

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

(IB) 420(ND)/2017

**CORAM:**

**PRESENT: DR. V. K. SUBBURAJ**  
**HON'BLE MEMBER(T)**

**MS. INA MALHOTRA**  
**HON'BLE MEMBER (J)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 04.02.2019**

**NAME OF THE COMPANY: M/s Regal Metal & Ferro Alloys Vs. M/s Sandeep Axles Pvt. Ltd.**

**SECTION OF THE COMPANIES ACT: 9 of IBC, 2016**

<b>S.NO.</b>	<b>NAME</b>	<b>DESIGNATION</b>	<b>REPRESENTATION</b>	<b>SIGNATURE</b>
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**Present for the Petitioner:** Ms. Ekta Choudhary, Advocate

**Present for the Respondent:** Ms. Nalini and Mr. Shivam Mishra, Advocates

**ORDER**

No reply has been filed by the liquidator in CA 4/2019. Vide this application, the applicant, being the Corporation Bank is aggrieved by the decision of the Liquidator rejecting their claim of over Rs. 2 crores and not accepting them as the Financial Creditors of the Corporate Debtor. The reason for rejecting the claim is that the applicant had also staked their claim in a related company, M/s. SPM Auto Ltd. as a secured creditor and it is therefore precluded from filing a claim for the same debt in liquidation proceedings herein.

2. We are unable to accept the proposal. As long as the applicant limits the recovery to the extent of its debt, being a Secured Creditor with two entities, it is immaterial as to how many forae it seeks recovery against its secured debt. Ld. Counsel for the Applicant relies upon the decision in the matter of ICICI Bank V/s. Ritu Rastogi & Ors. in IB-102(PB)/2017. By the aforesaid order, Hon'ble Principal Bench rejected the RPs' contention that the applicant cannot

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simultaneously raise its claim against principal borrower and corporate guarantor which are under their respective CIR process because it would create anomalies. The Hon'ble Principal Bench placed reliance on the observations made by the Hon'ble NCLAT in the case of Prowess International Pvt. Ltd. V/s. Parker Hannifin India Pvt. Ltd. It has noted that the basic object of the Code is to consolidate and amend the laws relating to reorganization of the Corporate person and to balance the claims of all the stakeholders. While rejecting the submissions of the RP, it has been observed by the Hon'ble Principal Bench that the right of the parties under Section 128 of the Indian Contract Act, 1872 are subject to the terms of the agreement between the parties and hence the guarantor or the RP is not entitled to raise an objection which goes against the express terms of guarantee agreement duly executed between the Financial Creditor and the Corporate Debtor or corporate guarantor.

3. In view of the settled law, Ld. Counsel for the Liquidator submits that they shall consider the claim in the present liquidating proceedings subject, however, to the undertaking that the claim of the applicant company shall not exceed their entitlement.

Let steps be taken accordingly.

No further orders are called for. CA stands disposed off. Copy of the order be given Dasti.

Be listed as and when the interim reports are filed by the Liquidator.



**(V. K. Subburaj)**  
**Member (T)**



**(Ina Malhotra)**  
**Member (J)**