

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 547 of 2022**

In the matter of:

Oriental Bank of Commerce

(Now Punjab National Bank)
Zonal Sastra, 11 Hemanta Basu
Sarani, 3rd Floor, Kolkata- 7000011

....Appellant

Vs.

1. Anil Anchalia,

Liquidator of M/s. Bala Techno Industries Ltd.
(In Liquidation) having its office at 16,
B Robert Street, 2nd Floor, Kolkata- 700 012
Email: bttil.cirp@gmail.com

2. UCO Bank,

Member of the Stakeholder's Consultation Committee of
Bala Techno Industries Ltd. (in liquidation)
Having its registered office at No.10,
BTM Sarani, Kolkata- 700001,
West Bengal and its Asset Management Branch at No.5,
L.L.R Sarani, Kolkata- 700 020
Email: arbkol@ucobank.com.in

...Respondents

For Appellant: Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr.
Nipun Sharma and Mr. Vidur Ahluwalia, Advocates.

For Respondents: Mr. Anil Anchalia (R1 in person)

**J U D G M E N T
(26th May, 2022)**

Ashok Bhushan, J.

1. This Appeal has been filed against the order dated 04.03.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, rejecting the I.A (I.B.C)/101(KB)2022 filed by the Appellant.

The brief facts of the case necessary to be noticed are:-

The Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was initiated by order dated 15.10.2019. The Appellant has extended the financial assistance to the Corporate Debtor in the year 2014. There was exclusive charge over factory land, building and plots at Ramnagar, West Bengal. The Exclusive Charge of the Appellant- Bank was also registered with the Registrar of Companies, Kolkata. The liquidation order was passed on 15.02.2021. In the liquidation proceedings, the Appellant relinquished its security with regard to secured assets. The secured assets, thus, formed the part of the liquidation assets. The liquidator sold the assets for a sum of Rs.1,68,00,000/-. The Appellant sent an e-mail on 28.10.2021 informing that the Appellant being first and exclusive charge on the security is entitled to receive the amount. The Liquidator distributed the sale proceeds on the pro-rata basis under Section 53 of the Insolvency and Bankruptcy Code, 2016 ("Code" for short). Being aggrieved, the Appellant filed an I.A (I.B.C)/101(KB)2022. In the I.A, following prayers were made by the Appellant:-

"a) Liquidator be directed to distribute the entire sale proceeds of the liquidation estate to Punjab National Bank since the same has exclusive charge over the property of the corporate debtor which has been sold by the Liquidator.

b) The delay in filing the present application may kindly be condoned.

c) Any other order and/or orders as Your Honour may deem fit and proper."

The Adjudicating Authority rejected the Application by impugned order.

2. Learned Counsel for the Appellant challenging the order contends that the Appellant having first charge over the assets, he was entitled to receive the payment realised from the secured assets. Learned Counsel submits that this Appellate Tribunal in Company Appeal (AT) (Ins.) No. 731 of 2020 **“Technology Development Board vs. Mr. Anil Goel & Ors.”** has taken the view that secured creditors after having relinquished their security interest could not claim any amount realised from secured assets once they elected for relinquishment of security interest, they would be governed by the waterfall mechanism under Section 53. It is submitted that against the judgment of this Tribunal dated 05.04.2021, Appeal has been filed before the Hon’ble Supreme Court being Civil Appeal No. 11060 of 2021 where the Hon’ble Supreme Court has stayed the judgment of this Tribunal. It is submitted that the Appellant is entitled to receive the entire amount realised from its secured assets.

3. We have considered the submissions of the learned Counsel for the Appellant and perused the record.

4. The Appellant had opted to relinquish its security exercising its right under Section 52 of the Code. After it relinquished the security, the secured creditors are entitled for receiving payment as per Section 53. The issue is no more *res integra* in view of the judgment of the Hon’ble Supreme Court in **“India Resurgence ARC Private Limited vs. Amit Metaliks Limited and Anr.- 2021 SC OnLine SC 409”**. In the case before Hon’ble Supreme Court, Appellant was Dissenting Financial Creditor and it challenged the distribution of the assets under the Resolution Plan. The argument was raised that the Dissenting Financial Creditor was entitled to receive the payment as per their

secured interest. The argument was rejected and the Hon'ble Supreme Court in Paragraphs 17, 19, 20 & 21 laid down following:-

“17. Thus, what amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.

19. In Jaypee Kensington(supra), this Court repeatedly made it clear that a dissenting financial creditor would be receiving the payment of the amount as per his entitlement; and that entitlement could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him. It has never been laid down that if a dissenting financial creditor is having a security available with him, he would be entitled to enforce the entire of security interest or to receive the entire value of the security available with him. It is but obvious that his dealing with the security interest, if occasion so arise, would be conditioned by the extent of value receivable by him.

20. The extent of value receivable by the appellant is distinctly given out in the resolution plan i.e., a sum of INR 2.026 crores which is in the same proportion and percentage as provided to the other secured financial creditors with reference to their respective admitted claims. Repeated reference on behalf of the

appellant to the value of security at about INR 12 crores is wholly inapt and is rather ill-conceived.

21. The limitation on the extent of the amount receivable by a dissenting financial creditor is innate in Section 30(2)(b) of the Code and has been further expounded in the decisions aforesaid. It has not been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right over and above other financial creditors so as to enforce the entire of the security interest and thereby bring about an inequitable scenario, by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors.”

5. In a recent judgment delivered by this Appellate Tribunal in Company Appeal (AT) (Ins.) No. 644 of 2021 dated 06.05.2022 –“**Indian Bank vs. Charu Desai, Erstwhile Resolution Professional & Chairman of Monitoring Committee of GB Global Ltd. & Anr.**”, a similar contention raised by the Indian Bank which was secured creditor who was Dissenting Financial Creditor was repelled. After relying the judgment of the Hon’ble Supreme Court in **M/s. Amit Metaliks Ltd.** (supra), this Tribunal in paragraphs 27 and 28 laid down following:-

“27. The Judgment of the Hon’ble Supreme Court, in the above case, is that when the extent of value received by the creditors under Section 53 is given which is in the same proportion and percentage as provided to the other Financial Creditors, the challenge is to be repelled.”

6. We thus, do not find any merit in the submissions of the Learned Counsel for the Appellant. The submission that earlier judgment of this Tribunal in **“Technology Development Board”** having been stayed by the Hon’ble Supreme Court on 29.06.2021, no reliance can be placed on the said judgment loses its importance in view of the subsequent judgment of the Hon’ble Supreme Court dated 13.05.2021 **M/s. Amit Metaliks Ltd.** (supra). The issue is no more *res integra* and no error is committed by the Adjudicating Authority in rejecting the Application filed by the Appellant. There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Shreesha Merla]
Member (Technical)

Anjali/nn