

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

**IA 2913 of 2025
IN
CP (IB)/ 3143 (MB) 2019**

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.

Punjab National Bank

... Applicant

Vs.

Pankaj Mahajan
(Resolution Professional of Arshiya
Limited)

... Respondent

In the matter of

Company Petition No. 3143 of 2019,
Under Section 7 of the Insolvency and
Bankruptcy Code, 2016.

Punjab National Bank

.... Financial Creditor

Vs.

Arshiya Limited

...Corporate Debtor

Order delivered on: 12.01.2026

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Adv. Ankur Kumar a/w Adv.
Saniya Anjum and Adv. Komal
For the Respondent : Adv. Ayush Rajani

ORDER

1. The present interlocutory application IA 2913 of 2025 is filed on 11.6.2025 under Section 60(5) of Insolvency & Bankruptcy Code, 2016 (“Code”) by Punjab National Bank (“the Applicant/ PNB”) against Pankaj Mahajan, Resolution Professional (“Respondent/RP”) in Corporate Insolvency Resolution Process (“CIRP”) of Arshiya Limited (“Corporate Debtor”) seeking a direction from this Tribunal to declare and recognize the status of the Applicant as a secured creditor in the CIRP of the Corporate Debtor carried in terms of Order passed in Company Petition No. 3143 of 2019, filed under Section 7 of the Code. The Applicant has prayed the following:
 - a. *Allow the present Application;*
 - b. *Direct the Respondent to treat and recognize the Applicant as a secured creditor in the CIRP of Corporate Debtor in respect of the amount secured by way of pledge agreement dated 09.09.2010;*
 - c. *Declare that the reclassification of the Applicant's claim by Respondent as an unsecured financial creditor is erroneous and contrary to the provisions of the code, and hence need to be set aside;*
 - d. *Pass such further or other order(s) as may be deemed fit and proper in the interest of justice.*
2. The Applicant is a Financial Creditor in respect of the credit facilities sanctioned and disbursed to Arshiya Northern FTWZ Limited (“ANFL” / “Principal Borrower”), which is the subsidiary company of Corporate Debtor.

3. Mr. Nitin Vishwanath Panchal was appointed as the Interim Resolution Professional of the Corporate Debtor by this Tribunal vide Order dated 23.04.2024 passed in CP (IB)/ 3143 (MB) 2019. Thereafter Mr. Pankaj Mahajan i.e., the Respondent herein, was appointed as the Resolution Professional of the Corporate Debtor vide order dated 25.09.2024 passed in IA No. 4395 of 2024.
4. The Applicant sanctioned a Loan of Rs. 100 crores on 27th October, 2009.
5. Thereafter, ANFL was sanctioned the loan facilities for an aggregate principal amount not exceeding Rs.280,37,00,000/- (Rupees Two Hundred and Eighty Crores and Thirty Seven Lakhs Only) by the consortium of banks, viz. PNB, State Bank of India ("SBI"), AXIS Bank Limited ("AXIS"), State Bank of Patiala ("SBoP"), State Bank of Travancore ("SBT"), and State Bank of Mysore ("SBM") and a 'Common Loan Agreement' and 'Trust and Retention Account Agreement' among Borrower, Consortium Lenders, PNB as Lenders' Agent and PNB Investment Services Limited as well as 'Lender's Agent Agreement' and 'Inter-Creditors Agreement' among Consortium Lenders, PNB as Lenders' Agent and PNB Investment Services Limited both dated 7th May, 2010 were entered into. These facilities were secured by Corporate Guarantee by M/s. Arshiya International Limited (subsequently merged into Corporate Debtor) and M/s Arshiya FWTZ Limited vide deed dated 7th May, 2010 as well as Pledge Agreement and Deed of Hypothecation both dated 9th September, 2010. The share of each consortium lender in the aggregate credit facilities was as follows :

NAME OF THE LENDER	COMMITMENT IN THE FACILITY AMOUNT
Punjab National Bank	90.00
State Bank of India	45.00
Axis Bank Limited	38.00
State Bank of Patiala	38.00
State Bank of Travancore	42.00
State Bank of Mysore	27.37
Total	280.37

6. The Consortium appointed PNB Investment Services Limited to act as the Security Trustee for the consortium Lenders, on the terms and conditions set forth in the Security Trustee Agreement dated 7th May, 2010 entered into among the Lenders, the Security Trustee and the Borrower. Arshiya FTWZ Limited executed a Pledge of Shares Agreement dated 09.09.2010 in favour of the PNB Investment Services Limited acting as Security Trustee for the consortium to secure loan facilities collaterally, extended by consortium, including the Applicant. The pledged shares represented 51% of ANFL's paid-up and voting equity share capital.
7. PNB also sanctioned a working capital facility for Rs. 25.00 crores pursuant to a loan agreement dated 19th December, 2012 entered between PNB and Borrower and it was secured in terms of Deed of Hypothecation dated 19th December, 2012.
8. A Master Restructuring Agreement (MRA) dated 28.09.2013 was executed by the Applicant - as the Monitoring Institution for Consortium, with ANFL pursuant to Letter of Approval bearing letter no. BY. CDR (ATR) No./462/2013-14 dated September 6, 2013 ("CDR LOA") issued by Corporate Debt Restructuring Cell to the Lenders and Borrowers sacrificing the part of their existing debt and funding interest, thereby total outstanding after restructuring stood at Rs. 252.32 crores.

Punjab National Bank was appointed as Monitoring Institution to monitor the progress of implementation of Approved CDR Package. Amongst others, the restructured debt continued to be secured by (i) pledge of 40.52,778 equity shafts held by the Promoters (constituting 51% of the paid Up capital of the Borrower already pledged with CDR Rupee Lenders and the same shall continue); and (ii) Irrevocable corporate guarantee of Arshiya Limited. Further, it is provided in the Section 3.1(A) and (B) of MRA that *“the personal guarantees and pledge of shares as referred under Section 3.1(A) and (B) required to be furnished by the Promoters in favour of the CDR Rupee Lenders/ Security Trustee for securing their Restructured Loans shall in all respects rank pari-passu inter-se amongst the CDR Rupee Lenders and the Working Capital Lender”*. It is also provided in Section 3.1(A) and (B) that *“The CDR Lenders shall provide NOC for transfer of pledged shares from Arshiya FTWZ Ltd. ("AFL") to AL as a result of merger of AFL with AL pursuant to Hon'ble Bombay High Court order dated December 7, 2012 under the scheme of amalgamation in accordance with the provisions of the Companies Act, 1956....”*

9. Accordingly, Arshiya FTWZ Ltd. (since merged into the Corporate Debtor) executed a fresh Corporate Guarantee dated 28.09.2013 expressly securing the restructured obligations, with the MRA itself confirming the continuity and subsistence of the earlier pledge and guarantee. The relevant clauses are as under:

“3.1 Security

(A) Restructured Rupee Term Loans, Working Capital Term Loan and FITL, the Restructured Rupee Term Loans, Working Capital Term Loan and FITL together with all interest, liquidation damages, premia on prepayment or on redemption, costs, expenses

and other monies whatsoever stipulated in this agreement shall be secured by way of creation of Security Interest as under:

i)

xxx xxx xxx

vii) Pledge of 40,52,778 equity shares held by the Promoters (constituting 51% of the paid up capital of the Borrower already pledge with CDR Rupee Lenders and the same shall continue); and
viii) Irrevocable Corporate Guarantee of Arshiya Limited.”

10. Due to default by ANFL in repaying its dues, the Applicant declared ANFL's account as NPA on 30.09.2014 and proceedings under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 were initiated pursuant to a notice dated 14.10.2015 against ANFL. The Applicant initiated legal proceedings on 22.12.2017 before the Debt Recovery Tribunal-II, Delhi by filing Original Application No. 123 of 2018 against ANFL and the Corporate Debtor for recovery of dues. This matter is currently pending as TA 114 of 2022 before DRT-III, Delhi.

11. The 1st meeting CoC was held on 08.08.2024 and the IRP presented the list of claims received, wherein the Applicant's claim of Rs. 374.60 crores was stated as a secured financial creditor. The minute of the meeting records that “*The team member of IPE responded that Punjab National Bank have security interest in form of shares of M/s. Arshiya Northern FTWZ Limited, which is the wholly owned subsidiary of Arshiya Limited, which becomes the assets of the company*”.

12. The Applicant submitted its Form-C claim to the RP, claiming Rs. 354.16 crores along with all supporting documentation,

including copies of the pledge agreement and corporate guarantee on 28.10.2024. In the 5th CoC meeting held on 18.11.2024, the applicant was reclassified as Unsecured Financial Creditor. It is recorded in the minutes that “*The RP presented before the Committee of Creditors, the legal opinion on the security status of claims against Corporate Guarantee. The claim is now considered as an “unsecured financial creditor” - the pledge of shares is merely a “security” and there is no act of disbursement to Arshiya Limited. Based on the aforesaid legal opinion, the claim of Punjab National Bank has been shifted from Secured financial creditor to Unsecured financial creditors and the CoC constitution has been updated as follows –...*”

13. The Applicant vide email dated 26th November, 2024 objected to such re-classification stating that “*The unilateral reclassification of PNB’s claim by the newly appointed RP is a violation of these principles. If the RP was of a different opinion regarding PNB’s classification, the proper course of action would have been to approach NCLT to seek directions if any, rather than unilaterally reclassifying the claim. Additionally, when objections were raised, you failed to provide specific and adequate reasoning. Instead, you cited a “legal opinion” that has not been shared on record.*” The said email further reproduces the extracts of legal opinion relied upon by the RP, which reads as follows :

.....

2. ‘Pledging of shares’ is a contractual arrangement whereby the ‘pledgor’ transfers possession of shares to the ‘pledgee’ as collateral security for a loan. Under the Indian Contracts Act, 1872, a pledge has been defined as the bailment of goods as security for payment of a debt or performance of a promise. The

term bailment simply denotes that the pledgee can retain the shares till the time of repayment of the loan. It is when the pledgee defaults on the repayment of the loan that the pledgor's right to sell the shares accrues by which it can recover the outstanding amount. Thus, pledged shares act as a security for the loan granted.

3. The Supreme Court in the judgments of Anuj Jain (Jaypee) and Phoenix ARC, (Ketulbhai) held that pledgees will not be regarded as "financial creditors" and instead shall only qualify as "secured creditors" if (a) the pledgor is not the principal borrower and (b) no amount has been disbursed directly to the pledgor. This takes away the rights of the pledgee to initiate any proceedings against the pledgor.

4. There is also judgement of Apex Court in Vistra ITCL vs Dinkar which has also dealt with both the judgements of Anuj Jain and Phoenix and has held that the only option for the beneficiary of "pledge of shares" is that they have their security interest in terms of section 3(31) and can exercise the same under section 52 if they want to exercise their rights over the said pledge.

5. It is also relevant to note that, even otherwise, a corporate guarantee is an unsecured financial debt. Pledge of share is not even a "financial debt" since there is no act of disbursement. In simple terms even having combination of both the documents being executed does not mean that it becomes a "secured financial debt". Moreover, in this case both documents are executed for complete different facilities / under different facility agreements.

In summary: Claim is "unsecured financial creditor" pledge of shares is merely a "security" and there is no act of disbursement to Arshiya Limited."

14. Being aggrieved, the applicant has filed the present application, however, no application in this relation was filed by the Resolution Professional.
15. We heard the Learned Counsel and perused the material on record.
16. Before proceeding further, it is pertinent to refer to decision of Hon'ble NCLAT in case of **Mr Rajnish Jain v. Manoj Kumar Singh, (2020) ibclaw.in 409 NCLAT**, wherein it is held that :

"59. Based on the above discussion, we clarify and hold that during CIRP, the IRP is authorised to collate the claims, and based on that he is empowered to constitute the Committee of Creditors. We hold that the Resolution Professional may add to existing claims of claimants already received, or admit or reject further Claims and update list of Creditors. But after categorisation of a claim by the IRP/Resolution Professional we hold that they cannot change the status of a Creditor. For example, if the Resolution Professional has accepted a claim as a Financial Debt and Creditor as a Financial Creditor, then he cannot review or change that position in the name of updation of Claim. It is also to be clarified that while updating list of Claims the Resolution Professional, can accept or reject claims which are further received and update list."

17. The said decision was further followed in case of *Byju Raveendran v. Aditya Birla Finance Ltd. and Ors., (2025) ibclaw.in 610 NCLAT*. The facts in the present case are identical to facts

in case of Mr. Rajnish Jain (Supra) and Byju Ravindran (Supra). The decision in case of Mr. Rajnish Jain (Supra) was available prior to legal opinion obtained by RP on 16th November, 2024. Accordingly, the reclassification done by RP is without any authority vested in him and in doing so, he has exceeded his powers.

18. Nonetheless since the facts are before us, we consider it appropriate to decide the issue on merit to avoid another application on this issue from RP to seek adjudication in relation to classification of applicant's claim.

19. In case of *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd. & Ors., (2020) 8 SCC 401*, the Hon'ble Division Bench of Supreme Court, after examining the definition of financial debt, held at Para 49.1 that "*Thus, any mortgage created in favour of a creditor leads to a security interest being created and thereby, the creditor becomes a secured creditor*". The Hon'ble Court concluded at Para 50.2 that "*Therefore, we have no hesitation in saying that a person having only security interest over the assets of corporate debtor (like the instant third party securities), even if falling within the description of 'secured creditor' by virtue of collateral security extended by the corporate debtor, would nevertheless stand outside the sect of 'financial creditors' as per the definitions contained in sub-sections (7) and (8) of Section 5 of the Code.*"

20. In case of *Phoenix Arc Private Limited V.s Ketulbhai Patel (2021) ibclaw.in 04 SC*, the Hon'ble Three Judge Bench took note of the Division Bench decision in case of Anuj Jain (Supra) and noted that the decisions in case of Swiss Ribbons (P) v. Union of India, (2019) 4 SCC 17 and Pioneer Urban Land & Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416 were taken note of by

Division Bench. It observed and held that “30. *This Court held that a person having only security interest over the assets of corporate debtor, even if falling within the description of ‘secured creditor’ by virtue of collateral security extended by the corporate debtor, would not be covered by the financial creditors as per definitions contained in sub-section (7) and (8) of Section 5. What has been held by this Court as noted above is fully attracted in the present case where corporate debtor has only extended a security by pledging 40,160 shares of GEL. The appellant at best will be secured debtor qua above security but shall not be a financial creditor within the meaning of Section 5 sub-sections (7) and (8).*”

21. The aforesaid binding judicial proposition clearly holds that a security interest holder, per-se, in the absence of disbursement and time value of money-the sine qua non for constituting a financial debt, shall be classified as secured creditor only.
22. In the present case, the Applicant is holding two securities for the debt advanced to the ANFL, namely, (i) pledge over shares held by Corporate Debtor in ANFL, and (ii) Corporate Guarantee executed by Corporate Debtor’s predecessor to secure same debt lent to ANFL. There is no dispute that obligations arising under Guarantee Agreement, dehors existence of disbursement of debt and time value of money, falls within the definition of Financial Debt in terms of express provision contained in section 5(8)(i) of the Code. Accordingly, the obligations in respect of debt owed by ANFL becoming due from Corporate Debtor under Guarantee constitutes a financial debt, and since the contract of guarantee is personal in nature, there is no underlying security, the said debt is an unsecured financial debt.

23. The Applicant is also holding security interest owned by the Corporate Debtor in relation to same debt, and such security interest binds the Corporate Debtor to the applicant in capacity of a secured creditor as held in Anuj Jain (Supra), Ketulbhai (Supra) and *Vistra ITCL (India) Ltd. and Ors. v. Mr. Dinkar Venkatasubramanian and Anr. (2023) ibclaw.in 62 SC*. In other words, in relation to same debt, the Applicant is standing in two capacities viz. (i) an Unsecured Financial Creditor; and (ii) a Secured Creditor. It is also pertinent to note that both the debt claims cannot be admitted in the CIRP of the Corporate Debtor which would result into duplication of claim of the applicant, which even the applicant is not asserting. On the other hand, if the applicant is recognised as Unsecured Financial Creditor, that goes against the security interest it holds as it yields lesser amount in terms of liquidation value, and if it is classified as Secured Creditor, it loses its voting right in the CoC.

24. In the context, it is pertinent to note the discussion in Anju Jain (Supra) leading to the conclusion that a security interest holder per-se cannot qualify as financial creditor –

50. A conjoint reading of the statutory provisions with the enunciation of this Court in Swiss Ribbons (supra), leaves nothing to doubt that in the scheme of the IBC, what is intended by the expression 'financial creditor' is a person who has direct engagement in the functioning of the corporate debtor; who is involved right from the beginning while assessing the viability of the corporate debtor; who would engage in restructuring of the loan as well as in reorganisation of the corporate debtor's business when there is financial stress. In other words, the financial creditor, by its own direct involvement in a functional existence of corporate debtor, acquires

unique position, who could be entrusted with the task of ensuring the sustenance and growth of the corporate debtor, akin to that of a guardian. In the context of insolvency resolution process, this class of stakeholders namely, financial creditors, is entrusted by the legislature with such a role that it would look forward to ensure that the corporate debtor is rejuvenated and gets back to its wheels with reasonable capacity of repaying its debts and to attend on its other obligations. Protection of the rights of all other stakeholders, including other creditors, would obviously be concomitant of such resurgence of the corporate debtor. (emphasis supplied)

50.1. Keeping the objectives of the Code in view, the position and role of a person having only security interest over the assets of the corporate debtor could easily be contrasted with the role of a financial creditor because the former shall have only the interest of realising the value of its security (there being no other stakes involved and least any stake in the corporate debtor's growth or equitable liquidation) while the latter would, apart from looking at safeguards of its own interests, would also and simultaneously be interested in rejuvenation, revival and growth of the corporate debtor. Thus understood, it is clear that if the former i.e., a person having only security interest over the assets of the corporate debtor is also included as a financial creditor and thereby allowed to have its say in the processes contemplated by Part II of the Code, the growth and revival of the corporate debtor may be the casualty. Such result would defeat the very objective and purpose of the Code, particularly of the provisions aimed at corporate insolvency resolution. (emphasis supplied).

25. In contrast, the Applicant in the present case is a financial creditor as well as security interest holder independently in respect of same debt. The only security interest holder was

rejected to be a financial creditor on the premise that they shall be interest only in realisation of their mortgage debt, while the Financial Creditor is poised to look forward to ensure that the corporate debtor is rejuvenated and gets back to its wheels with reasonable capacity of repaying its debts and to attend on its other obligations.

26. In view of this reasoning, we do not find any merit in the contention of the RP that these documents pertain to different facilities and transactions. The pledge of shares and the corporate guarantee do not relate to the same facility, and as such, cannot be cumulatively treated as creating a secured financial debt under the IBC. Further, the RP's contention that a corporate guarantee issued later in time cannot be said to have been backed by a pledge agreement as a security which was issued many years prior, and also relates to a completely different credit facility, is not based on correct appreciation of facts in hand. In this case, the pledge agreement as well as corporate guarantee were extended to the restructured credit facilities, and initial facility granted by applicant in its personal capacity got merged when a consortium arrangement was entered into, which is evident from the allocation of credit facilities amongst consortium members having been recognised distinctly. Also, it is not the case of the RP that the applicant that has filed two claims viz. one against 100 crores facility and another against 90 Crores and 25 Crores facilities recognised under consortium arrangement. The CD i.e. Arshiya Limited is not even a party to the MRA dated 28.09.2013, however, it is pertinent to note that its predecessor Arshiya International Limited, which got merged into Corporate Debtor later on, had

executed a corporate guarantee to secure restructured debt on 28.09.2013, and consequent to merger of Arshiya International Limited into Corporate Debtor, the Corporate Debtor becomes obliged to the guarantee terms.

27. Accordingly, in our considered view, the position the applicant is to be reconciled holistically so as not to deny it the benefit of security interest it holds as well as its entitlement to participate in collective decision making in the peculiar facts and circumstances of the case. Hence, we have no hesitation to hold that the Applicant is entitled to be classified as secured financial creditor on the basis of concurrent holder of security interest as well as guarantee obligations from the Corporate Debtor in respect of same debt.

Order:

28. Accordingly, the Application is **allowed** in the following terms:

- i. The Resolution Professional is directed to treat and recognize the Applicant as a secured creditor in the CIRP of the Corporate Debtor to the extent of the security interest created by the Share Pledge Agreement dated 09.09.2010. So will be the other lenders in the consortium;
- ii. The reclassification of the Applicant's claim as an unsecured financial creditor, as reflected in the agenda of the 5th CoC meeting dated 18.11.2024, is hereby set aside;
- iii. The Respondent shall carry out necessary corrections in the list of creditors and all CIRP records forthwith;

- iv. The rights and obligations of the Applicant as a secured creditor shall be governed in accordance with Sections 52 and 53 of the Code.

29. The Application IA 2913 of 2025 stands disposed of as allowed.

No order as to costs.

30. Ordered accordingly.

Sd/-
Prabhat Kumar
Member (Technical)
MK

Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)