FEBRUARY 2020

SUPREME COURT

February 19, 2020

Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority and Another, Civil Appeal No. 12248 of 2018.

The issue before the SC was the interpretation of S. 14(1)(d) of the Code. A Tripartite Joint Development Agreement (JDA) was entered into between the CD, Respondent, and a housing society, whereby the CD had to demolish structures, build new ones and allot tenements free of cost. The remaining land was free to be used by the CD to construct other structures to be sold at a profit. The Respondent granted the CD licence to enter upon the premises and carry out the work. While the CD defaulted in the payment to its FC, CIRP was initiated, and a moratorium was ordered. Subsequently, Respondents issued a termination notice to CD to handover possession of the land. The NCLT held that the provision does not sweep over the licence to enter upon the land as it is 'personal' and not an interest created. The NCLAT dismissed the same on limitation even though a Resolution Plan was approved by the CoC by then, and noted that the land was not an asset of the CD, but was only handed over for developmental work. The SC, being convinced that the matter is well within the limitation period, embarked to explore the meaning of the key ingredients of the provision. Employing the maxim *reddendo singula singulis* to construe the syntax of the provision and referring to an array of judgments, the SC interpreted the law and arrived at the opinion that 'occupied by' and 'possession' have to be understood as distinctive in nature and cannot be used interchangeably. Further, on a reading of the JDA and a Deed of Modification, it further affirmed that CD is only in occupation of the same, and not in possession. The SC also looked into the Maharashtra Housing and Area Development Act, 1976 and noted S. 238 of the Code, by which, in instances of a clash between provisions of that statute and IBC, the IBC would prevail. The rationale behind the same was that the Code was effectuated so as to bring back the CD to life from its corporate sickness. In order to make that possible, it is important to strictly adhere to the prescribed moratorium, in the bare minimum, at least for the time between the initiation of CIRP and approval of a plan by the AA or until liquidation. Hence, the appeal was allowed.

February 26, 2020

Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited Etc., Civil Appeal Nos. 8512-8527 of 2019 and Ors.

This is a landmark judgement in which two issues of critical importance were decided upon. The CD, a Special Purpose Vehicle, mortgaged some of its properties to secure loans advanced to its parent company (JAL). IDBI Bank Ltd., an FC of the CD, filed an application to initiate the CIRP in respect of the CD. During its CIRP, the IRP filed an application seeking avoidance of these mortgages as preferential, undervalued, and fraudulent transactions u/Ss. 43, 45, 49, and 66 of the Code. The NCLT, through separate Orders, partially allowed the application and also held that creditors of JAL can be recognized as CD's FCs. The NCLAT set aside NCLT's Order on preferential transactions. On an appeal by different parties, the two questions before the SC were whether the transactions could be classified as preferential and whether JAL's lenders could be recognized as CD's FC. The SC held the first issue in the affirmative on the reasoning that JAL had an unlevelled advantage in the waterfall scheme compared to other stakeholders. That is, apart from benefitting JAL, it would also affect the other creditors as these assets would not form part of the assets during liquidation. Looking into the ingredients of the provision, the SC was convinced that they were satisfied as JAL was a related party of the CD and the transactions were entered into during the two-year period prior to initiating CIRP. Secondly, brushing through the borrowing history of the CD and JAL, it was noted that there are antecedent Operational Debts, which is another aspect covered u/S. 43(2)(a) of the Code. Thirdly, the SC held that the transfer was not in the ordinary course of business of the CD and the transferee. For this, the Court took the view that the word 'or' appearing in S. 43(3) was required to be read as 'and,' so as to cover those transfers made in the ordinary course of business of the CD. Looking into the second question, it was held that JAL cannot be classified as an FC as the transaction did not satisfy the necessary elements which construe a Financial Debt as recognized by the SC. Further, it was also ruled that position and role of an entity merely having a security over assets of the CD could not be considered FC, as its only interest was realizing the value of the security.

NCLAT

February 3, 2020

Indian Renewable Energy Development Agency Ltd. (IREDA) v. Mr. T.S.N. Raja (RP), Company Appeal (AT) (Insolvency) No. 899 of 2019.

The RP had rejected the claim of the appellant, but the same was upheld by the AA. The appellant had extended a term loan to M/s. OPCL and the CD M/s. VBC Industries Ltd., that had created a charge against the said loan in favour of the appellant by mortgaging its property. CIRP proceeding was initiated against the CD, and the appellant approached the RP with a claim for the money yet to be recovered from OPCL. OPCL however, had not defaulted in payment till then. For that reason, the RP had not admitted the claim of the appellant. S.3(6) of the IBC was referred to determine "claim," and it was submitted that it includes the right to remedy for breach of a contract, whether or not such right is matured. The resolution plan was already approved and was before the AA awaiting orders. The court observed that the appellant must bring such contingent existing right to the notice of the successful resolution applicants by filing an application before the AA and they must be heard in the matter. The NCLAT also directed the AA to note such a claim while considering the resolution plan.

February 4, 2020

Vijay Pal Garg & Ors. v. Pooja Bahry (Liquidator), Company Appeal (AT) Insolvency No. 949 of 2019.

The instant appeal challenged the legality of the impugned order passed by the AA by claiming that it incorrectly invoked S. 210(2) of the CA, 2013 while exercising its jurisdiction under the provisions of IBC. The RP had found various discrepancies in the accounts of the CD, which led to suspicions of fabricated records and fraudulent activities. The AA, thus, u/S. 210(2) of the Companies Act, directed the Central Government to order an investigation into the affairs of the CD. The appellants contended that the AA, exercising limited powers as per IBC, cannot direct investigation into the affairs of a company. The appellant further attempted to distinguish between the roles of NCLT as a 'tribunal' as provided u/S. 2(90) of the CA, 2013, and the 'Adjudicating Authority' as u/S. 5(1) of the IBC and submitted that though they are the same body, their jurisdictions and powers are different as governed by the respective statutes.

The NCLAT, however, ruled that the Tribunal/AA is well within its jurisdiction to refer a matter to the Central Government for investigation upon satisfaction over a complaint highlighting fraud, etc. which is in breach of the CA, 2013, and the IBC. But, the NCLAT, relying on S. 424 of the CA, 2013, observed that before ordering an investigation, the AA ought to have abided by the principles of natural justice and issued a notice to the concerned authorities requiring them to state as to why the affairs of the company should not be investigated. Thus, the NCLAT did not quash the order of the AA, but varied the impugned order and referred the matter to the Central Government for investigation through an inspector.

February 4, 2020

Flat Buyers Association Winter Hills v. Umang Realtech Pvt. Ltd. through IRP & Ors., Company Appeal (AT) (Insolvency) No. 926 of 2019.

The NCLAT termed this appeal to be a 'peculiar' one and experimented with the 'reverse CIRP' to address the claims of all stakeholders. The appellants were allottees in the building, and the CD was the real estate company. The amount declared by the NCLT for the IRP was ₹2 lakh, which was not sufficient to keep the real estate company a going concern. In the appeal, the allottees wanted CIRP for resolution but did not want the approval of a resolution applicant. The court acknowledged that though home buyers are also declared as financial creditors u/S. 5(8)(f) of the IBC, they do not have the 'commercial wisdom' as that of financial institutions to understand the viabilities of a resolution plan. The court, therefore, adopted a reverse CIRP approach as infrastructure is the 'asset' of the real estate CD, which, under IBC, would only meet the due of a secured creditor. The only claim possible by allottees is the possession of the flats. Neither can homebuyers take a haircut on their flats, like financial institutions generally do on their debts.

Under the mutually agreed proposal, the promoter stayed as an 'intended lender' to ensure completion of the project and enabling the CD to transfer possession to the allottees. In return, the homebuyers had to repay their dues to the CD, and the CD would utilize the amount so received to repay the dues to other third-party FCs. This ensured that the CD continues as a going concern, and all the stakeholders get their stake without compromises.

February 6, 2020

Bank of India v. Multi Arc Coating and Straps Ltd., Company Appeal (AT) (Insolvency) No. 891 of 2019.

The appeal was filed by the FC bank against the order of the AA rejecting their application as barred by limitation. The AA had noticed the acknowledgement letter dated 24.04.2012 and calculated the limitation period accordingly, thereby barring proceedings by April 2015. The appellants, however, produced a letter dated 09.06.2016, wherein the CD allegedly acknowledged the dues of the consortium banks, wrote with regard to action taken under the SARFAESI Act, and suggested actions to banks regarding the sale of property, etc. The appellants contended that it constitutes acknowledgement for the purpose of S. 18 of the Limitation Act and thus, the 3-year limitation period would not have crossed at the time of filing the application in 2018. The respondents contended that the letter by the CD clearly stated that it was "without prejudice to rights and contentions of the CD in the court proceedings pending," and for that reason, it could

not be considered as acknowledgement. The NCLAT however observed that merely adding the words "without prejudice to the rights and contentions" will not make any difference and construed it to be the acknowledgement of debt, thereby giving rise to a fresh limitation period. Thus, it was ruled that the S. 7 Application was not barred by limitation and the impugned order was quashed and set aside.

February 14, 2020

Hammond Power Solutions Pvt. Ltd. v. Mr. Sanjit Kumar Nayak (RP) and Ors., Company Appeal (AT) (Ins) No.606 of 2019.

The appellant (OC) had filed his claim before the respondent RP during CIRP for the CD. The appeal lied against the resolution plan approved by the AA. It was submitted that the resolution plan was not in compliance with the IBC and judgements of the Hon'ble SC and the NCLAT, as it had a provision of paying NIL amount to the OC, whereas it is settled that OC deserved similar treatment as FC. NCLAT perused the minutes of the CoC and concluded that no reason was given by it for approving such a plan. The NCLAT relied on the judgement in *Essar Steel* to maintain that such reasons are to be given by the CoC while approving a resolution plan. Hence, it was ruled that the CoC has not acted fairly to balance the interest of all stakeholders or maximise the value of assets of the CD. Thus, the impugned order was set aside and the matter was remitted back to the AA with a direction to send back the resolution plan to the CoC to consider the stakes of the OC as well.

February 17, 2020

JSW Steel Ltd. v. Mahender Kumar Khandelwal & Ors., Company Appeal (AT) (Insolvency) No. 957 of 2019.

In this case, the CIRP of CD (Bhushan Power & Steel Limited) had already begun, and the resolution plan had been submitted by resolution applicant (JSW Steel Limited). The said plan had been approved by the AA vide Judgment dated 05.09.2019 with certain conditions. However, on 10.10.2019, on certain suspicions raised by the Enforcement Directorate (ED) of the Central Government, investigations were launched under the PMLA.

The issue before the NCLAT was whether the ED had the jurisdiction to attach the property of the company under CIRP and whether it could be considered as an OC under the Code.

The NCLAT upheld the decision of the NCLT and stayed the order of attachment passed by the ED and prohibited it from attaching properties belonging to the CD without prior approval of the

AA. The NCLAT further held that once a resolution plan is approved by NCLT, it was binding on CD, its employees, creditors including the Central Government, any State Government, or any local authority and it was not up to the ED to determine the application of the Code. However, the NCLAT had also stated that it would not interfere with any further investigations conducted by the CBI or the Serious Fraud Investigation Office.

February 24, 2020

Neeraj Jain, Director of M/s Flipkart India Private Limited v. Cloudwalker Streaming Technologies Private Limited, Company Appeal (AT) (Insolvency) No. 1354 of 2019.

In this case, the NCLAT set aside the order given by the NCLT Bangalore, to initiate the CIRP against the major e-commerce platform, Flipkart. In the impugned NCLT Order, Cloudwater Technologies was admitted as the OC of Flipkart, on allegation of Flipkart failing to pay the dues to Cloudwater Technologies, on the supply of LED TVs, at locations specified by Flipkart.

The CD was released from the CIRP. IRP was directed to hand over the records and assets of the CD to the Promoter, who resumed to manage the CD. NCLAT further held that the choice of issuance of demand notice u/S. 8(1) of the IBC, either in Form 3 or Form 4, under the IBC Application to Adjudicating Authority Rules 2016, depends on the nature of Operational Debt. S. 8(1) does not provide the OC, with the discretion to send the demand notice either in Form 3 or Form 4, as per its convenience.

February 26, 2020

State Bank of India v. Maithan Alloys Limited and Others, Company Appeal (AT) (Insolvency) No. 1245 - 1247 of 2019.

Respondent No. 1 (Maithan Alloys) (R - 1) had accepted the bid for the company under liquidation. However, later, Respondents No. 2 – 4 (R – 2 - 4) had formed a consortium and objected to the e-auction in which R - 1 was declared to be successful. R - 2 - 4 moved to the NCLT Kolkata by stating that they will offer a price higher than paid by R – 1. Subsequently, R – 1 decided to withdraw its bid even after it had paid some part of the price. The NCLT ruled in favor of R – 2 – 4 by keeping in mind the object of Code, i.e., maximization of the value of the asset, and directed the liquidator to hand over the assets to R - 2 - 4.

The grounds on which R – 2 - 4 had tried to intervene in the bidding process was that they were not given a fair opportunity to stake their claim. Appellant alleged that the grounds were invalid as there had been no arbitrariness on the part of the liquidator, and NCLT had interfered unjustly in

the public auction. The NCLAT took into account the submissions made by the various parties, i.e., appellant, respondents and the liquidator, and allowed the appeal to set aside the orders of NCLT Kolkata. NCLAT relied on the case of *Manjit Commercial LLP* v. *SPM Auto Pvt. Ltd.* (In Liquidation), CA(AT) (Insolvency) No. 732 of 2019, which held that objectors are not allowed to cause unnecessary delay to the liquidation process and gain an advantageous position. It also stated that the IBC empowers liquidator to sell the property of the CD in liquidation by public auction. Hence, there was no need for the AA to direct the liquidator for considering the proposal of R – 2 - 4.

NCLT

February 3, 2020

State Bank of India v. M/S. Mackeil Ipsat & Forging Limited, CP (IB) No. 213/KB/2019.

In the instant case, the FC had filed a petition on behalf of the Consortium of Lenders for the initiation of CIRP u/S. 7 of the Code against the CD. The FC stated that the accounts of the CD were declared NPA with effect from March 31, 2013. The restructured facilities were called and in the same matter, the DRT- II, Kolkata, in its order dated June 8, 2018, held that the CD did not pay the debt and issued a recovery certificate.

The CD contended that the application of the FC was barred by the law of the limitation as well as principles of waiver, estoppels, and acquiescence. The FC also suppressed the material fact regarding the pre-existing dispute that the loan was disbursed in driblets and there was a delay of 20 months in releasing the loan amount which affected the projects of the CD. The FC also sanctioned Rs. 30 Crore in favour of the CD on December 4, 2013, which showed that the accounts of the CD were not NPA. The FC further submitted that the Kolkata HC, in its order dated September 19, 2014, stayed the recovery proceedings in the present matter. However, the said matter was decided by the Kolkata HC on November 2, 2020, and it was directed that the order of 2014 stands vacated. Thus, the FC submitted that the period of around 2 years and 2 months should be excluded from the limitation period, and therefore, there would be no question of debt being barred by the time. The AA admitted the petition and held that the CD filed petition within the limitation period and also defaulted in the payment of the debt.

February 4, 2020

Jupiter International Limited v. Phyto Biotech Private Limited, CP (IB) No. 515/KB/2019.

In the instant case, the OC had filed a petition for initiation of CIRP u/S. 9 of the Code against the CD for defaulted in payment of goods. The CD alleged that the petition was not maintainable because the OC deliberately chose not to disclose the material fact regarding the pre-existing dispute of poor quality of goods before the tribunal. Further, the transactions were procured for back to back sale of one Envision Jaipur Sales Pvt. Ltd., and the OC was aware of the back to back sale arrangement. The CD had not procured the assignment in the case at hand for its own use; therefore, the CD was not liable for default. Further, Envision also raised various disputes regarding the quality of the goods. The petitioner (OC) contended that there was no dispute regarding the quality of the goods between the OC and CD, and if there had been quality issues, then cheques (later dishonoured) would not have been released by the CD. Envision also never raised a dispute regarding the same. Further, the goods were delivered to Envision on behalf of the CD and back to back sale arrangement was not mentioned in the purchase order issued by the CD.

After looking into the documents produced by the OC and CD, the AA held that default had occurred in the present case. The CD had failed to provide any evidence regarding the dispute of poor quality of goods and the existence of a back to back sale arrangement. Further, the CD mentioned the address of Envision in the purchase order; therefore, the goods were delivered on behalf of the CD. The tribunal thus admitted the petition.

February 5, 2020

M/s. Learning Candid Pvt. Ltd. v. M/s. Alfa People IT Services Pvt. Ltd., CP (IB) No. 307/BB/2019.

In the instant case, the petition was filed for the initiation of the CIRP u/S. 7 of the Code for default in payment of the debt extended by the petitioner by way of an Inter-Corporate Loan Agreement. The petitioner contended that the FC is neither a banking institution nor a non-banking financial institution; thus, the Inter- Corporate Loan agreement was executed between the parties u/S. 186 of the Companies Act, 2013 read with Companies (Meetings of Board and its Powers) Rules, 2014 to extend the loan to the CD. The FC contended that the loan was given after complying with all the requirements u/S. 186 of the CA, 2013. Since the CD was not a related party of the FC according to S. 2(76) of the CA, 2013, the provisions of related party transactions were not implemented in the present case. The petitioner further stated that the relationship of

the FC with the CD was a pure financial contract under a loan agreement and the petition is maintainable as the default in the payment occurred, and the dues owed to the FC fall within the definition of 'Financial Debt' u/S. 5(8) of the IBC.

The CD did not raise any dispute regarding the default of debt. The CD also admitted that it had failed to pay the debt due to financial exigencies. The AA held that the default in the payment under the Inter-Corporate loan agreement comes within the definition of 'Financial Debt' under S. 5(8) of the Code and thus admitted the petition for initiation of CIRP u/S. 7 of the Code.

February 7, 2020

BP Agency (Delhi) v. Brightsun Technocraft Pvt. Ltd., IB-1198/ (ND)/2019.

The OC issued a notice for the payment of a debt, but the CD replied on June 4, 2016, and denied the claim of the OC as the material was found damaged/wet. Thus, the CD asked the OC to take back the material and also claimed that the OC did not provide the 5.5% cash discount on the purchase value, which was not paid to the CD. Later, owing to the default in the payment of the goods by the CD, the OC filed an application u/S. 9 of the Code.

The OC contended that the CD never raised objection regarding wet/damaged goods before June 4, 2016. Further, the address provided by the CD in the communication dated June 4, 2017, never existed, and the material was never supplied at that address. The OC also stated that the ledger account filed by the CD reflected that the discount had been paid.

The AA said that the question that arose was pertaining to the existence of any pre-existing dispute between the parties. It was held that there was no written agreement between the OC and CD for payment of 5.5 % cash discount on the purchase value. Thus, the CD cannot claim it as a matter of right. The second issue was whether the CD was legally entitled to adjust wet/damaged compensation out of the balance of OC. The tribunal held that the OC did not supply material to the address mentioned in the communication dated June 4, 2017. The CD did not raise any debit note concerning the wet/damaged goods and also did not return it to the OC. Thus, there was no pre-existing dispute between the parties, and the petition was admitted.

February 7, 2020

Arun Kumar K. v. M/s. Bob Tech Solutions Private Limited, CP (IB) No. 381/BB/2019.

The petitioner was working as the head of the Human Resources and Operations Department in the Company (CD). The CD did not pay the salaries to the employees (OC) from January 2018. The OC finally issued demand notice on October 4, 2019, to pay an outstanding amount of Rs.

10,06,127, but the CD did not reply. Thus, the OC filed a petition for initiation of CIRP u/S. 9 of the Code.

The Respondent stated that the Company was not able to complete the targeted projects on time due to global economic slowdown and various other micro and macroeconomic factors. Therefore, the CD suffered huge losses. The CD admitted the liabilities and further stated that it was unable to service the overdraft of the bank, unable to clear vendor dues, and also failed to pay employees due and salaries. The AA held that the CD was *prima facie* an insolvent Company, and had a negative growth rate. Thus, the tribunal admitted the petition by initiating CIRP in respect of the CD.

1. February 10, 2020

Rachna Sarees v. Charming Apparels Pvt. Ltd., through RP, CA No. 993/2019 in (IB)-348(ND) 2017.

An objection was filed by one of the ex-directors of the company against the resolution plan submitted by a resolution applicant. It was contended that the CIRP is vitiated as the Information Memorandum filed by the RP does not completely disclose the assets of the CD. The assets had been undervalued and not in consonance with the fair market value and were, therefore, being handed over to the resolution applicant at an undervalued price to the detriment of the stakeholders. The valuation report had not been shared with the suspended BoD. The claims of the workers and employees were ignored.

The AA rejected the arguments of the ex-director as he had no *locus standi* to object to the resolution once approved by the CoC. The AA is not required to interfere or question the commercial wisdom of the CoC, unless there are legal infirmities, and a plan in conformity with the requirements of the Code is to be allowed. The allegations that the assets had been undervalued were not substantiated and remained mere averments as no data was provided to contradict the average fair price arrived at by the professional valuers. The submission that workmen and employee claims had been ignored was totally baseless as the claims received were unsubstantiated and, therefore not admitted. Therefore, the application was dismissed as the objections raised were frivolous.

2. February 10, 2020

Sidana Enterprises through its Sole Proprietor v. M/s Bhandari Hosiery Exports Ltd., CP (IB) No.361/Chd/Pb/2018.

The application for CIRP had been filed u/S. 9 of the IBC. The main issue, in this case, was whether a notice of dispute was received by Sidana and the application was rejected on this ground. In *Mobilox Innovation Private Limited v. Kirusa Software Pvt Ltd*, (2017) 140 CLA 123 (SC), it was held that once the OC has filed an application, which is otherwise complete, the AA must reject the application u/S. 9(5)(2)(d) if notice of dispute has been received by the OC or there is a record of dispute in the Information Utility. In the instant case, the CD had sent an undated letter stating that the chemicals received from the OC were defective and after using the chemicals, the fabric of the CD became defective and unusable. The OC contended that the last material supplied to the CD was in June 2016 and the dispute regarding quality was raised in June 2018 and the defects were not mentioned therein. The CD also submitted that the OC charged an excessive amount for which debit notes were maintained by the CD. The OC contended that the CD did not raise this issue in its letter.

The Tribunal found this argument to be a patently feeble legal argument, and there is no such pre-existing dispute. The CD had also contended that the OC had approached the tribunal in the capacity of a proprietor. However, this defect was rectified. Therefore, the tribunal admitted the application.

3. February 12, 2020

M/s S.S. Engineers v. M/s HPCL Biofuels Ltd., CP (IB) No. 1422/KB/2018.

The application had been filed u/S. 9 of IBC for the initiation of CIRP. The CD floated a tender for plant upgradation. The OC raised bills from 01.10.2012-30.12.2013. The sum was not paid during execution due to some differences but part payments were made.

The CD contended that the petition cannot be maintained as the proprietorship firm filed it and is not covered u/S. 3(23) of IBC. They placed reliance on *S.K. Traders* case, CP (IB)/ 506/KB/2018 (NCLT Kolkata). There was no acknowledgement of debt by way of form C issued between 2015 & 2018, and reliance was placed on *Shivarad Polyfab (P) Ltd* case, CA (AT) (Insolvency) No. 261 of 2017 (NCLAT). It was contended that it was a composite contract. There were disputes prior to the issue of demand notice. The materials were defective, the petitioner could not complete the work and the CD had to get the help of other contractors. The OC contended that an advocate had been authorised on behalf of the sole proprietor which is as per the IBC and also approved

by the SC. It was further contended that there was a clear bifurcation between supply, work and service and it is not a consolidated contract as per the invoices. They contended that form C is the acknowledgement of debt and hence not barred by limitation and placed reliance on *Electrosteel Flame Ltd and Mittal Iron Foundry Pvt Ltd*, 1998 (2) ALD 594, (Andhra Pradesh HC) for the same.

The tribunal held that S. 3(23) is inclusive and if sole proprietors are barred from filing under Ss. 7 and 9 of IBC, then it would be against the object of IBC. The tribunal went through the letter of intent and purchase order issued by the CD and invoices where the activities are mentioned separately. Therefore, the claim of the CD was not accepted. They placed reliance on *ARC India Ltd* case, CP (IB) No.1198/KB/2018 (NCLT Kolkata) and held that the petition was not time-barred. It was held that there was no dispute as per the provisional statement of the CD. Therefore, the application was admitted.

February 17, 2020

Trau Bros NV v. Osia Gems Pvt. Ltd., CP (IB) No. 3555/NCLT/MB/2018.

The petition was filed against the CD u/S. 9 of the Code for the default in the payment of diamonds supplied by the OD. The CD raised a preliminary objection on the maintainability of the petition on the ground that the title was not transferred and hence sale did not occur. The AA, relying on S. 24 of the Sales of Goods Act, 1930 quashed the contention of the CD as it had not returned the goods within a reasonable time and hence, the petition was admitted.

February 27, 2020

Technology Development Board v. Mr. Anil Goel, Liquidator of Gujarat Oleo Chem Ltd., IA No. 514 of 2019 in CP (IB) No. 04 of 2017.

The applicant FC was a part of the CoC with a voting share of 14.54% in a company that was ordered to be liquidated by the AA. The contention of the applicant was that it was not given sale proceeds from the liquidated company even though he was a secured creditor and secured creditors are entitled to a pro-rata share in the liquidation proceeds. The liquidator contends that the liquidation proceeds were done in adherence to S. 53(2) of IBC and that the application made by the FC is liable to be dismissed. The AA had to decide whether *inter se* priorities between the secured creditors i.e. first charge holder and second charge holder have to be considered while distributing the liquidation proceeds in cases where a secured creditor had not realized his security u/S. 52 of IBC and had relinquished the security to the liquidation estate. It was held that there remains no such classification and by joining liquidation proceedings, all the secured creditors rank *pari passu* irrespective of whether they have any *inter se* priorities. The AA also noted that the

idea of proportionality in liquidation is only as far as similar rankings are concerned. If contractually, parties have put one party as the first priority and other as second, there will be no parity whatsoever. Therefore, the application is not maintainable.