

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 321 of 2024

[Arising out of Order dated 20.12.2023 passed by the Adjudicating Authority
(National Company Law Tribunal, Kolkata Bench, (Court-II), Kolkata), in IA
(IB) No. 1694/(KB)/2022 in C.P. (IB) No. 1284/(KB)/2019]

IN THE MATTER OF:

State Bank of India

Stressed Assets Management Branch-I,
Mumbai 2nd Floor, "The Arcade",
World Trade Centre Cuffe Parade,
Colaba, Mumbai
Maharashtra-400 005, India.

...Appellant

Versus

1. IDBI Bank Ltd.

Having its office at NPA Management Group
7th Floor, IDBI Tower,
World Trade Center Complex
Cuffe Parade,
Colaba, Mumbai
Maharashtra-400 005, India.

...Respondent No. 1

2. Deepika Bhugra Prasad

Liquidator of Ess Dee Aluminium Limited
IP Registration No.
IBBI/IPA-003/IP-N000110/2017-2018/11186
Having office at
E-10A, LGF, Kailash Colony
New Delhi-110048

...Respondent No. 2

Present:

For Appellant : **Mr. Krishnan Venugopal Sr. Advocate with Mr. Sanjay Kapur, Mr. Devesh Dubey and Mr. Arjun Bhatia, Advocates.**

For Respondents : **Mr. Abhijeet Sinha Sr. Advocate with Ms. Prachi Johri, Ms. Abhipsa Sahu and Mr. Rishi Jhakur, Advocates for R-1/ IDBI Bank.**

Mr. Rahul Gupta, Advocate for R-2.

Ms. Deepika B. Prasad, Liquidator in person.

WITH

Company Appeal (AT) (Insolvency) No. 335 of 2024

[Arising out of Order dated 20.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, (Court-II), Kolkata), in IA (IB) No. 1694/(KB)/2022 in C.P. (IB) No. 1284/(KB)/2019]

IN THE MATTER OF:

IFCI Limited

Address: IFCI Tower,
61 Nehru Place,
New Delhi-110019

Email ID: ehteshamuddin@ifcilt.com

...Appellant

Versus

1. IDBI Bank Ltd.

Address: NPA Management Group
7th Floor, IDBI Tower,
World Trade Center Complex,
Cuffe Parade,
Colaba, Mumbai
Maharashtra-400 005, India.

Email ID: nipun.paliwal@idbi.co.in,
shipra.garg@idbi.co.in

...Respondent No. 1

**2. Deepika Bhugra Prasad
(the liquidator of ESS DEE Aluminium Limited)**

Address: E-10A, Kailash Colony,
Greater Kailash-1,
New Delhi-110048.

Email ID: deepika.bhugra@aaainsolvency.com,
essdee@aaainsolvency.com

...Respondent No. 2

Present:

**For Appellant : Mr. Amish Tandon and Ms. Anushree Kulkarni,
Advocates.**

**For Respondents : Ms. Prachi Johri, Ms. Abhipsa Sahu and Mr. Rishi
Jhakur, Advocates for R-1/ IDBI Bank.**

Mr. Rahul Gupta, Advocate for R-2.

Ms. Deepika B. Prasad, Liquidator in person.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeals have been filed against the same Order dated 20.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Court-II, Kolkata) in IA (IB) No.1694/KB/2022 in CP (IB) No.1284/KB/2019. Both the Appeals having raised same issues of facts and law have been heard together and are being decided by this common Judgment. It shall be sufficient to refer to the facts and pleadings in Comp. App. (AT) (Ins.) No.321/2024 for deciding both the Appeals.

2. Brief facts of the case giving rise to these Appeals are:

- i. On an Application under Section 7 filed by the State Bank of India (SBI), the Corporate Debtor, ESS DEE Aluminium Limited was admitted to Corporate Insolvency Resolution Process (CIRP) by Order dated 14.02.2020 passed by the NCLT, Kolkata Bench.
- ii. No Resolution Plan having been approved in the CIRP, Adjudicating Authority vide Order dated 08.10.2021 directed for Liquidation of the Corporate Debtor. The R-2 was appointed as Liquidator. Liquidator published 'Form-B' inviting claim from stakeholders.
- iii. IDBI Bank submitted its claim in 'Form-D' for an amount of ₹1,46,12,18,998/-.

- iv. Stakeholders Consultation Committee (SCC) was constituted on 07.12.2021.
- v. On 30.08.2022, in 9th SCC Meeting the Liquidator declared Shakambhari Ispat & Power Limited as successful H-1 bidder for the sale of Corporate Debtor as a going concern.
- vi. IDBI sent an email to the Liquidator, requesting to share the methodology adopted qua the distribution of assets. Liquidator informed the IDBI that in reference to the list of stakeholders as on 07.12.2021, the share of IDBI is considered as 10%. Liquidator proposed to distribution of sale proceeds as per security interest which was opposed by the IDBI Bank.
- vii. IDBI Bank sent objection that proceeds be distributed in proportion to their admitted claim in pro-rata basis.
- viii. In 10th SCC Meeting held on 26.09.2022, the methodology adopted for distribution was discussed and despite objection by the IDBI Bank, Liquidator agreed for distribution of sale proceeds on the basis of charge on the security interest of individual Creditors.
- ix. An undertaking was given by Secured Creditors, including IDBI that they forthwith return any excess money received by them for distribution, in case, Tribunal or Hon'ble Supreme Court decides that they are not entitled for the same.

- x. The Respondent accepted the distribution of amount of ₹1,26,10,109/- under protest. An I.A. 1694/2022 was filed by IDBI opposing the distribution methodology adopted by Liquidator. In IA, IDBI prayed for a direction to distribute the assets as per admitted debt of Secured Creditors on pro-rata basis.
 - xi. Liquidator filed a Reply in I.A. 1694/2022 justifying its distribution. Arguments were heard by Adjudicating Authority on the Application and vide Order dated 20.12.2023, Adjudicating Authority allowed the Application.
 - xii. Adjudicating Authority in the Impugned Order held that distribution of Liquidation proceeds as per Section 53(1), the distribution has to be in proportion to the admitted claim of the Secured Creditors. Adjudicating Authority held that distribution made by Liquidator is not as per the stipulation of Section 53. The Adjudicating Authority allowed the Application and directed the Liquidator to re-work the distribution of the proceeds.
 - xiii. Aggrieved by the Order dated 20.12.2023 passed by the Adjudicating Authority, SBI and IFCI Limited have filed these two Appeals.
- 3.** We have heard Learned Sr. Counsel Mr. Krishnan Venugopal for the SBI. Learned Counsel Mr. Amish Tandon and Learned Counsel Ms. Anushree Kulkarni has appeared for the IFCI Limited. Learned Sr. Counsel Mr. Abhijeet Sinha and Learned Counsel Ms. Prachi Johri has appeared for IDBI Limited. We have also heard Liquidator, who appeared in person.

4. Similar submissions having been raised in both the Appeals by the Appellant which are referred to as submissions of the Appellant.

5. Learned Counsel for the Appellant submits that the distribution made by Liquidator was not in accordance with law. It is submitted that Liquidator by making distribution has relied on the Judgment of the NCLT Ahmedabad in the matter of **'Technology Development Board of India' Vs. 'Anil Goel, Liquidator of M/s. Gujarat Oleo Chem Ltd. & Ors.'** in **IA No. 514 of 2019 in CP (IB) No. 4/NCLT/AHM/2017**, which Judgment, NCLT has held that inter se priority amongst the Secured Creditors will remain valid and prevail in the distribution of assets in Liquidation. Though the above Order was set aside by NCLAT, however, Judgment of the NCLAT has been stayed by the Hon'ble Supreme Court vide its Order dated 29.06.2021, therefore, the Liquidator followed the Judgment of the NCLT Ahmedabad, which is applicable on the issue in the present Appeal. It is submitted that Judgment of the Hon'ble Supreme Court in **'Amit Metaliks Limited'** relied by R-1 has been disagreed and referred by Hon'ble Supreme Court in the matter of **'DBS Bank Limited Singapore' Vs. 'Ruchi Soya Industries Limited & Anr.'** reported in **(2024) 3 SCC 752**, hence, the Judgment of the **'Amit Metaliks Limited' (Supra)** cannot be relied. It is submitted that this Tribunal while passing an Interim Order on 29.02.2024, has protected the interest of the parties and said arrangement be allowed to be continued, till the law is settled by the Hon'ble Supreme Court. Learned Counsel for the Appellant has also placed reliance on the Judgment of the Hon'ble Supreme Court in the matter of **'ICICI Bank Ltd.' Vs. 'Sidco Leathers Ltd. & Ors.'** reported in **(2006) 10**

SCC 452, in which Judgment, Hon'ble Supreme Court while considering Section 529 and 529-A of the Companies Act, 1956, has held that although the debt due to the workmen and the Secured Creditors were to be treated as par or *pari passu* with each other, however, this does not signify that inter se priority amongst the Secured Creditors is excluded. Learned Counsel for the Appellant has also relied on Insolvency Law Committee (ILC) Report dated 26.03.2019, where ILC has opined that priority of charge on the secured assets has to be considered while returning the share of concerned Creditors. Learned Counsel for the Appellant has also referred to provisions of Section 30(4) as amended by 2019 amendment.

6. Learned Counsel for the IDBI Bank opposing the submissions made by Counsel for the Appellant submits that the law declared by the Hon'ble Supreme Court in the matter of **'India Resurgence Arc Pvt. Ltd.' Vs. 'Amit Metaliks Ltd. & Anr.'** reported in **(2021) 19 SCC 672** is the law which is a law declared by Hon'ble Supreme Court which need to be followed. It is submitted that till the reference made by the Hon'ble Supreme Court in **'DBS Bank Limited Singapore' (Supra)** are answered overruling the law laid down by the Hon'ble Supreme Court in **'Amit Metaliks Limited' (Supra)**, the law laid down by the Hon'ble Supreme Court in **'Amit Metaliks Limited' (Supra)** binds all. Learned Counsel for the Respondent has relied on the Judgment of this Tribunal in **'Beacon Trusteeship Limited' Vs. 'Jayesh Sanghrajka & Ors.'** reported in **2024 SCC OnLine NCLAT 667**, where it was held that until a different view is expressed by the Hon'ble Supreme Court in reference made in **'DBS Bank Ltd. Singapore' (Supra)**, **'Amit Metaliks Limited' (Supra)**

need to be followed. Respondent has also relied on the Judgment of this Tribunal in the matter of **'Paridhi Finvest Private Ltd.' Vs. 'Value Infracon Buyers Association & Anr.'** in **Comp. App. (AT) (Ins.) No.654/2022**, where this Tribunal relying on **'Amit Metaliks Limited' (Supra)**, has held that there is no scope of distribution of assets based on the security interest, which Judgment was also upheld by the Hon'ble Supreme Court. It is submitted that Adjudicating Authority in the Impugned Order has correctly applied Section 53(1) and held that as per Section 53(1) distribution has to be as per admitted claim and cannot be on the basis of security interest of difference Secured Creditors. It is submitted that in view of the law laid down by the Hon'ble Supreme Court, reliance by the Appellant on the undertaking given before the Adjudicating Authority is not relevant. When the law is clear, any undertaking cannot justify an illegal distribution. It is submitted that the distribution needs to be made as per the Order of the Adjudicating Authority and Respondent undertakes to refund any excess amount, in event law is so declared by the Hon'ble Supreme Court.

7. We have considered the submissions of the Counsel for the Parties and perused the record.

8. Appellants and R-1 are Secured Creditors of the Corporate Debtor and the only issue which was raised in the I.A.1694/KB/2022 filed by the IDBI Bank before the Adjudicating Authority was challenge to the distribution as undertaken by the Liquidator, despite objections raised by the IDBI Bank. In I.A. No. 1694/KB/2022, IDBI has prayed for following reliefs:

“a) The methodology adopted by the Respondent for distribution of the sale proceeds of the liquidation estate be set aside;

b) To recall the amount from the secured creditors who has received more than the amount which they are legally entitled to as per the waterfall mechanism mentioned under Section 53 of Insolvency and Bankruptcy Code, 2016 and make payment to the Applicant in the same ratio as any other secured financial creditor;

c) Pass such other or further and relief(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case;”

9. The I.A.1694/2022 was objected by the Liquidator by filing a Reply where Liquidator supported the distribution as per the security interest of the Secured Creditors. Liquidator in the Reply, has noticed the objection by the IDBI Bank, Liquidator has further pleaded that the distribution the Liquidator is following the Order of the NCLT Ahmedabad in **‘Technology Development Board of India’ (Supra)** dated 27.02.2020. It is useful to notice pleadings of Liquidator in Paragraph 58 of the Reply, which is as follows:

“58. That in the meantime, the Respondent vide Email dated 19.09.2022. informed the stakeholders of the Corporate Debtor about the objections raised by the Applicant qua the Methodology adopted by the Respondent for the distribution of the sale proceeds amongst the stakeholders of the Corporate Debtor. That in view of the same, vide the aforesaid Email, the Respondent provided a clarification on the Methodology adopted by the Respondent for the distribution of the sale proceeds amongst the stakeholders of the Corporate Debtor, to the stakeholders of the Corporate Debtor. Moreover, the Respondent informed the stakeholders of the Corporate Debtor that the Distribution of the sale proceeds is totally based on the Interpretation of Section 53 of the Code read with the Interpretation laid down in the Insolvency Law Committee Report dated 26.03.2018. That further, the Respondent informed the

stakeholders of the Corporate Debtor that the aforesaid issue at hand regarding priority of charge has been decided by the Hon'ble National Company Law Tribunal, Ahmedabad Bench, at Ahmedabad in the matter of "Technology Development Board vs. Ant"/ Goel Liquidator, Gujarat Oleo Chem Limited & Ors.; IA. No. 514 of 2019 in C.P. (IB) No. 4 of 2017" vide Order dated 27.02.2020 wherein the Hon'ble Tribunal held that Section 53 of the Code read with ILC Report talks about the Priority and the Distribution should be done as per the Charge of respective Banks and their Security Interest. That the Respondent further informed the stakeholders of the Corporate Debtor that the said Order dated 27.02.2020 passed by the Hon'ble Tribunal was thereby challenged by the Technology Development Board before the Hon'ble National Company Law Appellate Tribunal, New Delhi wherein the Hon'ble Appellate Tribunal vide Judgment dated 05.04.2021 directed the Liquidator of Gujarat Oleo Chem Limited 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 the Code. Furthermore, the Respondent apprised the stakeholders of the Corporate Debtor that the said Judgment dated 05.04.2021 passed by the Hon'ble Appellate Tribunal has been stayed by the Hon'ble Supreme Court of India vide an Interim Order dated 29.06.2021 and thus, as on date, the Order dated 27.02.2020 passed by the Hon'ble Tribunal prevails. Copy of the Email dated 19.09.2022 sent by the Respondent to the stakeholders of the Corporate Debtor is annexed herewith and marked as **ANNEXURE - R-5**. Copy of the Order dated 27.02.2020 passed by the Hon'ble National Company Law Tribunal, Ahmedabad Bench, at Ahmedabad in the matter of "Technology Development Board vs. Ani/ Goel Liquidator, Gujarat Oleo Chem Limited & Ors.; IA. No. 514 of 2019 in C.P. (IB) No. 4 of 2017" is annexed herewith and marked as **ANNEXURE - R-6**."

10. The Order passed by the NCLT Ahmedabad dated 27.02.2020 was set aside by NCLAT and against the Order passed by NCLAT, Hon'ble Supreme Court has passed an Interim Order on 29.06.2021 in **Civil Appeal Diary No. 11060/2021** in the matter of '**Kotak Mahindra Bank Ltd.**' Vs. '**Technology**

Development Board & Ors., which Order of the Hon'ble Supreme Court is as follows:

“Permission to file Appeal is granted.

Issue notice.

In the meantime, there shall be stay of the operation of the impugned judgment and Order passed by the National Company Law Appellate Tribunal.”

11. There can be no dispute with regard to proceedings which arose out of the above Order of the NCLT Ahmedabad, which is pending consideration before the Hon'ble Supreme Court. Learned Counsel for the IDBI Bank has relied on the Judgment of the Hon'ble Supreme Court in **'Amit Metaliks Limited' (Supra)**, which Judgment, the Hon'ble Supreme Court has not accepted the submissions that distribution is to be made as per the value of security interest. It is useful to extract Paragraphs 17 to 21 which are as follows:

“17. Thus, what amount is to be paid to different classes or sub-classes 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.

18. In Jaypee Kensington [Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., (2022) 1 SCC 401 : (2022) 2 SCC (Civ) 165], the proposal in the resolution plan was to the effect that if the dissenting financial creditors would be entitled to some amount in the nature of liquidation value in terms of Sections 30 and 53 IBC read with Regulation 38 of the CIRP Regulations, they would be provided such liquidation value in the form of proportionate share in the equity of a special purpose vehicle proposed to be set up and with transfer of certain land parcels belonging to corporate debtor. Such method of meeting

with the liability towards the dissenting financial creditors in the resolution plan was disapproved by the adjudicating authority; and this part of the order of the adjudicating authority was upheld by this Court with the finding that the proposal in the resolution plan was not in accord with the requirement of “payment” as envisaged by clause (b) of Section 30(2) of the Code [In Jaypee Kensington, (2022) 1 SCC 401, after disapproving the proposition of the resolution plan regarding dissenting financial creditor, the adjudicating authority itself modified the offending terms of the plan and provided for monetary payment to the dissenting financial creditor. This latter part of the order of the adjudicating authority was not approved by this Court while holding that after disapproval of such term related with financial model proposed in the resolution plan, the adjudicating authority itself could not have modified the same and ought to have sent the matter back to CoC for reconsideration. However, that part of the decision in Jaypee Kensington, (2022) 1 SCC 401 is not relevant for the present purpose.] . In that context, this Court held that such action of “payment” could only be by handing over the quantum of money or allowing the recovery of such money by enforcement of security interest, as per the entitlement of a dissenting financial creditor.

19. *This Court in Jaypee Kensington [Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., (2022) 1 SCC 401 : (2022) 2 SCC (Civ) 165] further made it clear that in case a valid security interest is held by a dissenting financial creditor, the entitlement of such dissenting financial creditor to receive the amount could be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him and in the order of priority available to him. This Court clarified that by enforcing such a security interest, a dissenting financial creditor would receive payment to the extent of his entitlement and that would satisfy the requirement of Section 30(2)(b) of the Code. This Court, inter alia, observed and held as under : (Jaypee Kensington case [Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., (2022) 1 SCC 401 : (2022) 2 SCC (Civ) 165] , SCC p. 606, para 164)*

“164. ... 164.1. Therefore, when, for the purpose of discharge of obligation mentioned in the second part of clause (b) of Section 30(2) of the Code, the dissenting financial creditors are to be “paid” an “amount” quantified in terms of the “proceeds” of assets receivable under Section 53 of the Code; and the “amount payable” is to be “paid” in priority over their assenting counterparts, the statute is referring only to the sum of money and not anything else. In the frame and purport of the provision and also the scheme of the Code, the expression “payment” is clearly descriptive of the action of discharge of obligation and at the same time, is also prescriptive of the mode of undertaking such an action. And, that action could only be of handing over the quantum of money, or allowing the recovery of such money by enforcement of security interest, as per the entitlement of the dissenting financial creditor.

164.2. We would hasten to observe that in case a dissenting financial creditor is a secured creditor and a valid security interest is created in his favour and is existing, the entitlement of such a dissenting financial creditor to receive the “amount payable” could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him and in the order of priority available to him. Obviously, by enforcing such a security interest, a dissenting financial creditor would receive “payment” to the extent of his entitlement and that would satisfy the requirement of Section 30(2)(b) of the Code [Per Dinesh Maheshwari, J.— Though it is obvious, but is clarified to avoid any ambiguity, that the “security interest” referred herein for the purpose of money recovery by dissenting financial creditor would only be such security interest which is relatable to the “financial debt” and not to any other debt or claim.] .”

(emphasis supplied)

20. *In Jaypee Kensington [Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., (2022) 1 SCC 401 : (2022) 2 SCC (Civ) 165] , this Court repeatedly made it clear that a dissenting financial creditor would be receiving the payment of the*

amount as per his entitlement; and that entitlement could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him. It has never been laid down that if a dissenting financial creditor is having a security available with him, he would be entitled to enforce the entire of security interest or to receive the entire value of the security available with him. It is but obvious that his dealing with the security interest, if occasion so arise, would be conditioned by the extent of value receivable by him.

21. The extent of value receivable by the appellant is distinctly given out in the resolution plan i.e. a sum of INR 2.026 crores which is in the same proportion and percentage as provided to the other secured financial creditors with reference to their respective admitted claims. Repeated reference on behalf of the appellant to the value of security at about INR 12 crores is wholly inapt and is rather ill-conceived.”

12. This Tribunal in **Comp. App. (AT) (Ins.) No.547/2022** in the matter of **‘Oriental Bank of Commerce’ Vs. ‘Anil Anchalia & Anr.** had occasion to consider distribution of sale proceeds in the Liquidation as per Section 53 of the Code, in which proceeding, an IA was filed by Oriental Bank of Commerce seeking a direction to distribute the entire sale proceeds to the Punjab National Bank who has exclusive charge over the property of the Corporate Debtor. The Application was rejected by the Adjudicating Authority against which the Appeal was filed. The Appeal was heard and by the Judgment of this Tribunal dated 26.05.2022, the Appeal was dismissed. This Tribunal while dismissing the Appeal relied on the Judgment of the Hon’ble Supreme Court in **‘Amit Metaliks Limited’ (Supra)**. This Tribunal has also noticed the Orders passed by the Hon’ble Supreme Court staying the Judgment in **‘Technology Development Board of India’ (Supra)** and this Tribunal opined that law laid down by the Hon’ble Supreme Court in **‘Amit Metaliks Limited’**

(Supra) need to be followed. Paragraph 6 of the Judgment of this Tribunal in **‘Oriental Bank of Commerce’ (Supra)** lays down following:

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

13. Insofar as submissions of the Counsel for the Appellant that correctness of the Judgment of Hon’ble Supreme Court in **‘Amit Metaliks Limited’ (Supra)** has already been referred to the larger bench by Judgment of 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 be relied upon until a different view is expressed by the Hon’ble Supreme Court is the reference made in **‘DBS Bank Ltd. Singapore’ (Supra)**. Paragraph 54 of the Judgment of this Tribunal is as follows:

*“54. Judgment of the Hon’ble Supreme Court in **‘Vistara ITCL (India) Ltd.’ (Supra)** does not come to help of the Appellant in the present case. It is relevant to notice that Hon’ble Supreme Court in **‘DBS Bank Ltd.***

Singapore v. Ruchi Soya Industries Ltd.’ 2024 SCC OnLine SC 3, made a reference to the earlier Judgment of the Hon’ble Supreme Court in ‘India Resurgence ARC Pvt. Ltd.’ (Supra), which reference is pending consideration before the Hon’ble Supreme Court. Law declared by Hon’ble Supreme Court in ‘India Resurgence ARC Pvt. Ltd.’ (Supra) can very well be relied until a different view is expressed by the Hon’ble Supreme Court in the reference pending before it.”

14. The Adjudicating Authority in the Impugned Order has relied on the Judgment of this Tribunal in **‘Oriental Bank of Commerce’ (Supra)** and after noticing the scheme in Section 53(1) has made following observations in Paragraph 7 of the Judgment:

“7. From the emphasized text in 53(1)(b)(ii), we note that two word have been stressed on in the statute are ‘between and among’. Thus while the first word i.e. “between” is intended to integrate the two different classes i.e. the workmen and the Secured Creditor, which shall therefore rank equally, the other word i.e. “among” signifies the equality within a group which herein consists of all such secured creditors who have relinquished their security interest in line with Section 52. Since there is no quarrel on the issue of relinquishment, therefore the significance of the word “among” relates to the inter-se relationship between all such secured creditors and these have to be then given an equitable treatment which shall mean in proportion to their admitted claim. Section 53 does not differentiate between the quantum or magnitude of the relinquishment, which is taken care while distributing the proceeds on a proportional basis. We are therefore inclined to agree with the contention of the applicant that the distribution made by the respondent is not as per the stipulations of section 53.”

15. The Adjudicating Authority has rightly taken the view that the distribution amongst the Secured Creditors has to be on the basis of their admitted claim, which is the statutory scheme delineated by Section 53(1) and

the law declared by the Hon'ble Supreme Court existing as on date in '**Amit Metaliks Limited**' (*Supra*).

16. Learned Counsel for the Appellants have also relied on the ILC Report dated 26.03.2018. Learned Counsel for the Respondent is right in his submissions that ILC Report cannot be relied in view of the law declared by the Hon'ble Supreme Court in '**Amit Metaliks Limited**' (*Supra*), which is binding on all concern under Article 141 of the Constitution of India.

17. Learned Counsel for the Appellant has also placed reliance on the Judgment of the Hon'ble Supreme Court in the matter of '**ICICI Bank Ltd.**' (*Supra*). The Judgment of the Hon'ble Supreme Court on which reliance has been placed by the Appellant was Judgment dealing with Section 529 and Section 529-A of the Companies Act 1956. The said Judgment was pre-IBC Judgment and when Section 53 of the IBC has been dealt with by the Hon'ble Supreme Court in '**Amit Metaliks Limited**' (*Supra*), we are bound to follow the Judgment of the Hon'ble Supreme Court in '**Amit Metaliks Limited**' (*Supra*). We while hearing these Appeals on 29.02.2024 have passed following Interim Order:

"...However, to balance the equities of both the parties, we direct that the payments in pursuance of communication of reworking of redistribution by the Liquidator the said amount be kept in separate interest bearing account so in event of the dismissal of the Appeals, the said amount should be handed over to the beneficiary along with the interest.

*List this Appeal on **22nd April, 2024** at 02:00 pm."*

18. Coming to the undertaking which is relied by the Appellant, the undertaking submitted before the Adjudicating Authority was to the effect that excess money received as per distribution shall be returned, when Order is passed by Tribunal or Hon'ble Supreme Court the undertaking given by stakeholders was in terms of Regulation 43 of the Insolvency and Bankruptcy Board of India, Liquidation Process Regulations 2016, which undertaking has to be given while accepting any distribution of the sale proceeds in the Liquidation, which undertaking was for the benefit of the Secured Creditors, who is ultimately found to have larger share of sale proceeds in the Liquidation. Thus, undertaking given by the Parties in no manner can come in the way of Adjudicating Authority in issuing direction for re-distribution in accordance with law.

19. In view of the forgoing discussions and our conclusions, we are 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 pro-rata basis and the directions issued by the Adjudicating Authority is in accordance with law as declared by the Hon'ble Supreme Court in **'Amit Metaliks Limited' (Supra)**.

20. We, thus do not find any good ground to interfere with the Impugned Order. Both the Appeals are dismissed. The amount as per re-distribution in pursuance of the Impugned Order shall be made over to the Secured Creditors, including the IDBI Bank Ltd., along with the interest as directed on 29.02.2024. Both the Appeals are dismissed accordingly.

21. 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.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

28th January, 2025

himanshu