

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 67 of 2024

[Arising out of the Order dated 21.11.2023, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench-I), in I.A. No. 852 of 2021, CP (IB) No. 2889/MB/2019]

IN THE MATTER OF:

1. KOTAK MAHINDRA BANK LTD.

A banking company incorporated under the Companies Act, 1956 having its registered office at 27-BKC, Plot No. C-27, Bandra Kurla Complex, Bandra (East) Mumbai- 400 051 and having an office inter alia, at 6th Floor, 12- BKC, Plot No. C-12, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051

...Appellant

Versus

1. IDBI BANK LIMITED

Through NPA Management Group
7th Floor, D Wing, IDBI Towers,
WTC Complex, Cuffe Parade
Mumbai - 400 005

..Respondent No.1

**2. Ms. JOVITA REEMA MATHIAS
LIQUIDATOR OF GUPTA SYNTHETICS
LTD.**

Having office at 306 A Wing, Rustomjee
Central Park, Andheri Kurla Road,
Chakala, Andheri (E),
Mumbai -400 069

..Respondent No.2

3. STATE BANK OF INDIA

Asset Management Branch – II
Gr Floor, B Wing, Raheja Chambers
Free Press Journal Marg,
Nariman Point, Mumbai- 400021

..Respondent No. 3

**4. Edelweiss Asset Reconstruction Company
Ltd.**

Edelweiss House, Off CST Road, Kalina,
Santacruz (E), Mumbai-400098

..Respondent No. 4

Present:

For Appellant : Mr. Himanshu Bhushan, Ms. Shagun Srivastava,
Advocates
For Respondent : Mr. Inayt Ali, Mr. Milan Singh Negi, Mr. Nikhil
Kumar Jha, Ms. Katyayani & Mr. Utkarsh,
Advocates for R-1.
Mr. Harshit Khare, Mr. Prafful Saini & Mr. Ayuj
Agrawal, Advocates for SBI.
Mr. Amir Arsiwala, Advocate for Liquidator

With
Company Appeal (AT) (Ins) No. 68 of 2024

[Arising out of the Order dated 21.11.2023, passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Mumbai Bench-I), in I.A. No. 2228 of 2020, CP (IB) No. 2889/MB/2019]

IN THE MATTER OF:

1. KOTAK MAHINDRA BANK LTD.

A banking company incorporated under the Companies Act, 1956 having its registered office at 27-BKC, Plot No. C-27, Bandra Kurla Complex, Bandra (East) Mumbai- 400 051 and having an office inter alia, at 6th Floor, 12- BKC, Plot No. C-12, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051

..Appellant

Versus

1. STATE BANK OF INDIA

Having its corporate office at
State Bank Bhavan, Madam Cama Road,
Nariman Point, Mumbai - 400 021

Branch at:

Stressed Asset Management Branch - II,
Mumbai
Raheja Chambers, Ground Floor,
Free Press Journal Road, Nariman Point
Mumbai - 400 021

..Respondent No.1

2. RESOLUTION PROFESSIONAL OF GUPTA SYNTHETICS LTD.

Having office at 506, Inizio, Cardinal
Gracious Road, Chakala, Andheri (E),
Mumbai- 400093

..Respondent No.2

Present:

For Appellant : Mr. Himanshu Bhushan, Ms. Shagun Srivastava,
Advocates
For Respondent : Mr. Harshit Khare, Mr. Prafful Saini & Mr. Ayuj
Agrawal, Advocates for SBI.
Mr. Amir Arsiwala, Advocate for Liquidator.

With
Company Appeal (AT) (Ins) No. 198 of 2024

[Arising out of the Order dated 20.12.2023, passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Mumbai in I.A. No. 1111 of 2023, in Company Petition (IB) No. 2889/(MB)/2019]

IN THE MATTER OF:

1. KOTAK MAHINDRA BANK LTD.

A banking company incorporated under the Companies Act, 1956 having its registered office at 27-BKC, Plot No. C-27, Bandra Kurla Complex, Bandra (East) Mumbai- 400 051 and having an office inter alia, at 6th Floor, 12- BKC, Plot No. C-12, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051

..Appellant

Versus

1. JOVITA REEMA MATHIAS LIQUIDATOR OF GUPTA SYNTHETICS LTD.

Having office at 306 A Wing, Rustomjee Central Park, Andheri Kurla Road, Chakala, Andheri (E), Mumbai 400 069.

..Respondent No.1

2. STATE BANK OF INDIA

Asset Management Branch -/II, Gr Floor, B Wing, Raheja Chambers, Free Press Journal Marg, Nariman Point, Mumbai - 400 021.

..Respondent No.2

3. IDBI BANK LIMITED

Through NPA Management Group 7th Floor, D Wing, IDBI Towers, WTC Complex, Cuffe Parade, Mumbai-400 005.

..Respondent No. 3

4. EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED

Edelweiss House, Off CST Road, Kalina, Santacruz (E), Mumbai - 400 098.

..Respondent No. 4

5. STANDARD CHARTERED BANK

CRESENZO
C-38/39, G Block BKC, Bandra East,
Mumbai - 400 051.

.Respondent No. 5

Present:

For Appellant : Mr. Amar Dave, Sr. Adv. with Mr. Himanshu Bhushan, Ms. Shagun Srivastava, Advocates
For Respondent : Mr. Harshit Khare, Mr. Prafful Saini & Mr. Ayuj Agrawal, Advocates for SBI.
Mr. Amir Arsiwala, Advocate for Liquidator.
Mr. Inayt Ali, Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Ms. Katyayani & Mr. Utkarsh, Advocates for R-3.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

All above mentioned three appeals are connected with each other and having regard to the fact that common question of fact and law is involved in these appeals, the aforesaid appeals are being disposed of by passing this common judgment.

Factual matrix of CA (AT) (Ins) No. 67 of 2024

2. The instant appeal has been filed against the impugned order dated 21.11.2023 passed by the Ld. National Company Law Tribunal, Mumbai (Ld. Adjudicating Authority) with regard to Interlocutory application being IA No. 852 of 2021 in CP IB No. 2889/MB/2019 whereby Ld. Adjudicating Authority allowed the application moved by the Respondent No. 1/IDBI Bank Ltd. and hold that classification of the claim of the appellant as a secured creditor by the liquidator of the CD was not correct as it does not create fresh security.

3. The appellant of this appeal namely Kotak Mahindra Bank Ltd. is a Banking Company and is a Secured Financial Creditor of Gupta Synthetics Ltd. (CD) who is under liquidation.

4. It is reflected that financial facilities were extended to the CD in 2004 by VYSYA Bank Ltd. (now merged with the appellant), Bank of Baroda (BoB) and Oriental Bank of Commerce (OBC). Subsequently, Standard Chartered Bank (SCB), IDBI Bank Ltd. (IDBI) (Respondent No.1), State Bank of India (SBI) and State Bank of Saurashtra (SBS) were also inducted into the consortium while the BoB moved out of the same.

5. Respondent No.1-IDBI Sanctioned term loan of Rs. 17.60 Crores to the CD vide Sanction letter dated 21.06.2006, and working capital facilities to the CD of Rs. 10 Crores which included cash credit of Rs. 2.50 Crores and ILC/Import LC of Rs. 7.50 Crores by sanction letter dated 25.07.2006 and a supplemental joint deed of hypothecation dated 23.08.2006 creating security for the term loan for the DT and D-Tax Plant including machineries was executed by the CD and a memorandum of deposit of title deeds dated 07.12.2006 was also executed by the CD for extension of mortgage creating security by the Respondent No. 1 and Form VIII dated 07.12.2006 was filed for registration of charge in respect of the working capital facilities.

6. It is further reflected that a working capital consortium agreement was executed along with a supplemental joint deed of hypothecation on 26.03.2008 along with supplemental memorandum of deposit of title deeds for extension of equitable mortgage and as per the said documents the Respondent No. 1 had sanctioned a limit of Rs. 27.60 Crores to the CD including fund based limit of Rs. 20.10 Crores.

7. It is also reflected that a revised sanction letter was issued by the Respondent No. 1 in favour of the CD restructuring the facilities to the aggregate amount of the limits sanctioned to Rs. 30.75 Crores and there was a deferred payment interest of Rs. 52 lakhs.

8. The account of the CD was classified as NPA with all the members of consortium and the appellant restructured its facilities by a sanction letter dated 21.07.2009 however the same was revoked by the Respondent No. 1 vide notice dated 01.04.2011 and the facilities granted to the CD were also recalled vide notice dated 14.12.2011.

9. The appellant filed an original application before Debts Recovery Tribunal, Mumbai (DRT) against the CD and its guarantors and pursuant to the assignment of facilities by OBC in favour of Edelweiss Asset Reconstruction Company Ltd. (EARC) a modification of charge was filed by EARC with the Registrar of Companies and this modification only recorded the fact of assignment as there was no modification of charge in respect of the assets of the CD.

10. The Respondent No. 1 issued notice dated 10.04.2014 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for enforcement of securities and thereafter Respondent No. 1 filed original application being OA No. 469 of 2016 before the DRT and a Company Petition No. 184 of 2016 was also filed by the appellant before the Hon'ble High Court of Bombay under the Companies Act, 1956 against the CD.

11. In October, 2017 default is stated to have been committed by the CD in payment of the amounts under the consent terms to the appellant

pertaining to which application was filed for issuance of a Recovery Certificate before the DRT and before the Hon'ble High Court Bombay and DRT allowed the said application and granted recovery certificate.

12. The Company Petition No. 184/2016 filed before the Hon'ble Bombay High Court was transferred to Ld. Adjudicating Authority vide order dated 06.06.2019 and was admitted vide order dated 17.09.2019 and Ms. Jovita Reema Mathias was appointed as IRP and the Resolution Process resulted in the initiation of liquidation vide order dated 14.07.2022 and Ms. Jovita Reema Mathias was appointed as the liquidator of the CD.

13. It is also reflected that the Respondent-IDBI Bank has filed its claim aggregating to Rs. 197.61 Crores on 03.08.2020 by stating that the last security over the immovable assets of the CD was created on 26.03.2008 in terms of second supplemental memorandum deposit of title deeds for extension of equitable mortgage which has created first *Pari-Pasu* Charge for the facilities sanctioned by the respective lenders.

14. The Respondent No. 2/liquidator classified the claim of the appellant as partly secured in respect of the facilities of term loan –I and term loan –II as well as of cash credit to the extent of Rs. 707,571,789.36/- and the balance claim in respect of the term loan –III to the extent of Rs. 712,916,236.05/- as unsecured on the ground that the last charge created in favour of the appellant was in 2008 and no charge was created in respect of the term loan-III.

15. It is also reflected that appellant provided copy of the consent terms and order of the DRT and after several correspondences and after taking an

opinion the Respondent No. 2 admitted the entire claim of the appellant as secured and filed IA No. 858 of 2021 to modify the stakeholders list.

16. Respondent No. 1 had filed its claim before the Respondent No. 2 for an aggregate amount of Rs. 197.61 Crores and Respondent No. 2 classified Rs. 197.48 Crores as Secured. Consequently, the assets of the CD were sold by the liquidator for an aggregate sum of Rs. 34.65 Crores during November and December, 2020 and being aggrieved by the proposed distribution of the sale proceeds as suggested by the Respondent No. 2 the Respondent No. 1 filed an appeal before the Ld. Adjudicating Authority under Section 42 of the IBC being IA No. 852 of 2021. The appellant also filed an application being IA No. 1111 of 2023 before Ld. Adjudicating Authority challenging the distribution pattern suggested by Respondent No. 2. The IA No. 858 of 2021 was allowed by the Ld. Adjudicating Authority by passing the order dated 13.06.2023.

17. The Respondent-IDBI has filed its claim aggregating to Rs. 197.61 Crores on 03.08.2020, stating that the last security over the immovable assets of the CD was created on 26.03.2008 in terms of second supplemental memorandum of deposit of title deeds for extension of equitable mortgage creating first *Pari-Pasu* charge for the facilities sanctioned by the lenders. Thereafter certain concession by way of restructuring were granted by these lenders however no security was created in respect of the restructured /additional facilities sanctioned by these lenders and it was pleaded that these restructured/additional facilities remained unsecured in absence of any security/loan documentation.

18. It was further contended that the Principal for security creation has been ignored by the RP while reassessing claims of the banks and the security documents dated 26.03.2008 creating charge on the assets of the company in favour of the lenders have been completely disregarded and unsecured claim of the appellant for Rs. 712,916,236.05/- has been reclassified as secured based on a legal undated opinion of an Advocate and consent terms dated 10.01.2017 filed before the DRT while none of the aforesaid documents constitute creation of charge or security as the DRT decree only entitles a lender to recover its dues and may have residual charge on the assets of the borrower below the charge of the existing charge holder.

19. It is also reflected that Respondent-IDBI Bank Ltd. in his application has also contended that liquidator had granted preferential treatment to Respondent No. 3- Kotak Mahindra Bank Ltd. and Respondent No. 4- Edelweiss Asset Reconstruction Co. Ltd. by enhancing their claim to be secured in comparison to other creditors. While the case of the appellant was that in the minutes of the meeting of the second stakeholder's consultation committee held on 07.12.2020 the liquidator himself has recorded that none of the lenders have registered their charge after restructuring including IDBI and SBI and the sanction letter dated 21.04.2010 issued by the IDBI also mandates that charges created in favour of the bank will be registered with the Registrar of Companies within 30 days from the date of creation and in absence of new charge having been created with the Registrar of Companies only the facilities of the IDBI Bank

Ltd. as recorded in the security documents executed in 2008, before restructuring, are validly secured.

20. Ld. Adjudicating Authority has disposed of the IA No. 852 of 2021 filed by the Respondent-IDBI Bank Ltd. by passing the impugned order which has been assailed by the Appellant-Kotak Mahindra Bank Ltd. by filing the instant appeal.

Factual matrix of CA (AT) (Ins) No. 68 of 2024

21. In the facts of the instant appeal after the admission of the CD in the Corporate Insolvency Resolution Process (CIRP) in September, 2019 the Resolution Process appears to have failed and consequently Ld. Adjudicating Authority has passed liquidation order against the CD on 14.07.2020 and appointed Ms. Jovita Reema Mathias as Liquidator of the CD.

22. It is also reflected that the Respondent –SBI has filed its claim aggregating approximately to Rs. 196 Crores (Principal Rs. 42 crores and Interest Rs. 153 crores) with the liquidator and vide email dated 19.09.2020, liquidator informed the applicant that only Rs. 47 crores pertaining to cash credit facility can be considered as secured and consequently, the liquidator classified the SBI as unsecured creditor for Rs. 148 crores. The liquidator also informs the applicant that under Sanction letter dated 21.04.2010 the applicant was required to modify its charge with ROC for restructuring facilities however the applicant could not produce such modification of charge.

23. It further appears that in 2004, SBI sanctioned credit facilities aggregating to Rs. 18.35 crores under a consortium banking arrangement constituting ING VYSYA Bank Ltd. (now Kotak Mahindra Bank, SBI and

Oriental Bank of Commerce) and the facilities were subsequently enhanced to Rs. 38.90 crores. The State Bank of Saurashtra (SBS) merged with the SBI in 2008 and also provided Rs. 7.45 crores to the CD under the consortium and this facility, after the merger of SBS with the SBI was transferred to the SBI and the facilities were secured by charge over current assets and immovable assets of the CD. The SBI restructured the facilities in 2010 by way of sanction letter dated 21.04.2010.

24. It is further reflected that on the failure of the liquidator to treat the whole claim of the SBI amounting to Rs. 196 crores as secured the SBI moved IA No. 2228 of 2020 which was disposed of by the Ld. Adjudicating Authority by passing the impugned order and aggrieved by the same the instant appeal is filed by the appellant- Kotak Mahindra Bank.

Factual matrix of CA (AT) (Ins) No. 198 of 2024

25. The appellant in this appeal had preferred an IA No. 1111 of 2023 before Ld. Adjudicating Authority requesting to direct the liquidator to distribute the sale proceeds received from the sale of the assets of the CD amongst the creditors considering the provisions of Section 77 and 79 of the Companies Act, 2013. The Ld. Adjudicating Authority has disposed of another IA No. 2228 of 2020 in CP (IB) No. 2889 of 2019 on 21.11.2023 involving an identical issue between the parties involving the appellant and by passing the impugned order of date 20.12.2023 observed with regard to IA No. 1111 of 2023 filed by the appellant that the same has become infructuous in view of the order passed in IA No. 2228 of 2020 and aggrieved by the same along with the appeal filed against the order passed in IA No.

2228 of 2020 the impugned order has also been assailed by the appellant by filing the instant appeal.

Submissions of Ld. Counsel for the parties

26. Ld. Counsel for the appellants in all the appeal submits that the essence of the dispute is pertaining to the classification of Respondent SBI and IDBI Bank Ltd. as Secured creditors despite non-registration of charge post restructuring of facilities by these banks. Elaborating further it is submitted that keeping in view Section 77 and 79 of the Companies Act the registration of charge and its modification is mandatory however, Ld. Adjudicating Authority despite acknowledging this aspect of the matter has classified Respondent SBI and IDBI as secured creditors. Reliance in this regard has been laid on ***Kerala state financial enterprises Ltd. vs. Official liquidator, (2006) 10 SCC 709.***

27. It is further submitted that it is an admitted case that credit facilities were restructured by IDBI Bank appellant –Kotak Mahindra Bank Ltd. and State Bank of India vide letters dated 09.04.2009, 21.07.2009 and 21.04.2010, however despite restructuring the facilities no modification of charge, as provided under Section 77 (1) Read with Section 79 (b) of the Companies Act, 2013 was registered by the lenders and this aspect has been completely ignored by Ld. Adjudicating Authority.

28. It is further highlighted that the Ld. DRT, Mumbai has passed a decree in favour of the appellant in original application no. 114 of 2012 and therefore by virtue of this decree the appellant should have been classified as a secured creditor. Reliance in this regard is placed on ***Indian Bank vs. Ol, Chemmeens Exports Pvt. Ltd. & Ors. (1998) 5 SCC 401.***

29. It is also submitted that Section 77 (3) of the Companies Act bars the liquidator to take a charge into consideration which has not been duly registered and in respect of which a certificate of registration of such charge has not been issued by the Registrar under Sub-Section 2 of Section 77 and while, in case of non-registration of charge there is no impediment in enforcement of such contract or obligation for repayment of money but such charge could not be taken into account by the liquidator.

30. It is also submitted that Section 238 of the Code, could not be of any aid to the Respondents as the amendment under Section 77 (3) of the Companies Act has been made specifically under Section 255 of the Code which consciously incorporates that the liquidator appointed under the Code is bound to ignore the charge not registered as per the Companies Act. Reliance in this regard has been placed on ***Raghunath Rai Bareja and Anr. Vs. Punjab National Bank and Ors., (2007) 2 SCC 230.***

31. It is further highlighted that under Section 23 of the SARFAESI, Act registration of Security Interest with the Central Registrar is mandatory and Section 24 of the same Act requires that any modification to the security interest should also be registered failing which the security, as per Section 26 D, could not be enforced, however, Ld. Adjudicating Authority has completely ignored this aspect.

32. It is further submitted that Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 cannot override Section 77 (3) of the Companies Act as Regulation 21 aforesaid is only limited to proving the security interest and could not be sufficient to establish the priority of charge.

33. It is also submitted that once the credit facilities have been restructured the original charge would not survive as the former letter of arrangement stood substituted by the restructuring of the debt. Reliance in this regard has been laid on ***State Bank of India and Anr. vs. Varun Roshan Kohli and Anr. (2024) SCC Online 692.***

34. Ld. Counsel for the liquidator in CA (AT) (Ins) No. 67 of 2024 submits that Section 77 of the Companies Act makes it mandatory for a company to seek registration of every charge created by it and a perusal of Section 77 (3) makes it clear that the failure to register the charge under Sub-Section 1 is a bar for a liquidator appointed under the IBC from taking cognizance of such charge.

35. It is further submitted that as per Section 79 (b) of the Companies Act a modification in the terms of conditions or the extent of operation of any registered charge would also attract the requirement of Section 77 and a combined reading of Section 77 and 79 of the Companies Act would suggest that a modification in terms and condition relating to the charge is also required to be registered under Section 77(1) of the Companies Act, 2013.

36. It is also submitted that the liquidator has examined the documents made available by the Stakeholders including records of registered charges, financial documents and other supporting material furnished in support of the claims and the classification of claims was carried out on the basis of objective criteria including the existence of registered charges and supporting documentation available at that time, strictly within the statutory framework of the IBC.

37. It is further submitted that the present appeal essentially raises an issue of inter se priority of claims of financial creditors particularly in relation to the assets of the CD and the controversy has not arisen from any independent action of the liquidator and the role of the liquidator in this regard was limited only to the extent of verifying and classifying the claims on the basis of documents and record made available.

38. So far as CA (AT) (Ins) No. 68 of 2024 is concerned Ld. Counsel for the liquidator submits that the liquidator was having a very limited role in the instant dispute and she has acted strictly in accordance with the statutory framework of the Code and has acted on the basis of the record and provisions of the Code and applicable Regulations and further the liquidator has complied with all the directions issued by the Ld. Adjudicating Authority and did not proceed with the distribution pending adjudication of IA No. 2228 of 2020.

39. It is further submitted that instant appeal is pertaining to the challenge to the proposed distribution of sale proceeds and the continuation of the interim restraint on such distribution and it is for this Hon'ble Tribunal to adjudicate the same in accordance with law and the liquidator being an independent person is not siding with any party.

40. With regard to CA (AT) (Ins) No. 198 of 2024 Ld. Counsel for the liquidator submits that liquidator has undertaken the process of verification and classification of claims strictly in accordance with the provisions of the Code and applicable Regulations after examining the existence and validity of security interest with reference to statutory records including filings with the Registrar of Companies and has assessed whether such security could

be recognized for the purpose of distribution under Section 53 of the Code and also that the classification of claims has been made strictly in accordance with law.

41. It is also submitted the liquidator has acted diligently, fairly and strictly in accordance with the law and Regulations in discharging her duties during the liquidation process and classification of claims has been done on the basis of documents and materials placed on record by the stakeholders and while determining the status of claims she has not exercised any adjudicatory function.

42. It is further submitted that the issue in this appeal is pertaining to the recognition of security interest claimed by the appellant as well as the inter se priority of claims amongst financial creditor and the same is to be decided by this Appellate Tribunal.

43. Ld. Counsel for the Respondent –IDBI Bank in CA (AT) (Ins) No. 67 of 2024 and CA (AT) (Ins) No. 198 of 2024 submits that in order to prove its security interest a secured creditor can rely upon any of the documents provided under Regulation 21 of liquidation Regulations, 2016 and the same could be on the basis of any of the document provided in sub clause (a), (b) or (c) and the intention of the legislature was for the recognition of the security interest by any of the three conditions mentioned in above subsection. Reliance in this regard has been placed on **Bizloan Pvt. Ltd. vs. Investor Amit Chandrashekhar Poddar, CA (AT) (Ins) No. 210 of 2024 and 718 of 2024.**

44. It is further submitted that in the instant case the documents enumerated in sub clause (b) and (c) were on record and exclusive charge of

the IDBI Bank was duly registered on 07.12.2006 and the modification was also registered on enhancement of facilities made on 26.03.2008 and the charge of the IDBI was also duly registered with CERSAI.

45. It is also submitted that Section 77 and 79 of the Companies Act does not envisage that in the event of non-registration of modification of charge the charge shall not be taken into consideration and a conjoint reading of Section 77 (3) and 77 (b) of the Companies Act would provide that the liquidator shall recognize such charges which are duly registered with the ROC and mere non-registration of the modification of charge would not take away the original registered charge. Reliance in this regard has been placed on **State of Punjab vs. Grindlays Bank and Anr., decided by Hon'ble Delhi High Court, 1980 SCC Online Del 25.**

46. It is also submitted that in the instant case the IDBI's charge over the DT and D-Tax unit of the CD was exclusively registered and the same is subsisting as on date and even otherwise the restructuring of the outstanding loan of CD vide letter dated 09.04.2009 was revoked by the IDBI on 01.04.2011 and the original terms were restored.

47. It is also submitted that the reliance of the appellant on the DRT decree in order to establish that the same will amount to registration of modification of charge is untenable as the registration of modification of charge is completely estranged to Section 77 and 79 of the Companies Act and moreover the DRT decree is the consent decree and it records that IDBI shall have exclusive charge over the DT and D-Tax unit of the CD.

48. Ld. Counsel for the Respondent No. 1 SBI in CA (AT) (Ins) No. 68 of 2024 submits that IA No. 2228 of 2020 was filed by the SBI before Ld.

Adjudicating Authority seeking directions for considering entire SBI's claim of Rs. 196 Crores as Secured and accordingly to redistribute liquidation proceeds and the same has been allowed by treating the entire claim of the SBI as secured and no illegality has been committed thereby.

49. It is further submitted that original facility aggregating to Rs. 48.04 Crore including the facility extended by SBS and all accrued interest were secured by charge over the immovable and movable fixed assets of the CD and the charge was duly registered with the ROC in 2004 which was lastly modified in 2008.

50. It is further submitted that SBI in the year 2010 has restructured the facilities by way of its sanction letter date 21.04.2010 which includes WCTL of Rs. 12.16 Crores, FITL- I loan of Rs. 1.09 Crores, FITL-II loan of Rs. 3.03 Crores and FITL-III loan of Rs. 2.70 Crore and the security securing these facilities is registered with ROC which covers Principal amount along with all interest, compound interest, damages etc.

51. It is further submitted that when the charge in relation to restructured facilities were duly registered with ROC the restructured facilities are nothing more than categorizing newly term loans as a result of RBI Regulations and when the original registered charge was never satisfied/released it is still subsisting and valid in law.

52. It is further submitted that Regulation 21 of the liquidation Regulations, 2016 will prevail over amendment made in Section 77 (3) of the Companies Act incorporated on 15.11.2016 as the legislature has made amendment in the IBC and in Regulation 21 of the liquidation Regulations,

2016 on 15.12.2016 wherein the creditors had been given three options for proving security interest.

53. It is also submitted that the legislature by amending the liquidation Regulations, 2016 has clearly contemplated the existence of the Section 77 and 79 of the Companies Act and has intentionally given three options under Regulation 21 of the liquidation Regulations to establish security interest.

54. It is further submitted that when the original charge was registered in terms of Section 77 (1) of the Companies Act then there was no need to register the same after the facilities were restructured on 2010 as the restructuring did not alter the terms and conditions of the charge nor it altered the extent of the operation of security.

55. It is also submitted that the registration of Form CHG-1 by Edelweiss Asset Reconstruction Company was filed after the restructuring in 2010 wherein the SBI has been recorded as a joint charge holder and thus the reliance of the appellant on clause 17 of the sanction letter of 2010 is misplaced.

56. It is further submitted that Regulation 21 of the liquidation Regulations, 2016 expressly provides three ways of proving the security interest and the SBI has proved security interest on the basis of the registration of charge with CERSAI and the same is sufficient to establish the security interest. Reliance in this regard has been laid on **Bizloan Pvt. Ltd. vs. Investor Amit Chandrashekhar Poddar, CA (AT) (Ins) No. 210 of 2024 and 718 of 2024** and **Brihan Mumbai Electricity Supply and**

Transport Undertaking vs. Ashok Kumar Golecha, (2025) SCC Online, NCLAT 808.

57. It is lastly submitted that even if the later charge is deemed void due to non-registration of it the earlier charge would automatically revive and the liquidator has acknowledged that the charge created in 2008 was duly registered and there is no dispute with regard to the same and thus even if the restructured facility is considered a separate loan, the 2008 charge will revive to cover the original Principal loan and accrued interest and therefore the entire claim of the SBI is bound to be designated/classified as secured.

58. We have heard Ld. Counsel for the parties and have perused the record.

59. Section 77, 79 of the Companies Act, 2013, Section 20 of the SARFAESI Act, 2002, Section 3(31) of the Code and Regulation 21 of the Liquidation Process Regulations, 2016 are relevant and are reproduced as under:

Section 77- Duty to register charges, etc

(1) It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation:

1[Provided that the Registrar may, on an application by the company, allow such registration to be made--

(a) in case of charges created before the commencement of the Companies (Amendment) Act, 2019, within a period of three hundred days of such creation; or

(b) in case of charges created on or after the commencement of the Companies (Amendment) Act, 2019,

within a period of sixty days of such creation, on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified--

(a) in clause (a) to the first proviso, the registration of the charges shall be made within six months from the date of commencement of the Companies (Amendment) Act, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such additional fees as may be prescribed.]

Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered:

2[Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India.]

(2) Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.

(3) Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator ³[appointed under this Act or the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as the case may be,] or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2).

(4) Nothing in sub-section (3) shall prejudice any contract or obligation for the repayment of the money secured by a charge.

Section 79 Section 77 to apply in certain matters.

The provisions of section 77 relating to registration of charges shall, so far as may be, apply to--

(a) a company acquiring any property subject to a charge within the meaning of that section; or

(b) any modification in the terms or conditions or the extent or operation of any charge registered under that section.

**Section 20 Central Registry
SARFAESI Act, 2002**

(1) The Central Government may, by notification, set up or cause to be set up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under this Act.

(2) The head office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions referred to in sub-section (1), there may be established at such other places as the Central Government may think fit, branch offices of the Central Registry.

(3) The Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions.

(4) The provisions of this Act pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908 (16 of 1908), the Companies Act, 1956 (1 of 1956), the Merchant Shipping Act, 1958 (44 of 1958), the Patents Act, 1970 (39 of 1970), the Motor Vehicles Act, 1988 (49 of 1988), and the Designs Act, 2000 (16 of 2000) or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

Section 3(31) of the Code:

3(31) "security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:

Provided that security interest shall not include a performance guarantee;

Regulation 21 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

21. Proving security interest. *The existence of a security interest may be proved by a secured creditor on the basis of-*

(a) the records available in an 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 of India.

[21A. Presumption of security interest. (1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:

Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

(2) Where a secured creditor proceeds to realise its security interest, it shall pay –

(a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and

(b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date:

Provided that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator:

Provided further that any difference between the amount payable under this sub-regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.

(3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.

[Explanation- It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of

60. It is reflected that the case of the appellant in all the aforesaid appeals is in terms that the credit facilities were advanced by ING VYSYA Bank Ltd. which later on merged with the appellant in consortium with other creditors being SBI, IDBI Bank Ltd., Oriental Bank of Commerce (who has assigned the debt to Edelweiss Asset Reconstruction Company Ltd.) and Standard Chartered Bank and State Bank of Saurashtra which have merged with SBI. The said consortium facilities were secured by an equitable mortgage created by way of *Pari-Pasu* Charge by deposit of title deeds and by hypothecation of movable assets of the CD and the said equitable mortgage was recorded by way of memorandum of deposit of title deed dated 26.03.2008 and the hypothecation was created by execution of deed dated 26.03.2008 and the said memorandum of deposit of title deeds and deed of hypothecation recorded the facilities of each lender including the inter se priorities the said charges were registered and filed with the Ministry of Corporate Affairs under the appropriate forms on 22.04.2008.

61. The Appellant restructured the facilities granted to the CD by sanction letter dated 21.07.2009. The term loan-III was carved out of earlier sanctioned short term loan liability, cash credit liability and the unpaid interest on all existing credit facilities and the primary security being first *Pari-Pasu* charge on entire fixed assets of the CD excluding the assets specifically charged to SBI in respect of the FDY Project and to IDBI in respect of the draw twisting project (DT and D-Tax), which were sanctioned outside the consortium.

62. It is further the case of the appellant that the appellant entered into a settlement with the CD and its guarantors and the consent terms dated 22.12.2016 were executed between the parties and were also taken on record by the DRT in its order dated 10.01.2017 and the application was disposed of in terms of the said consent terms.

63. In pursuance of the public notice dated 17.07.2020, issued by the liquidator of the CD the appellant lodged an aggregate claim of Rs. 1,420,488,025.41/-.

64. In the meantime, the liquidator received a sum of Rs. 64,240,000/- towards the insurance claim filed by the CD prior to the liquidation in respect of damage caused due to fire at the factory premises and as all the lenders were listed as the beneficiaries this money was distributed among all the financial creditors whose name were reflected in the insurance policy.

65. The liquidator vide her email dated 19.09.2020, classified the claim of the appellant only to the tune of Rs. 707,571,789.36/- as secured while the rest of the claim i.e. 712,916,236.05/- was classified as unsecured however after various correspondences exchanged between the appellant and the liquidator and on the basis of the consent terms liquidator revised the admitted claims of the appellant and classified the whole claim filed by the appellant as secured. The Ld. Adjudicating Authority by passing the impugned order has unsettled the decision taken by the liquidator.

66. So far as Respondent SBI is concerned its case is that it has sanctioned credit facilities aggregating to Rs. 18.35 Crores under a consortium banking arrangement and as stated earlier the original facility was secured by a charge over current assets movable and immovable fixed

assets of the CD. In November, 2005 the original facility was enhanced from Rs. 18.35 Crores to Rs. 38.90 Crores.

67. The consortium lenders sanctioned further facilities to CD in 2006 however the original facility remained of Rs. 38.90 Crores and the State Bank of Saurashtra which subsequently merged in the SBI in 2008 also provided Rs. 7.45 Crores to CD under the consortium and the security documents were modified and the charge filed with the Registrar of Companies was also modified in 2006 and the same was lastly modified in 2008 which captures the original facility of Rs. 38.90 Crore and SBS facility of Rs. 9.14 crores total 48.04 Crores.

68. The SBI at the request of the CD restructured the original facility in 2010 by sanction letter dated 21.04.2010. the restructure facility includes WCTL of Rs. 12.16 Crore, FITL-I of Rs. 1.09 Crore, FITL-II of Rs. 3.03 Crore and FITL-III of Rs. 2.70 Crore and also including the SBS facility of Rs. 9.14 Crore and except the sanction letter no other document was executed between the bank and the CD with respect to the restructuring of these facilities and also the charge filed with the RoC was not modified for any of the consortium lenders who have also restructured their respective facilities.

69. The SBI filed its claim aggregating to Rs. 196 Crores with the liquidator who vide her email dated 19.09.2020, informed that only Rs. 47 Crore pertaining to the cash credit facility can be considered as secured and for claim of Rs. 148 Crore was classified as unsecured. The liquidator also informed the Bank that under sanction letter dated 21.04.2010 the Bank was required to modify its charge with ROC for the restructured facilities but no evidence of such modification was produced.

70. The State Bank filed an IA No. 2228 of 2020 before the Ld. Adjudicating Authority and vide impugned order the application was allowed holding that restructuring of the facilities, in strict sense, may not be deemed to be a modification of charge and thus the registration of it was not required and secondly, that under Regulation 21 of the Liquidation Process Regulations, 2016, three options have been given to prove the security interest and since the applicant has filed a CERSAI search report dated 08.01.2021, to the liquidator to established its security interest the same could be proved by the document and thus directed the liquidator to verify the extent of charge registered in favour of the SBI with CERSAI and thereafter considered the security interest of the applicant on that basis and further hold that the interest of each lender in the proceeds of the insurance claim can be determined with reference to security interest in favour of each lender pertaining to which the insurance claim has been received and thus directed the liquidator to work out the amount receivable by each lender in this manner with a further direction to offset the amount incorrectly paid to any consortium lender.

71. So far as the case of the Respondent IDBI Bank is concerned it has granted financial assistance to the CD to the tune of Rs. 17.60 Crores vide letter of intent dated 21.06.2006 and for securing the facilities borrowers and guarantors have executed various loan and security documents in favour of the Bank.

72. The Bank further sanction financial assistance under consortium arrangement of the Bank led by Oriental Bank of Commerce whereby the IDBI Bank sanction Rs. 10 crores to the borrower vide letter of intent dated

25.07.2006 and on 23.08.2006 then lender Banks executed inter se agreement amongst themselves. Subsequently, OBC assigned its debt to Edelweiss Asset Reconstruction Company Ltd. and ING VYAS Bank merged with Kotak Mahindra Bank and similarly the State Bank of Saurashtra merged with the SBI.

73. It is also the case that third joint deed of hypothecation dated 23.08.2006 which is the first charge in favour of the consortium lender was created on the current assets of the CD including plant and machinery other movables and premises and godown of the borrower at Silvassa Maharashtra excluding FDY plant and machinery which were exclusively charged to SBI for the term loan and also excluding DT and D-Tax plant and machinery which were exclusively charged to IDBI for its TUFs loan and tripartite agreement was executed on 23.08.2006.

74. It is also the case of the Bank that for securing the facilities including TUFs loan of Rs. 17.60 Crores and working capital facilities of Rs. 10 Crores along with member of consortium to the borrower it has created mortgage in respect of immovable properties situated at village Dadra of Union Territory of Dadar and Nagar Haveli in favour of Bank and other Members of the consortium by way of second supplemental memorandum of entry of deposit of title deeds for extension of equitable mortgage dated 07.12.2006 and the charge created for TUFs loan was registered with the ROC Mumbai on 03.09.2007 and the mortgage/hypothecation in respect of working capital facilities was registered with ROC Mumbai on 12.01.2007 and also with the Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI).

75. It is also the case of the Bank that later on the consortium Banks have enhanced the facilities to the borrower to the extent of Rs. 180.94 Crores however the facilities granted by the Bank remained as it is and in March 2009 the IDBI Bank Ltd. has restructured the repayment schedule of due loan account on the request of the borrower and thereafter a demand notice dated 01.04.2014 was issued under Section 13 (2) of the SARFAESI Act, 2002 and thereafter the original application was filed before the DRT and in the meantime, in September, 2019 the CIRP initiated against the CD and the claim submitted by the Bank was classified by the liquidator as secured debt however the application no. 852 of 2021 was filed by the IDBI Bank with a direction to treat and classify the claim of member of consortium i.e. SBI, Kotak Mahindra Bank and Edelweiss Reconstruction Company Ltd. in accordance with their security documents and release the proceeds amounting to Rs. 39,067,706/- received from sale of DT and D-Tax unit of the borrower which has been allowed by passing the impugned order.

76. Perusal of the record would reveal that earlier credit facilities were extended by the Banks in favour of the CD and security charge was created and the last security over the immovable assets of the CD was created on 26.03.2008.

77. It is further reflected that SBI was having specific and exclusive charge over FDY plant and the IDBI Bank Ltd. was having exclusive charge on DT and D-Tax unit, despite the modification of charge lastly on 26.03.2008.

78. It is also reflected that the credit facilities to the borrower/CD was restructured by all the lender Banks in the year 2009-2010 however no

corresponding charge was registered with the ROC while the earlier charge of the consortium Banks was registered with the ROC.

79. It has been argued that the restructured facilities remained unsecured in absence of any security or loan documentation more so when none of the restructured facilities were registered in terms of Section 77 (1) read with Section 79(b) of the Companies Act, 2013.

80. The record would fortify that all the consortium lender Banks were aware of the extent of charge and the facilities extended by all the lender Banks. It is also reflected that original charge was created with regard to the Principal amount, including overdue Principal component and the interest which has accrued but has not been paid including the penal interest if any.

81. It has been argued by the Respondent Banks that the credit facility to the CD was restructured in accordance with the Reserve Bank of India's requirement and the loan amount sanctioned earlier has only been categorized as different loans by such restructuring. It is also argued that a funded interest term loan is not a separate loan that requires modification of charge already filed with the ROC and the funded interest account is nothing but interest due on term loan so there was no necessity to modify the charge already registered with the ROC as the earlier term loan was secured and charge was filed with the ROC and that no fresh loan or facility was provided to the borrower or CD and the restructured facility was nothing but the recapitalization of the original facility and the charge created over the original facility in 2008 secures Principal amount, interest, cost, charges etc. which the restructured facility also covers.

82. The appellant- Kotak Mahindra Bank is claiming his secured interest on the basis of the consent terms acknowledged by the Ld. DRT in its order and its claim under various facilities secured in terms of registration of charge was followed by a decree of Ld. DRT and therefore request was made to classify whole of its claim as secured.

83. The Ld. Adjudicating Authority in the impugned order has found that in strict sense the restructuring of the credit facilities may require registration with ROC in view of Section 79 (b) of the Companies Act however after discussing at length the nature of the restructuring done by the lender Banks came to a conclusion that the term modification should be liberally construed in favour of lenders in a manner that such construction does not prejudice the security interest of existing lenders where security interest has been acquired by other lenders with prior knowledge of existence of such security interest.

84. We do not find any illegality in the approach adopted by the Ld. Adjudicating Authority. The Banks had earlier granted term loan and working capital/cash credit facility to the CD and thereafter became part of consortium in 2008. It appears that these credit facilities were restructured by funding the interest on term loan and by converting some of the portion of working capital into term loan and the case of the lender Banks is that these restructured credit facilities, only by naming them as new facilities, were divided into various kinds, in terms of RBI Regulations.

85. We have perused the restructuring of the loan by the lender Banks and found that the restructured facilities were made in the form of WCTL, FITL-I, FITL-II and FITL-III and all these facilities arise from the existing

cash credit and term loan facilities and thus a new facility has been made out from the overdue portion of Principal and interest to help the CD to overcome its distress.

86. We notice that the Ld. Adjudicating Authority while discussing the case of SBI found that though the sanctioned limit indicates increase of Rs. 11.09 Crores in fund based facility but the clause -5 of the same states that the restructuring package involves sacrifices to the extent of Rs. 11.11 Crores however the company would be required to show this amount in their audited balance sheet every year as contingent liability till the amount is re-compensated.

87. We also notice that the original charge so far as the case of lender Banks is concerned was created in relation to the Principal amount, overdue Principal component and accrued interest which has not been paid on such facilities including penal interest and the restructured facilities though have been named differently but are with regard to the same components and it would not be fair to say that a material modification in terms of the conditions of the credit facilities have occurred only because the overdue amount of these credit facilities and the interest which remained unpaid has been designated as a new facility.

88. We also notice that none of the lenders has registered modification of charge at the ROC after restructuring of the facilities and it is apparent and evident on record that all the lender Banks were in prior knowledge of the credit facilities extended by each of the Bank including the specific charge of the each Bank and therefore in our considered opinion when the credit facilities have been restructured by all the lender Banks and the security

interest acquired by the other lender Banks was in knowledge of all the lender Banks, we are in agreement with the approach adopted by the Ld. Adjudicating Authority in construing the term modification liberally as the same will not prejudice the security interest of existing lenders and the restructuring of the facilities done by the lender Banks may not amount to modification of charge in strict sense, more so when the securities have remained the same and the secured amount has also not been disturbed.

89. Here, Regulation 21 of the Liquidation Process Regulations, 2016 reproduced earlier in this judgment) is also important which govern the liquidation of the companies and provides three options by which the security interest can be proved by a creditor in liquidation proceedings.

90. We notice that the Ld. Adjudicating Authority also in impugned judgments has observed that the Regulation 21 of the Liquidation Process Regulations, 2016 provides three modes of proving the security interest and the same may be proved by either of the said mode or manner and keeping in view the Section 238 of the Code, Regulation 21 would override the provision of Section 77 (3) of the Companies Act, 2013 and thus hold that apart from the certificate of registration of charge issued by the ROC the security interest may also be proved by registration of charge with the CERSAI.

91. A Co-ordinate Bench of this Appellate Tribunal in ***Bizloan Pvt. Ltd. vs. Mr. Amit Chandrashekhar Poddar (Liquidator for Autocop) (India) Pvt. Ltd., CA (AT) (Ins) No. 210 of 2024 dated 03.07.2025***, after considering Regulation 21, of the Liquidation Process Regulations, 2016 and Section 77 (3) of the Companies Act as well as Section 238 and 255 of the

Code and also considering Section 20 of the SARFAESI Act, 2002 opined that Section 255 of the Code amends various other laws including the Companies Act, 2013 to align them with the provisions of the Code to ensure consistency and smooth functioning of the Insolvency Framework and that the Principle of later law prevails having regard to the 'general rule of statutory provision' and on the basis of this the later enacted law is presumed to override the earlier one and adopting a harmonious construction between the Regulation 21, of the Liquidation Process Regulations, 2016, Section 77, 79 of the Companies Act and Section 20 of the SARFAESI Act opined as under:

“42. Looking from different angle, Section 77(3) of the Companies Act, 2013 may not really be "inconsistent" with the Code as Section 77(3) of the Companies Act, 2013 which provides for a charge to be "taken into account by a liquidator or any other creditor.", whereas the Code deals with the process of insolvency resolution or Liquidation process and the prioritization of creditors. We need, therefore to consider harmonious construction and interpret laws harmoniously. Thus, there may exist the interplay between:

**Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016*

** Section 77 of the Companies Act, 2013*

** Section 20 of SARFAESI Act, 2002*

43. Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 have been framed by the IBBI under the powers granted by the Code and provide the detailed procedural framework for the liquidation process. We note that Regulation 21 is relating to Proof of Claim by a Secured Creditor. This regulation deals with how a secured creditor submits its claim during liquidation. It requires a secured creditor to submit proof of their security interest, including evidence of its creation.

44. On the other hand, Section 77 of the Companies Act, 2013 mandates the registration of charges created by companies with the RoC and Section 77(3) stipulate that, "Notwithstanding anything contained in any other law for the time being in force, no charge created by a company

shall be taken into account by a liquidator or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration is issued by the Registrar."

45. We note that the purpose of SARFAESI Act, 2002 is to allow secured creditors (banks/financial institutions) to enforce their security interests without court intervention. The SARFAESI Act, 2002 also has Section 35 (Non-Obstante) which state "The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law...". Similarly, Section 26D of SARFAESI Act, 2002, mandates registration of security interests with CERSAI to make them enforceable against third parties. However, it also explicitly states this is "notwithstanding anything contained in any other law for the time being in force relating to registration of charges."

46. Thus, the complexity arises because all these laws have their own "non-obstante" clauses and specific purposes.

47. The overarching principle remains that the Code, being a special law for insolvency, and self-contained code overrides other laws to the extent of inconsistency in matters of insolvency resolution.

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 than Section 77(3) of Companies Act, 2013 which was done on 15.11.2016.

51. Based on above laws and facts, it becomes clear that security interest by the Creditors can also be proved if the same is available in CERSAI and is not completely and exclusively dependent on charge registered with RoC under Section 77 of the Companies Act, 2013”.

92. Thus keeping in view the aforesaid law propounded by the Co-ordinate bench of this Appellate tribunal we do not find any defect in the approach adopted by Ld. Adjudicating Authority in concluding that the security interest could be proved by any of the mode provided under Regulation 21, of the Liquidation Process Regulations, 2016.

93. Similarly, we also concur with the finding of Ld. Adjudicating Authority, that the DRT order based on the consent terms is not sufficient to create fresh security interest and even if such security interest is presumed to have been created the same will remain subordinate to already created security interest. It is also for the reason that in the instant case the DRT order is based on consent terms filed before it in OA No. 114 of 2012 instituted by the appellant and consent terms were filed by appellant and corporate debtor and its guarantors. Secondly the basis of the claim has been shown in para no. 4 of the consent term (filed with the appeal) as the

4th supplemental joint deed of hypothecation dated 26.03.2008 and second supplemental memorandum of deposit of title deeds for extension of equitable mortgage. Moreover, in this consent term with regard to FDY plant and DT and D-Tax plant second *Pari Pasu* charge has been shown and therefore the first charge of the SBI and IDBI has been acknowledged on these assets. Therefore, the consent decree/consent term may not create a first charge in favour of Appellant, on the secured assets of the CD which were also secured in favour of other creditors by the same 4th supplemental joint deed of hypothecation dated 26.03.2008 and second supplemental memorandum of deposit of title deeds for extension of equitable mortgage.

94. Ld. Counsel for the appellant has relied on ***Indian Bank vs. The Official liquidator (1998) 5 SCC 301***. However, we notice that this law propounded by Hon'ble Supreme Court is before the enactment of Code in the year 2016 and so far as ***CA (AT) (Ins) No. 02 of 2020 Volkswagen Finance Pvt. Ltd. & Ors. vs. Shree Balaji Printopack Pvt. Ltd. & Ors.*** decided on ***19.10.2020*** and ***Axis Bank Ltd. vs. Value Infracon India Pvt. Ltd. CA (AT) (Ins) No. 582 of 2020*** decided on ***20.12.2021***, ***CA (AT) (Ins) No. 830 of 2019 decided on 18.12.2019*** and ***India Bulls Housing Finance Ltd. vs. Samir Kumar Bhattacharya & Ors.*** are concerned these are the appeals in the facts of which no charge was ever registered with the ROC, while in the case at hand the dispute is with regard to the non-registration of charge pertaining to some modifications allegedly occurred later on. In the another judgment of this Appellate Tribunal relied on by the Ld. Counsel for the appellant ***Unity Small Finance Bank Ltd. vs. Shree Sripatham Venkatasubramanian Ramkumar, RP for privilege***

Industries Ltd. & Anr., CA (AT) (Ins) No. 601 of 2024, decided on **16.04.2024** the contention of the appellant for its designation as secured creditor was rejected as no charge was ever registered under Section 77 of the Companies Act. Thus it is again a case where no charge was ever registered with the ROC while in the instant case the original charge was registered with the ROC and the overall amount sanctioned under the restructuring schemes was less than the amount which was secured in terms of the charge earlier registered with the ROC in the year 2008.

95. Thus, keeping in view all the facts and circumstances of the case and for the reasons given herein before we do not find any good ground to interfere in the impugned Judgments and also do not find any merits in the appeals preferred by the appellant and thus all the appeals filed by the appellant are **dismissed**.

96. However, there will be no order with regard to costs.

97. Pending IA's if any are also closed.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

New Delhi.
24.04.2026.

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