

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **11.07.2025** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : ICCI Bank Ltd
Vs
Oceanic Tropical Fruits Pvt Ltd

MAIN PETITION NUMBER : CP/564/IB/2017

(IA/MA) APPLICATION NUMBERS

IA(IBC)/550(CHE)/2023; IA(IBC)/1035(CHE)2023; IA(IBC)/411(CHE)2024

ORDER

Present: Ld. Counsel Shri. A. Saranya for the ICCI Bank Ltd and Central
Bank of India

Ld. Counsel Shri. Sashikumar for SBI.

Shri. V. Nagarajan, Liquidator in person.

Vide common order pronounced in Open Court, all the three applications
are disposed of with directions.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Date: 11.07.2025

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA/IB/550/CHE/2023

In

MA/517/2018

In

CP/564/IB/CB/2017

(filed under Section 60(5)(c) of the Insolvency Bankruptcy Code, 2016 read with Section 53 of the Insolvency Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016)

In the matter of M/s. Oceanic Tropical Fruits Private Limited

1. ICICI Bank Ltd,

Nugambakkam Branch, No.110,
Nugambakkam High Road,
Chennai-600034.

2. Central Bank of India,

Stressed Asset Management Branch,
Ground Floor, 48/49, Montieth Road,
Egmore, Chennai - 600008.

Applicants.

Vs

1. Oceanic Tropical Fruits Private Limited,

Represented by its Liquidator Mr. Venkataramanarao Nagarajan,
Insolvency Resolution Professional
IBBI/IPA-002/IP-N00055/2016-2017/10107
New No.29, Kavarai Street,
West Mambalam, Chennai-600033.

2. State Bank of India,

Stressed Asset Mangement Branch (SAMB)
Red Cross Building, Montieth Road,
Egmore, Chennai-600008.

Respondents.

For ICICI Bank & Central Bank of India :

*Counsel Shri. H. Kartik Seshadri
and Ms. Janani*

For State Bank of India:

*Counsel Shri. M.L.Ganesh and
Sasikumar*

For Liquidator :

*Counsel Shri. A.G.
Sathyanarayanan*

ALONG WITH

IA/IB/1035/CHE/2023

In

CP/564/IB/CB/2017

(filed under Section 53 and Section 60(5) of the Insolvency Bankruptcy Code, 2016)

1. Oceanic Tropical Fruits Private Limited,

Represented by its Liquidator Mr. Venkataramanarao Nagarajan,
New No.29, Kavarai Street,
West Mambalam, Chennai-600033.
(Near AMR Kalayana Mandapam).
Applicant. ...

Vs

ICICI Bank Ltd,

3rd Floor, No.1 Cenatoph Road,
Teynampet, Chennai – 600018
And Nungambakkam Branch
No.110, Nungambakkam High Road,
Chennai – 600034.
Respondent. ...

For Liquidator :

*Counsel Shri. A.G.
Sathyanarayanan*

For ICICI Bank:

*Counsel Shri. H. Kartik Seshadri
and Ms. Janani*

ALONG WITH
IA/411/CHE/2024
In
MA/517/2018
In
CP/564/IB/CB/2017

(Under Section 60(5) of the Insolvency Bankruptcy Code, 2016 read with Section 53 of the Insolvency Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016)

1. ICICI Bank Ltd,

Nugambakkam Branch,
No.110, Nugambakkam High Road,
Chennai-600034.

2. Central Bank of India,

Stressed Asset Management Branch,
Ground Floor, 48/49, Montieth Road,
Egmore, Chennai – 600008.

... Applicants.

Vs

1. Oceanic Tropical Fruits Private Limited,

Represented by its Liquidator
Mr. Venkataramanarao Nagarajan,
Insolvency Resolution Professional
IBBI/IPA-002/IP-N00055/2016-2017/10107,
New No.29, Kavarai Street,
West Mambalam, Chennai-600033.

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Stressed Asset Management Branch (SAMB),
Red Cross Building, Montieth Road,
Egmore, Chennai - 600008.

... Respondents.

For ICICI Bank & Central Bank of India :

Counsel Shri. H. Kartik Seshadri
and Ms. Janani

For State Bank of India:

Counsel Shri. M.L.Ganesh and
Sasikumar

For Liquidator :

Counsel Shri. A.G.
Sathyanarayanan

Order Pronounced on 11th July, 2025

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

COMMON ORDER

(Heard Through Hybrid Mode)

1. **IA/IB/550/CHE/2023** has been filed by ICICI Bank and Central Bank of India seeking the following relief(s): -

“To declare the transfer of funds from the liquidation account i.e., transfer of the entire sum of Rs.31,57,16,000/- received from the sale of Annur, Andhra Pradesh property of the Corporate Debtor, by the 1st Respondent to the 2nd Respondent in contravention of the provisions of the IBC as illegal and to consequentially direct the 2nd Respondent to reimburse the 1st Applicant Bank a sum of Rs.8,58,84,826.50/- in proportion to the 1st Applicant’s share of 26.85% in the liquidation proceeds and the 2nd Respondent to reimburse the 2nd Applicant Bank, a sum of Rs.3,27,86,572.50/-in

proportion to the 2nd Applicant's share of 10.25%, towards the dues owned by the Corporate Debtor to the 1st Applicant and 2nd Applicant and pass any other orders as this Tribunal deems fit and necessary and thereby render justice."

2. IA/IB/1035/CHE/2023 has been filed by Liquidator of Oceanic Tropical Fruits Pvt Ltd. seeking the following reliefs: -

"a. To direct the Respondent to recompense the Applicant as per demand in Applicant's letter dated 21.11.2022 to the Respondent.

b. For costs and

c. For such other and further reliefs as the nature and circumstances of the case may require."

3. IA/411/CHE/2024 has been filed by ICICI Bank and Central Bank of India seeking the following relief(s): -

a) To direct the 1st Respondent to distribute sale proceeds to the Applicants amounting to

(i) Rs.8,81,00,000/-, received from M/s. Casurina Bay Farms Private Limited towards the sale of both plant and machineries and land and factory buildings at the premises of Corporate Debtor Oceanic Tropical Fruits Pvt. Ltd at Pudupakkam Village, Mandavai Post, Tindivanam Taluk, Villupuram District, Marakkanam 604303, approx. land extent 13.044 acres

(ii) Rs.1,72,00,000/- received from Kaleel Rahman towards the sale of a vacant land approximately measuring an extent of 18.465 acres situated at Kottaikadu Village, Kolathur Village, Cheyyur Taluk, Kancheepuram district, as per the claims of the Applicants admitted by the 1st Respondent and the Inter-se Agreement dated 21.03.2012.

b) And pass any other orders as this Hon'ble Tribunal deems fit and necessary and thereby render justice.

4. Submissions by ICICI Bank and Central Bank of India, the Applicants in IA/IB/550/CHE/2023

4.1. Oceanic Tropical Fruits Private Limited (In Liquidation), (Corporate Debtor) availed credit facilities under a consortium arrangement with State Bank of India (SBI) (2nd Respondent) as Lead Bank and erstwhile State Bank of Travancore and the Applicants as members. The overall exposure of the consortium amounting to Rs.260.0 Crores was secured by pari-passu charge on the current assets, movable and immovable fixed assets of the Corporate Debtor (CD) through joint documentation done by SBI on

behalf of the consortium. Due to non-servicing of dues, the account was classified as NPA by the consortium since 2013.

4.2. ICICI Bank (1st Applicant) filed a petition under Section 7 of Insolvency Bankruptcy Code, 2016 (IBC) with National Company Law Tribunal, Chennai (NCLT) on 28.07.2017 for admission of the Corporate Debtor into Corporate Insolvency Resolution Process (CIRP) and the same was allowed by Order dated 12.09.2017 passed by NCLT. Upon the ICICI Bank's recommendation, Mr. C. Ramasubramaniam was appointed as the Interim Resolution Professional. Subsequently, a Committee of Creditors was constituted with the SBI (2nd Respondent) (63.5% share), Central Bank of India (2nd Applicant) (10.25% share) and ICICI Bank (1st Applicant) (26.4% share) as Financial Creditors to the Company. In the Second meeting of the Committee of Creditors (CoC) held on 14.11.2017, SBI (the 2nd Respondent) proposed for appointment of Mr. V. Nagarajan as Resolution Professional (RP), and the same was seconded by the 2nd Applicant. The 1st Applicant requested the 2nd Respondent and the 2nd Applicant to reconsider their decision,

considering the fact that the proposed RP was engaged in too many assignments and hence might not be able to devote adequate time for this account. However, the 2nd Respondent and the 2nd Applicant reiterated their stand to appoint Mr. V. Nagarajan as RP. The 1st Applicant Bank informed the Committee of Creditors that it would challenge his appointment before the tribunal, in view of the fact that the majority vote of 75% was not arrived at for appointment of RP.

4.3. SBI (The 2nd Respondent) (Lead Bank) filed an application with NCLT on 11.01.2018 for appointment of Mr. V. Nagarajan as RP. ICICI Bank (The 1st Applicant Bank) filed detailed objection with regard to appointment of Mr. V. Nagarajan with NCLT on 09.02.2018. Post hearing the 1st Applicant's submissions, NCLT confirmed the appointment of Mr. V Nagarajan as RP vide its order dated 09.02.2018. ICICI Bank (The 1st Applicant Bank) preferred an appeal against the order dated 09.02.2018 before Hon'ble National Company Law Appellate Tribunal, Delhi (NCLAT). Post hearing the parties, the Hon'ble NCLAT on 04.07.2018 passed an Order

stating that appointment of Mr. Nagarajan as RP cannot be upheld. However, considering the fact that Mr. Nagarajan had already completed 90 days tenure as RP to the Corporate Debtor and in the larger interest of timely resolution under CIRP, the Hon'ble NCLAT did not set aside the impugned order.

4.4. During the subsistence of the CIRP, the RP (Mr. Nagarajan) violated various Sections of Insolvency and Bankruptcy Code ("IBC") namely Sections 23, 24, 25, 28, 29, 30, 31, 43, 45, 50, 66 and 208 (2) (a) etc. of IBC. In addition, RP also violated Clauses 18, 19, 20, 24, 33, 34, 36 and 37 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016. This came as a shock to the 2nd Respondent and the 2nd Applicant who had earlier strongly recommended for appointment of Mr. V. Nagarajan as RP. Considering the aforementioned lapses and blatant violation of express provisions of the Insolvency and Bankruptcy Code on the part of the RP, all the financial creditors (including the 2nd Respondent and 2nd Applicant) convened a Joint lenders meeting on

03.09.2018. It was decided unanimously by the lenders to replace the RP with a new Resolution Professional and a joint petition was filed with NCLT for the same. SBI, the 2nd Respondent (being Lead Bank) prepared the requisite application on behalf of all the financial creditors and the same was filed with NCLT on 05.09.2018. Simultaneously, all the members of the Committee of Creditors unanimously filed a complaint on 05.10.2018 against Mr. V. Nagarajan with *Insolvency and Bankruptcy Board of India* (IBBI) highlighting negligence on various issues on the part of RP in conducting CIRP (as mentioned above). The above complaint was disposed by IBBI on 16.04.2021 with advice to Mr. Nagarajan to be extremely careful and to take reasonable care in complying with the provisions of the Code. The multiple instances of the RP not complying with the instructions of the Committee of Creditors were also noted by the IBBI. It is stated that the IBBI took a lenient view with respect to the same, on account of no significant prejudice caused by the inaction of the RP, in contravention of the Code.

4.5. During the pendency of the complaint with IBBI, RP filed a Status report on 08.10.2018 with NCLT along with an application for liquidation. Post arguments, NCLT dismissed the application filed by the CoC members vide its Order dated 31.10.2018 seeking replacement of RP and allowed the liquidation application filed by RP. Vide the same order, the NCLT appointed Mr. V. Nagarajan as liquidator, despite grave concerns expressed by the CoC members. Post the appointment, the 2nd Respondent and the 1st Applicant preferred an appeal against the Order dated 31.10.2018 before the Hon'ble NCLAT on 01.12.2018. However, the appeal was dismissed by Hon'ble NCLAT on 13.12.2018 citing non-availability of any Resolution Plan in CIRP and the liquidation ordered by the NCLT as reasonable. It is stated that in the said Order, the Hon'ble NCLAT did not give any findings relating to performance or activity of Mr. V. Nagarajan (Resolution Professional/liquidator). The Hon'ble NCLAT also proposed that it is for the IBBI to decide on the conduct of Mr. Nagarajan pursuant to complaints made against him by CoC, uninfluenced by the order of Hon'ble NCLAT.

4.6. It is stated that ICICI Bank (the 1st Applicant Bank) filed claim (Form D) with the 1st Respondent (liquidator) on 07.12.2018 for an amount of Rs.137,76,24,351.00 being outstanding as on 31.10.2018 (Liquidation commencement date) and the same was admitted by the Liquidator. Pursuant to the same, all the Secured Financial Creditors relinquished their security interest for the benefit of liquidation estate under section 52(1)(a) of IBC. Such relinquishment is evident from the minutes of meeting held on 15.12.2020, whereby the mutual understanding was that the sale of the entire assets of the Corporate Debtor would be conducted by the Liquidator. All the members of the CoC were requested to share the costs incurred for e-auction, valuation, insurance and such other incidental and ancillary costs. ICICI Bank (The 1st Applicant Bank) relinquished its security interest for the benefit of the liquidation estate, and approved the subsequent auction based on the understanding that the interest of the 1st Applicant Bank will be taken care during the distribution of sale proceeds, strictly in accordance with the waterfall mechanism stipulated under Section 53(1)(b) of the code

wherein the distribution of sale proceeds shall be at par with all the secured creditors.

4.7. Details of Financial Creditors and their admitted claims by liquidator are as follows:

Name of Bank	Claim Amount Rs.	% of Share
State Bank of India (Includes dues of Erstwhile State Bank of Travancore)	322,65,54,250	62.90
ICICI Bank Ltd	137,76,24,352	26.85
Central Bank of India	52,62.24,572	10.25
Total	513,04,03,174	100.0

4.8. Liquidator Mr. V. Nagarajan informed the Stakeholders in the meeting held on 15.12.2020 that he is in very advanced stage in terms of disposing one of the property located at Annur, Andhra Pradesh for which the 1st Applicant Bank informed that since sale is happening as per the provisions of Code and all the lenders relinquished their security interest, any distribution of sale amount should be done in proportion to the claim amount filed by each stake holder. Liquidator informed that "the opinion of the Bankers

shall be duly considered with the legal provisions of the code and shall be done accordingly after taking suitable opinion/precautions in this connection." The same was also recorded in the Minutes of Stakeholder Meeting dated 15.12.2020.

4.9. Though SBI, the 2nd Respondent was the lead bank, the liquidator (1st Respondent) approached the 1st Applicant Bank with a request to open liquidation account, after 2½ years of the company being under liquidation. The 1st Applicant Bank acceded to the request and opened a liquidation account on 01.03.2021.

4.10. The 1st Respondent brought the property located at Annur, Andra Pradesh for sale through E Auction under Section 35(1)(f) of IBC 2016 read with Regulation 33 of the IBBI (Liquidation Process) Regulations 2017. The liquidator (1st Respondent) published advertisements on various dates clearly indicating to prospective buyers that the asset was relinquished by the secured creditors, the details of the same are as follows:

Auction Number	Date of Advt	Date of E Auction	Number of Days	Reserve Price (Rs. in Crores)	% Reduction in Sale price
1	22.01.2021	22.02.2021	30	62.60	
2	24.02.2021	05.03.2021	10	50.00	20%
3	06.03.2021	12.03.2021	7	45.00	10%
4	12.03.2021	19.03.2021	7	42.75	5%
5	23.03.2021	29.03.2021	7	38.00	11%
6	02.04.2021	16.04.2021	14	38.00	0%
7	17.06.2021	25.06.2021	7	32.30	15%

4.11. It is stated that above table clearly highlights that the property reserve price fixed at Rs.62.60 crores in the first auction held on 22.01.2021 was gradually reduced by the liquidator to Rs.32.30 crores on 25.06.2021.

4.12. The 1st Respondent vide his letter dated June 28, 2021 informed all stake holders about the successful sale of property located at Annur, Andhra Pradesh to the sole bidder M/s. ABC Fruits (Partnership firm) for an amount of Rs.32,31,00,000.00, seeking views of the Stake Holders in this regard. The 1st Applicant Bank

vide its letter dated 09.07.2021 once again brought to the attention of Liquidator that

"All the security interest pertaining to the Corporate Debtor under liquidation (Oceanic Tropical Fruits Pvt. Ltd) have been relinquished by all Secured Financial Creditors to the benefit of the liquidation estate, as stipulated under Section 52(1)(a) of IBC. Hence, the sale proceeds need to be distributed equitably to all Secured Financial Creditors as per the waterfall mechanism stipulated under Section 53(1)(b) of IBC."

4.13. The 1st Respondent informed the authorized officer of the 1st Applicant Bank over phone on 27.09.2021 that the entire sale proceeds have been remitted by M/s ABC Fruits (buyer) into liquidation account and that he is in the process of obtaining legal opinion to facilitate distribution of sale proceeds to stake holders.

4.14. It is stated that 1st Applicant Bank while waiting for the communication / remittance of sale proceeds from the 1st Respondent, was shocked to find that the 1st Respondent visited the 1st Applicant on 28.09.2021 with a request for closure of Fixed Deposits in liquidation account and transfer of closure proceeds to

the collection account of SBI, the 2nd Respondent. It is stated that there was no clarity/communication from the 1st Respondent with regard to the reason for transferring the entire sale proceeds to a collection account of the 2nd Respondent. It is stated that transfer of funds to collection account of the 2nd Respondent was without any consultation with the stakeholders on the mode of distribution of sale proceeds of an asset relinquished by all secured creditors and advertised as a relinquished asset of liquidation estate, contrary to the express provisions of the Insolvency and Bankruptcy Code read with rules passed thereunder, and the duties of the Liquidator in a fiduciary capacity. It is stated that in light of the 1st Applicant Bank's prior unpleasant experience with the manner of functioning of the Liquidator, the 1st Applicant Bank was constrained to mark lien for Rs.8,58,84,826.50 (ICICI Bank share of 26.85%) to ensure that the distribution of sale proceeds of a relinquished asset is in compliance with waterfall mechanism under section 53 of the Code, and in line with the undertaking given and minuted by the 1st Respondent in the stake holders meeting held on

December 15, 2020. The details of lien marking was informed to the 1st Respondent orally by the 1st Applicant's Branch Manager on 28.09.2021 and through a letter addressed to the 1st Respondent (sent by email) on 29.09.2021.

4.15. It is stated that the 1st Applicant Bank was shocked to observe that a huge amount of Rs.23.70 crores was transferred overnight by the 1st Respondent to the collection account of the 2nd Respondent Bank bearing SBI Account No.30319576399 through Internet Banking on 28.09.2021.

4.16. On 29.09.2021 once again, the 1st Respondent approached the 1st Applicant Bank Nungambakkam Branch with RTGS request for transfer of Rs.7,87,16,062.00 to the 2nd Respondent collection Account No.30319576399 vide cheque no. 000780 knowing very well about the insufficient funds in this account as well as the lien marked by the 1st Applicant Bank.

4.17. On 30.09.2021, one cheque bearing No. 000779 dated 28.09.2021 was presented by the 2nd Respondent Bank to the 1st

Applicant Bank for collection of Rs.7,87,16,062.00 to SBI A/c No.30319576399 and the same was returned by ICICI Bank stating. "Lien marked informed to Liquidator". The 1st Respondent issued two cheques for the available funds in the account knowing well that the funds were sufficient for only one cheque. Since the 2nd Respondent deposited cheque dated 28.09.2021, and simultaneously, the 1st Respondent approached the 1st Applicant Bank with a RTGS request for same amount to be transferred to collection account of the 2nd Respondent, the 1st Respondent already discussed / took opinion from the 2nd Respondent with regard to distribution of sale proceeds. It is stated that as per the Minutes of Stakeholders meeting dated 15th December 2020, 1st Respondent should have discussed this aspect with all the stakeholders, and taken all the stakeholders who approved subsequent auction, into confidence rather than acting unilaterally, in direct contravention of the Code of Conduct for Insolvency Professionals provided in the IBBI (Insolvency Professionals) Regulations, 2016.

4.18. Instead of following the express provisions of IBC, the 1st Respondent preferred to transfer the entire sale consideration to one of the stakeholder and that too to a collection account within 24 hours of receiving the sale consideration.

4.19. It is stated that Section 35(2) of IBC enables the 1st Respondent to consult any of the stake holder entitled for distribution of proceeds under Section 53 of the IBC. When the liquidator was very well aware about the multiple communications made by the 1st Applicant Bank with regard to the distribution of sale proceeds under Section 53 of IBC, he should have taken the opinion/consultation of all the stake holders before distributing the sale proceeds. In this case, not only the 1st Respondent neglected to contact the 1st Applicant Bank holding 26.85% share but also the 2nd Applicant Bank holding 10.25% share.

4.20. In *Binani Industries Limited Vs. Bank of Baroda, Company Appeal (AT) (Insolvency) No. 82 of 2018* the Hon'ble NCLAT observed that the objective of the Insolvency and Bankruptcy Code is Resolution.

4.21. The purpose of Resolution is for maximization of value of

assets of Corporate Debtor and thereby for all creditors. It is not maximization of value for a "stake holder" or "a set of stake holder" such as creditor. It is to promote entrepreneurship, availability of credit and balance the interest.

4.22. It is stated that a Handbook issued by IBBI on 'Understanding the IBC' clearly highlights that the liquidation estate refers to all assets and property of the CD, in whatever form, whether in possession or not, and includes future proceeds. The assets that are not owned by the CD (such as assets of shareholder or subsidiaries, or assets held in trust) are not included within the estate. It is the liquidation estate that is realized and the proceeds are to be distributed to the stakeholders as per *Section 53 of the IBC*.

4.23. It is stated that what does not form part of the liquidation estate cannot be appropriated or sold by the liquidator and cannot be distributed to the stakeholders of the CD as per Section 53 of the IBC. In this case, there is incontrovertible evidence to suggest that the 2nd Respondent Bank relinquished its security

interest and elected to share in the liquidation proceeds to the extent of its share, like all other financial creditors.

4.24. It is stated that the 2nd Respondent could have opted out of liquidation under Section 52(1)(b) of IBC and realised its security interest in the manner specified under Section 52(2) to 52(9) of IBC. However, considering the challenges involved in disposing the security interest under SARFAESI Act due to satisfaction of multiple charge (First charge to the 2nd Respondent and second charge to the 1st Applicant Bank, State Bank of Travancore and the 2nd Applicant Bank) and corresponding litigation/time involved, it decided to relinquish the security interest for the benefit of Liquidation estate. Through relinquishment, the 2nd Respondent utilized the service of the 1st Respondent and also gave confidence to the successful bidder that the purchaser will get property without any charge (Second charge) attached to it. However, post successful sale of property by 1st Respondent, now bringing its first charge aspect inside to liquidation and trying to take away the entire money which includes the share of second charge holder Banks (the Applicants) is

not correct. It is stated that the second charge holders have also relinquished their security interest and approved subsequent auction, with the confidence that all the secured financial creditors will get their due share during distribution under section 53 of IBC.

4.25. It is stated that as per Section 53 of the IBC, there is no reference to priority of secured creditors inter se. In the event of liquidation, if a secured creditor relinquishes its security interest in accordance with Section 52, all secured creditors are treated at par with each other without any preference or priority between each other. Any proceeds from the liquidation estate (after accounting for CIRP and liquidation costs, workmen's dues) will be paid to the secured creditors in proportion to their admitted claim against the corporate debtor.

4.26. This view was also upheld by the *Hon'ble NCLAT in Technology Development Board v. Anil Goel (C.A 731/2020)*. It was held that "*whether a secured creditor holds first charge or second charge is material only when such secured creditor elects to realise the security interest outside of liquidation.*" Moreover, in the same vein, the

Hon'ble Supreme Court in the case of *India Resurgence ARC Private Limited v. Amit Metaliks Limited and Anr* 2021 SConLine SC 409 has stated: *"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. 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."*

4.27. The above judgement of the Hon'ble Supreme Court has been relied upon by the Hon'ble NCLAT in the case of **Oriental Bank of Commerce v. Anil Anchalia and Ors** dated May 26, 2022, where Hon'ble NCLAT reiterated its stand that preference or priority of charge holders is not recognized under the IBC.

4.28. In the aforesaid circumstances, the Applicants filed an application vide IA.No.1042 (CHE) of 2021 before this Tribunal seeking the following reliefs:

a) To declare that the 1st Applicant Bank is the rightful owner of Rs.8,58,84,826.50/-, being 26.85% the 1st Applicant's share in the liquidation proceeds towards the dues owned by the Corporate Debtor to the 1st Applicant Bank, and to consequently permit the 1st Applicant Bank to appropriate a sum of Rs.8,58,84,826.50/-, in proportion to its share from the sale proceeds of the Annur, Andhra Pradesh property of the Corporate Debtor to M/s. ABC Fruits, lying in the Liquidation Account No. 000905033177 of the 1st Respondent:

b) To direct the 2nd Respondent to pay the 2nd Applicant Bank, a sum of Rs.3.27,86,572.50/- in proportion to the 2nd Applicant's share of 10.25% in the liquidation proceeds towards the dues owned by the Corporate Debtor to the 2nd Applicant Bank, from the sale proceeds of the Annur, Andhra Pradesh property of the Corporate Debtor to M/s. ABC Fruits, lying in the collection account of the Respondent bearing SBI Account No. 30319576399.

4.29. Also, the 1st Respondent filed an application vide IA/1006 (CHE)/2021 in MA/517/2018 in CP/564/IB/CB/2017 seeking the following reliefs:

' to declare the act of the 1st Respondent therein (ICICI Bank) directing the Applicant Bank to return the cheque bearing No.000779 drawn on ICICI bank, Nugambakkam Branch, dated 28.09.2021 for Rs.7,87,16,062/- as illegal, unlawful and ultra vires and not in accordance with law and consequently direct the liquidator to distribute the sale proceeds in terms of letter dated 01.06.2019 given by the Applicant Bank.'

4.30. It is stated that IA/1006(CHE)/2021 and IA/1042(CHE)/2021 were listed before the Tribunal on 21.10.2022. Upon hearing the submissions of all the Counsels, the Tribunal ordered that lien marked by the 1st Applicant in the Liquidator's A/c. No.00090533177 should be lifted, as there is no provision in the IBC giving right to the Bank to mark lien on the Liquidator's Account maintained with the bank. The Tribunal also made an observation that the Liquidator should distribute the amount in accordance with the provisions of

IBC and posted the matter on 23.12.2022 for further hearing of the applications.

4.31. In compliance with the aforesaid direction of this tribunal, without any delay on 21.10.2022 itself, the 1st Applicant lifted the lien marked by the 1st Applicant in the Liquidator's A/c. No.00090533177.

4.32. It is stated that the *IA/1042(CHE)/2021* and *IA/1006(CHE)/2021* did not come up before this Tribunal, on 23.12.2022. Only upon checking with the Registry, the 1st Applicant Bank came to know that the tribunal disposed of the IAs when the Tribunal passed an order rejecting the lien marked by the 1st Applicant Bank in the Liquidator's account on 21.10.2022. Hence, the present application has been filed. (Copy of the Order dated 21.10.2022 passed by this Tribunal is enclosed herewith as *Annexure-19*). It is stated that until the Applicants came to know of the said order in January, 2023, they were under the impression that the IA's are pending.

4.33. It is stated that the 1st Respondent on 25.10.2022, unilaterally and arbitrarily transferred the balance sale proceeds received from

the sale of the Annur Property amounting to Rs.7,87,16,000/- to the account of the 2nd Respondent. without consulting or referring the matter to any of the other lenders. No CoC meeting was conducted for the distribution of the said liquidation funds.

4.34. It is stated that when all the secured financial creditors relinquished their security interest in the liquidation estate of the Corporate Debtor, as stipulated under Section 52(1)(a) of the IBC, the 1st Respondent is obligated to distribute the sale proceeds equitably strictly in accordance with the waterfall mechanism stipulated under Section 53(1)(b) of the IBC. The 1st Respondent failed to adhere to the provisions of the IBC and acted contrary to assurance given by him to all the lenders in the Meeting held on 15.12.2020 that the opinion of all the lenders shall be duly considered by him prior to distribution of funds.

4.35. It is stated that letter dated 21.11.2022 was received by the 1st Applicant from the 1st Respondent demanding the 1st Applicant Bank to pay interest on account of the lien marked by the 1st

Applicant Bank in the 1st Respondent's Liquidation Account. Vide the said letter, the 1st Respondent demanded interest for Rs.8,58,84,826.50 for the period from 29.09.2021 to 22.10.2022. (Copy of the letter dated 21.11.2022 is enclosed herewith as Annexure-22).

4.36. Further, on the same day i.e., 21.11.2022, another letter was issued by the 1st Respondent to the 1st Applicant Bank reiterating his stand over the distribution of proceeds from of the sale of the Annur Property dated 25.06.2021 based on the conditional relinquishment of security made by the 2nd Respondent and attempted to justify his illegal act of transferring the balance amount of Rs.7.87,16,062/- received from the sale of the Annur Property to the 2nd Respondent. The 1st Respondent also stated in the letter that issues arising thereafter are subject matter of proceedings before the tribunal which are pending. (Copy of the letter dated 21.11.2022 is enclosed herewith as *Annexure-23*).

4.37. The 1st Respondent replied to the 1st Applicant's letter dated 01.11.2022 vide letter dated 05.12.2022, stating that the sale proceeds

of the properties on which the 2nd Respondent had sole 1st charge is to be paid to it as the security interest was conditionally relinquished and that he has acted in accordance to law.

4.38. It is stated that it is settled that a provision of law must first and foremost, be interpreted literally. The term "relinquishment" means to "give up." Therefore, the law is clear that when a secured creditor relinquishes his security interest, he elects to enforce his rights against the debtor not as a mortgagee, but as a creditor on par with other creditors. This position is clear from the express wordings of Section 52 and 53. Therefore, after a creditor elects to relinquish its security interest, the proceeds from liquidation are to be distributed to all creditors without preference or priority of one over the other and without any reference to the priority of charge held prior to such relinquishment.

4.39. It is stated that 1st Respondent failed to distribute the money received from the sale of Annur, Andhra Pradesh property of the Corporate Debtor in accordance with the waterfall mechanism stipulated under Section 53(1)(b) of the IBC in spite of the specific

direction of the Tribunal by Order dated 21.10.2022 to distribute/utilize the amount as he deems fit in accordance with provisions of law.

5. Affidavit of Preliminary Objection of 1st respondent Liquidator on maintainability

5.1. It is stated that the Application has been filed, on the mischievous allegation as though the Tribunal had in some manner changed its order passed in open Court on 21.10.2022. Such claim was never raised at any time in the last 6 months, since the order was passed and no application has been filed to either rectify the error in the order under Rule 154 of the Tribunal Rules 2016.

5.2. It is stated that the entire application is based on the claim in para 3(GG) and 3(II) of the application which are as under:

GG. On 21.10.2022, IA/1006/2021 and 1A/1042(CHE)/2021 were listed this Hon'ble Tribunal. Upon hearing the submissions of all the Counsels, this Hon'ble Tribunal was of the view that lien marked by the 1st Applicant in the Liquidator's A/c. No.00000533177 should be lifted as there was no provision in the IBC

giving right to the Bank to mark lien on the Liquidator's Account maintained with the Bank and in view of the same, directed the 1st Applicant to lift the lien marked by the 1st Applicant in the Liquidator's A/c. No. 00090533177. This Hon'ble Tribunal also made an observation that the Liquidator shall distribute the amount in accordance with the provisions of IBC and posted the matter on 23.12.2022 for further hearing of the applications

II. Further, the IA/1042(CHE)/2021 and IA/1006(CHE)/2021 did not come up before this Hon'ble Tribunal, on 23.12.2022. Only upon checking with the Registry, the 1st Applicant Bank came to know that this Tribunal has disposed of the said IA's when this Tribunal passed an order rejecting the lien marked by the 1st Applicant Bank in the Liquidator's account on 21.10.2022. Hence the present application. (Copy of the order dated 21.10.2022 passed by this Hon'ble Tribunal is enclosed herewith as Annexure-10). Until the Applicants came to know of the said order in January 2023, there were under the impression that the IA's are pending.

5.3. It is stated that the claim as though the IAs were not listed in cause list of 23.12.2022 is also false, as the matters were listed and the Tribunal noted the fact of the Applications having been wrongly listed as the IAs were disposed of. There was no objection whatsoever made by the Applicants at that stage to the Tribunal. If there was any iota of truth in the claim of the Applicants as though the order dated 21.10.2022 is wrongly recorded, the same would have been set out to the Tribunal at least on that date. The very fact that no submission of such nature was ever made reveals that the claim of the Applicants now in para 3(GG) and 3(II) is only an afterthought and false and seeks to blame the Tribunal as though the order was somehow modified behind their back.

5.4. It is stated that an application for identical reliefs was filed by the same applicants as *IA 1042/2021* and the same was extensively heard and then disposed of by this Tribunal by order dated 21.10.2022 along with connected applications of the 2nd respondent.

5.5. It is stated that the Application *IA 1042/2021* filed by the Applicants had the prayers as under:

a. to declare that the 1st Applicant Bank is the rightful owner of Rs.8,58,84,826.50/-, being 26.85% the 1st Applicant's share in the liquidation proceeds towards the dues owned by the Corporate Debtor to the 1st Applicant and to consequently permit the 1st Applicant Bank to appreciate a sum of Rs. 8,58,84,826,50/-, in proportion to its share from the sale proceeds of the Annur, Andhra Pradesh property of the Corporate Debtor to M/s. ABC Fruits, lying in the Liquidation Account No. 000905033177 of the 1st Respondent,

b. To direct the 2nd Respondent to pay the 2nd Applicant Bank a sum of Rs.3,27,86,572.50 in proportion to the 2nd Applicants share of 10.25% in the liquidation proceeds towards the dues owned by the Corporate Debtor to eh 2nd Applicant Bank, from the sale proceeds of the Annur Andhra Pradesh Property of the Corporate Debtor to M/s. ABC Fruits lying in the collection account of the 2nd Respondent bearing SBI Account No 30319576399.

5.6. It is stated that the reliefs sought in both the applications IA 1042 (CHE) /2021 and the present Application are that the Applicants are to be paid share of the proceeds of the sale made by e- Auction dated 25.06.2021 of the CD's factory unit at Annur and

the basis of the said claim in both applications is as though Section 53 of the Code vests such right on the Applicants.

5.7. It is stated that in the application *IA 1042/(CHE)/2021*, the extensive pleadings were filed and the order dated 21.10.2022 was passed only after the matter was heard on multiple dates. The pleadings filed by all sides were on the issue of whether the Applicants were entitled to any share of the proceeds realised by the answering respondent from the e auction of the Annur factory of the Corporate Debtor.

5.8. It is stated that the Tribunal in *IA 1042 (CHE)/ 2021* filed by the Applicants granted no relief to the Applicants in respect of the said claims and the said decision has now become final as the Applicants had chosen not to challenge the order dated 21.10.2022 in manner known to law evidently as they had no case on merits.

5.9. It is stated that the said application having been decided without any relief granted to the Applicants, the present application is *ex facie* not maintainable.

5.10. It is stated that the application has been filed in even without annexing the copy of IA 1042(CHE)/2021 filed at the Tribunal and without setting out how in the teeth of the order dated 21.10.2022, the present application is maintainable despite disposal of the previous application.

5.11. It is stated that the Applicants neither chose to appeal against the order dated 21.10.2022 of the Tribunal nor sought to get it rectified revealing that they are aware that they have no merit in the claims to get legal redressal and this Application has been filed to agitate stale claim as though they are entitled to share in the sale proceeds.

6. Counter Filed By SBI, Second Respondent in IA 550 CHE 2023

6.1. It is stated that the above application deserves to be dismissed with cost since the tribunal has already passed an order on 21.10.2022 in 1.A No.1006/2021 filed by the 2nd Respondent as well as in IA No.1042/2021 filed by the applicants herein.

6.2. It is stated that after considering the aforesaid prayers as sought for by the Applicants, the tribunal passed the orders on 21.10.2022 in favour of the 2nd respondent and as against which, the applicants have not preferred any appeal till date.

6.3. It is stated that SBI had filed the proof of claim in Form-D on 06.12.2018 to the tune of Rs.322.66 crores and the same was admitted by the first respondent/liquidator.

6.4. It is stated that SBI had given a letter on 01.06.2019 to the first respondent whereby it empowered him to proceed with the sale of assets of the CD company, provided the sale proceeds were paid to the Second Respondent. It is stated that the Applicants had not assailed or challenged the claim of the Second Respondent over the securities as described in the Annexure to Form-D.

6.5. It is stated that it is important to extract the letter dated 01.06.2019 for proper adjudication of the above application:

"We are advised to state that in view of amendment dated 22.10.2018 to Regulation 32 of the Liquidation Regulations you

require our specific consent as a Security Interest Holder before disposing off any Asset of the company under Liquidation charged to us.

It is stated that while the Regulations require such consent from each of the Security Interest Holders, our position is different as we are the sole 1st charge holder in respect of the immovable properties of the company under Liquidation and further we account for 62.5% of the total claims of persons holding security interest.

We have no objection to your effecting sale of the assets provided that no proceeds out of sale of any asset in respect of which we hold sole 1st charge should be paid to any one else unless the amounts due to us are fully settled. We have no objection however to payment of CIRP cost and Liquidator fees and workmen dues of up to 24 months prior to liquidation out of the sale proceeds realized.

You may note that our consent is conditional on the above and unless the sale proceeds are dealt with in such fashion as above set out you may not proceed sale of any assets under Regulation 32 in so far as we have to sole 1st charge on the same.

At all stages our consent under Regulation 32 may be treated as subject to condition as above."

6.6. It is stated that at the relevant point of time (on 01.06.2019), IBBI Liquidation Regulations did not mandate any procedure or time limit for the secured creditors to cede security interest and hence Regulation 21A is not applicable to the case on hand as the same came into force only on 25.07.2019. The said amendment shall have prospective effect only.

6.7. It is stated that Section 53 of IBC, 2016 provides for distribution of sale proceeds by setting the order of priority with a non-obstante clause which does not in any manner exclude or remove the right of realization on the basis of specific charges on assets in favour of the creditors. The said order of priority in Section 53 specifically refers to secured creditor as well as unsecured creditor and also provides for the category of secured creditor who relinquished the security in the manner set out in Section 52. Thus, at the first instance, it can be emphasized as to non-exclusion of the

right based charges over the asset held by a creditor while laying down the order of priority under Section 53. In other words within the frame work of Section 53, it would be still open for the secured creditors to seek for distribution of their proceeds from the sale of assets in terms of the charges held by them.

6.8. It is stated that prior to IBC 2016, the liquidation in cases of companies were dealt with under the Companies Act and situation as to the distribution of sale proceeds was purely in terms of the charge held over the assets. The aforesaid issue was also considered by the Hon'ble Apex Court in the context of the provisions of the Companies Act, in the case of *ICICI Bank Vs SIDCO Leathers Ltd and others, Civil Appeal No 2332 of 2006* wherein the Hon'ble Supreme Court held that the concept of inter-se rights amongst the secured creditors had never been intended to give a total go by. The ranking of claims in liquidation is a recognized principle in the context of the march of law and various enactments which provided for enforcement.

6.9. It is stated that Section 53 of IBC, 2016 does not provide for or remove priority inter-se secured creditors in the instance of distribution, driving to the conclusion that any inter-creditor/subordination agreements/creation of charges and enforcement continues to be valid.

6.10. It is stated that the recommendations of the bankruptcy law committee throw much light on the subject in the context of the banking principles and the march of law underlining the fact that the inter-creditor rights are not meant to be overruled while applying Section 53 of IBC. It could be said that the unequal's were never recognised to be treated as equals and the right of creditors to seek for distribution of sale proceeds shall be only in terms of the charges held by them.

6.11. It is stated that amendment to FORM C by addition of Row 8A of the Liquidation Regulations came into force only on 25.07.2019 but they gave conditional letter on 01.06.2019. Hence the notification cannot be invoked with retrospective effect.

6.12. It is stated that the first applicant marked a lien on the cheque issued by the first respondent which was against the rule of law and principles of natural justice. The first applicant had no authority to with-hold the cheque issued in favour of the second Respondent and the Tribunal directed the first applicant to remove the same in order to pave way for the first Respondent to deal with the proceeds in accordance with law. The said order remains unchallenged till now. It is not out of place to mention that if the applicants have any purported stake over the sale proceeds of the property under consideration, they ought to have filed the application immediately after the FORM D along with annexure submitted by the second respondent on 06.12.2018 with the first respondent herein.

6.13. It is stated that on the aforesaid condition only, the first respondent was empowered to bring the subject property for e-auction on 25.06.2021. Neither the applicants nor the first respondent raised any issue with regard to the distribution of sale proceeds of the subject property prior to the e-auction. The second respondent was under bona-fide impression that the entire sale

proceeds would be credited to its loan account of the company in liquidation. The marking of lien on the cheque by the first applicant issued by the first respondent was arbitrary, capricious and whimsical in nature. After maintaining mute silence for more than two years (from 06.12.2018 to 25.06.2021), the applicants suddenly made vexatious and untenable claim over the exclusive charged property in favour of the second respondent and in fact, the loan security documents executed by the company in liquidation would prove that the subject property was exclusively charged in favour of the second respondent herein.

6.14. It is denied that it relinquished their security interest over the subject property for the benefit of liquidation estate under Section 52(1)(a) of IBC, 2016. It is stated that there is absolutely no legal requirement to get NOC or mandate from the first applicant for sale of subject property since the second respondent got exclusive charge over the same which has been reiterated in FORM D and letter dated 01.06.2019.

6.15. It is stated that any purported letter unilaterally given by the first applicant ICICI Bank to the first respondent subsequent to the sale of property under consideration is not binding on the second respondent. It is stated that the property under consideration is not relinquished in favour of the liquidation estate to be shared in line with the water fall mechanism in terms of Section 53(1)(b) of IBC, 2016.

6.16. It is stated that the analogy made by ICICI Bank in Para Nos.BB and CC of the above application is contrary to the settled position of law. The case laws cited in Para No.DD have been stayed by the Supreme Court and pending disposal. Further Hon'ble Supreme Court decision in regard to dissenting secured creditor is distinguishable on facts and hence not applicable.

6.17. It is stated that the creditors fall under different category of holding exclusive charge, first charge, second charge and pari passu charge in terms of the lending and securities created in their favour.

As such, the priority of charges flow in terms of Section 48 of Transfer of property Act as well as other statutory provision in recognition of charges.

IA/411/CHE/2024

7. Submissions by ICICI Bank and Central Bank of India the applicants

7.1. It is stated that Oceanic Tropical Fruits Private Limited (In Liquidation), (Corporate Debtor) availed credit facilities under a consortium arrangement vide inter se arrangement dated 21.03.2012 with the 2nd Respondent as Lead Bank and erstwhile State Bank of Travancore and the Applicants as members. The overall exposure of the consortium amounting to Rs.260.0 Crores was secured by *pari passu* charge on the current assets, movable and immovable fixed assets of the Corporate Debtor (CD) through joint documentation done by the 2nd Respondent on behalf of the consortium. Due to non-servicing of dues, the account was classified as NPA by the consortium since 2013.

7.2. It is stated that Inter-se Agreement dated 21.03.2012 defines the rights inter se of the Applicants and the 2nd Respondent and erstwhile State Bank of Travancore with respect to the credit facilities availed by the Corporate Debtor under the consortium arrangement. As per the Inter-se Agreement dated 21.03.2012, the amounts realised from or out of the securities shall be available for distribution amongst all consortium members inter se in the same proportion to their respective outstanding in the facilities availed by Oceanic Tropical Fruits Private Limited, without any preference or priority of one over the other or others for all purposes.

7.3. Prejudiced by the actions of the 1st Respondent regarding distribution of sale proceeds of Annur property forming part of liquidation estate, the Applicants filed *I.A.No.550 of 2023* in *M.A.No.517 of 2018* in *CP/564/IB/CB/2017* seeking for the following relief:

"To declare the transfer of funds from the liquidation account i.e., transfer of the entire sum of Rs.31,57,16,000/- received from the sale of Annur, Andhra Pradesh property of the Corporate Debtor, by the 1st Respondent to the 2nd Respondent in contravention of the

provisions of the IBC as illegal and to consequentially direct the 2nd Respondent to reimburse the 1st Applicant Bank a sum of Rs.8,58,84,826.50/- in proportion to the 1st Applicant's share of 26.85% in the liquidation proceeds and the 2nd Respondent to reimburse the 2nd Applicant Bank, a sum of Rs.3,27,86,572.50/- in proportion to the 2nd Applicant's share of 10.25%, towards the dues owned by the Corporate Debtor to the 1st Applicant and 2nd Applicant and pass any other orders as this Hon'ble Tribunal deems fit and necessary and thereby render justice."

7.4. While that application is pending , liquidator auctioned two other properties forming part of liquidation estate and distributed the sale proceeds without convening a stake holders committee meeting, in violation of provisions of IBC and the Inter-Se Agreement dated 21.03.2012. In view of the above, the applicants were constrained to file this application IA 411 of 2024 on 03.02.2024.

7.5. Further to the pleadings made in IA 550 of 2023, the following are the additional pleadings.

7.6. On 28.12.2023, the Liquidator sent an email addressed to the Applicants and the 2nd Respondent communicating

- (i) that M/s Casurina Bay Farms Private Limited participated in the e-auction for the sale of asset i.e. land, buildings, and plant machinery in Marakanam, belonging to Oceanic Tropical Fruits Private Limited and bid for the same
- (ii) that he will be receiving the e-auction report shortly from the e-auction platform provider.
- (iii) he will be proceeding with the sale confirmation of the same and shall be issuing letter of Intent for the deposit of the balance money as per the bid documents
- (iv) for the other item, there was no bidder and the bidder who had deposited the amount has withdrawn before bidding.

7.7. The Liquidator also called upon the Applicants and the 2nd Respondent to write to him if they have any queries/clarifications regarding the same. On the same day, the Liquidator also sent another email forwarding the e-auction report. It can be seen from the e-auction report that both plant and machineries and land and factory buildings at the premises of Oceanic Tropical Fruits Pvt. Ltd. at Pudupakkam Village, Mandavai Post, Tindivanam Taluk,

Villupuram District, Marakkanam 604303, approx, land extent 13.044 acres were bid by Casurina Bay Farms Private Limited for an amount of Rs.8,81,00,000/-.

7.8. On 29.12.2023, the 1st Applicant sent an email to the Liquidator requesting him to convene Stake Holders meeting prior to issuance of Sale Certificate / distribution of sale proceeds. On the same day, the Liquidator vaguely replied to the 1st Applicant stating that the sale confirmation has been issued to the buyer and that he is following up with the buyer for early payment. However, the Liquidator did not reply to the specific request of the 1st Applicant to convene Stake Holders meeting prior to issuance of Sale Certificate / distribution of sale proceeds.

7.9. In reply to the Liquidator's email dated 29.12.2023, the 1st Applicant sent an email dated 02.01.2024 to the Liquidator asking if there is any update on payment and once again requesting the Liquidator to convene Stake Holders meeting prior to distribution of sale proceeds/issuance of sale certificate.

7.10. On 22.01.2024, Liquidator forwarded the e-auction report received from the e-auction service provider to the Applicants and the 2nd Respondent and stated that he will be proceeding with the sale confirmation and requested for confirmation of the same. It can be seen from the e-auction report that a vacant land approximately measuring an extent of *18.465 acres situated at Kottaikadu Village, Kolathur Village, Cheyyur Taluk, Kancheepuram district* was bid by a bidder named Kaleel Rahman for an amount of Rs.1,72,00,000/-, Upon receipt of the email dated 22.01.2024, the 1st Applicant sent an email to the Liquidator on 23.01.2024 once again requesting him to convene Stake Holders meeting prior to issuance of sale confirmation.

7.11. Despite repeated requests made by the 1st Applicant to convene Stake Holders meeting prior to issuance of sale confirmation, the Liquidator sent an email to the 1st Applicant on 29.01.2024 stating *"since the sale confirmation in the e-auction is a routine one and the bidders are pressuring us for the sale to deposit the remaining money - we will be issuing the same as a matter of routine*

Kindly take note of the same". The 1st Applicant once vide email dated 29.01.2024 requested the Liquidator to convene Stake Holders meeting prior to distribution of any sale proceeds.

7.12. The above communications clearly show that the Liquidator was acting in a unilateral and arbitrary manner with respect to confirming the sale of an asset of the Corporate Debtor/distribution of sale proceeds without convening a stake holders committee meeting despite repeated requests by the 1st Applicant.

7.13. The 1st Respondent was obligated to distribute the sale proceeds from the sale of properties of the Corporate Debtor in Marakkanam and Kancheepuram in accordance with the waterfall mechanism stipulated under Section 53(1)(b) of the IBC and the Inter-se Agreement dated 21.03.2012. The 1st Respondent acted in disregard to his duties as a Liquidator. The Applicants are severally prejudiced by the actions of the 1st Respondent in contravention to the provisions of IBC.

7.14. It is stated that the Inter-se Agreement dated 21.03.2012 clearly states that the amounts realised from or out of the securities shall be available for distribution amongst all consortium members inter se in the same proportion to their respective outstanding in the facilities availed by the Corporate Debtor Oceanic Tropical Fruits Private Limited, without any preference or priority of one over the other or others for all purposes.

7.15. The 2nd Respondent in collusion with the 1st Respondent previously appropriated all the monies received from the sale of properties belonging to the liquidation estate of the Corporate Debtor to the exclusion of the Applicants. The 1st Respondent had not convened a Stakeholders Committee Meeting prior to the issuance of sale notice/distribution of sale proceeds, till date. The Applicants apprehend such conduct again and hence the present application.

8. Common Written Submission On Behalf Of Liquidator (Respondent 1) in IA 550 /CHE/2023 and IA 411/CHE/ 2024

8.1. It is stated that the applications filed by ICICI Bank are not maintainable in law nor on facts. The prayer in the applications is Res-Judicata since their contentions have already been disposed of by the tribunal in *IA/1006/CHE/2021*, *IA/1008/CHE/2021*, *IA/1036/CHE/2021* AND *IA/1042/CHE/2021*.

8.2. It is stated that the ICICI Bank suppressed the fact that they even before filing the Applications chose to unilaterally mark lien on the proceeds of the Liquidation Estate (29.09.2021 To 25.10.2022) and filed the present application as though that it was entitled to a share of the proceeds of the sale of a property only after the 2nd Respondent moved the Tribunal. The same were decided by the Tribunal vide an order dated 21.10.2022, after which the said lien was lifted and distribution of the proceeds was done.

8.3. It is stated that the issue in the various applications relates to the mode of distribution of the proceeds of the Liquidation Estate under the Waterfall mechanism.

8.4. Assets of the CD were sold by e-auction of the properties situated at Annur, in the State of Andhra Pradesh and Marakkanam and Cheyyur in the State of Tamilnadu and the distribution made to the following banks on various dates is as detailed below:

Name of the bank	28.09.2021	25.10.2022	20.03.2024	27.03.2024	29.04.2024	Total (in Rs.)
State Bank of India	237,000,000	78,716,000	81,190,668	-	9,783,943	406,690,611
ICICI bank Limited	0	0	5,541,548	0	4,177,361	9,718,909
Central Bank of India	0	0	0	2,116,000	1,595,680	3,711,680
Total	237,000,000	78,716,000	86,732,216	2,116,000	15,556,984	420,121,200

8.5. As per the terms of the auction and the Liquidation Regulations, while the initial sale proceeds were received in the account maintained with ICICI Bank Limited, the other sale proceeds were received in the account opened with Kotak Mahindra Bank Limited.

8.6. It is stated that the 2nd Respondent (State Bank of India) was the sole first charge holder in respect of the secured assets and the Applicants ICICI Bank and Central Bank of India i.e., both were 2nd charge holders. It is stated that 2nd Respondent was also holding

over 60% of the value of the total charge in respect of the property and hence was entitled to stay outside the liquidation and enforce the security interest by itself in view of the provisions of Section 52 of the Code, read with the provisions of the Security Interest (Enforcement) Rules 2002. It is stated that there were no other Secured financial creditors in respect of the Corporate Debtor.

8.7. That the respective claims amounts of the three Secured financial creditors were as under:

Bank	Claim Admitted Rs. in Crs.	Share %
State Bank of India	325.66	63.48%
ICICI Bank	137.76	26.85%
Central Bank of India	52.62	10.26%
Total	513.04	100.00%

8.8. It is stated that vide letter dated 01.06.2019 the 2nd Respondent (State Bank of India) gave consent to be part of the liquidation estate on conditional basis mandating that the proceeds of sale of any asset of which they are sole first charge holder be made over to SBI till

their dues are discharged and only thereafter should any part thereof be paid to anyone else. It is stated that the 2nd Respondent accepted the position of payments of CIRP Cost and Liquidator fees and 24 months of workmen dues as per the waterfall. It is stated that based on such consent of the 2nd Respondent, liquidator proceeded to conduct the Auction for the sale of Assets and the various units of the Corporate Debtor were sold.

8.9. It is stated that the provisions of Section 52 of the Code entitle a Secured Creditor to decide to stay outside Liquidation. The Code further entitles a Secured Creditor staying outside liquidation to dispose of the property as per procedure under law applicable and in the case of financial creditors such law would be the SARFAESI Act and Rules thereunder.

8.10. It is stated that the 2nd Respondent, apart from holding sole first charge is also holding over 60% share in the total credit of all FC's of the Corporate Debtor. The financial creditors, irrespective of charge type being 1st or 2nd charge, who hold over 60% share in respect of security interest can opt to stay outside liquidation. In this

case 2nd Respondent holds over 60% share and is so entitled for whole share.

8.11. It is stated that the 2nd Respondent could opt to stay outside liquidation in respect of the properties of the CD, being the property sold by liquidator and distribution of proceeds therefrom being the issue in this Applications, and deal with the same as per SARFAESI. It is stated that there is no ambiguity that if the sale of the assets of the CD was effected by 2nd Respondent under SARFAESI, it was entitled to retain the entire proceeds to meet its dues and only any surplus over dues would flow to the Applicants herein as 2nd charge holders and as such if 2nd Respondent stayed outside liquidation and sold the assets under SARFAESI, it would have retained the entire proceeds as it was sole 1st charge holder.

8.12. It is stated that when consenting to stay within liquidation estate, 2nd Respondent vide letter as stated above, only gave conditional approval setting out that it will stay inside liquidation

only if the distribution from sale of assets charged to it was first made to it.

8.13. It is stated that the conditional consent dated 01.06.2019 was in no manner barred under the Code. Until 25.07.2019, there was nothing in the Liquidation Regulations mandating the manner of a secured creditor choosing to relinquish its security interest to the liquidation estate or to realise its security interest.

8.14. It is stated that the Applicants are seeking to try and get a windfall at the expense of the 2nd Respondent knowing fully well that they are mere second charge holders and hence not entitled for parity with 2nd Respondent when Respondent has a right to proceed under SARFAESI.

8.15. It is stated that the issue of pro-rata sharing of proceeds of Liquidation Estate by stakeholders would arise only when the stakeholders have no option but to stay in liquidation and no one / no one group has over 60% share to seek to stay out of liquidation.

8.16. In case if the 2nd Respondent is held not entitled to the entire proceeds, then the very auction will be vitiated as the entire ceding of security interest by the 2nd Respondent was only on such condition. It is stated that in such case the auction would have been vitiated and the same would have to be cancelled and proceeds refunded and even then thereafter the 2nd Respondent could sell the same property to the same auction purchaser for the same price and retain the same wholly.

8.17. *It is stated that since ICICI Bank at stakeholder meeting raised a dispute on distribution, liquidator had taken legal advice from an expert legal counsel and also taken an undertaking from 2nd Respondent in respect of repaying amounts that it might be held as not entitled to.*

8.18. It is stated that if at all the applicants felt that liquidator was wrong in acting on 01.06.2019 letter of 2nd Respondent, they could have represented the same to the liquidator and the liquidator was duty bound to consider the same. It is stated that in any event the tribunal was always available for any remedy that Applicants could seek.

8.19. It is stated that the common written submissions are only to set out the facts of the case and the position in law as understood and not to make a case for or against the Applicants or in favor of the 2nd Respondent. It is stated that liquidator acted in accordance with the law in seeking to distribute the entire proceeds to the 2nd Respondent on the basis that it was the sole 1st charge holder and had free right to decide how to realise the asset in view of it being over 60% stakeholder and for reason that if the same were sold under SARFAESI, it would retain the entire proceeds.

8.20. It is stated that the ICICI bank is not clear in its prayer about challenging the decision of the liquidator on 1st / 2nd charge holders whereas they are challenging only the distribution of sale proceeds therefore fundamentally they did not follow the due process of law.

9. Common Written Synopsis filed on behalf of ICICI Bank Limited and Central Bank of India in IA 550 of 2023 and IA 411 of 2024

9.1. It is stated that these applications were filed pursuant to the Liquidator's attempt to sell the assets belonging to the liquidation estate and distribute the sale proceeds without convening a stake

holders committee meeting in violation of provisions of IBC and the Inter-Se Agreement dated 21.03.2012 entered into between the State Bank of India, erstwhile State Bank of Travancore, ICICI Bank and Central Bank of India.

9.2. The subject matter of these two applications revolves around the sale of 3 properties of the CD namely 1. Property at Annur. Andhra Pradesh for a sum of Rs.31,57,16,000/- 2. Plant and machineries and land measuring 13.044 acres approx. and factory buildings at the premises of the CD at Marakkanam, Villupuram District for a sum of Rs.8.81,00,000/- and 3. Vacant land measuring 18.465 acres approx. in Kancheepuram District for a sum of Rs.1,72,00,000/- and distribution of the same by the Liquidator.

9.3. The distribution of the above sale proceeds ought to have been done by the Liquidator as per the terms of the Inter-se Agreement dated 21.03.2012 entered into between ICICI Bank and Central Bank of India, SBI and erstwhile State Bank of Travancore and as per Section 53 of the IBC post relinquishment of security interest for the benefit of liquidation estate by all the secured financial creditors

under Section 52(1)(a) of the IBC (Reference is made to Order dated 11.06.2024 passed in IA No.1778 of 2023 and the Inter Se Agreement at Page 272 and Minutes of the 1^a Committee of Creditors Meeting dated 15.12.2020 at Page No.210, both in IA No.411 of 2024). The Liquidator is in violation of Regulation 32 A of the IBBI (Liquidation Process) Regulations, 2016.

Justification for filing IA 550 of 2023 & IA 411 of 2024

9.4. It is stated that no similar relief was sought by ICICI Bank and Central Bank in IA 1042 of 2021 (earlier application disposed of on 21.10.2022-Order at Page 238 in IA No.411 of 2024) as sought in the present application IA 550 of 2023. Vide Order dated 21.10.2022 in IA 1042 of 2021, the Tribunal rejected the lien marked by ICICI Bank on the Liquidator's account maintained with ICICI and directed the Liquidator to distribute the sale proceeds in accordance with law. ICICI Bank immediately on the same day lifted the lien. Further, on 25.10.2022, the Liquidator unilaterally and arbitrarily transferred the balance sale proceeds received from the sale of Annur Property amounting to Rs.7,87,16,000/- to SBI. This intentional transfer had

given rise to a fresh cause of action leading to filing of the present application. Hence, the present applications are maintainable.

Important facts & Submissions

9.5. It is stated that SBI, ICICI Bank and Central Bank of India are the Financial Creditors of the CD and their approved claims by the Liquidator are as follows:

Name of Bank	Claim Amount	% of share
State Bank of India (Including dues of erstwhile State Bank of Travancore)	Rs. 322,65,54,250/-	62.90
ICICI Bank	137,76,24,352/-	26.85
Central Bank of India	52.62,24,572/-	10.25
Total	513,04,03,174/-	100.00

9.6. The Inter-se Agreement deals with the inter se rights of the aforementioned banks with respect to the credit facilities availed by the CD under the consortium arrangement. Vide the said agreement, they agreed that the amounts realized from or out of the securities shall be available for distribution amongst all consortium members inter se in the same proportion to their respective

outstanding in the facilities availed by the CD, without any preference or priority of one over the others for all purposes

9.7. As per the *Inter Se Agreement dated 21.03.2012*, the Liquidator upon sale of assets and realization of sale proceeds, ought to have called for a stakeholders committee meeting and distributed the sale proceeds to the financial creditors i.e., SBI, ICICI Bank and Central Bank of India on basis of their respective standing in the facilities availed by the CD / their share of approved claims. Also, in addition to the Inter-se Agreement, the decision for relinquishment of security interest is for the benefit of liquidation estate by all the secured financial creditors in the Committee of Creditors Meeting dated 15.12.2020. It is stated that the distribution of the sale proceeds has not taken place in accordance with law.

9.8. It is stated that though the Liquidator realized a sum of around Rs.42,10,16,000/- out of sale of the above 3 assets of the CD, only a sum of Rs.97,18,909/- and Rs.3,77,680/- have been distributed to ICICI Bank and Central Bank of India respectively, despite their share in the claim being 26.85% and 10.25% respectively. The rest of

the monies from the sale proceeds has been distributed to SBI unilaterally without the approval of the stakeholders.

9.9. It is stated that the stand taken by the Liquidator and SBI is that SBI holds first charge in the subject properties and in regard to the same have relied on *Letter dated 01.06.2019 allegedly from SBI to the Liquidator*. Neither SBI nor the Liquidator brought on record this letter. SBI only extracted the contents of this alleged letter in its Counter at Para 10. The extract says that SBI has no objection for sale of the assets provided that no proceeds out of the sale of any asset in respect of which SBI has a sole 1st charge should be paid to anyone else unless the amounts due to SBI are fully settled. This letter was not even brought to the notice of ICICI Bank or Central Bank of India, either by the SBI or the Liquidator.

9.10. When tribunal heard *IA/1042(CHE)/2021* in *M.A. No.517 of 2018* in *CP/564/IB/2017* filed by ICICI Bank or Central Bank of India, the Liquidator was called upon to explain how he could rely upon a letter dated 01.06.2019 exchanged between him and the State Bank and why the same was suppressed from the Financial Creditors.

The Liquidator filed an Affidavit on 03.12.2021 (At Page No.15 of the typed Set Rejoinder in IA 550 of 2023) seeking to offer an explanation but candidly admitted that said letter was not brought to the notice of the financial creditors even as late as the meeting held on 15.12.2020. If really there had been any conditional relinquishment by SBI as allegedly claimed, the letter dated 01.06.2019 ought to have been placed before the SCC meeting on 15.12.2020. In fact, in the Minutes of the Meeting dated 15.12.2020 the Liquidator recorded that he would take suitable opinion/precautions regarding the rights. However, no such opinion had been sought. It is stated that the Liquidator had not made available the said letter to all other stakeholders and he did not consult with the other stakeholders in this regard as mandated under Section 35(2) of the IBC. The mere fact that sale was conducted by the Liquidator shows that all financial creditors relinquished their security interest for the benefit of Liquidation estate and that the Liquidator is bound to distribute sale proceeds strictly in line with Section 53 of IBC.

9.11. It is stated that the Liquidator and SBI in collusion are attempting to defeat the rights of ICICI Bank and Central Bank of India. Their argument that within the frame work of Section 53 of IBC, it would be still open for the secured creditors to seek for distribution of their proceeds from the sale of assets in terms of the charges held by them, is untenable. The Liquidator further sought to rely upon the "Conditional Relinquishment" to justify his action. *There is no concept of "Conditional Relinquishment" in IBC.* Either the Creditor stands outside the liquidation and realizes the security as per Section 53 or binds himself to the process under Section 52. The Creditor cannot use the Liquidator under Section 52 and claim exclusivity under Section 53. It is stated that there was only two options available for the Secured Creditor a) the Secured Creditor stands outside liquidation and realizes its security b) joins the liquidation and once that is done, the distribution ought to be made as per the waterfall mechanism under Section 53. There is no other view that can be urged. With respect to the judgment of *ICICI Bank*

Vs SIDCO leathers supra relied by SBI and the Liquidator, it is stated that the said judgment is not applicable to the present case.

9.12. No SCC meeting was conducted before the distribution of the liquidation funds. After a span of about nearly 3 years post SCC meeting held on 15.12.2020, the Liquidator conveyed the 2nd SCC meeting on 26.02.2024 that since the issue with regard to distribution of liquidation sale proceeds is pending before NCLT, it would not be appropriate to discuss the same. This SCC meeting was conveyed only after filing of *IA No.411 of 2024* by ICICI Bank and Central Bank of India and pursuant to the Tribunal asking the Liquidator when the next SCC meeting would be conducted.

9.13. It is stated that the Liquidator transferred the said liquidation funds to SBI unilaterally without the approval of the stakeholders. The Liquidator ought to have distributed the liquidation proceeds to all creditors without preference or priority of one over the other and without any reference to the priority of charge held prior to the

relinquishment on basis of the Inter Se Agreement dated 21.03.2012 and as per Section 53 of the IBC.

10. Common Rejoinder filed by the Applicants to the Counter filed by Respondent nos. 1 and 2

10.1. It is stated that the liquidator (Respondent No.1) has projected as if the present application has been filed by the Applicants on basis that the Tribunal had in some manner changed its order that was passed on 21.10.2022 in *IA/1042(CHE)/2021* in *M.A. No.517 of 2018* in *CP/564/IB/2017* and other connected applications. It is stated that the Applicants have utmost respect and regard for the Judiciary and would not ever intend to make any allegations against the Judiciary.

10.2. It is stated that the Applicants have been constrained to file the present applications consequent to the action of the Liquidator not distributing a sum of Rs.31,57,16,000/- as received from the sale of the property located at Annur, Andhra Pradesh belonging to the Corporate Debtor in accordance with law despite an Order dated 21.10.2022 passed by the Tribunal in *IA/1042(CHE)/2021* in *M.A. No.517 of 2018* in *CP/564/IB/2017* filed by the Applicants herein

earlier and in IA/1006(CHE) of 2021 in M.A. No.517 of 2018 in CP/564/IB/2017 filed by the 2nd Respondent, wherein the tribunal rejected the lien marked by the 1st Applicant on the liquidation account maintained by the Liquidator with the 1st Applicant Bank and has further given directions to the Liquidator to distribute/ utilize the amount as he deems fit in accordance with provisions of Law.

10.3. It is stated that the present application arises out of a new cause of action. The Applicants are not in any way barred to file the present application seeking new set of reliefs arising out of a new cause of action. For reference sake, the prayer as sought by the Applicants in IA/1042 (CHE)/2021 and the present application (IA/550 (CHE)/2023) are enumerated herein below:

Case No.	Prayer
IA/1042(CHE)/2021 in M.A. No.517 of 2018 in CP/564/IB/2017	a) To declare that the 1 st Applicant Bank the rightful owner of Rs.8,58,84,826.50/-, being 26.85% the 1 st Applicant's share in the liquidation proceeds towards the dues owned by the

Corporate Debtor to the 1st Applicant Bank and to consequently permit the 1st Applicant to appropriate a sum of Rs.8,58,84,826.50/-, in proportion to its share from the sale proceeds of the Annur, Andhra Pradesh property of the Corporate Debtor to M/s. ABC Fruits, lying in the Liquidation Account No. 000905033177 of 1 Respondent;

b) To direct the 2nd Respondent to pay the 2nd Applicant Bank, a sum of Rs.3,27,86,572.50/- in proportion to the 2nd Applicant's share of 10.25% in the liquidation proceeds towards the dues owned by the Corporate Debtor to the 2nd Applicant Bank, from the sale proceeds of the Annur, Andhra Pradesh property of the Corporate Debtor to M/s. ABC

	Fruits, lying in the collection account of the 2 nd Respondent bearing State Bank of India Account No. 30319576399.
Present Application – IA/550 (CHE)/2023 in M.A. No.517 of 2018 in CP/564/IB/2017	To declare the transfer of funds from the liquidation account i.e., transfer of the entire sum of Rs. 31,57,16,000/- received from the sale of Annur, Andhra Pradesh property of the Corporate Debtor, by the 1 st Respondent to the 2 nd Respondent in contravention of the provisions of the IBC as illegal and to consequentially direct the 2 nd Respondent to reimburse the 1 st Applicant Bank a sum of Rs.8,58,84,826.50/- in proportion to the 1 st Applicant's share of Rs.26.85% in the liquidation proceeds and the 2 nd Respondent to reimburse the 2 nd Applicant Bank, a sum of Rs.3,27,86,572.50/- in proportion

	to the 2 nd Applicant's share of Rs.10.25% towards the dues owned by the Corporate Debtor to the 1 st Applicant and the 2 nd Applicant and pass any other orders as this Hon'ble Tribunal deems fit and necessary and thereby render justice.
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10.4. A mere reading of the above prayers would show that, post lifting of lien marked on the Liquidator's account by the 1st Applicant, the Liquidator intentionally transferred funds from the liquidation account i.e., transfer of the entire sum of Rs.31,57,16,000/- as received from the sale of property located at Annur, Andhra Pradesh belonging to the Corporate Debtor to the 2nd Respondent, when the financial creditors including the 2nd Respondent had already relinquished their security interest. This intentional transfer has given rise to a fresh cause of action leading to the present application.

10.5. It is stated that the existence of the letter dated 01.06.2019 is in itself questionable as the said letter was never brought to light

through any communication by either the 2nd Respondent Bank or the 1st Respondent (Liquidator). The Applicants had not objected to this letter because it was not shared with them either by the 1st Respondent or the 2nd Respondent. *It is stated that the very purpose of the meeting on 15.12.2020 was to enable the Financial Creditors to know their respective rights.* If really had there been any conditional relinquishment of its rights by the Respondent No 2 as claimed, the letter ought to have been placed in the meeting. In fact, the Liquidator has recorded that he would take suitable opinion/precautions regarding the rights. It is stated that no such opinion was produced and the money was hurriedly distributed to the second respondent.

10.6. It is stated that the 2nd Respondent had written this letter against **Regulation 32 of IBBI amended on 22.10.2018**, since as per the amendment, once the security interest is relinquished to the liquidation estate, the question of security interest does not arise.

The regulation 32 reads as under

"The liquidator may Sell

(a) an asset on a standalone basis:

(b) the assets in a slump sale,

(C) a set of assets collectively.

(d) the assets in parcels

(e) the corporate debtor as a going concern or

(f) the business(es) of the corporate debtors as a going concern:

provided that where an asset is subject to security interest, it shall not be sold under any of the clause (a) to (f) unless the security interest therein has been relinquished to the liquidation estate."

10.7. It is stated that the sale has been conducted by the Liquidator after all financial creditors relinquished their security interest for the benefit of the liquidation estate and the Liquidator is duty bound to distribute sale proceeds strictly in line with Section 53 of the Insolvency and Bankruptcy Code (IBC).

10.8. It is stated that in IA/1006(CHE)/2021 in M.A. No.517 of 2018 in CP/564/IB/2017, **the 2nd Respondent clearly admitted in paragraph no 8 that it relinquished security for the benefit of liquidation estate under section 52(1)(a) of IBC.** The averments made by the 2nd

Respondent Bank that none of the lenders assailed or challenged the claim of the 2nd Respondent is false.

10.9. Even though the said letter dated 01.06.2019 which the 2nd Respondent refers to, for having intimated its intention to conditionally relinquish its security interest, it is stated that the same ought to have been submitted to the Liquidator within 30 days from the Liquidation Commencement date i.e., 01.11.2018 as per proviso to *Regulation 21 A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016*. The proviso also stipulates that in case the Secured Creditor does not intimate its decision within 30 days' time period, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

10.10. It is stated that the 1st Applicant Bank clearly recorded its stand in terms of distribution of sale proceeds to all the stake holders in the first Stake Holders meeting held on 15.12.2020. Hence, the 2nd Respondent's contention that the Applicants never raised any objection is totally false and untenable. It is stated that

the applicants approved the e-Auction with the belief that due share of sale proceeds will be remitted to each Financial Creditors irrespective of their charge and as per the waterfall mechanism as stipulated under Section 53 of the IBC.

10.11. It is stated that in the present case, the 1st Respondent liquidator neglected to contact the applicants holding over 37.11% share but he contacted only one of the Stakeholders. i.e., State Bank of India, the 2nd Respondent.

10.12. It is stated that the case of *ICICI Bank Vs SIDCO Leather [2006 10 SCC 452]* was decided *prior to the enactment of Insolvency and Bankruptcy Code, 2016*. Hence, the same cannot be considered. This was confirmed by Hon'ble NCLAT in its order in the matter of *Technology Development Board vs. Mr. Anil Goel and Ors. [Company Appeal (AT) (Insolvency) No. 731 of 2020]*.

10.13. Further, post the decision in *ICICI Bank Vs SIDCO Leathers*, the law has undergone substantial changes, with the enactment of Insolvency and Bankruptcy Code in 2016. Further, the *SIDCO Leathers* case was interpreted in accordance with *Section 529 and*

529A of the Companies Act, 1956 which is completely distinct from the mechanisms provided under *Section 52 & 53 of the IBC*. Section 529 and 529 A of the Companies Act, 1956 dealt with the rules of distribution as per Section 47 of the Provisional Insolvency Act, 1920 and the rules made thereunder. There has been a distinct departure from the rules of the Provisional Insolvency Act, 1920 and what is relevant in this case is only the interpretation of the provisions of Section 52 & 53 of the Insolvency and Bankruptcy Code, 2016.

10.14. It is stated that *Section 48 of Transfer of Property Act* is not applicable, since *Section 53 of IBC* starts with a Non-Obstante clause. The 2nd Respondent cannot take two different stands in the same counter. In Para No. 20 the 2nd Respondent is stating that it has not relinquished its security interest. However, in Para No. 12 again, it is claiming that even after relinquishment it can claim its security interest under section 53.

10.15. Hon'ble NCLAT in its order in the matter of *Technology Development Board vs. Mr. Anil Goel and Ors. [Company Appeal (AT) (Insolvency) No. 731 of 2020]* has held as under:

We accordingly allow the appeal and set aside the impugned order. I.A. 514 of 2019 in CP(IB) No. 04/2017 is held to be maintainable and we allow the same with direction to the Liquidator to treat the Secured Creditors relinquishing the security interest as one class ranking equally for distribution of assets under Section 53(1)(b)(ii) of I&B Code and distribute the proceeds in accordance therewith.

IA/IB/1035/CHE/2023

11. Submissions by Liquidator, the applicant

11.1. The facts leading to the filing of this Application are as follows:
The Liquidation Account of the CD was maintained with ICICI Bank under current account No 000905033177 at Nungambakkam branch Chennai. A sum of Rs.32.31 crores received on sale by e Auction of a factory premises of the CD was deposited in the above said Liquidation Account at various times before 28.09.2021. It is stated that the disputes in the manner in which the proceeds of Rs.32.31 Crores received on sale of the factory premises of CD by E Auction by the Liquidator are the subject matter of IA/1042(CHE)2021 filed by the Respondent and another .

11.2. It is stated that ICICI Bank, the Respondent unilaterally and illegally marked lien on the account to an extent of Rs.8.58 crores. Such lien marking was intimated to the Applicant (Liquidator) only after the Applicant was unable to use the funds as required under the Code and sought reason from the Respondent. It is stated that on 21.10.2022 the Tribunal finding that the Respondent was unable to set out any basis in law on which the lien was marked on the Liquidation Account, directed lifting of the lien by the Respondent and the Respondent ICICI Bank thereafter complied the same.

11.3. It is stated that Respondent had no right to mark lien on a Liquidation Account and the *funds were enjoyed by the Respondent ICICI Bank interest free from 28.09.2021 till 25.10.2022* on which date the illegal lien was lifted on the basis of directions of the Tribunal.

It is stated that liquidator on 22.11.2022 made a demand for recompense by the Respondent of the loss caused to it by the respondent by marking such illegal lien. The Respondent had on 28.11.2022 chosen to reply merely with a bald denial of the claims of

the Applicant and refused to make payment of the benefit derived by it by the illegal lien marking.

11.4. It is stated that there could be no basis for the respondent to refuse to recompense the Applicant after having admitted that the lien was illegal, when it had by such illegal act enjoyed free funds of Rs. 8.58 crores for nearly 13 months from 28.09.2021 to 25.10.2022. It is stated that the issue of payment of interest by way of recompense was not related to the issue in *IA/1042(CHE)2021* of Respondent and another Bank as the same was about the distribution of proceeds under Section 52 and Section 53 of the Code and the sole gainer in this wrongful lien marking was the Respondent and even the other applicant in *1A/1042(CHE)2021* did not gain anything from this act of the respondent. Whatever be the outcome of the MA's, the Respondent is bound to recompense to the Liquidation estate for the illegal benefit.

12. Counter to IA. No. 1035 of 2023 by ICICI Bank

12.1. It is stated that the sequence of events would be essential to understand why ICICI Bank was constrained to mark lien on

Rs.8,58,84,826.50 (ICICI Bank share of 26.85%) received from sale of Annur, Andra Pradesh property. Further, upon the tribunal rejecting the said lien marked by ICICI Bank vide Order dated 21.10.2022 passed in *IA/1006 (CHE)/2021 & IA/1042(CHE) 2021* in *CP/564/1B/2017*, ICICI Bank immediately lifted the lien on the same day. *There was no direction by the Tribunal in the said order to pay any interest to the Liquidator.* It is stated that, on 25.10.2022, within a few days after the lien of the amount lying in the liquidation account was lifted by ICICI Bank, the Liquidator unilaterally and arbitrarily transferred the balance sale proceeds received from the sale of the Annur Property amounting to Rs.7,87,16,000/- to the account of SBI, without holding SCC Meeting for distribution of the said liquidation funds. Taking into consideration, the conduct of the Liquidator and no direction of any payment of interest by the tribunal at the time of rejecting the lien, this IA may be dismissed with costs.

12.2. It is stated that the Applicant filed the present application without any basis and the same is liable to be dismissed in limine

for the reason that the Applicant unilaterally and arbitrarily transferred the entire sale consideration received from sale of one of the asset forming part of liquidation estate of the Applicant to State Bank of India without consulting any of the other lenders, in total disregard of his duty as a liquidator under the Insolvency and Bankruptcy Code, 2016.

12.3. It is stated that Applicant has filed this application without any basis only to claim unjust enrichment and the same is liable to be dismissed.

13 REJOINDER AFFIDAVIT OF APPLICANT

13.1. It is stated that Liquidation account was opened and operated for the Liquidation Estate with ICICI Bank (the Respondent) and liquidator deposited the security deposit and the auction proceeds received from one of the properties of the Corporate Debtor sold by him as per specific directions of State Bank of India in respect of release of their security interest in the said property having exclusive first charge thereon.

13.2. It is stated that maliciously and with malafide intention, the respondent withheld a sum of Rs.8.58 crores out of the balances in the said account claiming as though that sum was due and marked a lien for the same.

13.3. It is stated that the *IA/1042(CHE)2021* of the Respondent and another, on the claim of being entitled to the said sum was heard with *1A/1008(CHE)/2021* and *IA/1036(CHE)/2021* and *IA/1006(CHE)/2021* of State Bank of India and on 21.10.2022, it was ordered that nothing further survives in the matter as to whether any money was due or not to the Respondent. It is stated that as such from 21.09.2021 till 22.10.2022, sum of Rs.8.58 crores of the Liquidation Estate was wrongfully with-held in the current account of the Liquidation Estate.

13.4. It is stated that the principle in law is well settled that once the right is established, the claim for damages for denial of the right automatically flows.

13.5. It is stated that Application has been filed for directing Respondent to pay the same as demand of Applicant in this regard

was refused to be complied with by the Respondent by payment of interest / compensation for the said period on the amount of Rs 8.58 Crores.

13.6. It is stated that in the reply , Respondent did not deny that Rs 8.58 Crores was withheld by it by marking lien from 29.09.2021 to 22.10.2022 and that the same was enjoyed by it interest free.

13.7. It is stated that the reply of the Respondent is only as though that as the order dated 21.10.2022 of the Tribunal does not provide for payment of interest, hence there is no obligation for it to pay the interest.

13.8. It is stated that present liquidator was not the Applicant in the applications that were decided on 21.10.2022 and he was merely the 1st respondent in each of the Applications and as such the question of any interest claim to which the Liquidation Estate is entitled to decided by the orders in the said Applications is perverse, false and untenable.

13.9. It is stated that what was decided on 21.10.2022 is that Respondent did not have any right to mark lien and further disposing off the claim of Respondent and another bank being applicants in *IA (IBC) 550/2023* seeking to claim amounts from the Liquidation Estate out of such Auction sale without granting the reliefs prayed by the Applicant for the money.

13.10. It is stated that the said orders have not been appealed against and have become final between the parties and Respondent is therefore bound by the same. It is stated that once it is decided that Respondent did not have a right to mark lien on the amount and that the said act was illegal, the payment of compensation/damages by Respondent in respect of such unlawful act arises automatically and respondent was bound to have complied with the demand dated 21.11.2022 of the Applicant.

13.11. It is stated that the demand for interest / compensation / damages is consequential to the order dated 21.10.2022 holding the Respondent action of marking lien on the Applicant's Liquidation Estate Account illegal, as once the respondent acted illegally, it is

bound to disgorge the gains from such illegal act, even if it is not made to pay further penal damages. It is stated that as far as this application is concerned there was illegal lien and retention of Rs. 8.58 Crores for 13 months by the Respondent and as such interest / compensation/damages for the same is to be allowed.

13.12. It is stated that the benefit which would have accrued to the Liquidation Estate and the beneficiaries are bound to be paid by the Respondent.

14. Analysis and findings:

14.1. IA 1035 of 2023

14.1.1. This application has been filed by the liquidator stating that the liquidation estate be recompensed by the respondent ICICI Bank as per his demand in the letter dated 21.11.2022. It is stated that ICICI Bank, the respondent unilaterally and illegally marked lien on the liquidation account to an extent of Rs.8,58,84,826.50 and the tribunal vide order dated 21.10.2022 passed in *IA/1006 (CHE)/2021* &

IA/1042(CHE) 2021 in *CP/564/1B/2017* rejected the lien marked by ICICI Bank and asked it to remove the lien and the ICICI Bank complied with the same.

14.1.2. It is stated that the funds were enjoyed by the Respondent ICICI Bank interest free from 28.09.2021 till 25.10.2022 on which date the illegal lien was lifted on the directions of the Tribunal. Liquidator had asked from the respondent to recompense the liquidation estate for the period for which funds were illegally held by the respondent. As there was no response from respondent to his letter dated 21.11.2022, the present application has been filed.

14.1.3. ICICI Bank in response has stated that it marked lien only for the amount due to it, for which it filed *IA 550 of 2023* and *IA 411 of 2024* along with Central Bank of India and these applications are pending adjudication before this tribunal. ICICI Bank in its counter has stated that no direction was given by the tribunal about the payment of interest at the time of passing of the order of rejecting the lien.

14.1.4. In the rejoinder, liquidator has stated that he was not the applicant in the applications *IA/1006 (CHE)/2021 & IA/1042(CHE) 2021* which were decided on 21.10.2022 and that he was merely the 1st respondent in each of the Applications and as such, the question of deciding the interest claim to which the Liquidation Estate is entitled to did not arise in the application.

14.1.5. The issue in hand to be decided is whether ICICI Bank has to compensate the liquidation estate for illegal retention of Rs.8.58 crore for the period from 28.09.2021 till 25.10.2022 by marking lien in the liquidation account. This issue is being decided purely on the illegal retention by ICICI Bank without *going into the merit, 'whether ICICI Bank is eligible or not for the amount retained by it by marking lien'*.

14.1.6. As per IBC code, after initiation of CIRP, the affairs of the Corporate Debtor are to be looked after by Resolution professional and once Corporate Debtor goes into liquidation, the affairs of the company will be looked after by liquidator. During the liquidation period, as per statute, it is the liquidator who is supposed to manage the affairs of the company including the operation of liquidation

account. ICICI Bank where the liquidation account was maintained is one of the creditor which filed its claim before the liquidator . It cannot usurp the powers of the liquidator by marking lien and retaining the alleged eligible amount due to it.

14.1.7. The liquidator has prayed interest / compensation / damages in order to disgorge the gain accruing to ICICI Bank from the illegal act.

14.1.8. It is observed that from 28.09.2021 till 25.10.2022, i.e., for a period slightly more than 12 months period, an amount of Rs. 8.58 crore was wrongfully kept by ICICI Bank. So liquidation estate has to be compensated for it by the ICICI Bank.

14.1.9. We therefore direct ICICI Bank to pay interest for the amount withheld (Rs.8,58,84,826.50) by ICICI Bank for the period it was withheld by it . Interest will be the same as the fixed deposit rate of ICICI Bank as on 28.09.2021 for the period 1 to 2 years.

IA 550 of 2023 and IA 411 of 2024

14.2. ICICI bank and Central Bank of India are the applicants in the above applications. The IAs have been filed regarding the

distribution of sale proceeds from the following sale transactions in the liquidation estate:

SL No	Property	Date	Amount realised Rs.	IA No
1.	Annur, Andhra Pradesh	25.06.2021	31,57,16,000	550 of 2023
2	Pudupakkam Village, Marakannam	28.12.2023	8,81,00,000	411 of 2024
3	Kottaikadu village, Kancheepuram Taluk	20.01.2024	1,72,00,000	411 of 2024

14.3. In the common written submission filed by the liquidator, liquidator has provided date-wise chart of distribution made to various banks as under:

Name of the bank	28.09.2021	25.10.2022	20.03.2024	27.03.2024	29.04.2024	Total (in Rs.)
State Bank of India	237,000,000	78,716,000	81,190,668	-	9,783,943	406,690,611
ICICI bank Limited	0	0	5,541,548	0	4,177,361	9,718,909
Central Bank of India	0	0	0	2,116,000	1,595,680	3,711,680
Total	237,000,000	78,716,000	86,732,216	2,116,000	15,556,984	420,121,200

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14.4. ICICI bank and Central Bank of India who are the applicants in the above applications submit that liquidator did not make the disbursement as per Section 53 waterfall mechanism. To support their case they have placed two sets of arguments regarding distribution of proceeds as under:

- i) ICICI Bank and Central Bank of India contend that based on the interse agreement and other documents they also have pari-passu first charge on the assets in the liquidation estate along with SBI and Liquidator was wrong in stating that SBI was sole first charge holder.
- ii) There is no further distinction amongst secured creditors. Secured creditors as a class will receive payments proportionate to the claim submitted, irrespective of their sub- category as to whether it is first charge and second charge. To support this argument they have relied on the decisions of Hon'ble Supreme Court and Hon'ble NCLAT.

14.5. There are **other issues** which were raised as part of pleadings which are addressed here before dealing with the main issue as under:

A. Whether the prayers in the present IAs are identical with IA 1042 CHE of 2021 filed by the same applicants and hence these applications are not maintainable?

i) *IA 1042 of 2021* was filed by ICICI bank and Central Bank of India seeking direction that applicants would get their respective shares in realisation based on the claims filed. The above application was filed prior to the sale of assets in liquidation estate. *IA 550 of 2023* and *IA 411 of 2024* have been filed by the applicants regarding distribution, post-sale of liquidation assets. Additionally, while *IA 1042 of 2021* was filed, ICICI Bank marked lien on its share of money of Rs.8.58 crore in liquidation account maintained with it. Further the prayers relating to distribution in *IA 1042 of 2021* were not addressed by the tribunal. Hence, the present applications are maintainable.

B. Whether the tribunal had adequately dealt with the prayers made by ICICI Bank and Central Bank of India while disposing the IA 1042 CHE of 2021?

i) ICICI Bank and Central Bank of India had filed the application IA.No.1042 (CHE) of 2021 seeking the following reliefs:

a) To declare that the 1st Applicant Bank is the rightful owner of Rs.8,58,84,826.50/-, being 26.85% the 1st Applicant's share in the liquidation proceeds towards the dues owned by the Corporate Debtor to the 1st Applicant Bank, and to consequently permit the 1st Applicant Bank to appropriate a sum of Rs.8,58,84,826.50/-, in proportion to its share from the sale proceeds of the Annur, Andhra Pradesh property of the Corporate Debtor to M/s. ABC Fruits, lying in the Liquidation Account No. 000905033177 of the 1st Respondent:

b) To direct the 2nd Respondent to pay the 2nd Applicant Bank, a sum of Rs.3.27,86,572.50/- in proportion to the 2nd Applicant's share of 10.25% in the liquidation proceeds towards the dues owned by the Corporate Debtor to the 2nd Applicant Bank, from the sale proceeds of the Annur, Andhra Pradesh property of the Corporate Debtor to M/s. ABC Fruits, lying in the collection account of the Respondent bearing SBI Account No. 30319576399.

ii) Another IA. No. 1006/ CHE/ 2021 was filed by SBI for return of cheque of Rs. 7,87,16,062/- by ICICI Bank as ultra vires.

iii) Both IA.No.1042 (CHE) of 2021 and IA. No. 1006/ CHE/ 2021 came for hearing before the tribunal on 21.10.2022. On hearing the submissions of the Counsels, the Tribunal directed that lien marked by the 1st Applicant in the Liquidator's A/c. No.00090533177 be lifted since there is no provision in the IBC giving right to the Bank to mark lien on the Liquidator's Account maintained with the bank and in view of the same, directed the ICICI Bank to lift the lien marked by ICICI Bank in the Liquidator's A/c. No.00090533177.

Accordingly IA 1006 / CHE / 2021 was disposed of. Although it is the contention of ICICI Bank that IA 1042 CHE 2021 was not disposed and posted for subsequent date but from the Common order dated 21.10.2022 , it is observed that both the IAs 1042 of 2021 and 1006 of 2021 were disposed of . The extract of order is reproduced as under:

1. CP/564/IB/2017

COMMON ORDER

a) IA/1042(CHE)/2021 &

b) IA/1006(CHE)/2021

The Ld. Counsel Mr. Karthick Seshadri appeared in person for the ICICI Bank in IA/1042 of 2021, the Ld. Senior Counsel Mr. M.L. Ganesh appeared for the SBI in IA/1006 of 2021 & and the Ld. Counsel for R1/ Liquidator led by Mr.R. Subramanian in person in today's physical hearing.

IA/1006(CHE)/2021 has been filed under Sec. 60(5) of IBC, 2016 by the State Bank of India / Applicant. Convenience compilation by the R1 Liquidator is filed today. It is seen from Page 61 of the Convenience set that the scanned copy of letter dated 29.09.2021 is attached along with this order. While reading the conclusion part of the said letter, it is observed that ICICI has marked a Lien in A/c No.00090533177. It is stated by the Ld. Counsel for the R1 that this Account was opened by the Learned Liquidator with ICICI Bank as the Liquidator Account for the Company under liquidation falls under the provision of IBC, 2016 in our view no Lien can be marked from the Liquidator's Account.

A question was also put to the Ld. Counsel on behalf of ICICI to show provision of IBC, 2016, according to which, such Lien can be placed on the Liquidator's Account maintained with the Bank. The Ld. Counsel for the ICICI was unable to show any of the provision of IBC and said that IBC for the same does not have any such provision.

In view of specific averments and prayers made, we hereby reject the Lien on the said Account maintained by the Ld. Liquidator with ICICI Bank.

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In view of the above, in case money withdrawn by the ICICI in the said Account, ICICI is hereby directed to credit the same to the Account of the Liquidator forthwith.

The Ld. Liquidator is free to distribute / utilize the amount as he deems fit in accordance with provisions of Law.

Accordingly, IA/1042 & IA/1006 of 2021 in CP/564/IB/2017 are disposed of with the above direction.

c) IA/1008(CHE)/2021 &

d) IA/1036(CHE)/2021

The Ld. Senior Counsel Mr. M.L. Ganesh appeared for the Applicant/SBI and the Ld. Counsel for R1 led by Mr.R. Subramanian in person in today's physical hearing.

In view of disposal of IA/1042 & IA/1006 of 2021, both IA/1008 & IA/1036 of 2021 in CP/564/IB/2017 have become infructuous and hence the same are disposed of.


(SAMEER KAKAR)
MEMBER (TECHNICAL)


(JUSTICE RAMALINGAM SUDHAKAR)
PRESIDENT

ts.

iv) As different IAs were taken together and lifting of lien in the liquidation account was the primary issue, we are of the view that the prayers sought for in IA 1042 CHE 2021 have not been adequately addressed by the tribunal, while disposing the applications on 21.10.2022.

C. Whether the contention of ICICI Bank and Central Bank of India that the amounts realised from or out of the securities shall be available for distribution amongst all consortium members inter se in the same proportion to their respective outstanding in the facilities is correct?

i) There are two sets of documents available before the tribunal to enable the tribunal to decide this issue.

- a) First document is the *inter se document executed on 21.03.2012*, on the basis of which ICICI Bank and Central Bank of India contend that they have pari passu charge.
- b) Second set of documents are the security documents submitted by ICICI Bank as petitioner in Section 7 petition (*CP/564/IB/CB/2017*) filed against the Corporate Debtor which form part of documents filed in *IA 411 of 2024*.

ii) We will deal with them one by one.

On the basis of inter se agreement:

iii) ICICI Bank and Central bank of India state that they derive the first paripassu charge based on the inter se agreement.

iv) It is observed that the Inter se document dated 21.03.2012 was executed by consortium members including SBI, ICICI, SBT and Central Bank of India. This document has been produced as evidence by ICICI Bank stating that based on inter se agreement, the

disbursement interse banks should be in the proportion to their respective outstanding in the said facilities.

v) ' Inter se' is a latin term meaning " between or amongst themselves " . An inter se agreement is a legal arrangement that defines the rights and obligations between parties within a group.

vi) In the present case, working capital finance was given to the Corporate Debtor by way of Consortium advance by SBI, ICICI, Central Bank of India and erst while SBT. Arrangement letter, mortgage deed, joint hypothecation document, Inter se lenders agreement, etc. form part of these consortium documents. Normally in a working capital advance, current assets are given as first charge to the working capital lenders and fixed assets are given as second charge. Inter se lenders agreement produced by ICICI Bank is about the pari passu sharing of the above charges. In addition to the working capital loan, SBI gave term loans as a sole lender for which certain fixed assets were given as first charge and current assets were given as second charge. *The interse agreement entered into for working capital limits in no way can prevent the term lender from*

enjoying its first charge right over the fixed assets. So the contention of ICICI Bank that based on inter se agreement for working capital advance, they are entitled to distribution in proportion to the claim amount in respect of immovable property for which SBI has first charge may not be correct.

vii) Extract of Inter se agreement executed in 2012 (Pages 273, 282 and 283) of Petition in IA 411 of 2024 is appended below:

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THIS AGREEMENT is made at.....this the.....day of.....1999, between State Bank of India, a Statutory Corporation constituted under the state Bank of India Act, 1955 and having one of its Local Head Offices at.....and a *Zonal Office amongst other places at.....(hereinafter called "A Bank", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns) of the FIRST PART.....Bank, a Statutory Corporation constituted by and under the.....and having one of its Local Head Offices at.....and a Zonal Office amongst other places at.....(hereinafter called "B Bank", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns) of the SECOND PART.....Bank, a body corporate constituted by and under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1976/80 and having its Head Office at.....and a Regional Office amongst other places at.....(hereinafter called "C Bank", which expression shall unless it be repugnant to the subject or context thereof, include its successors and assigns) of the THIRD PART.....Bank, a body corporate constituted by and under the Banking Companies (Acquisition and Transfer of the Undertakings) Act, 1976/80 and having its Head Office at.....and a *Regional Office amongst other places at.....(hereinafter called "D Bank" which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns) of the FOURTH PART AND.....Bank, a Banking Company within the meaning of the Banking Regulation Act, 1949 and a Company within the meaning of the Companies Act, 1956 and having its Principal Place of Business in India at.....and a Regional Office at.....(hereinafter called "E Bank" which expression shall, unless it be repugnant to the subject to context thereof, include its successors and assigns) of the FIFTH PART.

(All of which A Bank, B Bank, C Bank, D Bank and E Bank are hereinafter collectively referred to as "the said Banks" or "the A Bank Consortium" which expression shall, unless it be repugnant to the subject or context thereof, include each of them or any one or more of them and their respective successors and assigns);

(अगर लागू नहा त कट ७)

5. Notwithstanding anything to the contrary contained in the said Consortium Agreement and/or the Joint Deed of Hypothecation and/or the Second Charge* or arising from or by virtue or reason of or implied by the same, all moneys resulting from the enforcement or realisation of the said Securities by or on behalf of the said Banks and the amounts realised from any policy or policies of insurance in respect of the said Securities though payable to the Borrower and any other realisation from or out of the said Securities or any part thereof by enforcement of the said Securities or by recourse to any special legislation for recovery of dues as may be applicable or otherwise howsoever shall be available for distribution amongst the said Banks *inter se* in the same proportion to their respective outstanding in the said Facilities, without any preference or priority of one over the other or others for all purposes and to all intents and shall be applied by the Lead Bank with all convenient despatch in the manner herein provided.

*(Delete if not applicable)

- (क) प्रथम — कथित बैंक द्वारा प्रतिभूतियों के प्रवर्तन तथा/अथवा चसूली अथवा ऐसी राशियों की प्राप्ति के लिए हुए अथवा होने वाले तथा अनुषंगिक लागतों, प्रभारों, व्ययों वर भुगतान इस राशियों में से किया जाएगा.
- (ख) द्वितीय — उक्त राशियों के बकाए की -
- (i) अगर वितरण के लिए उपलब्ध राशियां कथित बैंकों की पूर्ण ऋण राशियों (आकस्मिक दायित्वों सहित) जो ऋणी द्वारा उनकी क्रमानुसार संदेय थी, के लिए पर्याप्त हों तो उनमें से प्रत्येक को उनके पूर्ण ऋण की क्रमानुसार साथ साथ अदा किया जाएगा.
- a) First — there shall be paid out of such moneys or provisions made thereout for the costs, charges, expenses, incurred by the said Banks for and incidental to the enforcement of the said Securities and/or realisation or receipt of such moneys;
- b) Secondly — the balance of such moneys shall:
- i) in the event of the moneys so available for distribution being sufficient to pay to the said Banks the full amounts of the Debts (including the contingent liabilities) due from the Borrower to them respectively be applied simultaneously in the payment to each of them of their respective Debts in full;

के लिए उपलब्ध राशियां कथित बैंकों की पूर्ण राशियों (आकस्मिक

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- ii) in the event of moneys available for distribution being insufficient to pay to each of them the full amount of the Debts (including the contingent liabilities) due from the Borrower to them respectively, be applied *pari passu* as nearly as may be practicable towards payment to each of them without any Preference or priority whatsoever. The amount distributable to each of them shall bear to the total distributable amount the same proportion which the outstanding amounts of the Debts (including the contingent liabilities) due to each of them bears to the aggregate of the outstanding amounts of the Debts (including the contingent liabilities) due to all of them under the said Securities created and/or to be created by the Borrower.
- (ग) तृतीय — अगर ऐसी राशियों में से कुछ बच गई हों तो अग्रणी बैंक द्वारा ऋणी को अथवा उसके द्वारा इसके लिए प्राधिकृत व्यक्ति को दे दी जाएगी.
- c) Thirdly — the surplus, if any, out of such moneys shall be paid by the Lead Bank to the Borrower or the person entitled thereto.

viii) In para 5 it is stated ' *Notwithstanding anything to the contrary contained in the said Consortium Agreement and / or the Joint Deed of Hypothecation and / or the Second Charge* or arising from or by virtue or reason of or implied by the same, all moneys resulting from the enforcement or realisation of the said Securities by or on behalf of the said Banks and the amounts realised from any policy or policies of insurance in respect of the said Securities ----- shall be available for distribution amongst the said Banks inter se in the same proportion to their respective outstanding in the said Facilities, without any preference or priority of one over the other or others'*

ix) ICICI Bank states that as per para 5 above , amount available for distribution shall be available in the proportion to their respective outstanding in the facilities and not SBI alone.

x) However if we examine the para 5, apart from distribution it talks about Joint Deed of Hypothecation and / or second charge . It talks about distribution in same proportion between second charge holders who are working capital lenders. Hence the claim that the applicants are entitled

to proportionate distribution at par with SBI based on interse agreement has not been substantiated.

Security documents filed by ICICI Bank in Section 7 Petition against Corporate Debtor.

xi) ICICI Bank Limited was the petitioner who had filed the petition under Section 7 of IBC based on which Corporate Debtor was admitted into CIRP. Copy of the petition has been filed as **Annexure 1** in *IA 411 of 2024*. In the petition, the details of the securities as provided by ICICI Bank are as under (Pages 56 to 62 of application).

xii) Particulars of immovable property

i) Pari Passu First charge with existing working capital bankers:

1. Vacant land to the extent of 11.17 acres situated at Kalamavur Village, Kulathur Tk, Pudukottai District belonging to Mrs. **Sophia James Walter.**
2. Land Building and with total plot area of 6122 Sqft with built up area of 1968 Sqft situated at New No.27 & Door 29, Zackaria Colony, 4th Street, Choolaimedu, Chennai belonging to **Mr. Joseb Raj and Mrs. Vimala Joseb.**

3. Agricultural land to the extent of 0.74 acres situated at Village, Payyanur Thirupporur, Kancheepuram District belonging to **Oceanic Edibles International Ltd.**
4. Agricultural land to the extent of 18.125 acres situated at Kolathur Village, Cheyyur Taluk, Kancheepuram. District belonging to Oceanic Tropical Fruits Private Ltd.
5. Agricultural land to the extent of 5.19 acres situated at Marakkanam village, Tindivanam Taluk, Villupuram District belonging to **Oceanic Tropical Fruits Private Ltd.**

ii) Pari-passu second charge by way of extension of EM over the following properties with working capital banks. (First Charge for term loan lenders):

- a) Land to the extent of 16.78 acres situated at Annur Village, Chitoor District, Andhra Pradesh belonging to Oceanic Tropical Fruits Private Ltd.
- b) Land to the extent of 4.845 acres situated at Marakkanam, Tindivanam Taluk, Villupuram District belonging to Oceanic Tropical Fruits Private Ltd.
- c) Land to the extent of 0.940 situated Achikaddu Village, Tindivanam Taluk, Villupuram District belonging to **Mr. Joseb Raj.**
- d) Land to the extent of 1.025 situated Kalamavur Village, Kulathur Taluk, Pudukottai District belonging to **Mrs. Sophia James Walter.**

e) Vacant land to the extent of 8.4. acres situated Marakkanai, Tindivanam Taluk, Villupuram District belonging to Oceanic Tropical Fruits Private Ltd.

iii) **Pari passu second charge** with working capital lenders (First charge to term lenders)

a) Land to the extent of 1 acre situated at Mandavai Village , Marakkanam, Tindivanam Taluk, Villupuram District belonging to **Oceanic Tropical Fruits Private Ltd.**

b) Land to the extent of 2 acres situated at Marakkanam, Tindivanam Taluk, Villupuram District belonging to **Oceanic Tropical Fruits Private Ltd.**

c) Land to the extent of 13.93 acres situated at Annur Village, Chitoor District, Andhra Pradesh belonging to **Oceanic Tropical Fruits Private Ltd.**

d) All other fixed assets belonging to Oceanic Tropical Fruits Private (including Ltd the assets created out of SBI's Term Loans) excluding assets charged exclusively to SREI Equipment Finance Ltd

iv) **Pari-passu second charge** over all collaterals for all lenders:

i) Land area of 3807.6 Sqft with built up area of 4020 Sqft located at Bheemasena Garden Street, Mylapore, Chennai belonging to **Mr. Ramesh Narayanan.**

ii) Leasehold rights of the Corporate Debtor in the land measuring 4.0 acres situated at Mandavai village,

Marakkanam sub registration, Tindivanam Taluk,
Villupuram District belonging to **Mrs. Maria Salome**

xiii) Findings:

In the list of properties given as security, three properties sold by the liquidator have been highlighted by underlining the same. Despite pleading by ICICI Bank that as per inter se agreement they have first paripassu charge on all fixed assets but, from their own submissions in Section 7 petition we find that ICICI bank along with working capital lenders have **second pari passu charge** on Annur and Marakanam properties. In respect of third property in Kolathur village , Cheyyur taluk, which was sold for Rs. 1.72 crores , ICICI Bank and working capital lenders have first paripassu charge. Further from the distribution chart given by liquidator reproduced in Para 14.3. above, we find that liquidator has distributed the amount of Rs. 1.72 crores where all the lenders have first pari passu charge , in proportion to their claims on 27.03.2024 and 29.04.2024 and for the remaining two assets , SBI was given more share as a first charge holder.

D. Issues regarding relinquishment of Security interest by SBI

i) There are allegations stating that relinquishment of security interest by SBI do not comply with IBBI Liquidation Regulations, especially, Regulation 21A and Regulation 32.

ii) For better understanding let us go through the chronology of events. Regulation 21A introduced on 25.07.2019 and Regulation 32 of IBBI Liquidation Regulation amended on 22.10.2018 talk about the security interest. The Corporate Debtor was admitted to liquidation on 08.10.2018. SBI filed proof of claim in Form-D on 06.12.2018 to the tune of Rs.322.66 crores and the same was admitted by the liquidator.

iii) There are claims and counter claims as to whether Regulation 21A, Regulation 32 (amended) of Liquidation regulations are applicable or not. Further there is an issue of conditional relinquishment by SBI. We will deal these issues one by one.

Applicability of Regulation 21A

Regulation 21A of IBBI Liquidation Regulations 2016 (which was introduced on 25.07.2019) reads as under:

[21A. (1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:

Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

iv) Regulation 21A was introduced only on 25.07.2019, whereas liquidation commencement date is 08.10.2018. The SBI submitted the claims in Form D on 06.12.2018. As the regulation has prospective effect only, the same was not applicable on 06.12.2018 when Form D was filed by SBI.

Regarding Regulation 32:

Regulation 32 of IBBI Liquidation Regulations 2016 (after amendment on 22.10.2018) reads as under:

The liquidator may sell-

- (a) an asset on a standalone basis;*
- (b) the assets in a slump sale;*
- (c) a set of assets collectively;*

(d) the assets in parcels;

(e) the corporate debtor as a going concern; or

(f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate. (

Underlined portion introduced post amendment)

v) The Liquidation order was passed on 08.10.2018 and in the amendment dated 22.10.2018, the concept of security interest and relinquishment of the same was introduced for the first time. SBI submitted the claims in Form D on 06.12.2018. As SBI submitted the claim post introduction of the amendment , the contention that SBI need not relinquish the secured interest of the liquidation estate is not correct.

E. Whether SBI can give a conditional relinquishment letter under Section 52 of IBC?

i) Before proceeding further, let us go through the extract of letter dated 01.06.2019 submitted by SBI to the liquidator :

We are advised to state that in view of amendment dated 22.10.2018 to Regulation 32 of the Liquidation Regulations you require our specific consent as a Security Interest Holder before disposing off any Asset of the company under Liquidation charged to us.

It is stated that while the Regulations require such consent from each of the Security Interest Holders, our position is different as we are the sole 1st charge holder in respect of the immovable properties of the company under Liquidation and further we account for 62.5% of the total claims of persons holding security interest.

*We have no objection to your effecting sale of the assets **provided that no proceeds out of sale of any asset in respect of which we hold sole 1st charge should be paid to any one else unless the amounts due to us are fully settled.** We have no objection however to payment of CIRP cost and Liquidator fees and workmen dues of up to 24 months prior to liquidation out of the sale proceeds realized.*

*You may note that **our consent is conditional** on the above and unless the sale proceeds are dealt with in such fashion as above set out you may not proceed sale of any assets under Regulation 32 in so far as we have to sole 1st charge on the same.*

At all stages our consent under Regulation 32 may be treated as subject to condition as above.”

ii) Section 52 of IBC dealing with secured creditor in liquidation proceedings states as under:

(1) A secured creditor in the liquidation proceedings may—

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or

(b) realise its security interest in the manner specified in this section.

(2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

iii) As per Section 52 of IBC, there are only two options available to the Secured Creditor **a)** To stand outside liquidation and realize its security under Section 52 or **b)** To join the liquidation process by relinquishing the security interest and once it is done, the distribution ought to be made as per the waterfall mechanism under Section 53.

iv) The term "relinquishment" means to "give up." The law is clear that when a secured creditor relinquishes its security interest, it elects to enforce its rights against the debtor not as a mortgagee, but as a creditor at par with other creditors. This position is clear from

the express wordings of Section 52 and 53. He cannot have both the options. *There is no concept of "Conditional Relinquishment" in IBC.*

F. Whether liquidator's contention that he need not ask for relinquishment of security interest from second charge holder is correct?

i) Liquidator has stated that the applicants who are second charge holders did not relinquish their security interest over the subject property for the benefit of liquidation estate under Section 52(1)(a) of IBC, 2016 and there is no legal requirement to get NOC or mandate from the first applicant for sale of subject property, since the SBI got exclusive charge over the same which was reiterated in FORM D and letter dated 01.06.2019.

ii) Section 52 requires secured creditor to relinquish its security interest. It does not distinguish the security holder that only first charge holder should relinquish. If an asset has to be brought under liquidation estate, all the secured creditors have to relinquish their security interest. Hence, liquidator's contention is not correct.

G. Distribution to secured creditors whether based on proportion to the claim amount submitted or Inter se priority among secured lenders in liquidation.

i) Having decided that SBI is the first charge holder and ICICI Bank and Central Bank of India are second charge holders, the issue to be decided is *that in liquidation whether there is inter se priority among secured lenders or should all lenders receive the disbursements in proportion to their claim amounts.*

ii) Section 53(1) of IBC

(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:—

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following:—

(i) workmens dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

**iii) REPORT OF THE INSOLVENCY LAW COMMITTEE
MARCH, 2018**

Under the head '21.TREATMENT OF SUBORDINATION AGREEMENTS WITHIN THE LIQUIDATION WATERFALL' the report states as under:

'21.4 The Committee felt that the principles stated above that emerge from the ICICI case are also applicable to the issue at hand under section 53 of the Code. Moreover, although this was a case where creditors had not relinquished their security, the principles hold good under the Code even when creditors have relinquished their security as the Code unlike the Companies Act 1956 expressly recognises secured creditors who have relinquished their security as a separate category in section 53(1)(b)(ii) and distinguishes them from unsecured creditors. The Code in a bid to encourage relinquishment, also specifically places secured creditors who have relinquished security higher than unsecured creditors.

21.6 To conclude, the Committee was of the opinion that it is clear from a plain reading of section 53(1)(b) that it intended to rank workmen's dues equally with debts owed to secured creditors who have relinquished their security. Section 53(1)(b) does not talk about priority inter-se secured creditors. Thus, valid inter-creditor/subordination agreements would continue to govern their relationship. Further sub-section (2) of section 53 must also be interpreted accordingly. For instance, applying section 53(2) in the context of section 53(1)(b), any agreement between workmen and secured creditors which disrupts their pari passu rights will be disregarded by the liquidator. However, agreements inter-se secured creditors do not disturb the equal ranking sought to be provided by section 53(1)(b) and therefore do not fall within the ambit of section 53(2). The Committee felt that there was no requirement for an amendment to the Code required since a plain reading of section 53 was sufficient to establish that valid inter-creditor and subordination

provisions are required to be respected in the liquidation waterfall under section 53 of the Code.

**iv) REPORT OF THE INSOLVENCY LAW COMMITTEE
FEBRUARY, 2020**

Under the head '8. SUBORDINATION AGREEMENTS WITHIN THE LIQUIDATION WATERFALL' report states as under:

8.2. The First ILC Report had clarified the application of this provision on inter- creditor or subordination contracts between secured creditors by stating the following:

"the Committee was of the opinion that it is clear from a plain reading of section 53(1)(b) that it intended to rank workmen's dues equally with debts owed to secured creditors who have relinquished their security. Section 53(1)(b) does not talk about priority inter-se secured creditors. Thus, valid inter-creditor/subordination agreements would continue to govern their relationship. Further sub-section (2) of section 53 must also be

interpreted accordingly. For instance, applying section 53(2) in the context of section 53(1)(b), any agreement between workmen and secured creditors which disrupts their pari passu rights will be disregarded by the liquidator. However, agreements inter-se secured creditors do not disturb the equal ranking sought to be provided by section 53(1)(b) and therefore do not fall within the ambit of section 53(2)."

8.3. Despite this clarification, it was represented before the Committee that the confusion regarding the applicability of Section 53(2) on inter-creditor or subordination agreements among secured creditors has persisted among various stakeholders. **Therefore, in order to clarify the correct interpretation of Section 53(2), the Committee decided that necessary clarification may be provided by inserting an Explanation under Section 53(2), as explained in the First ILC Report.**

v) IBC Code has not been amended yet.

vi) Cases relating to distribution interse secured creditors in liquidation:

1. ICICI Bank Ltd vs SIDCO Leathers Ltd. and Ors. Appeal (Civil) 2332 of 2006 Hon'ble Supreme Court Decided on 28-Apr-06. This case deals with liquidation under provisions of Companies Act 1956 and not IBC. Hon'ble Supreme Court in its decision highlighted the following aspects : 'Only because the dues of the workmen and the debt due to the secured creditors are treated pari passu with each other, the same by itself, in our considered view, would not lead to the conclusion that the concept of inter se priorities amongst the secured creditors had thereby been intended to be given a total go-by. Section 48 of the *Transfer of Property Act, 1882* ("TOPA") clearly provides that claim of a first charge holder shall prevail over the claim of a second charge holder. Merely because the relevant section did not specifically provide for the rights of priorities over mortgaged assets, it would not mean that the provisions of section 48 of TOPA shall stand obliterated in relation to a company that has undergone liquidation'.

2. Technology Development Board vs Mr. Anil Goel & Others [CA AT 731 of 2020] [(2021) *ibclaw.in* 175 NCLAT, the Hon'ble NCLAT on 05.04.2021 decided that secured creditors who release their security interest during liquidation under Section 53 of the Insolvency & Bankruptcy Code, 2016, do not receive inter-se priority. It emphasized that whether holding the first charge or subsequent charges, these secured creditors are treated equally in such situations. The distribution of assets is determined by the established waterfall mechanism under Section 53 of the IBC, regardless of the nature of their prior charge. However, it's important to note that the Hon'ble Supreme Court passed a stay order on 29.06.2021 on this decision in the case of Kotak Mahindra Bank Ltd v. Technology Development Board. Civil Appeal Diary No 11060/ 2021, which is still continuing.

3. Oriental Bank of Commerce (now Punjab National Bank) vs Anil Anchalia & Anr. [Comp. App. (AT)(Ins) No. 547 of 2022 decided on 26th May, 2022 by the Hon'ble NCLAT].

Hon'ble NCLAT observed that in the light of the judgement passed by the Hon'ble Supreme Court in "*India Resurgence ARC Private*

Limited vs. Amit Metaliks Limited and Anr. [2021 SC OnLine SC 409] and its own "Indian Bank vs. Charu Desai, Erstwhile Resolution Professional & Chairman of Monitoring Committee of GB Global Ltd. & Anr.[CA(AT)No. 644 of 2021] the issue is no more res integra. In the aforesaid two cases, a similar contention was raised by the Appellants that the dissenting financial creditors are entitled to receive payment as per their secured interest, wherein it was decided 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".

The Hon'ble NCLAT effectively stated that, following the relinquishment of security, a secured financial creditor is only entitled to a pro-rata share of the sale proceeds, in line with other secured creditors, as per Section 53 of the Insolvency and Bankruptcy Code, 2016.

4. State Bank of India Vs IDBI Bank & another (2025) ibclaw.in 81

NCLAT- Hon'ble NCLAT decided on 28th January 2025 the issue regarding 'Distribution amongst the Secured Creditors on the basis

of charge on the security interest of individual Creditors **or** as per admitted debt of Secured Creditors on pro-rata basis’.

Regarding Insolvency Law Commission report, Hon’ble NCLAT stated as under: ILC Report cannot be relied in view of the law declared by the Hon’ble Supreme Court in *Amit Metaliks Ltd. (supra)*, which is binding on all concern under Article 141 of the Constitution of India.(p16).

In so far as submissions of the Counsel for the Appellant that the Judgment of Hon’ble Supreme Court in ‘*Amit Metaliks Limited*’ (*Supra*) has already been referred to the larger bench by the Hon’ble Supreme Court in ‘*DBS Bank Ltd. Singapore*’ (*Supra*), this Tribunal in ‘*Beacon Trusteeship Ltd.*’, (*Supra*) had occasion to notice Judgment of the Hon’ble Supreme Court in ‘*DBS Bank Ltd. Singapore*’ (*Supra*) where reference was made to the Judgment of the Hon’ble Supreme Court in ‘*Amit Metaliks Limited*’ (*Supra*). This Tribunal in Paragraph 54 held that law declared by the Hon’ble Supreme Court in ‘*Amit Metaliks Limited*’ (*Supra*) can very well relied until a different view is expressed by the Hon’ble

Supreme Court in the reference made in 'DBS Bank Ltd. Singapore'
(Supra).

It concluded that it is of the view that Adjudicating Authority has not committed any error in directing distribution of sale proceeds as per the admitted claim of the Financial Creditor on pro-rata basis and the directions issued by the Adjudicating Authority are in accordance with law as declared by the Hon'ble Supreme Court in *India Resurgence ARC Pvt. Ltd. v. Amit Metaliks Ltd. (2021) ibclaw.in 87 SC.(p19)*

Our view

vii) We are of the view that treatment of security interest in respect of dissenting creditors in CIRP is different from that of secured creditors relinquishing their security interest in liquidation.

viii) In the case of CIRP , it is the commercial wisdom of CoC being tested in terms of Section 30(2) (b) (ii) and Section 30(4) of IBC read with Section 53(1) of IBC. In *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.:* (2020) 8 SCC 531 it is stated

that “Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the commercial wisdom of the Committee of Creditors that is free to determine what amounts be paid to different classes and subclasses of creditors in accordance with the provisions of the Code and the Regulations made thereunder.” (underlining supplied for emphasis).

ix) During liquidation, secured creditor can opt out of liquidation process by realising the asset through SARFAESI mode under Section 52 of IBC , which option is not available to the dissenting creditor during CIRP. There is no question of minimum amount payable as stipulated for dissenting creditors during liquidation.

xiii) Hon’ble NCLAT while deciding distribution under Section 53 (1) in liquidation for secured creditors in the judgements *Oriental Bank of Commerce (now Punjab National Bank) vs Anil Anchalia & Anr. [Comp. App. (AT)(Ins) No. 547 of 2022* and *State Bank of India Vs IDBI Bank & another (2025) ibclaw.in 81* NCLAT has extensively relied on Hon’ble Supreme Court’s judgements in

- i) *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.*: (2020) 8 SCC 531
- ii) *Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd.*, (2022) 1 SCC 401 : (2022) 2 SCC (Civ) 165,
- iii) *India Resurgence ARC Private Limited vs M/S. Amit Metaliks Limited & Anr* (2021) 19 SCC 672, and
- iv) *DBS Bank Limited Singapore' Vs. 'Ruchi Soya Industries Limited & Anr.'* (2024) 3 SCC 752 which deal with distribution in respect of *dissenting creditors during CIRP*.
- x) All these cases cited by Hon'ble NCLAT in the above judgement relate to distribution to dissenting creditors during CIRP and not relating to distribution amongst secured creditors in liquidation.
- xi) Apart from the decision in the case of *ICICI Bank Ltd vs SIDCO Leathers Ltd. and Ors. Appeal (Civil) 2332 of 2006*, only the decision of Hon'ble NCLAT in **Technology Development Board vs Mr. Anil Goel & Others [CA AT 731 of 2020] [(2021) *ibclaw.in* 175 NCLAT**, which was **stayed by Hon'ble Supreme Court** on 29.06.2021 while deciding the case of *Kotak Mahindra Bank Ltd v.*

Technology Development Board. Civil Appeal Diary No 11060/ 2021
deals with distribution to secured creditors during liquidation. The
matter is not decided yet by Hon'ble Supreme Court.

xii) Hon'ble NCLAT's decisions in *Oriental Bank of Commerce (now Punjab National Bank) vs Anil Anchalia & Anr. [Comp. App. (AT)(Ins) No. 547 of 2022 and State Bank of India Vs IDBI Bank & another (2025) ibclaw.in 81* deal with distribution in liquidation amongst secured creditors as per the admitted claim of the Financial Creditor pro-rata basis based on **Amit Metaliks Limited** Judgement. We will go with the decision of Hon'ble NCLAT .

xiii) we order that the distribution of sale proceeds be made in proportion to the claims submitted by the secured creditors in liquidation .

xiv) Further, the direction of Hon'ble NCLAT in *State Bank of India vs IDBI Bank & Another Supra* that, 'We make it clear that any distribution as directed by the Order of the Adjudicating Authority and affirmed in this Appeal shall always be subject to any Order passed by the Hon'ble Supreme Court and as per the law declared by the Hon'ble

Supreme Court in Civil Appeal Diary No. 11060/2021' will be applicable in the present case also.

15) CONCLUSION:

15.1. IA 550 of 2023 and IA 411 of 2024 have been filed by ICICI Bank and Central Bank of India seeking share in the sale of assets in liquidation estate in proportion to their claim amounts.

15.2. IA 1035 of 2023 has been filed by liquidator seeking compensation for illegal withholding of amount in liquidation account by ICICI bank by marking lien on it.

15.3. Based on the averments, pleadings and written submissions, we have analysed and dealt with following issues which were raised by the parties in the preceding paras of Analysis and Findings:

- i) Whether the prayers in the present IAs are identical with IA 1042 CHE of 2021 filed by the same applicants and hence these applications are not maintainable?

- ii) Whether the tribunal has adequately dealt with the prayers made by ICICI Bank and Central Bank of India while disposing the IA 1042 CHE of 2021?
- iii) Whether the contention of ICICI Bank and Central Bank of India that the amounts realised from or out of the securities shall be available for distribution amongst all consortium members inter se in the same proportion to their respective outstanding in the facilities is correct?
- iv) Issues regarding relinquishment of Security interest by SBI including partial relinquishment , Regulation 21A , Regulation 32 of IBBI Liquidation regulations
- v) Whether liquidator's contention that he need not ask for relinquishment of security interest from second charge holder is correct?
- vi) IA1035 of 2023 seeking compensation from ICICI Bank regarding illegal marking of lien.

vii) Finally regarding distribution amongst secured creditors in liquidation whether based on interest priority or based on proportion to claim submitted.

15.4. Having dealt with the above issues, we dispose of the *IA 550 of 2023, IA 1035 of 2023 and IA 411 of 2024* with the following directions:

- i) **We direct that ICICI Bank to pay interest for the amount withheld i.e. Rs.8,58,84,826.50 for the period it was withheld (28.09.2021 till 25.10.2022). Interest to be paid will be based on the fixed deposit rate of ICICI Bank as on 28.09.2021 for deposits held for the period of 1 to 2 years. The interest amount be paid to liquidation estate within 21 days from the date of the order.**
- ii) **We direct the Liquidator to distribute the sale proceeds on disposal of assets in liquidation estate amongst secured creditors in proportion to the claim amounts submitted by them. The distribution chart should be**

reworked based on the above direction and shared with secured creditors. The excess amount received, if any, held by any secured lender should be returned to liquidator for redistribution within 21 days and the whole process of redistribution should be completed within 30 days of this order.

15.5. Files be consigned to records.

-Sd-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-
SANJIV JAIN
MEMBER (JUDICIAL)