

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 865 of 2023

[Arising out of the Order dated June 16, 2023 passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Chandigarh Bench, Chandigarh) in I.A. No. 758 of 2020 in
[CP(IB) No. 72/CHD/HRY/2017]

IN THE MATTER OF:

Anil Kohli

Liquidator of Vegan Colloids Limited

Having Office at:

409, 4th Floor, Ansal Bhawan, K.G. Marg,
New Delhi – 110001

...Appellant

Versus

1. **Punjab National Bank**

Rani Bazar Road, Rani Bazar,
Bikaner, Rajasthan – 334001.

...Respondent No.1

2. **Bimla Devi Jindal**

Ex-Director of Vegan Colloids Ltd.

(Wife and Legal Heir of

Late Sh. Bajrang Dass Aggarwal)

123, Vinobha Basti, Sri Ganganagar – 335001.

...Respondent No.2

3. **Kamini Jindal**

EX-director of Vegan Colloids Ltd.

(Daughter and Legal Heir of

Late Sh. Bajrang Dass Aggarwal)

129 Vinobha Basti, Sri Ganganagar-335001.

...Respondent No.3

Present:

For Appellant : Mr. Abhishek Anand, Mr. Karan Kohli, Ms.
Vanshika Dhoot, Advocates

For Respondent : Mr. Ayush Kumar, Ms. Ekta Choudhary, Advocates

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

That the present Appeal is being preferred under Section 61 (1) of the
Insolvency and Bankruptcy Code, 2016 ("Code"), against the Impugned Order

dated 16.06.2023 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh (“Adjudicating Authority”) in IA No. 758 of 2020 in [CP (IB) No. 72/CHD/HRY/2017] filed under Section 9 of the Code.

Brief facts of the case

2. On 21.11.2017, the Bank of India filed Company Petition CP (IB) No. 72/CHD/HRY/2017 under Section 7 of the IBC against CD-M/s Vegan Colloids Limited. The petition was admitted by the Adjudicating Authority, initiating CIRP. Mr. Anil Kohli (Appellant) was appointed as the Interim Resolution Professional (IRP) on 04.12.2017 and later confirmed as the Resolution Professional. On 10.10.2018, the CD-M/s Vegan Colloids Limited was directed to undergo liquidation, and the Appellant was appointed as the Liquidator.

3. During liquidation, Respondent No. 1- PNB filed a claim of ₹18,17,55,581/- on 17.12.2018, which was admitted by the Liquidator. Respondent No. 1- PNB relinquished its security interest to the Liquidation Estate, agreeing to receive proceeds from the asset sale. The Appellant initiated statutory audits for FY 2018-19 and obtained the audited financials on 08.01.2020. Discrepancies in financials prompted the Appellant to seek clarifications from Personal Guarantors - Respondents No. 2 and 3, and the late Mr. Bajrang Dass Aggarwal, who provided explanations on 25.02.2020.

4. The Appellant-Liquidator claimed that ₹4,50,44,500/- deposited with the Respondent No. 1-PNB formed part of the Liquidation Estate and requested its refund on 26.02.2020 with a reminder on 06.03.2020. As the Respondent No. 1-PNB did not comply, the Appellant filed an application (IA

No. 758/2020) before the AA on 26.06.2020, seeking directions to refund ₹4,50,44,500/- to the liquidation account, arguing that the amount was part of the Corporate Debtor's assets. On 16.06.2023, the Adjudicating Authority dismissed the Application, holding that the amount had been deposited by guarantors and was not an asset of the Corporate Debtor, which led the Appellant to file the present appeal on 06.07.2023, challenging the decision.

Submissions of the Appellant-Liquidator of CD-M/s Vegan Colloids Limited

5. The Adjudicating Authority overlooked significant discrepancies in the Corporate Debtor's balance sheet, which mainly included:

- Reduction in Short-Term Borrowings by ₹4,50,44,500/-.
- Reduction in Trade Receivables by ₹2,15,88,181/-, compared to ₹26,01,427/- in the earlier balance sheet.

The reduction in short-term borrowings indicates recovery by the creditor, Respondent No. 1- PNB, rather than payment by the guarantors.

6. Perusal of the Statutory Audit of the Corporate Debtor for the period starting from 01.04.2018 till 10.10.2018 [i.e. liquidation commencement date] and the balance sheet for the period starting from 01.04.2018 till 31.03.2019, it is evident that there are certain changes. Payments have been received by the Company-M/s Vegan Colloids Ltd in liquidation and the same has been paid by the Respondent Nos. 2 and 3 to the Respondent No. 1-PNB. The same being asset of the Corporate Debtor was required to be part of the Liquidation Estate. The said amount being recovered from debtors of the Company in liquidation by the Respondent Nos. 2 and 3 and the payment made to Punjab National Bank being Respondent No.1 – PNB is admittedly

an asset over which the Corporate Debtor has ownership rights as evidenced in the balance sheet of the Corporate Debtor and the same is required to be handed over to the Liquidator so that the same can be part of the Liquidation Estate. All assets reflected in the Corporate Debtor's balance sheet form part of the Liquidation Estate under Section 36 of the IBC Code, 2016. Realization of debts during the liquidation process is permissible only under Sections 52 and 53 of the IBC Code.

7. There has been a decrease in the balance of trade receivable and an amount of ₹ 4,50,44,500/- has been reduced from the short-term borrowing in the balance sheet of the Corporate Debtor. In the event, any amount, if believed to be correct as contented and relied by the Adjudicating Authority was paid by Respondent Nos 2 and 3 as guarantors, then no such reduction in the short-term borrowing was required to be made in the balance sheet of the Corporate Debtor.

8. During the liquidation process no creditor can realise any amount towards its debt satisfaction from the account of the Corporate Debtor. The only mechanism under which a creditor can realise its security interest is either through Sections 52 or 53 of the Code. Since the Respondent No. 1-PNB had relinquished its security interest to the Liquidation Estate and, therefore, any realisation which Respondent No. 1 could have done towards its debt from the loan account of the Corporate Debtor can only be as per waterfall priority provided under Section 53 of the Code.

9. The Adjudicating Authority negated to consider the treatment in the balance sheet of FY 2018-19 whereby the short-term borrowings were reduced will be debt satisfaction qua the creditor from the account of the Corporate Debtor. Respondent No. 1 did not file any document to corroborate that there were any OTS with the guarantors and the amount has been paid by the guarantors from their account. The Adjudicating Authority ignored the material on record, i.e. letter dated 25.02.2020, whereby the suspended board of director confirmed that the short-term borrowing reflected in the balance sheet is the amount paid to Punjab National Bank in the loan account. Admittedly, none of the Respondents refuted or denied this fact. Further, Respondent Nos 2 and 3 neither appeared before the Adjudicating Authority nor bothered to contest the application or file their response, which demonstrate that without any corroborative evidence the said contention has been believed to be correct by the Adjudicating Authority.

10. Merely on the contention of the Bank that the amount has been received from guarantors AA gave a finding that the amount does not fall under the assets of the Corporate Debtor. The Respondent No.1 bank did not file any document to substantiate the said contention or to demonstrate that such amount has been received from the guarantors.

11. Thus, the finding of the Adjudicating Authority that the said amount is recovered from the guarantors is full of infirmities and therefore, the Impugned Order deserves to be set aside.

Submissions made by the Respondent No.1 – PNB

12. The Corporate Debtor had availed financial facilities from the Respondent Bank, with Respondent Nos 1 to 2 and Sh B D Agarwal standing as guarantors by executing guarantee agreements. Under the law, the liability of guarantors is co-extensive with that of the principal borrower, making them jointly and severally liable for repayment. The loan account reflects dues payable by the Corporate Debtor or its guarantors.

13. Respondents No. 1-PNB contends that vide letter dated 22.01.2019 Shri B. D Aggarwal/Guarantor had proposed OTS settlement for liquidation of Personal Guarantee and release of some mortgaged properties. And in pursuance to the OTS settlement, they received the amount into the loan account of the corporate debtor is as under:

- a. Rs. 1,00,00,000/- (Rupees one crore only) received from M/S Vikas Chemical Gums (India) Corporate Guarantor on 05.01.2019.
- b. Rs. 1,00,00,000/- (Rupees one crore only) received from M/s Vikas Chemical Gums (India)/ Corporate Guarantor on 19.03.2019.
- c. Rs. 44,500/- (Rupees Forty four lakhs five hundred only) received from M/S Vikas Chemical Gums (India) Corporate Guarantor on 19.03.2019.
- d. Rs. 2,50,00,000/- (Rupees two crore fifty lakhs only received from M/s True Value Traders on 05.01.2019.”

14. Shri B. D Aggarwal/Guarantor acting as a guarantor, had entered into a OTS with the Bank and acknowledged individual liability through a letter dated 22.01.2019. The letter also referenced mortgaged properties not belonging to the Corporate Debtor, which the guarantor sought to release through settlement. The Bank accepted this proposal. Since Banks do not maintain separate accounts for borrowers and guarantors, any payment made by the guarantors is credited to the principal borrower’s account and

adjusted against its liability. Consequently, payments made by the guarantors reduced the Corporate Debtor's liability to the bank.

15. Respondents No. 1-PNB claims in its reply that the appellant is not entitled to refund as the amount of ₹ 4,50,44,500/- was deposited towards OTS which was entered into by the Guarantors in their individual capacity and as Corporate Guarantor for release of their properties under Equitable Mortgage. Except for the letter of Shri B.D Aggarwal there exist no evidence to show that the amount was transferred from the account of the Corporate Debtor or the said amount is the property of the Corporate Debtor.

16. Respondents No. 1-PNB also claims that the provisions of Section 52 or Section 53 of the Code is not applicable to the facts and circumstances of the instant case. There exist no explanation/documents reflecting that there existed business transaction between True Value. Except for placing reliance on the letter of Shri Bajrang Dass, no other document substantiating the averments have been filed. The Appellant have failed to bring on record the complete balance sheet.

17. Respondents No. 1-PNB admits that the amount was received in the loan account being maintained by the answering respondent and against the mortgaged property of the Corporate Guarantors from the Corporate Guarantors. Hence there exist no cause of action for filing of the instant appeal.

18. The amount adjusted in towards the liability of the Corporate Debtor was the amount paid by the guarantors personally and or by way of

arrangement with sister concern, to settle the liability towards bank being as guarantors. No amount is paid by the Corporate Debtor directly to the Bank, as such, no question arises to hand over the same to the Liquidator to made a part of Liquidation Estate, therefore, entire facts made it clear that amount paid by the guarantors cannot be the part of the Liquidation Estate. Thus the amount deposited/arranged by the guarantors of the Corporate Debtor in the loan account is against the liability arising and standing in their (guarantors) name after the default has been committed by the Corporate Debtor.

19. The payment credited/adjusted towards the liability of the Corporate Debtor is the amount paid/arranged by guarantors of the Corporate Debtor, to settle the liability severely standing in their names (being as guarantor) in particular, as the repayment of loan taken by the Corporate Debtor.

20. As per the provisions of law, the surety is jointly and severally liable to pay the debt of the principal debtor. The word 'surety' is an alternative term for guarantee in the Law Lexicon and is defined as a person who binds himself for the payment of a sum of money or the performance of something else for another who is already bound for the same. The word 'co-extensive' is an adjective for the word 'extent' and relates to the quantum of the principal debt. It is a settle proposition of law that the discharge of the principal debtor by operation of law does not discharge the surety and suit may also be maintained against the surety for the full payment of the debt where the principal-debtor has been adjudged insolvent or gone into liquidation. Further, as per the provisions of Code, separate proceedings may also be instituted against the personal/corporate guarantor of the Corporate Debtor,

which clearly proves that the liability of surety is co-extensive with the borrower and guarantors are equally liable to pay the dues of the Corporate Debtor.

21. The guarantors of the loan account of Corporate Debtor entered into compromise with the answering Respondent Bank and amount was deposited/arranged by the guarantors to clear their liabilities being as guarantors, towards Bank. As such amount which was deposited and adjusted towards liability of the Corporate Debtor cannot be part of the Liquidation Estate. It is further stated that the only assets of the Corporate Debtor will become the part of the Liquidation Estate, whereas, in the matter in hand, amount adjusted towards liability of the Corporate Debtor does not belong to the assets of the Corporate Debtor and same was arranged by the guarantors to absolve themselves from their liabilities in the loan account of the Corporate Debtor.

22. The guarantors of the loan account of the Corporate Debtor were entered into compromise with the answering Respondent Bank and amount was deposited/arranged by the guarantors to clear their liabilities being as guarantors, towards Bank. As such amount which was deposited and adjusted towards liability of the Corporate Debtor cannot be part of the Liquidation Estate. It is further submitted that the humble answering Respondent No.1 – PNB has not touched any of the assets of the Corporate Debtor Company, which is under liquidation at the current stage. The Bank has not recovered any amount from the asset of the Company, it is the loan liability standing in the name of guarantors of the Corporate Debtor, which

has been paid off by the guarantors in the loan account by way of some arrangement. It is also submitted that the loan account was opened in the name of principal borrower only and no separate account has been opened by the Respondent Bank in the name of guarantors of such principal debtor. As such, all amount paid and or arranged by the guarantors is to be adjusted in the liability of the principal borrower (Corporate Debtor) and, accordingly, outstanding amount in the account of the Corporate Debtor will be recalculated.

23. The answering Respondent No.1 – PNB submitted its claim to the tune of ₹ 18,17,55,581/- before the Applicant Liquidator. Further, the Respondent No.1 – PNB has relinquished its security interest over the properties as mentioned in the relinquishment letter dated 17.12.2018. The submission of the claim against the Corporate Debtor by the Bank does not mean that the liability of the guarantors has been released in whole. The liability of the surety/guarantors continues till the payment has been made by them against the amount outstanding to be paid in the said account. Therefore, the said amount of ₹4,50,44,500/- has been paid/arranged by the surety/guarantors of the Corporate Debtor. It is also submitted that the said amount has not been paid/deposited by the Corporate Debtor directly in the loan account nor Bank has received the same from the realisation of assets of the Corporate Debtor.

24. The said amount has been paid/arranged by the surety/guarantors of the Corporate Debtor. It is also submitted that the said amount has not been

paid/deposited by the Corporate Debtor directly in the loan account nor Bank has received the same from the realisation of assets of the Corporate Debtor. It is further submitted that the liability of the surety/guarantors continues till the payment has been made by them against the amount outstanding to be paid in the loan account of the Corporate Debtor, as such, no question arises to remit the amount paid/arranged by the guarantors and credited/adjusted towards liability of the Corporate Debtor in the loan account standing in the name of the Corporate Debtor, to the Applicant. It is submitted that since no asset in the name of the Corporate Debtor has been touched by the Bank/answering Respondent in such transaction being performed, the demand to refund the credited amount is against the settled preposition of law, as such, Application filed by the Applicant deserves to be dismissed on this count alone, with heavy cost.

25. Respondents No. 1-PNB claims that perusal of the letter dated 25.02.2020 from late Sh. Bajrang Dass Aggarwal reveals that it is unjustified/vague/fabricated with the malafide intentions of denying the bank its legal dues. It is also claimed that the appellants have failed to explain that when there is increase in trade payables how can the same be explained from the amount allegedly received from True Value. Nor are the transaction details of True Value reflected in the balance sheet. Hence, the letter is contradictory and cannot be relied upon.

26. Respondents No. 1-PNB also contends that the liability of the guarantors is joint and several. Section 128 of contract act specifically states

that the liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Appraisal:

27. Basis the materials on record, we find that between December 2019 and January 2020, the Appellant got statutory audit of the CD done. The Audit report and Balance Sheet captures the variations in two entries of trade receivables (current assets) and trade payables (current liabilities) which has significant difference between Financial Year ending 31.03.2018 and 31.03.2019. The entries relating to these two financial years are noted as follows:

	As on 31.03.2018 ₹	As on 10.10.2018 ₹	As on 31.03.2019 ₹	Change from 31.03.2018 ₹
Trade Receivables (current assets)	60,97,70,435	60,71,69,008	58,81,82,254	-2,15,88,181
Trade Payables (current liabilities)	3,52,89,513	2,50,37,504	6,03,27,017	+2,50,37,504

From the above, it is clear that:

- the trade receivables have deceased by an amount of ₹2,15,88,181/. However, it had come down by ₹26,01,427/- only on liquidation commencement date.
- Same way the trade payables have gone up to the extent of ₹2,50,37,504/-. However, it had come down by an amount of ₹84,302/- at the time of liquidation commencement date 10.10.2018.

28. On noticing above differences in the balance sheet for the F.Y. 2018-2019 ending 31.03.2019 and the audited financial statement from

01.04.2018 to 10.10.2018 [i.e. liquidation commencement date (LCD)], the Appellant-Liquidator sought clarifications. Also detailed discussion were held on the said difference in the 3rd Meeting of SCC convened on 06.02.2020 which the following was noted:

- i. There is a **Decrease in Short Term Borrowings by an amount of Rs. 4,50,44,500/- however no such difference was there in Balance Sheet till LCD. There is an increase in trade payables by an amount of Rs. 2,50,37,504/- however in Balance Sheet till LCD the decrease was of Rs. 84,302/- only. There is an increase in Deferred Tax Liabilities by an amount Rs. 2,26,20,676/-.**
- ii. There is a **decrease in balance of Trade receivables by an amount of Rs. 2,15,88,181/- however in Balance Sheet till LCD the decrease was of Rs. 26,01,427/- only.**
- iii. It was discussed that since during Corporate Insolvency Resolution Process (CIRP), bank accounts were to be operated by the RP only and debiting by any unauthorized means was discussed to be taken seriously. Also, the concerned bank account where such realized amount was deposited and utilized were found to be unknown.”

29. On 25.02.2020 vide a letter by one of the ex-directors of CD-M/s Vegan Colloids Ltd., Sh, Bajrang Dass Aggarwal (now deceased) the Appellant-liquidator got the following clarification: -

- i. The short terms borrowing difference is 4,50,44,500/- which has been given to Punjab National Bank in the loan account;
- ii. The increase in trade payable 2,50,37,504/- (Payment of Rs. 2,50,00,000/- received from the firm named True Value paid directly to bank in loan account as mentioned in Point no. 1);
- iii. Deferred Tax Liabilities of Rs. 2,26,20,676/- increased due to depreciation as per IT Act;
- iv. Decrease in balance trade receivables in 2,15,88,181/- (Payment of Rs. 2,00,44,500/- is paid to bank in loan account as mentioned in Point No. 1). The balance is paid to labour/legal by the sister concern.

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30. Based on above information, vide letter & email dated 26.02.2020, the Appellant-Liquidator requested the Respondent no. 1-PNB bank to refund the amount of ₹4,50,44,500/- to the credit of the Liquidation account of the Corporate Debtor, which shall form part of the Liquidation Estate under the

provisions of the Code. The Appellant-Liquidator vide letter dated 06.03.2020 again requested the respondent no. 1 to refund the amount of ₹4,50,44,500/- to the credit of the Liquidation account of M/s Vegan Colloids Ltd. which shall form part of the Liquidation Estate under the provisions of Insolvency & Bankruptcy Code, 2016.

31. Appellant-Liquidator in his Application I.A. No. 758 of 2020 before the Adjudicating Authority prayed as follows: -

“b. Issue appropriate direction to Respondent No. 4 to refund the amount of Rs. 4,50, 44,500/- to the liquidation account of Corporate Debtor as the same being asset of the Corporate Debtor.”

32. But the Adjudicating Authority dismissed the above prayer vide impugned order holding that the ₹4,50,44,500/- deposited with Respondent No. 1-PNB was made by the guarantors under a One-Time Settlement (OTS) proposal. It held that these funds do not form part of the Corporate Debtor's assets. AA also found that the deposited amount belonged to the guarantors and was used to release their individually owned or mortgaged properties, which are separate from the assets of the Corporate Debtor. The tribunal also observed that the Corporate Debtor's mortgaged properties with Respondent No. 1-PNB remain unreleased, confirming that the deposit was unrelated to the Corporate Debtor's assets. The tribunal held that, as per the Hon'ble Supreme Court's judgment in ***State Bank of India vs. Ramakrishnan & Anr., Civil Appeal no 3505 of 2018 of 14.05.2018*** the moratorium under Section 14 of the IBC applies only to the assets of the Corporate Debtor and does not extend to the assets of guarantors. Further it held that the deposited amount does not form part of the Corporate Debtor's estate.

33. AA held as follows:

“7. After hearing the learned counsel and careful perusal of the record carefully, we are of the considered view that the present application for a refund of Rs.4,50,44,500/- against respondent No.3 Bank is misconceived. A perusal of the records shows that the said amount was deposited with respondent No.3 Bank by the guarantors under the OTS proposal. Although, it is contended by learned counsel for the applicant that the said amount has been deposited during the moratorium period and that too from the Bank account of the corporate debtor, therefore, this amount forms the assets of the corporate debtor. However, this contention of learned counsel for the applicant is devoid of legal force because there is only one loan account with the corporate debtor because the said properties are not owned by the corporate debtor but these are the individuals' property owned by the guarantors/mortgagors. The property of the corporate debtor mortgaged with bank-respondent No.3 has not been released so far. Moreover, in view of the judgment (supra) in the State Bank of India Versus Ramakrishnan & Anr., wherein it has been held that the scope of the moratorium may be restricted to the assets of the corporate debtor only and not against assets of guarantors to the debts of corporate debtor, it can be safely held that amount deposited by guarantors does not form the part of assets of corporate debtor.

8. As a sequel, to the discussion above, the present application is not maintainable and the same is dismissed with no order as to costs.”

34. Briefly speaking the argument presented by the Appellant is that any amount in the balance sheet is part of the Liquidation Estate under Section 36 of the Code and that no creditor can recover dues outside the framework of Sections 52 and 53 of the Code, particularly in the situation when the Respondent No.1 -PNB had relinquished its security interest to the Liquidation Estate.

35. Before proceeding further, it will be instructive to look into the scheme of liquidation as provided under the Code, which has been relied upon by the Appellant. In terms of Section 35(1)(b) of the Code, the Appellant-Liquidator has the duty and power to take into his custody or control of all the assets, property, effects and actionable claims of the corporate debtor. Further in terms of Section 35(1)(d) of Code it has to take measures to protect and

preserve the assets of the Corporate Debtor. Furthermore, Appellant-Liquidator as part of his duties, in terms of Section 36(3) of Code, has to form liquidation estate of the assets mentioned in relation to the Corporate Debtor.

The relevant Section 36 is extracted as follows:

‘36. Liquidation estate

(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

(3) Subject to sub-section (4), **the liquidation estate shall comprise all liquidation estate assets which shall include the following: —**

(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;

(c) tangible assets, whether movable or immovable;

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) **any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;**

(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: —

....”

36. From the perusal of the balance sheet of the Corporate Debtor and other materials on record, we find that certain payments have been received by the company in liquidation and the same has been paid by Respondent No. 2 and 3 to Respondent No. 1. We also find that the Respondent No. 1 filed

its claim for an amount of ₹ 18,17,55,581/- which has been admitted by the Liquidator. Also in terms of Section 52(1) of Code vide letter dated 17.12.2018 Respondent No.1 – PNB has already relinquished its security interest to the liquidation estate. We find that the amount has been realized from the assets under Liquidation estate of the CD in Liquidation and distributed in preference to one of the creditors Respondent No.1 – PNB without intimation to the Liquidator, which should have been distributed by the Liquidator as per Section 53 of the IBC,2016 i.e waterfall mechanism. Further Respondent No.1 – PNB has not placed any evidence or document to demonstrate that the amount which has been reduced in the Balance sheet of the Corporate Debtor is not an asset of the Corporate Debtor and without considering that no document was filed by the Respondent No. 1. We also find from the materials on record that Respondent No.1 Bank in its Reply in paragraph 8 of has admitted to have received ₹ 2,5 crs from one Trade Receivable of the CD which is extracted as under: -

“8. That in pursuance to the OTS settlement that the amount received into the loan account of the Corporate Debtor is as under: -

d. ₹ 2,50,00,000/- (Rupees two crore fifty lakhs only received from M/s. True Value Traders on 05.01.2019.”

This is an admission by Respondent no.1 bank that an amount of ₹2,50,00,000/- was received from M/s. True value traders (being the trade receivable) on 05.01.2019 and was adjusted towards OTS entered with the personal guarantor. It is difficult to rely on general statements of the Respondent that the amount adjusted towards the liability of the Corporate Debtor was the amount paid by the guarantors personally and or by way of arrangement with sister concern, to settle the liability towards bank being as

guarantors and no amount is paid by the Corporate Debtor directly to the Bank.

37. As noted, earlier Section 36 (1) of the Code provides that for the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3) which will be called the liquidation estate in relation to the Corporate Debtor. Further, Section 36 (2) provides that the Liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors. Any amount reflected in the balance sheet of the Corporate Debtor is admittedly an asset of the Corporate Debtor and, therefore, the Adjudicating Authority ought to have considered the balance sheet of the Corporate Debtor which reflects a reduction of short-term borrowing during the Liquidation process. The Adjudicating Authority failed to consider that in terms of Section 36 (3) (a) and (g) of the Code, any assets over which the Corporate Debtor has ownership right, including all rights and interest therein as evidenced in the balance sheet of the Corporate Debtor or any asset of the Corporate Debtor in respect of which a secured creditor has relinquished security interest, becomes part of the liquidation estate assets of the Corporate Debtor. Further Section 53 provides that the proceeds from the sale of the liquidation assets shall be distributed in the order of priority. Therefore, Respondent No. 1 has no right to recover any amount being an asset of the Company in liquidation during the liquidation process as Respondent No.1 – PNB will receive the proceeds from Liquidation Estate in the manner provided under Section 53 of the Code. Respondent No.1 – PNB had already filed its claim for an amount of ₹ 18,17,55,581/-, which has been admitted by the Liquidator and in terms of Section 52 (1) (a) of the Code has

vide its letter dated 17.12.2018 already relinquished its security interest to the Liquidation Estate and have agreed to receive the proceeds from the sale of assets by the Liquidator in the manner specified and, therefore, the Respondent No.1 – PNB cannot recover any amount being part of the Liquidation Estate.

38. The AA relied on the judgement of Hon'ble Supreme Court's in ***State Bank of India vs. Ramakrishnan & Anr. (supra)*** and held that the moratorium under Section 14 of the IBC applies only to the assets of the Corporate Debtor and does not extend to the assets of guarantors. Further it held that the deposited amount does not form part of the Corporate Debtor's estate. We note that the conclusions of the judgement of Hon'ble Apex Court are not in dispute. But herein, firstly it has not been established that the payments have been made from independent sources -other than that of CD. Secondly, even if it has been made it has to be made to the account of the Corporate Debtor due to the moratorium existing on the assets of the CD. During the liquidation, it is the Liquidator who is in control of the assets of the CD. Any disturbance in CD's assets or liabilities has to have the approval of the Liquidator. Herin the trade receivables have come down, but the funds inflow have gone to the Respondent No1-PNB, which is impermissible under the Code. Same way trade payables have gone up at the cost of the CD but benefit has accrued to Respondent No1-PNB. Furthermore, the sum of "Increase in trade payable by ₹ 2,50,37,504/" and "Decrease in balance trade receivables by ₹ 2,15,88,181/-" is ₹ 4,66,25,685/- a very close amount to INR 4,50,44,500/-, which has actually been deposited in the loan account with

the Respondents No. 1, which admittedly is the amount that has been realised from the assets under Liquidation estate of the CD in Liquidation and distributed in preference to one of the creditors without intimation to the Liquidator, which should have been distributed by the Liquidator as per law in terms of Section 53 of the IBC, 2016 i.e waterfall mechanism. Respondent No. 1-PNB has not been able to justify that the dues to the tune of INR 4,50,44,500/-, so satisfied are not made out of assets of the Corporate Debtor. We can, therefore, safely conclude that it is none other than Trade Receivables and Trade Payments of the Corporate Debtor which has been used to pay ₹4,50,44,500/-.

39. This has also been noted in the 3rd Meeting of SCC convened on 06.02.2020 which:

“that since during Corporate Insolvency Resolution Process (CIRP), bank accounts were to be operated by the RP only and debiting by any unauthorized means was discussed to be taken seriously. Also, the concerned bank account where such realized amount was deposited and utilized were found to be unknown.”

Conclusions:

40. All assets listed in the Corporate Debtor’s balance sheet are included in the Liquidation Estate under Section 36 of the Insolvency and Bankruptcy Code, 2016. Debt realization during liquidation is permitted only under Sections 52 and 53 of the Code. Upon liquidation, dues must be distributed strictly according to the waterfall mechanism outlined in Section 53 of the Code. However, in this case, Respondent No. 1 (PNB) disrupted the Liquidation Estate formed under Section 36 by attempting to override the

waterfall mechanism. The amount was realized from assets under liquidation and distributed preferentially to one creditor without informing the Liquidator. As per the Code, such distributions should have been made by the Liquidator in accordance with Section 53, ensuring compliance with the waterfall mechanism. Based on this, it is evident that Respondent No. 1 (PNB) did not comply with Section 36 read with Section 52 while appropriating the amount.

Orders

41. Order of the AA in I.A. No. 758 of 2020 in [CP(IB) No.72/CHD/HRY/2017] is set aside for the reasons as noted in this judgement and the Appeal is allowed. No orders as to costs.

**[Justice Yogesh Khanna]
Member (Judicial)**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
April 02, 2025.**

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