NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.12.2021 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
TCP(IB) No.33/7/AMR/2019	IA No.8/2020	7 of IBC	Canara Bank Vs Transstroy (India) Ltd. (Under Liqudation)

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA No.8/2020 is allowed, vide separate orders.

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH

I.A.No.8 of 2020
IN
TCP (IB) No.33/7/AMR/2019
IN
CP (IB) No.47/7/HDB/2018

Under Section 52, 53 and 60 of the Insolvency and Bankruptcy Code, 2016

In the matter of
M/s. TRANSSTORY (INDIA) LIMITED

BETWEEN:

UCO Bank,
Flag Ship Corporate Branch,
Somajiguda, Hyderabad

.... Applicant

AND

Govindarajula Venkata Narasimha Rao,
Liquidator for M/s.Transstroy India Limited,
301, Alekhya Raindrops, Gautami Enclave,
Kondapur, Hyderabad -500084

.... Respondent

Orders pronounced on: 06.12.2021

***Coram*:**

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

For the Applicant : Mr. P.V.Markandeyulu, Advocate

For the Respondent : Mr. Abhishek Dash, Advocate

ORDER

1. This application is filed under Section Under Section 52, 53 and 60 of the Insolvency and Bankruptcy Code, 2016, by the

Applicant/Financial Creditor i.e., M/s. UCO Bank on the following facts:

i. Vide order dated 18.09.2019, this Tribunal ordered for liquidation of the Company M/s. Transstroy India Limited and appointed Mr.G.V.Narasimha Rao as the Liquidator, who was earlier appointed as the IRP.

ii. The Committee of Creditors (CoC) was formed by the IRP and in its meeting dated 07.05.2019 voting was done in favour of liquidation of the Corporate Debtor. After the appointment of Liquidator by the Tribunal, the Liquidator called the Secured Creditors and Unsecured Creditors to submit their proof of claims, including the particulars of the securities.

iii. The Applicant Bank submitted its proof of claim. Security interest which was credited in favour of the Bank was relinquished as under:

   a) Security interest of current assets as part of consortium arrangement.

   b) Collateral Security exclusively charged to the Bank is also relinquished on condition that the sale proceeds there of shall be allotted exclusively to the Bank without any sharing with other Financial Creditors.

iv. On submission of proof of claim by the Applicant Bank, the Liquidator, on 11.11.2019, sent reply by email to the letter of the Bank dated 01.11.2019 stating that it will not be able to agree to the request to remit the proceeds upon realisation of the collateral security exclusively charged to the Applicant without sharing it amongst other Financial Creditors/Lenders subject to proportionate deduction thereof. The reasons assigned were that;

a) The expression "relinquishing security" contemplates that the secured creditor gives up the security created in its favour and brings such relinquished security to the common pool for the benefit of all the secured creditors, who are similarly relinquishing their security.

b) The object of the enabling provision to facilitate relinquishment of security is that where a Secured Creditor relinquishes a security and brings it to the common pool, such relinquishing secured creditor is compensated by being entitled to distribution as per the priority level contemplated in Section 53 (1) (b) (ii) of the Code.

v. As the representation of the Applicant Bank was declined to be accepted by the Liquidator, this Application, seeking this Tribunal to consider the concept of the exclusive charge over the property securities and realisation thereof and issue necessary direction to the Liquidator.

2. The Liquidator filed counter accepting the facts to the extent of the Applicant Bank having a secured interest and relinquishment of the security. But the contention is that the entitlement of the Applicant Bank would be, in accordance with Section 53 of the Code and as per the priorities listed out in Section 53.

3. Heard the arguments of Counsel appearing for the Applicant and Counsel appearing for the Respondent. At the outset Section 53 of

the IBC, 2016 reproduced hereunder for ready reference, since both the counsel rely on the said provision in support of their respective submissions.

"Section 53:

(1) *Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—*

(a) the insolvency resolution process costs and the liquidation costs paid in full; Secured creditor in liquidation proceedings. Distribution of assets.

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

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

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

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following:—
(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

> (h) *equity shareholders or partners, as the case may be.*
>
> (2) *Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.*
>
> (3) *The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction."*

4. There is no dispute with regard to the relinquishment of the security interest by the Applicant to the liquidated estate and it was agreed that the proceeds from the sale of assets by the Liquidator will be received in the manner specified in Section 53 of the IBC, 2016.

5. On record there is Form-D, containing the signature of the Applicant admitting that the security interest is relinquished. However, the same is not disputed by the Counsel for the Applicant. The only apprehension of the Applicant is that priority as specified in section 53 of the IBC, 2016 would not be given to the Applicant. But the Liquidator undertakes before the Court that Section 53 of the Code, 2016 would be followed while distributing the assets and that in fact the claim of the Applicant is also admitted. The apprehension thus, seems to be unfounded. Hence, I do not opine that any further discussion on the matter need to be taken up. It would suffice to order that the Liquidator shall follow Section 53 of the IBC, 2016, while distributing the proceeds from the sale of liquidation assets.

6. The proportion between the workmen's dues under Section 53 (b) (*i*) and the debts owed to a Secured Creditor under Section 53 (b) (*ii*) shall rank equally between and among them.

7. Hence in the above terms, the Application is allowed.

Accordingly, I.A.No.8/2021 in TCP (IB) No.33/7/AMR/2019 is disposed of.

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu