NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.69 of 2024

(Arising out of Order dated 02.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in I.A. 1943 of 2020 in C.P.(IB) No.3025/MB/2019)

IN THE MATTER OF:

Industrial and Commercial Bank of China Limited ...Appellant

Versus

Anish Niranjan Nanavaty & Ors. ...Respondents

Present:

For Appellant	**:**	**Mr. Abhijeet Sinha, Sr. Adv. With Ms. Jinal Shah, Ms. Palak Nenwani, Mr. Rohit Chopra, Advocates**
For Respondents	**:**	**Mr. Krishnendu Datta, Sr. Adv. With Ms. Anannya Ghosh, Ms. Mrinalini Mishra, Advocates**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging the order dated 02.01.2024 passed by National Company Law Tribunal, Mumbai Bench-I allowing IA No.1943 of 2020 filed by Resolution Professional ("**RP**") – Anish Niranjan Nanavaty (Respondent No.1 herein), directing the Appellant to lift/ release/ remove the lien marked on the Fixed Deposit ("**FD**") on amount of Rs.27.60 crores, which was opened by the CD with the Appellant Bank.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

(i) The Corporate Debtor ("**CD**") – Reliance Communication Infrastructure Limited opened an FDR in the Appellant Bank on 27.03.2017. On the same date a letter dated 27.03.2017

was written to the Bank by Reliance Communication Infrastructure Limited asking the Bank to mark a lien against the FD, which may be due from us to you, whether singly or jointly with another or others in connection with credit facility provided to them by the Bank.

(ii) The Corporate Insolvency Resolution Process ("**CIRP**") against the CD commenced on 25.09.2019 on an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**") filed by the State Bank of India ("**SBI**").

(iii) The Interim Resolution Professional ("**IRP**") vide letter dated 03.10.2019 informed the Appellant that CD is undergoing a CIRP and Bank need not debit, freeze, block, transfer or appropriate any funds from the accounts of the CD. The IRP wrote an email dated 10.07.2020 to the Appellant that CD - Reliance Communication Infrastructure Limited had not obtained any credit facilities from the Appellant, hence, the amount lying in the FD be released within five days. On 30.08.2020, the RP requested to release the funds lying in the FD.

(iv) A letter dated 07.08.2020 was sent by the Appellant refusing to release the funds on the ground that Appellant had extended certain foreign currency facilities to Reliance Infrastructure Limited ("**RITL**"). The Appellant informed that

it is exercising its lien on the FD for credit facilities extended to RITL. After that there had been certain correspondence between the RP and the Bank.

(v) The RP filed an IA No.1943 of 2020 before the Adjudicating Authority seeking a direction to the Bank to lift/ release the fund along with interest in the account of SBI belonging to the CD. The Appellant filed the reply to the said IA.

(vi) After hearing both the parties, the Adjudicating Authority vide order dated 02.01.2024 allowed the application and directed the Appellant to release the lien marked on the FD of the CD and release the fund along with interest. Aggrieved by the said order, this Appeal has been filed.

3. We have heard Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant and Shri Krishnendu Datta, learned Senior Counsel appearing for Respondent/ RP.

4. Learned Senior Counsel for the Appellant in support of the Appeal submits that lien letter of the CD dated 27.03.2017 was to secure obligations of its related parties towards the Appellant. Learned Counsel for the Appellant has referred to paragraph-1 and various clauses of the letter dated 27.03.2017 to support his submission. It is submitted that the lien letter was given not only to the specific advance made to the CD, but also any other money due from the CD, whether singly or jointly with another or others in connection with credit facilities provided by the Bank. It is submitted that NCLT by the impugned order has ignored the

commercial purpose and the intent of the lien letter, which was to allow financial institutions to manage risk across group companies. The security created pursuant to lien letter, continues to secure the debt owed by RITL. Learned Counsel for the Appellant relying on Section 171 of the Indian Contract Act, 1872 submits that Bank has statutory right to hold a lien. Section 171 empowers Bankers to have a general lien of any balance due, whether owed directly or indirectly. He further submits that right of the secured creditor will not be extinguished under the CIRP. The secured creditor can enforce security outside CIRP. It is not compulsory that a claim should be filed in the CIRP. In the present case, the Appellant did not file any claim in the CIRP of the CD. The Appellant was not required to file any claim in the CIRP of the CD, since it held a valid lien of the CD. The nature of the security is relevant and nomenclature of security is irrelevant. The lien letter being a security provided by the CD on behalf of its related parties also extends to the default of RITL and R.Com., which companies were also admitted in the CIRP during the same period. It is submitted that the Adjudicating Authority exceeded its jurisdiction to enter into lien letter, which was not subject matter of dispute. Learned Counsel for the Appellant in support of his submission relied on various judgments of Hon'ble Supreme Court, this Tribunal and different High Courts, which we shall refer to while considering the submissions in detail.

5. Shri Krishnendu Datta, learned Senior Counsel appearing for Respondent No.1 refuting the submissions of the Appellant submits that

the letter dated 27.03.2017 does not entitle the Bank to retain FDR for dues of third party, i.e., other Reliance Group entities. It is submitted that RP is duty bound under Section 18 to take control and custody of any asset over which the CD has ownership rights. The FDR was supposed to be retained under lien to secure credit facilities availed by the CD only and admittedly no credit facilities were ever disbursed to the CD by the Appellant. Hence, the FDR could not have been retained by the Appellant. The RP proceeded to take charge of the assets of the CD including the FDR and sent various letters seeking release, which was denied by the Appellant. The lien letter dated 27.03.2017 does not make any reference to the credit facilities by other Reliance entities. If the intent was to include credit facilities pertaining to other Reliance entities, the lien letter would have expressly indicated so. The sole signatory of lien letter is the CD. Neither any other Reliance entity is marked, nor any other Reliance facility have been referred to in the letter. Thus, the lien letter cannot be interpreted to extend it to facilities provided by the Appellant to other Group Companies of the CD. The CD and other Reliance entities are separate legal entities and lien marked by one entity cannot automatically apply in connection with liabilities of other Group Companies, unless the contract expressly provides. Section 171 of the Contract Act allows Banks to exercise general lien towards general balance of account for any sum due to them, hence, general lien can be exercised in respect of an amount outstanding from the CD and not from other Group Companies. Section 171 allows lien to be exercised only over

the goods or property of a customer who owes a debt or is liable to pay. The said general lien cannot be extended to secure debts owed to creditors by third parties or for any liabilities unrelated to the particular customer account. Claim of general lien under Section 171 in no manner supports the claim of the Bank. Reliance placed by the Appellant on different judgments of the High Courts are all distinguishable and do not support the submissions of the Appellant. It is submitted that the Appellant has filed its claim in the CIRP – RITL and R.Com, where no reliance was placed on lien letter. The CIRP of the CD has already culminated into approval of Resolution Plan by order dated 19.12.2023. In terms of the Resolution Plan, the funds lying in the FDR are required to be utilized for payment to the assenting Financial Creditors, including the Appellant. The Resolution Plan was also assented by the Appellant. The Plan approval order has not been challenged by the Appellant, which deals with the treatment of the FDR. The Resolution Plan is clearly binding on the Appellant also. The resolution process of RITL has also culminated into approval of the Resolution Plan. The Appellant could not enforce any security interest by virtue of moratorium under Section 14. The Appellant has not filed any claim in the CIRP of the CD and NCLT has jurisdiction to adjudicate the issue. The FD was the asset of the CD, which was required to be taken control under Section 17(1)(d) and the Financial Institutions including the Appellant were required to act on the instructions of the IRP, whereas instructions given by IRP was disregarded by the Appellant, violating Section 17(1)(d) of the IBC.

6. We have considered the submissions of learned Counsel for the parties and have perused the records.

7. From the materials on record and the submission made by the parties, following are the undisputed facts and events in the present case:

(i) FD of Rs.27.60 crores was opened by the CD Reliance Communication Infrastructure Limited on 27.03.2017 with the Appellant.

(ii) A letter dated 27.03.2017 was written by the CD Reliance Communication Infrastructure Limited to the Appellant for making a lien on FDR.

(iii) The Appellant did not extend any facility to the CD, nor any amount is due from the CD to the Bank.

(iv) The Appellant has extended certain foreign currency facilities to RITL and certain facilities to Reliance Communication.

(v) After CIRP of the CD commenced on 25.09.2019, IRP wrote a letter to the Appellant to release the amount in the FDR along with interest in the account of the CD, which was denied by the Appellant, which led to filing of IA No.1943 of 2020 by the RP before the Adjudicating Authority, seeking direction to release the amount in the account of the CD.

8. The submission of both the parties steer around the letter dated 27.03.2017 written by the CD to the Appellant Bank. The Appellant's case on the one hand relying on different clauses of the letter is that by

virtue of the said letter of lien, the Appellant can withhold the FD for foreign currency facility advanced by it RITL and Group Companies of the CD and further by virtue of Section 171 of the Contract Act, the Appellant has right of general lien, which has been exercised by the Bank. Learned Counsel for the Appellant further submitted that lien letter clearly contemplated lien for the facilities not only availed by the CD, but Group Companies, whether singly or jointly. On the other hand, the learned Counsel for the Respondent submits that the lien letter had authorised the Appellant Bank to mark a lien only with respect to dues against the CD, whether singly or jointly and admittedly there was no dues against the CD. The said FD cannot be withheld by the Bank for facilities of RITL, a third party, which is not contemplated by the letter dated 27.03.2017. We, thus, need to first notice the contents of the letter dated 27.03.2017, which is a letter of lien written by Reliance Communications Infrastructure Limited (CD) to the Appellant. The copy of the letter dated 27.03.2017 was brought on the record by the RP along with his IA No.1943 of 2020. Copy of the letter is at page-92 of the paper book. The letter is addressed to the Appellant and subject of the letter is as follows:

> "Subject: Lien and set off Against Fixed Deposit Receipts ("FDR") in the name of Reliance Communications Infrastructure Limited with your Reference: Follo No.00001 and Maturity Date 01/07/2017."

9. The letter addressed to the Bank reads as follows:

> "Dear Sirs,
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> In consideration of Industrial and Commercial Bank of China Limited, Mumbai Branch having its branch office at 801, 8th Floor,

A-Wing, ONE BKC, C-66,G Block, Bandra Kurla Complex, Bandra(E), Mumbai-400051 (hereinafter called "ICBC") having granted / agreeing to grant an extension of the availability period of the facility under the facility agreement dated 14 October 2016 (as amended by the deed of amendment and confirmation, dated 16 December 2016) entered into between Industrial and Commercial Bank of China Limited, Mumbai Branch and Reliance Communications Infrastructure Limited, a company incorporated under the laws of India bearing corporate identification number U64203MH1997PLC166329 with its registered office at H Block 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai, 400710, against the security Interalia of FDR worth Rs. 27,60,00,000/- (Rupees Twenty Seven Crores Sixty lakhs only Only) (number of units) bearing Reference No.00001 (hereinafter together referred to as "Units"), created with ICBC of which we are the holder/s and on the understanding that you are being given necessary authority to mark a lien in your favor against the said Units and every renewal thereof in your books. We hereby authorize you i.e., ICBC to mark a lien against the Units mentioned herein and every renewal of such FD thereof upon maturity, in your favour till the same is vacated by yourself. We are authorized to Issue this letter authorizing you to mark lien, pursuant to the Board Resolution passed at the meeting held on 30th day of May, 2016 by the Directors."

10. The letter further states that the CD agree, undertake and authorise in favour of the Bank following, which are captured in Clauses (1) to (10) of the letter. Clause (1) of the letter, which has been relied, both by the Appellant and Respondent are as follows:

> "1. That you may hold all securities belonging to us (which may now be in your possession or which may at any time hereafter come into your possession) and the proceeds thereof respectively not only for the specific advance made thereon but also as security for any other moneys now due or which may at any time be due

from us to you, whether singly or jointly with another or others in connection with credit facilities, provided to us by you."

11. The relevant expression in the above clause is "*not only for the specific advance made thereon but also as security for any other moneys now due or which may at any time be due from us to you, whether singly or jointly with another or others in connection with credit facilities, provided to us by you*". The above expression captures two conditions - (i) it pre-supposes any other moneys now due or which may at any time be due from us to you (ii) whether singly or jointly with another or other in connection with credit facilities, provided to us by you. The interpretations of above two expressions will answer the rival contentions raised by the parties. The first expression clearly indicate that CD authorised the Bank to hold the security for any other moneys now due or which may at any time be due from us to you. Much emphasis has been made on the words 'us'. The Adjudicating Authority has rightly taken the view that word 'us' used in Clause (1) refers to the CD only. The CD being a corporate entity it described itself by use of express 'us'. The said use of expression 'us' cannot be expanded to mean that under the said expression all Group Companies were referred to and any amount due from any Group Companies is also included in the expression 'us'. The letter has to be looked into and interpreted in its plain and normal meaning. When a letter is written by a corporate entity, use of expression 'us' for the entity is both, natural and correct. The second interpretation of Clause (1) i.e. whether singly or jointly with another or others in connection with credit facilities provided to us by you, is also clear. The

said Clause captures the situation where any facility or any amount is due singly by the CD or jointly with CD with another or others in connections with credit facilities provided to it by Bank. Thus, the credit facilities, which are contemplated, could be -- (a) singly to CD; (b) jointly with CD with another entity; or (c) jointly with CD and others. Thus, the key word in the above Clause is facility should be due on CD, either singly, jointly with another or jointly with others. Thus, the facility should be due on CD and CD has to be part of the facility whether singly or jointly with another or jointly with others. In a case where no facility is due on the CD, Clause (1) cannot be read to authorise the Bank to hold securities. Thus, any due on the CD, whether singly, jointly with another or jointly with others, is a pre-condition for authorisation to the Bank to hold the security. In the present case, it is admitted between the parties that no facilities were taken by the CD from the Bank. It is also not the case of the Appellant or any material on record that CD was party to any facility taken by it jointly with another or others. Hence, reliance on Clause (1) does not support the contention of the Appellant that CD authorised the Bank to hold the securities. When nothing is due on the CD or CD jointly with another or others, Clause (1), cannot be relied by the Appellant.

12. Another Clause, which needs to be noticed is Clause 10 of the letter, which is as follows:

> "10. That in addition to any general lien or similar right to which you as bankers may be entitled by law, you may at any time and without notice to us combine or consolidate all or any of our accounts with the liabilities to you and set off or transfer any sum

> or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of our liabilities including without limitations to all liabilities that are in relation to the credit facilities provided to us by you on any other account or in any other respect, whether such liabilities be actual or contingent, primary or collateral and several or joint."

13. The above Clause is in addition to any general lien or similar right to which Banker may be entitled in law and the above Clause authorise the Bank to combine or consolidate all of any of the CD's accounts with the liabilities to Bank. 'Our Account' clearly mean accounts of the CD and 'liabilities to you' is liability to the Bank in any account of the CD. If any liabilities are there to the Bank, the Bank was authorised to combine or consolidate all or any of the accounts of the CD, for the purpose of set off or transfer any sum or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of our liabilities. Thus, applicability of Clause (10) for set off or transfer was with respect to the account of the CD and any liability to the Bank owed by the CD. It is not a case of the Appellant that there are any liabilities on the CD or any account of the CD or there are any liabilities in any account of the CD. Thus, Clause (10) has no application in the facts of the present case. The letter dated 27.03.2017, which is a letter authorizing the Bank to mark lien and set off, has to be read as per the plain and natural meaning of the letter and the said letter cannot be read to mean that the CD has authorised the Appellant to withhold securities for any liabilities against its Group Companies.

14. Learned Counsel for both the parties have referred to and relied on judgment of the Hon'ble Supreme Court in ***(1992) 2 SCC 330 –***

Syndicate Bank vs. Vijay Kumar and Ors., where the Hon'ble Supreme Court had occasion to consider the concept of Banker's lien and has also dealt with the concept of general lien, which is exercised by the Bank. The above was a case where a Firm namely – M/s Jullundur Body Builders have been enjoying the various credit facilities from the Syndicate Bank, including overdraft facility. Vijay Kumar obtained a Decree against the Firm of Rs.1,04,441.35 with future interest @ 9%. The Judgment-Debtor agreed to pay the decretal amount in the instalments of Rs.5,000/- per month. The Judgment-Debtor was required to furnish a Bank Guarantee of Rs.90,000/- in favour of the High Court of Delhi. The Judgment-Debtor deposited the amount of Rs.90,000/- by two FDRs. The Bank thereafter issued a guarantee in favour of the Registrar of the High Court. The High Court discharged the Bank Guarantee and the original Bank Guarantee was returned to the Bank by the High Court. The Decree-Holder made an application in the pending execution petition for adjustment of Rs.35,000/- out of Rs.90,000/- deposited as security by the Bank. Learned Single Judge passed an order of attachment. The Appellant Bank appeared before the High Court and objected to the attachment, which objection was rejected. The High Court directed the Bank to deposit Rs.35,000/- in the Court, which order was challenged by filing the Appeal in the Hon'ble Supreme Court. In the above context, the Hon'ble Supreme Court has dealt with the expression Banker's lien. In paragraph-6 of the judgment, the definition of lien and Banker's lien is noticed in following words:

"**6.** In *Halsbury's Laws of England*, 2nd Edn., Vol. 20, p. 552, para 695, lien is defined as follows: [**Ed.**: In 4th Edn. see Vol. 28, para 502]

> "Lien in its primary sense is a right in one man to retain that which is in his possession belonging to another until certain demands of the person in possession are satisfied. In this primary sense it is given by law and not by contract."
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> In *Chalmers on Bills of Exchange*, 13th Edn., p. 91 the meaning of "Banker's lien" is given as follows:
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> "A banker's lien on negotiable securities has been judicially defined as 'an implied pledge'. A banker has, in the absence of agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in respect of any balance that may be due from such customer."
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> In *Chitty on Contract*, 26th Edn., p. 389, para 3032 the Banker's lien is explained as under:
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> "*Extent of lien.*— By mercantile custom the banker has a general lien over all forms of commercial paper deposited by or on behalf of a customer in the ordinary course of banking business. The custom does not extent to valuables lodged for the purpose of safe custody and may in any event be displaced by either an express contract or circumstances which show an implied agreement inconsistent with the lien ....
>
> ... The lien is applicable to negotiable instruments which are ... remitted to the banker from the customer for the purpose of collection. *When collection has been made the proceeds may be used by the banker in reduction of the customer's debit balance unless otherwise earmarked.*"
>
> (emphasis supplied)

In *Paget's Law of Banking*, 8th Edn., p. 498 a passage reads as under:

> "The Banker's Lien
>
> Apart from any specific security, the banker can look to his general lien as a protection against loss on loan or overdraft or other credit facility. The general lien of bankers is part of law merchant and judicially recognised as such."

In Brandao v. Barnett [(1843-60) All ER 719 : (1846) 12 Cl & Fin 787 : 8 ER 1622] , it was stated as under: (All ER p. 722-H)

> "Bankers, most undoubtedly, have a general lien on all securities deposited with them, as bankers, by a customer, unless there be an express contract, or circumstances that show an implied contract, inconsistent with lien."

The above passages go to show that by mercantile system the Bank has a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customer in the ordinary course of banking business and that the general lien is a valuable right of the banker judicially recognised and in the absence of an agreement to the contrary, a Banker has a general lien over such securities or bills received from a customer in the ordinary course of banking business and has a right to use the proceeds in respect of any balance that may be due from the customer by way of reduction of customer's debit balance. Such a lien is also applicable to negotiable instruments including FDRs which are remitted to the Bank by the customer for the purpose of collection. There is no gainsaying that such a lien extends to FDRs also which are deposited by the customer."

15. The Hon'ble Supreme Court held that applying the principles, the Appellant Bank has lien over the two FDRs. In paragraph-7, following was held:

> "**7.** Applying these principles to the case before us we are of the view that undoubtedly the appellant Bank has a lien over the two FDRs. In any event the two letters executed by the Judgment-debtor on September 17, 1980 created a general lien in favour of

the appellant Bank over the two FDRs. Even otherwise having regard to the mercantile custom as judicially recognised the Banker has such a general lien over all forms of deposits or securities made by or on behalf of the customer in the ordinary course of banking business. The recital in the two letters clearly creates a general lien without giving any room whatsoever for any controversy."

16. The Hon'ble Supreme Court in the above case has held that the Bank has liberty to adjust from the proceeds of the two FDRs towards dues to the Bank. In the above case, admittedly there was a Decree and there was due of the Bank against the Firm, due to various credit facilities extended to the Firm. In paragraph-5, following was observed by the Hon'ble Supreme Court:

"**5.** The two FDRs were duly discharged by signing on the reverse of each of them by the Judgment-debtor and were handed over along with two covering letters on the Bank's usual printed forms on September 17, 1980 at the time of obtaining the guarantee. The relevant clause of the letter reads as under:

"The Bank is at liberty to adjust from the proceeds covered by the aforesaid Deposit Receipt/Certificate or from proceeds of other receipts/certificates issued in renewal thereof at any time without any reference to us, to the said loan/OD account.

We agree that the above deposit and renewals shall remain with the Bank so long as any amount on any account is due to the Bank from us or the said M/s Jullundur Body Builders singly or jointly with others."

To the same effect is the other letter. The above recital in the letter clearly goes to show that a general lien is created in favour of the appellant Bank in respect of those two FDRs. The Bank is given the authority to retain the FDRs so long as any amount on any account

> is due from the Judgment-debtor. Thus the appellant Bank had a right to set-off in respect of these FDRs if there was a liability of the Judgment-debtor due to the Bank. In this context it is useful to refer to some passages in the text-books on the scope and meaning of the expression "Banker's lien".

17. The above judgment is clear authority for proposition that Bank exercises general lien on a FDR and the authority to retain the FDRs if any amount is due to the Bank. The above judgment, thus, does not come to the aid of the Appellant to authorize it to withhold the FDRs opened by the CD. The present is not a case where any amount is due from the CD, either singly or jointly with another or others.

18. Learned Counsel for the Appellant has relied on various judgments of different High Court on Section 171 of the Contract Act. Section 171 of the Contract Act provides as follows:

> "**171.** General lien of bankers, factors, wharfingers, attorneys and policy-brokers.—Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

19. Section 171 deals with general lien of Bankers, where Bank is empowered to retain as a security for general balance of account, any goods bailed to them. Section 171 itself contemplates balance of account holder for purposes of exercising general lien. General lien, thus is to be exercised when there is balance in the account of the customer.

20. Learned Counsel for the Appellant has relied on few judgments on Section 171. He has relied on judgment of the Madras High Court in ***(1896) ILR 19 Madras 234 – Kunhan Mayan & Ors. vs. The Bank of Madras***. The above was a case where a suit was filed for return of certain jewels pledged by First Plaintiff to the Bank. The Plaintiff after tendering the amount due on the loans, demanded return of the jewels pledged. The Bank refused to return the jewels until the First Plaintiff discharge his other liabilities to the Bank. A suit was filed by the Plaintiff where the High Court dealt with the Bank's general lien. Madras High Court – Justice Shephard while dismissing the suit observed as follows:

> "All we know is that besides these three loans there were other loans by the bank to the plaintiff, a list of which with interest was made up to the 31st May 1893. On the 28th June, a deed of hypothecation was given as security. The bank books were not produced, but perhaps it may be inferred that the loans on jewels and the other loans were not entered in one account. This circumstancee, however, is not inconsistent with the bank's claim to a general lien. The evidence of the cash-keeper, which is extremely brief, shows that he at least thought there was nothing special about the plaintiff's loans and that therefore the jewels might be retained until all debts were paid off. It being incumbent on the plaintiff to show that the bank had agreed to give up the general lien to which by law a bank is prima facie entitled, I must say that in my opinion the plaintiff has failed in his proof. There was, it may be observed, no proper issue on the question, and no attempt-made to prove a special contract except by the evidence of the witnesses which was discredited by the Judge. Holding that the bank was entitled to retain the jewels until the other debts owed by the plaintiff wero paid off, I think the suit ought to have been dismissed. I would accordingly reverse the decree and dismiss the suit with all costs."

21. Another judgment relied by the Appellant is ***(1995) SCC OnLine All 361 – State Bank of India, Kanpur vs. Deepak Malviya and Ors***. The said proceedings also arose out of a suit filed against the SBI for a Decree for redemption. The Trial Court dismissed the suit. One of the issues framed by the Trial Court was, whether there are outstanding dues of the defendant against the Bhola Nath Malviya, whose heirs filed the suit. The First Appellate Court reversed the Decree, against which an Appeal was filed before the High Court. In the above context, the High Court noticed Section 171 of the Indian Contract Act and the Banker's lien. In paragraph 20, following was held:

> "Section 171 of the Act refers to the lien of bankers, etc., the right of security for the general balance on account of any goods bailed to them. In other words if a certain sum is due to the bank in one account it may retain as security money or other movable that comes into its hands in another account. The aforesaid analysis makes it clear that the lower appellate court was in error in taking a view that the bank could not have claimed lien over the pledged ornaments of the predecessor-in-interest of the respondent. Section 171 of the Act and the general principles covering the bankers lien specifically authorise the bank to retain the pledged ornaments claiming lien over them till the bank's money is cleared by the respondents for the loan in connection with the other account for which a decree has already been passed in favour of the bank."

22. The above judgment also in no manner support the Appellant, since clearly in the facts of the said case, there was outstanding dues against Shri Bhola Nath Malviya, whose legal heirs has filed the suit against the Bank. Hence, Benker's lien was exercised.

23. Learned Counsel for the Appellant has relied on judgment of Hon'ble Supreme Court in ***(2023) 7 SCC 324 – Vistra ITCL (India) Ltd. Ors. vs. Dinkar Venkatasubramanian and Ors.*** The above was a case where the Appellant had filed a claim as a secured creditor in the CIRP of the CD, which was rejected by the RP, which was not challenged by the Appellant. In the CIRP, a Resolution Plan was approved, however, the Resolution Applicant did not fulfill the commitment. The Appellant thereafter filed an application claiming its right on the basis of pledged shares, which application was dismissed, against which an Appeal was filed, which too was dismissed. The matter was taken to the Hon'ble Supreme Court, where it was contended that pledge of shares will be construed as financial debt. The Hon'ble Supreme Court in the said facts noticed the difficult situation, which was presented in the case. In the above context, the Hon'ble Supreme Court in paragraphs-41 to 44 held following:

> "**41.** Thus, we are presented with a difficult situation, wherein, Appellant 1-Vistra, a secured creditor, is being denied the rights under Section 52 as well as Section 53 of the Code in respect of the pledged shares, whereas, the intent of the amended Section 30(2) read with Section 31 of the Code is to the contrary, as it recognises and protects the interests of other creditors who are outside the purview of the CoC. To our mind, the answer to this tricky problem is two-fold.
>
> **41.1.** First is to treat the secured creditor as a financial creditor of the corporate debtor to the extent of the estimated value of the pledged share on the date of commencement of the CIRP. This would make it a member of the CoC and give it voting rights, equivalent to the estimated value of the pledged shares. However,

this may require reconsideration of the dictum and ratio of *Anuj Jain* [*Jaypee Infratech Ltd. (Interim Resolution Professional)* v. *Axis Bank*, (2020) 8 SCC 401 : (2021) 2 SCC (Civ) 334] and *Phoenix ARC* [*Phoenix ARC (P) Ltd.* v. *Ketulbhai Ramubhai Patel*, (2021) 2 SCC 799 : (2021) 2 SCC (Civ) 540] , which would entail reference to a larger Bench. In the context of the present case, the said solution may not be viable as the resolution plan has already been approved by the CoC without Appellant 1-Vistra being a member of the CoC. Therefore, we would opt for the second option.

41.2. The second option is to treat Appellant 1-Vistra as a secured creditor in terms of Section 52 read with Section 53 of the Code. In other words, we give the option to the successful resolution applicant — DVI (Deccan Value Investors) to treat Appellant 1-Vistra as a secured creditor, who will be entitled to retain the security interest in the pledged shares, and in terms thereof, would be entitled to retain the security proceeds on the sale of the said pledged shares under Section 52 of the Code read with Rule 21-A of the Liquidation Process Regulations. The second recourse available, would be almost equivalent in monetary terms for Appellant 1-Vistra, who is treated as a secured creditor and is held entitled to all rights and obligations as applicable to a secured creditor under Sections 52 and 53 of the Code. This to our mind would be a fair and just solution to the legal conundrum and issue highlighted before us.

42. We wish to clarify that the directions given by us would not be a ground for the successful resolution applicant — DVI to withdraw the resolution plan which has already been approved by Nclat and by us. The reason is simple. Any resolution plan must meet with the requirements/provisions of the Code and any provisions of law for the time being in force. What we have directed and the option given by us ensures that the resolution plan meets the mandate of the Code and does not violate the rights given to the secured creditor, who cannot be treated as worse off/inferior in its claim and rights viz an operational creditor or a dissenting financial creditor.

> **43.** In the end, we must meet the argument raised by Respondent 1 — Dinkar Venkatasubramanian, resolution professional for the corporate debtor-Amtek and Respondent 2 — the CoC of the corporate debtor-Amtek, that the present plea of Appellant 1-Vistra to be treated as a financial creditor of the corporate debtor-Amtek should be dismissed on the grounds of delay, laches and acquiescence. The submission is that Appellant 1-Vistra had not objected to the resolution plan submitted by the erstwhile resolution applicant — LHG and, as a sequitur, its non-classification as a financial creditor in the CoC of the corporate debtor-Amtek. Though this argument had appealed and had weighed with Nclat, in our opinion is untenable since the resolution plan submitted by erstwhile resolution applicant — LHG did not in any way affect the rights or interests of Appellant 1-Vistra as a secured creditor in respect of the pledged shares. Appellant 1-Vistra has elaborately explained that LHG, etc. were in negotiations with them so as to redeem the pledge and acquire the shares.
>
> **44.** In view of our aforesaid findings, the impugned judgment [*Vistara ITCL (India) Ltd.* v. *Dinkar Venkatasubramanian*, 2020 SCC OnLine NCLAT 654] of Nclat affirming the view [*Corpn. Bank* v. *Amtek Auto Ltd.*, 2018 SCC OnLine NCLT 24111] taken by the NCLT is partly modified in terms of our directions holding that Appellant 1-M/s Vistra ITCL (India) Ltd. would be treated as a secured creditor, who would be entitled to all rights and obligations as applicable to a secured creditor in terms of Sections 52 and 53 of the Code, and in accordance with the pledge agreement dated 5-7-2016."

24. The above judgment in no manner can help the Appellant in the facts of the present case. According to own case, the Appellant has never filed any claim in the CIRP of the CD. In the above case, Hon'ble Supreme Court treated the Appellant as a secured creditor and gave option to the SRA to treat the Appellant as a secured creditor, who would be entitled to

retain its security. This Tribunal had occasion with regard to the above case in another judgment passed in Company Appeal (AT) (Ins.) No.517-518 of 2023 – Edelweiss Asset Reconstruction Company Ltd. vs. Mr. Anuj Jain, Resolution Professional of Ballarpur Industries Ltd. and Ors. decided on 4th July, 2023, which judgment has also been relied by the Appellant. Noticing the judgment of **Vistra ITCL (India) Ltd.** (supra), in paragraph 33 to 38, following was observed:

> "**33.** The Appellant has next relied Hon'ble Supreme Court judgment in ***"Vistra ITCL (India) Ltd." (supra)***. In the above case also Amtek Auto Limited (Corporate Debtor) has pledged its shares for loan facility availed by two group companies i.e. Brassco Engineers Ltd. and WLD Investments Pvt. Ltd. In the insolvency proceeding of the Corporate Debtor, claim was filed by M/s Vistra ITCL (India) Ltd., the Security Trustee in Form 'C', which claim was rejected. Resolution Plan was approved. Thereafter, an application was filed claiming right on the basis of pledged shares. I.A. No. 62 of 2020 as well as Appeal having been dismissed, Appeal was filed before the Hon'ble Supreme Court. Hon'ble Supreme Court in the above case, noticed the judgment of ***"Anuj Jain vs. Axis Bank Ltd."*** (supra). Hon'ble Supreme Court in Para 9 noticed the issues raised and observed that two-fold answers can be given to the problem. First was to treat the Secured Creditor as a Financial Creditor, which according to the judgment of the Hon'ble Supreme Court may require reference to a larger bench. Hence, the Hon'ble Supreme Court proceeded to the Second option under which the Hon'ble Supreme Court held that Appellant was entitled to retain the security interest in the pledged shares, which means was entitled to retain the security proceeds on the sale of the said pledged shares. In Para 9 following was held:
>
> > *"9. Thus, we are presented with a difficult situation, wherein, Appellant No.1 – Vistra, a secured creditor, is being denied*

the rights under Section 52 as well as Section 53 of the Code in respect of the pledged shares, whereas, the intent of the amended Section 30(2) read with Section 31 of the Code is too contrary, as it recognises and protects the interests of other creditors who are outside the purview of the CoC. To our mind, the answer to this tricky problem is twofold. First is to treat the secured creditor as a financial creditor of the Corporate Debtor to the extent of the estimated value of the pledged share on the date of commencement of the CIRP. This would make it a member of the CoC and give it voting rights, equivalent to the estimated value of the pledged shares. However, this may require re consideration of the dictum and ratio of Anuj Jain (supra) and Phoenix ARC (supra), which would entail reference to a larger bench. In the context of the present case, the said solution may not be viable as the resolution plan has already been approved by the CoC without Appellant No. 1 Vistra being a member of the CoC. Therefore, we would opt for the second option. The second option is to treat the Appellant No. 1 – Vistra as a secured creditor in terms of Section 52 read with Section 53 of the Code. In other words, we give the option to the successful resolution applicant – DVI (Deccan Value Investors) to treat the Appellant No.1 – Vistra as a secured creditor, who will be entitled to retain the security interest in the pledged shares, and in terms thereof, would be entitled to retain the security proceeds on the sale of the said pledged shares under Section 52 of the Code read with Rule 21A of the Liquidation Process Regulations. The second recourse available, would be almost equivalent in monetary terms for the Appellant No. 1 Vistra, who is treated it as a secured creditor and is held entitled to all rights and obligations as applicable to a secured creditor under Section 52 and 53 of the Code. This to our mind would be a fair and just solution to the legal conundrum and issue highlighted before us."

34. In the aforesaid judgment the Hon'ble Supreme Court has noticed provisions of Section 52, Section 53 and Section 30 of the Code. The submission which has been pressed by learned counsel for the Respondent is that the judgment of the Hon'ble Supreme Court in ***"Vistra ITCL (India) Ltd."*** is judgment of the Supreme Court where Hon'ble Supreme Court has exercised its jurisdiction under Article 142 of the Constitution. Observation of the Hon'ble Supreme Court in Para 9 that "This to our mind would be a fair and just solution to the legal conundrum and issue highlighted before us.", indicate that the solution which was followed by Supreme Court was in the facts of the said case and observation of the Hon'ble Supreme Court in Para 9 cannot be read as laying law within meaning of Article 141.

35. A third-party security interest holder is entitled to retain the security proceeds on the land of security interest under Section 52 of the Code. As noted above, Section 52 and 53 becomes applicable only in Liquidation Proceeding and reference of Section 53 under Section 30(2) is for the purpose of computing the payment to Operational Creditors and dissenting Financial Creditors to which they may be entitled under Section 53.

36. We, thus, accept the submission of learned counsel for the Respondent that judgment of Hon'ble Supreme Court in ***"Vistra ITCL (India) Ltd."*** and direction issued in Para 9 have been in exercise of Article 142. Learned counsel for the Respondent has placed reliance on judgment of Hon'ble Supreme Court in ***"State of Punjab & Ors. vs. Rafiq Masih, (2014) 8 SCC 883"***, where Hon'ble Supreme Court dealing with Article 141 and 142 of the Constitution of India enumerated the principles in Paras 8 and 11, which are to the following effect:

> *"8. In our view, the law laid down in Chandi Prasad Uniyal's case, no way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were issued in exercise of the powers of this Court under Article 142 of the Constitution, but in the subsequent decision*

this Court under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Article 136 and 142 of the Constitution of India. Distinctively, although the words employed under the two aforesaid provision speak of the powers of this Court, the former vest a plenary jurisdiction in supreme court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a Court or Tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing 'complete justice' in any cause or matter.

11. Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the Land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vest a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in the case of Union of India v. Karnail Singh, it makes the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution."

37. It has categorically held by the Hon'ble Supreme Court in the above judgment that Article 142 of the Constitution is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. Differentiation in Article 141 and 142 has been noticed. Following has been observed in Para 12:

> *"12. ….This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case."*
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> **38.** We, thus, are of the view that judgment of Hon'ble Supreme Court in ***"Vistra ITCL (India) Ltd."*** is in facts of the said case. The Appellant in the present case cannot rely on the said judgment as a declaration of law within the meaning of Article 141 of the Constitution of India."

25. We, thus, are of the view that judgment of the Hon'ble Supreme Court in **Vistra ITCL (India) Ltd.** as well as judgment of this Tribunal in **Edelweiss Asset Reconstruction Company Ltd.** in no manner support the submission of the Appellant.

26. The present is a case where question which arose for consideration before the Adjudicating Authority in IA No.1943 of 2020 was as to whether the Appellant was entitled to refuse release of the FD, which was opened by the CD on the ground that there are dues against another Group Company RITL. The Adjudicating Authority in the above context has noticed the case of both the parties and after noticing the letter dated 27.03.2017 came to the conclusion that the Appellant Bank was not entitled to withhold the FD on ground of alleged facilities due to RITL.

27. The core question to be answered in this case is as to whether the Appellant was justified in refusing to release the FD, which was opened by the CD on the ground of general lien.

28. Shri Krishnendu Datta, learned Senior Counsel appearing for the Respondent has also relied on judgment of different High Courts to support his submission that Banker's lien only extend to debt owed by the same customer. Reliance has been placed on judgment of High Court of Karnataka reported in ***ILR 2004 KHC 993 - Vijaya Bank and Ors. vs. Naveen Mechanised Construction (Private) Limited and Ors***. The facts of the said case has been noticed in paragraph-2 of the judgment. The Hon'ble High Court has held that Section 171 would enable the Bank to retain the security for repayment of debt borrowed by the same person. Following was held in paragraph-13:

> "**13.** The decision relied upon by the learned Counsel appearing for the appellant-Bank in SYNDICATE BANK vs. VIJAY KUMAR (AIR 1992 SC 1066) would not be helpful to him in the present case as in the said case the letters were executed in favour of the Bank specifically to enable the Bank to retain the securities with the Bank so long as any amount on any account is due to the Bank from the borrower. In the present case, it is not the case of the appellant-Bank that the petitioners have subsequently borrowed any amount and that the security is withheld for any amount due from the petitioners and wherefore in the absence of any specific authorisation or lien conferred upon the appellant- Bank to retain the security towards the discharge of any debt in respect of other Companies, the Bank is not at all justified in retaining the security as Section 171 of the Contract Act would only enable the Bank to retain the security for repayment of debt borrowed by the same person. In the present case as no amount is due to be paid by the petitioners, the contention that the Director of the first petitioner-Company as also the guarantor for the transaction is also a Director in MFEL against which recovery proceeding has been initiated in the Debt Recovery Tribunal. That would not be a justifiable ground to withhold securities in the absence of any

express clause in the Contract entered into by the petitioners and the Bank."

29. To the same effect is judgment of Kerala High Court relied by the learned Counsel for the Respondent in ***(2023) SCC OnLine Ker 2178 – PNB Vesper Life Science Pvt. Ltd. and Ors. vs. The Registrar of Co-operative Societies and Ors***. Shri Datta has relied on judgment of Orisa High Court in ***(2004) SCC OnLine Ori 25 – Alekha Sahoo vs. Puri Urban Co-operative Bank Ltd. and Ors.***, where following was laid down by the Orissa High Court in paragraphs 11 and 12:

> "**11.** In Syndicate Bank v. Vijay Kumar (supra) cited by Mr. Kanungo, the judgment debtor who owned two Fixed Deposits executed two letters on 17-9-1980 creating a lien in favour of the Bank over the two Fixed Deposit Receipts and on these facts the Supreme Court held that the two letters executed by the judgment debtor on 17-9-1980 created a lien in favour of the bank over the two Fixed Deposit Receipts. This is thus a case where the owner of the Fixed Deposit Receipts had expressly agreed that the Bank would have lien over the fixed Deposit Receipts. In this case, the Supreme Court has not laid down any law that the Bank can exercise its general lien under Section 171 of the Contract Act over the properties of the surety for the liabilities of the principal debtor to the Bank. In S. Vasupalaiah v. The Vysya Bank, Kudagenahalli Branch (supra) and in City Union Bank Ltd. v. C. Thangarajan (supra) cited by Mr. Kanungo, the learned single Judges of the Karnataka High Court and the Madras High Court respectively have referred to the aforesaid decision of the Supreme Court in Syndicate Bank v. Vijay Kumar (supra) and have held that the Bank can exercise lien over the properties of a guarantor or a co-promisor for recovery of the outstanding dues of the principal debtor or the promisor to the Bank. But as we have discussed above, courts in England and in India have held that the Bank can

> exercise general lien over the properties of a customer for the general balance in such customer's account and not for the general balance of some other customer's account. Unless therefore a customer has expressly agreed that his properties can be retained as security for the outstanding balance in the account of some other customer, a Bank cannot exercise lien over the properties of such customer under Section 171 of the Contract Act. In the guarantee agreement executed by the petitioner for the cash credit account of Bimala Bhandar, a copy of which has been annexed to the counter-affidavit as Annexure - R/2, there is no such provision that the Bank can retain the properties of the petitioner as security for the outstanding balance in the loan account of Bimala Bhandar. In fact, the Bank has also not relied on any such provision in the guarantee agreement and instead has relied on the bye-laws of the Bank and the general lien of the Bank as provided in Section 171 of the Contract Act. As we have seen, the Bank has no such right under the bye-laws or Section 171 of the Contract Act to retain the gold ornaments of the petitioner as security for the outstanding balance in the loan account of Bimala Bhandar.
>
> **12.** Since we have found that the Bank has no right whatsoever either under its bye-laws or under Section 171 of the Contract Act to retain the gold ornaments of the petitioner after the petitioner had cleared the outstanding balance in the two gold loan accounts for which the gold ornaments were pledged as security, the retention of the gold ornaments of the petitioner by the Bank was without any authority of law and is arbitrary and the impugned notice dated 30-7-2003 is liable to be quashed."

30. In view of our foregoing discussions and conclusions we are of the view that action of the Bank in not releasing the FD opened by the CD on 27.03.2017 on the pretext that there are dues on Appellant of another Group Company of the CD, i.e. RITL is unjustified. The letter of lien dated 27.03.2017 as noticed above authorised the Bank to retain securities for

any amount due on the CD, either singly or jointly with another or others. Unless the CD was not part of any facility against which any amount is due, the Bank had no jurisdiction to retain the security. We, thus, are satisfied that Adjudicating Authority has not committed any error in issuing necessary directions to the Appellant to lift/ release/ remove the lien marked on the FD of Rs.27.60 crores and direction to release the fund along with interest, cannot be faulted.

31. In result of the above discussion, we are of the view that no grounds have been made by the Appellant to interfere with the impugned order. The Appeal is dismissed. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Arun Baroka Member
(Technical)

NEW DELHI

25th September, 2025

Ashwani