NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Comp App (AT) (CH) (Ins) No. 19/2025
(IA Nos. 85 & 86/2025)

In the matter of:

Tamil Nadu Mercantile Bank Limited,
Represented by its Chief Manager,
Mr. A. Jayavel,
Having Its Registered Office at
80-93, Palace Residency,
1st Floor, Purasawalkam High Road,
Chennai – 600010. **…Appellant**

V

Ms. E. Santhanalakshmi,
Liquidator of M/s. Swastik Spinners (India) Private Limited
Having Office at:
No. 42B, Sree Krishna Flats,
S-1, 2nd Floor, LIC Nagar, 2nd Street,
Madipakkam, Chennai – 600 091 **…Respondent No. 1**

Mr. S.V. Ramasamy,
Guarantor of M/s. Swastik Spinners (India) Private Limited
Having Office at:
22/1, Ormes Road, Kilpauk,
Chennai – 600 010 **…Respondent No. 2**

Present :

For Appellant	:	Mr. Rajendran Raghavan, Advocate
For Respondents	:	Ms. S. Umamaheswari, Advocate for R1
		Mr. P. Prashanth, Advocate for R2

WITH

Comp App (AT) (CH) (Ins) No. 20/2025
(IA Nos. 92 & 94/2025)

In the matter of:

Tamil Nadu Mercantile Bank Limited,
Represented by its Chief Manager,

Mr. A. Jayavel,
Having Its Registered Office at
80-93, Palace Residency,
1st Floor, Purasawalkam High Road,
Chennai – 600010. **…Appellant**

V

Ms. E. Santhanalakshmi,
Liquidator of M/s. Swastik Spinners (India) Private Limited
Having Office at:
No. 42B, Sree Krishna Flats,
S-1, 2nd Floor, LIC Nagar, 2nd Street,
Madipakkam, Chennai – 600 091 **…Respondent No. 1**

Mr. S.V. Ramasamy,
Guarantor of M/s. Swastik Spinners (India) Private Limited
Having Office at:
22/1, Ormes Road, Kilpauk,
Chennai – 600 010 **…Respondent No. 2**

Present :

For Appellant : Mr. Rajendran Raghavan, Advocate
For Respondent : Ms. S. Umamaheswari, Advocate for R1

WITH

Comp App (AT) (CH) (Ins) No. 21/2025
(IA Nos. 96 & 97/2025)

In the matter of:

Tamil Nadu Mercantile Bank Limited,
Represented by its Chief Manager,
Mr. A. Jayavel,
Having Its Registered Office at
80-93, Palace Residency,
1st Floor, Purasawalkam High Road,
Chennai – 600010. **…Appellant**

V

Mr. S. Muthuraju
Erstwhile Liquidator of Swastik Spinners (India) Pvt. Limited
Having Office at:
No.3, Sundaram Brothers Layout,

Opposite to All India Road, Trichy Road,
Ramanathapuram, Coimbatore – 641 645 **…Respondent No. 1**

Present :

For Appellant : Mr. Rajendran Raghavan, Advocate
For Respondent : Mr. Rohan Rajasekaran, Advocate for R1

WITH
Comp App (AT) (CH) (Ins) No. 430/2024
(IA Nos. 1175/2024 & 58/2025)

In the matter of:

Mr. S.V. Ramasamy,
Guarantor of Swastik Spinners (India) Pvt Limited
22/1, Ormes Road, Kilpauk,
Chennai - 600 010. **…Appellant**

V

Mr. S. Muthuraju,
Erstwhile Liquidator of Swastik Spinners (India) Pvt. Limited.
No. 3, Sundaram Brothers Layout,
Opposite to All India Radio,
Trichy Road, Ramanathapuram,
Coimbatore - 641 045 **…Respondent No. 1**

Tamilnad Mercantile Bank,
Represented by its Branch Manager,
Palace Regency, First Floor,
No.80-93, Pursawalkam High Road,
Chennai - 600 010 **…Respondent No. 2**

Ms. E. Santhanalakshmi,
Liquidator of M/s. Swastik Spinners (India) Private Limited,
(Reg. No: IBBI/002/IP-N00831/2019-2020/12661)
No. 42B, Sree Krishna Flats,
S-1, 2nd Floor, LIC Nagar 2nd Street,
Madipakkam, Chennai – 600 091 **…Respondent No. 3**

Present :

For Appellant : Mr. P. Prashanth & Mr. Gautam S Raman, Advocates
For Respondent : Mr. Rohan Rajasekaran, Advocate for R1
Mr. Rajendran Raghavan, Advocate for R2
Ms. S. Umamaheswari, Advocate for R3

JUDGMENT
(Hybrid Mode)

[Per: Jatindranath Swain, Member (Technical)]

1. These four appeals have been filed, challenging the common order passed by the learned NCLT in the interlocutory applications. IA Nos. 1838/2023, 167/2023, 1240/2023, 1421/2023 and 1735/2024 in IBA/288/2018. By virtue of the said impugned order, the learned NCLT allowed the prayer of the liquidator made in IA/1838/2023 to permit the liquidator to ratify the OTS transaction dated 17.07.2021 between Tamil Nadu Mercantile Bank (TMB) and Mr. S.V. Ramasamy and to sell the assets of the CD to the personal guarantor, rejected the prayer of Sri Sivajothi spinning Mills Pvt Limited made in IA/167/2023 and IA/1240/2023 for return of the EMD with applicable interest which had been forfeited by the liquidator, partially allowed the prayer made by ex-liquidator Mr. S. Muthuraju in IA/1421/2023 by ordering payment of ₹20 lakhs towards remuneration along with expenses incurred by him till date from out of the liquidation account and directed TMB to remit the forfeited amount back to the liquidator who will distribute the same among the stakeholders including the operational creditor as per the waterfall mechanism prescribed under Section 53 of the I&B Code (**the Code**), and allowed the prayer of the

liquidator in IA/1735/2024 to permit her to transfer the assets of the CD in favour of Mr. S.V. Ramasamy, the personal guarantor of the CD.

2. In Comp App (AT) (CH) (Ins) No. 430/2024, the appellant Mr. S.V. Ramasamy has prayed to set aside the impugned order passed in IA/1421/2023 ordering payment of ₹20 lakh to the Erstwhile Liquidator and payment of amount eligible under Section 53 of the Code to the operational creditor from out of the forfeited amount of ₹54,31,050/- and consequently, to direct the 2nd Respondent TMB to pay the amount of ₹52.27 lakh of the forfeited amount received by it to the appellant with interest. The other three appeals, namely, Comp App (AT) (CH) (Ins) Nos. 19/2025, 20/2025 and 21/2025 have been filed by the financial creditor, Tamil Nadu Mercantile Bank (TMB), challenging the orders passed in IA Nos. 1838/2023, 1735/2024 and 1421/2023, the gist of which has been presented in the preceding paragraph. Since all four appeals involve consideration of the same set of facts and law, they are being taken up for consideration together.

3. Brief facts of the case are that the appellant in Comp App (AT) (CH) (Ins) No. 430/2024 is the managing director and the personal guarantor of the corporate debtor Swastik Spinners (India) Limited and he had preferred an application under Section 10 of IBC 2016 to be read with Rule 7 of IBBI (Application to Adjudicating Authority) Rules, 2016 in IBA/288/2018. The said application was allowed, and the CD was admitted

into CIRP on 22.03.2018. Shri S. Muthuraju was appointed as the IRP to conduct the CIRP. The IRP invited claims of the creditors and constituted the committee of creditors, which consisted of only one financial creditor, that is, Tamil Nadu Mercantile Bank. Subsequently, Mr. S. Muthuraju was confirmed as RP of the said corporate debtor. During CIRP, Mr. S.V. Ramasamy submitted a resolution plan which was rejected by the COC, and it was resolved to liquidate the CD. On application by the RP in MA/445/2018, the Adjudicating Authority passed the order of liquidation on 22.02.2019. Aggrieved by the order of liquidation, Mr. S.V. Ramasamy, the promoter director of the CD preferred the Company Appeal (AT) (Ins) No. 550/2019 before this appellate tribunal, which by its order dated 26.09.2019, stayed the order of liquidation subject to the condition that the promoter Director pays ₹7.30 crore in three instalments to TMB within a period ending on 31.03.2020 and also pays the requisite fees to the RP/liquidator in full, at the rate of ₹50,000/- per month along with associated costs, including litigation expenses, in the event of which the CIRP commenced against the CD will stand set aside and the CD will go out of the CIRP. This appellate tribunal also directed that on failure to pay the total amount to the TMB and the RP/liquidator as directed, the liquidation proceedings may continue, if ordered by this Tribunal. Subsequently, as the promoter director was not in the position to comply with the aforesaid conditions and pay the first two instalments, the order of stay was vacated, and the appeal was dismissed by the order dated 11.12.2019.

4. The liquidator, on disposal of the appeal by NCLAT, initiated auction proceedings of the CD's assets. There was no bidder for first 3 auctions. Thereafter, on 21.01.2021, the liquidator issued the notice for 4th auction of the immovable property owned by the CD, which was to be held on 26.02.2021, against which promoter/Director filed WP/5192/2021 before the Hon'ble High Court of Madras on 27.01.2021 challenging the said auction notice. Meanwhile, the auction process continued, and one Sivajothi Spinning Mills was declared as the successful bidder on 26.02.2021 and it deposited an EMD of ₹54,31,050/-. But on 27.05.2021, the said auction was cancelled and the said EMD was forfeited because the bidder did not pay the balance consideration. From the said amount, the liquidator took out ₹2,03,664/- as his fees, and the remaining amount of ₹52.27 lakhs was distributed to the financial creditor, TMB in accordance with Section 53 of the Code. In the meanwhile, the promoter/personal guarantor continued settlement talks with the financial creditor, TMB, and they mutually agreed that on payment of ₹9.50 crore by the promoter/personal guarantor, TMB will permit him to discharge the debt of the CD as one-time settlement (OTS). Accordingly, the promoter Director offered ₹9.50 crores as full and final settlement for all dues of the CD as OTS, which was accepted by the

bank, and the bank also issued the account closure certificate on 06.08.2021 certifying that the personal guarantor has closed the loan account on 17.07.2021, under OTS. The suspended Director then filed MA No. 3/2022 before the Ld. NCLT, seeking a declaration that the CD is released from the liquidation process and is restored to its Erstwhile management, as the loan account of the CD has been closed on 17.07.2021. However, after hearing the concerned parties, learned NCLT observed that the suspended Director did not settle the matter with the financial creditor within the specific timeframe as fixed by NCLAT when the order of liquidation was under stay, that the CD can be revived only during CIRP through a resolution plan or a settlement via Section 12A route, that the CD can be revived during the liquidation either through a scheme under Section 230 of the Companies Act or through sale as a going concern and that none of these routes has been adopted by the suspended Director in his efforts to revive the CD. Learned Tribunal further observed that the suspended Director has chosen to enter into an OTS settlement with a financial creditor without the knowledge of the liquidator, even when auction of the properties of the CD is underway, which is totally contrary to the provisions of the Code, that he is not willing to pay the liquidator's fees and that there is no provision under IBC to come out of the liquidation process once liquidation is ordered, except by way of a scheme under Section 230 of the Companies Act or by sale of the CD as a going concern. Based on such observations made as above, Ld. NCLT proceeded to pass the order dated 12.05.2023, rejecting the application MA/3/2022 and directing the liquidator to proceed with the E-auction process in accordance with law and to distribute the proceeds thereof in terms of Section 53 of the IBC, 2016. The said order has not been challenged by any of the parties till now and has attained finality.

5. Meanwhile, the Honourable High Court of Madras passed orders in the writ petition 5192/2021 on 10.11.2021, holding, thereby, that since parties have resolved the disputes between them and the bank's claim has now been met, the petitioner (suspended Director), will be entitled to the benefit of the forfeited money, subject to the right of the relevant purchaser to challenge the forfeiture on the ground of unjust enrichment, in accordance with law. Based on said order, the unsuccessful auction purchaser, Sivajothi Spinning Mills, filed an interlocutory application IA No. 167/2023 before NCLT, praying for a direction to TMB to refund of the EMD amount deposited by it. The said party also filed IA No. 1240/2023 to implead Mr. S.V. Ramasamy as a necessary party in IA 167/2023. In parallel, the liquidator, Shri. S. Muthuraju filed an application IA/1033/2023, praying for release from the post of liquidator and appointment of a new liquidator and another application IA No. 1421/2023 for early payment of his pending dues along with liquidation expenses incurred by him amounting to ₹31,85,000/.

6. Subsequently, a new liquidator Ms. E. Santhanalakshmi, was appointed as liquidator on 10.07.2023. After her appointment, the new liquidator took charge of the CD. After taking stock of the situation, she filed an interlocutory application, IA/1838/2023, before the learned NCLT to permit the applicant/liquidator to ratify the OTS transaction between Mr. S.V. Ramasamy and Tamil Nadu Mercantile Bank, which had taken place on 17.07.2021 and to sell the assets of the CD to the personal guarantor accordingly. Subsequently, she filed another interlocutory application, IA/1735/2024, on 13.08.2024 praying to permit her to transfer the assets of the corporate debtor in favour of Mr. S.V. Ramasamy, the personal guarantor of the CD. The said two interlocutory applications being IA/1838/2023 and IA/1735/2024, along with IA/167/2023 filed by M/s. Sri Sivajothi Spinning Mills Limited, praying for return of EMD deposited by him and IA/1421/2023, filed by the Erstwhile Liquidator praying for a release of ₹31,85,000/- to him towards fees/remuneration along with expenses incurred by him till date, were disposed of by the learned NCLT by the common order dated 12.09.2024, which is impugned herein.

<u>Submissions of the Appellants:</u>

7. (i) In **Comp App (AT) (CH) (Ins) No. 430/2024**, the appellant is Mr. S.V. Ramasamy, who is the promoter and personal guarantor of the CD. He has stated that he had paid an amount of ₹9.50 crores as a full and final

settlement of all debts owed by the CD to the financial creditor, Tamil Nadu Mercantile Bank and the said offer as a one-time settlement (OTS) was accepted by TMB by a letter dated 16.07.2021, and that, he has paid the entire amount to TMB, and consequent to which TMB has also issued an account closure certificate dated 06.08.2021, certifying that the CD has closed the loan account on 17.07.2021 under OTS. He has contended that the said position has been noted by the Hon'ble High Court of Madras in the order dated 10.11.2021 in WP/5192/2021 with the observations as follows:

> *' ' 'nothing remains of the petition, though certain formalities have to be complied with before National Company Tribunal". "It is also recorded that a part of the consideration deposited by a successful bidder at an auction in connection with the present matter had been forfeited by the official liquidator. Since the bank's claim has now been met, it will be the petitioner who will be entitled to the benefit of the forfeited money, subject to the right of the relevant purchaser to challenge the forfeiture on the ground of unjust enrichment, in accordance with law.' ' '*

(ii) In view of the same, the appellant Mr. S.V. Ramasamy has contended that the forfeited amount, which were deposited by Sivajothi Spinning Mills, and which were paid to TMB consequent to its forfeiture, should be transmitted to him as he has taken over the debts of the CD and has become the sole financial creditor to the CD. He has submitted that he had asked the Erstwhile liquidator, Mr. S. Muthuraju, to convene the Stakeholders Consultation Committee (SCC) meeting to discuss the said issue, which the latter refused to convene, stating that it is sub judice and that the said liquidator took no action to resolve the issues in the said liquidation process. The liquidation process really started only when the new liquidator, Ms. E Santhanalakshmi took charge and filed the necessary applications in IA/1838/2023 and IA/1735/2024, seeking permission to transfer the assets of the CD in favour of the appellant Mr. S.V. Ramasamy, on the ground that the dues of the sole FC have been paid under one-time settlement and the said amount is substantially higher than the reserve price as well as the highest bid obtained in the auction process.

(iii) Ld. NCLT, while deciding the interlocutory applications filed by him, Sivajothi Spinning Mills, erstwhile liquidator Mr. S. Muthuraju and the new liquidator Ms. E Santhanalakshmi, has directed that the liquidator can transfer the immovable assets of the CD to Mr. S.V. Ramasamy for an amount of ₹9.50 crores already paid by him to the Bank under OTS by invoking the principle of Doctrine of Necessity, since there are no other financial creditors, the act of settlement has already been done, the said amount is the highest offer so far received for the assets of the CD and the sole financial creditor has already issued the no dues certificate. However, Ld. NCLT, in the said order, has allowed payment of ₹20 lakh to the

Erstwhile Liquidator S. Muthuraju and ₹4.5 lakh to the present liquidator Ms. E. Santhanalakshmi as fees and other liquidation expenses incurred by them and payment to an operational creditor, TCP Limited, out of the forfeited amount of ₹54.31 lakh as per the waterfall mechanism under Section 53 of the IBC, 2016.

(iv) The grievance of the appellant, Mr. S.V. Ramasamy is that this forfeited amount of ₹54.31 lakhs should have been given to him after deducting ₹4.5 lakhs towards liquidation fees and expenses for the new liquidator only. He has stated that as per law the fee of the RP is to be fixed by the Committee of Creditors and the fee of the liquidator is to be approved by the Stakeholders Consultation Committee (SCC) or the Adjudicating Authority, and it cannot be fixed by the respondent S. Muthuraju without getting approval from SCC or NCLT, that fee for Mr. S. Muthuraju was not fixed in the manner prescribed under the Code, that Mr. S. Muthuraju has not done anything during the said period to merit payment of fees, and that the said fee of ₹20 lakh was ordered to be paid without giving an opportunity to him to counter the same and hence the direction as above should be set aside. He has further submitted that the claim of the OC (operational creditor) TCP Limited is inadmissible because it was not verified during CIRP and that the present liquidator merely submitted the said claim vide a memo in Sr. No. 1404 dated 18.03.2024 without verifying the same, and even otherwise also, no amount is payable to the OC and the entire forfeited amount ought to have been given to him in priority after settling the liquidation and CIRP expenses, since he has stepped into the shoes of FC by settling the entire claim of TMB

(v) This has been strongly countered by both the erstwhile liquidator, Respondent No. 1 and the present liquidator, Respondent No. 3. Respondent No. 1 has stated that the appellant, as well as the respondents, had agreed for paying the liquidations costs, including liquidation fees, before Ld. NCLT which has been recorded in its order dated 28.05.2024, that his fees at the rate of ₹50,000/- was fixed during CIRP and the same was extended for liquidation period by NCLAT in its order dated 26.09.2019 in CA (AT) (Ins) No. 550/2019, and though his total claim comes to ₹33.25 lakh, he has settled for an amount of ₹20 lakh in the interest of closure of all issues, and that the delay in resolving the insolvency of CD is because the conduct of the Appellant alone.

(vi) The 3rd respondent, the present liquidator, has submitted that though the Appellant has objected to the direction of Ld. NCLT to TMB to deposit the forfeited amount into the liquidation account and to utilise the same for settling liquidation expenses and the claim of operational creditor, the said direction to settle claims as per Section 53 of the IBC is correct in law because the claim of the sole financial creditor TMB stands fully satisfied on account of the settlement and issue of account closure certificate. She has also stated that the appellant, having agreed to bear the cost of liquidation, including the fees of the liquidator and liquidation expenses, now cannot challenge the same and appeal.

Comp App (AT) (CH) (Ins) Nos. 19, 20 & 21/2025

8. These appeals have been filed by the financial creditor, Tamil Nadu Mercantile Bank (TMB), challenging the orders issued in IA Nos. 1838/2023, 1735/2024 & 1421/2023 respectively, asking TMB to refund the amount of ₹52.27 lakh received by it from the forfeited EMD amount. The contention of the Bank is that when it sanctioned the OTS scheme to the guarantor, Mr. S.V. Ramasamy, it was clearly agreed between them that the guarantor will bear all the liquidation costs and remuneration payable to the liquidator, and discharge all surviving liabilities arising out of the liquidation process and it will honour the undertaking given under the one-time settlement to withdraw all proceedings instituted against the appellant bank in relation to the insolvency of the CD. However, Mr. S.V. Ramasamy has failed to honour his commitment to pay the liquidation expenses and other surviving liabilities such as the claims of the OC, which Ld. NCLT failed to notice and instead directed it to transfer the forfeited amount back into liquidation account to be utilised for the aforesaid purposes instead of asking Mr. S.V. Ramasamy to settle the said claims.

9. The appellant's contention had been that the forfeited amount was already paid to it prior to the OTS and therefore the said forfeited amount should not be used right now to pay the liquidation costs, including the fee payable to both the Erstwhile Liquidator and the present liquidator and to settle the claims of the operational creditor. It has further stated that the claim of the operational creditor was never deliberated in any meeting, nor it was verified at any stage, and it is an inadmissible claim. Further, the direction to pay ₹20 lakh to erstwhile RP as fee, and other expenses should be set aside because the said claim was not placed before any meeting and no work or coordination has been done by him. Moreover, it had agreed to a final settlement amount of ₹9.50 crore under the assumption that it will retain the amount of ₹52.27 lakh paid out of the forfeited EMD amount. Further, since Mr. S.V. Ramasamy, the guarantor, has not abided by the conditions of OTS and has kept legal proceedings pending, the impugned order may be set aside, and the forfeited amount may be allowed to be retained by the bank, and the payment to the liquidator and to the OC should be done as per the agreement, wherein the guarantor has expressly agreed to settle the surviving liabilities under CIRP and liquidation, which includes the liquidation expenses and also the claim of the operational creditor.

10. The submissions of the Appellant, TMB, has been countered by the present liquidator, who is a respondent in all 3 appeals, in a common counter filed by her on the following grounds:

a) Contrary to the claim of the Appellant, the operational creditor TCP Limited had submitted their claim during the CIRP on 01.08.2018 for ₹1.06 crore with interest and subsequently, during the liquidation process, submitted the updated claim on 25.03.2019 for a sum of ₹1.32 crore. The said claim has been admitted by the erstwhile liquidator and has been reported to NCLT and IBBI as well, and therefore the appellant bank cannot challenge the said claim at this stage.

b) There is no provision to withdraw the liquidation process, as has been affirmed in a catena of judgments by NCLAT and Hon'ble Supreme Court and the same has already been ordered in the present case by the order of Ld. NCLT dated 12.05.2023 in MA No. 3/2022, which has not been challenged and therefore it has attained finality. She has stated that, considering the objectives of the Code, which aim at value maximisation of the CD and speedy resolution of insolvency, she has taken special steps to get the assets of the CD transferred in favour of the guarantor so as to bring a closure to the liquidation process.

c) The act of the appellant bank accepting the OTS offer and receiving the amount during the liquidation period, is against the provisions of the Code which was very graciously ratified by learned NCLT, and instead of being grateful, the appellant bank has filed this frivolous appeal, wasting the precious time of this Appellate Tribunal.

d) Once the appellant bank has received ₹9.50 crore from the guarantor, Mr. S.V. Ramasamy and has given a no-dues certificate, it has to be deemed that it has walked out of the liquidation process, and therefore, it will not have any claim over the forfeited EMD amount ₹54.31 lakh, which belongs to the liquidation estate and not to the financial creditor. Now that the appellant bank has clearly said that its dues have been fully settled by payment of ₹9.50 crores to it by Mr. S.V. Ramasamy, its claims stand extinguished and it cannot hold on to the said amount.

e) Regarding the payment of fees and other liquidation expenses, she has submitted that this was agreed upon during the proceedings held on 28.05.2024, where the personal guarantor had agreed to pay ₹4.5 lakh to her and with respect to claim of erstwhile liquidator, the Bank had stated that it has no objection to the forfeited amount to be distributed as per law.

11. Respondent Mr. S.V. Ramasamy, the personal guarantor, has stated in his counter that he had filed MA No. 3/2022 to withdraw the CP/288/IB/2018, which was rejected by Ld. NCLT and hence he should not

be blamed for continuing litigation against TMB. He has submitted that after paying off the loan extended by TMB to the CD in full, he has stepped into the shoes of the sole financial creditor and hence he has the first right to the amount available in the liquidation account, which is the forfeited amount. He has further submited that having agreed to the OTS amount and having accepted the same, the Bank cannot take a different stand now when he is being asked to refund the forfeited amount.

12. The erstwhile liquidator, in his common counter to all the appeals, states that the impugned directions issued in the impugned order of 12.09.2024 in respect of payment of liquidation expenses arises from a consensus arrived among the parties on 28.05.2024 and the same has been recorded by the order of Ld. NCLT of the same date, and now they cannot be challenged by the very same parties, including the Bank. He states that his fees were fixed in the 1st CoC meeting and subsequently by Hon'ble NCLAT in their order dated 26.09.2019 in CA (AT) No. 550/2019. Further, his claims are extremely reasonable as he has reduced the same on the request of Ld. NCLT to ₹20 lakh even though he has worked for 64 months as RP and liquidator and spent ₹4.35 lakh on account of legal expenses. Accordingly, he has prayed that the appeals may be dismissed.

Findings:

13. We have heard the parties to these four appeals at length. The first issue that needs determination is as to what implication will the settlement arrived between Mr. S.V. Ramasamy and TMB have on the instant liquidation proceeding. The order of Ld. NCLT dated 12.05.2023 in MA No. 3/2022, which has since attained finality, makes it very clear that it is a liquidation proceedings and there is no provision under the Code for a CD to come out of the liquidation process except by way of a scheme under Section 230 of the Companies Act, 2013, or by sale as a going concern and therefore liquidator is bound to proceed with e-auction process in accordance with law and to distribute the proceeds thereof in terms of Section 53 of the Code. Therefore, the process of settlement arrived at between Mr. S.V. Ramasamy and TMB and the terms thereof will not have any impact on the liquidation proceedings being carried in the Company Petition IBA/288/2018.

14. The liquidator found that TMB, the financial creditor, has already accepted the OTS offer of ₹9.50 crore made by Mr. S.V. Ramasamy and has requested the liquidator to permit him to hand over the immovable assets and title deeds of the CD to Mr. S.V. Ramasamy. In the face of 4 e-auctions having failed and the Bank having already issued an account closure certificate, the liquidator, finding no option left, filed IA 1838/2023 before

Ld. NCLT praying for ratification of the same, on the ground that the amount obtained for the assets is more than the reserve price and the value of the highest bid submitted in the auctions conducted so far. Ld. NCLT ratified the same, and permitted the liquidator to hand over the assets of the CD to Mr. S.V. Ramasamy on the grounds that the resolution of insolvency of CD is pending for more than 6 years, the resolution plan submitted by the promoter during CIRP was rejected, the scheme proposed by the promoter for whose implementation, NCLAT stayed the liquidation proceedings for 3 months also failed, 4 e-auctions conducted to sell the asset of CD also failed, that amount offered and paid to TMB in the said settlement is way above the reserve price and the offer of the highest bidder, that the personal guarantor is eligible under Section 29A of the Code to participate in the sale of the assets of the CD, and therefore the objectives of the Code of value maximisation of CD will be achieved if the said transaction between the personal guarantor (who is also the promoter) and the financial creditor TMB is treated as a private sale of the assets of the CD under Regulation 33 and 37 of IBBI (Liquidation Process) Regulations. On the said reasoning and citing the Doctrine of Necessity, Ld. NCLT proceeded to permit the liquidator to transfer the land and buildings and plant and machinery therein to Mr. S.V. Ramasamy, the personal guarantor, and disposed IA/1838/2023 and IA/1735/2024 accordingly. This part of the order has not been challenged by anyone. Ld. NCLT visualised the said process as if TMB has sold the assets of the CD acting on behalf of the liquidator in a private sale to Mr. S.V. Ramasamy, the personal guarantor, and received the sale proceeds on behalf of the liquidator, keeping the same with itself, being entitled to the same as the sole financial creditor. Though this is not strictly as per the Code and the Regulations, since no one has challenged it and it satisfies the overall objective of the Code, we do not wish to interfere at this stage.

15. It is to be noted that apart from the above-mentioned assets, more particularly described in page 7-8 of memo bearing Sr. No. 4267 of 23.08.2024 filed by the liquidation, there was one more asset in the liquidation estate, that is, ₹54.31 lakh accruing on account of forfeiture of EMD deposited by M/s. Sivajothi Mills. Prior to the settlement between Mr. S.V. Ramasamy and TMB, this amount stood distributed between erstwhile liquidator Mr. S. Muthuraju and TMB in accordance with Section 53 of the Code and liquidation regulations. Now that TMB, after the said settlement, has given the account closure certificate after receiving the settlement amount of ₹9.50 crore, it has to be construed that the said amount given to TMB will have to come back to the liquidation estate, to be distributed among the stakeholders. TMB has also agreed to the same which is recorded in the order of Ld. NCLT dated 28.05.2024, in the said proceedings. The relevant part is extracted below:

> *"Issue as to the payment of CIRP / Liquidation expenses/ fee is discussed.*
>
> *Shri. Rohan Rajasekaran submits that the erstwhile Liquidator agrees for a reasonable sum of ₹ 20 Lakhs.*
>
> *Ms. Santhanalakshmi submits that she agrees for a reasonable sum of ₹4.5 Lakh.*
>
> *Shri. S V Ramasamy submits that in addition to what he has paid towards settlement to the bank, he offers to pay ₹ 4.5 Lakh to the new Liquidator. As regards the expenses to the erstwhile Liquidator, it is for the bank to settle since the money has been realized by the bank.*
>
> *Ld. Counsel for the bank submits that the bank has no objection as to the return of the forfeited amount to be distributed as per law."*

The said order remains unchallenged by either of parties. Hence, the objection of TMB that the said forfeited amount should be permitted to be kept by TMB is not permissible and is accordingly rejected.

16. Now we turn our attention to the manner in which distribution of the aforesaid forfeited amount was done, which is the main bone of contention in the instant appeals. Ld. NCLT, in its order dated 12.09.2024, proceeded to direct that this amount be distributed as ₹20 lakh to Mr. S. Muthuraju, erstwhile liquidator, ₹4.5 Lakh to Ms. E. Santhanalakshmi, present liquidator and the balance to the operational creditor TCP Limited, in accordance with Section 53 of the Code. This part of the order has been hotly challenged by Mr. S.V. Ramasamy and TMB. Both of them contend that Mr. S. Muthuraju should not be paid ₹20 lakh because his fees has not

been fixed in accordance with the provisions of the Code and because he has not done any work or, coordination in the said period for which he claims the fee. However, Mr. S. Muthuraju in his counter has given a table detailing how he has arrived at the claim of ₹33.35 lakh and how he has accepted a reduced fee of ₹20 lakh on request by Ld. NCLT. The said computation has not been challenged by anyone, except that he has not done any worthwhile work in the said period of 64 months for which he is claiming fees at ₹50,000/month.

It is seen from the records of the Appeals that the erstwhile liquidator has moved various applications before Ld. NCLT at different points of time, has defended the corporate debtor before the Hon'ble High Court of Madras and conducted four e-auctions, apart from processing claims in his capacity as RP and liquidator. Further, the contention of Mr. S. Muthuraju has been that most of CIRP / liquidation period were rendered unproductive because various litigations resorted to by the promoter Mr. S.V. Ramaswamy. Further, he states that his fees were fixed at ₹50,000/month during CIRP and the same was ordered to be continued during the liquidation period by Hon'ble NCLAT in its order dated 26.09.2019 in CA (AT) (Ins) No. 550/2019. None of the challengers, i.e., Mr. S.V. Ramaswamy and TMB have challenged his continuance as liquidator. The contentions of Mr. S.

Muthuraju are held to be correct and therefore, the directions of Ld. NCLT to pay ₹20 lakhs to him from the liquidation estate account is perfectly valid.

17. None of the Appellants have challenged the payment of ₹4.5 lakhs as fee to the present liquidator Ms. E. Santhanalakshmi. However, they have challenged the direction to pay the Operational Creditor M/s. TCP Limited, its claims out of the said forfeited amount as per the waterfall mechanism prescribed in Section 53 of the Code. TMB states that the said claim was never verified and the said Operational Creditor never participated in the CoC meeting. The same is being echoed by Mr. S.V. Ramasamy. However, this cannot be the ground for rejecting the claim as both liquidators have vouchsafed that indeed the said Operational Creditor filed its claim during CIRP on 01.08.2018 for an amount of ₹1.06 crore with interest and later updated the same on 25.03.2019 to ₹1.32 crore after commencement of liquidation and the same has been reported to Ld. NCLT and IBBI. Given this, the assertion of the Appellant that the claim of M/s. TCP Limited is non-existent and unverified, cannot be accepted.

18. Appellant Mr. S.V. Ramaswamy has come up with a peculiar argument that by settling the dues of the Corporate Debtor with TMB he has become the sole Financial Creditor in the liquidation proceedings of the Corporate Debtor and hence he has the first right to the proceeds of liquidation estate and therefore the amount available in the liquidation

account being the forfeited amount should be given to him after settling the CIRP and liquidation costs instead of giving it to the Operational Creditor. It is seen that Mr. S.V. Ramaswamy has settled the dues of the Corporate Debtor to the bank TMB, but there is no assignment of debt. It is inconceivable how he becomes a financial creditor to the Corporate Debtor, when he has not sought substitution of TMB by himself in the liquidation proceedings. At the most, he can be described as the buyer of the assets of the Corporate Debtor in a private sale apart from being the promoter. Given this, in the role as a buyer, he will have no locus to claim any amount from the liquidation estate and in the role as a promoter, he will have to be the last person in the queue during the distribution of proceeds realised out of the liquidation estate. Hence, he will be entitled to the forfeited amount only after all the claims are satisfied in accordance with Section 53 of the Code.

19. As far as the contention of TMB is concerned, it is that as per the settlement Mr. S.V. Ramaswamy undertook to settle all liabilities including liquidation expenses and therefore the said liquidation expenses and payment of admitted claim of the Operational Creditor should be incurred by Mr. S.V. Ramaswamy and not from the forfeited amount. This is not acceptable because the settlement was not done in line of the provisions of the Code and the Regulations, and since TMB has already declared that its claim has been fully satisfied by the said settlement amount

and therefore it will have no claim on the liquidation estate of which the forfeited amount forms a part.

20. In view of the above, we are of the view that the impugned order does not invite any interference at our hands. Accordingly, the Appeals **CA (AT) (CH) (Ins) No. 430/2024, CA (AT) (CH) (Ins) No. 19/2025, CA (AT) (CH) (Ins) No. 20/2025** and **CA (AT) (CH) (Ins) No. 21/2025** are dismissed. All interlocutory applications will also be closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

28/09/2026
DD/MS/RS