

**SC RULED THAT THE APPELLANT WILL BE RECOGNIZED AS A
SECURED CREDITOR UNDER SECTIONS 52 AND 53 OF THE IBC,
INCLUDING RETAINING SECURITY INTEREST AND PROCEEDS
FROM THE PLEDGED SHARES.**

Court: The Hon'ble Supreme Court

Citation: Civil Appeal No.3606 of 2020

Case title: M/s Vistra ITCL (India) Ltd & Ors. v Mr. Dinkar Venkatasubramanian & Anr.

Date of Order: 4 May 2023

Bench: Hon'ble Justice M.R. Shah and Hon'ble Justice Sanjiv Khanna

Parties: Appellant: M/s Vistra ITCL (India) Ltd & Ors.

Respondent: Mr. Dinkar Venkatasubramanian & Anr.

SUBJECT:

The division Bench of the Supreme Court granted a civil appeal that challenged the order of the National Company Law Appellate Tribunal (NCLAT). The appellant, Vistra Itcl (India) Ltd, had pleaded to be recognized as a 'secured financial creditor,' but the NCLAT had rejected their plea. However, the Court accepted the appellant's plea and modified the judgment of the NCLAT. The Court ruled that the appellant should be considered a secured creditor and granted all the rights and obligations applicable to secured creditors under Section 52 and 53 of the Insolvency and Bankruptcy Code (IBC) and entitled to retain the security interest in the pledged shares.

IMPORTANT PROVISIONS:

The [Insolvency and Bankruptcy Code, 2016](#) (IBC) is a comprehensive law in India that provides a unified framework for dealing with insolvency and bankruptcy cases involving companies, partnership firms, and individuals. It establishes specific procedures for resolving insolvency issues for each of these entities. The initiation of the insolvency process can be done by either the debtor or the creditors. The IBC sets time limits for completing the resolution process, with a

maximum of 180 days for companies, which can be extended by 90 days with creditor approval. For start-ups, small companies, and companies with assets less than Rs. 1 crore, the resolution process must be completed within 90 days, extendable by 45 days.

- **Section 52:** This section pertains to the powers of the Adjudicating Authority (National Company Law Tribunal) during the liquidation process. This section specifically deals with the rights and powers of secured creditors in relation to their security interests in the assets of the corporate debtor. It outlines the procedures and conditions under which a secured creditor can realize or enforce their security interest in the liquidation process. Section 52 establishes the framework for secured creditors to retain their rights and obligations regarding the security interest, including the right to retain the security proceeds from the sale of the secured assets.
- **Section 53:** This section pertains to the distribution of assets in the event of liquidation. This section outlines the priority of payments to different classes of creditors and stakeholders during the liquidation process of a corporate debtor. It establishes the order in which debts and claims are to be paid, ensuring a systematic distribution of the available assets. Under Section 53, the following priority is given to different classes of creditors:
 1. Insolvency resolution process costs and liquidation costs: These include the expenses incurred during the insolvency resolution process and liquidation, such as fees of the resolution professional and liquidator.
 2. Secured creditors: Secured creditors, who have a security interest over the assets of the corporate debtor, are entitled to the proceeds from the realization of their security interest. However, this is subject to the provisions of Section 52, which governs the rights and powers of secured creditors during the liquidation process.
 3. Workmen's dues for the period of 24 months preceding the liquidation commencement date: This includes unpaid wages, salaries, or any other amount due to employees for the 24 months preceding the liquidation commencement date.
 4. Financial debts owed to unsecured creditors: This category includes financial debts that are not covered under secured creditors, such as loans or debts owed to financial institutions or unsecured lenders.
 5. Government dues: This includes unpaid taxes, duties, or other dues owed to the government authorities.

6. Remaining debts and dues: Any remaining debts and dues owed to operational creditors, including suppliers, service providers, or any other person other than those covered in the above categories.

Section 53 provides a hierarchy for the distribution of assets to ensure that certain debts and claims are given priority over others, thereby facilitating an orderly and fair distribution of the liquidation proceeds.

OVERVIEW:

- The Amtek Auto Limited (Corporate Debtor) approached Vistra Itcl (India) Ltd, the appellant, to extend a short-term loan facility of Rs. 500 crores to its group companies i.e., Brassco Engineers Ltd. and WLD Investments Pvt. Ltd. ***for ultimate end use of the Corporate Debtor***. The loan was to be secured by pledging 16,82,06,100 equity shares of face value of Rs.2/- each of JMT Auto Ltd held by the Corporate Debtor. A Security Trustee Agreement was executed between Vistra Itcl (India) Ltd and WLD, and subsequent agreements were made with Brassco.
- Subsequently, an application for insolvency was filed against Amtek Auto Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 (IBC), and the respondent was appointed as the resolution professional. The claim by Vistra Itcl (India) Ltd as a [secured creditor](#) was rejected by the respondent. The appellant then submitted another application under Section 60(5) of the IBC, asserting their rights based on the pledged shares.
- The respondent sought approval of the resolution plan from the Adjudicating Authority, while the appellants' application before the Adjudicating Authority was dismissed. The appellants subsequently appealed to the NCLAT, which dismissed the appeal by stating that the appellant's claim as a 'secured financial creditor' had already been rejected earlier. The NCLAT further noted that since the appellants had not provided any financial debt to the Corporate Debtor, they did not fall under the category of financial creditors. Dissatisfied with the NCLAT's decision, the appellants have now appealed to the Court.

ISSUES RAISED:

1. Whether the Appellants can claim to be secured financial creditors on the basis of the pledged shares being the security for the short-term loan granted by them to the Corporate Debtor's group companies?

ARGUMENTS ADVANCED BY THE APPELLANT:

- The senior counsel representing the appellants strongly argues that the NCLT/NCLAT made a significant mistake by considering the appellant's claim as a secured financial creditor to be late. They contend that it was actually a continuing cause of action and that there is no specific time limit for objecting to the categorization of creditors. The appellants had already challenged their non-inclusion as a financial secured creditor before the resolution plan was approved, so there was no delay on their part. The CIRP process, under the supervision of the Resolution Professional and CoC, itself carried on for 3 years, which 3 years is well beyond the timeline of 330 days as set out under the IBC. Therefore, the CoC and Resolution Professional cannot justify their delay on one hand and then seek to erode the rights of the Appellants by relying on delay.
- The appellants further argued that the decisions in the cases of *Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited vs. Axis Bank Limited* and *Phoenix ARC Private Limited vs. Ketulbhai Ramubhai Patel* are not applicable to the present case.
- They emphasize that there is a debtor-creditor relationship between the appellants and Amtek Auto Limited. WLD and Brassco borrowed money from appellant nos. 2 and 3 through appellant no. 1, and this money was intended for the benefit of the Corporate Debtor. To establish a direct debtor-creditor relationship, evidence such as the Board Resolution of Amtek Auto, no objection certificates requested by Amtek Auto, and a no objection certificate issued by IDBI Bank to Vistra ITCL is relied upon. These documents indicate that Amtek Auto borrowed money when it was in financial distress, and the banks were aware of this situation as the purpose was to "standardize" Amtek's loan account with the banks.
- The pledge of shares is considered a financial debt under the IBC as Security Interest under Section 3(31) of the IBC.

ARGUMENTS ADVANCED BY THE RESPONDENT:

- The counsel for the respondents argued that the appellant had submitted its claim to the Resolution Professional on 02.11.2017, but it was rejected and reflected in the list of creditors. The appellant never challenged this rejection. In their communications, the appellant made a request regarding the pledged shares but did not challenge the rejection of their claim. On 11.02.2020, the appellant filed an application to be admitted into the Committee of Creditors (CoC), but it was considered belated and rejected by the NCLT and NCLAT.
- It is further contended that the issue at hand is similar to previous cases decided by the court, namely *Anuj Jain and Phoenix ARC Private Limited*.
- The appellants cannot be considered financial creditors of the Corporate Debtor, as they only hold third-party security in the form of pledged shares related to the amounts they lent to the Corporate Debtor's affiliates.

JUDGEMENT ANALYSIS:

- Referring to the cases of *Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited* and *Phoenix ARC (P) Ltd. v. Ketulbhai Ramubhai Patel*, the court concluded that the Corporate Debtor, Amtek, was not responsible for repaying the loans obtained by the appellant's predecessor-in-interest.
- The court emphasized that the liability of Amtek was limited to the pledged shares and that the loans were procured by Brassco and WLD. It clarified that the assets of Amtek would not be encumbered except for the shares given as security.
- The court recognized the appellant as a secured creditor with the first right to the pledged shares. The court examined the definition of 'security interest' and the concept of 'pledge' under Section 3(31) of the IBC. It also addressed whether a resolution plan can override the pledge agreement and highlighted the importance of protecting the interests of creditors not included in the Committee of Creditors (CoC) under the Insolvency and Bankruptcy Code (IBC).
- The Court noted that the amendment introduced by in 2019 ensured that the operational creditors under the resolution plan should be paid the amount equivalent which they have been entitled to, in the event of liquidation of the Corporate Debtor under Section 53 of the

IBC. The Court said that thus, the amount payable under the resolution plan to the operational creditors should not be less than the amount payable to them under Section 53, in the event of liquidation of the Corporate Debtor. The Court also said that it is the mandate of Section 31 of the IBC that the adjudicating authority should be satisfied that the resolution plan, as approved by the CoC under sub-section (4) of Section 30 meets with the requirement as referred to in sub-section (2) of Section 30. Only then shall the adjudicating authority approve the resolution plan, which shall then be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. Thus, the amended Section 30(2) read with Section 31 of the IBC, enunciates the manner in which the interest of the creditors who are not included in the CoC i.e., the operational creditors and the financial creditors who have not been not been in favour of the resolution plan, must be protected in the resolution plan by the resolution professional and the adjudicating authority.

- The court ruled that the appellant would be treated as a secured creditor under Sections 52 and 53 of the IBC, entitled to retain the security interest in the pledged shares and receive the proceeds from their sale. The court modified the NCLAT's judgment, granting the appellant the rights and obligations of a secured creditor under the IBC.

CONCLUSION

The Court held that the appellant would be treated as a secured creditor in terms of Section 52 and 53 of the IBC, who would be entitled to retain the security interest in the pledged shares, and would be entitled to retain the security proceeds on the sale of the said pledged shares under Section 52 of the IBC read with rule 21-A of the Liquidation Process Regulations. The Court said that it was best to opt for this recourse as the Court was presented with a difficult issue, wherein the appellant, a secured creditor, was denied the rights under Section 52 and 53 of the IBC in respect of the pledged shares. Thus, the impugned judgment and order of the NCLAT was partly modified in terms of directions that the appellant would be treated as a secured creditor, who would be entitled to all rights and obligations as applicable to the secured creditor under Section 52 and 53 of the IBC.