

Distribution of proceeds under section 53 is on the basis of voting share of secured creditor as approved by CoC, not on the basis of value of security of the financial creditor.

CASE TITLE	Small Industries Development Bank of India (SIDBI) v. Vivek Raheja and Ors. ¹
CASE CITATION	Company Appeal (AT) (Insolvency) No. 570 of 2022
SECTIONS/ REGULATION	Section 30, 53 IBC
DATE OF ORDER	16.09.2022
COURT/ TRIBUNAL	NCLAT, New Delhi
CASE LAW REFERRED	<ul style="list-style-type: none">• ICICI Bank Vs. SIDCO Leathers Ltd. & Ors.• Technology Development Board Vs. Anil Goel & Ors.• Oriental Bank of Commerce Vs. Anil Anchalia & Anr.

Brief of the case:

In an application to the AA, the Appellant claimed that as per security interest of the Appellant, the Appellant is entitled to 6.93 % i.e. the amount of Rs. 5,64,97,893/- and as per voting share as approved by the CoC, the Appellant is entitled to 2.03% i.e. Rs. 1,65,47,078/-. The case of the Appellant set up in the Application was that he is entitled for his distribution of amount as per value of the security interest of the Appellant. The same was refuted by the RP and the decision of the COC was upheld by the AA. The same was challenged in this Appeal.

Decision:

Hon'ble NCLAT dismissed the appeal and held that,

"it is made clear that financial creditors who do not vote in favour of the resolution plan shall receive an amount that is not less than the liquidation value of their debt. The above statement of objects and reasons also makes it clear that the entitlement of dissenting financial creditor is to receive liquidation value of their debt and not the distribution as per their security value as is sought to be contended by the Learned Counsel for the Appellant before us. The statement of objects and reasons by which amendments in Section 30(2)(b) has been made, makes it clear that entitlement of dissenting financial creditor is the liquidation value of their debt which also clearly negate the submissions raised by the Learned Counsel for the Appellant before us.

The conclusion of the committee is that the priority under Section 53(1)(b)(ii) shall be only to the extent of security interest of the secured creditor. The secured creditor cannot claim priority under Section 53(1)(b)(ii) of the whole debt where only part of the debt is secured.

The decision of the Committee of Creditors and the Adjudicating Authority deciding to distribute the proceeds of the plan value as per voting share of the secured creditor in no manner contravenes the provisions of Section 30(2)(b) of the Code."



QR CODE FOR FULL ORDER/JUDGEMENT:

¹https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2NhczVkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDktMTYvY291cnRzLzEvZGFpbHkvMTY2MzMxOTk3OTM1NzEyMjc3NiMyNDNmYWlxOGNhZC5wZGY=