



**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

**APPEAL(IBC)/32/2024 & IVN.P (IBC)/55(MB)
2025 IN C.P. (IB)/2815(MB)2019**

Under Sections 42 of the Insolvency and Bankruptcy
Code, 2016

Jammu & Kashmir Bank Limited

...Appellant

V/s

**Mr. Ajay Agrawal, Liquidator of Pan India
Infraprojects Pvt. Ltd.**

...Respondent

&

**J.C. FLOWERS ASSET RECONSTRUCTION
PRIVATE LIMITED**

...Petitioner

V/s

JAMMU & KASHMIR BANK LIMITED.

...Respondent/ORG.Appellant

In the matter of

COMPANY PETITION NO. 2815 OF 2019

Garg Enterprises

...Petitioner/Operational Creditor

V/s

Pan India Infraprojects Pvt. Ltd



...Respondent/Corporate Debtor

Order delivered on: 12.01.2026

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Appearances: APPEAL(IBC)/ 32/2024

Shri Sushil Mahadeorao Kochey

Hon'ble Member (Judicial)

For the Applicant/Appellant : Mr. Chetan Kapadia, Ld. Sr. Advocate,
Adv. Rohan Agrawal a/w Adv. Yahya
Batatawala.

For the Respondents : Adv. Aditya Tolani
For the Liquidator : Adv. Rishabh Khemuka

Appearances: IVN.P(IBC)/55(MB)2025

For the Petitioner : Mr. Prateek Seksaria, Ld. Sr. Advocate,
Adv. Aditya Tolani.

For the Respondents : Mr. Chetan Kapadia, Ld. Sr. Advocate,
Adv. Rohan Agrawal a/w Adv. Yahya
Batatawala.

ORDER

1. The instant appeal is being preferred under Section 42 of the Insolvency & Bankruptcy Code, 2016 ("IBC") by Jammu and Kashmir Bank Limited ("Appellant") against the decision of the Liquidator communicated vide Email dated 04.12.2023 to the Appellant whereby the Liquidator declared the Appellant as Unsecured Financial Creditor in the liquidation process of Pan India Infraprojects Pvt. Ltd. ("Corporate Debtor") The Appellant has made following prayers :

a. Allow the present Appeal by declaring the Appellant Bank as secured financial creditor by setting aside the impugned



*Decision/Communication dated 04.12.2023 issued by the Liquidator;
and*

*b. Pass such other and further reliefs that this Hon'ble Tribunal may
deem fit in the facts and circumstances of this case*

2. The Respondent is the Liquidator appointed in respect of the Corporate Debtor vide order dated 04.10.2023, passed by this Adjudicating Authority in IA No. 1282 of 2019, commencing the liquidation of Corporate Debtor. Initially, the said Company Petition (IB) 2815/MB/2019 was filed by Garg Enterprises, under Section 9 of the Code for initiation of the Corporate Insolvency Resolution Process ("CIRP") in respect of PIPL i.e., the Corporate Debtor and the Corporate Insolvency Resolution Process ("CIRP") for resolution of Corporate Debtor under IBC commenced on 16.7.2020.
3. On 17.06.2010, the Appellant sanctioned a Corporate Loan of Rs. 200 Crores and a Bank Guarantee Facility of Rs.30 Crores in favor of one Pan India Network Private Limited ("PINPL") and a loan agreement dated 07.07.2010 and later on a supplementary loan agreement dated 18.08.2011 were executed by PINPL and the Appellant. The said loan was secured by collateral securities in form of shares of group companies.
4. On 13.1.2012, the existing collateral securities were replaced by pari-passu charge on non agricultural land situated in Bhayander in terms of mortgage of said property created by its owner Essel Infraprojects Limited ("EIL"). On 1.6.2012, the existing pari-passu charge on Bhayander property was replaced by Pari- passu charge on land measuring 196.16 acres located at Gorai Village, Survey No. 268, Borivali (W), Mumbai - 400091 ("Mortgaged Property"), in terms of mortgage of said property created by its owner viz. EIL.
5. The Appellant sanctioned two Term Loan of Rs. 100 Crores to the Corporate Debtor in terms of sanction letter dated 30.1.2012 and sanction letter dated 15.3.2022. A common loan agreement was executed on 20.3.2012 between the Corporate Debtor and Appellant in relation to both sanctions. Both of these facilities were secured by a charge by way of 1.5 times cover over land at Gorai Village, Survey No. 268, Borivali (W), Mumbai - 400091 ("Mortgaged



Property") as well as Corporate Guarantee of EIL. The sanction letter(s) also stipulated registration of charge with RoC within the prescribed time.

6. Thereafter, in the year 2013, Appellant sanctioned Rs.100 Crores to EIL vide Sanction Letter dated 14.01.2013 for which the formal sanction was accorded on 17.01.2013 and for securing the said facility, EIL offered to extend charge on the Mortgaged Property which was accepted by the Appellant vide a Sanction letter/communication dated 16.03.2013.
7. Thereafter, in the year 2013, another group concern of Essel Group, Pan India Utilities Distribution Company Limited ("PIUDCL") availed Secured Overdraft Credit Facility to the tune of Rs. 200 Crores ("SOD"), vide a sanction letter dated 17.12.2013 and the facility was inter-alia secured by extending charge by way of 1.25 times cover on the outstanding loan of the Mortgaged Property by EIL and by executing a Deed of Corporate Guarantee dated 27.12.2013 by EIL in favor of the Appellant. Pursuant to sanctioning of the credit facility i.e. SOD of Rs. 200 Crores, charge and security interest was created with respect to the secured assets i.e., Mortgaged Property of EIL and in respect to the same Certificate of Registration of Mortgage dated 27.12.2013 was issued by the Registrar of Companies (ROC) Mumbai to that effect.
8. Thereafter, EIL demerged and another entity, i.e., Essel Urban Infrastructures Private Limited ("EUIPL") was created vide a scheme of arrangement and the same was approved by the Hon'ble Bombay High Court vide its order dated 4th April 2014 and EUIPL was vested with the rights over the Mortgaged Property. Furthermore, Certificate of Registration of Charge dated 19.12.2014 was issued by the Registrar of Companies (ROC) Mumbai for the SOD credit facility of Rs. 200 Crores availed by PIUDCL from the Appellant. Clause 3.1 of the approved scheme reads as under :

"Clause 3.1: Notwithstanding anything to the contrary contained in the contract, deed, bond, agreement or any other instrument, but subject to the other provisions of this scheme, as contracts, deeds, bonds, agreements and other instruments, if any, of whatsoever nature and subsisting, or having effect on the Effective Date and relating to the Demerged Undertaking of the Demerged Company, shall continue in



full force and effect against or in favour of the Resulting Company, and may be enforced effectively by or against the Resulting Company as full and effectively as if, instead of the Demerged Company, the Resulting Company has been a party thereto. "

9. Subsequently, EUIPL was merged into the Corporate Debtor, i.e., PIPL vide a scheme of arrangement/ amalgamation which was approved by the Hon'ble Bombay High Court vide its order dated 20th June, 2014. Clause 2.7.1 of the approved scheme reads as under :

"Clause 2.7.1: Subject to the other provisions contained in this Scheme, all contracts, deeds, bonds, agreements and other instruments of whatever nature to which the Transferor Company is a party subsisting or having effect immediately before the Scheme coming into effect shall be in full force and effect against or in favour of the Transferee Company, and may be enforced or against the Transferee Company as full and effectually as if, instead of the Transferor Company, the Transferee Company had been a party thereto."

10. The Appellant submitted its claim with the RP (who is now Liquidator) in CIRP vide a duly filled FORM-C dated 6.8.2020 wherein Appellant intimated the RP about the particulars of the debt and its claim on the basis, mortgaged property, sponsors undertaking and Deed of Guarantee, however, the Appellant was admitted in the capacity of unsecured financial Creditor to the Corporate Debtor in CIRP process. That Appellant being aggrieved by the decision of the RP filed the Interlocutory Application No. 944/ 2021 in Company Petition (IB) 2815/MB/2019 before this Tribunal, vide order dated 04.09.2023 disposed of the Application in view of filing of an application for liquidation of corporate debtor thus rendering that application meaningless at that stage. The Appellant preferred an Appeal, bearing Company Appeal (AT) (INS) No. 1414 of 2023, against order dated 4.9.2023 before the National Company Law Appellate Tribunal, New Delhi, which was disposed of by Hon'ble NCLAT vide order dated 8.8.2024 stating that *"it has become infructuous because the appellant has already availed the remedy to challenge the decision of the liquidator dated 04.12.2023 by way of an independent application bearing I.A. No. 6010 of*



2023 which is pending before this Court”, and consequently disposed of IA 6010 of 2023 stating that “liberty is granted to the appellant to file appropriate application before the Tribunal in this regard which shall be decided by the Tribunal as early as possible”. The Hon’ble NCLAT also stated that “It is made clear that in case any such application/ appeal is filed before the Ld. Tribunal, all the issues involved in the application as well as defence thereto shall remain open”.

11. In the meanwhile, pursuant to public announcement made by the Liquidator under FORM-B, the Appellant during the pendency of an Appeal bearing no. 1414 of 2023 before the NCLAT, New Delhi filed its claim (FORM-D) on 02.12.2023 in the capacity of Secured Financial Creditor before the Liquidator, however, the Liquidator admitted the claim of the Appellant as Unsecured Financial Creditor and the same was conveyed by the Liquidator to the Appellant via email dated 04.12.2023. Being aggrieved by the decision of Liquidator and pursuant to liberty granted by Hon’ble NCLAT, the Appellant has filed this appeal.
12. One J.C. Flowers Asset Reconstruction Private Limited, admitted as a secured financial creditor in liquidation process of the Corporate Debtor, filed an intervention application INVP 55 of 2025 in the present appeal. The intervenor is stated to have become a secured financial creditor Pvt. Ltd. ("PIIPL") through the assignment of two term loan facilities amounting to ₹ 100 crore and ₹ 400 crore in terms of Assignment Agreement dated 16th December 2022 executed by the original lender YES Bank Ltd. Subsequent to filing of intervention application, the said loan was further assigned to Omkara Asset Reconstruction Private Limited, who was substituted as applicant in the intervention application.
13. It is case of the applicant that by virtue of the aforementioned schemes of arrangements Corporate Debtor has stepped into the shoes of Original Mortgagor i.e., EIL as per the terms and conditions of Deed of Mortgage dated 27.12.2013 and also has stepped into the shoes of Corporate Guarantor i.e., EIL as per the terms and conditions of Deed of Corporate Guarantee dated 17.12.2013. Accordingly, the applicant has contended that the Corporate



Debtor is liable towards the Appellant for repayment of the facility availed by PIUDCL. Furthermore, RP (now Liquidator) failed to understand that the Corporate Debtor has also executed sponsor's undertaking dated 27.12.2013 in favor of the Appellant whereby the Corporate Debtor has declared and undertaken to meet any shortfall in cash flows and other financial obligations of PIUOCL towards the Applicant. It is also stated that the Liquidator also failed to understand that EIL has also executed a Corporate Guarantee dated 17.12.2013 in favor of the Appellant for securing the SOD facility sanctioned by the Bank in favour of PIUDCL and by virtue of scheme of arrangements i.e. Demerger and Amalgamation, the Corporate Debtor has stepped into the shoes of Corporate Guarantor i.e. EIL and now the Corporate Debtor is liable towards the Appellant Bank for repayment of the facility availed by PIUDCL as per the terms and conditions of Deed of Corporate Guarantee dated 17.12.2013.

14. Per contra, the Respondent Liquidator has submitted that he, after application of mind and after following the law laid down in *India Bulls Housing Finance Vs Sameer Kumar Bhattacharya Company Appeal (AT) (Insolvency) No. 830 of 2019* informed the appellant that they have been classified as an unsecured financial creditor as the charge was not recorded / registered with RoC and failure of the applicant to prove its security interest in terms of Regulation 21 of Liquidation Process Regulations. It is also stated by the Liquidator that Section 79 of the Companies Act clearly specify that any acquisition of property, which is subject to charge, or any modifications in the terms and conditions or the extent or operation of any charge should be registered as per section 77 of the Companies Act, and Section 77(3) of the Companies Act clearly mandates that no charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered under sub-section (I) of section 77.
15. The Intervenor Omkara has challenged the Application stating that (i) the Applicant has taken inconsistent positions regarding the Corporate Guarantee executed by EIL. While it now claims that PIIPL assumed EIL's guarantee via the demerger into EUIPL and subsequent merger into PIIPL, in its application for initiation of corporate insolvency proceedings against EIL, being C.P. (I.B.)



6 of 2023 filed before this Tribunal, the Applicant stated that the corporate guarantee was not transferred and therefore EIL is liable for the same. This Tribunal in the said matter held that a corporate guarantee cannot be transferred and has held EIL liable for the Applicant's debt. Moreover, by a Renewal cum Reduction Letter dated 18th November 2017, the Applicant requested PIPL to issue a fresh guarantee, which was never provided, indicating no subsisting guarantee by PIPL even as per applicant's stand; (ii) Out of the 196.16 acres allegedly mortgaged, 41.16 acres had already been transferred to another group entity in 2009 post restructuring of EIL and did not belong to EIL when the charge was registered on 15th January 2014 which was recognized in an order dated 3rd March 2021 in proceedings under the Maharashtra Land Revenue Court, which vacated the charge, an order that has attained finality.

16. Heard the Learned Counsel and perused the material on record, including reply of Respondent Liquidator, reply of Applicant in the intervention application of Omkara and rejoinder of Applicant to the reply of Liquidator in the Interlocutory application, as well as arguments advanced by the Ld. Counsel for the parties have been taken into consideration.
17. The Interlocutory application is filed on 24.08.2024 challenging the decision of liquidator dated 4.12.2023 treating the applicant as unsecured financial creditor. Section 42 of the IBC requires a creditor to file its appeal within 14 days of receipt of the decision of liquidator. It is noted that Hon'ble NCLAT vide order dated 8.8.2024 had granted a liberty to the applicant to file appropriate application before the Tribunal while disposing of applicant's I.A. No. 6010 of 2023 as well as Company Appeal (AT) (INS) No. 1414 of 2023 filed by the applicant before Hon'ble NCLAT challenging the impugned decision of the liquidator in its appeal pending before it. In view of specific liberty granted by Hon'ble NCLAT to challenge the impugned decision before this Tribunal, we are of considered view that the present application is maintainable.
18. Before proceeding further, it is important to decide following issues :
 - a. Whether the security interest in Gorai Land owned by EIL to secure loan granted to PIUDCL is continued to be held by the applicant consequent to



order dated 4th April 2014 passed approving the Scheme of arrangement between EIL and EUIPL whereby one undertaking of EIL, including Gorai land, was transferred to EUIPL under the said arrangement;

- b. Whether the corporate guarantee extended by EIL, additionally, to secure the loans advanced to PIUDCL, binds the Corporate Debtor in terms of said corporate guarantee consequent upon merger of EUIPL with the Corporate Debtor in terms of order dated 20th June, 2014 approving the scheme of amalgamation of EUIPL with the Corporate Debtor;

19. The Scheme of arrangement between EIL and EUIPL sanctioned vide order dated 4th April, 2014 defines the “Demerged Undertaking” under clause 1.1.4 to mean *“the project for development, operation and maintenance of a facility centre to be established in the Gorai region. The project envisages the development of various infrastructure facilities such as residential and commercial complexes, shopping centre, sports complex, convention/exhibition centre, food courts, hotels, restaurants, educational centre, mora, wellness/health centre /spiritual centre, eco park, roads, bridges, terminal, and other physical and social Infrastructure. Demerged Undertaking would mean the entire undertakings, business, activities and operations of EIL related to the above mentioned project in Goral Village on a going concern basis including specifically but not limited to the following:*

1.1.4.1. Land Including the property situated at Goral village containing survey no. 268 including all capital work in progress, electrical installation, water connection, tenancy rights, statutory permissions, consents and registrations, all rights or titles or interest in property by virtue of any Court decree or order, no objections from any authorities including municipal authorities, consents and approvals of every kind and descriptions, leave and lease agreement, or lease agreements, other contracts and arrangements and all other interests in connection with or relating to the Demerged Undertaking;

1.1.4.2. All liabilities present and future (including contingent liabilities pertaining to or relatable to the Demerged Undertaking), as may be determined by the Board of EIL;



xxx xxx xxx

1.1.4.7. 7. Any other asset/liability which is deemed to be pertaining to the Demerged Undertaking by the Board of EIL

Explanation: In case of any doubt regarding whether any particular assets forms a part of the Demerged Undertaking or otherwise, the same shall be resolved mutually by the Board of Directors of the Demerged Company and the Resulting Company.”

20. It is clear from the definition of “Demerged Undertaking”, the Land Including the property situated at Goral village containing survey no. 268 stood transferred to EUIPL. Further, the liability pertaining to the demerged undertaking, as decided by the Board of EIL, also stood transferred to EUIPL. Clause 3.1 of the said scheme states makes all contract, deed, agreement or any other instrument subsisting, or having effect on the Effective Date and relating to the Demerged Undertaking of the Demerged Company, continue in full force and effect against or in favour of the Resulting Company, and enforceable by or against the Resulting Company as if, instead of the Demerged Company, the Resulting Company has been a party thereto. Hence, the mortgage deed 27.12.2013 creating a charge on Gorai Land which stood transferred to EUIPL continues to be binding on the EUIPL. Accordingly, the security interest in Gorai Land owned by EUIPL consequent to scheme of arrangement to secure loan granted to PIUDCL is continued to be held by the applicant consequent to order dated 4th April 2014 passed approving the Scheme of arrangement between EIL and EUIPL and binds EUIPL. Further, EUIPL was merged with the Corporate Debtor pursuant to scheme of arrangement approved by order dated 20th June, 2014, thus, the obligations of EUIPL stood transferred to the Corporate Debtor in terms of clause 2.7.1 of said scheme of arrangement (clause 2.7.1 is identically worded as clause 3.1 of earlier scheme of arrangement). Accordingly, the Corporate Debtor’s rights in Gorai Land continued to be encumbered by a charge created in favor of applicant as on date.

21. As regards transfer of obligations under the Corporate Guarantee, it is pertinent to note that clause 3.1 of the scheme of arrangement approved vide



order dated 4th April 2014 in the Scheme of arrangement between EIL and EU IPL transferred liabilities as well as deed, agreements or contracts or instruments relating to demerged undertaking. Further clause 1.1.4.2 of the approved scheme transferred liabilities present and future (including contingent liabilities pertaining to or relatable to the Demerged Undertaking) as may be decided by board of EIL. Though, no document has been placed on record by the applicant whether the Corporate Guarantee dated 27.12.2023 executed by EIL to secure the loans extended to PIUDCL was decided by the Board of EIL to be transferred to EU IPL, however, it is pertinent to note the stand of EIL in the proceedings in RCP (IB) 6/MB/2023 connected to C.P. (IB) 361/2022 as recorded in order dated 28.8.2024 passed by this tribunal in the said matter. It is recorded therein that “23. *The Petitioner, through its Renewal cum Reduction letter dated November 18, 2017, requested that PIPpL execute an extension of the mortgage previously created in favor of the Petitioner. This was because the property at Survey No. 268 in Village Gorai, Taluka Borivali, Mumbai had now been transferred to PI IPL. The letter also required PI IPL to provide a guarantee for the mortgage. This indicates that the corporate guarantee provided by the Respondent had been released, and the Respondent was no longer acting as the mortgagor.*” It was further contended by EIL as recorded at para 34 of said order that “*Additionally, the guarantee document explicitly stated that it would not be affected by any absorption or amalgamation of the Guarantor Company with another company. However, this provision was overridden by the court-approved demerger scheme, which transferred the liability of the Corporate Debtor under the guarantee to the resulting company, thus releasing the Corporate Debtor from the guarantee obligation.*” This clarifies that the Board of EIL had decided to transfer the obligations under Corporate Guarantee to EU IPL. However, this Tribunal rejected the contention of the EIL and held at 46 of order dated 28.8.2024 passed in RCP (IB) 6/MB/2023 connected to C.P. (IB) 361/2022 thus upholding the applicant’s stand that the Corporate Guarantee dated 27.12.2023 binds EIL. This Tribunal held therein that “*In relation to the assertion that Corporate Debtor is no longer liable for the debt due to the demerger and*



subsequent amalgamation schemes approved by the Bombay High Court in 2014, the Tribunal found that the corporate guarantee provided by the Corporate Debtor remained valid despite the restructuring. Further the guarantee agreement dated 27.12.2013 is an independent document executed between the petitioner and respondent and it specifically mention page 394 & 395 of the Petition. This agreement was deemed not to be linked solely to the Gorai project, which was transferred to Essel Urban Infraprojects Ltd.”

Accordingly, we are of considered view that the applicant cannot take a contrary stand in the present proceedings after having elected while filing C.P. (IB) 361/2022 against EIL that EIL continues to remain bound by the Corporate Guarantee dated 27.12.2023 despite approval of scheme of arrangement transferring the Gorai Land to EUIPL. Accordingly, we are of considered view that the corporate guarantee dated 27.12.2023 extended by EIL, additionally, to secure the loans advanced to PIUDCL, does not bind the Corporate Debtor in terms of said corporate guarantee consequent upon merger of EUIPL with the Corporate Debtor in terms of order dated 20th June, 2014 approving the scheme of amalgamation of EUIPL with the Corporate Debtor, as the obligations under the said guarantee could not said to have stood transferred pursuant to approval of scheme of arrangement vide order dated 4th April 2014.

22. Having said so, it is not disputed that no charge is registered on the Gorai Land transferred to EUIPL and thereafter to Corporate Debtor pursuant to scheme of arrangement approval order (s) dated 4th April, 2014 and 20th June, 2014 by the Hon’ble Bombay High Court, however, the charge on Gorai land was registered initially to secure the loans granted to PIUDCL when it was owned by EIL. It is also not disputed that the deed of mortgage dated 27.12.2013 is registered with Sub-Registrar Borivali No. 1, Mumbai.

23. The Hon’ble NCLAT in case of ***Bizloan Pvt. Ltd. v. Amit Chandrashekhar Poddar (Liquidator)***, [\(2025\) ibclaw.in 463 NCLAT](#) held that :

“48. As already discussed earlier, the basic issue is whether Section 77 (3) of the Companies Act, 2013 which mandates registration of charge will prevail over Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 or vice-versa. We have already noted that the purpose of registration of charge



with the RoC under Section 77 is distinct and non compliance result into consequential implication for concerned stakeholders, whereas the registration with CERSAI in terms of Section 20 of SARFAESI Act, 20052 is for realisation of security interest by banks and NBFC and help in preventing frauds since the lender becomes alert so that he does not land money on the assets already hypothecated or mortgaged.

49. To recapitulate Regulation 21 is for proving existence of security interest which may be proved by security creditor on the basis of (a) the records available in the information utility, if any, (b) certificate of registration of charge issued by the Registrar of Companies or (c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest and India.

50. Thus, it is clear that Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 provides three alternatives certification of registration of charge issued by RoC or proof of registration of charge with CERSAI. It is utmost important to note that the word “or” has been used in Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 sub-clause (b) and sub-clause (c) which make it clear that the security interest may be proved either by registered charge maintained by RoC or registration of charge has entered with CERSAI. We have already noted that Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 came into force with effect from 15.12.2016. Thus, this amendment is later then Section 77(3) of Companies Act, 2013 which was done on 15.11.2016.

24. Further in case of *Canara Bank v. S. Rajendran (Liquidator)*, (2024) ibclaw.in 139 NCLAT, the Chennai Bench of Hon’ble NCLAT (3 member) held that “53. In addition, the ‘non-registration of the Mortgage’, as per Section 77 of the Companies Act, 2013, is not a sufficient / enough ground, to come to an ‘opinion’, that the ‘Appellant’, is not a ‘Secured Creditor’. In reality, the ‘rights’ of a ‘Mortgagee’, under the ‘Transfer of Property Act’, 1882 and the ‘SARFAESI Act’, are not to be diluted, in terms of Regulation 21 of IBBI (Liquidation process) Regulations, 2016.” It further said that “54. It cannot be



lost sight of the fact that ‘CERSAI Registration’, became ‘mandatory’, only in February, 2020, much after the ‘Mortgage’, was created in the instant case. Further, the fact remains that the ‘Mortgage’, was registered in the Office of S.R.O., Thovalai, Kanyakumari District, Tamil Nadu, which is again a Public Office, providing ‘information’, on the ‘Mortgages’, registered in it.”

25. It is also noted that, in case of **Brihanmumbai Electric Supply and Transport Undertaking v. Ashok Kumar Golecha**, [\(2025\) ibclaw.in 295 NCLAT](#) Hon’ble NCLAT (3 member Principal Bench) took note of decision in case of S. Rajendran, however, it rejected the claim in absence of registration with MCA on different ground. The relevant observations reads as “17. When we look at the facts of the present case, we find that the Liquidator did not receive any proof with regard to recording of the security having been created either with the information utility or proof of Certificate of Registration of Charge issued by the ROC or registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India. Even if the requirement of the registration of charge is side-stepped for the time being in deciding the status of the Appellant as a secured financial creditor, the need to possess documents of charge creating the interest cannot be waived as this requirement was clearly envisaged in the IA.”
26. Further, the decision in case of **Home Kraft Avenues v. Jayesh Sanghrajka (RP) and Ors.**, [\(2025\) ibclaw.in 122 NCLAT](#) was rendered in case of admission of claim in CIRP process, however, it observed that “17. Thus, it is a settled law right of a mortgagee under the Transfer of Property Act, 1882 cannot be taken away only because of non-registration of the charge u/s 77 of the Companies Act, 2013”. Similarly, the issue was admission of claim in CIRP in case of **India Bulls Housing Finance Vs Sameer Kumar Bhattacharya Company Appeal (AT) (Insolvency) No. 830 of 2019**, which was rejected on account of non-registration of charge with RoC, is distinguishable on facts of the case.
27. Further, the decision in case of **Volkswagen Finance Pvt. Ltd. v. Shree Balaji Printopack Pvt. Ltd**, [\(2020\) ibclaw.in 302 NCLAT](#), the charge was not registered with RoC but was registered only with RTO. However, in the



present case, the charge is registered with a public authority prior to introduction of CERSAI.

28. The facts of the case in S. Rajendran and the case of Respondent No. 2 are similar as in the present case also, the deed of mortgage came to be registered prior to February, 2013 and the said deed is duly registered with Sub Registrar Borivali, Mumbai. Accordingly, we are bound by the decision in case of S. Rajendran, which has also been noticed in Home Kraft Avenues and found approval.

29. In the present case, the security interest of the applicant is backed by the mortgage deed registered prior to introduction of CERSAI. Further, Hon'ble NCLAT in Home Kraft Avenues (Supra) held that “17. *Thus, it is a settled law right of a mortgagee under the Transfer of Property Act, 1882 cannot be taken away only because of non-registration of the charge u/s 77 of the Companies Act, 2013.*”

30. Further, clause 1 of deed of mortgage provides that “1. *In consideration of the bank having allowed or agreed to allow Line of Credit (SOD) facility of Rs. 200/- (Rupees Two hundred Crores Only) in favour of the Borrowers, THE MORTGAGOR hereby covenants with the bank that it shall on demand pay the bank all the moneys which now are or may hereafter become due from the Borrower towards the bank in its account or accounts with the bank as mentioned above in respect of the credit facility advanced or hereafter to be advanced by the bank to the Borrower to the extent of Rs. 200 Crores (Rupees Two I Hundred Crores Only) together with interest @ BR+2.75% (at present 13 %) or such other rate of interest as may be prescribed by the bank from time to time with monthly rests along with costs, charges, etc.*” The said covenant constitutes guarantee in favor of Applicant in terms of Mortgage Deed, which stood transferred to EUIPL and then to Corporate Debtor. However, it is clarified that the obligations under corporate guarantee did not come to be transferred to EUIPL, accordingly, no obligations in terms of corporate guarantee executed by EIL can be fastened upon the Corporate Debtor pursuant of scheme of arrangement(s) approved by Hon'ble Bombay High Court.



31. In light of these propositions and facts of the case, we are of considered view that the claim of the applicant deserve to be admitted as secured financial creditor. Accordingly, Appeal 32 of 2024 is allowed and Intervention 55 of 2025 is dismissed and disposed of accordingly.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)