

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**IA No.368/2020
in
CP (IB) No.136/Chd/Pb/2017
(admitted)**

In the matter of:

UCO Bank

....Petitioner-Financial Creditor

Versus

Oswal Spinning and Weaving Mills Ltd.

....Respondent-Corporate Debtor

And in the matter of:-

IA No.368/2020

**Under Section 60(5) read with
Section 42 of the IBC, 2016**

Mr. Ashok Oswal, Managing Director (Suspended)

Oswal Spinning and Weaving Mills Ltd.

...Applicant

Vs.

1. Hemanshu Jetley (Liquidator) of
Oswal Spinning and Weaving Mills Ltd.
2. State Bank of India through its Manager
3. IFCI Limited through its General Manager
4. Kotak Mahindra Bank Limited, through its Vice President
5. UCO Bank through its Attorney and Principal Officer
....Respondents

Order delivered on: 03.06.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through video-conferencing:

For the Applicant : Mr. Vaibhav Sharma, Advocate

For the Respondent No.1/ : Mr. G.S. Sarin, Practising Company Secretary
Liquidator

Respondent No.2 : Mr. Yogesh Goyal, Advocate
Respondent No.3 : Mr. D.K. Singal, Advocate
Respondent No.4 : Mr. Manish Jain, Advocate
Respondent No.5 : Mr. H.S. Bhatia, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No.368/2020

This is an application filed under Section 60(5) read with Section 42 of the IBC, 2016. In the present application, **Mr. Ashok Oswal, Managing Director (Suspended) of Oswal Spinning and Weaving Mills Ltd.** is the applicant, and Hemanshu Jetley (Liquidator) of Oswal Spinning and Weaving Mills Ltd. (**Respondent No.1**), State Bank of India through its Manager (**Respondent No.2**), IFCI Limited through its General Manager (**Respondent No.3**), Kotak Mahindra Bank Limited, through its Vice President (**Respondent No.4**), UCO Bank through its Attorney and Principal Officer (**Respondent No.5**) are the respondents.

2. In the present application, the applicant prays to quash the acceptance of the claim of Respondent Nos.2 to 5 by the Respondent No.1; and direct Respondent No.1 to await the final adjudication of the claims pending before the Hon'ble Debt Recovery Tribunal or the Hon'ble Punjab and Haryana High Court, or any other authority/Court/Tribunal as the case may be, before any claim for payment of financial dues on behalf of Respondent Nos.2 to 5 can be accepted and monies accordingly disbursed; direct the Respondent No.1, to effectively contest the claims made by the corporate

debtor before various Courts/Tribunals, in order to discharge his legal obligations under the IB Code, 2016; pending consideration of the reliefs as aforesaid, restrain the Respondent No.1 from disbursing any funds to Respondent Nos.2 to 5; and direct the Respondent No.1, to effectively contest the claims made by the Corporate Debtor before various Hon'ble Courts/Tribunals, in order to discharge his legal obligations under the IB Code 2016.

3. The brief facts as outlined in the application are as under:

3.1 The Respondent No.1-Liquidator has accepted the claims of Respondent No.2 to 5, which the applicant states to be without any legal basis. The aforementioned respondents are banks and financial institutions which at some point in time issued credit facilities to the corporate debtor. These claims by the respondents are stated to be disputed by the corporate debtor and except in the case of respondent No.5. These claims are stated to be not reflected in the books of the corporate debtor. It is further stated that during the pendency of the CIRP process, the respondent No.1 as the Resolution Professional had accepted certain claims of the said respondents for the purpose of constituting the Committee of Creditors (CoC). This action by the Respondent No.1, presently the Liquidator, was assailed by the applicant through various applications but in the meanwhile, the CIRP proceed relating to the corporate debtor was completed with no Resolution Applicant being selected to take over the company and consequently, the corporate debtor has been ordered to be liquidated. In the present application the applicant has sought liberty to agitate the issue at the appropriate stage in accordance with law. By its order dated 18.12.2019, this Adjudicating Authority

has dismissed the CA No.615/2018, 148/2019 & 255/2019 filed in this case as infructuous with the liberty to avail the remedies in accordance with the law. Subsequently, the respondent Nos.2 to 5 i.e. banks and financial institutions have filed their respective claims before Respondent No.1-Liquidator which is stated to be against the provisions of the Code. The applicant has cited the various provisions in the IBBI (Liquidation Process) Regulations, 2016 regarding the submission and verification of claims and their distribution in Para 12 of the application. He has also furnished the details of claims and counter-claims pending adjudication before the Hon'ble Debt Recovery Tribunal (DRT) pertaining to the corporate debtor as well as respondents No.2 to 5. Based on such facts, the applicant has assailed the issue of whether the Respondent No.1-Liquidator is competent to determine and admit a specific amount of money as payable to a particular creditor, when there is pending litigation that the company is contesting before the appropriate forum, such as the Hon'ble Debt Recovery Tribunal.

4. The Respondent No.1-Liquidator by its reply filed by Diary No.00019/5 dated 02.11.2020 has stated that he has collated the claims of the financial creditors based on the records. Two meetings of the Stakeholders Consultation Committee (SCC) have been held by the Respondent No.1-Liquidator on 05.02.2020 and 23.06.2020 and the Respondent No.1-Liquidator has published a sale notice on 13.07.2020 at the suggestions of the SCC inviting interested bidders to participate in the e-auction on 14.08.2020. However, Respondent No.1-Liquidator has been restrained by this Adjudicating Authority's order dated 09.09.2020 from distribution of the funds so realised among financial creditors. In its reply, Respondent

No.1-Liquidator has set out a brief history of the transactions between the corporate debtor and the respondents-financial creditors.

4.1 As regard Respondent No.2-State Bank of India, the Liquidator has stated that the SBI vide sanction letter dated 01.10.2007 accepted the OTS proposal of the corporate debtor for an amount of Rs.11.46 Crores and subsequently, on 16.11.2007, an assignment agreement was executed between the State Bank of India (SBI) and Kotak Mahindra Bank Limited wherein debt of Rs.13.36 Crores (which includes 60% of the outstanding under OTS Rs.8.58 Crores plus waiver Rs.5.29 Crores) was assigned to Kotak Mahindra Bank Limited for a purchase consideration of Rs.8.06 Crores. The Respondent No.1-Liquidator states that there was a transaction of assignment of debt by respondent No.2 i.e. State Bank of India to respondent No.4 i.e. Kotak Mahindra Bank Limited in addition to an OTS which were both part of the same transaction and as such the present claim of SBI is based on the amount that was excluded from assignment to Kotak Mahindra Bank Limited and in respect of which CRPS(Cumulative Redeemable Preference Shares) were issued. SBI has filed its claim in Form-D dated 08.01.2020 which is annexed to the reply of Respondent No.1-Liquidator as Annexure A-14. It is further stated that the claim of SBI in respect of the unpaid OTS amount (40%) for which SBI had issued CRPS i.e. Rs.5.38 Crores has been admitted by Respondent No.1-Liquidator.

4.2 As regards Respondent No.3-IFCI Limited, Respondent No.1-Liquidator states that an OTS proposal submitted by the corporate debtor was approved by IFCI vide their letter dated 22.08.2007. In order to conclude OTS of outstanding dues and process assignment of debt in favour

of Kotak Bank, IFCI vide its letter dated 23.10.2007, requested the Corporate Debtor to comply with the terms of the OTS as sanctioned by IFCI vide its letters dated 22.08.2007 which inter alia include Deposit of sum of Rs.14.95 Crores towards 60% of the outstanding principal amount, deposit of current interest amounting to Rs.2.85 Crores and other payments. In compliance of the conditions under the OTS, an Agreement dated 24.10.2007 was executed between the corporate debtor, Mr. Ashok Oswal-Director of the corporate debtor as guarantor (Applicant herein) and IFCI Limited, for issuance of CRPS of Rs.12.69 Crores by the corporate debtor, wherein it is stated that an outstanding amount of Rs.12.69 Crores is payable as Funded Interest Term Loan (FITL) by the corporate debtor. The Corporate Debtor failed to make payment of Rs.3.60 Crores by 31.03.2008 as agreed to under the terms of the OTS and CRPS Agreement dated 24.10.2007 and thereafter, vide letter dated 27.03.2008, requested IFCI not to present the post dated cheques amounting to Rs.3.60 Crores issued as security by the Company/Corporate Debtor, to IFCI for encashment. Thereafter, IFCI vide letter dated 02.12.2010 revoked the OTS and demanded repayment of the entire outstanding amount from the Corporate Debtor. It is further stated that as per the Claim Form-D submitted by IFCI to the Liquidator, total claim of IFCI is Rs.93.03 Crores as on 13.12.2019. Thus, the Liquidator has admitted the claim of IFCI to the extent of Rs.75.67 Crores as against its initial claim of Rs. 93.03 Crores. The amount admitted by the Liquidator excludes the amounts claimed by IFCI towards cost of litigation, cost of investment in equity, liquidated damages and interest on liquidated damages.

4.3 As regards Respondent No.4-Kotak Mahindra Bank Limited, Respondent No.1-Liquidator states that in 2007, one-time settlement (OTS) and restructuring was undertaken by the Corporate Debtor under which 60% of the Debt outstanding was to be paid as cash to the aforesaid banks by the Corporate Debtor. Subsequently, a revised Letter of Acceptance dated 30.09.2009 (Revised LOA') was duly executed between Kotak Bank and the Corporate Debtor and thereafter, on 10.10.2011, a Sanction Letter was issued by Kotak Bank wherein Kotak Bank sanctioned a fresh credit facility i.e. EPC (Export Packaging Credit') of Rs.2.50 Crores in favour of the Corporate Debtor. The claim submitted by Kotak Bank in Form-D dated 07.01.2020, amount due and payable by the Corporate Debtor to the Bank as on 13.12.2020 was Rs. 410.54 Crores which comprises Interest of Rs.70.99 Crores, Penal Interest @3% compounded quarterly i.e. Rs.338.08 Crores and an amount of Rs.1.47 Crores (as on 13.12.2019) due under EPC facility. As per respondent No.1-Liquidator, the same is not permissible under the law in view of the judgment of the Hon'ble Supreme Court in **Central Bank of India v. Ravindra (2002) 1 SCC 367** and because of the settled legal position that penal interest cannot be capitalized as this is opposed to public policy. The claim of Kotak Bank is restricted to Contractual interest due at the rate of 17.5% p.a. (as per Revised LOA) i.e. Rs.70.99 Crores plus interest amount of Rs.1.47 Crores due under the EPC facility.

4.4 As regards Respondent No.5-UCO Bank, Respondent No.1-Liquidator states that claims of all the Financial Creditor except claim of UCO Bank are disputed but in subsequent paragraphs Applicant has contradicted himself by stating that Corporate Debtor has filed counter-claim

before Hon'ble DRT against UCO Bank and matter is sub-judice but liquidator has accepted claim on his mere whims and fancies. The respondent No.1-Liquidator has admitted the claim of UCO Bank for an amount of Rs.29.02 Crores which comprises Principal of Rs.12.95 Crores and Interest of Rs.16.07 Crores against their claim for Rs.30.58 Crores. Copy of claim Form D- Submitted by UCO Bank to Liquidator is annexed with the reply as Annexure A-36.

4.5 The respondent No.1-Liquidator states that the proceedings before the Hon'ble DRT and the Hon'ble High Court of Punjab and Haryana as well as proceedings initiated by Banks before different Forum are separate and distinct from the proceedings under IBC. It is reiterated that the Liquidator is not bound by the decision of the Hon'ble High Court of Punjab and Haryana or the Hon'ble DRT while admitting the claim of Kotak Bank. Admission of Kotak's claim by the Liquidator does in no manner affect the Corporate Debtor's ability to settle with UCO bank in terms of the liberty granted by the Hon'ble NCLAT. Further, admission of claim by the Liquidator does not amount to overruling the decision of any court, as alleged by the Applicant. It is reiterated that proceedings before the Hon'ble High Court and DRT have no bearing on the performance of functions by Liquidator as per the provisions of IBC. It is further asserted that the Applicant has made absolutely bogus and baseless allegations against the legitimate actions of the Liquidator.

5. The Respondent No.2-State Bank of India by its reply filed by Diary No.00019/12 dated 22.02.2021 justified the claims that are lodged by it before the respondent No.1-Liquidator and also states that the proceedings before the learned DRT have no bearing on the decision of the claims by the

IRP or Liquidator and the petitioner is intentionally ignoring Section 14 of the Code which operates moratorium on all the other proceedings on the commencement of CIRP.

6. On the same lines of Respondent No.4-Kotak Mahindra Bank Limited filed its reply by Diary No.00794/2 dated 09.11.2020 has justified its claim lodged with the respondent No.1-Liquidator and has asserted that it has submitted the statement of account in the pending proceedings before the learned DRT-III, Chandigarh and that the applicant is misrepresenting the facts before this Authority. It is further stated that the applicant has made false statements regarding the respondent with the intention of portraying the respondent in a bad light and is very conveniently avoiding the liability of the corporate debtor. It is also stated that the writ petition filed by the respondent No.4 before the Hon'ble High Court of Punjab and Haryana against the orders passed by Ld. District Magistrate, i.e. CWP 18174/2017 is pending and the matter is sub-judice. The Liquidator has rightly accepted its claim. It is further submitted that the Hon'ble NCLAT in its order dated 15.12.2019 has clearly stated that there was no merit in the appeal filed by the applicant and that the applicant thereafter through its conduct has been trying to delay the process of the liquidation proceedings of the corporate debtor.

7. In the reply of Respondent No.5-UCO Bank filed by Diary No.00794/5 dated 12.03.2021, it is asserted that the respondent bank has rightly lodged its claim with the respondent No.1-Liquidator in accordance with the provisions of the Code and it is incorrect that in the absence of filing determination of the liability by DRT, the Liquidator cannot proceed independently to determine the amount.

8. The Applicant filed a rejoinder to the reply of respondent No.1-Liquidator by Diary No.00795/1 dated 05.07.2021. The applicant has pointed out certain alleged violations committed by the respondent banks including alleged violation of RBI guidelines regarding classifying company's accounts as NPA as on 30.09.2015. It is also denied some of the references to the debts of the bank in the Liquidator's report. It is argued that the Liquidator cannot ignore the documents placed before him by the applicant/corporate debtor which were earlier part of proceedings in other legal fora and more specifically when these documents are filed by Kotak Bank itself in support of its defence of its claims against the corporate debtor. It is further stated that Section 238 of the I&B Code does not put a bar on the Liquidator to check the authenticity and correctness of documents filed by a party before any legal forum.

9. Rejoinder has also been filed by the Applicant to the reply of Respondent No.4-Kotak Mahindra Bank Ltd. and Respondent No.5-UCO Bank by Diary No.00794/3 dated 22.02.2021 and Diary No.00794/8 dated 22.10.2021 respectively mostly repealing the contentions made earlier.

10. Subsequently, the Applicant has filed written submission by Diary No.00794/12 dated 18.04.2022, reiterating that instead of contesting the claims on behalf of the company, so as to maximise the value for all stakeholders, the Liquidator has decided to arbitrarily side with the banks with the result that the amounts which would otherwise become available to the remaining stakeholders would either get severely diminished or be reduced to zero. It is also stated that this Adjudicating Authority cannot, in effect, exercise the powers already bestowed on other Courts of law/Tribunals as they are

already exercising jurisdiction on related issues before them. It is further stated that the scope of Section 238 of the IBC, 2016 which provides for an overriding effect of the IBC, will not be attracted in the present case as there is no conflict, and the Liquidator has to honour the decision of the various Courts of law/Tribunal as the case may be before disbursing funds from the Liquidation account, or in a situation where the funds have already been disbursed, for the Liquidator to take actions in accordance with law, and specifically, Regulation 43 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 to recover the excess amount paid to the respective creditor. The attention of this Tribunal is specially drawn to the provisions of Section 35 of the IBC dealing with the powers and functions of the Liquidator in support of the contention that the Liquidator is required under the IBC to contest all manner of proceedings on behalf of the corporate debtor so as to maximise the value available for all stakeholders. The relevant portion of Section 35 is reproduced as below:

“35. (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:-

*.....
(k) to institute or defend any suit, prosecution or other legal proceedings, civil and criminal, in the name of or on behalf of the corporate debtor;”*

10.1 A mention of the decision of the Hon'ble NCLAT in ***Company Appeal (AT) (Insolvency) No.575 of 2021 (Kotak Mahindra Bank Vs. Ashok Oswal & Others) dated 04.04.2022***, especially the following extract of the order has been made:-

“26. Learned counsel for the Liquidator has referred to Regulation 43 of the Insolvency And Bankruptcy Board of India (Liquidation Process) Regulations, 2016 which provides following:-

“43. Return of money. A stakeholder shall forthwith return any monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to.”

27. Regulation 43 amply take care of any excess amount to any stakeholders.” (emphasis supplied)

11. In the written submissions filed on behalf of the Respondent No.1-Liquidator by Diary No.00794/11 dated 12.04.2022, a reference has been made to the following Sections of the Code and Regulations of the IBBI (Liquidation Process) Regulations, 2016 relating to verification of the claims of the Financial Creditors:

- a) Section 38 of IBC 2016 -Consolidation of claims.
- b) Section 39 of IBC 2016 -Verification of claims.
- c) Section 42 Appeal against the decision of liquidation.
- d) Section 53 -Distribution of assets.
- e) Section 238 -Provisions of this Code to override other laws.
- f) Regulation 16 of IBBI (Liquidation Process) Regulations 2016-Submission of claim.
- g) Regulation 18 of IBBI (Liquidation Process) Regulations 2016-Claims by Financial Creditors.
- h) Regulation 30 of IBBI (Liquidation Process) Regulations, 2016-Verification of Claims.
- i) Regulation 31 of IBBI (Liquidation Process) Regulations, 2016- List of Stakeholders
- i) Regulation 44 of the IBBI (Liquidation Process) Regulations, 2016-Completion of liquidation
- k) Regulation 47 of IBBI (Liquidation Process) Regulations 2016-Model Time-line for liquidation process.

11.1 It is also stated that the claims and counter claims filed before the various Courts including DRT are not crystallized as on the date of the liquidation commencement date. Therefore the liquidator has correctly verified the claims under Regulation 16(2) of the IBBI (Liquidation Process)

Regulations, 2016 which states that “A person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date”. It is also emphasized that the liquidation process is a strictly time bound process and the liquidation is bound by the Regulation 44 and 47 of the IBBI (Liquidation Process) Regulations, 2016 which is to the following effect:-

“Regulation 44 "Completion of liquidation":- "The liquidator shall liquidate corporate debtor within a period of one year from the liquidation commencement date.. "Regulation 47 provides "Model time-line for liquidation process.”

11.2 The Respondent No.1-Liquidator also submitted in detail the grounds on which the claims by the respondent banks have been admitted. It is also stated that the present application should be rejected on the following grounds:-

- i. The Director of the Suspended Board has no locus to file this application under Section 60 (5) of the Code read with section 42 of the Code 2016 Applicant has tactfully exploited/used Section 60(5) including Section 42. Applicant is not eligible under Section 42, because he is not claimant and to surpass the specific Section 42 of the Code 2016 used Section 60(5) read with Section 42 of the Code to file this application. Therefore application is defective to that extent.
- ii. There is no judgment of any Hon'ble NCLT bench, Hon'ble NCLAT bench or even by the Hon'ble SC in support of the Applicant's view that the liquidator should refrain himself from admitting the claims of creditors or from distributing the realization proceeds due to

ongoing disputes as to existence of debt or any counter claim thereto pending before any other forum.

- iii. Section 238 of the IBC code 2016 specifically states that the Code has overriding effects over other laws:-*"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law"*. Therefore, in terms of Section 238 of the IBC Code 2016 proceeding pending with Hon'ble DRT has no bearing on the proceedings of the IBC.
- iv. The Liquidator appointed under the provisions of IBC, is bound by the provisions of code which specifically lays down the manner in which he has to discharge his duties i.e. regarding receiving the claims, verification of the same, realization the assets of CD and distribution of the same among the stakeholders of CD in the manner prescribed under Section 53 of the Code. Liquidator has duly acted within the scope of IBC. It is further submitted that Liquidator has verified the claim on the basis of Form D submitted by FC along-with documents filed along-with Form D and on the basis of available records and financial statements. No where liquidator has said in his reply that he has adjudicated the claim.
- v. RP, now Liquidator, has already filed application u/s 19(2) for the non co-cooperation of the promoter director including applicant of 368/2020 for not providing the books and documents with an ulterior motive to conceal the factual position in the accounts Application is still pending CA 143/2019.

11.3 After submitting the detailed reasons for admitting the claims with reference to documents and correspondences before him, the respondent No.1-Liquidator has also clarified that the Liquidator in no way adjudicated the claims of any stakeholder. Claims have been admitted after the verification in terms of the Section 38 and 39 of the Code, 2016 and Regulations 16, 18, 30 & 31 of IBBI (Liquidation Process) Regulations, 2016. The Liquidator, in accordance to the aforementioned regulations, has simply verified the claims of the stakeholders based on the information provided by the claimants along-with affidavit and as per the record available, and subsequently filed the 'List of Stakeholders' before this Adjudicating Authority. Hence, there is no 'Adjudication of Claims' by the Liquidator. It is also stated that the Liquidator has only verified the claim amount that is currently on record of this Adjudicating Authority on 26.02.2020. It is also stated that the Liquidator has complied with the duties assigned under the Act, Section 25(2)(b) of the Code, 2016 for early disposal of matter pending before DRT. It is also informed that the matter could not be taken-up in DRT due to Covid situation and also due to the pending re-constitution of the Bench at DRT Chandigarh.

12. In the written statements filed by Diary No.00794/6 dated 01.04.2021 on behalf of the Respondent No.3-IFCI Limited, has specifically denied that the liquidator would necessarily have to await the outcome of the proceedings before the Hon'ble Debt Recovery Tribunal. It is also submitted that DRT proceedings and the proceedings before this Adjudicating Authority are two separate independent proceedings and cannot be clubbed. The facts

in detail leading to the invocation of the default clause by the bank's letter dated 02.12.2010 which led to the claim filed by the respondent bank before the Liquidator have also been submitted.

13. In the written submissions filed by Diary No.00794/9 dated 01.04.2022 on behalf of the Respondent No.4-Kotak Mahindra Bank Limited, it is stated that the present application is not maintainable as it has been filed only to derail the Liquidation Proceedings of the Corporate Debtor. It is also stated that the provisions of Section 42 of I&B Code, 2016 provides a right of appeal only to the creditors against the decision of the Liquidator in accepting or rejecting the claims. Thus, Section 42 does not give any right to the applicant to file the present application/appeal against the respondent. Thus by filing an application, the applicant is indirectly trying to do what he cannot do directly, and this is not permissible in law. It is further stated that for the sake of arguments, if the counter-claim pending before learned DRT Chandigarh is allowed then the amounts payable thereunder, if any, will be remitted in the account of the corporate debtor and not into the account of the applicant herein. One such counter claim filed by the corporate debtor against UCO Bank has already been rejected by the learned DRT, Chandigarh and the same is recorded in the order dated 15.05.2019 passed by Hon'ble NCLAT. It also highlights the decision of the Hon'ble Punjab & Haryana High Court in its order dated 11.04.2016 passed in "**CWP 13888 of 2015, M/s Oswal Spinning & Weaving Mills Ltd vs. Reserve Bank of India and others**" has rejected the contention of the Applicant that mere payment of the amount due under EPC account, the Applicant account would no longer be NPA and thus liable to be classified as standard account.

13.1 Further the factum of debt due can also be corroborated from the order dated 23.04.2021 passed in CWP #18174 of 2017 "**Kotak Mahindra Bank Ltd. vs. The District Magistrate, Ludhiana and Another**" dated 23.04.2021, wherein para #15 @Pg #16 of the said order it has been recorded that the account of CD is declared as NPA, notices under Section 13(2) of the SARFAESI Act have been issued, the objections filed by the CD having been rejected - is an admitted fact.

13.2 It is submitted that the prayer that the Liquidator be directed to await the final adjudication of claims/counterclaim cannot be accepted in view of the provisions of Section 238 of I&B Code, 2016, which provides that provisions of I&B Code will have an overriding effect over the other laws. It is also stated that in the case of respondent out of a total claim of Rs.410.54 Crores, the Liquidator has only accepted its claim of Rs.73.05 Crores after due application of mind. Furthermore, the Liquidator is not a rubber stamp of the financial creditor as being portrayed by the applicant.

13.3 It is stated that the wrongful conduct of the applicant has been highlighted by stating that the fact that he has obtained the ex-parte order dated 09.09.2020, whereby a status quo has been ordered on the distribution of funds to the financial creditors by this Hon'ble Tribunal. The said order has been wrongly obtained by the Applicant '*without serving the advance copy*' of the present application upon KMB or any of the other Financial Creditors. It is also stated that, an advance copy of IA # 368/2020 was served only on the Liquidator and even after issuance of the said order dated 9.9.2020, the Applicant did not bother to serve the Financial Creditors a fact that has been

recorded in the order dated 21.10.2020 - so as to keep on enjoying the benefits of the ex parte order dated 9.9.2020.

13.4 It is also stated that the the forensic auditor in its Report dated 25.06.2019 has highlighted that the suspended directors have carried out various fraudulent and preferential transactions in CD and, thus, an amount of Rs.1320.62 is recoverable from suspended directors in terms of Section 43 & 66 of I&B Code, 2016 and in this regard, the RP has already filed an appropriate application before this Hon'ble Tribunal bearing IA #1164/2019 which is pending for consideration.

13.5 Reference has also been made to IA No.904/2021 filed by Kotak Mahindra Bank Limited (KMBL) for wilful falsification of the books of accounts of CD by the Applicant and other suspended directors of the CD on the basis of ICAI Order dated 03.02.2020. It is also submitted that there is no conflict in the provisions of I&B Code, 2016 and RDB Act, 1993, as they both operate in their own respective spheres. It further submitted that if at all the counter-claim of the CD is allowed, KMBL would be bound to abide by those orders. However, this is not a valid reason to stall the liquidation proceedings or disbursal of amounts due and payable.

14. We have gone through the arguments along with their submissions filed by all the parties and have perused the records carefully.

15. To put the discussion in the proper context, we feel it necessary to mention certain observations by the Hon'ble Supreme Court and the Hon'ble NCLAT on the issues related to the case in hand. On an appeal filed by Kotak Mahindra Bank Limited-Respondent No.4 in the present case, the Hon'ble Supreme Court noticing the proceedings taken on IA No.368/2020 (present

application) and IA No.555/2020 and the orders of the Hon'ble NCLAT passed on 19.01.2021 and 10.08.2021, by order dated 26.11.2021 disposed of the appeal and made interalia the following observations:-

“16.

the submissions before us on behalf of the respondent No.1(applicant) are to the effect that there ought not to be “tearing hurry” in deciding those applications. Such a proposition on the part of the applicant cannot be countenanced, particularly looking to the previous orders passed in the matter, as noticed hereinabove.

.....”

15.1 Subsequently, the Hon'ble NCLAT in its order dated 04.04.2022 ***in Company Appeal (AT) (Insolvency) No.575 of 2021 in Kotak Mahindra Bank Limited vs. Ashok Oswal & Ors.*** has allowed the application IA No.555/2020 by modifying the order dated 09.09.2020 and deleting the following part of the order dated 09.09.2020:

“In the meantime, the respondent No.1-Liquidator shall maintain status quo with regard to the distribution of funds to respondent Nos.2 to 5.”

15.2 It is also noted that in its order dated 15.05.2019, the Hon'ble NCLAT in para 4 has duly recorded the fact that the counterclaim filed by the corporate debtor against the UCO Bank has been rejected by the learned DRT, Chandigarh.

15.3 In the present application, the issues before this Adjudicating Authority are whether the acceptance of claims of Respondent Nos.2 to 5 by the Liquidator is not in accordance with the provisions of the Code and the Rules made there in; and whether the Liquidator should wait for the final adjudication of the claims of the Respondents pending before the learned DRT and other Judicial Authorities, before admitting the claims and disbursing the amounts.

15.4 It is clarified that the I&B Code, 2016 is a complete Code and the relevant provisions in the Code and the Rules made therein as extracted below will determine the appropriateness of the actions of the Liquidator:

“Section 38: Consolidation of claims.

**38. (1) The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.*

(2) A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility:

Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the operational creditor under sub-section(3).

(3) An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.

(4) A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner as provided in sub-section (2) and to the extent of his operational debt under sub-section (3).

(5) A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

Section 39: Verification of claims.

39. (1) The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board.

(2) The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

16. Submission of claim.

(1) A person, who claims to be a stakeholder, shall submit its claim, or update its claim submitted during the corporate insolvency resolution process, including interest, if any, on or before the last date mentioned in the public announcement.

(2) A person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.

18. Claims by Financial Creditors.

(1) A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the liquidator in electronic means in Form D of Schedule II.

(2) *The existence of debt due to the financial creditor may be proved on the basis of-*

(a) *the records available in an information utility, if any; or*
(b) *other relevant documents which adequately establish the debt, including any or all of the following-*

(i) *a financial contract supported by financial statements as evidence of the debt;*

(ii) *a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;*

(iii) *financial statements showing that the debt has not been repaid; and 16*

(iv) *an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.*

30. Verification of claims.

The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be.

31. List of stakeholders.

(1) *The liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted under these Regulations, with-*

(a) *the amounts of claim admitted, if applicable,*

(b) *the extent to which the debts or dues are secured or unsecured, if applicable,*

(c) *the details of the stakeholders, and*

(d) *the proofs admitted or rejected in part, and the proofs wholly rejected.*

(2) *The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of claims, and the filing of the list shall be announced to the public in the manner specified in Regulation 12(3).*

(3) *The liquidator may apply to the Adjudicating Authority to modify an entry in the list of stakeholders filed with the Adjudicating Authority, when he comes across additional information warranting such modification, and shall modify the entry in the manner directed by the Adjudicating Authority.*

(4) *The liquidator shall modify an entry in the list of stakeholders filed with the Adjudicating Authority, in the manner directed by the Adjudicating Authority while disposing off an appeal preferred under section 42.*

- (5) *The list of stakeholders, as modified from time to time, shall be-*
- (a) *available for inspection by the persons who submitted proofs of claim;*
 - (b) *available for inspection by members, partners, directors and guarantors of the corporate debtor;*
 - (c) *displayed on the website, if any, of the corporate debtor.”*

16. It is an undisputed proposition that the Liquidator is mandated to discharge his duties strictly as per the provisions quoted above while verifying/admitting the claims. On a careful perusal of these provisions, it is clear that the Liquidator is required to verify the claims with reference to the date of liquidation and if there is no crystallization of a debt through a decree on that date, the Code does not direct the Liquidator to wait for the same. As regards the admission of the claims, we have carefully gone through the voluminous evidence including correspondences etc. produced in the course of proceedings and also the grounds on which the claims have been admitted in the cases of Respondent Nos.2 to 5 by the Liquidator with reference to. Prima facie, the Liquidator has verified the claims on the basis of Form-D submitted by the Financial Creditors along with documents, records and financial statements filed with the same. It is also noted that the Liquidator has accepted only partial amounts of the total claims made by the financial creditors and have sought legal opinion upon some of the issues before reaching a conclusion. The issues have also been discussed in the meetings of the Stakeholders Consultation Committee (SCC). The records show that he has simply verified the claims of the stakeholders based on the information provided by the claimants along with the affidavit and by considering all the evidence before him and has filed a “List of Stakeholders” before this Adjudicating Authority. No particular procedural mistake on the part of the

Liquidator has been pointed out by the applicant during the current proceedings. It may be noted that word adjudication has been used by the Liquidator in more than one place while verifying the claim of the respondents but it seems to be a typographical or mistake through inadvertence, and the same is ignored.

16.1 In view of the above discussion, we hold that the allegation of the applicant that the Liquidator has “adjudicated” the claims filed by the respondent-financial creditors and has wrongly accepted their claims is misconceived.

17. It is trite law that timelines are sacrosanct in a liquidation proceedings as is apparent from the Regulation 47 laying down Model TimeLine for liquidation process. We also note that Section 53 dealing with Distribution of Assets also commences with a Non-obstante’ clause which specifically overrides any law enacted by the Parliament or any State Legislature for the time being in force and nowhere requires the Liquidator to wait for the decisions of other court before commencing with the process of distribution. The relevant part of the said Section is extracted below for the sake of clarity:

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.....”

18. Furthermore, Regulation 43 of the Liquidation Process Regulations 2016 quoted below itself provides the remedy, if any, undue benefit is given to a stakeholder in distribution:-

“43. Return of money.

A stakeholder shall forthwith return any monies received by him in distribution, which he was not entitled to at the time of distribution, or subsequently became not entitled to.”

19. Now coming to the Applicant’s contention that proceedings before Hon’ble DRT need to be completed before the distribution under the IBC can take place, it is clarified that the general principle of construction in a circumstance where two special Acts are in conflict with each other is that, the Act made later should prevail vide the maxim “leges posteriores priores abrogant”. The DRT was constituted under Recovery of Debts Due to Banks & Financial Institutions Act, 1993, much prior to the I&B Code, 2016. In view of Section 238 of the I&B Code, 2016 steps taken under the Code by the authority would have precedence over other authorities in parallel proceedings. Thus, the provisions of I&B Code, 2016 should prevail in case of any conflict. Furthermore, this contention of the Applicant does not hold much water in view of the a catena of judgements of the Hon’ble NCLAT in the following matter of ***Bimal Kumar Manubhai Savalia vs. Bank of India and Ors. Company Appeal (AT) (Insolvency) No. 1166 of 2019*** wherein it has been inter-alia held as follows:

(Para No. 9; page 07): "We are of the view that the SARFAESI and DRT proceedings are independent and as per Section 238 of IBC, the Insolvency and Bankruptcy Code is a complete code and will have an overriding effect on other laws. Therefore, the proceedings imitated (initiated) or pending in DRT, either initiated under SARFAESI or under Debts due to the Banks and Financial Institutions cannot be taken into account for the purpose of limitation." (emphasis supplied)

19.1 The Hon'ble NCLAT in the case of ***Rakesh Kumar Gupta V. Mahesh Bansal and others [Company Appeal (AT) (Insolvency) No. 1408 of 2019]*** has also held inter alia that:

"The pendency of actions under the SARFAESI Act or actions under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 does not create obstruction for filing an Application under Section 7 of Insolvency and Bankruptcy Code 2016, specially in view of Section 238 of IBC The Application is more to bring about a Resolution of Corporate Debtor than any penal action or any recovery proceedings."

(emphasis supplied)

19.2 Furthermore, the Hon'ble NCLAT in the matter of **Harkirat S. Bedi Vs. Oriental Bank of Commerce MANU/NL/0207/2019 : [2019] 108 taxmann.com 110 (NCLAT)** held as under:

"From the aforesaid finding, it is evident that even if a claim is disputed and if the amount payable is more than Rupees 1 lakh, the application u/s. 7 of the I & B Code is maintainable. Mere pendency of the case before the DRT for adjudication of such disputed amount cannot be a ground to reject the application u/s. 7 of the I & B Code, if the Adjudicating Authority is satisfied that there is a 'debt' and 'default' and the application is complete. On the other hand, in view of Section 14 all such proceedings in respect of any debt will remain stayed and cannot proceed during the period of moratorium."

(emphasis supplied)

20. This Authority, therefore, finds no reason to keep the liquidation proceeding in abeyance, and thus, rejects the Applicant's prayer that the Liquidator should await the final adjudication of the claims before the Hon'ble DRT before accepting the claims of the Respondents and subsequently disbursement of the amounts.

21. Before parting with this order, this Bench records the fact that there are applications by the Liquidator regarding the non-cooperation by the applicant. In this context, the Liquidator is directed to expeditiously complete the present liquidation proceedings. He is also directed to actively pursue the cases

pending before the Hon'ble DRT, Chandigarh other Judicial Authorities and include the results in the Status Report.

22. Consequently, IA No.368/2020 is dismissed and accordingly stands disposed of.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

June 03, 2022

AV