* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20th March, 2023
Pronounced on: 19th July, 2023

\+ **CO.PET. 539/1998, CO.APPLs. 174/2018, 1506/2018, 696/2019, 698/2019, 772/2020, 132/2021, 658/2021, 780/2021, 789/2021, 434/2022, 718/2022, 61/2023 & 89/2023**

M/S TATA IRON & STEEL CO. LTD ..... Petitioner

Through:

M/S JHALANI TOOLS INDIA LTD ..... Respondent

Through: Ms. Ruchi Sindhwani, SSC with Ms. Megha Bharara, Advocate for OL.
Mr. B. L. Wali, Advocate for Kotak Mahindra Bank Ltd.
Mr. Sangram Patnaik, Ms. Swayam Sidha Patnaik and Mr. Aman Garg, Advocates for IDBI.
Mr. A.K. Kohli and Mr. Ankush Sharma, Advocates for non-Applicant in CO.APPL. 174/2018.
Ms. Neeru Vaid, Advocate for workers, Faridabad, Jhalna and Aurangabad.
Mr. Dinkar Singh, Mr. Gagan Garg and Mr. Rohit Singh, Advocates for ARCIL.
Mr. Aman Vachher, Mr. Ashutosh Dubey and Mr. Amit Kumar, Advocates for Ex-Management.
Mr. Ramesh Kumar and Mr. Abhishek Gusain, Advocates for Bank of Baroda/Secured Creditor.
Mr. Shiv Charan Sharma, Advocates for Workmen.

Mr. Ramesh Kumar, Advocate for Applicant in CA 1313/2018.
Mr. Anil Nauriya and Ms. Sumita Hazarika, Advocates for Kundli Unit.
Mr. Hemendra Jailiya, Advocate for Jalna Workers Union.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

CO.APPL. 1313/2018 (*on behalf of Dena Bank/ secured creditor seeking appropriate directions*)

1. Despite explicit court directives issued on 10th July 2018 instructing the Official Liquidator ("**OL**") to disburse payments towards the admitted claims of workmen, the situation remains largely unchanged with a majority of such claims yet to be settled. The key contributor to the present of affairs is the above-captioned application filed by Dena Bank,[1] a secured creditor and the Lead Bank of a consortium of banks[2] ("**Consortium**"). Dena Bank's instant application pertains to Consortium's second charge on certain assets belonging to the company in liquidation i.e., Jhalani Tools India Limited ("**JTIL**" or "**Company**"). They assert that this second charge ranks at par with their first charge. Consequently, this judgment will address Dena Bank's aforenoted contention, but at the same time also deal with the claims of interest on outstanding dues, presented by the Company's workmen, while contesting Dena Bank's afore-noted prayer.

[1] Dena Bank merged with Bank of Baroda on 01 April 2019 and the merged entity is presently known as Bank of Baroda. For convenience, Applicant is hereinafter referred to as Dena Bank.
[2] Kotak Mahindra Bank, Indian Overseas Bank, Syndicate Bank, Canara Bank, and JP Morgan.

Course of events leading to the present deadlock

2. JTIL was engaged in the business of manufacturing hand tools and other steel and iron implements, with six factories located in four different locations – three in Faridabad and one each in Aurangabad, Jalna and Kundli. Over time, all these units/ factories ceased operations. Tata Iron and Steel Company Limited ("**TISCO**") sanctioned a working capital loan of Rs. 9 crores to the Company and failure to repay the same led to the filing of the present petition. In parallel, JTIL had gone before the Board for Industrial and Financial Reconstruction ("**BIFR**") under Case No. 288/1987 for revival of the Company as a 'sick industrial company' as per Sick Industrial Companies (Special Provisions) Act, 1985 ("**SICA**").

Proceedings before the BIFR

3. During the BIFR proceedings, a rehabilitation scheme was approved in 1987. Pursuant to this scheme, two financial institutions, Industrial Bank of India ("**IDBI**") and Industrial Investment Bank of India ("**IIBI**") (together, "**Financial Institutions"** or **"FIs**") sanctioned a term loan ("**TL**") of Rs. 1 crore and 1.56 crores respectively. In addition to this, as part of the said scheme, from March 1988 onwards, the Consortium sanctioned/ released various facilities including TLs/ working capital term loans ("**WCTL**") of approx. Rs. 5.74 crores to the Company. In 1991, the Company extended mortgages that were created in 1983 in favour of other banks, namely, SICOM Ltd., Punjab & Sind Bank and Bank of America. Further, in 1993, the Consortium approved additional facilities such as cash credit/ overdraft/ packing credit/ bills purchased/ IPRS claim bills purchase/ letter of credit etc. with an aggregate limit of approximately Rs. 32 crores.

By 1998, the Company had settled all outstanding amounts owed to SICOM Ltd., Punjab & Sind Bank and Bank of America. As a result, SICOM Ltd. returned the original title deeds of various immovable properties of the Company that had been mortgaged. These deeds were subsequently transferred to Dena Bank to secure the outstanding loans.

Revival of proceedings before the Company Court

4. In view of BIFR proceedings, hearings in the present company petition were indefinitely postponed. On 17th July 2000, the BIFR recommended winding up of JTIL under Section 20(2) of SICA. This reference was registered as CO. PET. 18/2001 and was consequently listed alongside the instant petition. Subsequently, on 01st March 2003, the instant petition was revived, and the OL attached with this Court as appointed as Provisional Liquidator *vide* order dated 18th March, 2003. The OL took over the custody and assumed possession of various properties belonging to JTIL and under Court's directions, proceeded to auction the same, details whereof are provided below:

S.NO.	PROPERTY	DATE OF POSSESSION	AUCTION DATE & AMOUNT
1.	Unit I- 10,11,12, New Industrial Area, Faridabad, Haryana	Possession taken on 05.10.2004	* Movables & Building auctioned for Rs. 6,55,00,000/- vide order dated 16.01.2014. * Immovable land auctioned for Rs. 43,82,28,090/- vide order dated 11.04.2022.
2.	Unit II- 4, New Industrial Area, Faridabad, Haryana	Possession taken on 07.10.2004	Auctioned for Rs. 59 Crores vide order dated 20.10.2005 & 11.08.2005
3.	Unit III - 1, 2, New Industrial Area, Faridabad, Haryana	Possession taken on 07.10.2004	
4.	Unit IV - Narela Road, Village Kundli Distt. Sonepat, Haryana	Possession taken on 08.10.2004	
5.	Unit-V - E-29, 30, Chikalithanu Industrial Area, Aurangabad	Possession taken on 13.10.2004	

6.	Unit-VI - C-1, Addl. Industrial Area. Jalna and open land E-18 & E-19	Possession taken on 10.10.2004	

5. In accordance with order dated 20th May 2009, the OL issued notice inviting creditors of the Company to submit their claims. Concurrently, on 25th March 2011, the Court constituted a three-member committee, headed by Justice (Retd.) S.N. Dhingra ("**Dhingra Committee**") who were tasked with assessing the claims filed by workmen. A settlement was agreed between the ex-management and 2018 workmen of three units in Faridabad, for a payment of Rs. 14.64 crores in terms of a One Time Settlement ("**OTS**").[3] The total dues owed to the workmen were calculated as Rs. 51.95 crores. Additionally, the aggregate dues of all the secured creditors, including FIs and the Consortium, were estimated at a combined total of Rs. 93.37 crores.

6. On 25th May 2011, the final order for winding up the Company was issued.[4] In the period subsequent thereto, OL engaged in several meetings with stakeholders with the aim of determining a *pro rata* distribution between secured creditors and workmen. OL also obtained a report dated 08th January, 2013 from M/s SSAS & Associates, Chartered Accountants ("**CA Report**"). During this time, Dena Bank filed various applications *inter alia* contesting the computation of the ratio of *pro rata pari passu* distribution *inter se* secured creditors, as well as between secured creditors and workmen. Notably, among these applications, CO. APPL. 302/2013 was

[3] On 13 August 2013, while considering OL's application to disburse lumpsum payments to workmen under the OTS, this Court directed that the amount be distributed amongst all the workmen on a *pro rata* basis. In appeal, [Company Appeal No. 69 of 2013] on 03 September 2014, the Division Bench passed an order issuing directions *inter alia* upholding the release of the lumpsum OTS amount.
[4] As recorded in order dated 13 August, 2013.

disposed of on 13th August 2013[5] and CO. APPL. 2061/2013 was withdrawn on 03rd October 2018.

7. On 08th May 2017, OL was directed by this Court to give a comprehensive report detailing the funds available with the OL and the dues owed to both the workmen and the secured creditors. A year later, on 08th May 2018, the Court noted that the report had not been filed and the workmen had been waiting for an extended period to receive their unpaid dues. In response, OL filed OLR No. 165/2018 on 06th July 2018 providing the computation of dues payable to both, workmen and secured creditors. Subsequently, the court passed the following order on 10th July 2018:

> *"**OLR 165/2018***
>
> *This OLR is filed pursuant to order of this court dated 8.5.2018 Copy of this Report be supplied to learned counsel appearing for the Workmen, Secured Creditors and to the Ex. Management. The OL who is appearing in person states that there are enough funds available to meet the admitted claims of the workmen and payment shall be released within four weeks to those workmen who provide the necessary details. He further submits that regarding the issue of interest which some of the workmen claim, that aspect can be gone into after sale of the immovable property which is yet to be sold. Report is taken on record and stands disposed of."*

8. Later, OL's office recomputed the figures on the basis of OLR No. 165/2018 and convened a meeting of representatives of workmen and the secured creditors on 24th August 2018. The payments were calculated on the principle of treating first charge holders and the workmen *pari passu*, which was accepted by all parties involved, including Dena Bank. Following this meeting, OL filed C.A. No. 1103/2018 based on the agreed-upon computations, seeking directions from this Court to allow disbursement of

[5] Said application was disposed of *vide* order dated 13 August 2018 with directions (see *supra note 3*) and the appeal to the same was decided by order dated 03 September 2014 of the Division Bench of this Court [Company Appeal No. 69 of 2013] (see *supra note 3*).

payments among all the stakeholders. The Court considered this request on 19th September 2018 and granted permission to the Official Liquidator to disburse payments amounting to Rs. 4,53,85,682/- to the secured creditors who held the security of the plant and machinery, and the land and building. In addition, the Official Liquidator was also authorized to disburse payments of Rs. 71,83,976/- to the secured creditors who held a charge on the inventory or stock of the Company.

9. However, before the payments could be fully disbursed, the present application was filed in October 2018, which paused the disbursal process.

10. Noticing the delay being caused, the Court, on 13th December 2018, instructed the representatives of the workmen and the secured creditors to meet with the OL in an attempt to resolve the dispute amicably. Despite efforts, the meetings remained indecisive due to disagreements amongst the parties. Subsequently, on 19th March 2019, in response to OLR No. 95/2019, the Court, took cognizance of the ongoing dispute regarding payment of dues to the workmen and passed the following order:

*"**OLR 95/2019***

> *The learned counsel for the Official Liquidator states that pursuant to the meeting held with Dena Bank/secured creditor, a fresh calculation has been made and will be filed shortly within three days with an advance copy of the same to the learned counsel for the Dena Bank/secured creditor.*
>
> *There is a dispute regarding payment of the dues of the workers. In this regard, the Official Liquidator has filed a report being OLR 95/2019 where it has been stated that in compliance with the order of this court dated 19.09.2018, the OL has made payment to the 207 workmen of Jalna Unit and 56 workmen of Aurangabad Unit in November, 2018. Another payment of 126 workers of Jalna Unit is ready for dispatch but it could not be sent due to disputes between the secured creditors and the workmen.*
>
> *My attention has been drawn to the meeting held on 01.02.2019 between the OL, secured creditors and the learned counsel for the workers of Jalna Unit and that of Kundli Unit. Para 3 of the minutes of the meeting read as follows:*

> *"3. Representative of Dena Bank has submitted one calculation and according to that calculation he has agreed to disburse to the ex-workers (non-OTS) amounting to Rs.6,97,48,399/- and OTS workers amounting to Rs.3,73,71,299/-. Also in the said calculation he proposed to pay the amount to financial institutions amounting to Rs.1,40,10,047/- of IFCI and Rs.89,86,891/- to IDBI. This proposal of him does not cause any prejudice to the pending adjudication of CA No.1313/2018."*
>
> *The OL may take into account the above submission made by the representative of the Dena Bank/secured creditor and takes steps accordingly regarding payment of the dues of the workers only.*
> *Report is disposed of."*

11. OL submitted the Minutes of the Meetings that took place on the 14th and 16th January and 1st February 2019, along with OLR No. 95/2019. These minutes reveal that all stakeholders were present at these meetings. We note that despite some disagreements concerning the computation, the representative from Dena Bank concurred with the disbursement plan to the workmen, IFCI and IDBI.

Contentions of Applicant-Bank

12. Dena Bank/ Consortium holds first charge over the immovable properties and fixed assets of the Company in respect of its TL/ WCTL amounting to Rs. 5.74 crores, ranking *pari passu* with the TL advanced by the Financial Institutions, and a second charge in respect of additional working capital facilities of Rs. 32 crores. Applicant-Bank contends that for the purpose of calculation of workmen's portion under Section 529 of the Companies Act, 1956 ("**the Act**") amounts due under the second charge must be combined with amounts due under the first charge, and then the total amounts must be compared against the amounts due to workmen. They

dispute the approach followed by the OL whereby only the amounts due against the first charge have been taken into account to calculate the *pro rata* share payable to the workmen. In support of this contention, Dena Bank proffers the judgment of this Court in ***In Re: Bokiyu Tanneries Ltd.***[6], wherein following observations were made by the Single Judge:

> *"20. For the purpose of Section 529 and 529A of the Act, all the secured creditors including those having second charge are treated equally and their claims cannot be differentiated. Similarly, the claims of all the workmen have to be calculated and accordingly in terms of Sections 529(3) and 529A of the Act, payment is to be made in the ratio and proportion specified therein."*

13. On the basis of these observations, Dena Bank argues that as no distinction has been made out through the literal interpretation of the provisions, all charges must be treated at par for the purposes of calculation as per Section 529 and 529A of the Act.

Analysis

14. The present application is verbose and runs into nearly 100 pages and contains repetitive contentions. Among these are allegations that OL acted with bias and malice, thereby depriving the Consortium of its rightful dues. However, these contentions were not raised during the hearing, and thus are not addressed. The primary contention is thus: the entirety of dues owed to the secured creditors must be computed as a single unit against the dues owed to the workmen for calculating the *pro rata* shares. This calculation should disregard the distinctions between the first and second charges held by various creditors under Section 529 of the Act, as the Act does not

[6] 2006 (89) DRJ 513

provide for such differentiation.

(I) SECOND CHARGE VIS-À-VIS SECTION 529A OF THE ACT

15. Upon review of the pleadings on record, it emerges that the Financial Institutions, i.e., IFCI (assignee of IIBI) and IDBI, hold the first charge over the land, building, and plant and machinery of the Company's six units. Dena Bank contends that the Consortium similarly holds the first charge over the land, buildings, and plant and machinery of the six units pertaining to its term loan/working capital term loan of approximately Rs. 5.74 crores. Furthermore, Dena Bank suggests that the Consortium also holds a second charge regarding the additional working c apital facilities of roughly Rs. 32 crores. OL, in their written submission, counters this claim by stating that the Consortium's first charge pertains to the stock and inventories and that a second charge is held over the land, building, and plant and machinery associated with the six properties. Notwithstanding this factual dispute, for the present purposes, the Court is adjudicating whether the Consortium's second charge can be considered equivalent to their first charge as well as those held by the Financial Institutions for the purpose of *pari passu* distribution of dues.

16. The methodology adopted by OL for determining *pari passu* shares, dues of the workmen and secured creditors holding first charge were prioritized. OL maintains that admitted amounts due to workmen and first charge secured creditors can be settled in full, given the availability of sufficient funds. Subsequently, the residual amount is to be disbursed towards the debt of the second charge holder. According to the OL, the balance is insufficient for full payment to the second charge holders, leading

to calculation of *pro rata* payments for the secured creditors bearing a second charge.

17. In the Court's opinion, Dena Bank's attempt to prioritize their claims above the claims of the workmen lacks a valid basis. They cannot contend that the Consortium's second charge should be merged with their first charge. In situations where secured creditors hold both first and second charges, like in the case of Dena Bank/Consortium, the debt associated with the second charge cannot be at par with the first charge. It would be inappropriate for the creditor to amalgamate these charges for the purposes of Section 529 and 529A, as doing so would affect the rights of the secured creditors having first charge. It is important to recognise that the underlying intent of the legislature in enacting Section 529A of the Act was to prevent circumvention of order of priority among the creditors, particularly those holding different ranks of security. Allowing creation of a "basket" which combines both, first charge and second charge debts would render it nearly impossible to distinguish the debt associated with the second charge. This could potentially undermine the object of the statute and disrupt the purpose of Section 529A of the Act, which is to ensure fair and systematic distribution of assets among all classes of creditors. Moreover, allowing such a practice could open the door to manipulation, as a creditor holding different charges might prioritize a lower-ranked claim over other creditors during the asset distribution process. This would significantly undermine the equitable principles that form the foundation of insolvency laws. Therefore, to maintain the integrity of the statutory framework and ensure equitable treatment of all creditors, it is crucial to distinguish between first and second charge holders when applying the *pari passu* principle under Sections 529

and 529A of the Act.

18. The Supreme Court's ruling in the case of ***Jitendera Nath Singh v. Official Liquidator & Ors.***,[7] elaborated on the distinct hierarchy of claims and charges in the winding-up proceedings, particularly in the light of the 1985 amendment[8] ("**1985 Amendment**") to the Act. The Supreme Court emphasized that a secured creditor holds a charge solely over a specific asset or property of the company, which is their secured asset. A statutory charge favouring the workmen has been established under the first limb of the proviso to Section 529(1)(c) of the Act, which covers workers' dues from a company. This charge is *pari passu* with that of each secured creditor and extends to the workers' share relative to the security of any secured creditor of the company, as provided under Section 529(3)(c) of the Act. Therefore, every property offered as security in favour of the creditors implicitly carries a *pari passu* charge favouring the workmen, which is at par with the secured creditors. This interpretation implies that, under Sections 529 and 529A of the Act, JTIL's workmen hold a *pari passu* first charge over the assets of JTIL at par with the first charge of the secured creditors. Consequently, the workmen's admitted claims would be paid in priority over the amounts due against second charge held by the Consortium.

19. Furthermore, accepting Dena Bank's interpretation of Sections 529 and 529A would effectively undermine the two crucial legislative provisions. Firstly, Section 48 of the Transfer of Property Act, 1882 ("**TP Act**"), which establishes a clear hierarchy of charges. Secondly, Section 529 of the Companies Act, 1956, which is a welfare provision enacted to

[7] (2013) 1 SCC 462.
[8] Companies (Amendment) Act, 1985.

acknowledge the contributions of workmen to the company in liquidation. Section 529 of the Act recognizes the special status of workmen as creditors and ensures their protection. Allowing the amalgamation of first and second charges could result in inflating the amounts due to secured creditors against an inferior charge, thereby jeopardizing the interests of the workmen and subverting the purpose of this legislative provision. Maintaining the clear legislative intent and established hierarchy of claims is crucial in winding-up proceedings. It ensures a fair and just distribution of assets and upholds the safeguards put in place to protect the interests of various stakeholders, particularly the workmen. Blurring the distinction between first and second charge holders would lead to an unjust distribution of assets and undermine the purpose of the legislative provisions designed to safeguard the rights of all stakeholders.

20. The priority between two sets of secured creditors has been elucidated in the judgment in ***ICICI Bank Ltd v. Sidco Leathers Ltd & Ors.***[9] wherein the Supreme Court addressed the relationship between various types of secured creditors and determined their respective rights and priorities. The Court was tasked with examining *inter alia* the following key issues:

a) Whether the rights of priority between different sets of secured creditors are diminished under Section 529A of the Act.

b) Whether Section 48 of the TP Act is overridden by Section 529-A of the Act.

21. After analysing the law on the subject, it was observed that the claim of first charge holder will prevail over the claim of the second charge holder,

[9] 2006 10 SCC 452.

as under:

> *"44. Section 529(1)(c) of the Companies Act speaks about the respective rights of the secured creditors which would mean the respective rights of secured creditors vis-à-vis unsecured creditors. It does not envisage respective rights amongst the secured creditors. Merely because Section 529 does not specifically provide for the rights of priorities over the mortgaged assets, that, in our opinion, would not mean that the provisions of Section 48 of the Transfer of Property Act in relation to a company, which has undergone liquidation, shall stand obliterated.*
> *45. If we were to accept that inter se priority of secured creditors gets obliterated by merely responding to a public notice wherein it is specifically stated that on his failure to do so, he will be excluded from the benefits of the Dividends that may be distributed by the Official Liquidator, the same would lead to deprivation of the secured creditor of his right over the security and would bring him at par with an unsecured creditor. The logical sequitor of such an inference would be that even unsecured creditors would be placed at par with the secured creditors. This could not have been the intendment of the legislation. The provisions of the Companies Act may be a special statute but if the special statute does not contain any specific provision dealing with the contractual and other statutory rights between different kinds of the secured creditors, the specific provisions contained in the general statute shall prevail."*

22. As can be seen from the above excerpt, the Supreme Court has held that the absence of explicit provisions in Section 529 of the Act regarding priority rights over mortgaged assets does not exclude the application of Section 48 of the TP Act in cases of company liquidation. The Court has reasoned that if *inter se* priority rights of secured creditors were disregarded, it would result in their exclusion from dividend distribution and unjustly treat them as unsecured creditors. This would also unjustly deprive the secured creditor of their rights over the security, which surely is not the legislature's intent. Furthermore, the Court held that while the Companies Act, 1956 is a specialized statute, nonetheless it does not specifically address the contractual and statutory rights between different types of secured creditors. Thus, the specific provisions outlined in a general statute like the

TP Act should take precedence. This interpretation preserves the hierarchy of charges and protects the rights of various secured creditors as envisioned by both the Act and the TP Act.

23. Although the judgment in ***ICICI Bank Ltd.*** (supra) has been referred to in the decision of a Co-ordinate Bench of this Court in ***Bokiyu Tanneries*** (supra), however, Court's interpretation appears to deviate from the understanding provided by the Supreme Court in ***ICICI Bank Ltd.*** (supra) *qua* secured creditors. ***Bokiyu Tanneries*** (supra) holds that Sections 529 and 529A of the Act create two classes of creditors - workmen and secured creditors (regardless of whether they have the first charge or the second charge). This view overlooks the nuanced distinction provided by the Supreme Court in ***ICICI Bank Ltd.*** (supra) which made it clear that the rights of a first charge holder take precedence over those of a second charge holder. The interpretation presented in ***Bokiyu Tanneries*** (supra) which suggests that Sections 529 and 529A of the Act treat all secured creditors equally, regardless of whether they hold a first or second charge, appears to be contrary to the Supreme Court's ruling in ***ICICI Bank Ltd.*** (supra). In ***ICICI Bank Ltd.*** (supra), the Supreme Court did not declare that all secured creditors are equal. Instead, it acknowledged that while the Act does not explicitly differentiate between first and second charge holders, it does not eliminate the existing rights and hierarchies defined by the TP Act. Thus, the interpretation put forth in ***Bokiyu Tanneries*** (supra) does not align with the reasoning and interpretation provided by the Supreme Court in ***ICICI Bank Ltd.*** (supra), which emphasized the preservation of the rights of first charge holders over second charge holders. Therefore, Dena Bank's reliance on ***Bokiyu Tanneries*** (supra) is misplaced.

24. In view of the aforenoted discussion and holding in ***ICICI Bank Ltd.*** (supra), it becomes evident that the first and second charge holders cannot be treated equally. Upholding the objection of the second charge holder would upset the priority of the first charge holder, which would go against the provisions of Section 48 of the TP Act. The OL position on this issue, as stated in paragraph 10 of its compliance report OLR No. 109/2019, is thus accepted.

25. Having resolved the aforementioned issue, the inevitable outcome is the dismissal of the present application. However, the Court believes that a simple rejection would be insufficient given that Dena Bank has caused significant delay in the proceedings, thereby depriving the workmen of their rightful dues. Thus, the conduct of the Bank necessitates imposition of costs.

(II) IMPOSITION OF COSTS

26. In addition to disputing the disbursal of claims on a misconceived legal premise, the Applicant-Bank also challenges the priority given to the disbursement of the OTS reached between the former management and the workmen of the Faridabad Units, as well as the validity of the OTS itself. It is important to note that payments to the workmen of the Faridabad Units were made based on a settlement approved by the Division Bench of this Court through an order dated 3rd September, 2014, in which the Applicant-Bank itself was a party. In fact, the Applicant-Bank had expressed its support for the said settlement with the workmen of the Faridabad Units because it involved return of funds (along with interest) to the Company's account, which had previously been transferred by the OL to the Common Pool Fund. As the Consortium would benefit from the return of these funds

to the Company's account, it accepted the special arrangement created for the disbursement of the OTS amount. This fact is admitted by the Applicant-Bank itself in paragraph 63 of the present application. The conflicting stance taken by the Applicant-Bank clearly demonstrates their obstructive stance in the ongoing proceedings.

27. During the proceedings, a mutual agreement was reached among the secured creditors, including Dena Bank, to implement the payments outlined in OLR No. 165/2018. This understanding is evidenced by the Minutes of Meeting dated 24th August, 2018, which were signed by Mr. Rahul Pratap, Chief Manager of Dena Bank. However, the Applicant-Bank has chosen to backtrack on this commitment. The delay in releasing the dues to the workmen can thus be attributed solely to the actions of the Applicant-Bank/Consortium. The Applicant-Bank had previously filed CA No. 2061/2013, seeking a refund of liquidation expenses and the distribution of sale proceeds among the Financial Institutions and the Consortium. However, this application was later withdrawn. On 10th July, 2018, the Court noted the OL's statement that there were sufficient funds to meet the admitted claims of the workmen, and directed the payment to be released within four weeks. Despite this directive and the withdrawal of CA No. 2061/2013, the present application was filed. On 13th December, 2018, the Court observed that the disbursement of payments was unnecessarily being delayed due to the filing of the instant application by Dena Bank. The Court even directed a meeting between all stakeholders to facilitate an amicable resolution regarding the payment of dues. Subsequent meetings were held between the OL and the parties involved, but these discussions did not bring about a definitive resolution to the issues at hand. Consequently, the

Applicant-Bank has purposefully caused delays by attempting to undermine the overriding priority granted by law to the first charge holders, namely the workmen and their admitted claims.

28. For the foregoing reasons, the present application is dismissed with a cost of Rs. 10 lakhs on the Consortium, to be deposited in terms of the directions issued later in the judgment.

(III) WORKMEN'S CLAIM FOR INTEREST ON WAGES

29. The Court shall now analyse the claim of interest on outstanding wages, which has been raised by workmen's unions of the Aurangabad, Jalna and Faridabad Units. The aforenoted parties claim interest at the rate of 12 percent p.a. on pending wages, calculated from the date of notice of payment till the date of winding up, as applicable to the secured creditors. On this issue, reliance has been placed on ***In Re: Crips Laboratories Limited***[10], wherein the Andhra Pradesh High Court has made the following observations:

> *"14. ...For all practical purposes, a workman is treated as a co-charge holder along with the secured creditor and would, therefore, be entitled to claim the same rate of interest from the assets of the Company under liquidation as has been contracted to by the secured creditor which, in the present case, is 15% per annum. This question can be examined from another angle also. The dues payable to the secured creditor, inclusive of the contracted rate of interest, has a bearing on the preferential payment to be made to a workman under Section 529-A of the Companies Act. More often than not, the amounts received by the Official Liquidator, on the sale of the assets of the company in liquidation, is insufficient to meet the entire dues of the secured creditors and the workmen, necessitating the amount available being paid to them pari passu. If the total dues payable to a secured creditor increases, then the proportionate amount available for repayment of the dues of the workmen decreases. Accepting the contention of Sri K. Gopalarishna Murthy, learned standing counsel for S.B.I, would*

[10] MANU/AP/0166/2008.

mean that, while the secured creditor would be repaid the principal and interest at the contracted rate till the date of repayment, the dues of the workmen would be restricted only to the principal and they would not be entitled for interest on their dues. The very purpose of inserting Section 529-A, to treat workmen's dues on par with the dues of the secured creditors, would be defeated thereby.

15. It must, therefore, be held that since the workmen are entitled to have their dues ranked pari passu with the debts of the secured creditor they shall, on par with the secured creditor, be entitled for payment of interest at the contracted rate of interest which the secured creditor is entitled to claim from the sale proceeds of the assets of the Company under liquidation to the extent to which it holds a charge over such assets."

[Emphasis Supplied]

30. Ms. Neeru Vaid, the counsel representing the workmen of Faridabad, Jalna, and Aurangabad units, asserts that under Section 529A of the Act, the workmen should be entitled to receive interest, as they are considered to be on an equal footing with the secured creditors. She argues that the failure to award interest would not only misconstrue the legislative intent behind Section 529A but also result in a miscarriage of justice. Furthermore, Ms. Vaid contends that granting interest solely to the secured creditors would confer a double benefit upon them. This is because the workmen have been deprived of their rightful wages for a substantial period, and denying them interest while providing it to the secured creditors would create an imbalance in the distribution of funds. In light of these arguments, Ms. Vaid emphasizes the importance of granting interest to the workmen to ensure a fair and equitable resolution in accordance with the provisions of Section 529A of the Act.

31. No formal application has been submitted on behalf of the workmen seeking the aforementioned relief regarding the entitlement to interest. When claims were invited against JTIL, the workmen presented their claims,

which were subsequently reviewed and approved by the Dhingra Committee. Rules 156-178 of the Companies (Court) Rules, 1959 ("**Rules**") outline the procedure for processing claims for interest, when it has not been explicitly provided for. Rule 163 of the Rules, provides the process of admission of debt, requiring submission of evidence, which is followed by a decision by OL. If dissatisfied with this decision, the creditor, in this instance, the workmen, has the option to file an appeal under Rule 164 before the Company Judge. However, it is pertinent to note that the workmen have not raised any such claim for interest under these Rules and cannot be permitted to raise the same at this juncture.

32. The judgment in ***Crips Laboratories*** (supra) relied upon by Ms. Vaid provides limited assistance to the present dispute. While the aforesaid judgment seemingly awards workmen interest on the principal amount at the same rate as the contractual rate of interest payable to secured creditors, it does not establish any statutory provision or legal basis for granting such an interest rate. The decision has been rendered in specific circumstances and contractual provisions involved in that case and cannot be conclusively relied upon as a precedent for the present case.

33. Furthermore, another judgment referenced by Ms. Vaid – ***Textile Labour Association v. Official Liquidator of Jubilee Mills***[11], appropriately establishes that no interest (apart from subsequent interest under Rule 179) can be granted to secured creditors or workmen after the date of winding up. The Court in that case declined to award interest to the workmen who sought payment at the same rate as the secured creditors, as there was no contract or

[11] [2000] 99 Comp. Cas. 189 (Guj)

statutory provision brought to the Court's attention that supported such an interest payment.

34. The contractual provisions outlined in the facility documents of the secured creditors serve as the basis for their entitlement of interest. On the other hand, the workmen do not present any comparable contractual stipulation or statutory basis for the payment of interest on their overdue salaries or other remuneration. Their claim for interest is grounded in equity, which cannot serve as a sufficient foundation for the Court to approve such a claim. Unless debts explicitly carry interest as per the terms of a contract, interest cannot be awarded, except in specific situations outlined under the relevant rules. Therefore, without a valid contractual provision or statutory basis supporting the payment of interest, and considering the nature of the workmen's claim, it is not justifiable to equate their situation with that of the secured creditors for the purpose of interest payment. Interest payment for workmen would only arise if there is a surplus, which triggers the application of Rule 179 and not otherwise. It is also noteworthy that the entitlement to interest from the date of the winding-up order, as per Rule 179, for subsequent interest is not in dispute. The OL has confirmed that once the admitted claims have been settled, any surplus funds will be utilized to declare dividends in accordance with Rule 179. These dividends will be distributed to all relevant parties, including the workmen.

35. Based on the aforementioned reasons, Ms. Vaid's claim for payment of interest to the workmen at a rate of 12 percent lacks merit and is rejected. Additionally, it should be noted that Ms. Vaid has also argued that no interest has been added to the gratuity payment. However, the Official Liquidator disputes this allegation and maintains that interest on gratuity has

indeed been paid to the workmen. Ms. Vaid has not provided any evidence to substantiate her claim or refute the Official Liquidator's assertion.

(IV) DIRECTIONS

36. In view of the foregoing, the following directions are issued:

(i) CO. APPL. 1313/2018 is dismissed.

(ii) Costs of Rs. 10 lakhs is imposed on Dena Bank and other members of the Consortium. Said banks are directed to collectively deposit the same with OL, in proportion to their claims admitted by OL within a period of two weeks from today. OL is directed to utilise the amount to set off OL's liquidation expenses and deposit the balance, if any, in the Common Pool Fund.

(iii) OL is directed to resume disbursement of admitted dues to the first charge holders and workmen, as also the second charge holders, in terms of the calculation sheet filed by the OL on 16th January 2023 *vide* Index D. no. 66941/2023. In case any further amounts or interest is payable in addition thereto, the same shall be disbursed by the OL at the earliest, with the leave of the Court.

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37. List before the Roster Bench on 1st August, 2023.

SANJEEV NARULA, J

JULY 19, 2023
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