



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I), CHANDIGARH**

CA No.739/2019
in
CP(IB) No.67/Chd/Pb/2017
(Admitted)

**Under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016**

IN THE MATTER OF:

Allahabad Bank

..... Financial Creditor

VS.

M/s Supreme Tex Mart Ltd

..... Corporate Debtor

AND IN THE MATTER OF CA NO.739/2019:

M/s Parkash Cotton Pressing Factory,
Having its Principal Place of Business at,
Village Road, Mansa (Punjab)

..... Operational Creditor/ Applicant

Versus

1. Allahabad Bank,
Having its Head Office at
2, Netaji Subhash Road, Kolkata,
And having its Branch at
Industrial Finance Branch, 165, Industrial Area- A,
Ludhiana- 141001

.....Respondent No. 1

2. Mr. Bhupesh Gupta,
Resolution Professional & Liquidator,
M/s Supreme Tex Mart Limited,
(Earlier Known as Supreme Woollen Mills Pvt. Ltd.)
Having its head office at
B-72, Focal Point, Phase- VIII, Ludhiana (Punjab)
(Erstwhile registered office at
424, Industrial Area- A Ludhiana).

.....Respondent No. 2



Order delivered on: 02. 01.2025

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Aalok Jagga, Mr. APS Madaan, Ms. Vibhu Aggarwal, Mr. Sahil Lohan Advocates.

For the Respondent No.1 : None

For the Respondent No.2 : Mr. Atul V. Sood, Mr. Nahush Jain Advocates.

Per: SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
SH. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)

ORDER

This Company Application (hereinafter referred to as the “**CA**”) has been filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**” or “**Code**”) by M/s Parkash Cotton Pressing Factory (hereinafter referred to as the “**Applicant**” or “**Operational Creditor**”) praying for directing the Resolution Professional-now-Liquidator (hereinafter referred to as the “**RP**” or “**Liquidator**”) to release the payment of dues on account of interest due towards the Applicant and other Operational Creditors including employees, accrued during the period of Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”).

2 The present CA was disposed of as infructuous vide this Tribunal Order dated 06.12.2023. However, the Applicants challenged the said order before Hon'ble NCLAT, which vide orders dated 05.07.2024 remanded the matter to this Tribunal as it was of the view that the matter may be heard afresh and decided after hearing both the parties.



FACTS OF THE CASE

3 The brief facts, as stated by the Applicant in the CA, are as below:

- (i) Pursuant to an application bearing C.P. No.(IB) 67/Chd/Pb/2017), filed under Section 7 of the Code by the Allahabad Bank (hereinafter referred to as the “**Financial Creditor**” or “**Respondent No.1**”), this Tribunal vide its Order dated 29.09.2017 (copy annexed as Annexure A/1 with the CA) initiated the CIRP of M/s Supreme Tex Mart Limited (hereinafter referred to as the “**Corporate Debtor**”).
- (ii) The Applicant is the Operational Creditor of the Corporate Debtor and his claim of Rs.3,01,90,402/- was duly admitted in relation to CIRP of the Corporate Debtor.
- (iii) The Corporate Debtor went into liquidation vide this Tribunal Order dated 08.08.2018 (a copy annexed as Annexure A/2 with the CA). The RP continued the operations of the Corporate Debtor on uninterrupted, as a going concern as per the provisions of Regulation 32(c) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as the “**Liquidation Regulations**”).
- (iv) As per the mandate of Section 20(1) of the Code, the RP shall make every endeavour to protect and preserve the value of the property of the Corporate Debtor and manage its operations as a going concern. Therefore, keeping in mind this object, the Applicant still continued to supply raw material to the Corporate Debtor in spite of its unpaid claim of Rs.3,01,90402/- just with intent to help the Corporate Debtor being run as going concern.



- (v) Subsequently the Corporate Debtor went into liquidation and it was ordered by this Tribunal that the same may undergo liquidation as a going concern. At the time of liquidation, the Corporate Debtor owed an amount of Rs.7,19.65,695/- towards the supply of raw material by the Applicant during the CIRP period besides the admitted amount of claim as Operation Creditor of Rs.3,01,90.402/-. The Applicant supplied raw materials worth Rs.3.34,48.392/- post the liquidation order.
- (vi) Subsequently, the Applicants were paid certain amount for the raw materials supplied during the CIRP process and certain amount for the raw materials supplied during the liquidation process. As per the accounts of the Applicant, Rs.2,00,00,000/- have been paid for the bills pertaining to the raw materials supplied during the CIRP and Rs.1,40,00,000/- have been paid for the raw materials supplied during the liquidation. The Liquidator had to clear (a) Rs.5,19,65,695/- on account of the pending CIRP costs of raw materials supplied during the CIRP, (b) Rs.1,94,00,000/- on account of the raw materials supplied during the liquidation process, and (c) Rs. 2.29,56,480.20/- on account of interest due.
- (vii) Therefore, the Applicant in order to seek his dues for the CIRP process moved CA No.429/2018 before this Adjudicating Authority seeking direction that the dues of the Applicant being classified as CIRP costs must be cleared by the Respondent No.2 on priority. This Tribunal, vide its order dated 27.11.2018 (copy annexed as Annexure A/3 with the CA), disposed off the CA No. 429/2018 by holding that the dues of the Applicant have a priority over the dues of any Financial Creditor.
- (viii) Thereafter, the Applicant sent several reminders to the Liquidator seeking



clearance of their dues pertaining to the CIRP in compliance of this Tribunal Order in the CA No. 429/2018. However, the Liquidator avoided making any payment to the Applicant and instead stopped the payment for the material supplied during the liquidation period. Therefore, the Applicant moved CA No. 606/2018 to this Adjudicating Authority seeking recovery of his dues.

- (ix) The Liquidator had been duly deducting TDS on the interest due and the Form 26AS (copy annexed as Annexure A/5 of the CA) shows the TDS deducted on account of interest paid till 31.03.2018. Now on account of non-payment of the due towards the Applicant, interest due has accumulated to the tune of Rs.2,29,56,480.2/- as shown in table below

Period when material was supplied	Amount of Interest
During CIRP (Mansa Unit)	Rs.67,93,385.18/- (Credit)
During Liquidation (Mnnsa Unit)	Rs.6,70,372.82/- (Debit)
During CIRP (Sangaria Unit)	Rs.2,76,01,810/- (Debit)
During Liquidation (Sangaria Unit)	Rs.14,77,682.56/- (Debit)
Total	Rs.2,29,56,480.2/-

The tabulation charts for the interest due as on 07.08.2019 and the Statement of Accounts for the period of 01.04.2018-31.03.2019 have been annexed as Annexure A/6 (Colly) and Annexure A/7 with the CA.

REPLY BY THE RESPONDENT NO. 1

4 No reply has been filed by the Respondent No.1.

REPLY BY THE RESPONDENT NO. 2

5 The Respondent No.2, in its reply submitted vide Diary No. 01241/4 dated 20.08.2024, wherein it is stated that:



- (i) The memo of parties shows Mr. Bhupesh Gupta as the Liquidator of the Corporate Debtor. However, Mr. Bhupesh Gupta, who was appointed as Liquidator vide order dated 08.08.2018, was replaced with Mr. Ravinder Goel as the Liquidator, vide this Tribunal order dated 01.11.2019 in CA No. 941 of 2019. Thus, the reply has been filed through Mr. Ravinder Kumar Goel in capacity of the Liquidator of the Corporate Debtor.
- (ii) The Hon'ble NCLT had vide its order dated 06.12.2023 disposed off IA No. 739/2019 as being infructuous, by noting that CA No. 739/2019 and CA No. 606/2018 are filed by the Applicant and the claim of Applicant is taken care of in CA No. 606/2018.
- (iii) The Applicant had earlier filed CA No. 429/2018 and CA No.466/2018 also on similar issues and contentions. But the Applicant never claimed any interest on his amount due in CA No. 606/2018, CA No.429/2018 and CA No.466/2018. In fact, a bare perusal of the Invoices attached by the Applicant shows that none of the Invoices had any provision or stipulation for interest.
- (iv) Similar to Applicant, various other suppliers had also made supplies during CIRP/ liquidation period. The Applicant in its applications had been claiming to get the amounts released even before the closure of CIRP/liquidation, i.e., even before the realization of proceeds from the sale of assets of the Corporate Debtor.
- (v) The Financial Creditors of the Corporate Debtor had raised various issues/ concerns regarding the costs during CIRP and liquidation and therefore, State Bank of India, one of the Financial Creditors of Corporate Debtor, had filed an IA No.574/2021 under Section 60(5) of the IBC, read with Rule



11 of the NCLT Rules 2016, seeking appropriate directions to appoint a competent person to get the audit of the CIRP cost of the whole CIRP period, as well as the liquidation cost for the period of the Corporate Debtor from 08th August, 2018 to 31st October, 2019, thus, seeking a audit for the period from 29.09.2017 to 31.10.2019. The said IA No.574/2021 was allowed by this Tribunal vide Order dated 28.09.2022, by directing the Liquidator to appoint independent Auditor for the purpose of audits of books of account of the Corporate Debtor.

- (vi) Accordingly, D. Pathak & Co., Chartered Accountants, were appointed to do the audit and after conducting the Audit exercise, the Report dated 14.02.2023 was submitted to the Liquidator, which was then placed before the Financial Creditors in a meeting held on 22.02.2023 and before this Tribunal vide IA No. 674/2023. Subsequently, due to some glitches being discovered in Audit report, an updated report (copy annexed as Annexure R-9 to the reply) was submitted by way of IA No.1323/2023 and taken on record on 01.08.2023 (copy annexed as Annexure R-8 to the reply).
- (vii) Pursuant to the audit conducted as per the documents/ information provided by the Applicant, Auditor did not find any amount due to the Applicant on account of interest and it was identified by the Auditor, the outstanding amount of the Applicant for the supplies made during CIRP period and liquidation period as below:

Stage	CIRP	Liquidation
Amount (Rs.)	6,95,24,683.35	0.00
Total of CIRP & Liquidation	6,95,24,683.35	



- (viii) On 08.12.2023, the Applicant on its letterhead executed an undertaking in terms of order dated 06.12.2023 (copy annexed as Annexure R-11 of the reply), which was signed by the Applicant in terms Regulation 43 of Liquidation process Regulations.
- (ix) In terms of undertaking signed by the Applicant, it has accepted the amount determined by the Auditor in full and final satisfaction of the dues and accordingly, the amount of Rs.6,95,24,683.35 was paid to the Applicant after receipt of aforesaid undertaking in furtherance of the directions given by this Tribunal Order dated 06.12.2023.
- (x) The Applicant had never pressed for his IA No.739/2019 and never made any submissions in this regard before this Tribunal at any point of time. The Appeal filed before Hon'ble NCLAT against the order dated 06.12.2023 in IA No.739 of 2019 is only an afterthought, and a malafide attempt to extort money from the Corporate Debtor in an illegal manner.
- (xi) There are no purchase orders or supply contracts relied upon by the Applicant to claim interest from the Corporate Debtor. The Applicant has not produced any document to show that the Corporate Debtor agreed to pay interest on account of delayed payment of the invoices, especially for the period of CIRP/ liquidation. No interest is payable to a party as a matter of right, especially for the period of CIRP/ liquidation, because the same will then also disturb the distribution in terms of Section 53 of IBC.
- (xii) The Liquidator has recently received a GST Show Cause Notice No. 89/2024-25-GST dated 30.07.2024 for Corporate Debtor, from the Office of The Principal Commissioner, Central GST Commissionerate, Ludhiana, in relation to illegal availing of ITC based on goods-less invoices of fake/



non-existing/ non-operational suppliers, including the Applicant herein. It has been mentioned in the said GST Notice that based on the investigation, it has been found that the Applicant (Parkash Cotton Pressing Factory) is also a fake/ non-existing/ non-operational supplier. The same has been observed after an investigation being conducted on this aspect, the details of which are mentioned in the said GST notice itself. As per Panchnama dated 03.09.2020 drawn by the officers of DGGI Jaipur Zonal Unit, the firm in the name and style of M/s Parkash Cotton Pressing Factory could not be found. On further enquiry, it was gathered by the Officers that no such factory had ever worked at the given address or nearby area. Further statement of Sh. Kushagar Garg S/o Sh. Vijay Kumar (Karta of M/s Parkash Cotton Pressing Factory) has also been taken into account for the same.

- (xiii) As per the Audit Report, an amount of Rs.39,62,86,850 was paid to the Applicant during the CIRP and Liquidation period itself, after adjustment of which Rs.6,95,24,743 was remaining, which was also paid in furtherance of Order dated 06.12.2023. Thus, a total amount of Rs.46,58,11,593 was paid to the Applicant during CIRP and Liquidation period. However, the GST Notice shows that an amount of Rs.40,25,99,229 relating to the Applicant is based on goods-less sale. Thus, if the supplies claimed to have been made by Applicant are fake and fraudulent, then the amount already paid to Applicant is required to be refunded back to the Corporate Debtor under regulation 43 of Liquidation Process Regulations, 2016 besides serious legal consequences of the same.



REJOINDER BY THE APPLICANT

6 In counter response to the reply, the Applicant filed rejoinder vide Diary No. 01241/6 dated 06.12.2022, in which besides reiterating the submission made in the present CA, it is stated that:

- (i) It is a well settled law that the Judicial Notices of Trade Practices and Customs can be taken into consideration to understand the practice adopted in a particular market and as per a clarificatory circular for the year 2018-2019 (copy appended herewith as Annexure A-1 of the rejoinder) issued by Indian Cotton Association Limited (formerly known as Northern India Cotton Association limited), it is a common practice and convention amongst the suppliers of cotton that in case, the buyer lifts the cotton bales without any payment, then the seller, like the Applicant herein, would become entitled to interest @1.4% per month or 16.8% p.a. from the due date till the payment is received.
- (ii) The CA No.606/2018 filed by the Applicant was allowed vide this Adjudicating Authority Order dated 06.12.2023, whereby it was held that the Applicant is entitled to receive Rs.6,95,24,683/- against the material supplied to the Corporate Debtor. Once the Applicant has been held entitled to the main amount of the goods supplied, then it is a settled principle of law that he would also be entitled to the interest, which would have been accrued on such amount. The Liquidator cannot enrich himself at the cost of the suppliers, who have duly supplied material and hence are entitled for the due interest. The interest accrued on such amount cannot be used by the Liquidator for any other purpose except to pay the applicant herein.



- (iii) There was an unprecedented delay in the payment for the goods supplied and there is no provision, which prohibits the Applicant from claiming interest on such amount, which was held to be admittedly paid by the Liquidator to the Applicant. The reliance has been placed on the Order passed by the Hon'ble Supreme Court in the case of ***South Eastern Coalfields Limited vs. State of MP and Others***, the relevant extract of which is reproduced herein below:

"22. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement. Interest in equity has been held to be payable on a market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many."

- (iv) The Applicant also being a trader has been paying interest to its creditors i.e. Kotak Mahindra Bank and Axis Bank with @ 9% and 9.25% respectively per annum compounded monthly (copy of sanction/ renewal letters of these banks are annexed as Annexure A-2 of the rejoinder).
- (v) The interest has been paid previously by the Liquidator to the Applicant on delayed payments, which is quite unequivocal from the invoice dated 31.03.2018 (copy attached as Annexure A-3 of the rejoinder) and Form 26AS under Section 203AA of the Income Tax Act, 1961 (annexed with the Application as Annexure A-5). Therefore, the Liquidator is bound by the acts of the Corporate Debtor.
- (vi) The Liquidator in his reply has heavily relied upon the undertaking dated 08.12.2023 executed by the Applicant in full and final satisfaction of his



dues. The Applicant is a Sole Proprietorship Firm registered in the name of Mr. Vijay Kumar, who is the only person authorized to sign and execute any document with regard to the firm. The manager namely Kushagar Garg, who signed the undertaking, was only authorized to file the CA No.606/2018 before this Tribunal by a Special Power of Attorney executed by the Proprietor of the Firm in his name, which expired on the day, when the final order dated 06.12.2023 was passed by this Tribunal, therefore, had no right and authorization to sign and execute any such undertaking on behalf of the firm after expiration of such special power of attorney. Therefore, the undertaking dated 08.12.2023 does not hold any value in the eyes of law and is not a valid document.

(vii) Further, the Applicant was under financial duress at the time, when the undertaking was executed by the manager of the Applicant, because the pending dues of the Applicant were getting cleared after a prolonged time, hence, the Applicant did not even consider the consequences of such undertaking executed by its manager. The reliance has also been placed on the Judgement of the Hon'ble Supreme Court in the case of ***M/s Associated Construction Versus Pawanhans Helicopters Pvt. Ltd. In appeal (Civil) 3376-3377 of 2008 dated 07.05.2008.***

(viii) The show cause notice issued to the Liquidator by the GST Department, cannot be even remotely a reason for denying or delaying the adjudication of the present CA for inter alia following:

(a) As per order dated 28.03.2024 issued by GST Authorities (copy annexed as Annexure A-4 of the rejoinder), it is noticed in para 3 that accounts of Applicant were subject to GST Audit from July, 2017 to



March, 2021 under Section 65 of CGST Act, 2017.

- (b) The aforesaid order after verification of records of aforesaid period concluded tax liability of Rs.2,90,514/-, which pertains to the period, when Applicant made supplies to Corporate Director as CIRP commencement date is 29.09.2017 and liquidation order was passed on 08.08.2018 and supplies were made till 2019 and the aforesaid GST Audit is from July, 2017 to March, 2021.
- (c) Further, perusal of the show cause notice 30.07.2024 reflects in para 2.1 that Applicant/trading firm allegedly arranged cotton bales through various ginners in cash and then supplied to Corporate Director, which is end user and availed ITC on the strength of purchasers, of which allegedly GST was not paid at any stage. Therefore, Applicant received corresponding show cause notice dated 26.07.2024 (copy annexed as Annexure A-5 of the rejoinder), for which the reply has already been (copy annexed as Annexure A-6 of the rejoinder). It is clarified that all sales are on the basis of supporting documentary record and which can be examined by the authorities.
- (d) It is only a show cause and there cannot be presumption of infirmity in absence of any order and consequently, it has no relevance to the claim of Applicant regarding interest on delayed payments.
- (e) Even otherwise, the GST Show Cause Notice at Pg 230- 231 reflects foundational factual incorrectness because GST has presumed Rs.6,33,11,113/- to have been received from July, 2017 to November 2018 from Corporate Director, whereas as per record, amount



received during this period was more than Rs.20 crore.

- (f) Even otherwise, Liquidator has already got audit conducted and the report of such audit has been approved by all Financial Creditors and no objection has been raised to the said report till now. Even as per Liquidator, the report is correct and Liquidator by relying upon GST Show cause notice is self-contradicting his own act, which is impermissible, because it is not the case of Liquidator that payments made by Corporate Debtor are not as per law.
- (g) Further Liquidator has not placed any single document on record to show that it has replied to the contentions raised in the instant Show Cause Notice.

WRITTEN SUBMISSION BY THE APPLICANT

7 In compliance of the Order dated 19.09.2024 of this Tribunal, the Applicant filed the written submissions vide Diary No. 01241/7 dated 24.09.2024 in which besides reiterating the submission made in CA and rejoinder, it is stated that:

- (i) The Liquidator by retaining the amount, earned interest by keeping this amount in the FDR and it is unreasonable that Liquidator earned interest on the amount, which belonged to the Applicant as per section 61 of Sale of Goods Act, 1930. If Liquidator earned interest admittedly on the amount which belonged to the Applicant, it cannot retain that amount, because if timely payment would have made, Applicant would have earned interest on that payment.
- (ii) With regard to undertaking, the Applicant had no other option but to agree to the force of Liquidator. The moment the undertaking was given, cheque



was provided on 08.12.2023 which happens to be Friday and 09.12.2023 happened to be 2nd Saturday therefore cheque could be realised only by 11.12.2023-12.12.2023 and immediately thereafter on 19.12.2023, the Appeal before Hon'ble Appellate Tribunal was filed. It is therefore clear from the conduct of the Applicant that Immediately after receipt of the amount, which apparently was obtained under protest, appeal was filed. Sequence of events clearly show that applicant never wanted to give up his right to claim interest, which was stated for in the undertaking, but had that undertaking not been given, amount would not have been released and under coercion and financial duress such undertaking was given. Moreover, Order dated 06.12.2023 never required liquidator to obtain undertaking with respect to Applicant giving up right of interest, which he is claiming since 2019.

WRITTEN SUBMISSION BY THE RESPONDENT

8 in compliance of the Order dated 19.09.2024 of this Tribunal, the Respondent No. 2 filed the short note vide Diary No. 01241/8 dated 30.09.2024 in which besides reiterating the submission made in the reply, it is stated that while filing rejoinder the Applicant has built altogether new case and stand by making new pleadings, bringing new documents and taking different conflicting grounds, which has been replied by the Liquidator as follows:

- (i) There is neither provision in the law nor such precedent that the goods supplied by Applicant during CIRP/ liquidation is like an “interim finance” and thus interest is payable on the same for delayed payment.
- (ii) Indian Cotton Association Ltd., Bathinda is only a private body in Bathinda



and doesn't set any practice/ procedure and there is also no precedent shown. Also, it is neither a legislation making body under any law, nor recognized by IBBI or has any mention in IBC. Thus, reliance cannot be placed by the Applicant upon the letter of the above Association to claim interest.

- (iii) The applicant is incurring interest on the loans availed by him, has no relation to the claim of Interest by the Applicant and there is neither such provision in the law nor such precedent supporting Applicant's contention
- (iv) At the time of receiving money, the Applicant gave an undertaking of Mr. Kushagar Garg, who is the son of Mr. Vijay Kumar (proprietor of Applicant) and had always represented the Applicant before different forums and CA No.429/2018, CA No.466/2018, CA No.739/ 2019 and I.A. No.968/2022 were all filed by him. Moreover, Mr. Kushagar Garg is also shown as signatory and guarantor for all the loan facilities of Applicant. The Applicant is not denying the fact that the said undertaking was given by Mr. Kushagar Garg, but to refute and back-out from the undertaking given by Applicant, the Applicant is now taking a different stand that he was not authorized.

ANALYSIS AND FINDINGS

9 Before examining the issue, we also consider it appropriate to go through this Tribunal Order dated 06.12.2024, vide which the present Application was disposed of. The relevant extracts of the above Order are reproduced below:

"9. It is noted in the minutes of the 16th meeting of the financial creditors on 28.08.2023, that these issues have been discussed in detail and the relevant part of the same is extracted as under:

.....



.....

Financial Creditors ratified the revised audit report and unanimously concluded that all the creditors shall be paid the claims falling under CIRP/liquidation cost strictly as per the figures arrived at in the revised audit report as per the waterfall mechanism provided in the Code.”

10. A chart *containing* the IA-wise claims and the amount payable as per the audit report is as under:

Sr. No.	I.A. / C.A. No.	Name of Applicant	Amount claimed in Application		Amount Payable as per Audit Report			Match / Tally	
			CIRP	Liquidation	CIRP	Liquidation	Total		
2	606/2018	Prakash Cotton Pressing Factory	5,19,65,695	1,94,00,000	6,95,24,683.35		6,95,24,683.35	slight variation	
31	739/2019	Prakash Cotton Pressing Factory		Linked with CA 606/2018, therefore this is infructuous					

11. *We note that CA No.739/2019 and CA No.606/2018 are filed by the same party, i.e., Prakash Cotton Pressing Factory. And, the amounts outstanding as per the audit report mentioned at serial No. 2 in the table above. Thus, no separate processing of the claims made in CA No.739/2019 is warranted. In the result, CA No.739/2019 is rendered infructuous and disposed of accordingly.*

.....

17. In view of the above discussion, IA No. 739/2019 is dismissed as infructuous and all the other bunch applications are allowed and disposed of accordingly.”

10 It is noted from this Tribunal Order that the CA No.739/2019 was rendered infructuous, as the whole claim of the Applicant as per the Audit Report was allowed in CA No.606/2018. On perusal of the above Audit Report, it is noted that the Auditor at page 52 of the Auditor Report has stated as below:

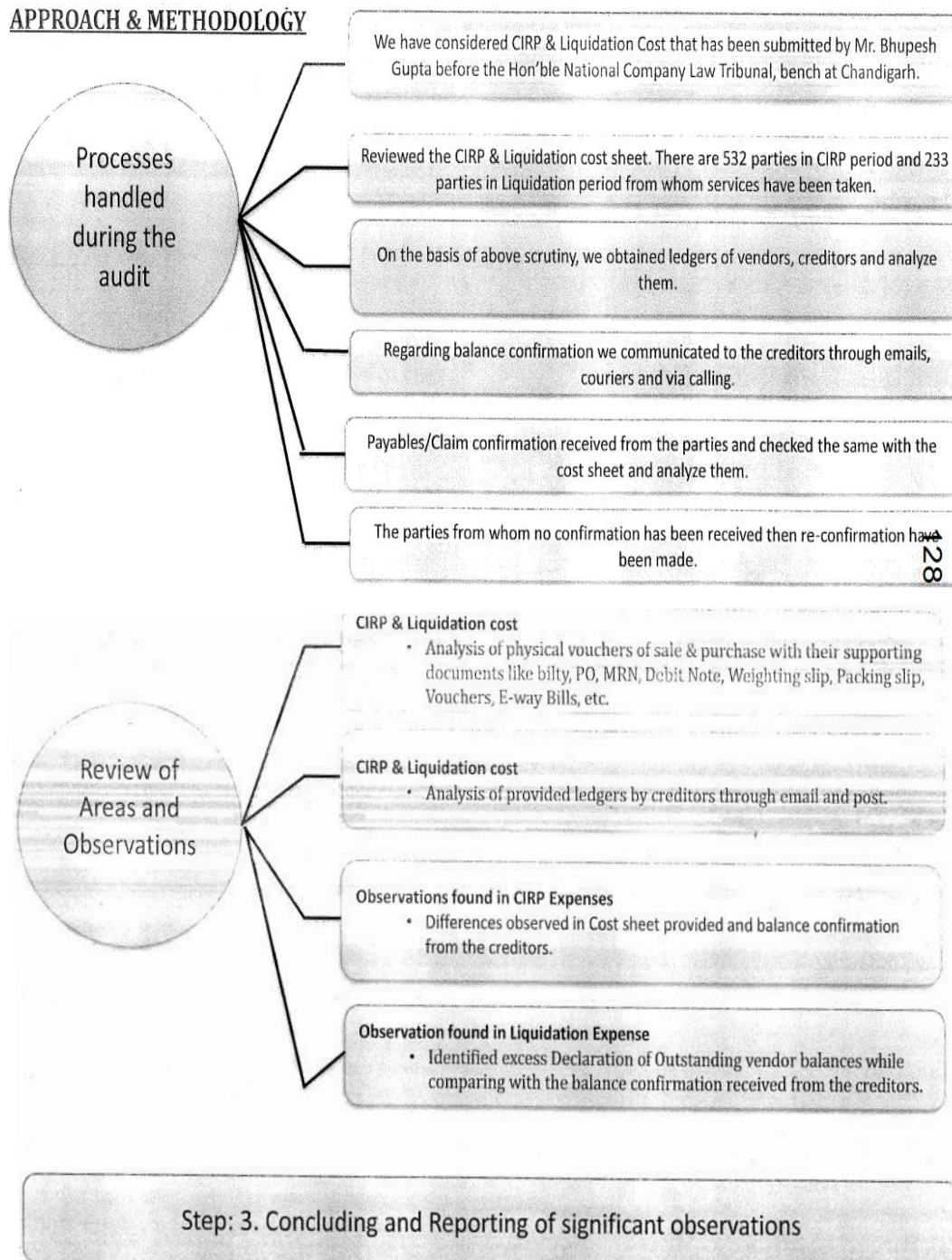
This final report (“Report”) is based on the data/information/description provided by Liquidator’s Team via hard copies, email from ipravinderkumargoel@gmail.com, documents available at Mr. Ravinder Kumar Goel (Liquidator) office premises & document’s/information received from creditors/parties. Hence, our observations are primarily based on review of such information/documents as provided by the above means.

Further, page 12 and 13 of the Auditor’s Report shows the approach &



methodology adopted in preparation of the report as below:

APPROACH & METHODOLOGY



From the above, it is observed that the auditor has prepared the report not only considering the invoices, but also after communication with the creditors. The Applicant being Operational Creditors, it was safe to assume that his claim was worked out by the auditor after considering all the documents related thereto and communication with him.



11 We also consider it appropriate to peruse the NCLAT order dated 05.07.2024, vide which the matter has been remanded back to this Tribunal, which is reproduced below:

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) [Ins] No. 137 of 2024 &
I.A. No. 436 of 2024

IN THE MATTER OF:

Parkash Cotton Pressing Factory **...Appellants**

Versus

Allahabad Bank & Ors. **...Respondents**

Present:

For Appellant : Mr. Aalok Jagga, Mr. APS Madaan and Ms. Pallavi Singh, Advocates.

For Respondents : Mr. Abhishek Anand, Advocate.
Mr. Iswar Mohapatra, Advocate.

ORDER
(Hybrid Mode)

05.07.2024: This appeal has been filed against the order dated 06.12.2023 passed in IA No. 739 of 2019 which was filed by the appellant praying for interest on the delayed payment received. The Adjudicating Authority by impugned order has dismissed the application noticing that the application has become infructuous in view of the order in I.A. No. 606 of 2018 which was filed by the same party for the amount outstanding as per the audit report.

2. Shri Abhishek Anand, Advocate appearing for liquidator submits that the appellant before receiving the payment of the amount directed by Adjudicating Authority has submitted the undertaking (on page- 57 of the Reply) that on payment of Rs. 6,95,24,683/-, he shall not claim any damages or compensation or interest or any sought of claim arising out of the same.



3. Learned counsel for the appellant submits that Adjudicating Authority need not bind the appellant. He further submits that the Adjudicating Authority ought to have deliberated on the application in deciding the same on merits instead of dismissing as infructuous.

4. Learned counsel for both the parties have raised various contentions in support of their submissions. We are of the view that since the Adjudicating Authority has not decided the application and dismissed it as infructuous it is appropriate that the IA No. 739 of 2019 may be heard afresh and decided after hearing both the parties. It is made clear that we are not expressing any opinion on the claim of either of the parties.

Appeal is disposed of accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

12 As directed by the NCLAT in its order, we have heard the arguments advanced by the Counsels of both the parties i.e. the Applicant and Respondent No.2 (Liquidator) and have also perused carefully the Application, rejoinder and short written submission filed by the Applicant as well as the reply and short written submission filed by the Liquidator.

13 The first issue for consideration before us is ***“Whether the Order dated 06.12.2023 required the Liquidator to take the undertaking from the Applicant foregoing the interest”***.

- (i) Before examining this issue, It will be apposite to reproduce the undertaking given by the Applicant:



GSTIN : 03AADHV9572M1Z1	Subject to Mansa Jurisdiction Only	(M) : 98781-00047
PAN : No. AADHV.9572M		
PARKASH COTTON PRESSING FACTORY		
Village Road, MANSA-151505 (Pb.)		

Ref. No.....

Dated 08/12/2023

Undertaking of Stakeholders/CreditorsIn the Matter of Supreme Tex mart Ltd.

AA NCLT Chandigarh has passed orders dated 06.12.2023 on various IAs filed by various creditors for distribution of amount due to them from Corporate Debtor under CIRP cost & Liquidation cost. As per these orders, Liquidator has been directed to distribute amount due to me/us as certified by auditors and as per list enclosed with these orders. I am entitled to receive Rs. 6,95,24,683/- (Rs. Six Crore Ninety Five Lakh Twenty Four Thousand Six Hundred Eight Three only).

I request liquidator of Supreme Tex Mart Ltd. to distribute the above said amount to me/us either through a cheques drawn in my favour or the amount maybe credited in my Bank account as per following details:

Name of the account Holder: Parkash Cotton Pressing Factory

Bank Account No.: 9878100047

Name of the Bank & Branch: Kotak Mahindra Bank Limited, Jawaharke

IFSC: KKBK0004068

I/We undertake that upon payment of above said amount, my dues recoverable from Supreme Tex Mart Limited for supplies made during CIRP or Liquidation will be fully settled and nothing will remain outstanding. And I will not pursue or initiate any legal proceedings (Civil or Criminal) before any Court or Forum or Authority relating to aforesaid amount and I will also not claim any damages or compensation or interest or any other sort of claim arising out of the same.

In terms of Regulation 43 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, I undertake as under

I/We, shall forthwith return any monies received by me/us in distribution, which I/We are not entitled to at the time of distribution, or subsequently became not entitled to.

For Parkash Cotton Pressing Factory

Name: *[Signature]*
Prop./Manager

Address: Parkash Cotton Pressing Factory

PAN: AADHV9572M

Contact No. : 9592347000

E: pcpfmansa@gmail.com

*Paid on 8/12/23
through RTGS from Bank
COP No 575747*

True copy
For SUPREME TEX MART LIMITED
(In Liquidation)

[Signature]
Liquidator

- (ii) After perusing the undertaking, we consider it appropriate to examine the relevant part of this Tribunal Order dated 06.12.2023, based on which the Liquidator has stated to have taken the above undertaking, which reads as below:

"15. In the present proceedings, we direct the respondent liquidator to make the payment to the respective applicants as per amounts determined in the



said audit report. The payment may be made within the period of 7 days after necessary undertakings if any, from the Applicants.”

- (iii) It is observed from the Order dated 06.12.2023 that it never required the Liquidator to obtain undertaking with respect to the Applicant giving up right of interest, which he is claiming since 2019.

14 The next issue for consideration before us is ***“Whether the Mr. Kushagar Garg was authorised to give the undertaking on behalf of the Applicant”***.

- (i) It is contended by the Applicant that upon disposal of CA No. 606/2018, Mr. Kushagar Garg had become functus officio and he was not authorised to issue the undertaking and hence, the undertaking cannot be recognized as a valid undertaking.
- (ii) It is not in dispute that Mr. Kushagar Garg was the Authorised Signatory in CA No.606/2018, which was disposed of vide this Tribunal Order dated 06.12.2023 and the undertaking dated 08.12.2023 was given by Mr. Kushagar Garg, authorized signatory pursuant to the paragraph 15 of above Order of 06.12.2023.
- (iii) Thus, the undertaking was a consequence of the order dated 06.12.2023 passed in CA No.606/2018, in which Mr. Kushagar Garg was the authorized signatory. The said authorization was not withdrawn before the undertaking was given by him to the Liquidator. Hence, the Applicants are estopped from disclaiming the undertaking dated 08.12.2023.
- (iv) Further, Mr. Vijay Kumar, who had granted the Special Power of Attorney is father of Mr. Kushagar Garg. The Applicants has also not placed on record anything to show as to whether any civil or criminal proceedings



have been initiated by Mr. Vijay Kumar against his son Mr. Kushagar Garg for the furnishing of undertaking allegedly “without authorization”.

- (v) Further, the present Application has also been filed through Mr. Kushagar Garg s/o Mr. Vijay Kumar based on a Special Power of Attorney granted by Mr. Vijay Kumar to his son, Mr. Kushagar Garg. However, the Rejoinder has been filed by Mr. Vijay Kumar.
- (vi) In view of the above, we hold that the Applicants cannot deny that the undertaking dated 08.12.2023 given by his son Mr. Kushagar Garg is not a valid undertaking and the Applicant is bound by the undertaking.

15 The next issue for consideration before us is ***“Whether the undertaking was given under coercion or financial duress?”***.

- (i) It has been stated by the Applicant that after this Adjudicating Authority Order dated 06.12.2023, when the Applicant approached the Liquidator for release of payment, he insisted that without furnishing undertaking prepared by him, he will not release the payment. This undertaking was taken from all other suppliers.
- (ii) It is also stated by the Applicant that if Applicant would not have given this undertaking and had challenged, it would have taken another substantial time for release of payment and which period applicant would have further suffered losses due to pending payment of interest to the banks.
- (iii) Thus, the Applicant had no other option, but to agree to the force of Liquidator. We also observe that immediately after giving the undertaking and realisation of the cheque on 11/12.12.2023, the Appeal before Hon’ble Appellate Tribunal was filed on 19.12.2023.



- (iv) Although, from the above sequence of events, it appears that the undertaking was given under coercion and financial duress, however on careful perusal of the wording of undertaking given by Mr. Kushagar Garg, it is apparent that it was neither under coercion nor under financial duress. And if the undertaking was given under coercion or financial duress, then it could have been given under protest or without prejudice to the right of appeal, when appeal before Hon'ble NCLAT is stated to be filed immediately after receiving the payment.
- (v) Therefore, we are of the considered view that the Applicant is estopped from claiming the interest after furnishing the undertaking dated 08.12.2023.

16 The next issue before us is “**Whether the Applicant is entitled to claim the interest.**”

- (i) It is noted that the Applicant had supplied cotton to the Corporate Debtor, but Applicant had not annexed the invoices, which could depict that any interest on delay payment clause exists between the parties.
- (ii) Further, there is no existence of any separate Agreement between the parties, as per which the Applicant was allowed to claim interest.
- (iii) In this context, we refer to the Judgment dated 27.07.2018 in **Pavan Enterprises Vs Gammon India Ltd. Company in Appeal (AT) (Insolvency) No. 148 of 2018**, wherein the Hon'ble NCLAT held that -

"4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the Operational or Financial Creditor, then debt will include interest, otherwise, the principal amount is to be treated as the debt,



which is the liability in respect of the claim, which can be made from the Corporate Debtor.

(Emphasis added)

- (iv) The Applicant has also relied upon a clarificatory circular issued by the Indian Cotton Association Limited for the year 2018-2019, which is reproduced below:



INDIAN COTTON ASSOCIATION LTD.

(Formerly known as The Northern India Cotton Association Ltd.)

St No.-6, Nai Basti, Post Box No. 79,
Bathinda-151001, Punjab (India)

Phone (Off) : 0164-5006002, 5007002
(Lab) : 0164-5008003

E-mail Id: icalindia1963@gmail.com
nicabti1963@gmail.com

(Season 2018-19)

Carrying Charges & Other Terms Effective from 29th, August, 2011

For the need of present mode of payments and some clarifications in our earlier circular of carrying charges, a meeting of the Board of Directors of the Association was held on Saturday the 20th August, 2011 in the Meeting Room of the Association. The meeting was presided over by the President of the Association Shri Rakesh Rathl. After prolonged discussions, the following decisions were taken unanimously :-

PAYMENT:-

1. The due date for payment shall be 8 days from date of pressing i.e if a lot is pressed on 1st, the buyer should make payment on 9th by RTGS in bank advised by the seller.
2. If the buyer wishes to make payment by demand draft/local cheque/multicity cheque then it should be handed over to the seller before clearing hours of 9th. i.e. due date. Clearing hours will be different according to Local Station e.g. in case of Bathinda, clearing hours for 9th is 15.00 hours of 8th.
3. If due date of payment is bank holiday, then next bank working day will be taken as due date.
4. If the buyer makes payment before due date or on due date, the loss of subsequent Bank holiday/Sunday, if any, shall be borne by the seller. If the payment is made with carrying charges/interest, then such loss of bank holiday/Sunday shall be borne by the buyer.
5. If the buyer makes payment before due date, the buyer is entitled to early payment discount @ 1.40% p.m upto due date on invoice value.
6. If the buyer lifts cotton bales without payment, then the seller is entitled to interest @ 1.40% p.m. on invoice value from due date till payment.



7...But the Association does not support to lift cotton bales without payment .In case if there is an abnormal delay in payment by the buyer, it will be subject to mutually agreed terms between the buyer and the seller.

8. Calculation of interest/early payment discount will be on the basis of 360 days.

DATE OF PRESSING:-

The lot which is pressed upto 10 P.M. will be considered as pressed on the same day and in case it is pressed after 10 P.M., it will be considered as pressed on the next day. The bales pressed on Sunday will be treated as pressed on the next day.

CARRYING CHARGES:-

1. If cotton bales are pressed on 1st then its due date will be 9th. In case of ready lot due date will be subject to terms of bargain.
2. If cotton bales are not lifted by the buyer after due date, the seller will charge carrying charges for delayed lifting of cotton bales after due date till lifting date/ payment @ 1.75% p.m. (basis 360 days)
3. If the payment of cotton bales which are under carrying charges is made after 30 days from date of pressing, then carrying charges will be chargeable from date of pressing. i.e. if lot is pressed on 1st and payment is made after 31st, then carrying charges will be charged from 1st.
4. Carrying charges includes interest, insurance and godown rent. It is duty of the seller to store bales, which are under carrying charges, in proper way. If bales are damaged during period of carrying charges, the buyer will be entitled to claim damage to the cotton bales from the seller.
5. If the buyer is unable to lift material after due date then the seller can claim stacking charges from the buyer, if bales are stacked else where.

READY LOT/PRESSED BALES :

5. Ready bales are transacted on mutually agreed terms of payment between the buyer and the seller. If a bargain is finalised on 1st with 10 days payment, it means due date of the bargain will be 11th.
2. Terms of payment and carrying charges will same like pressing bargains. But in case, if the buyer is unable to make payment after 30 days from due date then carrying charges will be charged from bargain date. i.e. if a ready lot bargain is finalised on 1st Dec with 10 days payment but the buyer is unable to make payment upto 10th Jan then carrying charges will be charged from 1st Dec.

DUE DATE BARGAINS :

- a) In case any bargain is closed for any particular Due Date for payment, the draft will be got made on Due Date and that will be handed over to the seller on the next day before clearing hours;
- b) The bales must be pressed atleast two days before the payment date. In case where cotton is not ginned and pressed two days before payment date but the cotton is pressed one day earlier or on payment date, then the payment will be made as per Association Dhara; i.e. the payment will be made 8 days from date of pressing.
- c) In case of late payment, the carrying charges will be payable from the Due Date;
- d) If the payment is not made within 30 days from due date then carrying charges will be charged from pressing date.

KATLA : The Katla should be done before due date.

MARGIN MONEY.

In case if the buyer does not make payment even after 30 days from date of pressing, the seller is entitled to receive margin money equal to 15% of invoice value of cotton.

All the Members are earnestly requested to abide by the above decisions in the best of interest of the Cotton Trade of this region.

Thanking you for your full co-operation.

For Indian Cotton Association Ltd.,

(Jatinder Singh)
Secretary



- (v) It is noted that the above circular neither contains the number and date nor has the signature of the person issuing it. Further, the Applicant has failed to show the authority of the above Association to set any practice/ procedure and also the precedent in this regard more particularly, if it is a legislation making body under any law, or recognized by IBBI or has any mention in IBC. Thus, we are not inclined to accept the above circular submitted by the Applicant's in support of his claim for the interest.
- (v) We are also not inclined to accept the contentions of the Applicant that the goods supplied during CIRP/ liquidation is like an "interim finance" & thus interest is payable on the same for delayed payment and the Applicant is incurring interest on the loans availed by him, as there is neither such provision in the law nor Applicant has supported his contention regarding such precedent.
- (vi) In view of the above, we are of the considered view that the Applicant is not entitled to the interest on the delayed payment.

17 Even otherwise even if we assume that there is no undertaking in the present case at all and the Applicant is claiming interest on equity, then also in the absence of any clause on interest for delayed payment clause in any agreement or invoice, the Applicant is barred to claim this amount by virtue of Section 33(5) of IBC, which reads as below:

"5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor."

It is a matter of fact the present proceedings relate to CIRP cost and liquidation cost, as the present CA was filed on 03.09.2019 and liquidation of the Corporate



Debtor was ordered prior on 08.08.2018 and the Applicant is seeking recovery of interest, which had to be adjudicated on merits. In terms of Section 33(5) of IBC, no legal proceedings can be initiated against Corporate Debtor, therefore the same is covered under the term “other legal proceeding” used under the section 33(5) of IBC. Hence, the attempt to recover this amount under Section 60(5) of IBC, 2016 in absence of any delayed interest clause in invoice or agreement on equity terms, is like a recovery proceeding on the Corporate Debtor, which is barred in terms of Section 33(5) of IBC, 2016.

18 As a sequel to the discussion foregoing and reasons recorded therein, we are of the considered view that the Application is devoid of merits and deserves to be dismissed.

19 Hence, **the present application i.e. CA No. 739 of 2019 stands dismissed.** However without any order as to costs.

20 Let a copy of the Order be supplied to the parties, if applied for.

Sd/-
(Umesh Kumar Shukla)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

January 02, 2025
Japneet