

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **18.04.2024** THROUGH VIDEO CONFERENCE

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

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**IN THE MATTER OF** : Indian Overseas Bank  
VS  
Shree Murugan Flour Mills Pvt Ltd

**MAIN PETITION NUMBER** : CP(IB)/233(CHE)/2021

**(IA/MA) APPLICATION NUMBERS**

IA/1713(CHE)/2023; IA/1714(CHE)/2023

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**ORDER**

Present: None for the Applicant

Ld. Counsel Ms. Deepa Mariappan for the Respondent.

Vide separate order announced in open court, IA/1713(CHE)/2023 and  
IA/1714(CHE)/2023 are dismissed.

-Sd-  
**[VENKATARAMAN SUBRAMANIAM]**  
**MEMBER (TECHNICAL)**

MG

-Sd-  
**[SANJIV JAIN]**  
**MEMBER (JUDICIAL)**

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

**IA/1713/CHE/2023 in CP(IB)/233/(CHE)/2021**  
*(filed under Sections 42 of the Insolvency & Bankruptcy Code, 2016)*

*Along with*

**IA/1714/CHE/2023 in IA/1713/CHE/2023 in  
CP(IB)/233/(CHE)/2021**

*(filed under Rule 11 of the NCLT Rules, 2016 r/w Section 5 of Limitation Act, 1963)*

*In the matter of M/s. Shree Murugan Flour Mills Private Limited*

**CANARA BANK,**  
Ramnagar Branch,  
No.81a, Vivekananda Road,  
Ramnagar,  
Coimbatore-641 009.

... Applicant

Vs

**Mr. P. ESWARAMOORTHY,**  
Liquidator of Shree Murugan Flour Mills Pvt. Ltd.  
Having office at No. 44 & 44/1,  
5<sup>th</sup> Street, Ramalinga Jothi Nagar,  
Nanjundapuram Road,  
Ramanathapuram,  
Coimbatore - 641 045.

... Respondent

*Order pronounced on 18<sup>th</sup> April, 2024*

**CORAM:**

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

*For Applicants*

*: Mr. Varun Srinivasan, Counsel*

*For Respondent*

*: Mr. B.Dhanaraj, Counsel*

## ORDER

*(Heard through hybrid mode)*

**1. a) IA/1714/CHE/2023** has been filed seeking following relief:

*'It is therefore, for the reasons stated above, most respectfully prayed that this Hon'ble Tribunal may be pleased to condone the delay of 102 days in filing the Appeal under Section 42 of the Code which is filed along with this application as IA No of 2023 in CP(IB)/233/CHE/2021 and thereby hear and pass order in the said application, and /or pass such other order this Hon'ble Tribunal deem fit and thus render justice'*

**b). IA/1713/CHE/2023** has been filed by the Applicant under Section 42 of the Insolvency & Bankruptcy Code, 2016 seeking the following reliefs:

*"this Hon'ble Tribunal may be pleased to set aside the Order of the Liquidator dated 11.05.2023 and to thereafter direct the Respondent Liquidator to admit the claim of the Applicant Bank in its entirety and as a Secured Financial Creditor and pass such other Orders as this Hon'ble Tribunal may deem fit and necessary as per the facts and circumstances of the case and thus render justice."*

## **2. SUBMISSION BY APPLICANT**

2.1. The Applicant is a Public Sector Banking Company constituted under the Banking Companies Acquisition and Transfer Undertakings Act, 1970 and is in the business of Banking.

2.2. It is stated that Syndicate Bank (now the Applicant Canara Bank herein pursuant to the amalgamation as approved by the RBI vide Notification dated G.S.R. 155(E) dated 04.03.2020) was approached by *the*

*Principal Borrower M/s. Rajaram Flour Mill Pvt. Ltd.* for the purpose of availing financial assistance from the Applicant Bank. It was decided that the Applicant would sanction a loan to the Principal Borrower for an amount of Rs.15 crores for the purposes of Food Processing: Milling of Wheat and Maida Flour. To secure the said financial facilities, mortgages were created in favour of the Applicant on 06/05/2015, 17/12/2015 and 28/08/2020 based on the properties provided by the *Corporate Debtor M/s. Shree Murugan Flour Mills. Pvt. Ltd.* In addition to providing the security for the advancement of loan, the Corporate Debtor, namely, M/s. Shree Murugan Flour Mills Pvt. Ltd. also provided for a corporate guarantee on several dates, namely, 18/12/2015, 13/10/2017, 30/09/2019 and 26/07/2021.

2.3. It is further stated that the corporate guarantee, provided by the Corporate Debtor, Shree Murugan Flour Mills Pvt. Ltd., was for a limit of Rs. 15,60,00,000/- (Rupees Fifteen Crores and Sixty Lakhs) towards the loan availed by M/s Rajaram Flour Mills Pvt. Ltd. The Founding Director/Promoter of M/s Rajaram Flour Mills Pvt. Ltd. and M/s Shree Murugan Flour Mills Pvt Ltd., are one and the same, namely, Mr. G. Balasubramaniam.

2.4. It is stated that while the Principal Borrower was servicing its loan with the Applicant, it was brought to the attention of the Applicant that a Corporate Insolvency Resolution Process ("CIRP") had been initiated as against M/s Shree Murugan Flour Mills Pvt. Ltd. by the NCLT Chennai vide CP. No. CP(IB)233/CHE/2021 dated 21.04.2022 and accordingly Mr. P. Eswaramoorthy was appointed as the Interim

Resolution Professional. It is stated that the said initiation of CIRP as against the Corporate Debtor had come to the attention of the Applicant vide a letter issued by the Resolution Professional on 16/09/2022, wherein he had sought for verification regarding the asset that had been mortgaged by the Corporate Debtor as security for the loan advanced to M/s Rajaram Flour Mills Pvt. Ltd., while also requesting the Bank to update regarding the status of claim as against the Corporate Debtor. It is stated that on the basis of this letter, the Applicant filed its claim for Rs.15,07,33,733.54/- on 18/11/2022 by way of submission of the Form-C as per Regulation 8A of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

2.5. It is stated that the Applicant had also provided the list of documents that had been executed by the Corporate Debtor hereunder for ease of reference:

Sl. No.	Type of Document	Date of Document	Executed by
1	Guarantee Agreement	18/12/2015	M/s. Shree Murugan Flour Mills Pvt. Ltd
2	Guarantee Agreement	13/10/2017	M/s. Shree Murugan Flour Mills Pvt. Ltd
3	Guarantee Agreement	30/09/2019	M/s. Shree Murugan Flour Mills Pvt. Ltd
4	Guarantee Agreement	26/07/2021	M/s. Shree Murugan Flour Mills Pvt. Ltd
5	MODTD	06.05.2015 17.12.2015 28.08.2020	M/s Shree Murugan Flour Mills Pvt. Ltd
6	Board Resolution of M/s. Shree Murugan Flour Mills Pvt. Ltd	03.02.2015	M/s. Shree Murugan Flour Mills Pvt. Ltd

2.6. It is stated that the Applicant had also brought to the attention of the Resolution Professional while submitting its claim that the Corporate Debtor had provided for its security in the form of a land, the details of which are provided *below*:

*"8. Details of any security held, the value of the security, and the date it was given - EMT of 45.1 cents of Commercial Vacant Land at Survey No. 174/5 Part CHU 006, Commercial Side, Kurichi NHS Phase - II Scheme, Kurichi, Coimbatore in the name of M/s. Shree Murugan Flour Mills Pvt. Ltd valued Rs.360.00 lakhs as per the Valuation dated 18.06.2020 by M/s Manicka Sundaram & Associates."*

2.7. It is stated that the Corporate Debtor had also passed a Board resolution dated 03/02/2015 , wherein it was resolved that the company could provide the above security for the purposes of availment of loan by M/s. Rajaram Flour Mill Pvt. Ltd. from the Applicant herein. It is stated that the same was duly registered under the *Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI)* and the Security Interest ID provided to the Applicant Bank was 400010154631. It is stated that this was created on 06/02/2015 as per the requirements of the securitization under SARFAESI Act, 2002. (Copy of the CERSAI report dated 06/05/2015 is hereby enclosed as **Annexure A2**).

2.8. It is stated that pursuant to the verification of the claim of the Applicant, the claim was rejected by the Resolution Professional on the following grounds:

- (a) That the claims are not submitted within the due date as mentioned under Regulation 12 (1) and (2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (b) That according to the information, the Principal Borrower's Account is a standard account and no default has been committed as on date. That demand/Claim will arise only when the Principal Borrower defaults its payment.
- (c) That the guarantee provided by the Corporate Debtor has not been invoked so far. Accordingly on the basis of the above, the claim of the Bank was rejected.

2.9. It is stated that by such time the Applicant Bank could proceed in lodging its appeal before the Hon'ble Adjudicating Authority, it was brought to the attention of the Applicant that as there were no resolution plans that were formulated, that the corporate debtor was ordered into liquidation vide Order dated 06.03.2023 in IA(IBC)/176(CHE)2023. It is submitted that consequently, the Applicant submitted its claim in Form D dated 05.04.2023 detailing the various claims and securities provided for by the Corporate Debtor in support of its claim. (Copy of the Form D along with the supporting documents are collectively enclosed as **Annexure A4**). It is stated that, however, the Liquidator, vide email dated 17/04/2023 had written to the Applicant seeking for certain queries. (Copy of the email dated 17/04/2023 is hereby enclosed as **Annexure A5**). It is stated that in response to the same, the Applicant had addressed an email reply letter dated 12.05.2023 clarifying the queries. (Copy of the email letter dated 12.05.2023 is hereby enclosed as **Annexure A6**).

2.10. It is stated that after consideration of the Applicant's claim and the response provided by it, the Liquidator rejected the claim on 11.05.2023 stating the reasons for rejection of the same as follows:

- (a) No charge has been created or registered with the MCA;
- (b) As the company is regular in payment, debt due become payable doesn't arise;
- (c) Corporate guarantee has not been invoked;
- (d) According to the information available in the MCA, there was a change in management in 22/09/2022.

2.11. It is stated that on the basis of the above reasoning, the Liquidator rejected the Applicant's claim while also informing the Applicant that it will not fall under the category of a secured creditor and furthermore that the said asset mortgaged in favour of the Applicant by the Corporate Debtor would be sold along with the other assets of the Corporate Debtor as per the liquidation process. It is stated that thereafter, while the Applicant was evaluating its legal options, it was brought to the attention of the Applicant that a public auction was conducted on 16/06/2023 and that the Corporate Debtor was sold to the successful bidder, namely, *M/s Coimbatore Child Trust Hospital Pvt. Ltd.* as a going concern and that the sale certificate was also duly issued to the successful bidder as per the provisions of the Code. It is stated that the Liquidator had subsequently also written a letter dated 28/06/2023 to the Applicant seeking for the release of the memorandum of deposit of Title Deeds of the property belonging to the Corporate Debtor and thereafter to hand over the same to the successful bidder, namely, *M/s. Coimbatore*



Child Trust Hospital Pvt. Ltd. (Copy of letter dated 28/06/2023 is hereby enclosed as **Annexure A8**).

2.12. It is submitted that as per Section 3(6) of the Code, a claim has been defined as follows:

*"Claim means*

*(a) Right to payment, whether or not such right is reduced to judgement, fixed, disputed, undisputed, legal, equitable, secure or unsecure;*

*(b) Right to remedy for breach of contract under any law for the time being in force if such breach gives rise to a right to payment, whether or not such right is reduced to judgement, fixed, matured, unmatured, disputed, undisputed, secure or unsecure.*

2.13. It is stated that on the basis of the above provision of law, all that is required to be seen by the Liquidator while adjudicating a claim of a Creditor is whether the Applicant is a Financial Creditor and whose loans have been secured by a corporate guarantee and a creation of mortgage is in its favour. It is stated that there is absolutely no necessity for the Liquidator to travel beyond the scope of this provision, which itself clearly states and provides that a claim would include *"Right to payment, whether or not such right is reduced to judgement, fixed, disputed, undisputed, legal, equitable, secure or unsecure."* It is stated that whether the claim is disputed or undisputed, it is the job/responsibility of the Liquidator to admit such claims provided, however, there is sufficient documentation shown in support of its claim.

2.14. It is stated that it is not in dispute that the Corporate Debtor had created a valid corporate guarantee in favour of the Applicant herein. It is further also not in dispute that mortgages were duly created in favour of the Applicant by the Corporate Debtor. It is, therefore, stated that only on the sole basis that the debt due and payable had not matured qua the Principal Borrower/Corporate Debtor and that the corporate guarantee had not been invoked could not have been justification on the part of the Liquidator to reject the claim of the Applicant herein.

2.15. It is stated that in support of the above contention, it would be relevant to refer to the decision of the Hon'ble NCLAT in the case of *Export Import Bank of India v. Resolution professional of JEKPL Pvt. Ltd. Company Appeal No. 304 of 2017* dated 14/08/2018 whereby it has been held as under:

*"54. Therefore, stand taken by the respondents that the claim has not been matured cannot be ground to reject the claim.*

*55. Section 25 provides the duties of Resolution Professional As per Section 25(2)(e), the Resolution Professional is required to maintain an updated list of all the claims. Aforesaid fact also suggests that the maturity of a claim or default of debt are not the guiding factors to be noticed for collating or updating the claims. The matter can be looked from another angle. It is only in case of 'debt' and 'default', a 'Financial Creditor' or 'Operational Creditor', may file applications under Section 7 or 9. The 'Corporate Applicant' has also right to file application under Section 10 for initiation of Corporate Insolvency Resolution Process against itself. if it has defaulted to pay the 'debt'. It does not mean that the persons whose debt has not been matured*

*cannot file claim The 'Financial Creditors' or 'Operational Creditors' or 'secured or unsecured creditors' all are entitled to file claim.*

*56. Therefore, we hold that maturity of claim or default of claim or invocation of guarantee for claiming the amount has no nexus with filing of claim pursuant to public announcement made under Section 13(1)(b) r/w Section 15(1)(c) or for collating the claim under Section 18(1)(b) or for updating claim under Section 25(2)(e). For the purpose of collating information relating to assets, finances and operations of Corporate Debtor or financial position of the Corporate Debtor, including the liabilities as on the date of initiation of the Resolution Process as per Section 18(1), it is the duty of the Resolution Professional to collate all the claims and to verify the same from the records of assets and liabilities maintained by the Corporate Debtor."*

2.16. It is stated that following the ratio of the decision of the Hon'ble NCLAT in the case of *Export Import Bank of India (supra)*, the Hon'ble NCLAT had once again had the opportunity to decide on this proposition of law in the case of *Edelweiss Asset Reconstruction Company Ltd. Vs V. Mahesh, Company Appeal (AT) (CH) (INS) No. 226 of 2021*. It is stated that one of the issues raised before the Hon'ble NCLAT was as follows:

*"(c) Not invoking corporate guarantee and not crystallizing into debt in the books of Corporate Debtor invalidates the claim."*

2.17. It is stated that while addressing the said point in the negative, the Hon'ble NCLAT by relying on its earlier decision in the case of *Export Import Bank of India (supra)* held as follows:

*"25. We are in agreement with the above decision. The resolution professional is required to maintain an updated list of claims. The*

*maturity of a claim or default of debt are not the guiding factors to be noticed for collating or updating the claims.*

*26. We have also perused the Letter of Continuing Guarantee (Corporate Guarantee) executed by Vasan Healthcare Pvt. Ltd, in favor of the Assignor Bank i.e., Indus Ind Bank Ltd annexed at Pages 118 to 133 to the typed set of documents filed by the Appellant.*

*27. After analyzed the points as discussed above, in (a) (b) and (c), this Tribunal comes to a resultant conclusion that the Corporate Guarantee was made available with IRP and Adjudicating Authority. Thus, the IRP and the Adjudicating Authority cannot take the unsustainable and unsound technical stand as discussed Comp App (AT) (CH) (INS) No. 226 of 2021 in Point 'b' and 'c' above while rejecting the claim. We unequivocally negative the stand taken by the IRP and the Adjudicating Authority. Having satisfied the grounds as made by the Appellant, the following order is passed.*

*a. Paras 52 and 56 of the Impugned Order dated 22.02.2021 in IA/156/2020 in CA/1/2017 passed by the Adjudicating Authority with respect to rejecting the claim of the Appellant to the extent of Rs.54,97,35,793/- is hereby quashed and set aside.*

*b. We direct the 2<sup>nd</sup> Respondent (RP) to verify all the documents with regard to Corporate Guarantee issued by Vasan Healthcare Pvt. Ltd, in respect of above claim.*

*c. After due verification of the documents, the 2<sup>nd</sup> Respondent is hereby directed to consider and admit the claim of the Appellant with respect to its claim of Rs.54,97,35,793/-.*

*d. With the above directions, the Appeal is allowed. No orders as to costs."*

2.18. It is stated that from a perusal of the above decisions of the Hon'ble NCLAT and while comparing the same to the facts of the present case, it is evident that the Liquidator has clearly acted in derogation of the law as it is applicable, namely, by rejecting the claim of the Applicant on the grounds of "non-crystallization of a debt" and "non-invocation of the corporate guarantee." It is, therefore, stated that on this basis itself the conclusion arrived at by the Liquidator in rejecting the claim of the Applicant is erroneous and requires to be set aside by this Hon'ble Tribunal, while admitting the claim of the Applicant in full.

2.19. It is stated that de hors the above reasoning provided by the Liquidator in rejecting the claim of the Applicant, another point for rejecting the claim of the Applicant was on the basis of the fact that the security created in favour of the Applicant was not registered as a charge with the MCA. It is submitted that even assuming but not conceding to the said proposition arrived at by the Liquidator in rejecting the claim of the Applicant, this at best can be relevant only for determining whether the Applicant Bank ought to be considered as a secured creditor or an unsecured creditor and has absolutely no relevance for the purpose of the determination/admission of the claim of the Applicant Bank. It is furthermore stated that as already stated above, the Applicant Bank has already registered the said security as per the requirements of the SARFAESI Act, 2002 under CERSAI on 06/05/2015. It is consequently submitted that the non-registration of charge under the MCA as alleged by the Liquidator cannot by itself be a reasoning to hold the Applicant as an unsecured creditor.

2.20. It is stated that compounding to the illegal and arbitrary act of the Liquidator, he has thereafter proceeded with the sale of the secured asset created in favour of the Applicant Bank by the Corporate Debtor, to a third party, which has thereby caused serious damage to the interest of the Applicant, including but not limited to exercising its potential right under Section 52 of the Code. It is stated that as informed by the Liquidator, that on the basis of a public auction conducted on 16/06/2023, wherein the Corporate Debtor was sold to the successful bidder, namely, M/s Coimbatore Child Trust Hospital Pvt. Ltd., as a going concern, the entire sale consideration of Rs.6.2 Crores has been deposited by the successful bidder for the amounts to be distributed as per the requirements of Section 53 of the Code. It is stated that as per the information available with the Applicant herein, Indian Overseas Bank, namely, the Financial Creditor has initiated CIRP against the Corporate Debtor and its outstanding dues as on date is only for an amount of Rs.12,00,000/-, which information the Applicant has orally ascertained from the Liquidator.

2.21. It is also stated that the Applicant has also reliably learnt that there are no other substantial claims due and payable to other Creditors. It is submitted that, when such being the case and the Applicant having lodged its claim, which are to be admitted in consonance of the decisions of the Hon'ble NCLAT, as quoted supra, in the event the Applicant is not included as one of the Claimants then its interest will be substantially affected and it will face grave and irreparable injury as a result of the

illegal and arbitrary acts of the Liquidator. It is stated that if the claim of the Applicant is allowed/admitted by this Tribunal, the Applicant would be a beneficiary to the amounts to be distributed as per the requirements of Section 53 of the Code. It is, nonetheless, stated that considering that the corporate debtor has been as a going concern and that the sale effected is yet to be approved by this Hon'ble Tribunal, the Applicant reserves its right to challenge the same by filing an appropriate application on the grounds available to it under law.

### **3. COMMON COUNTER FILED BY THE RESPONDENT/LIQUIDATOR**

3.1. It is stated that the Liquidation of the Corporate Debtor commenced by an Order dated 06.03.2023 passed by the Hon'ble Tribunal. During the Liquidation Process of the Corporate Debtor, the Respondent / Liquidator issued an E-Auction Sale Notice for sale of the Corporate Debtor as a "Going Concern" on 18.05.2023. Accordingly, the E-Auction was conducted on 16.06.2023 as per the E- Auction Sale Notice and one M/s. Coimbatore Child Trust Hospital Private Limited ("CCTHPL") was declared as the Successful Bidder.

3.2. It is stated that the Liquidator had issued a Letter of Intent ("LoI") on 17.06.2023 to the Successful Bidder and thereafter, upon compliance with the terms of the LoI, the Sale Certificate dated 20.06.2023 was issued by the Respondent / Liquidator in favor of CCTHPL and in fact, the amount was distributed by the Respondent / Liquidator to the Stakeholders of the Corporate Debtor as per the provisions of I&B Code,

2016 and its Regulations, 2016. Copy of the LoI dated 17.06.2023 and the Sale Certificate dated 20.06.2023 is attached herewith as **ANNEXURE-RI and ANNEXURE - R2 respectively.**

3.3. It is stated that during the CIRP process, the Applicant Bank had submitted its Claim belatedly on 18.11.2022 in Form - C for a sum of Rs.15.07,33,733.54/- and the same was rejected by the then RP vide Email dated 01.12.2022, by informing that the Claim was not submitted within a stipulated time and the account of the Principal Borrower M/s. Rajaram Flour Mills Pvt. Ltd., stands as "Standard Account" and in fact, no default has been committed by the Principal Borrower and further, the Guarantee provided by the Corporate Debtor was not invoked by the Applicant Bank.

3.4. In addition to the above, it is stated that the RP has informed the Applicant Bank that the Corporate Debtor was undergoing CIRP and therefore, requested the Applicant Bank, to issue directions to the Principal Borrower to replace the collateral security given by the Corporate Debtor and to release the original documents from the mortgage. However, no response was provided by the Applicant. Likewise, the then RP addressed an Email dated 10.12.2022 to the Principal Borrower, to release the mortgage and handover the original title documents to the then RP. Copy of the Emails dated 01.12.2022 and 10.12.2022 addressed by the then RP to the Applicant and the Principal Borrower is attached herewith as **ANNEXURE-R3 and ANNEXURE-R4 respectively.**



3.5. It is stated that in pursuance of the receipt of the Liquidation Order, the Respondent/Liquidator caused a Public Announcement in Form - B on 11.03.2023 informing the commencement of Liquidation of the Corporate Debtor and calling for claims from the Creditors of the Corporate Debtor and fixed the last date for submission of claims on or before 08.04.2023. Copy of the Public Announcement in Form-B dated 11.03.2023 is attached herewith as **ANNEXURE-R5**.

3.6. It is further stated that the Applicant Bank had submitted its Claim in Form-D dated 05.04.2023 (**Page No. 43 to 45 of Application**) for a sum of Rs.13,41,18,602.90/- towards the Corporate Guarantee executed by the Corporate Debtor, for the loans availed by one M/s Rajaram Flour Mills P. Ltd. Moreover, during the process of verification of the claim, the Respondent/Liquidator by his Email dated 17.04.2023 (**Page No. 106 of Application**) sought certain clarifications from the Applicant Bank. However, no response was provided by the Applicant Bank and accordingly, the Respondent/Liquidator by his Email dated 11.05.2023 (**Page No. 109 & 110 of Application**) rejected the Claim of the Applicant Bank as more fully described therein and also, included the property detailed therein into the Liquidation Estate of the Corporate Debtor.

3.7. It is stated that pursuant to the rejection of the Claim, the Liquidator had exercised his powers and discharged his duties as per the provisions of I&B 2016 and its Regulations, 2016 and issued the E-Auction Sale Notice for the sale of the Corporate Debtor as a "Going Concern" on 18.05.2023 and the E- Auction was conducted on 16.06.2023,

wherein, CCTHPL was declared as the Successful Bidder. Consequently, the Respondent / Liquidator issued a LoI on 17.06.2023 and the Sale Certificate was issued in favor of CCTHPL on 20.06.2023.

3.8. It is stated that pursuant to the execution of the Sale Certificate dated 20.06.2023, the Respondent / Liquidator by his Letter dated 28.06.2023 (**Page No.111 & 112 of Application**) requested the Applicant Bank, to release the MoD and handover the original documents to the Respondent / Liquidator within 10 days. However, despite of receipt of the above Letter, the Applicant Bank has chosen to remain silent for the reasons best know to them.

3.9. It is stated that the Claim of the Applicant was rejected by the Liquidator on 11.05.2023 and the Applicant ought to have filed an Application challenging the rejection of the Liquidator within 14 days as per Section 42 of I&B Code, 2016 i.e., 25.05.2022. However, the Applicant has filed the Application bearing IA/1714(CHE)2023 under Section 42 of I&B Code, 2016 only on 03.09.2023 with a delay of 104 days.

3.10 It is stated that the Applicant has filed an Application bearing *IA / 1714 (CHE) 2023* before the Hon'ble Tribunal, to condone the delay of 104 days for filing the Application bearing *IA/1713 (CHE) 2023* and further, the Applicant relies to the medical, administrative, search of documents, obtaining signature and seal from the Authorised Signatory, to substantiate the delay in filing the Application bearing *IA/1713(CHE) 2023*.

3.11. It is stated that the averments made by the Applicant in Para No. 9 of the Application bearing *IA / 1714 (CHE) 2023* was not supported with any documents having evidentiary value to substantiate its delay. In fact, the documents were already submitted by the Applicant Bank along with the Claim before the Liquidator. Therefore, the alleged reasons of delay are nothing but to coverup its wilful and negligent actions, in exercising their rights under Section 42 of 1&B Code, 2016.

3.12. It is stated that the Hon'ble Supreme Court of India in Civil Appeal No. 4952 of 2019 in the matter of *Gaurar Hargovindbhai Dave vs. Asset Reconstruction Company (P) Ltd., & Anr.*, restated the well-established and well settled principle that "*there is no equity about limitation.*"

3.13. It is stated that the Applicant was required to file an Application under Section 42 of I&B Code, 2016 on or before 25.05.2022. However, the Application was filed only on 03.09.2022 without substantiating the delay supported with any sufficient reasons. In fact, the Respondent/Liquidator through E- Auction has sold the Corporate Debtor as a Going Concern and executed the Sale Certificate in favor of the Successful Bidder on 20.06.2023 and also, distributed the amounts as per the provisions of 1&B Code, 2016.

3.14. It is stated that the above circumstances of the case would establish the fact that the Applicant had not made out the prima facie case and not supported with the documents having evidentiary value, to

substantiate the delay. Hence, the Application bearing IA / 1714 (CHE) 2023 is liable to be rejected in limine.

3.15. It is stated that the Applicant had filed a Claim for a sum of Rs.13,41,18,602.90 towards the Corporate Guarantee executed by the Corporate Debtor, for the loans availed by one M/s.Rajaram Flour Mills P. Ltd. In fact, while verifying the claim, the Respondent/Liquidator by his Email dated 17.04.2023 (**Page No. 106 of Application**) sought certain clarifications from the Applicant Bank. However, no response was provided by the Applicant Bank and accordingly, the Respondent/Liquidator by his Email / Letter dated 11.05.2023 (**Page No. 109 & 110 of Application**) rejected the Claim of the Applicant Bank and also, included the property into the Liquidation Estate of the Corporate Debtor, with the following reasons:

- a. No Charge has been created or registered with MCA.
- b. As the Company i.e., M/s, Rajaram Flour Mills P. Ltd., is regular in payment, Debt due become payable does not arise.
- c. Corporate Guarantee has not been invoked.

3.16. It is stated that pursuant to the receipt of the Rejection Email addressed by the Respondent/ Liquidator, the Applicant Bank by its Email dated 12.05.2023 (**Page No. 107 & 108 of the Application**) replied to the clarifications sought for by the Respondent/ Liquidator. A bare perusal of the above Email categorically stipulates that the account of the

Principal Borrower "M/s. Rajaram Flour Mills P. Ltd., is an Active Account and the Applicant Bank has not invoked the Corporate Guarantee provided by the Corporate Debtor". In other words, the account of the Principal Borrower was not declared as NPA and there are no outstanding dues payable as against the Principal Borrower.

3.17. It is stated that the Guarantee Agreement executed by the Corporate Debtor in favor of the Applicant Bank, specifically necessitates the Applicant Bank, *to issue Notice of Demand to the Corporate Debtor / Guarantor*, for any amount that is outstanding against the Principal Borrower. The relevant clause is extracted hereinunder for ready reference.

*"10. The Guarantor/s agree/s to pay without demur to the Bank any amount that is outstanding against the borrower directly or indirectly on receipt of the notice of demand from the Bank"*

3.18. It is stated that the Hon'ble Supreme Court of India in the matter of *Laxmi Pat Surana vs. Union Bank of India & Anr.*, (2021) 8 SCC 481 had settled the law with respect to the Principal Borrower and the Corporate Guarantee and the relevant observations is extracted hereunder for ready reference.

*"18. The term "financial creditor" has been defined in Section 5(7) read with expression "Creditor" in Section 3(10) of the Code to mean a person to whom financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to. This means that the applicant should be a person to whom a financial debt is owned. The expression "financial debt" has been defined in Section 5(8). Amongst other*

categories specified therein, it could be a debt along with interest, which is disbursed against the consideration for the time value of money and would include the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of the same clause. It is so provided in sub-clause (i) of Section 5(8) of the Code to take within its ambit a liability in relation to a guarantee offered by the corporate person as a result of the default committed by the principal borrower. The expression "debt" has been defined separately in the Code in Section 3(11) to mean a liability or obligation in respect of "a claim" which is due from any person and includes a financial debt and operational debt. The expression "claim" would certainly cover the right of the financial creditor to proceed against the corporate debtor being a guarantor due to the default committed by the principal borrower.....

19. Indubitably, a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) of the Code. For, as aforesaid, the expression "default" has also been defined in Section 3(12) of the Code to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be.

27. In law, the status of the guarantor, who is a corporate person, metamorphoses into corporate debtor, the moment principal borrower (regardless of not being a corporate person) commits default in payment of debt which had become due and payable. Thus, action under Section 7 of the Code could be legitimately invoked even against a (corporate)

*guarantor being a corporate debtor. The definition of "corporate guarantor" in Section 5(5A) of the Code needs to be so understood.*

*28. ....Whereas, upon default committed by the principal borrower, the liability of the company (corporate person), being the guarantor, instantly triggers the right of the financial creditor to proceed against the corporate person (being a corporate debtor)..."*

3.19. It is stated that the contentions of the Applicant Bank and the reliance of the Judgments of the Hon'ble NCLAT, are squarely not applicable to the facts and circumstances of the present case. In fact, the Judgments of the Hon'ble NCLAT relied by the Applicant Bank are with respect to the CIRP process and moreover, the Principal Borrower was declared as NPA. Hence, the contention of the Applicant Bank is liable to be dismissed.

3.20. The Respondent / Liquidator stated that the Applicant Bank while submitting the Claim before the Liquidator, had placed some of the documents as more fully described in Column No. 4 of the Claim Form, to substantiate its Claim (**Page No. 44 of the Application**). In fact, the CERSAI Report dated 06.05.2015 was not submitted by the Applicant Bank, to the Liquidator at any relevant period of time.

3.21. It is further stated that the Applicant Bank by its Email dated 12.05.2023 replied to the clarifications sought for by the Respondent / Liquidator, wherein, the Applicant Bank specifically informed the Liquidator that no charge has been created or registered with MCA. Moreover, the Applicant Bank had not informed the Respondent/Liquidator on the CERSAI Report dated 06.05.2015. This

being the case, the reliance of the Applicant Bank with the CERSAI Report dated 06.05.2015, to substantiate themselves as the Secured Financial Creditor directly before the Hon'ble Tribunal by way of the present Application, is not admissible in the eye of law.

#### **4. ANALYSIS AND FINDINGS**

4.1. Heard the counsels of the applicant and respondents. Perused the submissions made.

4.2. It is seen that Corporate Debtor M/s. Shree Murugan Flour Mills Pvt Ltd. had given corporate guarantee for a loan given to M/s. Rajaram Flour Mill Pvt Ltd by Canara Bank (erstwhile Syndicate Bank) and in addition also provided security of 45.1 cents of commercial vacant land at Survey No 174/5 Part, in Kurichi, Coimbatore by way of equitable mortgage.

4.3. M/s. Rajaram Flour Mills Pvt Ltd, the principal debtor continues to be standard asset in the books of Canara Bank, the applicant. Based on the notice received about CIRP and liquidation process, the applicant had filed the claim before Resolution Professional and Liquidator respectively, as a secured financial creditor, though with some delay.

4.4. Both, Resolution Professional and liquidator rejected the claim of the applicant stating that the principal debtor is a standard asset ,



the Corporate guarantee has not been invoked and that there is change in management of M/s. Rajaram Flour Mills Pvt Ltd, among other reasons.

4.5. The sequence of events is enumerated below:

#### Dates and events

SL NO.	DATES	EVENTS
1	18.12.2015 13.10.2017 30.09.2019 26.07.2021	Guarantee agreement signed by Corporate Debtor in favour of Canara Bank for loan availed by M/s. Rajaram Flour Mills Pvt Ltd
2	06.05.2015 17.12.2015 28.08.2020	Mortgage by Deposit of Title deed by Corporate Debtor of 45.1 cents of Commercial Vacant land at Survey No 174/5 Part CHU 006, Commercial Side , Kurchi NHS Phase II Scheme, Kurchi , Coimbatore
3	03.02.2015	Board Resolution of Corporate Debtor to provide security
4	21.04.2022	Initiation of CIRP of Shree Murugan Flour Mills Pvt Ltd
5	18.11.2022	Applicant filed claim to RP belatedly.
6	01.12.2022	Claim rejected by RP
7	10.12.2022	Letter of RP to Board of Principal Debtor to release the mortgage and handover the original title documents
8	06.03.2023	Date of liquidation
9	05.04.2023	Claim submitted by Applicant in Form D
10	17.04.2023	Liquidator sought clarification by e-mail
11	11.05.2023	Claim rejection mail by liquidator
12	12.05.2023	Applicant responded by e-mail to mail dated 17.04.2023
13	18.05.2023	Notice for e-auction
14	16.06.2023	Public auction – Corporate Debtor sold as a going concern
15	20.06.2023	Sale Certificate issued
16	28.06.2023	Letter by liquidator to release the mortgage and hand over the title deed to successful bidder.
17	28.08.2023	IA 1713 filed under Section 42 of IBC by the Applicant praying for setting aside the order of liquidator dated 11.05.2023
18	28.08.2023	IA 1714 filed under Rule 11 of NCLT Rules seeking condonation of delay in filing application under Section 42 of IBC

4.6. In IA/1713/ CHE/ 2022 filed under Section 42 of IBC Code, the applicant has sought direction from the tribunal asking the liquidator to admit the claim of applicant for the full amount as a secured financial

creditor . In order to analyze whether the action of the liquidator in not accepting the claim of the applicant was correct or not, based on the factual matrix and the dates and events, *following key points have to be addressed:*

- a) *When there is no default by the Principal Debtor, whether the claim submitted by the applicant could be accepted?*
- b) *Whether the Security Interest of the applicant gets extinguished during resolution/ liquidation?*
- c) *Whether delay in filing the application under Section 42 of IBC can be condoned?*

**4.6.(a) When there is no default by the Principal Debtor, whether the claim submitted by the applicant could be accepted?**

i) It is observed that the claim of the applicant was not accepted during CIRP process and during liquidation. Among the reasons stated for rejection of the claim, the main reason was that the Principal Debtor M/s. Rajaram Flour Mills Private Ltd continues to be a standard asset.

ii) The applicant had cited two case laws in its favour, which are examined in detail as under:

a) In the *Export Import Bank of India vs Resolution Professional of JEKPL Pvt Ltd. Company Appeal No 304 of 2017 supra* , Hon'ble NCLAT held that

*'56. Therefore, we hold that maturity of claim or default of claim or invocation of guarantee for claiming the amount has no nexus with filing of claim pursuant to public announcement made under Section 13(1)(b) r/w Section 15(1)(c) or for collating the claim under Section 18(1)(b) or for updating claim under Section 25(2)(e).'*

However it is observed in the above case that ‘ *There is admitted default by the ‘Principal Borrower’- JENV Netherlands and JEHNV in the payment of respective dollar loans*’. Per contra in the current case , the Principal Debtor M/s. Rajaram Flour Mills Private Ltd continues to be a standard asset and hence the above case law does not apply.

b) In *Edelweiss Asset Reconstruction Company Ltd Vs V Mahesh and Ors Company Appeal (AT) (CH) (INS) No 226 of 2021Supra*, as against claim amount of Rs.507 crore, only 119.72 crore was accepted. The issue in the above case was that due to non-submission of proof of Corporate guarantee , non-reflection of Corporate Guarantee in Books of Accounts of Corporate Debtor , non- invocation of corporate guarantee and non- crystallization , the full claim was not accepted by RP. Hon’ble NCLAT gave direction to the Resolution Professional to verify all the documents and admit the claim of the applicant. Further, it is observed that the loan to principal creditor covered by Corporate Guarantee was assigned by Indusind Bank (original financial Creditor) to Edeleweiss Asset Reconstruction Company , an ARC , as the loan had become NPA. So this case law also will not apply to the current case.

iii) *As per Section 128 of Indian Contract Act 1872, the liability of the surety is co-extensive with that of principal debtor.*

iv) For making a claim there should be debt due and default. In respect of Corporate Guarantee, the debt becomes due, when it is

invoked. In the current case, the **principal debtor continues to be standard asset and no default has occurred.**

v) The corporate guarantee was not invoked, as there was no debt due and default. The guarantee agreement executed by the Corporate Debtor, in favor of Applicant Bank, necessitates the Applicant Bank to issue notice of demand to the Corporate Debtor/ Guarantor for the amount outstanding against the Principal Borrower as under

*'10. The Guarantor/s agree/s to pay without demur to the Bank any amount that is outstanding against the borrower directly or indirectly on receipt of notice of demand from the Bank',*

vi) In *Laxmi Pat Suranana vs Union Bank of India, Civil Appeal No 2734 of 2020* , supra, Hon'ble Supreme Court while discussing about Corporate Guarantee links it with default of Principal Debtor as under:

18,. *The expression "financial debt" has been defined in Section 5(8). It is so provided in Section 5(8)(i) of the Code to take within its ambit a liability in relation to a guarantee offered by the corporate person as a result of the default committed by the principal borrower. The expression "claim" would certainly cover the right of the financial creditor to proceed against the corporate person being a guarantor due to the default committed by the principal borrower. The expression "claim" has been defined in Section 3(6), which means a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured. It also means a right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment in respect of specified matters.*

19. *Indubitably, a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well as the*

*guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) of the Code. For, as aforesaid, expression "default" has also been defined in Section 3(12) of the Code to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be.*

vii) In the above case, Hon'ble Supreme Court held that liability in relation to the guarantee offered by the corporate person arises only as a result of default committed by the principal borrower. The facts in the above case where principal debtor is not in default are similar to the current case.

viii) In the current case, the liquidator rejected the claim of the applicant adducing the reason that the principal debtor is a standard asset, which is in line with the decision of the Supreme Court in the above mentioned case. **In view of the above, the action of non-acceptance of the claim of the applicant by the liquidator is correct.**

**4.6.(b) Whether the Security Interest of the applicant gets extinguished during resolution/ liquidation?**

i) *It is observed that, when the applicant filed Form D as a financial creditor in liquidation on 05.04.2023, it did not opt to stand out of the liquidation process as per provisions of Section 52 of IBC.*

ii) As the applicant had not opted for standing out of liquidation process, the secured asset held by the applicant had become part of liquidation estate as laid out in Regulation 21 A of IBBI Liquidation Revaluations as under:

**21A. Presumption of security interest.**

*(1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II: Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.*

iii) Further it is observed that in the email dated 11.05.2023 to the applicant, liquidator had mentioned the property mortgaged to the applicant would also be part of the liquidation assets of the company which would be sold as under:

*'45.1 cents of commercial vacant land situated at SF No 174/5 Part Kurichi, Phase II Scheme, Coimbatore, belongs to the company has been brought under liquidation estate of M/s. Shree Murugan Flour Mills Private Ltd. It will be sold along with other assets of the company in the liquidation process.'*

iv) The applicant had not raised any objection with the liquidator in this regard.

v) *In view of the above acts of the applicant, it is concluded that the Security Interest of the applicant got extinguished and the property became part of liquidation estate.*

**4.6.(c) Whether delay in filing the application under Section 42 of IBC can be condoned?**

i) The applicant has filed *IA/IBC/ 1714/ CHE/2023* under Rule 11 of NCLT Rules seeking condonation of delay of 102 days in filing the *IA/IBC/ 1713/ CHE/2023* under Section 42 of IBC.

ii) In the current case, it is observed that :

- a) The claim filed during CIRP on 18.11.2022 was rejected on 01.12.2022.
- b) The claim filed during liquidation on 05.04.2023 was rejected on 11.05.2023, after seeking clarification from applicant on 17.04.2023.
- c) Liquidator had written to the Applicant on 28.06.2023 to release the mortgage and hand over the title deeds stating that e-auction of the Corporate Debtor as a going concern was completed on 16.06.2023 and Sale Certificate had been issued on 20.06.2023.

- d) The reason stated for 102 days delay due to administrative and managerial reasons. No documentary evidence has been produced.
- iii) The applicant was made aware that the security held by it was part of liquidation estate to be sold with other assets by way of e-auction on a going concern basis. The liquidator had sent a mail on 28.06.23 about the e-auction, asking the applicant to release the mortgage and handover the title deeds. The appeal under Section 42 of IBC was filed by the applicant on 28.08.2023 with a delay of 102 days after rejection of claim and 2 months after liquidator's letter dated 28.06.2023 informing about sale of the Corporate Debtor as a going concern.
- iv) It is observed that the current appeal had been filed after 2 months from the date of issue of Sale Certificate. There was no documentary evidence submitted for the delay of 102 days in filing the appeal and no convincing reason given for the delay. Hon'ble Supreme Court in the matter of *Gaurar Hargovindbhai Dave vs Asset Reconstruction Company P Ltd in Civil Appeal no 4952 of 2019* restated the well settled principle that '*there is no equity about limitation*'. **In view of the above, delay in filing the appeal under Section 42 is not condoned.**

5. **CONCLUSION:**

(a) i) In IA / IBC/1713/CHE/ 2023 , the relief sought is as under:

*'It is therefore, for the reasons stated above, most respectfully prayed that this Hon'ble Tribunal may be pleased to set aside the Order of the Liquidator dated 11,05.2023 and to direct the Respondent Liquidator to admit the claim of applicant in its entirety and as a Secured Financial*



*Creditor and pass such other orders as this Hon'ble Tribunal may deem fit and necessary as per the facts and circumstances of the case and render justice'*

ii) As discussed in Para 4.6.(a) above , liability in relation to the guarantee offered by the corporate person will arise only on the default committed by the principal borrower . Hon'ble Supreme Court in *Laxmi Pat Suranana vs Union Bank of India, Civil Appeal No 2734 of 2020* supra had upheld the same. Further, as discussed in Para 4.6.(b) above, as the applicant had not opted for standing out of liquidation process, the secured asset held by the applicant had become part of liquidation estate as laid out in Regulation 21 A of IBBI Liquidation Rules.

iii) **In view of the above, the relief claimed by the applicant to admit the claim and treat it as a secured creditor is not allowed.**

(b) i) The relief sought in IA /IBC/1714/CHE 2023 is as under:

*'It is therefore , for the reasons stated above, most respectfully prayed that this Hon'ble Tribunal may be pleased to condone the delay of 102 days in filing the Appeal under Section 42 of the Code which is filed along with this application as IA No of 2023 in CP(IB)/233/CHE/2021 and thereby hear and pass order in the said application, and /or pass such other order this Hon'ble Tribunal deem fit and thus render justice'*

ii) As mentioned in Para 4.6.(c) above , the appeal under Section 42 was made with the delay of 102 days after rejection by liquidator and further 2 months after information about 'Sale as a Going Concern' came to the knowledge of the applicant , without

adducing any convincing reason for delay in filing the application.

**Hence, the relief sought in IA /IBC/1714/CHE 2023 is not allowed.**

**(c) Both the applications IA /IBC/1713/CHE 2023 and IA /IBC/1714/CHE 2023 are dismissed for the reasons adduced.**

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)