

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH**

**IA No.1014/KB/2020**

**in**

**CP (IB) No.543/KB/2017**

**CP (IB) No.543/KB/2017**

*In the matter of*

SBER Bank

...

Financial Creditor

Versus

Varrsana Ispat Limited

...

Corporate Debtor

**IA No.1014/KB/2020**

*In the matter of*

Varrsana Employee Welfare Association...

Applicant

Versus

Anil Goel & others

...

Respondent

**Date of hearing: 23.03.2021**

**Date of pronouncement: 28.05.2021**

*Coram:*

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

*Appearances (via videoconferencing):*

For the Applicant/Varssana

: Mr Rishav Banerjee, Adv  
Mr Patita Paban Bishwal, Adv

For Respondent No.1/Liquidator

: Mr Joy Saha, Sr Adv  
Mr Kanishk Khetan, Adv  
Mr Arun Kumar Gupta, PCA  
Mr Anil Goel, Liquidator

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For Respondent Nos.2 and 7 : Mr Ramesh Chandra Prusti, Adv  
Ms Sukriti Dutta, Adv

For Respondent No.9 : Mr Shaunak Mitra, Adv  
Mr Dripto Majumdar, Adv  
Ms Ayusmita Sinha, Adv  
Mr Akshay Jhunjhunwala (R9),  
member of the suspended Board.

### **ORDER**

*Per: Rajasekhar V.K., Member (Judicial)*

#### **1. Preamble**

1.1. This is an application filed by Varssana Employee Welfare Association against Mr Anil Goel, Liquidator of Varssana Ispat Limited (**Corporate Debtor**), seeking multifarious reliefs *inter alia* as follows: -

- (a) An order directing the Liquidator to immediately refund the fees of ₹1.5 crore (approx) taken by the Liquidator for or on account of illegal distribution of funds among the creditors of the corporate debtor to the bank account of the corporate debtor along with interest;
- (b) Direction upon the Liquidator to immediately include a representative of the Applicant in the Stakeholders' Consultation Committee (**SCC**) of the Corporate Debtor and the Liquidator be directed not to take any decision without including the representative of the Applicant in the SCC of the Corporate Debtor;
- (c) Necessary orders directing the Liquidator to immediately take steps and direct the financial creditors to immediately deposit ₹26 crore (approx) in an interest-bearing account of the corporate Debtor in accordance with the order dated 26.06.2010 (*sic* 26.06.2020) passed by NCLT Kolkata Bench;
- (d) An appropriate order directing the Liquidator to immediately recover the sum of money illegally recovered by the Banks/Lenders/Financial Creditors in violation of the moratorium order and in violation of section 14 of IBC, 2016 as more particularly held in the order dated

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12.07.2018 passed by this Adjudicating Authority in CA (IB) No.563/KB/2018;

- (e) Injunction restraining the Liquidator from convening any meeting of the SCC without giving prior reasonable notice to the applicant;
  - (f) Injunction restraining the Liquidator from distributing margin money among the Creditors;
  - (g) Injunction restraining the creditors/Banks from receiving margin Money from the corporate Debtor before sale of assets of the Corporate Debtor;
  - (h) Order be passed directing the Liquidator to forthwith issue notices of meetings of the SCC of the corporate debtor to the applicant and to permit representation and participation of the applicant at all meetings of the SCC; and
  - (i) Any SCC meetings/decision taken at the SCC meetings till date be adjudged null and void.
- 1.2. In an ideal world, there ought to have been separate applications for such diverse prayers. However, in not rejecting the application on this ground alone, we have weighed in several factors, among them, the pandemic, lack of adequate access to litigants, the hardships faced by them in complying with the formalities required to file applications, and the most important factor of them all – the application has been filed by the workers and technicalities should not defeat the administration of justice itself.
- 1.3. Arguments were primarily addressed in respect of these prayers: -
- (a) An order directing the Liquidator to immediately refund the fees of ₹1.5 Crore (approx) taken by the Liquidator for or on account of illegal distribution of funds among the creditors of the corporate debtor to the bank account of the corporate debtor along with interest;
  - (b) Direction upon the Liquidator to immediately include a representative of the Applicant in the SCC of the Corporate Debtor and the Liquidator be directed not to take any decision without including the representative of the Applicant in the SCC of the Corporate Debtor;

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- (c) Necessary orders directing the Liquidator to immediately take steps and direct the Financial creditors to immediately deposit ₹26 crore (approx) in an interest-bearing account of the corporate Debtor in accordance with the order dated 26.06.2010 (*sic* 26.06.2020) passed by NCLT Kolkata Bench;
- (d) An appropriate order directing the Liquidator to immediately recover the sum of money illegally recovered by the Banks/Lenders/Financial Creditors in violation of the moratorium order and in violation of section 14 of IBC, 2016 as more particularly held in the order dated 12.07.2018 passed by this Tribunal in CA (IB) No.563/KB/2018.
- 1.4. The other prayers are consequential prayers, and really hinge on the grant of the four prayers as mentioned in this para.

**2. *The précis***

2.1. The Applicant's case as stated in the application is as follows: -

- (a) Around October-November 2019, the Applicant came to know that without finalising the asset memorandum, without carrying out valuation and without any attempt to sell the corporate debtor as a going concern, the Liquidator withheld ₹18 crore from the working capital of the corporate debtor for distribution amongst the financial creditors. This was in spite of the fact that a scheme of compromise and arrangement in respect of the corporate debtor was still pending for adjudication before this Adjudicating Authority. This was done with a view to getting more fees by such illegal distribution of funds, even though the Liquidator was already drawing a remuneration of eight lakh rupees a month from the corporate debtor.
- (b) In this circumstance, the Applicant filed an interlocutory application being IA No.1546/KB/2019, wherein this Adjudicating Authority held that as the company is a going concern, the Liquidator cannot distribute the assets till the determination of the interlocutory application. However, in complete disregard of this order, the Liquidator actually disbursed the entire amount of ₹21 crore to the financial creditor of the corporate debtor with the sole intention of getting a higher percentage of fees.

- (c) In February 2020, the Applicant filed another interlocutory application, complaining about the illegal distribution made by the Liquidator. The application was made returnable in March 2020, but due to the nationwide lockdown imposed due to the Covid-19 pandemic, the application could not be taken up for hearing. Taking advantage of this lockdown, the Liquidator transferred a further sum of ₹2 crore to the liquidation account for distribution amongst the financial creditors. There was a further transfer to the liquidation account, amassing about ₹5 crore for distribution.
- (d) The Applicant then filed another application in this regard, in which this Adjudicating Authority ordered on 26.06.2020 that the Liquidator could not have distributed the funds from the working capital of the corporate debtor pending liquidation of assets.
- (e) Subsequently, the Applicant came to know that the Liquidator has taken a fee of approximately ₹1.5 crore from the bank account of the corporate debtor for illegal distribution of funds among certain financial creditors of the corporate debtor which had already been declared unlawful and illegal by the order dated 26.06.2020 passed by the Adjudicating Authority. The Liquidator has also not taken any steps to comply with the directions contained in the said order dated 26.06.2020 whereby the financial creditors were directed to deposit the entire amount illegally distributed to them, in an interest-bearing account.
- (f) The Liquidator has also not taken any steps to recover the money that some financial creditors had withdrawn from the account of the corporate debtor during the Corporate Insolvency Resolution Process (CIRP) period in violation of the moratorium, which was also held to be illegal by the order dated 12.07.2018 passed by this Adjudicating Authority.
- (g) The further grievance is that the Liquidator has not included any workmen and employees in the SCC in complete violation of regulation 31A of the Insolvency & Bankruptcy Board of India (Liquidation Process Regulations), 2016 (*“Liquidation Regulations”*), and despite

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directions from this Adjudicating Authority to do so in its order dated 20.11.2019.

**3. *Arguments of Mr Rishav Banerjee, learned counsel for the applicant***

3.1. Mr. Rishav Banerjee, learned counsel for the applicant commenced his submissions by stating that he was pained at the way the Liquidator was treating the proceedings as adversarial litigation where the primary focus is on the employees and workers of the corporate debtor.

***On prayer (a): Liquidator to refund the fee of ₹1.5 crore taken by him***

3.2. On refund of fee of ₹1.5 crore (approx) taken by the Liquidator, Mr Rishav Banerjee submitted that the Liquidator refunded the money by cheque dated 03.11.2020<sup>1</sup> only after Insolvency & Bankruptcy Board of India (IBBI) passed an order on 29.10.2020 following a complaint made to it.

3.3. Mr Banerjee submitted that the prayer has since become infructuous, and therefore, he is not pressing for it.

***On prayer (b): Workers to have a seat on the SCC***

3.4. Mr Rishav Banerjee submitted that the Applicants have a claim in respect of the corporate debtor, thus entitling them to a seat on the SCC of the corporate debtor. The claim of the employees is in respect of notice period. As would be evident from the email dated 15.09.2020,<sup>2</sup> the Liquidator has wrongly rejected the claim for notice period on the wrong notion that the employees stand discharged by the order of liquidation. The corporate debtor is still a going concern. This is a position admitted by the Liquidator also. Section 33(7) of the Code categorically states that the order of liquidation shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process of the

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<sup>1</sup> Page 64 of the Liquidator's reply

<sup>2</sup> Page 111 of the Application

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liquidator. Thus, it is evident that the Liquidator has wrongfully denied the claim of the Applicant and is completely ignoring the provisions of the Code, Mr Banerjee submitted.

3.5. Mr Rishav Banerjee stated that in terms of section 33(7)<sup>3</sup> of the Code, the order dated 06.08.2019 passed by the Adjudicating Authority for liquidation of the corporate debtor acted as notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the Liquidator. He submitted that the workers have a claim for the notice period. He drew our attention the Liquidator's email dated 15.09.2020,<sup>4</sup> wherein he has mentioned that – (1) the claim was filed after the due date for receipt of the claims, which was 05.09.2019; (2) All the employees and workers were discharged by virtue of the liquidation order of 06.08.2019. Therefore, a claim for notice period cannot be accepted. In this regard, Mr Rishav Banerjee placed for consideration regulation 19(4) of Liquidation Regulations,<sup>5</sup> and submitted that there are 600 permanent employees of the corporate debtor, who would have gratuity claims. The gratuity claims will be part of the books of accounts. Regulation 28<sup>6</sup> *ibid* provides for debt payable at a future time.

3.6. Further, in terms of regulation 31A, the maximum number of financial creditors on the SCC can only be four. However, the Liquidator had sent

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<sup>3</sup> (7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

<sup>4</sup> Page 111 of the Application

<sup>5</sup> 19. Claims by workmen and employees. – (1) to (3) \*\*\*

(4) The Liquidator may admit the claims of a workman or an employee on the basis of the books of account of the corporate debtor if such workman or employee has not made a claim.

<sup>6</sup> **28. Debt payable at future time.** (1) A person may prove for a claim whose payment was not yet due on the liquidation commencement date and is entitled to distribution in the same manner as any other stakeholder. (2) \*\*\*

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invites to six financial creditors for the meeting on 05.11.2019.<sup>7</sup> These six financial creditors were – (1) Corporation Bank; (2) Indian Overseas Bank (IOB); (3) Central Bank of India; (4) SBER Bank; (5) UCO Bank; and (6) United Bank of India. This is in direct violation of regulation 31A.

***On prayer (c) - return of ₹26 crore paid to the financial creditors***

- 3.7. On return of the ₹26 crore paid to the financial creditors, Mr Rishav Banerjee submitted that a Contempt Application (No.859/KB/2020) is pending consideration before the Adjudicating Authority. There is *ex facie* contempt of the order dated 14.01.2020. Mr Rishav Banerjee further submitted that the Liquidator was in a tearing hurry to make the payments to the financial creditors because he was keen on taking the maximum possible fee prescribed under regulation 4 *ibid*, whereby the Liquidator is able to claim a higher percentage of fee.
- 3.8. The order dated 26.06.2020<sup>8</sup> passed by this Adjudicating categorically directed the financial creditors who were in receipt of the fund shall keep the amount received by them in an interest-bearing account of the corporate debtor. No appeal has been preferred by the financial creditors against such order and there is no order of stay of the order dated 26.06.2020. However, the Liquidator has hardly taken any active steps for complying with the order dated 26.06.2020. If the Liquidator would have been an independent person, he should have filed a contempt proceeding against the Financial Creditors for not complying with the order dated 26.06.2020. However, in the instant case, nothing has been done by the Liquidator. On the contrary, the Applicant is filing this application in the interest of the corporate debtor which actually is the task of the Liquidator. Thus, it is evident that the

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<sup>7</sup> Page 88 of the Application

<sup>8</sup> Pages 79-80 of the Application

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Liquidator is only concerned about his fees and the Liquidator is not acting in the best interest of the corporate debtor.

3.9. The financial creditors must thus be directed to comply with the order dated 26.06.2020 passed by this Adjudicating Authority.

3.10. The fact that the Liquidator vehemently contested this instant application which is in interest of the corporate debtor itself proves the intention of the Liquidator.

**4. *Arguments of Mr Joy Saha, learned Sr Counsel for the Liquidator/R1***

4.1. Mr Joy Saha, learned Sr Counsel appearing on behalf of the Liquidator, based his arguments on the following points:

(a) That the applicant has no locus to file and prosecute the present proceedings against the Liquidator;

(b) Part of the prayers asked for have become infructuous;

(c) There is no violation of the order dated 20.11.2019 passed by this Adjudicating Authority.

***On locus***

4.2. Mr Joy Saha drew our attention to the averment that the applicant is an employees' union registered under the Maharashtra Public Trust Act, 1950, and that it is entitled to institute and file the present application in its own name. The applicant has also averred that it is a representative body of employees of the corporate debtor, having about 628 members on its rolls.<sup>9</sup>

4.3. Mr Joy Saha placed section 50 of the Maharashtra Public Trust Act, 1950, and submitted that the present proceedings cannot be instituted without obtaining the consent in writing of the Charity Commissioner. There should be a list of office bearers; when they were elected; and the authority

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<sup>9</sup> Para 1 at page 30 of the Application

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in writing granted by the Charity Commissioner for filing of the present application. Being a case from the Trade Union Act, meeting must be held, resolution must be passed and enclosed with the application.

***On reliefs prayed for –***

- 4.4. **Prayer (a):** Mr Joy Saha submitted that prayer (a) at page 56 is for an order directing the Liquidator to immediately refund the fees of ₹1.5 crore (approx) taken by the Liquidator, to the bank account of the corporate debtor along with interest thereon. Mr Saha submitted that this is already done by the Liquidator and therefore this prayer does not survive.
- 4.5. **Prayer (b):** In so far as prayer (b) regarding inclusion of a representative of the Applicant on the SCC is concerned, Mr Joy Saha invited our attention to the operative portion of the order dated 20.11.2019 in CA (IB) No.1546/KB/2019.<sup>10</sup> He pointed out that it is not an unequivocal direction to the Liquidator to include a representative of the employees on the SCC, but to include such representation as per regulation 31A of the Liquidation Regulations “*if found eligible.*” The applicant’s only case for inclusion is the Table below regulation 31A(2), and the pleading at para 26 at page 48 of the Application.
- 4.6. Mr Joy Saha placed both regulation 31<sup>11</sup> and regulation 31A<sup>12</sup> of the Liquidation Regulations for consideration, and submitted that regulation

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<sup>10</sup> Page 62 of the Application

<sup>11</sup> **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.

<sup>12</sup> **31A. Stakeholders’ consultation committee.** – (1) The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of

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31A cannot be read *de hors* the list of stakeholders compiled in accordance with regulation 31 *ibid*. Only those who have a claim can be on the SCC. Therefore, the workers should first cross the threshold of regulation 31 before they can sit on the SCC. Since the workers had been paid upto December 2020, there was nothing due and payable to them. In these circumstances, in law, the workers cannot be included in the list of stakeholders compiled as per regulation 31 *ibid*, from which the SCC is required to be constituted in accordance with the table given in regulation 31A(2) *ibid*.

- 4.7. Regulation 31A *ibid* requires inclusion of representatives on the basis of amounts admitted under regulation 31. Therefore, there is an intrinsic connection between regulations 31 and 31A. A stakeholder is one who has established a claim. There is nothing on record to signify that there is any claim of the workers that is pending. Under regulation 31A, the Liquidator cannot just include anyone who is not in the list of stakeholders.
- 4.8. Having said that, if the Adjudicating Authority directs that workers must be included, then the Liquidator will be only too happy to do so, Mr Joy Saha submitted.
- 4.9. **Prayer (c):** On prayer (c), seeking direction to the liquidator to take steps to get the financial creditors to deposit approximately ₹26 crore in an interest-bearing account in accordance with the directions contained in the order dated 26.06.2020, Mr Joy Saha first drew our attention to the operative portion of the order dated 14.01.2020 at para 4.<sup>13</sup> He submitted that the

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stakeholders prepared under regulation 31, to advise him on the matters relating to sale under regulation 32.

<sup>13</sup> “4. We have heard the Applicant and non-applicants including Learned Counsel for the Liquidator and after hearing the parties, we are of the view that there is no justification for the Liquidator to withhold the aforesaid amount of ₹18.00 crores and odd, lying with the Liquidator and it is directed that the same may be utilised for the operations of the Corporate Debtor to remain Corporate Debtor as going concern for distribution amongst stakeholders in equal manner as per provisions of section 53 of the Insolvency & Bankruptcy Code, 2016, which would include the claims of the employees, if any (sic).”

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Liquidator has been allowed to utilise the same for the operations of the corporate debtor for distribution amongst stakeholders in equal manner as provisions of section 53 of the Code.<sup>14</sup> Since there was no justification for withholding the money, the Liquidator distributed the same to the financial creditors.

- 4.10. Thereafter, in the order dated 26.06.2020 in an unnumbered IA filed by the present applicant, the Adjudicating Authority framed the issue whether funds from the working capital and profits derived out of the operations of the corporate debtor includes proceeds under regulation 42(2)<sup>15</sup> read with section 53 of the Code, is available for distribution before liquidating the assets, and if not, whether the act of distribution amounts to violation of the said regulations.
- 4.11. The Adjudicating Authority specifically noted the contention of the Liquidator that the distribution of funds to the secured creditors would not affect the working of the corporate debtor, and that such distribution was not prohibited under the Code or the Regulations. The Adjudicating Authority also noted that the Liquidator was unable to satisfy the court as to his right to distribute the funds from the working capital. The Adjudicating Authority had junked the arguments advanced by the Liquidator and noted that he had attempted to misinterpret the order dated 14.01.2020. The financial creditors who had received the funds were directed to keep the amounts received by them in an interest-bearing

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<sup>14</sup> Page 66 of the Application

<sup>15</sup> **42. Distribution.** – (1) Subject to the provisions of section 53, the liquidator shall not commence distribution before the list of stakeholders and the asset memorandum has been filed with the Adjudicating Authority.

(2) The liquidator shall distribute the proceeds from realisation within ninety days from the receipt of the amount to the stakeholders.

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account, returnable as per regulation 43<sup>16</sup> of the Regulations *ibid*, if need arises.

- 5. *Arguments of Mr Rishav Banerjee, learned counsel for the applicants, in reply***
- 5.1. Mr Rishav Banerjee stressed that all the reliefs claimed in the present application are only for implementation of the directions contained in the earlier orders. Orders were passed 14.01.2020<sup>17</sup> and on 26.06.2020.<sup>18</sup> Therefore, at this stage, it must be concluded that the Adjudicating Authority was satisfied as to the maintainability of the application.
- 5.2. Mr Rishav Banerjee raised a fresh issue of conflict of interest in his reply arguments. He submitted that in the earlier round of litigation wherein this Adjudicating Authority passed an order dated 26.06.2020, Mr Joy Saha, learned Senior Counsel had earlier appeared for Central Bank of India. In that application, the Adjudicating Authority had held that the distribution made by the Liquidator to Central Bank of India is illegal. In the present application, Central Bank of India is Respondent No.4.
- 5.3. In fact, the Liquidator has himself filed an application which is numbered as IA No.859/KB/2020, wherein the Liquidator has asserted that money has been illegally recovered during moratorium by Central Bank of India and in the same application, the Liquidator has asserted that such recovery should be considered as distribution even when such distribution has been held to be illegal by order dated 26.06.2020. In that IA No.859/KB/2020, Mr Joy Saha, learned Sr Counsel who has now been engaged by the Liquidator, appeared for Central Bank of India.

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<sup>16</sup> **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.

<sup>17</sup> Page 63 of the Application

<sup>18</sup> Page 68 of the Application

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- 5.4. Therefore, Mr Rishav Banerjee submitted that it was not proper on the part of Mr Joy Saha to appear for the Liquidator. The fact that the same senior counsel is appearing both for Central Bank of India and for the Liquidator itself shows that the Liquidator is not independent and impartial and that he is siding with Central Bank of India.
- 5.5. On locus, Mr Rishav Banerjee submitted that this was being raised for the first time during oral arguments of Mr Joy Saha, learned Sr Counsel appearing for the Liquidator. The Liquidator had filed a reply to the application, wherein the question of locus was not raised at all. The same Pankaj Sharma who had filed the present application, had filed the earlier applications too, on which this Adjudicating Authority had passed directions. Authorisation is a question of fact which should have been taken in the pleadings. Without this, arguments cannot be advanced. Mr Rishav Banerjee wondered whether the objection could be taken now when it had not been taken earlier. He asserted that the Liquidator is estopped from raising this objection now.
6. *Arguments of Mr Ramesh Chandra Prusti, learned counsel appearing for Respondent No.7 (Corporation Bank)*
- 6.1. Mr Ramesh Chandra Prusti, learned counsel appearing for Respondent No.7 (Corporation Bank), urged the Court to take a pragmatic view as to why the Bank should not be paid if electricity expenses etc can be paid during the CIRP.
- 6.2. Mr Prusti further submitted that Corporation Bank has complied with the order dated 26.06.2020 in full by keeping the money paid to the Bank in an interest-bearing account.
7. *Arguments of Mr Shaunak Mitra, learned counsel appearing for Respondent No.9 (Mr Akshay Jhunjhunwala, member of the suspended board)*
- 7.1. Mr Shaunak Mitra, learned counsel appearing for Respondent No.9, submitted that he adopts the arguments of Mr Rishav Banerjee, learned

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counsel for the Applicants. In particular, he reiterated his strong support to the arguments of Mr Rishav Banerjee on conflict of interest on the part of Mr Joy Saha in representing the Liquidator in these proceedings when he had appeared for Central Bank of India earlier.

**8. *Reply of Mr. Joy Saha, learned Sr. Counsel for the Liquidator, to certain arguments of Mr Rishav Banerjee, learned Counsel for the Applicant***

8.1. Although it is not normal for counsel to reply to a reply, in the present case, Mr Joy Saha submitted that he would like to make certain points.

8.2. On conflict of interest, Mr Joy Saha, learned Sr Counsel submits that so far as this particular application is concerned, he is not appearing for Central Bank of India. A conflict of interest may arise if the Liquidator and the Central Bank of India are opposed to each other. Here, the Liquidator and the Central Bank of India are supporting each other. The position of the Liquidator *vis-à-vis* the Bank is absolutely not in conflict. Conflict of interest is used without any application of mind. There is no conflict as regards the Liquidator's case *vis-à-vis* the workers.

8.3. Mr Joy Saha submitted that in the earlier application in which he appeared for Central Bank of India against the Liquidator, the issue involved there was a direction given to the Bank not to recover the debt from the corporate debtor.

8.4. On maintainability, Mr Joy Saha submitted that in response to his objection regarding maintainability, Mr Rishav Banerjee had submitted that all the necessary authorisations had been filed with IA No.1546/KB/2020. He submitted that this was not enough. All litigants must come to court with proper authorisation since it is possible that authorisation may be withdrawn at any time and therefore, it was necessary to annex the same to this application also. Therefore, Mr Joy Saha submitted, there is no vestige of authority on the part of the Applicant to represent the workers.

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- 8.5. Mr Joy Saha further countered the argument of Mr Rishav Banerjee that section 50 of the Maharashtra Public Trust Act, 1950 applies only to suits, by saying that it does not appear to be so. He did not elaborate on this argument. In any case, it cannot be that any proceeding may be initiated at the sweet will of the office bearers. If the Applicant is a Trust, the basic concept of a Trust is that it can act only through its trustees. There is no answer to these points, Mr Joy Saha submitted.
- 8.6. On the Liquidator's remuneration, Mr Joy Saha pointed to the Applicant's arguments premised on regulation 4 *ibid*, which links the remuneration with the efficiency of the Liquidator. Mr Joy Saha pondered whether the Liquidator is to be castigated when the statute links the remuneration with performance of the Liquidator.
- 8.7. On the claims of the workers, Mr Joy Saha reiterated his earlier submissions and stated that regulation 19(4) is not even applicable on facts. The claim must at least be included in the books of the corporate debtor. That is not the case that the Applicant is running here. Further, Mr Rishav Banerjee's reliance on regulation 28 (*debts payable at a future time*) is not correct, since there is no claim as on date, and therefore there is no cause. In any case, there is no appeal under section 42 of the Code against the action of the Liquidator rejecting the claim of the workers.
- 8.8. On the allegation that the Liquidator has taken sides, Mr Joy Saha submitted that the if the insolvency professionals are in breach, they will be admonished and punished by the IBBI. In any case, the order dated 26.06.2020 is under challenge before the Hon'ble NCLAT.
- 8.9. On the constitution of the SCC, Mr Joy Saha stated that even assuming that there was a breach by the Liquidator in including all six financial creditors on the Committee in place of the maximum four, and if it is determined that the Liquidator has done something wrong, he should be castigated by all

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means. However, that still does not give a right to the workmen to sit on the SCC. If the proceedings of the SCC are stayed on this ground, then the liquidation process will come to a grinding halt, Mr Joy Saha submitted.

- 8.10. Winding up his arguments, Mr Joy Saha submitted that the Liquidator has not disappeared with the money; he has distributed it amongst the secured financial creditors. The Applicant has only attempted to vilify the Liquidator. The corporate debtor was proceeded against under the Prevention of Money Laundering Act (PMLA), 2002. This is the reason why no resolution plan was received. The Liquidator ran the company as a going concern. The company started making a huge profit. Even after meeting all payments, it has a huge sum of money left. Mr Joy Saha urged us to see regulation 42(2)<sup>19</sup> of the Liquidation Regulations. The Liquidator shall distribute the proceeds from realisation within 90 days from the receipt of the amount to the stakeholders. Some meaning has to be given to that also, Mr Joy Saha concluded.

**9. *Analysis of the pleadings, arguments and findings thereon***

- 9.1. We have perused the pleadings and heard the arguments of the learned counsel for the parties, including the learned senior counsel appearing for the Liquidator.

***Prayer (a) for refund of Liquidator's fee***

- 9.2. Since the first prayer for refund of the fee of ₹1.5 crore taken by the Liquidator has become infructuous following the recoupment of the same into the account of the corporate debtor, that prayer is deemed to have been given up.

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<sup>19</sup> **42. Distribution.**— (1) Subject to the provisions of section 53, the liquidator shall not commence distribution before the list of stakeholders and the asset memorandum has been filed with the Adjudicating Authority. (2) **The liquidator shall distribute the proceeds from realisation within ninety days from the receipt of the amount to the stakeholders.** (3) The insolvency resolution process costs, if any, and the liquidation costs shall be deducted before such distribution is made.

- 9.3. However, we note that the Liquidator did not refund the fee of ₹1.5 crore not out of any change of heart but because of the order dated 29.10.2020 passed by the Disciplinary Committee of the IBBI, wherein it was observed as follows: -

*“Further, taking a percentage of the amount distributed/ amount realised out of the current assets of working capital of the CD by the Liquidator as his fee would only serve to vitiate the purpose of the Code. Instead of running the Company effectively, the liquidator may engage in distributing the working capital to earn a quick penny at the expense of the livelihood of the employees and workers who are dependent on the CD as a going concern. Hence, the IP has contravened sections 35, 36, 208(2)(a) and (e) of the Code read with Regulation 4(2)(b) of Liquidation Regulations and Regulation 7(2)(h) of IP Regulations read with clauses 2 and 14 of Code of Conduct of the IP Regulations.”<sup>20</sup>*

- 9.4. We are conscious of the fact that this was an interim order, and that the Liquidator was given an opportunity to file his written submission and also seek an opportunity of hearing within fifteen days from the date of receipt of the said order dated 29.10.2020. Nothing has been placed on record to indicate the Liquidator has preferred oral or written submissions against the findings recorded therein, and whether there is any change in the order.

***Prayer (b) for inclusion of workmen on the SCC***

- 9.5. Mr Rishav Banerjee, learned counsel appearing for the Applicant, submitted that there is a subsisting claim for gratuity. In response to the Applicant’s demand for inclusion in the SCC, the Liquidator addressed an email dated 15.09.2020,<sup>21</sup> wherein he has stated that there is no existence of any claim from the side of the Applicant.<sup>22</sup> This rejection has still not been challenged

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<sup>20</sup> Para 5.2(iv) at page 12 of the Interim Order dated 29.10.2020 passed by the Disciplinary Authority of the IBBI, available at [694ac9d74e5e98e34308a4cd83ef2d54.pdf \(ibbi.gov.in\)](https://ibbi.gov.in/694ac9d74e5e98e34308a4cd83ef2d54.pdf).

<sup>21</sup> Page 111 of the Application

<sup>22</sup> Page 113 of the Application

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under section 42 of the Code. However, technicalities such as these are not the reason why we cannot accede to this request.

- 9.6. Mr Rishav Banerjee relied on regulation 28(1) of the Liquidation Regulations regarding debts payable at a future time.<sup>23</sup> However, this regulation is of no help to the Applicant, inasmuch as there is no discharge of the employees and workmen. Among other reasons, a claim for gratuity will arise only on termination. However, this is a company which, in the Applicant's own words, is "fully a going concern."<sup>24</sup> The workers and employees are being paid their full wage. If that be so, the claim for gratuity cannot be countenanced when the services of the workers and employees are being utilised and there is no retrenchment. In the case of a going concern, the provisions of section 33(7) of the Code would not apply.<sup>25</sup> Therefore, we have to hold that as on date, there is no claim pending from the side of the workmen.
- 9.7. Regulation 31<sup>26</sup> of the Liquidation Regulations mandates the Liquidator to prepare the list of stakeholders, category-wise, on the basis of claims

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<sup>23</sup> **28. Debt payable at future time.**– (1) A person may prove for a claim whose payment was not yet due on the liquidation commencement date and is entitled to distribution in the same manner as any other stakeholder.

<sup>24</sup> Para 18 at page 45 of the Application

<sup>25</sup> Section 33(7) posits that the order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees, and workmen of the corporate debtor, **except when the business of the corporate debtor is continued during the liquidation process by the Liquidator.**

<sup>26</sup> **31. List of shareholders.** – (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

submitted and accepted under the Regulations. The list cannot be populated with everyone, it is necessarily restricted to those who have a claim. It has to be categorised. This list is required to be filed with the Adjudicating Authority within forty-five days from the last date for receipt of claims, with such filing being announced to the public in the manner specified in regulation 12(3).<sup>27</sup> The words, “*on the basis of claims submitted and accepted*” cannot be rendered hollow. It has to be ascribed some meaning. Therefore, we hold that for getting on the list of stakeholders, the pre-requisite is an existing claim.

- 9.8. Regulation 31A(1) casts a duty on the Liquidator to constitute a consultation committee within sixty days from the liquidation commencement date, **based on the list of stakeholders prepared under regulation 31**, to advise him on the matters relating to sale under regulation 32 (*emphasis added*).
- 9.9. The table below regulation 31A(2) no doubt speaks of one representative of workmen and employees. The entire table is extracted below: -

Class of Stakeholders	Description	Number of Representatives
(1)	(2)	(3)
Secured financial creditors, who have	Where claims of such creditors admitted during the liquidation	Number of creditors in the category,

information warranting such modification, and shall modify the entry in the manner directed by the Adjudicating Authority.

<sup>27</sup> **12. Public announcement by liquidator.**– (1) The liquidator shall make a public announcement in Form B of Schedule II within five days from his appointment. (2)The public announcement shall- (a) call upon stakeholders to submit their claims or update their claims submitted during the corporate insolvency resolution process, as on the liquidation commencement date; and (b) provide the last date for submission or updation of claims, which shall be thirty days from the liquidation commencement date. (3) The announcement shall be published- (a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations; (b) on the website, if any, of the corporate debtor; and (c) on the website, if any, designated by the Board for this purpose.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

IA No.1014/KB/2020  
in CP (IB) No.543/KB/2017  
*Varssana Emp Welfare Assn v Anil Goel & ors*

Class of Stakeholders	Description	Number of Representatives
(1)	(2)	(3)
relinquished their security interests under section 52	process is less than 50% of liquidation value	subject to a maximum of 2
	Where claims of such creditors admitted during the liquidation process is at least 50% of liquidation value	Number of creditors in the category, subject to a maximum of 4
Unsecured financial creditors	Where claims of such creditors admitted during the liquidation process is less than 25% of liquidation value	Number of creditors in the category, subject to a maximum of 1
	Where claims of such creditors admitted during the liquidation process is at least 25% of liquidation value	Number of creditors in the category, subject to a maximum of 2
<b>Workmen and employees</b>	<b>1</b>	<b>1</b>
Governments	1	1
Operational creditors other than Workmen, employees and Governments	Where claims of such creditors admitted during the liquidation process is less than 25% of liquidation value	Number of creditors in the category, subject to a maximum of 1
	Where claims of such creditors admitted during the liquidation process is at least 25% of liquidation value	Number of creditors in the category, subject to a maximum of 2
Shareholders or partners, if any		1

9.10. The two regulations – 31 and 31A – share a symbiotic relationship, each drawing strength from one another. The table below regulation (2) *ibid* cannot be read *de hors* the list of stakeholders prepared in accordance with regulation 31. When the employees have no claim, they will not be included in the list of stakeholders under regulation 31. It follows therefrom that when the workers do not find a place in the list of stakeholders under regulation 31, they cannot suddenly be imported into the SCC under regulation 31A(1). One may then ask what the meaning of the entry “1” in

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the “*description*” column and in the “*number of representatives*” column is. The entry “1” in the second column shown against the row “*workmen and employees*” in the table in para 9.9 *supra* only means that the representation will not be dependent upon the liquidation value of the enterprise.

- 9.11. In the present case, having come to the conclusion that there is no subsisting claim *vide* para 9.6 *supra*, there is no question of including a representative of the workmen and employees on the SCC.

***On the constitution of the SCC with more than four financial creditors***

- 9.12. As already noticed in para 9.9 *supra*, in terms of regulation 31A, the number of financial creditors on the SCC can only be four at the maximum, whatever be the circumstance. The Liquidator sent invites to nine “financial creditors” for the meeting on 05.11.2019.<sup>28</sup>
- 9.13. Mr Joy Saha, learned Sr Counsel for the Liquidator, justified this on the ground that the SCC indeed consists only of four financial creditors, and that the others were only special invitees.
- 9.14. Let us look at the notice dated 01.11.2019,<sup>29</sup> inviting “*the stakeholders of Varrsana Ispat Ltd – in liquidation*” to attend the Stakeholders Consultation Committee to be held on 05.11.2019. The invitation is specifically sent to nine “financial creditors,” *viz.*, (1) Corporation Bank, (2) Indian Overseas Bank, (3) Central Bank of India, (4) SBER Bank, (5) UCO Bank, (6) United Bank of India, (7) Mahaveer Tie Up, (8) CGST, Anjar Gandhidham, and (9) REI Agro Ltd. We have our own doubts as to whether the entities mentioned at (7), (8) and (9) are actually financial creditors. The invite does not specify which of the financial creditors are members of the SCC, and which of them are the so-called “*special invitees.*”

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<sup>28</sup> Page 88 of the Application

<sup>29</sup> Page 89 of the Application

9.15. Therefore, it is clear that the SCC has been constituted by the Liquidator with all financial creditors. The artificial distinction now sought to be created – by submitting that there are only four financial creditors who are part of the SCC and that the rest are only “*special invitees*”, seems to be a feeble attempt to justify the Liquidator’s act of constituting the SCC with all nine financial creditors. This is unacceptable by any count and must be called out. This is what has spawned the argument on the part of the Applicant that if the Liquidator can constitute the SCC packed with financial creditors in excess of the limits specified in the Table under regulation 31A(2), then why could he not invite a representative of the workmen and employees?

9.16. We, therefore, have no hesitation in holding that the constitution of the SCC with all financial creditors – or even with six financial creditors as stated by the Liquidator – is unlawful. The Liquidator is hereby directed to take steps immediately to reconstitute the SCC in a manner consistent with regulations 31 and 31A.

***Prayer (c) for orders directing the Liquidator to take steps and direct the Financial creditors to immediately deposit approximately ₹26 crore in an interest-bearing account of the corporate debtor***

9.17. It is the case of the Applicant that the Liquidator has not taken any steps to comply with the order dated 26.06.2020 passed by this Adjudicating Authority, whereby the financial creditors were directed to deposit the entire amount, which was illegally distributed to them, in an interest-bearing account of the corporate debtor.<sup>30</sup>

9.18. Mr Ramesh Chandra Prusti, learned counsel appearing for Corporation Bank (R7), submitted that that the Bank had already complied with the said direction. There was no representation on behalf of the other financial

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<sup>30</sup> Para 29 at page 49 of the Application

creditors, and therefore there is no way of knowing whether there was compliance. The Liquidator has not been forthcoming in this regard.

9.19. In the normal course, once a direction has been passed by this Adjudicating Authority, the Liquidator ought to have taken further necessary steps in this regard. However, the Liquidator himself has filed an appeal before the Hon'ble NCLAT challenging the order dated 26.06.2020 whereby such directions were passed. The Hon'ble NCLAT is still seized of the matter. We are not aware of the basis of the challenge before the Hon'ble NCLAT, only that the appeal has been filed by the Liquidator and not by the financial creditors. Therefore, the order dated 26.06.2020 has become final *qua* the financial creditors.

9.20. Hence, we direct the financial creditors to keep the amounts so disbursed in an interest-bearing account, if not already done, and report compliance within a period of fifteen days from today.

***On conflict of interest of Mr Joy Saha, learned Sr Counsel***

9.21. Mr Rishav Banerjee, learned counsel appearing for the Applicant, submitted that Mr Joy Saha had earlier appeared for Central Bank of India against the Liquidator, and therefore, he ought not to have appeared for the Liquidator in the present application, in which Central Bank of India is a party and against whom consequential directions have been sought. As we have already noted earlier, Mr Shaunak Mitra, learned counsel appearing for Respondent No.9, supported Mr Rishav Banerjee in his submissions.

9.22. Rule 33 of the Bar Council of India Rules clearly states that an advocate who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party.

9.23. The rule should be interpreted to be wide enough to include any kind of involvement of an advocate in a matter that would restrict him from

appearing or pleading for the opposite party in the same matter. The question is whether the present proceeding would come within the meaning of “same matter” or not.

- 9.24. At least a part of the reliefs sought in the present application is for a direction to the Liquidator to recover monies from the financial creditors, one of whom happens to be Central Bank of India. It certainly cannot be said with any degree of certainty that the interests of the Liquidator and the Central Bank of India are in complete alignment in so far as the present application is concerned. Therefore, at least to this extent, there may potentially be a conflict of interest.

***On locus/lack of authority for filing the present application***

- 9.25. Mr Joy Saha, learned Sr Counsel appearing for the Liquidator, dwelt at length on the perceived lack of authority on the part of Mr Pankaj Sharma to sign and file the present application. The main points urged were –
- (a) Lack of transparency as to who has authorised Mr Pankaj Sharma to prefer the present application;
  - (b) Since the Applicant is registered as a trust under the Maharashtra Public Trust Act, 1950, it was necessary to obtain prior consent from the Charity Commissioner under section 50 of that Act before filing the present application;
  - (c) There is nothing to indicate who the other office bearers were, what was the term of the office bearers, when elections were held, etc.
- 9.26. The present application is probably the fourth filed by Varssana Employee Welfare Association. In this application, the reliefs sought are mainly for implementation of the orders passed in the earlier applications. No objection has been raised in the earlier round of litigations.
- 9.27. We notice section 50 of the Maharashtra Public Trust Act, 1950 to state as follows: -

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**50. Suit by or against or relating to public trusts or trustees or others.**– In any case, -

- (i) where it is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a trustee or trustees,
- (ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property to proceeds from a trustee, ex-trustee, alienee or any other person but not a person holding adversely to the public trust trespasser, licensee or tenant,
- (iii) where the direction of the Court is deemed necessary for the administration of any public trust, or
- (iv) for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof,

the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs:-

- (a) an order for the recovery of the possession of such property or proceeds thereof;
- (b) the removal of any trustee or manager;
- (c) the appointment of a new trustee or manager;
- (d) vesting any property in a trustee;
- (e) a direction for taking accounts and making certain enquiries;
- (f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or wilful default;
- (g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (h) [\*\*\*]

- (i) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the court may deem necessary;
- (j) the settlement of a scheme, or variations or alterations in a scheme already settled;
- (k) an order for amalgamation of two or more trusts by framing a common scheme for the same;
- (l) an order for winding up of any trust and applying the funds for other charitable purposes;
- (m) an order for handing over of one trust to the trustees for some other trust and deregistering such trust;
- (n) an order exonerating the trustees from technical breaches, etc.;
- (o) an order varying, altering, amending or superseding any instrument of trust;
- (p) declaration or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases; or
- (q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid relief or is necessary in the interest of the trust:

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in conformity with the provisions thereof:

Provided further that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled:

Provided also that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under sub-section (4) of section 1.

***Explanation.*** - In this section 'Court' means in the Greater Mumbai, the City Civil Court and elsewhere, the District Court.

- 9.28. Mr Rishav Banerjee, learned counsel for the applicant, submitted that the provision applies to “suits,” and not to “proceedings” such as this. We find

merit in this contention. Further, we find that the applicability of the above provision, whichever way one wants to look at it, is with regard to administration of the Trust itself, and not to the institution by such Trust of proceedings against third parties such as the present application.

9.29. Therefore, the objection regarding the locus of the Applicant to maintain the present application is misconceived and deserves to be rejected.

## 10. Orders

10.1. In sum, –

- (a) **On prayer (a):** The prayer for refund of the Liquidator's fee of ₹1.5 crore has become infructuous since the refund has already taken place *vide* cheque dated 03.11.2020, though under compelling circumstances (para 9.2 and 9.3 *supra*).
- (b) **On prayer (b):** The prayer for inclusion of a representative of the workmen and employees on the SCC is not acceded to, since the workers at this point of time do not have a subsisting claim, and we have held that there is a symbiotic relationship between regulations 31 and 31A of the Liquidation Regulations. The claim for inclusion in the SCC will subsist only if there is inclusion in the list of stakeholders and not *de hors* it (para 9.6, 9.10 and 9.11 *supra*).
- (c) **On prayer (c):** The prayer for direction to the Liquidator to take steps to recover the sum of ₹26 crore paid to the financial creditors cannot be acceded to at this stage, since the very order whose implementation is sought, *i.e.*, the order dated 26.06.2020 passed by this Adjudicating Authority, is under challenge before the Hon'ble NCLAT. However, the financial creditors are hereby directed to file affidavits within fifteen days from the date of pronouncement of this order, regarding keeping the amounts distributed to them, in an interest-bearing account (para 9.20 *supra*).
- (d) **On prayer (d):** This was not argued by both sides.
- (e) **On prayer (e), (h) and (i):** These are related to the main prayer (b). Since that prayer is not being granted, these prayers do not survive.

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- (f) **On prayer (f) and (g):** These were not argued by both sides.
- (g) **On locus:** We hold that the Applicant has locus to file the present application, since – (i) the provisions of section 50 of the Maharashtra Public Trust Act, 1950 will apply only to “suits” and not to the present proceedings; (ii) section 50 *ibid* will apply only to the administration of the trust itself and not to proceedings of this nature; (iii) the present petition is the latest in a series of applications filed by the applicant herein to compel the Liquidator to comply with the Code and the Regulations made thereunder; (iv) the objections regarding locus have not been taken in the reply filed by the Liquidator, but seems to be an afterthought (paras 9.28 and 9.29 *supra*).
- (h) **On conflict of interest:** At least a part of the reliefs sought seems to indicate that the interests of the Liquidator and of the Central Bank of India are not in complete alignment as far as the present application is concerned. Therefore, there may potentially be a case of conflict of interest (para 9.24 *supra*).
- (i) **On proper constitution of the SCC:** The Liquidator shall take steps immediately to reconstitute the SCC in accordance with regulation 31A read with regulation 31 of the Liquidation Regulations, since the SCC constituted with all nine financial creditors is violative of regulation 31A(2) of the Regulations *ibid* (para 9.16 *supra*).

- 10.2. IA No.1014/KB/2020 shall stand disposed of accordingly.
- 10.3. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Counsel for information and for taking necessary steps.
- 10.4. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri  
Member (Technical)

Rajasekhar V.K  
Member (Judicial)  
28.05.2021