

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA No.147/2022 IN CP (IB) No.356/ALD/2019

In the matter of

Application under Section 60(5) r/w s. 35(1)(N) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 & 32 of the NCLT Rules, 2016

IN THE MATTER OF:

**SANDEEP GOEL
LIQUIDATOR FOR CHAUDHARY INGOTS PVT. LTD.**

IBBI/IPA-003/IP-N00073/2017-18/10583

410, Pratap Bhawan
Bahadur Shah Zafar Marg,
New Delhi-110002

-----Applicant

VERSUS

PASCHIMANCHAL VIDYUT VITRAN NIGAM LTD. (PVVNL)

THROUGH

EXECUTIVE ENGINEER

ELECTRICITY URBAN DISTRIBUTION DIVISION III

16 Tikait Vihar Neer Vasundhara Residency
Muzzaffarnagar, Uttar Pradesh – 251001.

.....Respondent

AND IN THE MATTER OF:

SHRIYANK WADHAWA

.....Financial Creditor/Petitioner

VERSUS

M/S. CHAUDHARY INGOTS PVT. LTD.

(Under Liquidation)

.....Corporate Debtor/Respondent

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Order pronounced on 3rd April, 2024

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Shubham Agarwal, Adv. : *For the Liquidator/ Sh. Sandeep Goel
present in person*

NONE : *For the Respondent/Paschimanchal
Vidyut Vitran Nigam Ltd.*

ORDER

1. This Application has been filed under section 60(5) r/w Section 35(1) (N) of the IBC, 2016 r/w rule 11 and 13 of the NCLT Rules, 2016 for seeking the direction against the Respondents to deposit the security deposit amount of INR 1,04,00,000 (Indian Rupees One Crore Four Lacs Only) and interest thereon (as applicable upto the date of deposit); into liquidation account maintained by the applicant for the Corporate Debtor.

2. This tribunal vide order dated 29.11.2021 passed u/s. 33(2) and S. 33(5) of the Code in I.A No. 22/2021 and I.A No. 308/2021 in CP (IB) No. 356/ALD/2019 initiated the liquidation proceedings of the Corporate Debtor and the Applicant was approved as the

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liquidator in the matter in accordance with S.34 (1) of the Code. The copy of the order dated 29.11.2021 is annexed as **Annexure A-1** with the Application.

3. After being appointed as the liquidator and in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Applicant issued Public Announcement Form B dated 02.12.2021, inviting stakeholders to submit their claims along with supporting evidence by 30th December, 2021. The copy of the public announcement has been annexed as **Annexure A-2 (Colly)** with the Application.

4. As per Regulation 17 of the Liquidation Process Regulations, 2016, the Respondent filed their claim on 24.12.2021 in Form C under before the Applicant which has been annexed as **Annexure A-3** with the Application. In their claim the Respondent have claimed the following amounts, as under:

Particulars	Amount (in Rs.)
Principal	INR. 3,48,44,219/- (Indian Rupees Three Crore Forty Eight Lacs Forty Four Thousand Two Hundred and Nineteen Only)

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Interest	INR. 55,75,075/- (Indian Rupees Fifty Five Lacs Seventy Five Thousand Seventy Five Rupees Only).
TOTAL	INR.4,04,19,294/- (Indian Rupees Four Crore Four Lacs Nineteen Thousand Two Ninety Four Only).

5. It is stated that in their claim at Point No. 8, the Respondent has adjusted/set-off/retained the total amount of INR. 1,15,33,600/- (Indian Rupees One Crore Fifteen Lacs Thirty Three Thousand Six Hundred Only) towards the arrears of electricity dues of the Corporate Debtor in terms of provisions of the Electricity Supply Code, 2005. The details of the set-off/adjustment/retention are as under:-

Particulars of Asset of CD	Amount Adjusted By Respondent
Security Deposit deposited by Corporate Debtor	INR. 1,04,00,000/- (Indian Rupees One Crore Four Lacs Only)
Interest on Security Deposit calculated @6.25% for FY 2019-20 and @4.65% for FY 2020-21.	INR. 11,33,600/- (Indian Rupees Eleven Lacs Thirty Three Thousand Six Hundred Only).
TOTAL	INR. 1,15,33,600/-

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6. In an email dated 24.02.2022, the Applicant requested the Respondent to transfer the Security Deposit along with any applicable interest to the liquidation account managed by the Applicant for the Corporate Debtor. This deposit is considered part of the liquidation estate of the Corporate Debtor in accordance with Section 36 of the Code, and it will be distributed as per the provisions outlined in Section 53. The copy of the letter/E-mail dated 24.02.2022 has been annexed herein as **Annexure A-4** with the Application.

7. Thereafter, in accordance with Section 35(1) (f) of the Code, the Applicant suggested auctioning the assets of the Corporate Debtor (CD) located at SITE VAHALANA ROAD, MUZAFFARNAGAR, UTTAR PRADESH 251001, IND (detailed in Annexure A-5). A meeting of the CD's creditors was convened for this purpose vide notice dated 09.04.2020. Subsequently, the meeting took place on 25.02.2022, with the participation of the Respondent. During the meeting, it was proposed to conduct an E-auction for the sale of the mentioned assets/property (outlined in Annexure A-5). A copy of the E-auction sale notice dated

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13.04.2022 has been annexed herein as **Annexure A-5** with the Application.

8. The Applicant has successfully conducted and finalized the E-auction sale on 28.04.2022, adhering to the regulations of the Code. According to the outcome, two (2) bidders were identified and confirmed as successful. However, the bidder for the Plant and Machinery failed to fulfill the payment obligations stated in the Letter of Intent (LOI) which lead to the forfeiture of their Earnest Money Deposit (EMD). The E-auction results dated 28.04.2022 are annexed herein as **Annexure A-6** with the Application.

9. Subsequently, on 05.03.2022, the Respondent responded to the Applicant's request, declining to deposit the Security Deposit amount along with any applicable interest into the liquidation account managed by the Applicant for the Corporate Debtor. The Respondent justified this by stating that the adjustment/set-off of these amounts was carried out in accordance with the statutory provisions outlined in 4.38 (iii) of the Electricity Supply Code, 2005 (Uttar Pradesh). The copy of the reply dated 05.03.2022 has been annexed as **Annexure A-7** with the Application.

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10. Applicant contends that the actions of the Respondent are contrary to the provisions of Section 14 and after the commencement of liquidation proceedings the same also violates Section 33(5) of the Code. The Adjusted Security amounts are assets/property of the Corporate Debtor which shall vest with the Applicant in view of S.35 (1) (b) and shall form part of the liquidation estate under S.36 for the distribution in accordance with S.53 of the Code. The issues of the Respondent do not fall under Section 52 of the Code. Applicant has placed reliance on a Judgment dated 18.06.2020 in passed in **Company Appeal (AT) (Insolvency) No. 1510 of 2019 titled as "Mr Srikanth Dwarakanath vs Bharat Heavy Electricals Limited"**.

11. Applicant also contends that after the commencement of insolvency/liquidation proceeding, the assets of the CD shall vest with the IRP/RP/Liquidator and no option of set-off/adjustment is allowed and the same is contrary to the object of the Code as held in Judgment dated 13.07.2020 in Company Appeal No. 530 & 700 of 2019 before the Hon'ble NCLAT, New Delhi titled as '**Vijay Kumar V Iyer (Resolution Professional for Aircel Ltd. And Dishnet Wireless Ltd.) Versus Bharti Airtel Ltd. & Ors.**'

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12. The Respondent's contention is based on the provision 4.38 of the Electricity Supply Code, 2005 for the denial to deposit the Adjusted Security. The said provision is reproduced below:

"...4.38 Permanent Disconnection

(i) The supply shall be disconnected permanently in following cases:

(a) With the termination of the agreement.

(b) If the cause for which the supply was temporarily disconnected is not removed within six months period.

(c) On request of consumer as described under section 4.14(g). (ii) If the dues are not paid by the consumers the surcharge payable by the consumer on dues shall be levied upto the period of issue of section-5 notice, or for maximum eight months only.

(iii) The security amount shall be adjusted first and after adjusting the security amount the net arrear shall be calculated on which surcharge shall be payable by the consumer.

13. The provisions 4.38 (iii) states that the security amount shall be adjusted first and after adjusting the security amount; the net arrears shall be calculated on which surcharge is charged to the

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consumer. Therefore, this provision is only directed towards calculation of surcharge. The provision 4.20 (h) deals with adjustment of security deposit and the same is reproduced below:

"4.20 Security Deposit

...

(h) The security deposit shall be returned to consumer, upon termination of the agreement & finalization of permanent disconnection, and after adjustment of all dues, within 30 days. However, if the delay in payment exceeds 90 days, interest at bank rates of Reserve Bank of India, shall be payable to the consumer. In this regard it shall be the responsibility of the licensee to keep a watch on the bank rate from time to time.";

14. The Respondent has provided the interest on security deposit for the period of 2020-21 and the insolvency of the Corporate Debtor commenced on 03.01.2020. Therefore, any adjustment made by the Respondent has been, on or after, the commencement of insolvency proceedings of the CD. Section 238 of the Insolvency and Bankruptcy Code, 2016, states as follows:

"...238. Provisions of this Code to override 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..."

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15. It has also been held in **Company Application No. 65/ALD/2016 in CP No. (IB) 23/ALD/2017 titled as 'Raman Ispat Pvt. Ltd. Versus Executive Engineer Paschimanchal Vidyut Vitran Nigam Limited (PVVVNL) & Ors.** That the provisions of the Code shall over-ride the provisions of any other law including the Electricity Supply Code, 2005 as per the judgment dated 21.08.2018. The said judgment has also been upheld in the appeal preferred by PVVNL / Respondent before the Hon'ble NCLAT, New Delhi in **Company Appeal (AT) (Insolvency) No. 639 of 2018** as per judgement dated 15.05.2019.

16. The Adjusted Security is an asset of the Corporate Debtor and forms part of the operational debt owed to the Respondent as explained and held in the judgment dated 04.02.2022 in **Civil Appeal No 2839 of 2020 before the Hon'ble Apex Court of India titled as 'M/s Consolidated Construction Consortium Ltd. M/s Hitro Energy Solutions (P) Ltd.'** Therefore, the Adjusted Security cannot be set-off/adjusted/retained against the electricity arrears payable by the Corporate Debtor in priority to other creditors and the same shall form part of the liquidation estate in terms of S.36 of the Code.

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17. This conduct of the Respondent towards avoiding amounts in a manner the distribution of the Adjusted Security stated under Section 53 of the Code and the same also violates Article 14 of the Constitution of India. Therefore, the Applicant has preferred the present Application.

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT

18. In response to the said application Respondent has filed counter affidavit wherein respondents have denied all the averments made in the application by the applicant. The Respondent has made the following submissions: -

- i. Respondents states that this tribunal vide order dated 21.08.2018 passed in **CA No. 88/ALD/2018 in CP No. (IB) 23/ALD/2017 in the matter of Raman Ispat Pvt Ltd versus M/s PVVNL** held that *"Since the provision of Insolvency and Bankruptcy Code, 2016 has an overriding effect, and there exists a direct inconsistency between the provisions of liquidation as provided in Chapter 3rd of the I.B. Code, 2016 with the provision for attachment of assets for recovery of dues for supply of electrical energy under the U.P. Electricity Supply*

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Recovery)Act, 1956, therefore provisions of IB Code shall prevail."

- ii. In the aforesaid order, this Tribunal issued directions to the District Magistrate for immediate release of the property held by him in favour of the Liquidator.
- iii. Being aggrieved by the said order dated 21.08.2018, PVVNL preferred an appeal before the Hon'ble NCLAT, Delhi in **CA No. 88/ALD/2018 in CP No. (IB) 23/ALD/2017 in the matter of Raman Ispat Pvt Ltd versus M/s PVVNL**. The appeal before the Hon'ble NCLAT, Delhi was numbered as **Company Appeal (AT) (Insolvency) No. 639 of 2018**. The Hon'ble NCLAT dismissed the said appeal vide order dated 15.05.2019.
- iv. The judgment of the NCLAT dated 15.05.2019 was challenged before the Hon'ble Supreme Court of India vide Civil Appeal **CA No 007976/2019 titled as PVVNL VS Raman Ispat Limited & others**. This Civil Appeal is still pending.
- v. Respondent contends that present application is filed by the Liquidator for seeking a direction to the PVVNL to deposit the

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"Security Deposit" amount of Rs. 1,04,00,000/- into the liquidation account maintained by the Liquidator for the Corporate Debtor. This contention/prayer of the applicant is based solely on the ground of the Judgment dated 21.08.2018 passed in CA No. 88/ALD/2018 in CP No. (IB) 73/ALD/2017 in the matter of Raman Ispat Pvt Ltd versus M/s PVVNL passed by the NCLT.

- vi. The respondent is governed and covered by the provisions of Section 4.38 of the Electricity Supply Code, 2005 read with U.P. Government Electrical Undertakings (Dues Recovery) Act, 1958 and as such the provisions as contained therein shall apply to the facts and circumstances of the present case.
- vii. Respondent also contends that Section 4.20 would apply where the disconnection is permanent and after adjustment of all dues viz. payment of all electricity dues. Section 4.38 of the Code specifically states that if the dues are not paid by the consumer, the security deposit shall be adjusted after adjusting such deposit the net arrears shall be calculated.

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WRITTEN SUBMISSION ON BEHALF OF APPLICANT

19. The Applicant has filed written submissions vide dairy no. 627 dated 11.03.2024 wherein followings averments have been made stated as under:-

- i. *The present Application, the Applicant has challenged the action of the Respondent pertaining to the setting-off/adjustment of the electricity dues of the Corporate Debtor from the Security Deposit and Interest thereon, amounting to INR 1,15,33,600/- (Indian Rupees One Crore Fifteen Lacs Thirty Three Thousand Six Hundred Only) ("Adjusted Security"). The Security Deposit was deposited by the Corporate Debtor and held by the Respondent in terms of the provisions of Electricity Supply Act, 2005 (Uttar Pradesh). The Adjusted Security amount has been retained by the Respondent as reflected at Point No. 8 of their claim filed before the Applicant in FORM-C (under Regulation 17 of the Liquidation Process Regulations, 2016) dated 24.12.2021.*
- ii. *2. That the Liquidation order was passed against M/s. Chaudhary Ingots Pvt. Ltd. on, pursuant to which PVVNL submitted its claim of Rs. 4,04,19,294/- (after adjusting the security deposit of Rs. 1,04,00,000/- and interest thereon @4.65% i.e. of Rs 11,36,500/- against the total outstanding of Rs. 5,19,55,794.*

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iii. 3. The liquidator has admitted the claim of PVVNL to the extent of Rs. 4,04,19,294/-

iv. 6. The Applicant avers that the Adjusted Security amounts are assets / property of the Corporate Debtor and shall form part of the liquidation estate of the Corporate Debtor for the benefit of all creditors in terms of Section 36 of the Code. The action of set-off/adjustment/retention made by the Respondent has become void due to the initiation of Insolvency/Liquidation proceedings against the Corporate Debtor as the same is in contravention to the Moratorium envisaged under S. 14 and S.33(5) of the Code and the Respondent's case is not covered under S. 52 of the Code. Imperatively, as per Section 35 of the Code, the Adjusted Security amount shall vest with the Applicant and the same is subject to distribution in accordance with Section 53 of the Code.

v. 7. The Respondent has relied on provision 4.38 of the Electricity Supply Code, 2005 for the denial to deposit the Adjusted Security to the liquidation account maintained by the Applicant for the Corporate Debtor. The aforesaid denial by the Respondent is contrary and opposed to the provisions of the IB Code 2016.

vi. That Respondent mainly relied in their Counter Affidavit filed on 30.08.2022 on the Civil Appeal No 7976 of 2019 before the Hon'ble Apex Court of India titled as 'M/s Paschimanchal Vidyut Vitran Nigam Limited (PVVVNL) vs Raman Ispat Pvt.

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Ltd. stating that this appeal filed by them was pending before the Apex court. This appeal has now been decided as dismissed against the respondent (PVVNL).

vii. That the Hon'ble Apex Court in the judgement dated 17.07.2023 in Civil Appeal No 7976 of 2019 before the Hon'ble Apex Court of India titled as 'M/s Paschimanchal Vidyut Vitran Nigam Limited (PVVNL) vs Raman Ispat Pvt. Ltd. held the following:

(i) 52. "In a similar manner, it is held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174)."

(ii) 34. "Section 52 gives an option to secured creditors to either relinquish their security interest, in the liquidation process (the procedure for which is prescribed in Regulations 21 and 214 of the Liquidation Regulations 26), or proceed to enforce it. In case of the latter option, the secured creditor has to first indicate its option, within the time prescribed (30 days, in Form C or D of Schedule II to the Liquidation Regulations). The liquidator may then as per Section 52 (3), permit the secured creditor to realize such dues as are proved to exist, as security debts. Upon clearance by the liquidator, the secured creditor may proceed to enforce its claim, under Section 52 (4). If there is resistance during the process, the secured creditor may

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approach the NCLT [Section 52 (5) and (6)]. Upon enforcement, any excess amount realized should be tendered to the liquidator [Section 52 (7)]."

(iii) 47. "For these reasons, it is held that in the present case, dues or amounts payable to PVVNL do not fall within the description of Section 53(1)(f) of the IBC."

(iv) 56. "The record further shows that after the NCLT passed its order, the appellant preferred its claim on 10.04.2018. Based on that application, the liquidator had filed an application before the NCLT for modification of its order dated 21.08.2018, and contended that F'VVNL also came under the definition of 'secured operational creditor' in realization of its dues in the liquidation proceedings as per law."

(v) 57." For the above reasons, it is held that the appeal deserves to fail. At the same time, the liquidator is directed to decide the claim exercised by PVVNL in the manner required by law."

viii. 12. That the respondent having not taken approval from the liquidator as well as from the NCLT for appropriating the security to set off the dues of Corporate debtor within the time prescribed (30 days, in Form C or D of Schedule II to the Liquidation Regulations) and with the aforesaid position of law Liquidator reiterates its stand in the application that the security money lying with the PVVNL is an asset of the corporate debtor and it is to be deposited with the liquidation

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account of the Corporate Debtor so that liquidator can distribute the same as per section 53.

WRITTEN SUBMISSIONS ON BEHALF OF PVVNL

20. The Respondent has filed written submission vide dairy no. 582 dated 04.03.2024 wherein it stated that in the case of Raman Ispat the judgment of the Hon'ble NCLAT dated 15.05.2019 was challenged by the respondent PVVNL before the Hon'ble Supreme Court of India vide Civil Appeal CA No 007976/2019 PVVNL Vs Raman Ispat Limited & others. The Hon'ble Apex Court order dated 17.07.2023 dismissed the appeal with certain directions to the liquidator to decide the claim exercised by PVVNL in the manner required by law. The relevant extract of the Hon'ble Supreme Court judgement is reproduced below:-

“.....

55. Section 78 enacts, that when a company whose property is subject to charge, fails to register it, the charge holder (or the person entitled to the charge over the company's assets) can seek its registration. Section 3 (31) of the IBC defines “security interest” in the widest terms. In this court's opinion, the liquidator cannot urge this aspect at this stage, because of the concurrent findings

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of the NCLT and the NCLAT that PVVNL is a secured creditor.

56. The record further shows that after the NCLT passed its order, the appellant preferred its claim on 10.04.2018. Based on that application, the liquidator had filed an application before the NCLT for modification of its order dated 21.08.2018, and contended that PVVNL also came under the definition of ‘secured operational creditor’ in realization of its dues in the liquidation proceedings as per law. The application sought amendment of the list of stakeholders. The application was allowed. In view of these factual developments, this Court does not consider it appropriate to rule on the submissions of the liquidator vis-a-vis the fact of non-registration of charges under Section 77 of the Companies Act, 2013.

V. CONCLUSION

57. For the above reasons, it is held that the appeal deserves to fail. At the same time, the liquidator is directed to decide the claim exercised by PVVNL in the manner required by law. It shall complete the process within 10 weeks from the date of pronouncement of this decision, after providing such opportunity to the appellant, as is necessary under law.

...”

21. The Respondent has also placed reliance on judgement passed by the Hon'ble Supreme Court in ***Civil Appeal No 2109-2110 of 2004 K.C. Ninan v. Kerala State Electricity Board (2023 SCC Online SC 603)*** .

FINDING AND ORDERS

22. We heard the submissions made by the Ld. Counsel of both the parties and perused the materials submitted on record.

23. The Respondent in his averment has stated the adjusted security amount of Rs. 1,04,00,000 has been done as per Section 4.38 of the Electricity Act, 2003 and Electricity Supply Code, 2005 and Electricity Act is a special law which would prevail over IBC.

24. It is significant to mention that in ***Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Ltd. and Ors. (being Civil Appeal No.7976 of 2019)***, the Hon'ble Supreme Court has held that Section 238 of the Insolvency and Bankruptcy Code, 2016 ("**IBC/Code**") overrides the provisions of the Electricity Act, 2003, despite the latter containing two specific provisions being Section 173 and 174 which have overriding effect over all other laws. *"Section 52 gives an option to secured creditors to either*

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relinquish their security interest, in the liquidation process (the procedure for which is prescribed in Regulations 21 and 214 of the Liquidation Regulations 26), or proceed to enforce it. In case of the latter option, the secured creditor has to first indicate its option, within the time prescribed (30 days, in Form C or D of Schedule II to the Liquidation Regulations). The liquidator may then as per Section 52 (3), permit the secured creditor to realize such dues as are proved to exist, as security debts. Upon clearance by the liquidator, the secured creditor may proceed to enforce its claim, under Section 52 (4). If there is resistance during the process, the secured creditor may approach the NCLT [Section 52 (5) and (6)]. Upon enforcement, any excess amount realized should be tendered to the liquidator [Section 52 (7)]."

25. The Hon'ble Apex Court clarified that Section 53 confers Government debts [Section 53(1) (e)] and operational debts [Section 53(1) (f)] lower priority in comparison to dues owed to unsecured financial creditors. It is imperative to note that a secured creditor must make an informed decision, at the very outset of the liquidation process (under the Code), whether or not to relinquish its secured interest. In case the creditor relinquishes

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its interest, then its dues rank high in the waterfall mechanism. If the creditor chooses not to relinquish its security interest, and instead enforce it, but is unsuccessful in realizing its dues, then it will stand lower in priority, and accordingly, will have to await distribution of assets upon realization of the liquidation estate.

26. The rationale that the Hon'ble Supreme Court reaffirmed in the aforesaid case that the IBC, 2016 is a special statute that accounts for the dues of all creditors to be disbursed as per the waterfall mechanism during CIRP.

27. Recently, the Hon'ble Supreme Court has dealt with the issue of right of set-off by the creditor in the insolvency proceedings. The Hon'ble Supreme Court in the matter of ***Bharti Airtel Ltd. and Another Vs. Vijaykumar V. Iyer and Others – Supreme Court (2024) ibclaw.in 02 SC*** held that “.....*Unlike the provisions of the Companies Act, 1956 or the Companies Act, 2013, IBC in the case of CIRP does not give the indebted creditors the right to set-off against the corporate debtor. In the case of partnerships and individual bankruptcies, Section 173 of the IBC permits set-off. Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016 provides for mutual credits and setoff. The Liquidation Regulations*

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are not applicable to Chapter II Part II of the IBC, which relates to the CIRP. (p13)

Section 36(4) permits the IBBI to specify assets which could be subject to set-off on account of mutual dealings between the corporate debtor and the creditor. When an asset is excluded from the liquidation estate, it is not available for distribution in the liquidation process. It follows that if a creditor exercises and is allowed set-off, then in terms of Section 36(4) of the IBC this creditor is given a preferred status over others, including the secured creditors, to the extent of the set-off value.(p14)

Notwithstanding the omission in the Liquidation Regulations to refer to Section 36(4) of the IBC, set-off on account of mutual dealings is permitted in terms of Regulation 29 of the Liquidation Regulations. The sums due mutually can be set off to arrive at the net amount payable to the corporate debtor or the other party. (p15)

The principle of pari passu though not explicitly mentioned in the IBC, is apparent as the edifice of Section 53 read with Section 52 of the IBC, as these provisions create a liquidation hierarchy with the stipulation that each class of creditors shall rank equally among each other. The same class of creditors should be given equal treatment. As set-offs can mitigate against the pari passu principle, they should be allowed when mandated, or can be justified by law.

28. We have considered the aforesaid analysis and judgments passed by the Hon'ble Supreme Court. The PVVNL has adjusted the sum of Rs. 1,15,33,600/-. The amount already set off by the PVVNL against anticipated claim cannot be permitted. In view of the fact that entire amount becomes part of the Corporate Debtor, security deposit being an integral part of the payment made by the

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erstwhile Corporate Debtor would therefore be part of the liquidation estate.

29. The PVVNL at best is entitled to file its claim before the RP/Liquidator as the case may be, as per the amount due to be paid to the PVVNL and the adjustment of the claim by the Liquidator.

30. We therefore, allow the present application filed by the liquidator directing the PVVNL to refund the offset amount done by it along with interest which has been set off at its own level.

31. The Liquidator would adjudicate the claim if any of the PVVNL in accordance with law for the purpose of disbursement under section 53 of the Code, 2016.

32. In view of the above, **I.A No. 147 of 2022** is allowed and stands disposed off.

33. Ordered Accordingly.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Date: 3rd April, 2024

IA No.147/2022 IN CP (IB) No.356/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ