

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III



Company Appeal 10/2024

In

C.P. No. 3683/2018

[Under 42 of the Insolvency and Bankruptcy Code, 2016]

Akme Sarvodaya Dreamventures LLP

4/5, C Block, Sub city Centre
Savina Circle, Udaipur,
Rajasthan- 313001.

...Appellant No.1

Hiraman Developers Private Limited

409, 4th Floor, Mangalam Fun Square,
Durga Nursery Road, Udaipur,
Rajasthan- 313001.

...Appellant No.2

HDL Housing Development Company

409, 4th Floor, Mangalam Fun Square,
Durga Nursery Road, Udaipur
Rajasthan- 313001.

...Appellant No.3

Versus

Megha Agrawal

Liquidator of Brajesh Construction Pvt Ltd.

001, Shivranjini Apartments, in circle of
Congress Nagar Garden, Congress Nagar,
Nagpur, Maharashtra- 440012.

...Respondent

In the matter of

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016]

Asit C Mehta Investment Intermediates Ltd.

.... Financial Creditor

Vs.



Brajesh Construction Pvt Ltd.

2348/Bldg. No.49, Shree Sai Krupa CHS Ltd.,
Gandhi Nagar, Near Apna Bazar, Bandra
(East), Mumbai- 400051
[CIN: U45201MH1988PTC292521]

...Corporate Debtor

Order pronounced on: 20.04.2026

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)
Hon'ble Sh. Hariharan Neelakanta Iyer, Member (Technical).

Appearances:

For the Appellants: Adv. Nausher Kolhi, Adv. Krishna Baruah, Adv.
Ankita Yadav, Adv. Devdatta Uchil i/b Link
Legal,

For the Respondent: Adv. Aniruth Purusotham.

PER: MS. LAKSHMI GURUNG, MEMBER (JUDICIAL)


ORDER

1. This appeal has been filed by Akme Sarvodaya Dream ventures LLP (**'Appellant No.1'**), Hiran Developers Private Limited (**'HDPL'/ Appellant No.2'**), HDL Housing Development Company (**'Appellant No.3'**) hereinafter (**Collectively referred as 'the Appellants'**) under Section 42 of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**), seeking following reliefs: -

a) This Tribunal may be pleased to condone the delay in filing the present appeal.

b) This Tribunal may be pleased to allow the present Appeal under Section 42 of the Code.

c) This Tribunal may be pleased to set aside and reverse the decision of the Liquidator dated 24.07.2023 and 04.12.2023 in so far as she has:



Tahasil Girva, District Udaipur (Rajasthan) under Khasra No. 2507 to 2509, 2510 M, 2475, 2476, 3556/2510. The total area of the said plot No. 1A is 4,22,150 sq. ft. (approx. 42,000 sq. meters) by the name of AVL Tivona City (**'Subject Property'**).

- 2.2. The Corporate Debtor had mortgaged the subject property in favour of Dewan Housing Finance Limited (**'DHFL'**). Due to default in repayment of loan by the Corporate Debtor, in 2018, DHFL initiated proceedings under the SARFAESI Act to take possession and to sell the subject property.
- 2.3. On 01.05.2018, the Corporate Debtor, sent a letter to DHFL seeking one-time settlement (**'OTS'**) and stating that HDPL had agreed to purchase the subject property and pay Rs. 22 crores as OTS. Some of relevant excerpts from the said letter are reproduced below:

“As you are aware that real estate sector is passing through a very bad phase and we are not in the position to raise fund for completing the Project “Trivona City on our own and hence we have negotiated with a very reputed Developer M/s Hiranman Developer Private Limited, 2, Dhanawat Tower, Shastri Circle, Udaipur, Rajasthan-313001 for outright purchase of the project. They have agreed to buy the project on “As is where is basis” at Rs.22.00 Crores (Rupees Twenty-Two Crores Only) and have agreed to pay the bank directly OTS amount of Rs. 22.00 Crores. To show their intention a demand draft no. 620891 of Rs. 2.00 Crores dated 01.05.2018 of Kotak Mahindra Bank, Trimurti Heights, 8-3 Bank Street, Udaipur 313004, drawn on DHFL will be handed over to your office. Further, they also enclose post-dated cheques of Kotak Mahindra Bank drawn in DHFL name as follows:

Cheques No.	Date	Amount (Rs.)
000113	14/05/2018	1,00,00,000/-
000114	15/05/2018	1,00,00,000/-
000115	16/05/2018	1,00,00,000/-

The buyer has agreed to deposit balance OTS amount of Rs. 17 crores (Rupees ‘Seventeen Crores only) on or before 14th



August 2018. However, as you are aware that the Legal heirs of earlier seller has created frivolous litigation on portion of our project land, M/s Hiran Developers Pvt. Ltd. Buyer of the project would like to settle all the disputes, legal or otherwise related to title which may take 3 months as we have to follow the due process of law for eviction of illegal encroachment on our project land. We have already filed an FIR with the police station and also taken steps for eviction. The buyer M/s Hiran Developers are engaged in property developments for many years have completed 2000 flats in Udaipur. Therefore, they seek time of at least 3 months to pay the balance OTS - amount of Rs.17 Cr with the bank.”

- 2.4. DHFL acknowledged the said OTS letter of the Corporate Debtor with remarks *“In principally agreeable for OTS proposal of Rs. 22 crore subject to received (sic) payment of Rs. 5 crores before 16.05.2018. OTS letter with all other terms and conditions will be issued post 16.05.2018.”* Copy of the letter dated 01.05.2018 from Corporate Debtor to DHFL acknowledging OTS (and having endorsement of “in principal agreeable” by DHFL) is annexed as **Exhibit B**.
- 2.5. On 02.05.2018, HDPL handed over the Demand Draft for Rs. 2 crore to DHFL on behalf of the Corporate Debtor as part payment towards OTS, with covering letter dated 01.05.2018 and also undertook to pay the remaining OTS amount on or before 16.08.2018.
- 2.6. Contemporaneously, the Corporate Debtor and HDPL also entered into an Agreement dated 03.05.2018, which stated that the Corporate Debtor would sell the Subject Property to HDPL upon satisfaction of the OTS amount to DHFL. Copy of Agreement dated 03.05.2018 along with translated Copy is annexed as **Exhibit D-1 and D-2** respectively.
- 2.7. HDPL sent a letter dated 16.05.2018 to DHFL seeking discount of Rs. 2 crores on account of disputes pending with respect to title of the Subject Property. DHFL, vide its letter dated 22.05.2018, agreed to the OTS of Rs. 21.95 crores and stated that it required receipt of Rs. 16.95 crores on or before 16.08.2018.



2.8. Subsequently, HDPL sent letter dated 04.12.2018 to DHFL informing that OTS commitment was not fulfilled due to stay order granted in favour of one Madhulika Singh pertaining to structures located at AVL Tivona City. It was further stated that now the Hon'ble High Court has vacated the stay and it had arranged for further financing of Rs. 4.5 crores from its group concerns viz. Appellant No. 1 and Appellant No. 3 and requested that the validity period of OTS be extended until 15.03.2019 along with further discount of Rs. 2.95 crores. Copy of letter dated 04.12.2018 is annexed as **Exhibit H** to the Company Appeal.

2.9. Thereafter, DHFL sent a letter dated 09.01.2019 addressed to the Corporate Debtor and the three appellants herein agreeing to reduce OTS amount to Rs. 19 crores and recorded that:

- i. It had received additional payment of Rs. 4.5 crores. Therefore, the total payment received was Rs. 9.5 crores.
- ii. It required the balance payment of Rs. 9.5 crores for which the Corporate Debtor as well the Purchasers i.e. all three appellants shall be liable to pay on or before 28.02.2019.
- iii. It had no objection to Appellants purchasing the Project is conditional subject to payment of balance OTS amount.

Copy of letter dated 09.01.2019 is annexed as **Exhibit I** to the Company Appeal.

2.10. An agreement for Sale was executed on 24.01.2019 between the Corporate Debtor as Seller on one side and the three appellants as Purchasers on the other side for sale of the subject property for a total consideration of Rs. 19 crores, out of which Rs. 9.5 crore stood paid to DHFL and the balance amount was to be paid by 28.02.2019. The



Copy of Sale Agreement dated 24.01.2019, along with the translated copy is annexed as **Exhibit K-1 and K-2** respectively.

2.11. Thereafter DHFL issued letter dated 18.02.2019 addressed to the Corporate Debtor and the three appellants stating that the loan account of the corporate debtor was fully settled. Final settlement letter dated 18.02.2019 issued by DHFL is annexed as **Exhibit L**.

3. **Additional Affidavit dated 26.03.2026**

3.1. As the details of balance payment of Rs. 9.5 crores, as per the Sale Agreement dated 24.01.2019 could not be found, hence this Tribunal vide order dated 23.02.2026, sought clarification for the same.

3.2. Pursuant thereto, the Applicant has filed Additional Affidavit dated 26.03.2026, relevant extract of which is reproduced as under:

Quote

3. *It is clarified that the Agreement to Sell dated 24th January 2019 was executed between the Corporate Debtor and the Appellants, recording that the Corporate Debtor would transfer the Subject Property (as defined in the Company Appeal) upon payment of the balance OTS consideration to Dewan Housing Finance Limited ("DHFL"), being the entity in whose favour the Subject Property had been mortgaged by the Corporate Debtor. Under the said arrangement, the OTS consideration was Rs. 19 crores, out of which Rs. 9.5 crores had already been paid, and the balance amount of Rs. 9.5 crores were required to be paid by the Appellants to DHFL.*

4. *Thereafter, it was agreed between the parties, including DHFL that the total OTS consideration would stand reduced from Rs. 19 crores to Rs.17.5 crores. Consequently, the balance amount payable by the Appellants to DHFL stood reduced to Rs. 8 crores.*



In furtherance thereof, the Appellants made the following payments to DHFL as also reflected in Exhibit J at page 54 of the Company Appeal:

Company	Date	Amount	RTGS Ref No.
<i>Akme Sarvoday Dreamventures LLP</i>	<i>16.02.2019</i>	<i>3,50,00,000</i>	<i>MRGBH 19047715895</i>
<i>Akme Sarvoday Dreamventures LLP</i>	<i>18.02.2019</i>	<i>4,00,00,000</i>	<i>SBINH 19049056844</i>
<i>Hiraman Developers Pvt Ltd</i>	<i>26.02.2019</i>	<i>50,00,000</i>	<i>KBKR 19022600848239</i>

5. In furtherance of the aforesaid settlement, DHFL issued a Full and Final Settlement Letter in favour of the Corporate Debtor and the Appellants in respect of the dues of the Corporate Debtor and the charge created over the Subject Property which is at Exhibit L, Page 66 of the Company Appeal.

6. Pursuant thereto, the Corporate Debtor and the Appellants addressed a letter dated 1st March 2019 requesting release of all title documents pertaining to the Subject Property in favour of the Appellants, which documents were subsequently released to the Appellants on 14th March 2019. A copy of the 1st March 2019 letter is at Exhibit M, Page 67 of the Company Appeal.

Unquote

4. CIRP/Liquidation process

4.1. In the meantime, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (**'CIRP'**) vide order dated 31.01.2019. As no resolution plans were received, this Tribunal ordered for liquidation of the Corporate Debtor vide order dated 10.05.2023 and appointed the Respondent as the Liquidator of the Corporate Debtor.

4.2. Pursuant thereto the Liquidator made a public announcement under Form B on 27.05.2023 calling upon the Stakeholders of the Corporate



Debtor to submit their claims, Accordingly, the Appellants filed their claim before the Respondent as secured creditors.

4.3. The appellants filed their claims as per following details:

Name of Financial Creditor	Akme Sarvoday Dreamventures LLP AAM-7017															
<p>Total amount of claim including any interest as at the Liquidation commencement date and details of nature of claim</p> <p>(Whether term loan, secured, unsecured)</p>	<p>Principal: Rs, 11,00,00,000/-</p> <p>Interest: Rs,19,21,83,054/-</p> <p>Total Claim: 30,21,83,54/- (Amount secured by statutory charge on the property (more particularly described herein below)</p> <p>Xxxxx</p> <p>In order to settle the issue and to get a clear title of the property, we agreed to see to the litigation and work towards finding a way to settle the same. However, the High court had stayed a stay with respect to the property, which was vacated in December 2018.</p> <p>Accordingly, after various discussions we finally settled Shakti and Madhulika Singh. The same was informed to DHFL and accordingly the OTS amount was reduced to Rs.19 crores and thereafter to Rs.17.5 crores. An agreement dated 24.01.2019 was executed between the Corporate Debtor and the sale of property was settled at the revised settlement amount.</p> <p>Details of payments:</p> <table border="1" data-bbox="821 1720 1439 1951"> <thead> <tr> <th>Date</th> <th>Particular</th> <th>Amount (Rs)</th> </tr> </thead> <tbody> <tr> <td>29.11.2018</td> <td>DHFL</td> <td>20000000</td> </tr> <tr> <td>01.12.2018</td> <td>DHFL</td> <td>10000000</td> </tr> <tr> <td>16.02.2019</td> <td>DHFL</td> <td>35000000</td> </tr> <tr> <td>18.02.2019</td> <td>DHFL</td> <td>40000000</td> </tr> </tbody> </table>	Date	Particular	Amount (Rs)	29.11.2018	DHFL	20000000	01.12.2018	DHFL	10000000	16.02.2019	DHFL	35000000	18.02.2019	DHFL	40000000
Date	Particular	Amount (Rs)														
29.11.2018	DHFL	20000000														
01.12.2018	DHFL	10000000														
16.02.2019	DHFL	35000000														
18.02.2019	DHFL	40000000														



	In addition to aforesaid payments, in order to clear the liability of the company, payment is made to one of the flat buyers of the Company of Rs. 50,00,000/-.
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Name of Financial Creditor	Hiraman Developers Pvt Ltd CIN: U45201RJ2008PTC025670												
Total amount of claim including any interest as at the Liquidation commencement date and details of nature of claim (Whether term loan, secured, unsecured)	Principal: Rs.6,00,00,000/- Interest: Rs.13,08,21,196/- Total Claim: Rs.19,08,21,196/- (Amount secured by statutory charge on the property (more particularly described herein below) Details of payments: <table border="1"> <thead> <tr> <th>Date</th> <th>Particular</th> <th>Amount (Rs)</th> </tr> </thead> <tbody> <tr> <td>01.05.2018</td> <td>DHFL</td> <td>20000000</td> </tr> <tr> <td>15.05.2018</td> <td>DHFL</td> <td>30000000</td> </tr> <tr> <td>26.02.2019</td> <td>DHFL</td> <td>5000000</td> </tr> </tbody> </table> In addition to aforesaid payments, in order to clear the liability of the company, payment is made to one of the flat buyers of the Company of Rs. 50,00,000/-.	Date	Particular	Amount (Rs)	01.05.2018	DHFL	20000000	15.05.2018	DHFL	30000000	26.02.2019	DHFL	5000000
Date	Particular	Amount (Rs)											
01.05.2018	DHFL	20000000											
15.05.2018	DHFL	30000000											
26.02.2019	DHFL	5000000											

Name of Financial Creditor	HDL Housing Development Company. PAN NO: AAJFH6415R
Total amount of claim including any interest as at the Liquidation commencement date and details of nature of claim (Whether term loan, secured, unsecured)	Principal: Rs.1,50,00,000/- Interest: Rs.2,83,90,913/- Total Claim: Rs.4,33,90,913/-



	(Amount secured by statutory charge on the property (more particularly described herein below))
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- 4.4. The Liquidator conveyed to the Appellants vide email dated 24.07.2023 that the Appellants’ claims towards principal amount as unsecured creditors was admitted but the interest amount was provisionally rejected.
- 4.5. Aggrieved by the communication of the Liquidator, the Appellants requested the Liquidator for a hearing to explain their claims. The hearing was conducted by the Liquidator on 07.11.2023. However, the Liquidator did not admit the appellants as secured creditors nor admitted the interest claims and addressed an e-mail dated 04.12.2023 to the Appellants advising the Appellants to approach the appropriate authority.
- 5. Being aggrieved by the Liquidator’s order dated 04.12.2023 of not admitting appellants claims as secured creditors and also not admitting interest claims, the Appellants have jointly preferred the present Appeal seeking prayers as quoted in para 1 above.

6. **Grounds of Appeal:**

The Appellants had made payments on behalf of the Corporate Debtor to DHFL against sale consideration to sell the Subject Property to the Appellants. Despite completing its obligations under the Sale Agreement and making the entire sale consideration by clearing the OTS amount to DHFL, the Corporate Debtor has not transferred title in the Subject Property to the Appellants. Therefore, the Appellants are entitled to protection of Section 55(6)(b) of the Transfer of Property Act, 1882 by way of a charge on the Subject Property. The Appellants are also entitled to interest on the amount claimed.



7. **Reply by the Liquidator:**

- 7.1. The Respondent sent a letter dated 24.07.2023 to the Applicants informing them, that their claim had been verified as per Regulation 30 of IBBI (Liquidation Process) Regulations, 2016, and on basis of proof submitted the Appellants' claim was admitted as follows:

Party	Amount of claim admitted (Rs.)
Appellant No.1	11,00,00,000
Appellant No.2	6,00,00,000
Appellant No.3	1,50,00,000
Total	18,50,00,000

- 7.2. After examining the claims, the Liquidator had provisionally rejected the interest claim amount as no financial contract was made available duly supporting the claim for interest payment and no contractual loan agreement was available that adequately established the debt on account of the interest portion. Therefore, the Liquidator informed the Appellants vide email dated 24.07.2023 that the interest portion was provisionally rejected, however, further opportunity was given to the Appellants to submit supporting documents in event of non-submission of enough proof, the claim would not be admissible.
- 7.3. It was submitted that despite sending emails, Appellants have not submitted necessary documents to enable evaluation and processing of their claims therefore, it was not possible to admit the whole claims of the Appellants.
- 7.4. It is submitted that the Liquidator does not have jurisdiction to go into the prayer's sought by the Appellants. There is no direct privity of contract/documentation to verify and admit the claim pertaining to the interest.



DISCUSSION AND FINDINGS

8. Heard Ld. Counsel for the parties and perused the record.
9. We note that vide email dated 04.12.2023, the Liquidator after giving hearing to the appellants, finally refused to admit them as secured creditors and also rejected their claim for interest. The limitation for filing the Appeal expired on 18.12.2023. But the present appeal was filed on 19.04.2024. The Appellants have prayed for condonation of delay. The Hon'ble NCLAT in the case of ***Canara Bank v. Commercial Tax Department, Madhya Pradesh and Anr.; (2023) ibclaw.in 342 NCLAT*** has held that, delay in filing the Appeal under Section 42 of the Code is condonable while exercising the power under Section 5 of the Limitation Act. Having gone through the appeal and in the interest of delay is condoned.
10. By way of the present Appeal, the Appellants are assailing the decision of the Liquidator, wherein the Liquidator has, though admitted their principal claims but did not consider them as secured creditors and also rejected their claim for interest.
11. The three Appellants before us had filed three separate claims as per details mentioned in para 4.3 above. After verification of claims, the Liquidator, vide letter dated 24.07.2023, admitted the claims of the Appellants for the principal amounts, as Unsecured Creditors and provisionally rejected the interest claims. The details of claim admitted and rejected are as follows:

(in Rs.)

Party	Amount of claim admitted	Amount of claim rejected
Appellant No.1	11,00,00,000	19,21,83,054
Appellant No.2	6,00,00,000	13,08,21,916
Appellant No.3	1,50,00,000	2,83,90,913
Total	18,50,00,000	35,13,95,883



12. At the request of the Appellants, the Liquidator also granted them personal hearing and finally rejected the interest claims and also continued the appellants as Unsecured creditors vide email dated 04.12.2023, which has led to filing of the present appeal under section 42 of the Code.
13. It is the case of the Appellants that the Corporate Debtor and the Appellants have executed a Sale Agreement dated 24.01.2019 for sale of immovable property of the corporate debtor consisting of 42,000 sq. meters of land near Udaipur, Rajasthan by the name of AVL Tivona City (**'Subject Property'**) for a total consideration of Rs. 17.5 crores. The entire sale consideration was to be paid to DHFL who had security over the said property. Substantial amount of Rs.9.5 crores stood paid by 24.01.2019 when the Agreement to Sell was executed.
14. However, before the sale deed could be executed and registered in favour of the appellants, the Corporate Debtor was admitted into insolvency proceedings on 31.01.2019.
15. It is submitted that though the entire sale consideration under the Sale Agreement has been paid to DHFL, no proceedings could be initiated against the Corporate Debtor for specific performance of the sale agreement as the Corporate Debtor is under insolvency process. However, by virtue of Section 55(6)(b) of the Transfer of Property Act (**'TOPA'**), the appellants are provided protection as a charge holder for the subject property and they should be treated as secured creditors.
16. As noticed from the additional affidavit, the Appellants made balance payment to DHFL, as per the OTS, aggregating to Rs. 8.00 crores during the period from 16.02.2019 to 26.02.2019. The appellants had already paid Rs. 9.5 crores towards purchase of the said property. Thus, a total sum of Rs. 17.5 crores was paid by the Appellants towards purchase of the subject property. It is further submitted that



on payment of the entire OTS amount by the appellants, on behalf of the Corporate Debtor, DHFL has released the property documents.

17. The Appellants have placed reliance on the following judgments:

i. Delhi Development Authority versus Skipper Constructions Co. and Others (2000) 10 SCC 130.

ii. Videocon Properties Ltd versus Dr. Bhalchandra Laboratories and Others (2004) 3 SCC 711.

iii. Kolkata Municipal Corporation versus Gajesh Labhchand Jain, Liquidator of Talwalkars Better Value Fitness Ltd. (2025 SCC Online NCLAT 1565).

18. The Liquidator has submitted that as per Regulation 30 of IBBI (Liquidation Process) Regulations 2016, and on the basis of proof submitted, records available with the Liquidator and other relevant documents including but not limited to books of accounts of the corporate debtor, debt could be established for the principal amount only.

19. As regard to the category of the Appellants as Secured Creditors the liquidator has not admitted the Appellants as Secured Creditors and advised them to approach this Tribunal for appropriate orders. The Liquidator has also rejected the claims for interest in the absence of any provision in the contract documents.

20. After hearing the submissions advanced by the parties, following questions emerge for determination: -

i. Whether the Appellants can be treated as secured Creditors, in view of section 55(6)(b) of the Transfer of Property Act? If yes, to what extent?

ii. Whether the appellants are entitled for interest?



21. While section 55 of the Transfer of Properties Act deals with the rights and liabilities of the buyers and sellers subsection 6 deals with the entitlement of the buyer to a charge on the properties, IBC deals with 'security interest'. Therefore, we would proceed to examine the interplay between these provisions.

22. Provisions under the Transfer of Property Act, 1882:

a) **Section 55. Rights and liabilities of buyer and seller**

In the absence of contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following or such of them as are applicable to the property sold: -

(1) *The seller is bound-*

(a) to disclose to the buyer any material defect in the property or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;



(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

- (2) *The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:*

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

- (3) *Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:*

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers the buyers, of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.

- (4) *The seller is entitled—*

a) to the rents and profits of the property till the ownership thereof passes to the buyer;



b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, 1 [any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part 1 from the date on which possession has been delivered.

(5) *The buyer is bound—*

a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person, as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) **The buyer is entitled-**

a) where the ownership of the property has passed to him, to the benefit of any improvement in or increase in value of the property and to the rents and profits thereof;

b) unless he has improperly declined to accept delivery of the property, **to a charge on the property, as against the seller and all persons claiming under him to**



the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

b) **Section 100** of the Transfer of Property Act 1882

Charges. —Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

23. The provisions of section 55(6)(b) as quoted above makes it abundantly clear that buyer of a property is entitled to charge on the property, for the purchase money paid by it in anticipation of delivery of the property. Further all provisions which apply to a simple mortgage shall also apply to a charge.


24. Now, coming to the provisions relating to security interest under the IBC/Code.

i. **Section 3(30):**

“Secured creditor” means a creditor in favour of whom security interest is created”.

ii. **Section 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”.

iii. **Under Section 52**, existence of Security interest can be proved either

a) by the records of such security interest maintained by an information utility; or

b) By such other means as may be specified by the Board.

iv. The Board has prescribed Regulation 21 for proving security interest.

Regulation 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.

25. As per definition of ‘security interest’ under Section 3(31) of IBC, a charge or mortgage is covered as security interest. This charge can be proved on the basis of the records prescribed under Regulation 21. Though the charge created on the property by virtue of Section 55 (6) of Transfer of Property Act 1882, the same is not covered under Regulation 21 of the Liquidation Regulations. The Liquidator has therefore, not taken cognizance of the charge of the appellants over the subject property of the Corporate Debtor as the Liquidator could not find the creation of security interest over the subject property (i) there is no record with Information Utility, (ii) there is no registration of



charge with RoC, and (iii) there is no registration of charge with CERSAI to expressly create security interest.

26. The Hon'ble Supreme Court had occasion to deal with section 55 of Transfer of Property Act, 1882 in the case of ***Delhi Development Authority vs. Skipper Constructions Co.(P) Ltd and others, (2000) 10 Supreme Court Cases 130*** and observed that in absence of a contract to the contrary, the buyer is entitled to have a charge over the seller's interest in the property for the purchase money paid to the seller, unless buyer has improperly declined to accept delivery. The Hon'ble Supreme Court has held that buyer's charge under section 56(6)(b) of TPA is a statutory charge and is enforceable not only against the seller but against all persons claiming under him. The Hon'ble Supreme Court further held that the same principle, which is applicable to mortgages, also applies to cases of statutory charge under Section 55(6)(b) of the Transfer of Property Act 1882. The relevant extract is reproduced below:

“29. These points depend upon the effect of the provisions in subsection (6) of Section 55 of the Transfer of Property Act. That section starts with the words: “In the absence of a contract to the contrary”, and reads thus (in so far as it is material for our purpose).

“55 (6) (b) The buyer is entitled –

*(a) **

(b) unless he has improperly declined to accept delivery of the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase -money property paid by the buyer in anticipation of delivery and for interest on such amount; and , when he properly declines to accept the delivery, also for the



earnest (if any) and for the cost (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its recession.”

*It is plain from the above provision that, in absence of a contract to the contrary, the buyer will have a charge on the seller's interest in the property which is subject-matter of the sale agreement in so far as the purchase money and interest on such amount are concerned, unless the buyer has improperly declined to accept delivery. The charge is available against the seller and all persons claiming under him. This charge in favour of the buyer is the converse of the seller's charge under Section 55(4) (b). **The buyer's charge under this section is a statutory charge and differs from a contractual charge** which a buyer may be entitled to claim under a separate contract. No charge is available unless the agreement is genuine.*

30. *When the property upon which the charge is created gets converted into another form, the buyer will be entitled to proceed against the substituted security. This is a general principle of law and section 73 of the Transfer of Property Act is only an example of the said principle. The above principle has been applied to enforce mortgage on substituted securities (see *Barhamdeo Prasad v. Tara Chand and Surapali Munipaa vs Nookala Seshayaa Gari Subbaiah*). **The same principle which is applicable to mortgages applies to cases of statutory charge under Section 55(6)(b)**. If immovable property is charged and is converted into another property or money, then the charge will fasten on the property or money into which the subject of the agreement is converted.*

(Emphasis provided)



27. Following the above principle, in the case of ***Videocon Properties Ltd vs Dr. Bhalchandra Laboratories and others, (2004) 3 Supreme Court Cases 711***, the Hon'ble Supreme Court again observed that the buyer's charge as engrafted in Section 55(6)(b) of Transfer of Property Act is a statutory charge in favour of a buyer and is different from contractual charge. The relevant extract is given below:

13. **The buyer's charge engrafted in clause (b) of the subsection (6) of Section 55 of the Transfer of Property Act would extend and ensure to the purchase money or earnest money paid before the title passes and property has been delivered by the seller to the purchaser**, on the seller's interest in the property unless the purchaser has improperly declined to accept delivery of the property or when he properly declines to accept delivery of property or when he properly declines to accept delivery-including for the interest on purchase money and cost awarded to the purchaser of a suit to compel specific performance of the contract or to obtain a decree for its recession. The principle underlying the above provision is a trite principle of justice, equity and good conscience. The charge would last until the conveyance is executed by the seller and possession is also given to the purchaser and ceases only thereafter. The charge will not be lost by merely accepting delivery of possession alone. This charge is a statutory charge in favour of a buyer and is different from contractual charge to which the buyer may become entitled to under the terms of the contract, and in substance a converse to the charge created in favour of the seller under Section 55(4)(b). **Consequently, the buyer is entitled to enforce the said charge against the property and for that purpose trace the property even in the hands of third parties** and even when the property is converted into



another form by proceeding against the substituted security, since none claiming under the seller including a third-party purchaser can take advantage of any plea based even on want of notice of the charge. **The said statutory charge gets attracted and attaches to the property for the benefit of the buyer the moment he pays any part of the purchase money and is only lost in case of the purchaser's own default or his improper refusal to accept delivery.** So far as payment of interest is concerned, the section specifically envisages payment of interest upon the purchase money/price prepaid, though not so specifically on the earnest money deposit, apparently for the reason that an amount paid as earnest money simpliciter, as mere security for due performance does not become repayable till the contract or agreement gets terminated and it is shown that the purchaser has not failed to carry out his part of the contract, and the termination was brought about not due to his fault, the claim of the purchaser for refund of earnest money deposit will not arise for being asserted.

(Emphasis provided)

28. From, the reading of section 55(6) of Transfer of Property Act, 1882 as interpreted by the Hon'ble Supreme Court in the case of **Delhi Development Authority (supra)**, there is no iota of doubt that the buyer is entitled to have a statutory charge over the seller's interest in the property and the same principle which is applicable to mortgages shall apply to statutory charge under 55(6)(b).
29. In **Videocon Properties (supra)**, the Hon'ble Supreme Court held that the statutory charge under Section 55(6)(b) gets attracted and attaches to the property for the benefit of the buyer for any part of the purchase money paid by him.



30. Thus, it is settled proposition of law that by virtue of provisions of section 55(6)(b) of Transfer of Property Act, 1882 buyer who has paid purchase money to the seller shall have statutory charge over the property of the seller to the extent of the purchase money paid by it.
31. In **Greater Noida Industrial Development Authority v. Prabhjit Singh Soni in Civil Appeal No. 7590-7591 of 2023**, the Hon'ble Supreme court has recognized statutory charge of Greater Noida and has held Greater Noida to be a secured Creditor by virtue of Section 13A of U.P. Industrial Development Act 1976.
32. In **Kolkata Municipal Corporation vs Gajesh Labhchand Jain, Liquidator of Talwalkars Better Value Fitness Ltd, 2025 SCC Online NCLAT 1565**, the question before the Hon'ble Appellate Tribunal was whether the Kolkata Municipal Corporation is a secured creditor by virtue of Section 232 of the Kolkata Municipal Corporation Act, 1980. After discussing various judgments of Hon'ble Supreme Court including **Sales Tax officer vs Rainbow Papers, 2023 9 SCC 545, K.C. Ninan vs. Kerala State Electricity Board & Ors. (2023) 14 SCC 84 and Greater Noida Industrial Development Authority v. Prabhjit Singh Soni Company Appeal (AT) (Insolvency) No. 1042 of 2022**, in para 21, the Hon'ble Appellate Tribunal has held that by virtue of Section 2(32) of the Kolkata Municipal Corporate Act, Kolkata Municipal Corporation has a statutory charge over the properties of the Corporate Debtor and is therefore a secured creditor of the corporate debtor. The relevant extract of para 21 is reproduced below:

“21. We feel ourselves bound by the judgment of the Hon'ble Supreme Court in ‘Pashchimanchal Vidyut Vitran Nigam’ (supra), and ‘State Tax Officer’ (supra) as well as the judgment of the Hon'ble Supreme Court in ‘Greater Noida Industrial Development Authority’ (supra). In view of the law laid down by the Hon'ble Supreme Court in above cases, appellant has a statutory charge by virtue of Section 2(32) of the Kolkata



Municipal Corporation Act, and the appellant is a secured creditor. Adjudicating authority committed error in rejecting the claim of the appellant as secured creditors.”

33. Plain reading of section 3(31) of the Code, security interest includes charge and same principle shall apply as mortgage. In the wake of discussion and clear law laid down by the Hon’ble Supreme Court as captured in the case of **Kolkata Municipal Corporation (supra)** the Appellants shall be treated as secured creditors.
34. The next consideration is to what extent Appellants be treated as Secured Creditors. It is noticed that the claim of the appellants is Rs. 18.5 crores in aggregate. However, they have paid only Rs. 17.50 crores towards purchase of the subject property supported by the “Agreement of Sale” and “Full and Final Settlement” Certificate issued by DHFL to the Corporate Debtor and the Appellants. Hence, the appellants shall be treated as secured creditors to the extent of Rs. 17.5 crores only. First Question is answered accordingly.
35. The next question pertains to the claims of the appellants for interest on the principal amount on the ground that since liability of the Corporate Debtor towards DHFL was paid by the appellants, they are now entitled to enter into the shoes of DHFL and have charged interest at the rate on which DHFL was charging i.e. 24%.
36. During the course of the hearing the appellants were asked to demonstrate the contract to show their entitlement for interest. However, it was candidly accepted that the contract document did not provide for interest. Hence, we hold that the appellants are not entitled for interest. Accordingly, question (ii) is answered in negative.

CONCLUSION

37. A conjoint reading of section 55(6)(b) of Transfer of Property Act, 1882 and section 3(31) of the Code, a ‘statutory charge’ is created in favour



of the buyer of the property of corporate debtor and such buyer is entitled to be treated as secured creditor of the corporate debtor for the amount paid by it towards purchase of the property.

38. Consequently, the Liquidator shall amend and publish an updated list of stakeholders to reflect the Appellants' claim as a secured creditor to the extent allowed here and take all such consequential steps including updating/reconstituting the Stakeholders' Consultation Committee.
39. Accordingly, Company Appeal 10 of 2024 is **partly allowed** and stands **disposed of**.

SD/-

Hariharan Neelakanta Iyer
Member (Technical)

SD/-

Lakshmi Gurung
Member (Judicial)