application, direct the Respondent no.2 and 3 to forthwith deposit the sum received by them from the sale proceeds before this Hon'ble Tribunal.*
- (C) *Direct Respondent no.1 to pay interest to Applicant @ 18% from the date of disbursement and encashment of sale share in favor of Respondent no.2 and 3, qua the amount of the Applicant, in terms of their share as the secured creditor i.e. 14.54%.*
- (D) *Be pleased to direct initiation of appropriate proceedings against the erring concern.*
- (E) *To pass such other and further orders as this Hon'ble Tribunal may deem just and proper.*
10. The Respondent No. 1 in his reply submitted that application for initiation of Corporate Insolvency Resolution Process was filed by the Corporate Debtor in the year 2017 under Section 10 of the IB Code in view of the financial default of Rs.48,79,000.63.
11. The Respondent No. 1 further submits that due to failure of CIRP, the liquidation process of the Corporate Debtor commenced on 17.01.2018.
12. The Respondent No. 1 submits that at the outset, the application filed by the Applicant is liable to be rejected by

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this Tribunal as the decision taken by the liquidator on distribution of the sale proceeds has been made in accordance with Section 53 of IB Code. It is further submitted that the Respondent No. 1 had made the disbursement of the liquidation proceeds based on the interpretation of Section 53(2) as given in paragraph 21 of the Report of the Insolvency Law Committee dated 26th March, 2018.

13. The Respondent No. 1 further submits that the Applicant has a second charge on the moveable properties including moveable plant and machinery, machinery spares, tools, accessories and other moveable's (both present and future).
14. The Respondent No. 1 submits that in compliance of his duties as per the Code, the Respondent No. 1 verified the claims of the financial creditors and identified the charges of the financial creditors on the assets of the Corporate Debtor on the following basis:-

<u>Name of the stake holder</u>	<u>Industrial Property at Panoli, Ankaleshwar (Land)</u>	<u>Flat No.E-9 at GIDC, Ankaleshwar</u>	<u>Flat No.E-17 at GIDC, Ankaleshwar</u>	<u>Moveable properties (both present and future)</u>
SASF	First Pari passu charge	First exclusive charge	First exclusive charge	First charge
GSFC	First Pari passu charge	NIL	NIL	NIL
TDB	NIL	NIL	NIL	Second charge

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OBC	Second Pari Passu Charge	Second Pari Passu Charge	Second Pari Passu Charge	Second Pari Passu Charge
Andhra Bank	Second Pari Passu Charge	Second Pari Passu Charge	Second Pari Passu Charge	NIL

15. The Respondent No. 1 further submits that on 12.06.2018, the E-Auction of the following assets of the Corporate Debtor took place, wherein Mr. Himanshu Ramnilal Shah emerged as the highest bidder and sale certificate was issued for the following properties:
- Industrial property situated at Plot No.631-639, 654-656, 2019-2027, GIDC, Ankaleshwar
 - Residential Flat No.E-9, Amrapali Co-operative Housing Society Pvt. Ltd, GIDC, Ankaleshwar.
 - Residential Flat No.E-17, Amrapali Co-operative Housing Society Pvt. Ltd, GIDC, Ankaleshwar.
16. The Respondent No. 1 further submits that a mail was sent to the stakeholders on 07.07.2018 providing the charge sheet and the amount to be distributed, sheet on sources and uses of funds and liquidator's fee sheet, requiring the stakeholders to provide the objections within 5 days of the receipt of mail.
17. The Respondent No. 1 further submits that since no objections were received, the Respondent No. 1 disbursed the amount received from the sale of assets on 14.07.2018,

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in consideration of charge held by the creditors on the
assets of the Corporate Debtor in the following manner:

Sr. No.	Name of stakeholders under Section 53(b)(2)	Industrial property Bearing No.6912696, Unit-1; situated at; Plot No.631-639, 654 to 656, 2019-2027, GIDC, Panoli, Ankleshwar	Flat No.E-9, Amrapali Cooperative Housing Society Pvt. Ltd., GIDC, Ankleshwar areas covering 571 sq.ft.	Flat No.E-17, Amrapali Cooperative Housing Society Pvt. Ltd., GIDC, Ankleshwar area covering 571 sq.ft	Flat No.2, Rajshila at 597, JSS Road, Marine Lines, Mumbai(Not part of liquidation estate as the property is owned by Mr. S.D. Pathak)	Flat N o.C-41 and 42, Troika A partments Cooperative Housing Society Ltd. Lokhandwala, Complex, Andheri ("W), Mumbai covering area 630 sq.ft. each (not part of liquidation estate as the property is owned by Mr. S.D. Pathak and Ms. Uma Pathak respectively)	Movable properties including movable, plant and machinery, spares, tools and accessories, other movables (both present and future)	Claim admitted by liquidator	Percentage	Liquidation value as per sec. 53	Amount being disbursed.
	Liquidation value	109851574	1258870	792215							
1	Stressed Assets Stabilization fund	First paripasu charge	First Exclusive Charge	First Exclusive Charge	First Exclusive Charge		First charge	1735439280	46.57%	95903179	95903179
2	Gujarat Stage Financial Corporation	First paripasu charge						295849828	7.94%	15999480	5999480
3	Technology Development Board						Second charge	247868595	6.65%		
4	Oriental Bank of Commerce	Second paripasu	Second Paripasu	Second Paripasu	Second paripasu	First paripasu		43138136	11.58%		
5	Andhra Bank	Second paripasu	Second Paripasu	Second Paripasu	Second paripasu	First paripasu		1015980132	27.26%		
								3726519195	100.00%	111902659	111902659

18. The Respondent No. 1 submits that Respondent No. 1 has distributed the liquidation proceeds as per the provisions of the IB Code and based on understanding of paragraph 21.6 of Insolvency Law Committee (ILC) Report dated 26/03/2018 with regard to waterfall treatment of section 53 in the following manner-

- I. The CIRP Costs and Liquidation Costs shall be paid off in priority, thereafter;
- II. The first charge holder of a particular asset will be entitled to receive sale proceeds in priority up to the payment of its debt in full, after which, the second

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- charge holders would be paid from the balance sale proceeds, if any;
- III. If a particular Secured Stakeholder has exclusive charge on any asset, it alone shall be entitled to receive the proceeds from sale of such asset;
- IV. Pari-pasu charge holders shall be paid in proportion of their debt;
- V. The first charge holder of any current asset will be entitled to receive sale proceeds in priority up to the payment of its debt in full, after which, the second charge holders would be paid from the balance sale proceeds, if any;
- VI. After allocating sale proceeds of assets to the secured creditors who are having security interest in the assets, the balance debt would be tabulated and any sale proceeds or recovery from any other assets shall be distributed in the proportion of balance debt.
19. The Respondent No.1 states that he distributed the sale proceeds as per Section 53 of the IB Code. The Respondent No.1 has also taken into consideration the interpretation of law from the report of ILC and relied upon the judgment delivered by the Hon'ble NCLT, Kolkata Bench in the case of Sree Metalika Limited V. SREI Equipment Finance and Engineering Limited (Company Petition (IB) No.16/KB/2017) and the judgement of Hon'ble Supreme Court in the case of ICICI Bank Ltd Vs. Sidco Leathers Ltd. & Ors in Appeal (civil) 2332 of 2006.





Findings:

- 20.1 Perusal of the records, it is observed that the Applicant is having secured interest (second charge) only on the movable properties and not on immovable properties. Hence, the security interest is limited only to movable properties and not on entire assets of the Corporate Debtor. For distribution of assets under Section 53 of the Insolvency and Bankruptcy Code, 2016, his security interest is limited to movable assets.
- 20.2.1 Further, the dispute between the parties is whether inter-se priorities between the secured creditors i.e between the first charge holder and second charge holder has to be taken into consideration while distributing the liquidation proceeds.
- 20.2.2 It is to be noted that on the commencement of liquidation, a secured creditor has anyone of the following two options:-
- To realize his security interest outside the liquidation proceedings (Section 52 of the Code).
 - To claim the proceed from the liquidation proceedings after relinquishment of the security interest (Section 53 of the Code).

Now, the issue to be decided is whether;

- Once a secured creditor has not realized his security, under Section 52 of the Code, and has relinquished the security to the liquidation estate, there remains no classification inter-se, i.e. by joining liquidation proceedings, all the secured creditors rank equal (pari

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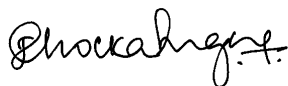
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passu), irrespective of the fact that they have inter-se priority in security charge.

It is important to understand what a first charge and second charge is. The first charge holder has a security interest on the asset of a company; the second charge holder has a subsequent charge over the remainder of the asset of the company, which is remaining after settling the claims of the first charge holder. In that sense, the charges are sequential and not proportional. It is a settled position that when a charge is created on a property already subject to encumbrance, it is no good to say that the existing charge holder ought to have objected to the creation of the second charge. In fact, if the charge is existing and registered, the charge is deemed to be a public notice, and anyone acquiring any interest in the same property is presumed to have notice of the charge.

To understand the interplay of charges, one needs to understand Section 53(2) of the Code which provides that *“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.”* On interpretation of the aforesaid provision, the stress is clearly on the words ‘with equal ranking’. If there are security interest of equal ranking, and parties have entered into a contract to the effect that one party will be paid in priority to the other, such a contract will be disregarded in liquidation.

The whole stance in liquidation proceedings is to ensure parity and proportionality. However, the idea of proportionality is only as far as claims of similar ranking are concerned. A security interest determines the recovery rate of a defaulted loan; hence, the ranking of security interest directly determines the value of the defaulted loan. If, contractually, parties had put Mr. A on first priority, and Mr. B on second priority, there will be no parity whatsoever





in the law pushing back Mr. A to the same status as Mr. B, as that would substantially erode the recovery rate for Mr. A.

The concept of distribution waterfall existed both in the Companies Act, 1956 and 2013, and not a concept unique to the Code. In fact, Companies Act is the parent Act, based on which the Code was formulated, and it is important to refer to Section 529A which was introduced in the Companies Act, 1956 by virtue of Companies (Amendment) Act, 1985, to provide a protection to the workmen. The intent of the said Section was deliberated upon by the Bombay High Court in the case of **Sicon Limited V. State of Maharashtra, III (2006) BC 304**. The relevant extracts of the judgments are reproduced hereunder-

“35. In terms of Section 529 of the Companies Act, as it stood prior to its amendment, the dues of the workmen were not treated pari passu with the secured creditors as a result whereof innumerable instances came to the notice of the Court that the workers may not get anything after discharging the debts of the secured creditors. It is only with a view to bring the workmen’s dues pari passu with the secured creditors, that Section 529-A was enacted.

*36. ** Only because the dues of the workmen and the debts due to the secured creditors are treated pari passu with each other, the same by itself, in our considered view, would not lead to the conclusion that the concept of inter se priorities amongst the secured creditors had thereby been intended to be given a total go-by.”*

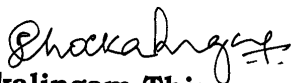
The issue of ranking of secured creditors have been discussed by the Supreme Court in **ICICI Bank V. Sidco Leathers Ltd., (2006) 10 SCC 452** – If the secured creditors relinquish their security interest and make claim on the liquidation estate, will the first / second ranking remain, or all secured creditors will be of the same ranking. In this case, the Supreme Court discussed the legal position and maintained the ranking of the secured creditors.

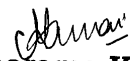
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20.2.3 In view of the above, this Adjudicating Authority is of the considered view that the inter se priorities amongst the secured creditors will remain valid and prevail in distribution of assets in liquidation and hence the instant application IA 514/2019 in CP(IB) 04/2017 is not maintainable.

21. IA 514/2019 in CP(IB) 04/2017 is disposed-off accordingly with no order as to costs.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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