

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 359 of 2026

[Arising out of the Impugned Order dated 09.01.2026 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-I in I.A. No. 2397 of 2025 in C.P. (IB)/571 (MB) 2019]

IN THE MATTER OF:

M/s ASREC (India) Limited

Solitaire Corporate Park, Building No. 2, Unit No. 2 01
202A & 200-2028, Ground Floor, Andheri Ghatkopar
Link Rd. Mumbai-400093

...Appellant(s)

Versus

1. Bhaskar Gopal Shetty

(Liquidator of Mirage Ceramics Pvt. Ltd)
C-77, Shanti Shopping Centre, Mira Road East,
Mumbai, 401107
Email: mirageceramics.cirp@gmail.com and
cabgshetty@gmail.com

2. Kamlesh Mehta

Senapati Bapat Marg, Lower Parel
Business at:5th Floor, Trade Link, (W), Mumbai- 400
013
Email: - Shrikant.mirageceramics@gmail.com

...Respondent(s)

Present:

For Appellant : Ms. Anjali Sharma, Mr. Ganesh Remani, Ms. Thanglunkim, Mr. Gaikhuanlung and Ms. Annu Sharma, Advocates.

For Respondents : Mr. Shadab Jan and Mr. Gaurav Jangle, Advocates for R-2.
Mr. Nausher Kali and Ms. Kejal Kamdar, Advocate for R-1.

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

Per: Barun Mitra, Member (Technical)

The present appeal, filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('IBC' in short) by the Appellant arises out of the Order dated 09.01.2026 (hereinafter referred to as the '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal,

Mumbai Bench, Court – I) in I.A No. 2397 of 2025 filed under Section 60(5) of the IBC in CP (IB) No. 571(MB) of 2019. By the said impugned order, the Adjudicating Authority has dismissed I.A No. 2397 of 2025. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. Coming to the brief factual matrix of the case which are relevant to be noticed for consideration of the matter at hand, we find that the Corporate Debtor-Mirage Ceramics Pvt. Ltd. was admitted into Corporate Insolvency Resolution Process (in short '**CIRP**') on 14.02.2020. The resolution process having failed, the Corporate Debtor went into liquidation on 15.06.2023. The Corporate Debtor prior to the initiation into CIRP had availed credit facilities from Abhyudaya Co-operative Bank ('**Abhyudaya**' in short) and had created mortgage and hypothecation over its movable and immovable assets including land at Pune besides plant and machinery, stocks and receivables which led to the signing of a Hypothecation of Stock and Book-Debts Agreement on 17.09.2018 (hereinafter referred to as '**Hypothecation Agreement**'). Subsequently, Abhyudaya as the assignor executed an Assignment Deed dated 26.08.2020 with the Appellant as assignee. Abhyudaya had assigned its loan exposure alongwith all underlying security interest of the Corporate Debtor to the Appellant-M/s ASREC (India) Ltd. After the Appellant stepped into the shoes of Abhyudaya, it enjoyed the status of a secured financial creditor of the Corporate Debtor. The claim of Respondent No. 2 had been admitted as an unsecured financial creditor during the CIRP process by the Resolution Professional ("**RP**" in short). The RP was subsequently appointed as the Liquidator to conduct the liquidation process of the Corporate Debtor in accordance with law. During the liquidation process, the Liquidator

classified the Respondent No. 2 as a secured financial creditor by adjudicating that the claim of Respondent No. 2 was that of a secured debt which was based on the creation of second charge on the property of the Corporate Debtor in pursuance to an order dated 04.10.2018 passed by the Bombay High Court in Commercial Arbitration Petition No. 1074 of 2018. Pursuant to the order of the Bombay High Court dated 04.10.2018, the Corporate Debtor had executed a Deed of Charge-cum-Hypothecation dated 20.02.2019 (**'Deed of Charge'** in short) with the Respondent No. 2 creating a second charge. The said hypothecation deed was registered with the Sub-Registrar, Pune Gramin. The Liquidator filed I.A No. 508 of 2025 before the Adjudicating Authority claiming that the interest of Respondent No. 2 was secured interest as per order and decree dated 04.10.2018 passed by the Bombay High Court. The Appellant however filed I.A No. 2397 of 2025 before the Adjudicating Authority challenging the validity and maintainability of classifying Respondent No. 2 as a secured financial creditor and inter alia urged the Adjudicating Authority to issue directions to the Respondent No. 1-Liquidator to declare the claim of Respondent No. 2 as an unsecured creditor of the Corporate Debtor. However, I.A No. 2397 of 2025 was dismissed by the Adjudicating Authority vide impugned order dated 09.01.2026, the present appeal has been preferred by the Appellant.

3. Making submissions on behalf of the Appellant, Ms. Anjali Sharma Ld. Counsel for the Appellant submitted that the impugned order passed by the Adjudicating Authority was erroneous as it wrongly classified Respondent No. 2 as a secured financial creditor in the absence of any legally valid and enforceable security interest in favour of the Respondent No. 2. It was

contended that neither the order passed by Bombay High Court in the Commercial Arbitration Petition on 04.10.2018 nor the Deed of Charge dated 20.02.2019 in pursuant thereof created any security interest in the eyes of law. It was submitted that merely because an undertaking had been given by the Corporate Debtor before the Bombay High Court to create a second charge, the same cannot be construed to be a judicial direction to create security interest. Moreover, no legally enforceable security interest could have been created by the Deed of Charge in the absence of prior consent of the Appellant to the creation of second charge in view of the express contractual covenant contained in the 2018 Hypothecation Agreement which prohibited creation of further charge without consent of the first charge holder. However, in the present case, it was submitted that second charge was created behind the back of the first charge-holder and hence the second charge was a defective charge. It was further asserted that the Respondent No. 1-Liquidator had failed to perform his duties in accordance with Regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 for having suo motu classified the Respondent No. 2 as a secured financial creditor without adequate and sufficient proof having been provided by the Respondent No. 2 as mandated by Regulation 21 of the Liquidation Process Regulations (**'LPR'** in short). It was added that Regulation 21 of the LPR makes it mandatory to obtain a certificate of registration of the charge from the Registrar of Companies (**'RoC'** in short) for recognition of any party as a secured financial creditor. It was submitted that though Respondent No. 2 had given an undertaking to register the charge within 15 days, this was done after 139 days and that too the registration was done with the Sub-Registrar of Pune

and not with the RoC. Submission was also pressed that Section 77(3) of the Companies Act, 2013 makes it a necessary pre-requisite to obtain a certificate from the RoC for recognition as a secured creditor which not having been done, the Liquidator had acted without proper verification of the security interest and thereby failed to adhere to the Code of Conduct for Insolvency Professionals.

4. Refuting the contentions put forward by the Appellant, it was contended by Mr. Shadab Jan, Ld. Counsel for the Respondent No. 2 that the present appeal was not maintainable since the Appellant had raised similar issues seeking identical reliefs in an earlier proceeding which they had subsequently withdrawn which had been allowed by the Adjudicating Authority on 04.03.2024. Since, the Appellant had not obtained liberty to initiate fresh proceedings on the same cause of action, the present proceedings were not maintainable and deserved to be dismissed *in limine*. It was contended that the status of the Respondent No. 2 as a secured financial creditor was clearly established by the consent decree dated 04.10.2018 passed by the High Court of Bombay wherein it was expressly recorded and agreed by the Corporate Debtor that it shall create a charge in favour of the Respondent No. 2 thereby clearly recognising the existence and enforceability of the second charge arrangement. It was further submitted that contention regarding non-registration of charge under Section 77 of the Companies Act, 2013 was wholly misconceived as it is well settled that the act of registration is procedural in nature and cannot override or extinguish a validly created security interest. Furthermore, when the Deed of Charge of 20.02.2019 clearly provided that sale proceeds of secured assets will be first appropriated

towards the dues of the Appellant and thereafter the remaining surplus amount was to be released to the Respondent No. 2, the Appellant as first charge holder not having suffered any legal injury or legal prejudice had no locus to question the status of Respondent No.2 as secured financial creditor. It was therefore contended that the Adjudicating Authority had taken a well-reasoned decision in upholding the treatment of the Respondent No. 2 as a secured financial creditor by the Liquidator.

5. The Ld. Counsel for the Respondent No. 1–Liquidator Mr. Nausher also supported the arguments which had been canvassed on behalf of Respondent No. 2. It was asserted that when the Deed of Charge had been formally and legally executed on 20.02.2019 between the Corporate Debtor and Respondent No. 2 in pursuance of the binding consent decree of the High Court of Bombay, the Deed of Charge formally created and perfected the second charge over the moveable and immovable assets of the Corporate Debtor and therefore, the Respondent No. 2 had been rightly admitted and recognised by the Respondent No. 1 as a secured financial creditor. It was emphatically asserted that the Respondent No. 1 had acted strictly within the four corners of the statutory provisions of the IBC besides taking into consideration judicial orders, contractual covenants and other foundational documents like the Deed of Charge etc. and had acted in good faith in recognising the Respondent No. 2 as a secured financial creditor for holding a valid, subsisting and enforceable second charge over the assets of the Corporate Debtor.

6. We have heard Ld. Counsels for all the parties and perused the records carefully.

7. It is the case of the Appellant that the claim of the Respondent No. 2 to enjoy the status of secured financial creditor basis second charge over the moveable and immovable assets of the Corporate Debtor in pursuance of the order passed by the High Court of Bombay on 04.10.2018 passed in Commercial Arbitration Petition was misplaced. It was vehemently contended that this order was not in the nature of a judicial direction or adjudication by the Bombay High court but was merely recording of an undertaking on the part of the Corporate Debtor that it would create a second charge in favour of the Respondent No. 2. Thus, when the High Court of Bombay did not issue any peremptory direction creating a charge, the Adjudicating Authority by treating the recording of an undertaking to be an adjudication committed an error. It was further added that no legally enforceable interest could have been created merely on the basis of such an undertaking without the consent of the first charge holder. It was strenuously contended that the financing arrangements between the Appellant with the Corporate Debtor vide Hypothecation Agreement of 17.09.2018 clearly provided for a restrictive covenant which prohibited creation of further encumbrances on the charge created over the property of the Corporate Debtor without prior written consent of the first charge holder. However, no such consent having been either sought from the Appellant or having been given by the Appellant, this rendered the creation of the second charge a nullity. It was also contended that liquidation being a value distributive regime with strict statutory hierarchy where all recognised secured creditors rank at par for purposes of distribution, the impugned order by accepting the status of the Respondent No. 2 as a secured financial creditor directly prejudiced the vested rights of

the Appellant and distorted the statutory waterfall mechanism under Section 53 of the IBC.

8. Per contra, it is the contention of both the Respondents that the order of the High Court of Bombay dated 04.10.2018 was in the nature of a Consent Decree which had acquired finality. This undertaking given before the Court was further firmed up and crystallized by a Deed of Charge executed between the Corporate Debtor and the Respondent No. 2 for creation of a second charge. The Liquidator had taken note of the fact that the Deed of Charge had been executed in furtherance of and in compliance with the order of the High Court of Bombay and therefore accorded the status of secured financial creditor on the Respondent No. 2 which has been rightly affirmed by the Adjudicating Authority in the impugned order. It was also asserted that the Bombay High Court while passing the Consent Decree was fully aware that the Appellant was the first charge holder as this factum had been brought to the notice of the Bombay High Court. Further the undertaking given was to the effect that only after the Appellant recoups his entire security interest that the Respondent No. 2 would receive its dues from the residual balance proceeds. Thus, when the interests of the Appellant as first charge holder was not getting impaired in any manner on the classification of the Respondent No. 2 as a secured financial creditor as second charge holder, the Adjudicating Authority did not commit any infirmity in upholding the status of secured financial creditor being given to Respondent No. 2 by Respondent No. 1.

9. To arrive at our findings on the tenability of the impugned order affirming the decision of the Respondent No.1 to classify the Respondent No. 2 as a secured financial creditor, it would be useful at this stage to first take

notice of the directions of the High Court of Bombay dated 04.10.2018 to set at rest any doubt as to whether the factum of the Appellant as first charge holder had been brought to the clear notice of the Bombay High Court. The relevant extracts of the said order are as reproduced below:

1. Heard the Learned Advocates for both the parties and the following order is passed, by consent :-

(i) Respondent No.1 submits to a decree in the sum of Rs.32,29,25,000/-

(ii) Respondent No.1 agrees and undertakes that the Petitioner will have a second charge on the suit property more particularly described in the Schedule to the Loan Agreement dated 28th March, 2018. In addition thereto, Respondent No. 1 agrees and undertakes to create a second charge on the plant and machinery and hypothecation on the stocks and book debts. Respondent No. 1 agrees and undertakes to register the aforesaid charges and pay the stamp duty and all other expenses/charges within a period of 15 days from the date of this Order being uploaded. The undertaking is accepted.

(iii) The Court Receiver, High Court, Bombay is appointed as Receiver in respect of the Manufacturing Unit at Gat No.297/ 1-2, Shahpur Industrial Area, Nandur Village, Pune-Solapur Road, Near Urlikanchan, District - Pune 412 202 together with all the buildings and structure constructed, fixed plant and machinery attached to the earth or permanent fastened to anything attached to the earth, fixtures and fittings erected/installed and every part thereof on "as is where is and as is what is" basis (suit property). However, it is clarified that Abhyudaya Bank has first charge over the properties to the extent of Rs.19,69,91,549.64 as of 30th September, 2018 qua the facilities enjoyed by Respondent No. 1.

(Emphasis supplied)

10. When we look at the above order of the Bombay High Court at para 1(iii), it is clear that the High Court of Bombay had the clear knowledge of the status of the Appellant as first charge holder and that Abhyudaya as the predecessor in interest of the Appellant was to have first charge over the properties to the extent of Rs. 19.69 Cr. over the properties of the Corporate Debtor. The order had clearly recorded that in the event of liquidation, the

first charge over the properties of the Corporate Debtor would devolve upon the Appellant. When we look at the above order of the Bombay High Court at para 1(ii), it is clear that Respondent No.2 was to have second charge over the property of the Corporate Debtor. It follows therefrom that the Respondent No. 2 would only enjoy the benefit of second charge over the property of the Corporate Debtor after the first charge has been discharged.

11. In this backdrop, we are of the considered view that it has been rightly held by the Adjudicating Authority at para 16 of the impugned order that the Bombay High Court had passed the consent decree in the Commercial Arbitration Petition whereby the second charge on the properties was agreed to be created in favour of the Respondent No. 2 while the Appellant enjoyed first charge over the properties of the Corporate Debtor. That being the case, we do not find any cogent reason for the Appellant to feel aggrieved with the status of secured financial creditor being accorded to Respondent No. 2 as such classification would not have any detrimental or deleterious impact on the claims of the Appellant as the first charge holder.

12. This now brings us to the related issue raised by the Appellant that in terms of the Hypothecation Agreement of 2018, there was a restrictive covenant that the No-Objection of the Appellant was necessary for creation of any charge and that in the absence of the same, the second charge created for Respondent No. 2 was rendered a nullity.

13. At this juncture, we may advert our attention to the relevant clause of the Hypothecation Agreement which was executed between Abhyudaya and the Corporate Debtor. The relevant clause No. 12 in the Hypothecation Agreement is as reproduced below:

“12. The Bank shall apply the sale proceeds towards the Cash Credit account to the extent of the balance due to the Bank or so much thereof as shall remain unpaid including interest at the rate of aforesaid until payment and including all costs as between Attorney and Client, charges and expenses incurred by the Bank on any account whatsoever. If the net sum realized by such sale were insufficient to cover the balance due to the Bank, the Borrower shall be liable forthwith on production to the Borrower, a statement prepared by the Bank to pay the balance due to the Bank. The Borrower/s agree/s that the hypothecated assets and any documents and any sale proceeds received by the Borrower/s on the sale in the ordinary course of business and any insurance monies received by them, shall be held by them in trust for the Bank as specifically appropriable to this security till such monies are deposited in the said account and the Borrower/s undertake to deposit such monies in the said account only and not to use the same for any other purpose, unless permitted by the Bank in writing. The Borrower/s further undertake/s that the Borrower/s will not create or suffer or attempt to create or suffer any mortgage, charge, lien, encumbrance, attachment or seizure affecting the hypothecated assets or any part thereof nor do or allow anything which prejudice the security hereby created. The security shall be operative and remain in full force till all the dues together with interest of the Borrower are fully paid to the Bank.

(Emphasis supplied)

14. When we read the above clause, it fortifies the position that the second charge-holder was to get his claims from any surplus balance that was left after discharge of the security interest of the first charge-holder. When the Bombay High Court had passed the Consent Decree that Respondent No. 2 was to be the second charge-holder after duly safeguarding the interests of the Appellant as first charge-holder and the said order was never challenged, the Liquidator was bound by the said order. The decision of the Liquidator to treat Respondent No. 2 as secured financial creditor in compliance of Consent Decree of the Bombay High Court read with the consequential Deed of Charge thus cannot be said to have suffered from legal infirmities. Moreover, when the charge created for Respondent No. 2 was undisputedly subservient and secondary to the charge of the Appellant, the Appellant cannot claim to have suffered any injury or prejudice on this count. We therefore do not find

substance in the contention raised the Appellant that since the Deed of Charge had been executed without the consent of the first charge-holder, the Liquidator could not have classified the Respondent No. 2 as a secured financial creditor.

15. This brings us to the other limb of argument adopted by the Appellant that since the second charge had not been registered with the RoC as required in terms of Section 77 or Section 78 of the Companies Act, 2013 either by the Corporate Debtor or the Respondent No. 2, the Liquidator could not have treated the Respondent No. 2 as a secured financial creditor. It is further the case of the Appellant that mere registration of Deed of Charge with the Sub-Registrar, Pune Gramin was not sufficient as it does not measure up to the requirements contemplated under Regulation 21 of the LPR which governs the field. Recognition of any other mode of proof of charge registration was impermissible and in support of their contention, reliance was placed on the judgment of this Tribunal in ***Bizloan Pvt. Ltd. vs Amit Chandra Shekhar Poddar, Liquidator for Auto Cop (India) Pvt. Ltd. in CA(AT)(Ins) No. 210 of 2024*** wherein it has been held that Regulation 21 of the LPR provides for the operative framework which governs the security interest proof. The Liquidator ought to have been guided only by Regulation 21 of LPR while verifying the security interest or second charge over the assets of the Corporate Debtor.

16. Per contra, it is the contention of the Respondents that the Respondent No. 2 cannot lose its status as secured financial creditor merely because of non-registration of charge under Section 77 of the Companies Act, 2013. In support of their contention, reliance was placed on the judgment of this

Tribunal in ***M/s Canara Bank Asset Recovery Management Branch Vs S. Rajendran in CA(AT)(CH)(Ins) No. 277 of 2023*** wherein it has been held that non-registration of mortgage as per Section 77 of the Companies Act, 2013 is not sufficient enough ground to come to an opinion whether any party is not a secured creditor. It was also added that the Adjudicating Authority had correctly relied on the judgment of this Tribunal in ***Home Kraft Avenues v. Jayesh Sanghrajka (RP) and Ors. in CA(AT)(Ins) No. 756 of 2023*** in which it was categorically held that the legislature had never intended registration of charge to be a mandatory pre-condition for recognition of any party as a secured creditor under the IBC and that it is settled law that the right of a mortgagee under Transfer of Property Act, 1882 cannot be taken away merely because of non-registration of charge under Section 77 of the Companies Act, 2013. In the present case, it was vehemently contended that the Liquidator having exercised his judicial discretion in deciding the status of the Respondent No. 2 as secured financial creditor on the basis of documentary evidence placed before him in terms of the Deed of Charge which had been registered before the Sub-Registrar, Pune Gramin, this was sufficient notwithstanding non-registration under Section 77 of the Companies Act, 2013.

17. When we look at the impugned order, we find that the Adjudicating Authority has dwelled on this aspect at length. It has noticed the sequence of events leading to the creation of second charge on the property of the Corporate Debtor following the order of Bombay High Court in Commercial Arbitration Petition and registration of charge before Sub-Registrar, Pune

Gramin. The factual narrative contained in the impugned order which is undisputed is as reproduced below:

“7. During the CIRP, Respondent No.1 admitted the claim of Respondent No.2 as an unsecured financial creditor, and in liquidation also, initially admitted the said claim as unsecured financial creditor, however, the claim of Respondent No.2 was subsequently classified as secured debt basing the creation of second charge on properties of the Corporate Debtor pursuant to an order dated 04.10.2018 passed by the Hon’ble Bombay High Court in proceedings arising from a commercial arbitration petition filed by Respondent No.2.

8. Pursuant to said order, the Corporate Debtor executed a Deed of Charge-cum-Hypothecation dated 20.02.2019 was executed between the Corporate Debtor and Respondent No.2 creating second charge on freehold land bearing Gat No. 94/ 1 & 94/2 and its present and future plant and machinery, book debts and stock in favor the Respondent No. 2. The said deed refers to one loan agreement dated 28.3.2018, in terms of which one loan granted by associates of Respondent No. 2 was repayable within 21 months and another loan granted by Respondent No. 2 was repayable within 9 months. The said deed is registered with Sub Registrar Pune Gramin, however, neither the Respondent No. 1 nor Respondent No. 2 had sought registration of said charge in the records of MCA in terms of Section 77 of the Companies Act, 2013.”

18. We also find that the Adjudicating Authority has taken notice of the objection made by the Appellant in classifying the claim of Respondent No. 2 by Respondent No. 1 as secured on the ground that the charge on which the claim was based was not registered with RoC in terms of Section 77 of the Companies Act, 2013. However, at para 19 of the impugned order, the Adjudicating Authority has discarded the objection of the Appellant by holding that registration of charge with RoC is dispensable in case of mortgage under the Transfer of Property Act, 1882 by relying on a judicial precedent laid down by this Tribunal in **S. Rajendran and Home Kraft Avenues judgement supra.**

19. At this stage, we may advert our attention to the relevant portion of the impugned order wherein it has relied on the judgments of this Tribunal in ***Home Kraft Avenues and S. Rajendran judgement supra*** to hold that the registration of Deed of charge with the Sub Registrar of Pune Gramin was sufficient to substantiate security interest. The relevant excerpts are as reproduced below:

“19. It is noted that, in case of Home Kraft Avenues (Supra), the Hon’ble NCLAT held that “18. *This is in consonance with Section 77 of the Companies Act 2013. Section 78(3) of the Companies Act, 2013 states no charge shall be created by the Company shall be taken in account by the “Liquidator” unless it is registered under sub-section 1 and 2. Section 77 (4) of the Companies Act, 2013 clarifies nothing in sub-section (c) shall prejudice any contract or obligation for repayment of money secured by charge. The obligation is only on the Liquidator. In fact, Section 3 (4) of IBC defines charge and Section 3 (31) of IBC states secured interest means and includes “Charge”. Thus, combine reading of all the section clarifies only a Liquidator will not consider a claim without registration, however, the RP is bound to consider a “Charge” and a Creditor having charge is a Secured Creditor*”. It is also pertinent to note that Hon’ble NCLAT also took note of NCLAT’s Chennai Bench decision in case of S. Rajendran (Supra) at Para 17 reproducing para 53 thereof which reads as “53. *In addition, the ‘non-registration of the Mortgage’, as per Section 77 of the Companies Act, 2013, is not a sufficient / enough ground, to come to an ‘opinion’, that the ‘Appellant’, is not a ‘Secured Creditor’. In reality, the ‘rights’ of a ‘Mortgagee’, under the ‘Transfer of Property Act’, 1882 and the ‘SARFAESI Act’, are not to be diluted, in terms of Regulation 21 of IBBI (Liquidation process) Regulations, 2016.*” Accordingly, the Hon’ble NCLAT in Home Kraft Avenues (Supra) held that “17. *Thus, it is a settled law right of a mortgagee under the Transfer of Property Act, 1882 cannot be taken away only because of non-registration of the charge u/s 77 of the Companies Act, 2013.*” It follows from these decisions that registration of charge u/s 77 of the Companies Act, 2013 is dispensable in case of mortgagee under the *Transfer of Property Act, 1882*.

21. The facts of the case in S. Rajendran and the case of Respondent No. 2 are similar as in the present case also, the deed

of charge cum hypothecation came to be registered prior to February, 2020 and the said deed is duly registered with Sub Registrar Pune Gramin. Accordingly, we are bound by the decision in case of S. Rajendran, which has also been noticed in Home Kraft Avenues and found approval.”

20. This brings us to the argument canvassed the Appellant that the Adjudicating Authority has missed out in noting that Regulation 21 of the LPR provides for the operative framework which governs the security interest proof as has been held by this Tribunal in **Bizloan case supra** and no other mode of proof is permissible in substantiating security interest proof.

21. Before we return our findings, we may first take note of the Regulation 21 of LPR which is reads as under:

“Regulation 21: Proving security interest.

*21. 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.”

22. A plain reading of Regulation 21 of LPR shows that it outlines that security interest can be proved by a secured financial creditor by way of Information Utility records or RoC registration or CERSAI Registration. However, the use of the word ‘**may**’ in the opening line of Regulation 21 of LPR implies that while these modes of proof are authoritative, reliable and assured, the above three modes are not exhaustive. The use of the word ‘**may**’ instead of ‘**shall**’ leaves sufficient room for other alternative modes to substantiate the existence of security interest. The judgment of this Tribunal in **Bizloan supra** focusses on the overlap of the three alternative modes laid down in Regulation 21 of LPR to prove existence of security interest but does

not make any observation on exclusion of other acceptable proofs or modes which could be relied upon to prove security interest. Hence, the reliance placed on the ***Bizloan judgment supra*** by the Appellant in the present factual matrix is misplaced. In the present case, the Deed of Charge had been duly registered before the Sub-Registrar, Pune Gramin which was a public office competent to register the said instrument and the legality of this instrument of registration has remained contested. Given this backdrop, the reliance placed by the Adjudicating Authority on the applicability of the ***S. Rajendran judgment supra*** in holding the second charge to be legally valid and enforceable is found to be appropriate. In view of the above backdrop, we are not persuaded by the contention of the Appellant that the Liquidator had erred in according the status of secured financial creditor to the Respondent No. 2 as second charge-holder merely because the Deed of Charge was not registered with the RoC.

23. In result, for the foregoing reasons as discussed above, we find the appeal to be devoid of merit. The appeal is dismissed. The impugned order is affirmed. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

*Place: New Delhi
Date : 24.04.2026
Sheetal*